

Trans 233.015(1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the *State of Wisconsin Facilities Development Manual*.

NOTE: For any given site, several patterns may work. These guidelines are exempt from the definition of rule under ss. 227.01(13), Stats.: "'Rule' does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:"... "(d) Relates to the use of highways and is made known to the public by means of signs or signals,"... or "(e) Relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 85.025,"...or "(r) Is a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature,"...or "(y) Prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance."

(2m) "In-ground swimming pool" means a swimming pool that is designed or used as part of a business or to serve the general public or members. It does not include any above-ground swimming pools without decks or any residential swimming pools.

(4)(note) There are some land divisions within the definition of s. Trans 233.015(4) that may not involve any change in use of existing structures and improvements or traffic. Examples of this type of land division would be the conversion of an apartment building that has been in existence for 5 years to condominium ownership or the conversion of leased commercial spaces in a shopping mall that has been in existence for 5 years to owned spaces. When the department, district, or authorized municipality makes a determination that a land division fits this category, the land division will be deemed a technical land division only and the department, district, or authorized municipality shall certify approval or declare the land division exempt from this chapter, and shall refund any fee paid.

SECTION 5. Trans 233.03(5) is repealed and recreated to read:

Trans 233.03(5) **TIME TO COMPLETE REVIEW.** The department, district or the municipality to which the department has officially and formally delegated review authority under sub. (8) shall complete the review by either objecting or certifying non-objection to the land division map as follows:

(a) *Initial decision.* In the absence of any request for a special exception under s. Trans 233.11, the district or municipality shall complete the review by either objecting

or certifying non-objection to the land division map within 20 calendar days from the date that a complete request is received by the required office of the department or municipality. A request shall be deemed complete unless the department provides notice that the request is incomplete within 5 working days. If a land division involves only changes in the type of ownership of structures or improvements that existed for 5 years prior to the land division, the department will approve the land division within this 20 calendar day period after verifying from the information provided that it is only a technical land division. If a special exception is requested, the district or municipality shall inform the land divider of its decision in writing granting or denying a special exception within a period of no more than 60 calendar days from receipt of the land divider's specific written request for a special exception. If the district or municipality fails to act within the 60-day limit, the district or municipality shall be deemed to have no objection to the special exception. There is no decision time limit applicable to conceptual reviews under sub. (1), except that it is intended that the department shall respond to any request for a conceptual review under sub. (1) within 30 calendar days.

(b) *Appeal.* Any final decision of a district or municipality regarding a land division, special exception, or consequence of failure to act within the time limits provided, may be appealed to the secretary or designee within 20 days of that final decision or failure to act. The secretary or designee shall inform the land divider of its decision on appeal in writing granting or denying or modifying the final decision of a district or municipality within a period of no more 60 days from receipt of the appeal. If the secretary or designee fails to act within the 60-day limit, the department shall be

deemed to have no objection to the land division. There are no appeals from conceptual reviews under sub. (1).

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

(c) *Intent of 60-day provision.* It is the intent of the 60-day special exception provision to allow land dividers and the district, municipality or department sufficient time to explore alternative locations or plans to avoid or minimize conflicts and facilitate mutual resolution. It is intended that decisions will be made sooner if practicable. The 60 day period may be extended by written consent of the land divider.

(d) *Judicial review.* 1. 'Chapter 236 land divisions.' Judicial review of final departmental or municipal decisions for land divisions subject to chapter 236, Stats., shall follow appeal procedures specified in that chapter.

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

2. 'All other land divisions.' Judicial review of final departmental or delegated municipal decision for land divisions that are not subject to chapter 236, Stats., shall follow the procedures specified in chapter 227, Stats., for judicial review of agency decisions.

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

3. 'Restrictions for public benefit.' Any recorded restriction placed on a land division 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 by

appropriate recorded document by the public body or public utility having the right of enforcement. There is no appeal from the denial of a request to release or waive a restriction for public benefit.

NOTE: See secs. 236.293 and 236.42(2), Stats.

SECTION 6. Trans 233.03(6) to (8) are created to read:

Trans 233.03(6) PROCEDURE. Land division reviews and approvals shall be granted by the department, its district offices or by municipalities that have requested and been formally delegated the authority. Any district or municipal approval or denial of a land division or special exception may be appealed to the secretary of the department or designee, who may reverse, modify or affirm the decision of the district or municipality. A land divider, governmental officer or entity, or member of the general public may appeal a final decision of the district or municipal authority to the secretary of the department or designee. The department will not unilaterally initiate a review of a decision of a district certifying nonobjection to a land division with or without a special exception. However, if an affected third party objects to a certificate of nonobjection provided by a district office, the department may reverse the district decision if it finds the objection of the third party to be meritorious. The department may unilaterally review any municipal decision to require conformity with the delegation agreement and this chapter.

(7) DISTRICT AUTHORITY TO REVIEW LAND DIVISIONS. Authority to review land divisions under this chapter is delegated by the department to each of its district offices on the effective date of this chapter . . . [Revisor insert date] or February 14, 2001, whichever occurs earlier. Persons not satisfied with a district decision may

appeal to the department's central office as provided in sub. (6). The department shall develop implementing procedures to assure consistency and uniformity among districts and shall provide uniform guidance in chapter 7 of the *State of Wisconsin Department of Transportation Facilities Development Manual* dated December 1, 2000.

NOTE: Uniform guidance is referenced by date in this rule so that future revisions will only become effective if ch. Trans 233 is amended, which requires legislative review. These guidelines are exempt from the definition of rule under ss. 227.01(13), Stats.: "'Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:"... "(d) Relates to the use of highways and is made known to the public by means of signs or signals,"... or "(e) Relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 85.025,"...or "(r) Is a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature," or... "(y) Prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance."

(8) MUNICIPAL AUTHORITY TO REVIEW LAND DIVISIONS. At the request of a city or village the department may delegate review and approval of land divisions abutting state trunk highways or connecting highways to cities and villages within which the highways lie. The department shall develop a uniform delegation agreement in cooperation with cities and villages. The delegation agreement may also grant a city or village authority to grant special exceptions. Land division approvals granted by cities or villages that have been delegated this authority by the department are subject to the internal appeal procedure applicable to land division approvals granted by the department or its districts, except that the department may unilaterally review any municipal decision to require conformity with the delegation agreement. No city or village delegated authority to review land divisions may change its setback policy once the authority has been delegated without a written and approved amendment to the delegation agreement.

SECTION 7. Trans 233.05(1)(intro.) is amended to read:

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

SECTION 8. Trans 233.08(2)(c) and (3n) are created to read:

Trans 233.08(2)(c) The department shall produce general reference maps that generally identify the highways specified in pars. 1. to 5. at least every 2 years. Persons may seek special exceptions to the setback requirement applicable to these highways through the special exceptions process for setbacks in s. Trans 233.11(3). "Level of service "C"" as used in this paragraph has the same meaning as in ss. Trans 210.03(4) and 210.05(1). The setback provision of par. (a) applies to highways identified as:

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

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

3. State trunk and connecting highways within incorporated areas and within one mile of those corporate boundaries.
4. State trunk highways with current average daily traffic of 5,000 or more.
5. State trunk and connecting highways with current and forecasted congestion projected to be worse than level of service "C" within the following 20 years.

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

(3n) Notwithstanding sub. (1), a person may erect, install or maintain any structure or improvement at 15 feet and beyond from the right of way line of any state

trunk or connecting highway not identified in s. Trans 233.08(2)(c). Persons may also seek special exceptions to the setback requirement applicable to these highways not identified in s. Trans 233.08(2)(c) through the special exceptions process for setbacks in s. Trans 233.11(3), except that there can be no adjustment of the 15 foot setback line except as expressly limited under s. Trans 233.11(3)(b).

SECTION 9. Trans 233.105(1), (2)(intro.) and (3) are amended to read:

Trans 233.105(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the ~~land divider~~ owners or users shall be responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from future geographic expansion of the through lane capacity of the highway itself by the government, more through lanes constructed, is not the responsibility of the land owner, user or land divider. In addition, the owner shall include the following notation on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise sufficient to protect these lots. Owners or users of these lots are responsible for abating noise sufficient to protect these lots if noise abatement is desired by the owners or users."

NOTE: Some land divisions will result in location of facilities in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners and users that they are responsible for further noise abatement for traffic and traffic increases on existing highways in the absence of any geographic expansion of capacity of the highway itself by the government (more lanes constructed).

(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The department shall allow the owner to grant a permanent vision corner easement in lieu of dedication whenever dedication makes it difficult to comply with local ordinances. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

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

NOTE: In sec. 88.87(1), Stats., the Legislature has recognized that changes in the direction and volume of flow of surface waters are frequently caused by development on private land adjacent to highways. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway and to impose correlative duties upon

owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87(3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87(3)(b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must be commenced within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the State of Wisconsin Department of Transportation Facilities Development Manual.

SECTION 10. Trans 233.11(title) and (1) are amended to read:

Trans 233.11 (title) ~~Variances~~ Special exceptions. (1) DEPARTMENT CONSENT. No municipality or county may issue a variance or special exception from this chapter without the prior written consent of the department.

SECTION 11. Trans 233.11(2) is renumbered (3)(a) and amended to read:

Trans 233.11(3)(a) (title) Special exceptions for setbacks allowed. The department may ~~not~~ authorize ~~variances~~ special exceptions from this chapter ~~except~~ in appropriate cases ~~in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government~~ when warranted by specific analysis of the setback needs as determined by the department. A ~~variance~~ special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department may ~~not~~ grant a ~~variance authorizing~~ special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area ~~unless the owner executes an agreement providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the variance~~ as

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

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

SECTION 12. Trans 233.11(3)(b) to (f), (4) and (5) are created to read:

Trans 233.11(3)(b) *Specific analysis for special exceptions for setbacks.* Upon request for a special exception from setback requirements of this chapter, the department shall make a specific analysis of the setback needs. The analysis of the department may consider all of the following:

1. The structure or improvement proposed and its location.
2. The area in the vicinity of the proposed land division and its existing development pattern.
3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
4. Current and forecasted congestion projected to be worse than level of service "C" within the following 20 years.
5. The objectives of the community, developer and owner.
6. The effect on other property or improvements in the area.
7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.

8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.

9. Transportation safety.

10. Preservation of the public interest and investment in the highway.

11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.

NOTE: "Level of Service "C"" as used in this paragraph has the same meaning as in ss. Trans 210.03(4) and 210.05(1).

(c) *Adjust setback.* If the department determines that it may grant the special exception by adjusting the setback area, the department assumes the risk and shall pay just compensation for future department required removal of a structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires in the future for a transportation improvement. The department may not adjust the 15 foot setback line for those highways identified under s. Trans 233.08(3n) unless a comprehensive local setback ordinance generally applicable to vicinity of the land division expressly sets a closer setback line.

(d) *Allow in setback – removal does not affect viability.* If the department determines that it may grant the special exception within the existing setback area and future removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with

the proposed structure or improvement, or adversely affect the community in which it is located, then the owner assumes the risk of future department required removal of the structure or improvement and waives any right to compensation or relocation assistance associated with the acquisition of land the department acquires in the future for a transportation improvement. As a condition of granting the special exception, the owner shall execute an agreement or other appropriate document as determined by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the special exception. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

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

(f) *Horizon of setback analysis.* For purposes of its specific analysis, the department shall consider a period within the following 20 years.

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

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

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

(5) MUNICIPAL SPECIAL EXCEPTIONS. A municipal delegation agreement under s. Trans 233.03(8) may also grant a city or village authority to grant special exceptions. Land division approvals and special exceptions granted by cities or village that have been delegated this authority by the department are subject to the internal appeal procedure applicable to land division approvals or special exceptions granted by the department or its districts, except that the department may unilaterally review any municipal decision granting a variance or special exception to require conformity with the delegation agreement and this chapter.

SECTION 14. Trans 233.13 is renumbered Trans 233.13(1).

SECTION 15. Trans 233.13(2) is created to read:

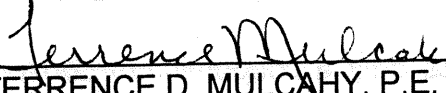
Trans 233.13(2) TREATMENT OF CONDOMINIUM CONVERSIONS AND OTHER LAND DIVISIONS INVOLVING NO CHANGE IN USE OF EXISTING STRUCTURES AND IMPROVEMENTS OR TRAFFIC IMPACTS, OR BOTH. If a land division involves only a condominium conversion plat on existing developed property and the existing development has been in existence for 5 years and the condominium development has traffic impacts similar to the existing development, the department will approve the land division. If a land division involves only changes in the type of ownership of structures or improvements that existed for 5 years prior to the land division, the department will approve the land division if there are no traffic impacts. Examples of these types of land division would be the conversion of leased commercial spaces in a shopping mall to owned spaces. If the land division involves only the movement of a property line between adjacent owners, the department shall approve the land division if there are no traffic impacts. An example of this type of land division would be 2 property owners exchanging deeds to resolve mutual encroachments. When the department, district, or authorized municipality makes a determination that a land division fits this category, the land division will be deemed a technical land division only and the department, district, or authorized municipality shall certify approval or declare the land division exempt from this chapter, and shall refund any fee paid.

NOTE: This type of technical land division will be handled as exempt or will be appropriately certified without charge after appropriate review to determine it fits this category and has existed the requisite time. This review is necessary to prevent evasion of the safety and public investment purposes of the law on which this rule is based.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 30 day of June, 2000.


TERRENCE D. MULCAHY, P.E.)
Secretary
Wisconsin Department of Transportation

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
6/30/2000

STATE TRUNK HIGHWAY SYSTEM SETBACKS

DRAFT



SETBACK REQUIREMENTS

-  "Normal"
-  Reduced

DRAFT

*Notes:
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September 28, 2000

Representative David Brandemuehl
Chair, Assembly Transportation Committee
Room 317 North, State Capitol
Madison, WI

Senator Roger Breske
Chair, Senate Transportation Committee
Room 18 South, State Capitol
Madison, WI

Re: **Proposed Administrative Rule
Chapter Trans 233, Wisconsin Administrative Code
Clearinghouse Rule No. 00-109**

Gentlemen:

At the Committee hearing on September 20, 2000, the Department agreed to modify parts of CR 00-109 relating to Items 6 and 7 of Legislative Council Attorney William Ford's memo dated September 15, 2000. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following germane modifications to the rule:

ITEM 6. On page 29, amend TRANS 233.105(2)(intro.) as follows:

TRANS 233.105(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

ITEM 7. On page 28, amend TRANS 233.105(1) as follows:

TRANS 233.105(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, ~~the land divider shall be~~ department is not responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, ~~the owner shall include~~ the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting

highways, in the absence of any increase by the department to the highway's through-lane capacity."

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

ITEM 5 of Mr. Ford's memo deals with "grandfather" rights and initial applicability of the original 1956 rule, the February 1, 1999 rule, and this rule revision. The Department has proposed to create s. Trans 233.012(2) on page 18 of the rule to clarify applicability as follows:

Trans 233.012(2). **Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist.** Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and the effective date of this chapter...[revisor insert date] are subject to ch. Trans 233 as it existed February 1, 1999. **[The above sentence is shown in bold in this letter for emphasis.]**

If WISDOT did not object to the preliminary plat; it cannot object to the final plat. Statutory law, sec. 236.11(1)(b), Stats., reads in part:

"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."

The language in Trans 233.012 is consistent with the statute and the changes previously agreed to and documented in the Legislative Council Memorandum by Mr. Ford.

In addition to the above changes requested at the hearing, the Department has agreed to other requests submitted by members to the Committee Chair. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following additional germane modifications to the rule:

On page 18, insert SECTION 11M as follows:

SECTION 11M. TRANS 233.012(3) is created to read:

Trans 233.012(3). Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

On page 27, insert SECTION 21M as follows:

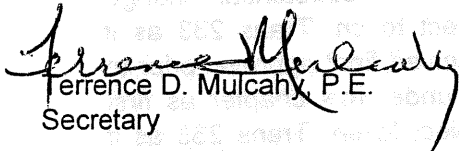
SECTION 21M. TRANS 233.08(2)(d) is created to read:

Trans 233.08(2)(d). In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

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

Thank you for your consideration of this proposal.

Sincerely,


Terrence D. Mulcahy, P.E.
Secretary

cc: Senator Judy Robson
Representative Glenn Grothman
Gary Poulson
John Haverberg
Ron Nohr
Ernie Peterson
Bonnie Tripoli



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 18, 2000
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: William Ford, Senior Staff Attorney
SUBJECT: Agreements Reached to Amend Ch. Trans 233

1. Introduction

This memorandum describes agreements to amend Wis. Adm. Code ch. Trans 233 reached between the Coalition to Reform Trans Ch. 233 ("the Coalition") and the Department of Transportation (DOT) at the February 17, 2000 meeting of the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. It is the intent of the subcommittee that the DOT, the Coalition and other interested parties will cooperate in developing draft administrative rules to implement the agreements described in this memorandum and that DOT will promulgate these as amendments to ch. Trans 233. It is also the intent of the subcommittee that the DOT, the Coalition and other interested parties will continue to work together to develop amendments to s. Trans 233.08, relating to setback requirements and restrictions.

A more detailed description of the issues discussed by the subcommittee is contained in a memorandum I provided to you, dated January 1, 2000, entitled *Issues Raised With Respect to Chapter Trans 233*.

2. Process for Approving Land Divisions

- a. DOT will transfer the authority to review land divisions under ch. Trans 233 from the state office to its district offices by a date that is no later than February 14, 2001.
- b. DOT will provide an appeal process under which persons not satisfied with a district decision with respect to a land division may appeal to DOT's central office.
- c. DOT will develop implementing procedures at the district level to assure consistency and will provide uniform guidance in DOT's facility development manuals and in other manuals specified and cross-referenced in ch. Trans 233.

d. A request for review of a land division will receive an automatic certificate of nonobjection if DOT does not act on the request within 20 days of its submission, unless an extension of the 20-day time period is mutually agreed to.

e. DOT shall request any additional information it determines is necessary to review a proposed land division within five working days after receiving a request for a review. Upon receipt of the additional information, the 20-day time period will again begin running. The 20-day review procedure shall be specified in ch. Trans 233.

f. DOT's central office will not, on its own initiative, reverse a certificate of nonobjection provided by a DOT district office with respect to a proposed land division. However, if an affected third party objects to a certificate of nonobjection provided by a DOT district office, DOT's central office may reverse the district office's decision if it finds the objection by a third party to be meritorious.

3. Explicit Approval of Plats Approved Prior to the Effective Date of Ch. Trans 233 and of Improvements and Structures Placed Prior to the Effective Date of Ch. Trans 233

a. DOT will revise ch. Trans 233 to give explicit approval to structures and improvements legally placed in a setback area prior to February 1, 1999. (Chapter Trans 233 took effect on February 1, 1999.)

b. DOT will revise ch. Trans 233 to explicitly state that plats that have received preliminary or final approval prior to February 1, 1999 will not be subject to the new standards under ch. Trans 233 as promulgated effective February 1, 1999.

4. Exclude Condominium Developments From Ch. Trans 233

DOT agrees to revise ch. Trans 233 to state that condominium conversion plats on existing developed property are exempt from ch. Trans 233 and are not subject to fees under s. Trans 233.13 if the existing development has been in existence five years and if the condominium development has traffic impacts similar to the existing development.

5. DOT Guidelines for Administering Ch. Trans 233

DOT agrees that its drafted guidelines for interpreting ch. Trans 233 will be incorporated by reference into ch. Trans 233. Furthermore, DOT states that these incorporated guidelines will be referenced by date such that future revisions to the guidelines will only become effective if ch. Trans 233 is amended, which requires legislative review.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:jal:wu;ksm;rv

MEMORANDUM

TO: Charles H. Thompson, Secretary

FROM: James S. Thiel, General Counsel, State Bar #1012582
John Haverberg, Director, Bureau of Highway Development

DATE: February 14, 2000

RE: Trans 233 Agreement with Wisconsin Realtors, Coalition and Others

BACKGROUND. On July 13, 1999, you responded to the initial concerns of the Wisconsin Realtors Association (Realtors) with revised Trans 233, Wis. Admin. Code, regarding land divisions abutting state trunk and connecting highways. The Realtors expressed a number of initial concerns shortly after these revisions went into effect on February 1, 1999. Your July 13, 1999 letter expressed your gratitude for the Realtors' willingness to cooperatively refine the implementation of the new provisions of Trans 233 for mutual private and public benefit. You also pledged a four step approach to address the Wisconsin Realtors' concerns on a continuing basis. In brief:

1. **Education, Training, and Meetings with Interested Groups.**
2. **Specific Responses to Specific Questions.**
3. **Uniform Implementation.**
4. **Then, Refine Rule As Necessary.**

Your letter also included a memorandum from WISDOT responding to specific legal and operational concerns expressed by the Realtors in Tom Larson's 12-page memo of February 19, 1999. William Malkasian, Executive Vice President of the Realtors, sent us a copy of this memo on March 30, 1999. A copy of your letter with the accompanying memorandum is attached.

On January 24, 2000, as a follow-up to this continuing cooperative process, you reached further agreement with the Realtors. Tom Larson of the Realtors has summarized our progress, discussions and the Realtors' understanding of our mutual conceptual solutions. The purpose of this memorandum to you is to confirm this agreement with the Realtors, with comments and corrections for clarification, as requested by the Realtors. This memorandum also represents what WISDOT agreed at committee and subcommittee meetings, e.g. January 27, 2000, and discussions with Legislators, the Coalition and other interested groups participating in this process. It also serves as a response to the Coalition's memo of November 22, 1999 and the Realtors' memo by Tom Larson of November 24, 1999. The following page summarizes all the agreements in principle on all the general issues to date:

February 14, 2000

Agreement in Principle on TRANS 233 Issues
General issues

Following is the “agreement in principle” on a list of issues reached by the Department, the Realtors, and several organizations/groups:

Issue	“Agreement in Principle”
Lack of certainty provided by conceptual review process	<ul style="list-style-type: none">• The department will develop implementing procedures at District level to assure the desired consistency, while still providing for an appeal process to the department’s central office.• Uniform guidance will be published in the department’s Facilities Development Manual and other manuals as appropriate and expressly cross-referenced in the Rule.
Inclusion of “condominium plats” in definition of “land division”	<ul style="list-style-type: none">• Rule will be clarified to say that condominium plats on existing developed properties are exempt from the Rule, with set minimum period of existence and similar traffic impact.
Noise barrier requirements place excessive burden on land dividers	<ul style="list-style-type: none">• Rule will be clarified to say that responsibility to construct or finance needed noise barriers for new land divisions next to existing highways applies to owner rather than land divider.• Rule will also be clarified to say that that noise resulting from expansion of the highway (more lanes) is not responsibility of the land divider or owner.
Land dedication requirements for vision corners are unreasonable	<ul style="list-style-type: none">• Rule will be clarified to say that permanent easements for vision corners may be allowed in lieu of dedication if the dedication creates a problem for the land divider in complying with local ordinances.
Drainage provisions expose land dividers to excessive liability	<ul style="list-style-type: none">• The Rule will be revised to make it clear that land dividers are not required to accept legal responsibility for all unforeseen acts of nature or forces beyond their control.• The Rule will be clarified to inform land dividers of their responsibilities for providing the drainage computations and information under state statutes. Various methods may be used for estimating runoff.
Lack of criteria for determining “desirable traffic access pattern”	<ul style="list-style-type: none">• Technical guidance is available in the department’s Facilities Development Manual and other manuals and will be expressly cross-referenced in the Rule. For any given site, several patterns may work.
Variance process is too restrictive	<ul style="list-style-type: none">• Rule will be changed to allow exceptions in some instances based on defined criteria, e.g. existing community ordinances and development patterns.• Rule will be changed to provide a different name (“special exception”?) and criteria for variances to avoid the strict legal standards applied by courts when reviewing the granting of variances.

The following is a specific response to each point in the Realtors' (Tom Larson's) summary of agreements of January 24, 2000:

SETBACK REQUIREMENT

In addition to the agreements outlined above [i.e. variance name, criteria and legal standard, conceptual review, uniform guidelines, and the appeal process], WISDOT is continuing negotiations regarding various options and criteria relating to the scope and applicability of setbacks to various highway situations.

CONCEPTUAL REVIEW PROCESS

WISDOT Agreement in bold:

1. Transferring the authority to review land divisions from the state office to its district offices by a yet-to-be-determined date (not to exceed 12 months from the date of this memo). This will allow the entire review process to occur at the local level by those who are most familiar with the specific land-division proposal [**WISDOT AGREES**].

EXISTING IMPROVEMENTS AND PLATS

WISDOT Agreement in bold:

1. Grandfather existing improvements and structures [**WISDOT AGREES**], and clarify that WISDOT may not request the removal or movement of these items as part of the land-division process [**DIFFICULT TO GENERALIZE**];
2. Modify current variance process to avoid the strict legal standard for variances [**WISDOT AGREES**]; and
3. Clarify that existing plats (plats that have received either preliminary or final approval prior to February 1, 1999) will not be subject to the standards under the new rule [**WISDOT AGREES, CAVEAT – NO SUBSTANTIAL CHANGE BETWEEN PRELIMINARY AND FINAL**].

CONDOMINIUM PLATS

WISDOT Agreement in bold:

1. Exempt from Trans. 233 existing buildings that are later converted into condominiums [**WISDOT AGREES, BUT BUILDING MUST EXIST FOR SPECIFIED PERIOD OF TIME AND HAVE TRAFFIC IMPACT CHARACTERISTICS SIMILAR TO CONDOMINIUM**]; and
2. As discussed above, grandfather condominium plats in existence prior to February 1, 1999 [**WISDOT AGREES**].

20-DAY REVIEW PERIOD

WISDOT Agreement in bold:

1. State that a request for review will be entitled to a certificate of non objection if WISDOT fails to act within the 20-day time period for reviewing land divisions [**WISDOT AGREES UNLESS EXTENSION MUTUALLY AGREED**].

NOISE BARRIERS

WISDOT Agreement in bold:

1. Revising the section to state that WISDOT is not responsible (rather than making the land divider responsible) for any noise barriers to abate excessive noise from existing state trunk highways or connecting highways [**WISDOT AGREES - OWNER RESPONSIBILITY**]; and
2. Clarifying that WISDOT is responsible, not the land divider, for abatement of excessive noise resulting from WISDOT's expansion of an existing highway, in accordance with Wis. Admin. Code sec. Trans. 405 (?) [**WISDOT AGREES - TRANS 405 IS CORRECT**].

VISION CORNERS

WISDOT Agreement in bold:

1. Deleting the dedication requirement from the rule (WISDOT is able to achieve the same level of public safety through easements) [**WISDOT AGREES THAT ALTERNATIVES ACHIEVE SAME PURPOSE**].

DRAINAGE PROVISIONS

WISDOT Agreement in bold:

1. Clarifying that the land divider will NOT be asked to guarantee that anticipated discharge ("estimate") is correct. (The intent is to eliminate any liability resulting from an incorrect estimate that was made in good faith.) [**WISDOT AGREES THAT "GUARANTEE" IS WRONG WORD**].

"DESIRABLE TRAFFIC ACCESS PATTERN"

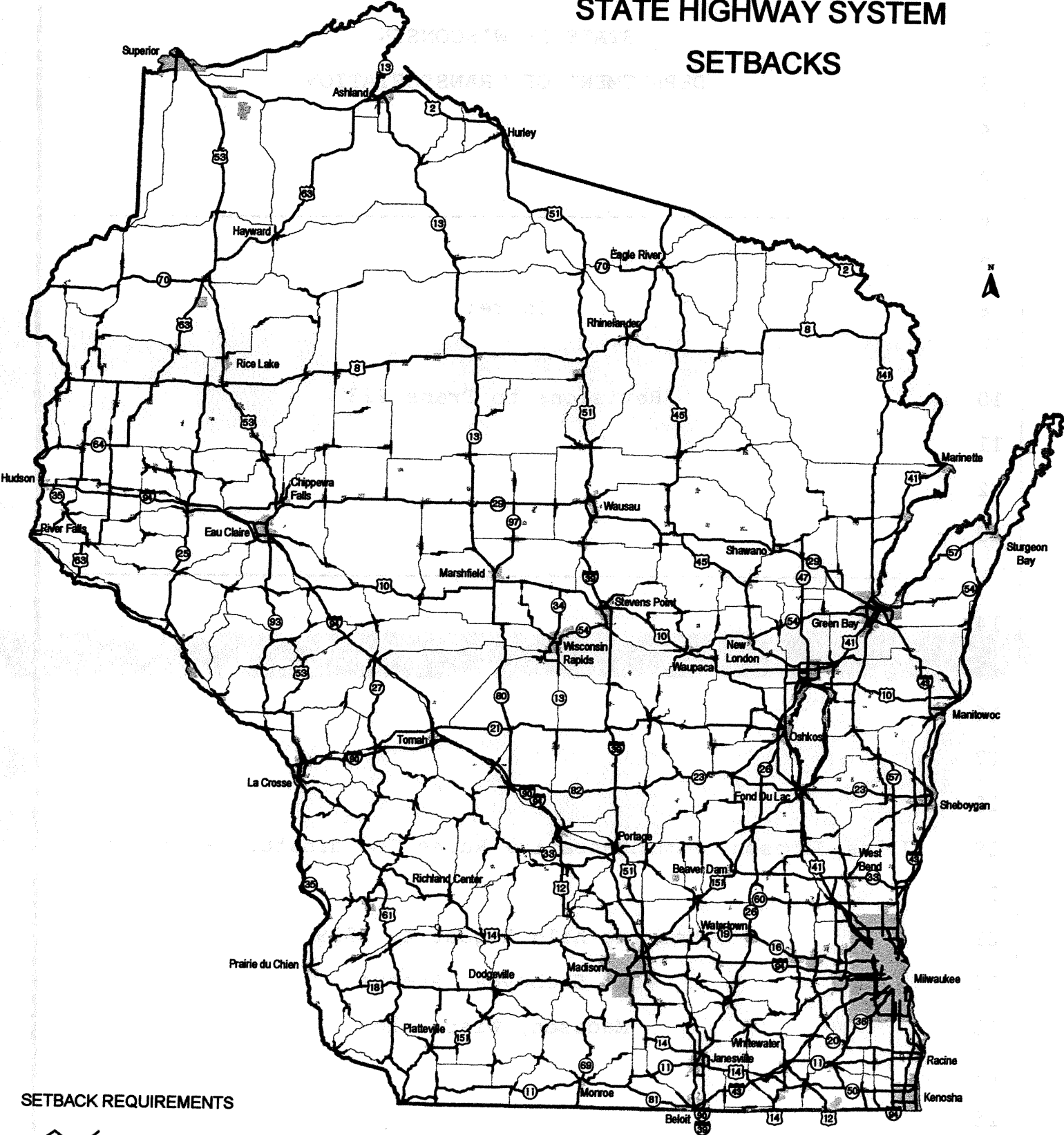
WISDOT Agreement in bold:

1. Reference to the multi-volume set of standards WISDOT uses to determine whether a particular traffic access pattern is "desirable." [**WISDOT AGREES**].

Attachments:

July 13, 1999 Letter and Memorandum from Secretary to Realtors
January 24, 2000 Memorandum from Tom Larson of Realtors

STATE HIGHWAY SYSTEM SETBACKS



SETBACK REQUIREMENTS

- Normal
- Reduced

Page 1

1 BEFORE THE
2 STATE OF WISCONSIN
3 DEPARTMENT OF TRANSPORTATION

6 -----
7
8 In re:

9
10 Revisions to Trans 233
11
12
13 -----

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17
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19 Jules Johnson, Administrative Rules Coordinator, Presiding
20

21 Hearing held August 4, 1999

22 4802 Sheboygan Avenue

23 Madison, Wisconsin
24
25

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1 RECORDER: We're on the record. My name is Frank
 2 Wiener. I'm employed by Textnet. We're at the Hill Farms
 3 State Office Building in Madison, Wisconsin, for a hearing at
 4 the Department of Transportation before Mr. Thiel. Time
 5 showing in the camera is 9:01 a.m. We can proceed.
 6 MS. JOHNSON: Thank you, Frank. Good morning,
 7 everyone. This is going to be a public hearing to consider
 8 the amendment of Chapter Trans 233 relating to division of
 9 land abutting a state trunk highway or connecting highway.
 10 Today is Friday, August 4th, and it's about 9:04 a.m. My name
 11 is Jules Johnson. I'm the administrative rules coordinator
 12 for the department. And on my immediate right is Jim Thiel,
 13 general counsel for the department. On Jim's right is John
 14 Haverberg, the director of the Bureau of Highway Development.
 15 And on my left is Bob Cook, the department's executive
 16 assistant. Notice for today's hearing was published in the
 17 July 15th, 2000, Wisconsin Administrative Register, as
 18 required by statute. I'll be conducting the hearing today in
 19 accordance with section 227.18 of the statutes. All
 20 interested persons will be given an opportunity to comment on
 21 and give their views concerning this rule. The department
 22 wants your comments and encourages your participation in this
 23 hearing. The information we receive today will be given
 24 serious consideration in deciding how to proceed with the
 25 proposed rule. This hearing is being recorded by way of

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1 hearing unless we're going to change what we've already
 2 submitted, or at least entertain any suggestions for change.
 3 Then we'll draft up a -- what we call our final draft rule,
 4 and we send that down to the legislature who distributes it to
 5 the appropriate standing committees in the legislature. They
 6 have a period of time which they can hold hearings on it. And
 7 if everything goes pretty much like clockwork, the rule can be
 8 published and go into effect December 1st.
 9 The other document -- another document you'll see back
 10 there is a -- a map showing normal and reduced setbacks. If
 11 you would, write August 4th, 2000, down at the bottom of it so
 12 you know what date this map is. This is an update to the
 13 draft map that was included with the proposed rule that was
 14 sent out June 30th.
 15 This document is just your registration for appearance or
 16 who was here. And then there's the -- actually what we sent
 17 down to the legislative rules clearinghouse by June 30th.
 18 One other thing you'll find back there which is our
 19 existing brochure on how Trans 233 works, and it is based on
 20 the rule that's currently in effect, not on the proposed rule.
 21 But we thought it might be helpful just to have it. It has a
 22 map in it and some contact numbers, even though the names have
 23 already changed as to the contacts within our districts. And
 24 it's a pretty straightforward description of what this rule
 25 actually does.

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1 videotape and a court reporter, and all oral statements will
 2 be made a part of the record. In addition to oral comments,
 3 anyone wishing to provide a written statement may do so. We
 4 will accept written statements until close of business on
 5 August 11. The secretary of the department will make the
 6 final decision on this proposed rule subject to review by the
 7 legislature. The secretary is not present at this hearing,
 8 but any person here today who would like the opportunity to
 9 present their comments directly to the secretary may provide
 10 us with a written request no later than the close of this
 11 hearing. The secretary does have the option of limiting
 12 comments in writing rather than orally.
 13 Anyone wishing to give testimony today should fill out a
 14 registration form, which is located in the back, and hand it
 15 to me. For those who do not wish to speak, we'd like you to
 16 fill out a form anyway just to let us know that you were here
 17 and to indicate whether you're for the rule, against the rule
 18 or whether you're just here for information. That way we'll
 19 have it for the record that you appeared at the hearing.
 20 We'll follow this format for the hearing: Jim Thiel will
 21 start off by summarizing the rule for you so you get a better
 22 understanding of what the rule's about. After that, anyone
 23 wishing to speak will be given an opportunity to do so. As I
 24 call your name, please come forward to the podium in front of
 25 this mic and clearly identify yourself and what organization

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1 So now what I'd like to try to do is summarize our --
 2 what is in the revisions to the existing rule. I don't know
 3 how much detail I should go into. I recognize some faces here
 4 who have been intimately involved with these discussions for
 5 over a year, who probably know exactly what's in here and may
 6 be a little bit bored by my tedious description. Others may
 7 not have seen this until they walked in today. So I'd like to
 8 try to balance it with enough information without going into
 9 too much detail, and then hear from you folks.
 10 So if you -- if you pull this one out, I'll kind of walk
 11 through the outline in it. Back -- backing up maybe, what is
 12 the purpose of Trans 233, just overall, without, you know,
 13 talking about these revisions. It's to protect the investment
 14 in the existing highway system, the public's investment. It's
 15 to provide for the safety of entrance and departure upon the
 16 highway. It's to provide for corridor planning. It's to
 17 provide for, to some degree, fire protection, light, access
 18 for work on utilities, vision corners, safety. It's intended
 19 to provide a tool to -- to have a long-range view of how major
 20 highway systems will be developed in the future, considering
 21 all the local plans and all the economic development plans.
 22 On page 8, there's a conclusion in the analysis that says in
 23 more detail exactly all the things that it intends to do. But
 24 basically, it's a way to look at developments adjacent to the
 25 state trunk highway system and connecting highways and try to

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1 you represent, and then state your position on the rule, and
 2 then provide your testimony.
 3 We will attempt to answer any questions you may have
 4 during your testimony. If time permits at the conclusion of
 5 the hearing -- or the conclusion of your testimony, we will
 6 also accept questions from anyone present. Does anyone have
 7 any comments so far or questions? Okay. Jim.
 8 MR. THIEL: Okay. In the back, there are about four
 9 or five documents. This document shows the schedule for
 10 making the rule and for it to become effective December 1st.
 11 And you'll see we're right kind of in the middle of this
 12 procedure. What has happened so far is we've had a lot of
 13 meetings since the revisions to the rule went into effect in
 14 early 1999, with a whole lot of interested parties. I'll go
 15 into more detail on those later. But the actual official
 16 revisions to that rule didn't commence until February 29th
 17 when we published a scope statement. That's a requirement of
 18 law that you say what you intend to do before you do it so
 19 people won't be surprised or you'll change horses in
 20 midstream. And then from that point on, you'll see that we're
 21 -- we sent the copy of the draft rule to the legislative rules
 22 clearinghouse June 30th; that's part of the legislature. They
 23 make comments on it. We received their comments back.
 24 We have a public hearing. After this public hearing, we
 25 consider what you say -- there's no sense having a public

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1 work with developers and land dividers to make their land
 2 divisions compatible with the purposes of the highway safety
 3 and the public investment in the highway.
 4 Now, the proposed revision to the rule had three
 5 objectives. The first objective is a -- we had all these
 6 meetings starting in probably May or June of last year,
 7 through and including meetings in the fall with various
 8 interest groups, meetings in December with interest groups,
 9 meetings with the assembly sub-committee on Trans 233 of the
 10 assembly committee on transportation, meeting with what's
 11 known as the Coalition -- I think they call themselves --
 12 Against Trans 233 --
 13 MR. HAVERBERG: To revise.
 14 MR. THIEL: -- To Revise -- more positive -- To
 15 Revise Trans 233. The realtors, the merchants' federation,
 16 local units of government, planners. We also had a followup
 17 meeting with the assembly subcommittee and they and all these
 18 groups we'd met with, came up with a documented -- a document
 19 saying this is what we've all agreed to do that makes sense.
 20 There was one item that was -- that was not resolved at that
 21 time in February of this year, and that was setbacks. So we
 22 had another series of meetings regarding setbacks from the
 23 state trunk highway system and connecting highway system,
 24 followed up with a further hearing before the joint committee
 25 for review of administrative rules, in which setbacks were

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1 discussed. That testimony and those meetings were taken into
 2 consideration. And those ideas are also shown in this rule.
 3 So what we're trying to do here is implement all those
 4 agreements we reached before, strike a balance between
 5 individual and government interest in setbacks and what
 6 controls there are on property, and just, while we're at it,
 7 to recognize the many recent changes in federal and state laws
 8 that affect transportation planning.
 9 Just as a quick look at that, the federal government
 10 requires for all metropolitan planning organizations and all
 11 state DOTs around the country to develop long-range plans with
 12 a minimum of 20 years' planning horizon, and also to have
 13 transportation improvement programs with a shorter horizon.
 14 But the emphasis has been on looking way, way out in the
 15 future because there are so many restrictions on what you can
 16 do and so many difficulties that result if you don't have some
 17 sort of comprehensive coordinated and continuing planning
 18 process, you just have havoc. Now, what is havoc. Havoc, in
 19 my opinion, is Tree Lane on Mineral Point Road -- for those
 20 familiar with the Madison area and the Target store out there;
 21 and havoc -- it's not as bad as it used to be, but the corner
 22 of Whitney Way and Odana. Both of those locations over the
 23 last six or seven years have had the highest crash rates in
 24 Madison. I'm trying to pick something maybe folks are
 25 familiar with locally. I don't know where you're all from.

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1 But what we -- what has been found and documented year after
 2 year, is the more access points you have to highways, the more
 3 crashes you have. And it goes up pretty fast. You have to --
 4 you have to try to get internal circulation so there's one
 5 entryway to major through-fares. And the concept between
 6 Trans 233 is the state trunk highways are primarily major
 7 arterials, principal arterials. Let me -- let me back up a
 8 second.
 9 In the state of Wisconsin, there are about 112,000 miles
 10 worth of highways. And by highways, I mean streets in cities
 11 and villages. I mean town roads. I mean country trunk
 12 highways and state trunk highways and the interstate system.
 13 All total there are about 112,000 center line miles of those
 14 highways. The jurisdiction over those highways, there are
 15 about 12,000 miles that under state of Wisconsin, the state
 16 DOT's jurisdiction. Those highways under our jurisdiction
 17 carry about 50 percent of the travel even though it's -- in
 18 center line miles, it's lower than -- than the rest.
 19 Then you have the country trunk highway system of about
 20 20,000 miles. Those are the lettered highways you've seen.
 21 Then you have cities and villages with their streets, which I
 22 think is probably 30,000 miles, something like that. And then
 23 you have town roads, which is about 70,000 miles of highways
 24 in Wisconsin, center line miles. Now, those are
 25 jurisdictional responsibilities. But rather than just

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1 thinking of governmental responsibilities for a particular
 2 highway system, you should think about what function the
 3 highways have. State trunk highways and the connecting
 4 highways, which are the ones that connect the state trunk
 5 highways through cities and villages, primarily are arterials.
 6 They -- they serve through traffic almost exclusively. Then
 7 you get down to the country trunk highways, and
 8 jurisdictionally, they are more of the collector system of
 9 highways, you know, collector and some local. Then you get
 10 down to the towns, the cities and villages, and their primary
 11 function is to serve local access, almost exclusively. Now,
 12 that's not 100 percent rule, but in those three categories is
 13 basically where things end up. So this deals with the state
 14 trunk highway system, major highways, principal arterials,
 15 mainly to serve through traffic. It's not an absolute rule,
 16 but I would say 95 percent of the state trunk highway system's
 17 primary function is principal arterial through traffic, more
 18 or less.
 19 Okay. Now, when did Trans 233 start. It's actually been
 20 in existence since 1956. And it was first amended -- between
 21 1956 up till February 1999, it was never amended. It was
 22 amended in February 1999 to actually just bring it up to date
 23 and make it work and make it uniform. And since then we've
 24 been trying to meet with people, educate them about how it
 25 works, the update, train our own folks, get uniform guidance

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1 out to our own folks, respond to specific questions. And
 2 then, you know, after all that, the objective was let's --
 3 okay, now that we've got this experience for about a year and
 4 a half, let's refine the rule and make it work better, you
 5 know, weighing all things we've -- we've come up with.
 6 I can go through all of the things we agreed to, if
 7 that's useful, just to kind of tick those off, if I'm not
 8 losing the crowd here. I'm not seeing an overwhelming -- one
 9 of the issues was a lack of certainty provided regarding the
 10 conceptual review process for land divisions abutting state
 11 trunk and connecting highways. And what we said we would do
 12 is to develop implementing procedures at the district level to
 13 assure that there was consistency and to also provide an
 14 appeal process. But we wanted to delegate out to our
 15 districts around the state -- and this map shows what the
 16 district boundaries are, if you unfold this brochure -- and
 17 get up some uniform guidance to make sure we were implementing
 18 this throughout the state in a uniform fashion, but to
 19 delegate it so we could have quicker responses and people
 20 could rely on an interaction at the conceptual review process.
 21 There was a question about condominium plats. Well, if
 22 all you're doing is changing an apartment to a condominium,
 23 why -- why -- which is actually a change in the type of
 24 ownership from just being a tenant to actually owning
 25 property. It's technically a land division, but there's

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1 really no change. So why do we got to go through this process
 2 to look at condominium plats. So for re-platting an
 3 apartment, we agreed well, we'll take care of that -- that
 4 problem, so that that won't have to be a -- a real issue.
 5 Noise barriers. It appeared that the way we wrote the
 6 noise barrier provision placed an excessive burden on land
 7 dividers. So we changed -- we agreed we'll change the wording
 8 there to say the responsibility for noise barriers next to
 9 existing highways applies to the owner not the land divider.
 10 And it's more of a warning, that, you know, if this -- if you
 11 live here, you have to be aware that there's going to be some
 12 noise. If you want to accept that, fine. If -- if in the
 13 future we expand the highway, put on an extra lane and cause
 14 more noise, we'll have to buy a noise easement from you. But
 15 if it's just the existing -- existing lanes and we're not
 16 doing anything, just be aware that the owner kind of is on
 17 notice that it's going to be kind of noisy there.
 18 There was a question about land dedication requirements
 19 for vision corners. And the idea was well, instead of a land
 20 dedication for public use at a vision corner, how about just
 21 giving a vision easement. That way it will be easier for us
 22 to comply with some local ordinances and restrictions. We
 23 said sure, that makes sense.
 24 Drainage provisions. The way it was written, it sounded
 25 like the drainage analysis that was to be provided with the

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1 land division had to be guaranteed there'd be no problem with
 2 drainage whatsoever forever, and if there was, you'd certainly
 3 be liable for it. And we said no, no, no, we just want a
 4 reasonable engineering judgment, look at it from the
 5 perspective of, you know, sound judgment, if it's negligible,
 6 fine, you know. But if it's really a major problem, let's
 7 have an analysis and take a look at it. We don't want to
 8 drain our highways on abutting property and abutting property
 9 owners have a responsibility not to wash out the highways. So
 10 we adjusted that language so it's a, you know, engineering
 11 judgment -- do the best you can. We've got guidance. We
 12 refer to the guidance. We will take a look at that. That's
 13 -- that change is in there.
 14 There was a question about a phrase that we wanted a
 15 desirable traffic pattern, in the rule, and say, okay, what is
 16 a desirable traffic pattern. Well, you actually have to look
 17 at each situation, but also in our Facilities Development
 18 Manual -- and I brought an example of one of the volumes along
 19 -- has guidance in it, not only for drainage but also for
 20 traffic patterns. This comes in about a six-volume set. It's
 21 available for purchase. It's also available -- those chapters
 22 I think we offered to just provide upon request. In the
 23 future, it will also be on the internet or the extranet. It's
 24 not there yet, but if you -- there are references in the rule
 25 where you can get this -- the information from us. And that's

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1 taken care of in the amendments to the rule.
 2 Then there was the question about variances. It said,
 3 look, you know, the variance process is much too restrictive.
 4 And one of the reasons for that is that the Wisconsin Supreme
 5 Court, much to the surprise of a lot of folks, in 1998, said
 6 the only time a -- an entity can grant a variance to a zoning
 7 ordinance or a similar setback requirement was if the property
 8 owner had absolutely no reasonable use for their property
 9 whatsoever unless that variance was granted. And that was a
 10 much steeper hill to climb than most folks thought, nor was it
 11 the -- what was taking place in practice. All governments had
 12 been, I think, more lenient than that. From a governmental
 13 perspective, the neat thing about was -- about it was, if you
 14 said no, boy, that no stuck. On the other hand, it created an
 15 opportunity where the government body and the land divider
 16 would say, look -- or the property owner would say look, we
 17 both agree we ought to be able to do something here, give us a
 18 variance; and then some third party for other reasons would
 19 object to it and have a legal ability to make that objection.
 20 So we addressed that by creating a less restrictive criteria
 21 for granting variances, which we called special exceptions and
 22 with the criteria to be applied, so that it's not a -- such an
 23 absolute steep hill to climb. It has criteria spelled out in
 24 the rule as to when that special exception can be granted.
 25 The setback requirements I'll get back into in more

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1 and we've got to give you something that says that. Now,
 2 there's the question well, what if it's not complete. Well,
 3 we put into the rule that we've got five days to get back to
 4 you and say it's complete or not. If we don't get within --
 5 back to you within five days of submission to us -- our
 6 receipt of it, I should say, we're going to have to say it's
 7 complete; sorry, we didn't get back to you. And frankly, what
 8 we hope is this conceptual review process where people come in
 9 and just talk with us first, we'll try to get things in order
 10 ahead of time, try to work things out, say we're going to be
 11 doing this on this highway, you -- you want to do this, and
 12 probably better if you did it over here or made this entrance
 13 point down here, because we're going to cut off this corner in
 14 about five or six years, or -- or hey, this just isn't going
 15 to work because we're going to widen this road in a year and a
 16 half, or five years, and we know we will, it is the major
 17 arterial. We know we will in ten years. We know that the
 18 level of service is going to go to hell in a handbasket within
 19 20 years. You just have to preserve this corridor, we can't
 20 allow you to put something within the setback area which is
 21 going to destroy the operation of your business or require us
 22 to take, you know -- take out a hospital or something,
 23 something like that, which is -- you know, destroys a
 24 community.
 25 With regard to if you ask for a special exception. Now,

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1 detail in a moment. We talked about the conceptual review
 2 process and agreed to transfer that authority to the
 3 districts. We agreed to grandfather existing improvements and
 4 structures. Now, that's kind of the concept, it's worded very
 5 carefully, and I can point that out as to how that was done.
 6 We not only exempted condominium plat provisions where it went
 7 from an apartment to condominium plat but also similar
 8 situations we wrote into the rule. For example, if two
 9 abutting property owners are just trying to resolve mutual
 10 encroachments with an exchange of deeds, fine, that's not a
 11 land division subject to this rule. All we ask is geez, send
 12 it in to us, though, so we can tell you're not playing games
 13 here. Another example would be a -- a shopping -- a little
 14 strip mall going from rental occupancy to actual ownership by
 15 the tenants, similar to a condo change. If there's no --
 16 really no significant -- if the traffic generated and uses are
 17 similar, no problem; we'll give you a declaration of exemption
 18 or approval and refund any fee paid with the document provided
 19 to us.
 20 I mentioned with regard to noise barriers we'll accept an
 21 easement -- excuse me, with regard to vision corners, an
 22 easement; noise barriers, we clarified whose responsibility it
 23 was; drainage provisions and desirable traffic pattern.
 24 So I think I've hit the high points of the agreements.
 25 Oh. We also provided an appeal process, an internal appeal

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1 that means you're asking for a -- a way to get away from
 2 what's in the rule itself, and not a -- you know, you say
 3 there's a situation where if you really look at it, this makes
 4 sense from everybody's perspective. We say fine, we'll do
 5 that. But give us -- you've got to give us some more time if
 6 you're asking for a special exception. The districts will be
 7 able to grant special exceptions. I think we wrote in there
 8 60 days. My memory is failing me right now, but -- 60 days.
 9 And if we don't answer you within 60 days on the special
 10 exception, it's deemed approved. So we've got to get back to
 11 you. Unless by mutual agreement you say well, let's work on
 12 it a little bit more, and continue working on that special
 13 exception. Give us some more time. But it has to be mutual
 14 agreement. Better be in writing, too, so we can all prove it.
 15 We will not in the central office unilaterally change the
 16 decision of a district. We will not initiate a reversal of a
 17 district's opinion or approval. If a municipality grants an
 18 approval or a certificate of non-objection and proves a
 19 special exception, all of which have to be recorded so we --
 20 everybody knows this goes with the property, if that happens
 21 with a district, we won't entertain a unilateral appeal by our
 22 central office. If it happens with a municipality, we have
 23 two restrictions on that: One, we can review it to make sure
 24 the municipality's abiding by the agreement where we delegated
 25 them the authority. This is cities and villages only, not

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1 process, where the district, when we delegate out to a
 2 district, or a municipality, authority to review a land
 3 division abutting a state trunk or connecting highway. They
 4 -- they will be able to make the decision in accordance with
 5 guidelines that we provide. These are guidelines which will
 6 actually be published in the Facilities Development Manual.
 7 There's been drafts circulated of those guidelines. I should
 8 also point out that the -- as to subdivision plats, which is a
 9 category that's been in existence a long time, the Department
 10 of Administration has a Wisconsin Platting Manual, which many
 11 of you have probably seen, but there is -- there is another
 12 source of guidance with regard to subdivision plats as well as
 13 ours. We also abide by this because we're an objecting
 14 authority under the subdivision plat. That is all part of
 15 Trans 233. But you just should know, if you don't already,
 16 that this comes from the Department of Administration, and it
 17 also has a whole bunch of guidelines, rules, opinions,
 18 materials. I think it cross-references what we do, too.
 19 If we do not act upon a land divider's request for review
 20 and approval within 20 days, if it's a subdivision plat, by
 21 statute it's automatically deemed approved when the
 22 preliminary plat is submitted, as long as it's complete. Same
 23 thing with any other land division abutting a state trunk
 24 highway. We're going to put in the rule that 20 days -- if we
 25 don't tell you it's bad within 20 days, it's deemed approved

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1 counties. That's the only place we have authority to
 2 delegate. With regard to a district approval of a special
 3 exception or an approval, if somebody outside, a third party,
 4 you know, a governmental entity or a legislator or a member of
 5 the public objects, we will entertain that objection, though.
 6 But we won't initiate it. And that seemed to be necessary to
 7 at least allow that one possibility that something happened
 8 that the governmental body really objected to or a legislator
 9 or a member of the public. Doesn't mean that we'll agree with
 10 them, but at least they have an opportunity to come and talk
 11 with us. And, frankly, they will anyway. So we need to build
 12 in something so we can respond to that.
 13 Now, let's see. Shall we get to the setbacks. Over the
 14 approximately year, year and a half that the existing rule had
 15 been in place, I think about -- what were then called
 16 variances, about 1200 variances were requested, I think all of
 17 which were granted except about -- what?
 18 MR. HAVERBERG: About seven percent.
 19 MR. THIEL: About seven percent for some reason or
 20 another we didn't grant. And of that seven percent, frankly,
 21 very few of them were setback, ones that weren't granted.
 22 Most of the ones that weren't granted were access requests.
 23 So you kind of -- even though we've been concentrating a lot
 24 in our discussions on setbacks, most of the time they were
 25 granted. It really didn't seem to be the issue. The issue

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1 seemed to be more of access, you know, how can you -- where
2 you can put a driveway. The concept of course is driveways
3 for private properties abutting a state trunk highway ought to
4 go to some other street and the street ought to connect with
5 the state trunk highway, because ours is the through highway;
6 it's the arterial.

7 One of the questions that came up, says, well, if -- you
8 know, if you're being that reasonable or that loose about
9 granting variances, why do you people through the rigmarole of
10 asking for it; why don't you actually try to lay out where
11 you're going to allow changes in setbacks. We said, okay,
12 we'll take a hard look at that. And that was pretty much
13 following the hearing before the joint committee for review of
14 administrative rules in late June. And what we came up with
15 was a -- a decision well, okay, where do we really need the
16 normal setback 50 feet from the right of way line or 110 feet
17 from the centerline. Where do we normally need that. We need
18 that on the major systems, the national highway system. We
19 need that on the interstate, which is part of the national
20 highway system. Wisconsin corridors 20-20 is part of the
21 national highway system. We need it on state trunk highways
22 that have an average daily traffic of 5,000 or more. We need
23 it on state trunk and connecting highways within incorporated
24 areas. And we picked within one mile outside of the corporate
25 boundaries, because, frankly, that's where the development's

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1 way it's been for years. And that's not changed. But just
2 for clarification. You also find -- we found that there's a
3 -- a -- kind of funny situations where there might be 10 feet
4 between one category and another and we put in -- we just
5 filled in those gaps where, you know, it's very minor,
6 technical. You shouldn't have a little jump out for half a
7 block.

8 With regard to setbacks, we also wrote into the rule two
9 -- two ways of granting special exceptions to the setback
10 requirements. With regard -- we will entertain special
11 exceptions to the setback requirements under either category
12 -- the normal setback or the reduced setback. In the case of
13 the normal setback, we will first of all take a look at it and
14 say well, can we just adjust the setback line. You know, is
15 there really any reason in this specific location that we need
16 that much setback. Take a look at everything else that is
17 going on around there. Take a look at the local ordinances.
18 Take a look at the long-range plans. Look at all the
19 information that's available and say, well, first of all, if
20 everything else in that area is within 42 feet of the right of
21 way line, why don't we just reduce the setback line to 42
22 feet. Fine. We can do that. That's step number one.
23 Step number two, okay, so we've gone through that, is
24 there something that we could actually allow within this
25 setback which is otherwise prohibited. Something, which, if

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1 occurring. It occurs at the boundaries, so we wanted to have
2 it there. We wanted to also take into account a consideration
3 expressed by a large number of folks was look, you can't just
4 look at immediacy, you have to look at what you project will
5 happen over 20 years. And if you project that the level of
6 service is going to fall off to below level of service C --
7 now, how am I going to explain level of service C. It's A to
8 F. F is absolute gridlock. You don't even move. A is -- is
9 you're zipping along just fine. And C is where you're going
10 to have platoons and stopping and starting and kind of the
11 things that you wonder about when you're -- you're on an
12 interstate and it just stops and you don't seem to see
13 anything blocking you, but that's kind of level of service C.
14 And it can be really frustrating. But if we project that to
15 happen, then that is where we will have the normal setback,
16 because that is where, if we look at this objectively, it will
17 be where we'll have to have a corridor to work with. Now,
18 we're going to print -- that's where there'll be the normal
19 setback.

20 The other system will be where we've looked at it and say
21 well, we really don't think over a 20 -year period that
22 anything is going to happen here that will require more than a
23 15-foot setback. So we've designated this. And if you look
24 at page 6, it describes these highways where the normal
25 setback is, then the map shows them. Where they're red is the

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1 it's removed, won't affect the integrity of that abutting
2 business or cause just sheer havoc because it's a drainage
3 pond or something like that, a collection basin of some sort,
4 which we can't tolerate in there, because if we remove it,
5 where are we going to put the water, and where's the abutting
6 property owner going to put it. So in those -- if it does not
7 affect the continuity of the business by removal, if it does
8 not affect and kind of destroy the local and state long-range
9 plans, we can allow some exceptions to what's put within the
10 reduced setback. Anything that's outside this reduced
11 setback, once we make that determination -- and it will be
12 recorded, once we make that determination, if we subsequently
13 come along and decide -- say, look, we made a mistake, there's
14 something beyond that setback that we're going to have to
15 acquire anyway, we're going to pay for it. However, if within
16 that reduced setback, we do allow you to put something in
17 there and we come along later and we say, hey, listen, this is
18 at your risk, you did ask for this. Normally, we wouldn't
19 require it, but part of this consideration is we can tell you
20 about when we think we might be needing this, but when time
21 comes that we will need it, you got to decide whether it was
22 worth your time and trouble and money to put it in that
23 location, because we're not going to pay you when we take it
24 out. That's the tradeoff there. Now, within the area, the
25 some -- like a -- 60 percent of the system is the normal

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1 major highways where you'll have the normal setback which has
2 been in existence, frankly, since 1956, and then the reduced
3 setback is the black lines. This is not in a detail where
4 you're going to be able to go metres and bounds to find exactly
5 where you are on this, of course. But we can tell you. And
6 we will have -- we have existing maps which show where
7 boundaries are and we have -- to bring this down to a scale by
8 geographic areas where it's a lot more useable. But frankly,
9 what controls is the language in the rule rather than the map.
10 The map's to get you in the ballpark, and it will be published
11 every two years. What controls is what's in the rule. Okay,
12 so you say, geez, out of your 12,000 or so miles of state
13 trunk and connecting highways, how much is within each
14 category, kind of hard to tell from this. And you'll see on
15 page 6, there's a note that says insert mileage numbers. So
16 if you'd like to insert them, here's what it is. The national
17 highway system is 3,962 miles with the normal setback. Other
18 principal arterials, 1,230 miles. Level of service worse than
19 C on 20-20, 521 miles. Now, average daily traffic greater
20 than 5,000 today, 236 miles. That is if, you know, it's not
21 included in the previous categories. The ones within cities
22 and villages, 337 miles. One mile on either side of cities
23 and villages, 595 miles. And you should also know that the
24 subdivision plat law and the Trans 233 do not apply within the
25 city of Milwaukee. That's just by statute, that's just the

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1 setback, about 40 percent of the whole system is the reduced
2 setback. If you say look, I would like a special exception as
3 to that reduced 15-foot setback, we say okay, but the only
4 thing we will allow you to do is for maybe putting something
5 within that reduced setback. We are not going to pull that in
6 closer to the right of way line. In that case, that's it,
7 that setback line is going to stay there.

8 MR. HAVERBERG: With the exception of city
9 ordinance.

10 MR. THIEL: Yes. Unless -- unless of course there's
11 a city ordinance which is less. We will also write -- wrote
12 into the rule a -- a case where we will be able to issue
13 blanket special exceptions if we've had some experience in an
14 area and we say we know what's going to happen here, if
15 anybody comes in with a land division anywhere within this
16 stretch of maybe two or three miles, it's going to be
17 absolutely the same provision, why not just record right now
18 that there's a reduced setback, and we'll figure out some way
19 to get that to the register of deeds, some way that it'll be
20 on a transportation plat of some sort that, you know, people
21 will know that it's reduced in this area. And, of course, the
22 local authorities will know about it, because we work with
23 them very closely.

24 Now, what else did we change here. And now, as I said,
25 there have been a lot of changes in laws over the years which

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1 make this process even more important than it used to be
 2 before. We are under an obligation under federal law and
 3 state law to make sure that when we do a project, we do not
 4 adversely affect low income groups, minority groups, other
 5 groups of people. We have been accused many times that look,
 6 you go out and you -- you build this highway right through a
 7 minority neighborhood or a low income neighborhood and you
 8 don't put up any noise walls and you don't provide for
 9 adequate transit for that area. You're discriminating against
 10 us. And that's the allegation. We are also under a
 11 requirement to make sure that we don't adversely affect the
 12 environment. Farmland restrictions, taking a -- take a hard
 13 look at that. Don't go into wetlands. Don't affect
 14 endangered species. Don't affect wild and scenic rivers.
 15 Don't affect archeological sites of importance. Don't affect
 16 natural life. Then the many federal agencies have asked us
 17 when we're doing something to mitigate the impacts of our
 18 construction. And they say well, look, if you're going to go
 19 through here, why don't you buy five acres of land and set it
 20 aside for archeological, historic preservation and have
 21 somebody manage it. We said okay, we'll do that. Well, the
 22 Supreme Court of Wisconsin says oh, no, you can't. You can't
 23 expand your authority to acquire property for highway purposes
 24 just by agreeing with someone else. Forget it. So we very
 25 imaginatively decided okay, but we still have to do something

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1 As an association and as individual members, we are fully
 2 aware of the vast needs that exist in our entire
 3 transportation system, including our state trunk highway
 4 system. We are also aware of the fact that current revenues,
 5 even under the most optimistic scenarios, fall far short of
 6 meeting documented needs. In the most -- in that light we
 7 feel that investments in every segment of our transportation
 8 system must be preserved and protection to make sure that they
 9 are not lost prematurely. Controlling access points along our
 10 higher function routes and maintaining adequate setbacks are
 11 two ways that we can protect our investment in roads. Public
 12 rights of way must be preserved and protected so that roads
 13 can function as planned and key corridors can be properly
 14 maintained and upgraded when necessary. We owe it not only to
 15 those currently using and paying for our roads, but also those
 16 that will need good transportation well into the future. We
 17 must not burden our children with unnecessary costs so that we
 18 can experience immediate or short-term financial gain.
 19 Wisconsinites and others are fully aware of the
 20 relationship between transportation and land use, as well as
 21 the relationship between transportation and our economy. That
 22 understanding has led to the completion of local and regional
 23 plans that coordinate land use and transportation, to numerous
 24 highway corridor studies and to passage of a comprehensive
 25 planning package in the state's recently passed biennial

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1 in situations like that, so we imaginatively found another
 2 statute which says well maybe we can't do it, but we can
 3 reimburse local units of government when they do it. And the
 4 legislature said hmm, we don't think that's such a good idea
 5 either. So they said well, from now on, you can't do it that
 6 way either except within one-quarter mile of the highway
 7 project. So that restriction was put on us. And, you know,
 8 the basic truth of the fact is we're going to have to use
 9 existing corridors, we don't want to have to go make bypasses.
 10 We want to work with existing corridors within cities. We're
 11 going to have to come up with systems that work better. We're
 12 going to have to use these for transportation corridors for
 13 utilities, not just for vehicles. We've got to think about
 14 high-occupancy vehicle lanes. We have to think about other
 15 opportunities for transport within that corridor. We're going
 16 to try to develop an intelligent transportation system which
 17 requires an additional infrastructure of lines going through
 18 there. We need to provide an opportunity for folks to access
 19 all these utilities within the high -- these arterial highways
 20 from the backside of the right of way line rather than
 21 stopping in the traffic lane and getting off there and work --
 22 work there. So we need that setback area. So, I mean, those
 23 changes in laws have brought home to us that we're just going
 24 to have to be a lot more careful about planning. The
 25 legislature also enacted the smart growth legislation, which

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1 budget. Clearly, good planning and related land use tools are
 2 needed to make sure development and transportation are well
 3 coordinated. Basic among those efforts must be the
 4 development of programs, ordinances, administrative rules and
 5 other tools that avoid unnecessary conflicts, maximize
 6 utilization of the existing system, and preserve options
 7 necessary to address our growing mobility needs. Unless we
 8 preserve and protect our existing transportation corridors and
 9 other transportation facilities, we may well be forced to look
 10 at relocating businesses or homes to undertake needed
 11 improvements. In some cases, the local government or the
 12 state may be forced to relocate existing highways and other
 13 facilities simply because they can no longer function as
 14 planned. The cost of such activities from a financial,
 15 political and environmental perspective is enormous. We must
 16 take steps to avoid having to spend public funds for the
 17 purchasing of homes or businesses to improve or widen a
 18 highway or extend a runway or some other transportation
 19 facility, simply because we did not take the precautions
 20 necessary to preserve and protect key corridors. Simply
 21 stated, we must do good planning. Trans 233 as amended and
 22 under consideration here today reflects a reasonable
 23 compromise and a rational approach to the issue of preserving
 24 and protecting key state trunk highway corridors. The
 25 criteria outlined in section 8 of the currently proposed rule

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1 says we're all going to have to work together in a partnership
 2 with local governments to -- to use our resources better.
 3 And well, to cut off a long story, that's what this
 4 amendment attempts to do. Whew. Okay.
 5 MS. JOHNSON: Thank you, Jim.
 6 MR. THIEL: At last.
 7 MS. JOHNSON: Okay, has everyone had an opportunity
 8 to fill out a registration form and hand it to me? One more.
 9 Okay. Charlie -- I'm going to attempt to pronounce your last
 10 name -- Causier?
 11 MR. CAUSIER: Yep.
 12 MS. JOHNSON: Is that correct?
 13 MR. CAUSIER: Close enough. Well, good morning. My
 14 testimony today is here as a member of the Transportation
 15 Development Association. TDA is a statewide alliance of
 16 approximately 500 agencies, groups, local governments, and
 17 others committed to the development and maintenance of a
 18 responsive transportation system for the state. Among our
 19 members we have cities, counties, towns, villages, chambers,
 20 economic development organizations, businesses, industries,
 21 organized labor, planning agencies, many others. We have
 22 interest in all modes of transportation and in transportation
 23 needs throughout the state. We are committed to a
 24 transportation system that meets our mobility and economic
 25 needs in an environmentally responsible manner.

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1 are critical to the protection of key routes and should be
 2 retained. The appeal process for variances as outlined in 233
 3 is reasonable and fair. TDA does, however, recommend that the
 4 Wisconsin Department of Transportation use extreme caution in
 5 granting variances which could limit future improvements.
 6 Trans 233 should err on the side of caution, protecting not
 7 only those roads with currently programmed improvements, but
 8 also any state trunk highway that might need to be improved in
 9 the future, whether that be 10, 20 or 30 years from now.
 10 Thank you. I'll leave this with you.
 11 MS. JOHNSON: Thank you, Charlie. Do you want them
 12 marked?
 13 MR. THIEL: Do you want to mark them?
 14 RECORDER: You want to mark an exhibit?
 15 MR. THIEL: Yeah, sure.
 16 RECORDER: Start with Exhibit Number 1.
 17 MR. THIEL: Sure. That way we'll be able to keep
 18 track of them better.
 19 MS. JOHNSON: Okay. Arden Sandsnes.
 20 MR. SANDSNES: Good morning. I'm Arden Sandsnes
 21 with Royal Oak Engineering. I've been following these
 22 hearings very closely for -- as Mr. Thiel puts it -- several
 23 -- several months. And his description of what's going on
 24 here is very accurate, I think, from our perspective, at
 25 least. But it would appear that the department has

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1 continually missed the concept that a condominium is not a
 2 land division. There is no trigger, there is no necessary
 3 requirement for anybody to review it in many places in this
 4 state. It is not, under any circumstances, a land division;
 5 it's a difference in ownership. Therefore, on the many pages
 6 of this document where you refer to land divisions and
 7 condominiums synonymously is meaningless. There is absolutely
 8 no government intervention in most condominiums in this state.
 9 There are some in areas where in fact the unit of government
 10 has a chance to look at it. So what I'm saying to you is that
 11 there is nothing to trigger a review of a condominium by the
 12 Department of Transportation whatsoever unless somebody
 13 chooses to do so. And it will only come to your light after
 14 your fact when the problem has already been created;
 15 therefore, you have avoided nothing. Very clear point. The
 16 only way that it could possibly come to your attention is if
 17 they came to you for a highway access right of way permit for
 18 a driveway. But if I own 40 acres and I was going to put up
 19 128 condominium units abutting a state highway, I would not
 20 take access to your highway; I would take it off the adjacent
 21 street, and therefore still no trigger for you to review this
 22 condominium. There is absolutely nothing in this thing
 23 whatsoever that applies to chapter 703. And if you read 703,
 24 you'll find out it's not a land division. So in each case
 25 where you're speaking of land divisions in here, it does not

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1 trying to make the statement. If I perform an American Land
 2 Title Association survey for John Blow the lender out in
 3 Virginia; he sends me a bunch of documents that came out of
 4 the register of deeds. I don't know that they send anybody
 5 out to the local DOT to see if there's a document on file.
 6 And if I suggest that there is no impact on this property and
 7 all of a sudden some restriction crops up out of nowhere,
 8 who's on the hook? Well, it certainly isn't the attorney
 9 sitting in his office in -- in Fairfax, Virginia, I can tell
 10 you. They're going to be looking to us. And you put an undue
 11 impact upon the professional surveyor of this state. Yeah.
 12 MR. THIEL: Can I ask you a question?
 13 MR. SANDSNES: Sure.
 14 MR. THIEL: We did try to address that. But I think
 15 you're right, what we didn't address is how are you going to
 16 prove it.
 17 MR. SANDSNES: That's right.
 18 MR. THIEL: And if you look on page 12 on section 3,
 19 is how we tried to address it.
 20 MR. SANDSNES: I don't think it did it, however.
 21 MR. THIEL: We said if they are legally placed in
 22 the setback area prior to February 1st --
 23 MR. SANDSNES: Mm-hmm.
 24 MR. THIEL: -- explicitly allowed to continue to
 25 exist.

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1 apply to a condominium except in some rare instances.
 2 There is another point that I think is as important, and
 3 that does not have anything to do with any changes in chapter
 4 230 -- or Trans 233. Prior to the February date of the
 5 enforcement of this last draft, there was a policy that was
 6 rampant throughout the Department of Transportation whereby
 7 certain permitted uses of the setback area were permitted
 8 without any special documentation, without any form of an
 9 application -- it was just done. Parking lot. As long as
 10 that parking area was not the necessary number of spaces to
 11 keep that business in business. If I had a hotel and required
 12 128 units of parking and I put in 5 in front of building, DOT
 13 never stepped into that. Ever. Now, what is the consequence
 14 of that? Many subdivisions that were recorded prior to that
 15 February date used that concept in providing the depth of the
 16 lots that would allow certain uses on that backside as long as
 17 it wasn't a salient feature or a structure or one of those
 18 things that would make that property useless or
 19 non-conforming; it was just ignored. I'm talking about a
 20 policy. Now, it is my contention then that as a surveyor and
 21 an engineering company, that we would have designed that plat
 22 substantially different had we known that that policy was
 23 going to change and future purchases would be impacted by
 24 that. The fact of the matter is that policy did change. And
 25 I think that this Trans 233 ought -- today ought to be written

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1 MR. SANDSNES: That's true.
 2 MR. THIEL: And if they had preliminary or final
 3 approval of a plat prior to February 1st, 1990, they're not
 4 subject to this chapter as first promulgated February 1st --
 5 MR. SANDSNES: I --
 6 MR. THIEL: -- but are subject to the old one. But
 7 how --
 8 MR. SANDSNES: You're correct.
 9 MR. THIEL: I mean, I think you got a good point.
 10 How do we identify that so people can find it?
 11 MR. SANDSNES: Therein lies the sticky wicket here.
 12 This section 3 on page 12 does very clearly attempt to do what
 13 we just discussed. However, it does not address those cases
 14 where the lot is empty, but having been created prior to that
 15 time and now up for sale, and the old policy as to how it was
 16 to be used in that setback area. This is not covered here.
 17 And this part of the rule hasn't changed. It just was a
 18 policy. Now, I also find that in several districts they --
 19 they approach the review process a little different. Some of
 20 the reviewers at districts will not issue the exception number
 21 until after they've seen the final document and all this
 22 verbiage has to be on the document itself, and then he'll
 23 finally give you -- or she will give you this approval number.
 24 That creates a time frame that gets to be very difficult.
 25 What it's saying is that we are now responsible in some way of

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1 to recognize that prior use policy so that those documents of
 2 land divisions that were recorded prior to the February 1999
 3 would have some variance or some allowance automatically
 4 granted to them for that use. Now, a most recent case that
 5 many of the people at this table are aware of, I suspect, is
 6 the case in the city of Stoughton, one of the land divisions
 7 down there, and there's one just north of it exactly the same
 8 set of circumstances. And I submit that that is true
 9 throughout the state where there are a lot of certified
 10 surveys and subdivisions that have come underneath the review
 11 process. To that end, I think that needs to be addressed. At
 12 the last hearing before the joint rules committee, I stopped
 13 one of the staff here long enough to suggest that there be
 14 some provision for any variances ending up recorded in the
 15 register of deeds office. I don't see that again. It's
 16 missed again. And I would say that if the department could
 17 say to us they've never lost a document, that probably
 18 wouldn't be too bad. I don't think they can say that. And
 19 second of all, it makes a tremendous difficulty for the
 20 attorneys and the real estate people giving opinion on title
 21 to trace this matter to have to chase it out at the DOT to see
 22 if something does magically exist, and god forbid, it should
 23 be lost and not found. Now you've got an obligation that's a
 24 legal obligation that you're throwing off onto the insurance
 25 or the surveyor or the developer or somebody else that's

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1 seeing to it all the i's and all the t's are crossed and that
 2 this person hasn't missed any of them and that we haven't
 3 missed any of them, and we have to go back to them two or
 4 three times in order to accomplish this. However, if the
 5 document as issued by the department were on record in the
 6 register of deeds office, they would be crafting it; there
 7 would be a cross reference of the number to that document in
 8 the register of deeds and there would be no question as to
 9 what it says or who made the mistake, if there be one. We're
 10 trying to avoid those troublesome hurdles that we're going to
 11 see down the road. I don't see those as unreasonable requests
 12 to look at, and I think you have to find some trigger -- and I
 13 have no idea what the trigger will be -- on condominiums. The
 14 condominium law is so wide open that unless you make a change
 15 in 703, it isn't going to -- it isn't going to come up.
 16 You're just not going to see them until it's too late. And
 17 that isn't what we're trying to do here, I don't think. We're
 18 trying to avoid the problem instead of trying to address it
 19 after the fact. So I would leave those as my few points, and
 20 I speak from having discussions across the state with a great
 21 number of land surveyors that have been involved in this, and
 22 I truly don't think you had any advising you or these subject
 23 matters would have even come up. Or if you did, they weren't
 24 from the private sector. Anything else?
 25 MR. THIEL: Thank you very much.

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1 MR. COOK: Thank you. We appreciate that.
 2 MS. JOHNSON: Did you have a written statement you'd
 3 like to provide us or not?
 4 MR. SANDSNES: No, I do not.
 5 MS. JOHNSON: Okay. Francis Thousand.
 6 MR. THOUSAND: Good morning. My name is Francis
 7 Thousand. I'm a land surveyor. I'm representing myself today
 8 even though I've been involved with discussions on Trans 233
 9 with the Wisconsin Society of Land Surveyors. We did meet
 10 with the DOT, but as far as I know, there was never any
 11 agreements between the DOT and WLS -- correct me if I'm
 12 wrong. I'd like to thank you for the opportunity to speak
 13 this morning. I do oppose the provisions of this -- of rule
 14 -- of Trans 233. I felt the original rule was confusing and
 15 unclear, and I think the proposed rule is worse. On page 12,
 16 the part you referred to, about structures placed prior to
 17 February 1st, there's no way that I can walk out in a field
 18 now -- I might be able to do it today and I might have been
 19 able to do it in '99 -- but in five years, and be able to
 20 identify what structures were placed there prior to November
 21 -- or February 1st. And I don't know if the property owner's
 22 going to advise me, if my client will tell me what's there, if
 23 they know what's there; it's real confusing from my
 24 perspective as how that's going to be handled. The other --
 25 with your conceptual review, you use the term intend in there,

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1 confusing to me as to what you want to show or what you need.
 2 The other issue that -- that is a concern to me is the
 3 issue of putting it in to the -- the details into the
 4 Facilities Development Manual. With the platting -- with the
 5 DOA's platting manual, all of the stuff that's in there is in
 6 the statute, and that's a rehash of the statute. There's
 7 things that will go into the guidelines that are not
 8 identified in the rule. Specifically, the policy about
 9 requiring access restrictions on all of the property that a
 10 land divider owns not just the property involved in the
 11 certified survey map, and that's a policy that I know is being
 12 enforced and I know that there's -- I have not seen that, any
 13 reference to that in any of the rule, either form, prior, now,
 14 before the proposed amendment. So I'm not sure how you do
 15 that, and if those details, you put them in the guideline,
 16 plat reviews, the last time I think it was 20 bucks, your
 17 facilities manual, the last time I looked at it was about 225
 18 or 230. There's a little bit of difference there. And I
 19 don't know how many farmers could buy that FDM and figure out
 20 what it said. And that's -- they're -- if they come to me and
 21 ask me if they abut a front -- they abut a state trunk
 22 highway, my direction to them is that they have to get a copy
 23 to find out what they know or what the -- what impacts it can
 24 be on their property, then I'm not taking the complete
 25 responsibility of explaining every detail of that manual to

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1 as you intend to have it done in 30 days of the review. I
 2 told the state trooper that I intended to be going 65, but
 3 that didn't seem to cut the mustard for me. So I don't know,
 4 you know. It seemed a little confusing to me what that meant.
 5 Does that really mean you intend to do it or is that just a
 6 way of opening up the time frame.
 7 In the noise -- under the noise section, you added users as
 8 well as owners to who's responsible for barrier walls or
 9 whatever. I'm not sure what the users means in that. Is that
 10 a public utility with a line across, is he now responsible to
 11 build a retaining wall or a berm or something? Is that a
 12 user? If I visit a public park, am I user and going to get a
 13 bill in the mail for a barrier on that structure? If I go to
 14 the convenience store? What is a user and who are those
 15 people? And you added to the notes, the notes -- the last one
 16 I did was -- they take up essentially a full page on a
 17 certified survey map, and now you've added some more language
 18 to the notes. I would -- would suggest that maybe you just
 19 add -- that the surveyors add to the certification that
 20 they've met the requirements of Trans 233, similar to what it
 21 says where they meet the requirements of Chapter 236 without
 22 listing each individual requirement to 236 on the sheet. We'd
 23 have, you know, volumes if we had to rehash the thing. And
 24 again saying the DOT is not responsible, I thought the note
 25 was clear when it said the owner is responsible, that there

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1 them so that they understand level of service C or some of the
 2 other references in, with good planning or good highway design
 3 and some of the other comments that you've made and pointed at
 4 sections.
 5 MR. COOK: If we can just address that point real
 6 quickly. We will put the Facilities Development Manual on the
 7 internet so it will be accessible; you won't have to pay that
 8 money. Understanding it may be a different issue, but it will
 9 certainly be available.
 10 MR. THOUSAND: The advantage that Chapter 236 has is
 11 that it's all in one spot and you just go there. They have
 12 the same 20-day time review that the DOT is looking at. It's
 13 in a central office. And we get a consistent review every
 14 time. Now, I would suggest that you not send it to all the
 15 districts as your agreements with other people have. I don't
 16 think it's a time review problem, because plat review can get
 17 it into the state and back out within the 20 days; the same
 18 time frame that you're using, and that's why you had selected
 19 the 20 days. So all of these things could come to the central
 20 office. They could be reviewed by people who knew what they
 21 were doing, and would give them a consistent review, if a
 22 consistent review is what you're after. I -- my last one at
 23 district one, I got two different reviews from two different
 24 reviewers I talked to on the same parcel. So I -- I can't see
 25 how you can possibly get a consistent review across the state

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1 was -- wasn't any confusion. And again, it just seems to me
 2 to add extra verbiage to that particular note that I have to
 3 add to all my surveys, and it doesn't really change anything
 4 or make it clear. But the users is beyond -- I don't know
 5 what a user is. The birds, are you going to give -- I don't
 6 know.
 7 In the section on drainage, you added phrases about
 8 engineering certainty or degree of engineering certainty and
 9 sound engineering judgment. I'm a land surveyor, my license
 10 says I can practice land surveying; it doesn't say I can
 11 practice engineering. Does that mean I now have to get an
 12 engineer to create the drainage plans or show that there is a
 13 drainage problem or not. It's not clear in the rule. I don't
 14 know that if you wanted to have a PE do it, say PE, you know,
 15 I don't know -- and then the section about indirect --
 16 directly or indirectly affects water, storm water on the right
 17 of way. My house dumps its water into Lake Monona and that
 18 goes underneath the South Beltline, which is -- crosses the
 19 right of way, and so the water coming off of my driveway is
 20 impacting indirectly the state right of way. So I'm not sure
 21 what -- if, you know, my house wouldn't -- wouldn't need to be
 22 covered by Trans 233, and I don't live anywhere within six
 23 blocks of a state trunk highway. But I'm indirectly
 24 contributing to that if I pave over my backyard, it's going to
 25 be more water to the lake. So I -- you know, again, it's

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1 between the eight districts. I also am aware that the -- many
 2 employees of the department feel that the FDM is a guideline
 3 and not a rule. Having worked for the DOT, it was my
 4 experience that some of the people that I worked with didn't
 5 recognize language out of the Facilities Development Manual,
 6 and in fact told me they would never do that, that it's in
 7 fact based on the environment in the local district how the
 8 Facilities Development Manual gets implemented. So I see a
 9 real problem with having this spread around the state. I'm
 10 going to have to learn who the people are in each district or
 11 each municipality, now that you're giving it to them, too, to
 12 figure out how that is going to be consistently applied. The
 13 other -- another point, traffic impact analyses are not
 14 mentioned in the rule anywhere, and my understanding is
 15 they're being required on reviews on Trans 233. Now, again, I
 16 don't know how you can make people do things that aren't
 17 covered by the rule if you're consistently doing the rule. I
 18 don't know that TIAs are being consistently required across
 19 the state. I don't know that. But I wonder.
 20 The other issue -- or another issue that doesn't seem to
 21 be anywhere in there is a waiver from the rule entirely. On a
 22 number of occasions I've done CSMs on top of subdivision lots
 23 on top of CSMs, and where -- in those cases, where the
 24 setbacks are in place, the noise notes will be in place,
 25 everything is there, there's no access -- access restrictions

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1 are in place, why would I need to come to you and pay you
 2 another \$110 for you to say yeah, all that stuff is on the
 3 last one, why do I have to -- and I just see no provision
 4 anywhere. There was some provision of that in the guidelines,
 5 but again, if that's actually going to be something that
 6 you're going to do, I'd like to see it in the rule, not in
 7 some -- buried in some guideline someplace.
 8 I think that's basically all of the things I thought of
 9 last night. I'm -- you'll probably be hearing from me again
 10 at the -- at the next series of hearings, and I will probably
 11 still -- I don't disagree with the concepts and what you're
 12 trying to do, but the rule, the way it's written, is just
 13 making it impossible. Back to the other part that I'd like to
 14 see you change was in talking about when is the land abutting
 15 a state trunk highway, abutting a state trunk highway. You
 16 use the term formal or informal agreement. I have a formal
 17 agreement with the city of Madison; I give them money every
 18 year for that formal agreement; they provide me that street in
 19 front of my house, and that goes and hooks on to the state
 20 trunk highway. Does that mean that I have a formal agreement
 21 with somebody that's abutting a state trunk highway so that
 22 all land in the state would have to be reviewed?
 23 Thank you.
 24 MS. JOHNSON: Thank you, Mr. Thousand. Did you have
 25 a written statement you'd like to provide us?

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1 they come underneath a whole different set of categories. So
 2 I think the majority of those in Wisconsin could be handled by
 3 the DOT because I think almost all of the airports are under
 4 your jurisdiction except for a very few privates. And I think
 5 they have some licensing requirements with the FAA. So I
 6 don't see that as anything that you can't handle
 7 interdepartmentally.
 8 MR. COOK: Well, thank you. If there are no other
 9 questions, I'd like to thank everyone for coming today. We've
 10 heard some very constructive comments that we will take into
 11 consideration and address in the rule where it's feasible.
 12 This debate will likely continue, so we look forward to
 13 hearing from you in the future with suggestions as we continue
 14 the rule promulgation process. Feel free to contact the
 15 department.
 16 MR. THIEL: If you look at this document, on the
 17 second page, it has Julie Johnson's name and address. If --
 18 if you want to send in followup written comments, please send
 19 them to her at that address. We wanted a single point so
 20 they're not scattered all over the place and nobody knows
 21 where they all are. But if you send them to Julie, everybody
 22 will see them. So if you'd like, if you could get those to us
 23 by August 11th, we can keep on schedule. I -- my impression
 24 is there's a lot of good stuff in here that people would like
 25 to see go into effect December 1st, and what we're hoping

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1 MR. THOUSAND: Pardon?
 2 MS. JOHNSON: Did you have a written statement you'd
 3 like to provide us?
 4 MR. THOUSAND: I added a bunch of notes to it so --
 5 MS. JOHNSON: Okay.
 6 MR. THOUSAND: -- it isn't written anymore.
 7 MS. JOHNSON: All right. Thank you. I have a
 8 number of registration forms that people checked they did not
 9 wish to speak. Has anyone changed their mind? No. Okay.
 10 Does anyone have any questions of us or of anyone who provided
 11 testimony? Mr. Sandsnes.
 12 MR. SANDSNES: In the section where you're speaking
 13 about impacts one mile outside of corporate limits, I'm
 14 curious as to why you didn't use the same language as -- as --
 15 I'm sorry.
 16 RECORDER: That's okay.
 17 MR. SANDSNES: I'm curious as to why you didn't use
 18 the same language as the extraterritorial jurisdiction, which
 19 is three miles outside of --
 20 MR. THIEL: At the one -- one and a half miles?
 21 MR. SANDSNES: Well, it's one and a half miles on --
 22 on smaller communities; three miles in the larger. And it
 23 would seem to me that that's as far as larger units of
 24 government plan, and you would then be in concert with that
 25 that is in another part of the statutes.

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1 we're doing is refining this, and personally I heard some very
 2 good comments, and I don't know what a user is either. We
 3 tried to get it away from land divider, said, well, it ought
 4 to be the owner, but what if somebody's got a long-term lease.
 5 Well, they're an owner, but they're not the only owner, so.
 6 MR. SANDSNES: A user could be confused with a
 7 renter, too.
 8 MR. THIEL: Yep. Which might be appropriate, if
 9 it's a long-term lease.
 10 MR. SANDSNES: Well, other than in Wisconsin, a
 11 lease beyond ten years is a land division. So you only have
 12 nine years, 11 months and 28 days or something like that.
 13 MR. COOK: That -- that concludes our hearing for
 14 today. Thank you very much for coming.
 15 RECORDER: We're off the record at 10:19. This
 16 hearing was 78 minutes long.
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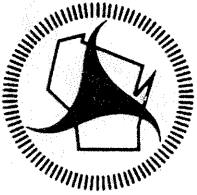
1 MR. THIEL: I think that's a reasonable
 2 consideration. I hadn't thought of that. Had you?
 3 MR. HAVERBERG: We just took one mile because it was
 4 something that we've been experiencing, it wasn't associated
 5 with the rest of the statutes, but that was what we'd been
 6 experiencing over the last year and a half, two years.
 7 MR. THIEL: Yeah.
 8 MR. HAVERBERG: It's where the issues are. Rarely
 9 have we seen issues going further out, Arden. It's right at
 10 the edges of the corporate, and usually it's -- that's where
 11 the city's going to annex the next piece of land, so that's
 12 where we're --
 13 MR. SANDSNES: That's true, but each time they annex
 14 one, it does reach another --
 15 MR. HAVERBERG: Then it keeps going out.
 16 MR. SANDSNES: It keeps moving out. And if you're
 17 in concert with the requirement of the city planners on
 18 extraterritorial jurisdiction, then at least we're playing
 19 with the same ball and the same racket.
 20 MR. THIEL: Another thought that that leads to in my
 21 mind is the extraterritorial zoning around airports, too.
 22 MR. SANDSNES: I don't believe that's an
 23 extraterritorial jurisdiction problem. That happens to be a
 24 navigation requirement to the Wisconsin DOT, and the fed --
 25 federal FAA. So that's a little different set of rules, and

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CERTIFICATE

1
 2
 3 I, Frank J. Wiener, hereby certify that as President of
 4 Textnet, Inc., an independent Electronic Recording and
 5 Transcription company, and as a Notary Public in and for the
 6 State of Wisconsin, that I directed the transcription of the
 7 proceedings given before the Department in the foregoing case
 8 from the original audiotape cassette recording the hearing
 9 held on August 4, 1999, in Madison, Wisconsin, and that the
 10 foregoing transcript is a true and correct transcript of the
 11 whole proceedings.
 12
 13
 14

15 Frank J. Wiener
 16 Notary Public, State of Wisconsin
 17 My Commission is permanent
 18 August 6, 2000



AUG 31 2000

Wisconsin Department of Transportation

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August 29, 2000

The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

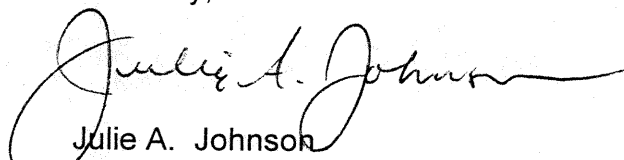
The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 233**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-109

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **00-109**, relating to **division of land abutting a state trunk or connecting highway**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,


Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Mike Cass/John Haverberg/Ron Nohr/Ernie Peterson/Bonnie Tripoli

CR 00-109

The Wisconsin Department of Transportation proposes an order to repeal TRANS 231.01(3); renumber TRANS 233.012; renumber and amend TRANS 233.11(2); amend TRANS 231.01(intro.), (4) to (7) and (9), 231.02(2) to (4) and (6), 231.03(2), (5), (7)(a) and (c), 231.04(1), (3) and (4)(a), 231.06(2) and (3), 231.07(2), 233.01, 233.02(intro.), 233.03(intro.), and (2) to (4), 233.05(1), 233.105(1), (2)(intro.) and (3), and 233.11(title) and (1); repeal and recreate TRANS 233.03(5); and create TRANS 233.012(2), 233.015(1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), 233.03(6) to (8), 233.08(2)(c) and (3n), 233.11(3)(b) to (f), and (4) to (7), relating to division of land abutting a state trunk or connecting highway.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

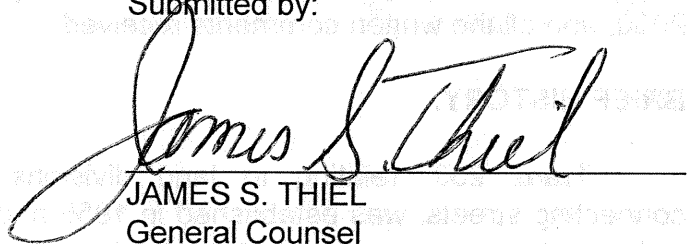
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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(608) 266-8810

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 15.04(1)(g), 85.16(1), 86.07(2), 85.025, 85.05, 84.01(15), 84.015, 84.03(1), 84.01(2), 85.02, 88.87(3), 20.395(9)(qx), 236.12(2)(a) and (7), 236.13(1)(e) and (3), 1.11(1), 1.12(2), 1.13(3), as created by 1999 Wis. Act 9; 114.31(1), 84.01(17); and 66.0301(2), as affected by 1999 Wis. Acts 150 and 167; and 86.31(6), Stats., as affected by 1999 Wis. Act 9

STATUTES INTERPRETED: ss. 1.13(2), 16.9651(2), 66.1001(2)(c), and 86.255, all as created by 1999 Wis. Act 9; 15.04(1)(g), 1.11, 1.12, 32.035, 88.87, 703.11, 84.01(15), 84.015, 84.03(1), Stats., and the federal laws and regulations thereby expressly endorsed and adopted by the Legislature, including 23 USC 109, 134, 135, 138, and 315.

General Summary of Proposed Rule.

FIVE OBJECTIVES.

This proposed revision to ch. Trans 233 attempts to accomplish five objectives. **First**, it implements agreements reached through a broad-based, participative process for consideration of improvements to the 1999 rule, sponsored by the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. **Second**, it attempts to strike a proper balance between individual and governmental highway **setback** concerns through a combination of special exceptions and applicability of different setback provisions to defined portions of the state trunk and connecting highway system. The proposal reflects the testimony and discussion at the hearing before the Joint Committee for Review of Administrative Rules on June 21, 2000. **Third**, it recognizes and reflects recent changes in state and federal laws regarding land use that affect highway and transportation planning and development. **Fourth**, it makes changes recommended by the Legislative Council Rules Clearinghouse on July 28, 2000, and corrects outmoded terms. **Fifth**, it reflects the testimony and discussion at the public hearing before the Department of Transportation on August 4, 2000, and all the written comments received.

BRIEF HISTORY.

Trans 233, relating to land divisions abutting state trunk highways and connecting streets, was established in 1956 and required amendments for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. Trans 233 was first revised effective February 1, 1999.

WISDOT has gained about a year and half experience with the revised rule and has been working cooperatively with many affected interests and legislators to refine the implementation of the new provisions of Trans 233 through a four step process, in brief:

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

Through this process, WISDOT and others have reached numerous agreements to amend TRANS 233, Wis. Admin. Code, in conjunction with the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. These agreements have been memorialized in the Wisconsin Legislative Council Staff Memorandum of William Ford to Representative David Brandemuehl dated **February 18, 2000** and an attached memo from James S. Thiel of **February 14, 2000** to former Secretary of Transportation Charles H. Thompson.

1. IMPLEMENT AGREEMENTS.

The first purpose of this proposed rule revision is to implement these conceptual agreements 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]."

The legislative Subcommittee asked WISDOT and other interested parties to continue to work together to develop amendments to s. Trans 233.08, relating to **setback** requirements and restrictions. There has been a setback provision in the rule since 1956 that has always contained language limiting structures and improvements within the setback.

WISDOT followed-up with several conceptual meetings and discussions with affected interests and exchanges of various drafts and correspondence relating to **setbacks**. A hearing was held before the Joint Committee for Review of Administrative Rules (JCRAR) on **June 21, 2000**, at which further concepts and ideas were advanced or clarified.

2. ADDRESS SETBACK ISSUES.

The second purpose of this proposed rule revision is to address these competing **setback** and related issues that came forward at the JCRAR hearing on **June 21**, in a manner consistent with the Committee's continuing oversight.

The proposed resolution of these concerns is discussed in some detail in this general summary of the rule. There are about 11,800 miles of state trunk highways. There are about 520 miles of connecting highways in 112 cities and 4 villages.

The statutes and the **setback** provisions of the current rule apply in full to all state trunk highways and connecting highways in all 72 counties with one exception; in Milwaukee County, the City of Milwaukee is excluded.

The U.S. Supreme Court has determined that the constitutionality of highway setbacks is well-established. **Gorieb v. Fox**, 274 US 603, 608-610, 47 S. Ct. 675, 677, 71 L. Ed. 1228, 53 A.L.R. 1210 (1927); **Euclid v. Ambler**, 272 US 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926); See also "Validity of front setback provisions in zoning ordinance or regulation", 93 A.L.R.2d 1223; and 83 Am. Jur. 2d **Zoning and Planning**, sec. 191 (2000):

"Setback regulations are widely upheld as an appropriate use of zoning power, although, of course, such regulations must be reasonable and not confiscatory."

Wisconsin expressly adopted the reasoning of the U.S. Supreme Court and upheld a Milwaukee setback requirement. **Bouchard v. Zetley**, 196 Wis. 635, 645, 220 N.W. 209 (1928). In 1959, the Wisconsin Supreme Court also upheld the validity of a 150 foot setback from a highway right of way line to combat hazards to traffic. **Highway 100 Auto Wreckers v. West Allis**, 6 Wis. 2d 637, 650-651, 96 N.W.2d 85 (1959). In 1989, the Wisconsin Supreme Court held that a setback requirement does not effect a taking unless the restriction "practically or substantially renders the land useless for all reasonable purposes." **Klinger v. Oneida County**, 149 Wis. 2d 838, 848-849, 440 N.W.2d 348 (1989).

In a very recent 1996 Wisconsin case upholding the validity of a highway setback requirement, the Wisconsin Court stated that setbacks:

"promote a variety of public purposes...provision for light and air, fire protection, traffic safety, prevention of overcrowding, rest and recreation, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and may, in particular cases, promote a variety of aesthetic and psychological values as well as ecological and environmental interests." (citing 3 The Law of Zoning and Planning sec. 34B.02[2] (1995). **Town of Portland v. WEPCO**, 198 Wis. 2d 775, 779, 543 N.W.2d 559, 560-61 (1996)

Not all traffic safety reasons for setbacks are apparent. Setbacks from freeways and expressways and other major through highways also serve to enhance traffic safety by making it possible for workers and equipment to access the many light, water, sewer, power, communication and other public utilities in or across highways for maintenance and construction from the back of the highway right of way line. Without setbacks highway and law enforcement authorities would be required to allow access from the highway lanes themselves or close traffic lanes, or both, on these higher speed and higher traffic volume highways. By their very nature these actions would impede traffic, increase congestion and increase the crash and injury risk to the motorists on the highway, highway and law enforcement personnel, and the public utility workers.

A recent Wisconsin Legislative Council analysis of the law of regulatory takings generally concludes that the ongoing judicial goal is to find an appropriate balance

between two conflicting principles: the property rights of individuals and the government's authority on behalf of all citizens to regulate an owner's use of the land.

The general rule is that a regulation is only a "taking" requiring compensation if it deprives the owner of "all or substantially all" of the value of a constitutionally protected property interest. It is not enough for the property owner to show that the regulation denies the owner of the expected or desired use of the property. To make this determination, the courts have adopted an ad hoc, case-by-case, analysis of each situation, because there is no clear "set formula."

Requiring the dedication of property for public use, including the dedication of private property for public highway and transportation purposes, as part of a land division approval process is not a taking of private property for public use without just compensation. This issue was decided by the Wisconsin Supreme Court in **Jordan v. Village of Menomonee Falls**, 28 Wis. 2d 608, 137 N.W.2d 442, 446-448 (1965) and confirmed recently in **Hoepker v. City of Madison Plan Commission**, 209 Wis. 2d 633, 649-650, par. 21, 563 N.W.2d 145, 152 (1997). Additionally, the Legislature has established a procedure for inverse condemnation through which an individual may seek compensation for a regulatory taking, sec. 32.10, Stats.

It is important to distinguish the above land division situations initiated by private owners from those where WISDOT does acquire property from one private property owner to provide to another private owner as a result of WISDOT's actions. For example, WISDOT has the authority to condemn lands of one property owner to provide a public access road to another property owner who would otherwise be landlocked by the highway construction actions initiated by WISDOT. Section 84.09, Stats.; 61 OAG 36 (1972). Another example is where WISDOT's highway construction actions initiated by WISDOT require the taking of the parking lot of a small grocery store. If no relocation of the grocery store to serve the community is reasonably possible and the grocery store is critical to the community, WISDOT has authority to condemn lands of an adjacent private owner to provide a functional parking lot for the other private owner and thereby preserve the facility for the community. In all of these cases WISDOT pays compensation for an actual taking. Section 84.09, Stats.; 61 OAG 36 (1972).

On **May 26** WISDOT proposed to conduct a specific **setback** analysis when requested for land divisions abutting a state trunk of connecting highway to determine whether WISDOT can responsibly adjust the **setback** line or allow a specific structure or improvement within the **setback**, in a timely manner, with a reasonable appeal process.

The **May 26** WISDOT proposal had a 20-year horizon for analysis.

In response, one group of interests proposed that any setback analysis be tied to WISDOT's 6-year plan adopted under sec. 84.01(17), Stats. WISDOT and others rejected this suggestion because 6 years is too short a period, the plan is both under

inclusive and over inclusive, is constrained by financial resources rather than public need, and is inconsistent with federal law.

Also in response, another group of interests generally indicated that WISDOT's 20-year specific analysis proposal had gone too far in striking the balance in favor of addressing private, individual concerns to the detriment of sound transportation planning in the interest of safety, convenience and investment of the public. WISDOT had been too short-sighted in its 20-year specific analysis proposal and ought to consider a broader set of criteria.

The hearing before the Joint Committee for Review of Administrative Rules on **June 21** brought out further testimony and suggestions regarding setbacks from additional legislators, from the existing interest groups, and from new groups and individuals. A consensus appeared to be reached that WISDOT should attempt to define a system of highways where a normal setback and where a reduced setback would be consistent with safety and public interest in the highways.

Therefore, WISDOT proposed a separate **setback** portion of the rule revision to balance individual, private concerns while preserving the public interest as follows:

- A. HIGHWAYS AND MAPS FOR "NORMAL" SETBACK.** The normal setback associated with land divisions that has been in existence since 1956 is 110 feet from the center line of the state trunk or connecting highway or 50 feet from the nearest right of way line, whichever is greater. This normal setback provision will be made applicable to a reduced system of highways. This consists of those state trunk and connecting highways identified as part of the National Highway System (NHS), [the NHS includes all of Wisconsin's Corridors 2020 as a subset], as well as all other principal arterials, and all other state trunk highways with current average daily traffic of 5,000 or more, all other state trunk and connecting highways within incorporated areas and within the extraterritorial zoning boundaries of cities and villages, major intersections consisting of the portion of a state trunk highway or connecting highway within one-half mile of its intersection or interchange with a freeway or expressway, and those highways with current and forecasted congestion projected to be worse than Level of Service "C" within the following 20 years. In response to testimony at the hearing on **August 4, 2000**, and written recommendations, the normal setback was established to coincide with the extraterritorial zoning boundaries of cities and villages as provided in sec. 62.23(7a), Stats. The rule calls for updating reference maps that identify this system at least every two years. Persons may still seek special exceptions to this normal setback requirement.
- B. OTHER HIGHWAYS.** The remaining state trunk and connecting highways will have a reduced **setback** of 15 feet from the nearest right of way line, unless local ordinances require a greater setback. Persons may

still seek special exceptions to this reduced setback requirement through a specific analysis process.

A map generally showing these highways with the normal setback and with the 15 foot setback are attached to this proposed rule. The normal setback currently applies to about 7,320 miles of highway; the reduced setback to about 4,312 miles.

3. IMPLEMENT CHANGES IN STATE AND FEDERAL LAW.

The third purpose of this proposed rule revision is to recognize and reflect recent changes in state and federal laws and regulations regarding land use that affect highway and transportation planning and development.

Human Equality.

Section 15.04(1)(g), Stats., requires the head of each Wisconsin agency to examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes to determine whether they have any arbitrary discriminatory effect on the basis of race, religion, national origin, sex, marital status or sexual orientation. If WISDOT or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

Similarly, Title VI of the Civil Rights Act of 1964 states that "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 USC 2000d. It bars intentional discrimination as well as disparate impact on protected groups. The federal government has taken steps to require the implementation of these laws at the earliest possible time in the transportation planning process.

Highway building projects that require the destruction of downtown areas due to lack of corridor preservation and lack of adequate setbacks and lack of concern for the affected populace have allegedly had a disparate impact on low income and minority populations. WISDOT cannot fulfill the mandates of these laws without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

Environment.

Sections 1.11, 1.12, 32.035 and 1.13, 16.9651(2), and 66.1001(2)(c), Stats., as created by 1999 Wisconsin Act 9, direct, authorize, and encourage Wisconsin state agencies, including WISDOT, to the fullest extent possible, to consider the effect of their actions on the environment (air, water, noise, endangered plants and animals, parklands, historic, scenic, etc.), the use of energy, the impact on agriculture and to balance the mission of the agency and local, comprehensive planning goals, including

building of community identity by revitalizing main streets and enforcing design standards, encouragement of neighborhood designs that support a range of transportation options, and providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety that meets the needs of all citizens, including transit dependent and disabled citizens, and implements transportation corridor plans.

Similarly, federal laws require WISDOT to abide by federal design and construction standards while also considering, for example, the impact of WISDOT's actions on air, noise, water pollution, man-made and natural resources, community cohesion and injurious displacement of people, businesses and farms, and implementing federal regulations that require a minimum 20-year transportation planning horizon. WISDOT is authorized and directed by Wisconsin law to carry out all of these federal mandates by secs. 84.01(15), 84.015, and 84.03(1), Stats.

In order to achieve these objectives, WISDOT must look forward for at least 20 years as required by federal law. WISDOT cannot fulfill the mandates of these laws without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

RESTRICTIONS REQUIRING USE OF EXISTING CORRIDORS.

The Wisconsin Supreme Court has determined that WISDOT cannot expand its authority to acquire property by agreeing to environmental and human impact mitigation demands of other state and federal authorities in order to get their concurrence to proceed with a project. **Mitton v. Transportation Dept.**, 184 Wis. 2d 738, 516 N.W.2d 709 (1994). Subsequent to this decision, the Wisconsin Legislature enacted sec. 86.255, Stats., in 1999 Wis. Act 9, that places further restrictions on WISDOT's authority to acquire property. These judicial and legislative restrictions have made it necessary for WISDOT to place greater reliance on long-range planning and corridor preservation.

4. IMPLEMENT CHANGES RECOMMENDED BY LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

The fourth purpose of this proposed rule revision is to include changes recommended by the Legislative Council Rules Clearinghouse in its report dated **July 28, 2000**. The recommendations fall into only 2 Rules Clearinghouse categories: (a) Format, Style and Placement in Administrative Code, and (b) Clarity, Grammar, Punctuation and Use of Plain Language. Details of the changes recommended by the Legislative Rules Clearinghouse can be found in the Part 4 report on pp. 55-56. The proposed rule also makes technical corrections to delete outmoded references to the former "highway commission," to correct spelling and nomenclature, and adopt modern rule drafting conventions in Ch. Trans 231.

5. MAKE CHANGES RECOMMENDED AT AUGUST 4 PUBLIC HEARING AND IN WRITTEN COMMENTS.

The fifth purpose of this proposed rule revision is to include changes recommended at the public hearing before the Department on **August 4, 2000** and in written comments received by the Department regarding the **August 4, 2000** public hearing draft. In brief, the changes resulting from the hearing refined the definition of the highway system subject to the normal and reduced setbacks, recognized the extraterritorial zoning jurisdiction of cities and villages under sec. 62.23(7a), Stats., clarified the "grandfathering" provision, defined "desirable traffic access pattern," "user," "reviewing municipality," "technical land division" and "major intersection," clarified that if the Department fails to act within the time specified it shall be considered to have no objection to the land division or special exception, clarified noise and drainage and recording provisions. More details of modifications made as a result of testimony and written comments can be found in the Part 4 report on pp. 49-54.

CONCLUSION.

Within the rigorous expectations placed upon and expected of WISDOT in providing a transportation system for the public, the ultimate objective of this proposed rule revision is to recognize state and local economic and land use goals, enhance the effectiveness of the rule "as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any highway access permit conditional thereon," to provide reasonable flexibility and clarity that does not jeopardize public investments or safety now or in the future, and to provide 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." The rule is intended to ensure adequate setbacks and access controls, with sufficient flexibility to provide for locally planned traditional streetscapes and setbacks in existing and planned urban areas, and to ensure the maximum practical use of existing highway facilities and rights of way to minimize the need for new alignments or expansion of lower function facilities. WISDOT cannot achieve these legal mandates and expectations without a comprehensive system of review of land divisions abutting state trunk and connecting highways.

Fiscal Effect. There will be an insubstantial reduction in revenues from the fee for the services provided by WISDOT in conjunction with review of land divisions. The change should not have an effect upon any county, city, village, town, school district, vocational, technical and adult education district and sewerage district liability unless they are assuming the role of developer. That situation occurs approximately five to ten times per year statewide. Developers will see a slight reduction in costs related to some condominium plat reviews. Surveyors who submit maps for review will pay less in total fees for the same reason, but those savings could be passed onto the developer. There will also be a slight reduction in costs of surveys passed on to developers or owners.

Several of WISDOT's transportation districts may use existing personnel to review more or less land divisions than in the past. There will be fewer reviews by WISDOT's

Central Office staff, but there may be greater involvement with delegations of reviews to local units of government. It is expected that some of the District costs will be defrayed by WISDOT delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12(2)(a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority, except to the extent they may voluntarily wish to also review developments of land abutting state trunk highways within their geographic jurisdiction.

In the long-term, there will in all likelihood be state, local and private savings that can be attributed to better long-range transportation planning and less adverse and more positive effects upon communities, businesses, residents, and the environment. An efficient and safe transportation system will have a positive, but hard to quantify, fiscal effect.

Copies of Proposed Rule. Copies of the rule may be obtained upon request, without cost, by writing to Julie Johnson, Administrative Rules Coordinator, Department of Transportation, Office of General Counsel, Room 115-B, P. O. Box 7910, Madison, WI 53707-7910, or by calling (608) 267-3703. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 15.04(1)(g), 85.16(1), 86.07(2), 85.025, 85.05, 84.01(15), 84.015, 84.03(1), 84.01(2), 85.02, 88.87(3), 20.395(9)(qx), 236.12(2)(a) and (7), 236.13(1)(e) and (3), 1.11(1), 1.12(2), 1.13(3), as created by 1999 Wis. Act 9; 114.31(1), 84.01(17), 66.0301(2), as affected by 1999 Wis. Acts 150 and 167; and 86.31(6), Stats., as affected by 1999 Wis. Act 9, the department of transportation hereby proposes to amend a rule interpreting ss. 1.13(2), 16.9651(2), 66.1001(2)(c), and 86.255, Stats., all as created by 1999 Wis. Act 9; 15.04(1)(g), 1.11, 1.12, 32.035, 88.87, 703.11, Stats.; 84.01(15), 84.015, 84.03(1), Stats., and the federal laws and regulations thereby expressly endorsed and adopted by the legislature, including 23 USC 109, 134, 135,

138, and 315, relating to division of land abutting a state trunk highway or connecting highway.

SECTION 1. Trans 231.01(intro.) is amended to read:

Trans 231.01 General. (1) This regulation is for the purpose of designating standards within which the ~~district engineers or the maintenance engineer of the commission, or authorized representatives of said engineers,~~ department is authorized to issue permits pursuant to s. 86.07(2), Stats., for placing, constructing or altering driveways for movement of traffic between state trunk highways and abutting property or otherwise making excavations or fills or installing culverts or making other alterations in a state trunk highway or in other manner disturbing any such highway or bridge thereon.

SECTION 2. Trans 231.01(3) is repealed.

SECTION 3. Trans 231.01(4) to (7) and (9) are amended to read:

Trans 231.01(4) No permit issued pursuant to this authority shall ~~supercede~~ supersede more restrictive requirements imposed by valid applicable local ordinances.

(5) Permits for such installations or alterations exceeding the limits or conditions established hereby shall be issued only on specific approval of the ~~commission~~ secretary.

(6) No permit shall be issued or be valid for construction of a driveway connecting directly with the through roadway of a controlled-access highway unless and until such driveway is authorized by specific finding, determination and declaration approved by the ~~commission~~ department.

(7) Applications for permits shall be made on forms available at the offices of the ~~state highway commission~~ department, and will be furnished upon request.

(9) No permit may be issued under this chapter for construction of a highway or a private road or driveway that connects directly with a state trunk highway and that provides vehicular access to a land division, as defined in s. Trans 233.015(4), unless the land division was created before February 1, 1999 or the department, district office, as defined in s. Trans 233.015(1r), or reviewing municipality, as defined in s. Trans 233.015(6m), determines that the land division meets the requirements of ch. Trans 233. If the department determines that a land division created after February 1, 1999, differs substantially from the land division shown on a land division map to which the department, district office or reviewing municipality certified no objection under ch. Trans 233, any permit issued under this chapter for that land division is void and may be summarily canceled by written notice to the land owner and the private road or driveway shall be discontinued.

SECTION 4. Trans 231.02(2), (3), (4) and (6) are amended to read:

Trans 231.02(2) That the permittee shall furnish all materials, do all work, and pay all costs in connection with the construction of the driveway and its appurtenances on the right of way. Materials used and type and character of work shall be suitable and appropriate for its intended purpose, and the type of construction shall be as designated and subject to approval of the ~~engineer~~ department. The permittee shall make the installation without jeopardy to or interference with traffic using the highway. Highway surfaces, shoulders, ditches and vegetation disturbed shall be restored to equivalent of original condition by the permittee.