

## 2007 DRAFTING REQUEST

### Bill

Received: 02/01/2007

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing: Kurt Simatic

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Adl. Drafters: mshovers

Subject: Real Estate - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Albers@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Plat approval

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 03/28/2007	kfollett 03/30/2007		_____			
/1			rschluet 03/30/2007	_____	cduerst 03/30/2007		
/2	pkahler 04/24/2007	kfollett 04/24/2007	pgreensl 04/24/2007	_____	sbasford 04/24/2007	cduerst 05/02/2007	

FE Sent For:

*none*

**<END>**

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/?	pkahler	1/16/07 3/30		_____	_____	_____	_____
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FE Sent For:

<END>

## Kahler, Pam

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**From:** Shovers, Marc  
**Sent:** Wednesday, January 10, 2007 12:26 PM  
**To:** Kahler, Pam  
**Subject:** FW: Drafting request

**Attachments:** Drafting Request for Extraterritorial Plat Approval and Zoning.doc

Hi Pam:

Sorry to add more to your backlog, but I think this one is yours.

Marc

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**From:** Simatic, Kurt  
**Sent:** Wednesday, January 10, 2007 11:30 AM  
**To:** Shovers, Marc  
**Subject:** Drafting request

Marc:

Please read the attached memo from the WI Towns Assoc on a drafting request that Rep. Albers would like to make.



Drafting Request  
for Extrater...

If you have any questions, please let me know.

**Kurt Simatic**  
**Office of State Representative Sheryl K. Albers**  
115 West  
State Capitol  
Madison, WI 53708  
608-266-8531  
[kurt.simatic@legis.wisconsin.gov](mailto:kurt.simatic@legis.wisconsin.gov)

To: Rep. Sheryl Albers  
From: Richard J. Stadelman, Executive Director Wisconsin Towns Association  
Re: **Drafting Instructions on Extraterritorial Platting Authority**  
Date: December 21, 2006

**Issue:** The Wisconsin Supreme Court in case of Wood v. City of Madison, 260 Wis. 2d 71, 659 N.W. 2d 31, (Sup. Ct., April, 2003) held that a city or village may deny a proposed plat within the extraterritorial plat area of the city or village on proposed use of the land to be platted. This decision reversed the Court of Appeals decision in Gordie Boucher Lincoln-Mercury v. Madison Plan Commission, 178 Wis. 2d 74, 503 N.W. 2d 265 (Ct. App. 1993). The Wood decision in effect allows the city or village to exercise "land use control" previously only exercised by extraterritorial zoning under Sec. 62.23 (7a) of Wis. Statutes which requires the agreement of the town and city or village. The Wood decision has rendered the extraterritorial zoning statute under Sec. 62.23 (7a) meaningless, because the city or village may exercise the powers of zoning in the extraterritorial area unilaterally under the extraterritorial plat approval authority of Sec. 236.45 of Wis. Statutes without the agreement of the town. Note the concurring opinion of Justice Prosser provides a lengthy dissertation on the legislative history of extraterritorial powers and would not have overruled the Bucher case.

**Goal of Wisconsin Towns Association:** To reverse the Wood v. City of Madison holding to allow a city or village to reject a plat within the extraterritorial plat approval area on the basis of the "proposed land use" without using extraterritorial zoning under Sec. 62.23 (7a) of Wis. Statutes, which requires the mutual agreement of the town and city/village.

**Possible wording to accomplish this goal:**

Amend Sec. 236.45 (2)(b) of Wis. Statutes to add the following sentence to this subsection:

"A municipality may not deny plat approval under this section based upon the proposed use of the land within the plat, unless, <sup>the</sup> such denial is based upon <sup>the</sup> the extraterritorial zoning agreement under Sec. 62.23 (7a) of Wis. Statutes."

*a plan or regulations, or amendments, adopted by a governing body*

Alternative to amending Sec. 236.45 (2)(b) would be to add a (c) to Sec. 236.45 (2) of Wis. Statutes.

Our Association would defer to the drafting attorney's ideas to best accomplish this goal.

If you or the drafting attorney have any questions in this matter, please contact me at (715) 526-3157 or by email at [wtowns1@frontiernet.net](mailto:wtowns1@frontiernet.net).

Thank you for your consideration in this matter.





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1811/3  
PJK&MES:...

gf

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

(2-3-28)

gen cat

1

AN ACT ...; relating to: denial of extraterritorial plat approval on basis of land's

2

use.

**Analysis by the Legislative Reference Bureau**

Current law specifies whether a county, town, city, or village has the right to approve or object to a plat (the map of a subdivision). Generally, the location of the subdivision determines which local governmental unit or units have the right to approve the plat. If a subdivision lies in the unincorporated area within three miles of the corporate limits of a first, second, or third class city, however, the governing body of the city has the right to approve the plat under its extraterritorial plat approval jurisdiction, as well as the board of the town within which the subdivision lies and the planning agency of the county within which the subdivision lies if the planning agency employs on a full-time basis a professional engineer, a planner, or another person charged with administering zoning or other planning legislation. Approval of a plat is conditioned on the plat's compliance with the local ordinances and comprehensive, master, or development plan of the local governmental unit or units that have the right to approve the plat.

In *Wood v. City of Madison*, 2003 WI 24, 260 Wis. 2d 71, 659 N.W. 2d 31, the Supreme Court determined that a city with extraterritorial plat approval jurisdiction over a plat could object to the plat on the basis of the proposed use of land outside the city limits. *Wood* overruled *Boucher Lincoln-Mercury v. Madison Plan Comm.*, 178 Wis. 2d 74, 503 N.W. 2d 265 (Ct. App. 1993), which held that extraterritorial plat approval or denial based on the use of the land in the plat is unilateral land use control (or zoning), and that the statutes require extraterritorial

zoning to be a cooperative effort between the city and the town in which the zoning ordinance is in effect.

This bill prohibits a municipality (city or village) from denying approval of a plat on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the municipality unless the denial is based on a plan or regulations adopted under the statute referred to in *Boucher Lincoln-Mercury* that sets out the requirements for the cooperative effort between the municipality and the town for extraterritorial zoning.

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

1           **SECTION 1.** 236.45 (3) of the statutes is renumbered 236.45 (3) (a).

2           **SECTION 2.** 236.45 (3) (b) of the statutes is created to read:

3           236.45 (3) (b) Notwithstanding par. (a) and subs. (1) and (2), a municipality  
4 may not deny approval of a plat under this section or s. 236.13 on the basis of the  
5 proposed use of land within the extraterritorial plat approval jurisdiction of the  
6 municipality, unless the denial is based on a plan or regulations, or amendments  
7 thereto, adopted by the governing body of the municipality under s. 62.23 (7a) (c).

8           **SECTION 3. Initial applicability.**

9           (1) This act first applies to preliminary plats or, in cases in which no  
10 preliminary plats are submitted, final plats that are submitted for approval on the  
11 effective date of this subsection.

12

(END)

## Kahler, Pam

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**From:** Simatic, Kurt  
**Sent:** Tuesday, April 24, 2007 1:10 PM  
**To:** Kahler, Pam  
**Subject:** RE: Changes needed for LRB 1811

This afternoon if possible?

I will pass along your observation to Sheryl and the Towns Association. Perhaps they will change it back in the another draft or an amendment.

Thank you very much.

---

**From:** Kahler, Pam  
**Sent:** Tuesday, April 24, 2007 1:07 PM  
**To:** Simatic, Kurt  
**Cc:** Shovers, Marc  
**Subject:** RE: Changes needed for LRB 1811

Kurt:

I think it is redundant to include both ss. 236.10 and 236.13, since s. 236.10 only specifies who must give approval, but I can easily add that section very quickly. How soon do you need it?

Pam

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**From:** Simatic, Kurt  
**Sent:** Tuesday, April 24, 2007 12:57 PM  
**To:** Shovers, Marc; Kahler, Pam  
**Subject:** Changes needed for LRB 1811

<< File: 07-18111.pdf >>

Changes are needed to the plat approval bill ASAP based on the following suggestion:

*The only suggestion that we would make is to include on line 4 of page 2 in addition to "..... under this section or s. 236.13 **or s. 236.10** on the basis...."*

*We suggest that Sec. 236.10 also be referenced because plat approvals are authorized in all of these sections including Sec. 236.10. Would you ask the drafting attorneys if they could do that?*

How soon could we get a /2 back?

Thanks.

**Kurt Simatic**  
**Office of State Representative Sheryl K. Albers**  
115 West  
State Capitol  
Madison, WI 53708  
608-266-8531  
kurt.simatic@legis.wisconsin.gov



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1811/1  
PJK&MES:kjf:rs

r m is run

2007 BILL

wanted  
this  
afternoon

Regen

1 AN ACT *to renumber* 236.45 (3); and *to create* 236.45 (3) (b) of the statutes;

2 relating to: *of* extraterritorial plat approval on basis of land's use.

**Analysis by the Legislative Reference Bureau**

Current law specifies whether a county, town, city, or village has the right to approve or object to a plat (the map of a subdivision). Generally, the location of the subdivision determines which local governmental unit or units have the right to approve the plat. If a subdivision lies in the unincorporated area within three miles of the corporate limits of a first, second, or third class city, however, the governing body of the city has the right to approve the plat under its extraterritorial plat approval jurisdiction, as well as the board of the town within which the subdivision lies and the planning agency of the county within which the subdivision lies if the planning agency employs on a full-time basis a professional engineer, a planner, or another person charged with administering zoning or other planning legislation. Approval of a plat is conditioned on the plat's compliance with the local ordinances and comprehensive, master, or development plan of the local governmental unit or units that have the right to approve the plat.

In *Wood v. City of Madison*, 2003 WI 24, 260 Wis. 2d 71, 659 N.W. 2d 31, the Supreme Court determined that a city with extraterritorial plat approval jurisdiction over a plat could object to the plat on the basis of the proposed use of land outside the city limits. *Wood* overruled *Boucher Lincoln-Mercury v. Madison Plan Comm.*, 178 Wis. 2d 74, 503 N.W. 2d 265 (Ct. App. 1993), which held that extraterritorial plat approval or denial based on the use of the land in the plat is unilateral land use control (or zoning), and that the statutes require extraterritorial



**Duerst, Christina**

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**From:** Simatic, Kurt  
**Sent:** Wednesday, May 02, 2007 4:28 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-1811/2 Topic: Plat approval

Please Jacket LRB 07-1811/2 for the ASSEMBLY.