

👉 **07hr_SC-CFRRIT_ab0423_pt01**



Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Campaign Finance Reform, Rural
Issues, and Information Technology (SC-CFRRIT)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Campaign Finance Reform, Rural Issues and Information Technology

Assembly Bill 423

Relating to: extraterritorial plat approval on basis of land's use.

By Representatives Albers, Roth, Musser, Gunderson, Petrowski and Mursau; cosponsored by Senators Breske, Harsdorf, A. Lasee and Schultz.

January 25, 2008 Referred to Committee on Campaign Finance Reform, Rural Issues and Information Technology.

March 3, 2008 **PUBLIC HEARING HELD**

Present: (0) None.

Absent: (0) None.

Appearances For

- None.

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

- None.

March 12, 2008 **EXECUTIVE SESSION HELD**

Present: (0) None.

Absent: (0) None.

March 13, 2008 Failed to concur pursuant to Senate Joint Resolution 1.

Kathy Daggs
Committee Clerk

WISCONSIN ASSEMBLY
2007-2008 SESSION
Speaker Huebsch

AB 423
BY ALBERS
EXTRATERRITORIAL PLAT APPROVAL
PASSAGE

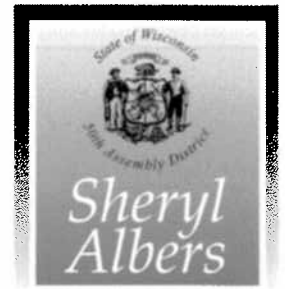
AYES - 70 NAYS - 26 NOT VOTING - 3 PAIRED - 0

<u>A</u>	<u>N</u>	<u>NY</u>	<u>NAME</u>		<u>A</u>	<u>N</u>	<u>NY</u>	<u>NAME</u>		<u>A</u>	<u>N</u>	<u>NY</u>	<u>NAME</u>	
Y			ALBERS	R	Y			KESTELL	R	Y			SCHNEIDER	D
Y			BALLWEG	R	Y			KLEEFISCH	R	Y			SEIDEL	D
Y			BENEDICT	D	Y			KRAMER	R	Y			SHERIDAN	D
	N		BERCEAU	D	Y			KREUSER	D	Y			SHERMAN	D
Y			BIES	R	Y			KRUSICK	D	Y			SHILLING	D
	N		BLACK	D	Y			LASEE	R		N		SINICKI	D
Y			BOYLE	D	Y			LEMAHIEU	R	Y			SMITH	D
	N		COLON	D	Y			LOTHIAN	R		N		SOLETSKI	D
	N		CULLEN	D		N		MASON	D	Y			STASKUNAS	D
Y			DAVIS	R	Y			MEYER	R		N		STEINBRINK	D
	N		FIELDS	D		N		MOLEPSKE	D	Y			STONE	R
Y			FITZGERALD	R		N		MONTGOMERY	R		N		STRACHOTA	R
Y			FRISKE	R	Y			MOULTON	R	Y			SUDER	R
Y			GARTHWAITE	D	Y			MURSAU	R	Y			TAUCHEN	R
	N		GOTTLIEB	R	Y			MURTHA	R		N		TOLES	D
	N		GRIGSBY	D	Y			MUSSER	R	Y			TOWNSEND	R
		x	GRONEMUS	D	Y			NASS	R		N		TRAVIS	D
Y			GUNDERSON	R	Y			NELSON	D	Y			TURNER	D
		x	GUNDRUM	R	Y			NERISON	R		N		VAN AKKEREN	D
Y			HAHN	R	Y			NEWCOMER	R	Y			VAN ROY	R
	N		HEBL	D	Y			NYGREN	R	Y			VOS	R
Y			HILGENBERG	D	Y			OTT, A.	R	Y			VRUWINK	D
Y			HINES	R	Y			OTT, J.	R	Y			VUKMIR	R
	N		HINTZ	D	Y			OWENS	R	Y			WASSERMAN	D
Y			HIXSON	D		N		PARISI	D	Y			WIECKERT	R
Y			HONADEL	R	Y			PETERSEN	R		N		WILLIAMS, A.	D
Y			HRAYCHUCK	D	Y			PETROWSKI	R	Y			WILLIAMS, M.	R
Y			HUBLER	D		N		POCAN	D	Y			WOOD	R
Y			JESKEWITZ	R	Y			POPE-ROBERTS	D	Y			YOUNG	D
Y			JORGENSEN	D	Y			PRIDEMORE	R		N		ZEPNICK	D
Y			KAUFERT	R	Y			RHOADES	R		N		ZIEGELBAUER	D
Y			KERKMAN	R		N		RICHARDS	D	Y			ZIPPERER	R
	N		KESSLER	D			x	ROTH	R	Y			SPEAKER	R

IN CHAIR: GOTTLIEB

NO VACANT DISTRICTS

SEQUENCE NO. 176
 Wednesday, January 23, 2008
 3:54 PM



February 7, 2008

The Honorable Pat Kreitlow
Chair, Senate Committee on Campaign Finance Reform,
Rural Issues & Information Technology
10 South State Capitol

Dear Senator Kreitlow:

I am writing to formally ask that you hold a public hearing on Assembly Bill 423, relating to extraterritorial plat approval based on a land's use.

The Wisconsin Supreme Court, in the case of *Wood v. City of Madison*, held that a city or village may deny a proposed plat (the map of a subdivision) within the extraterritorial plat area of the city or village on proposed use of the land to be platted. Essentially, the *Wood* decision allows the city or village to exercise "land use control" previously only exercised by extraterritorial zoning under sec 62.23 (7)(a), which requires the agreement of the city or village AND the town. The *Wood* decision has rendered this extraterritorial zoning statute meaningless because the city or village may exercise zoning powers in the extraterritorial area unilaterally and without the agreement of the town.

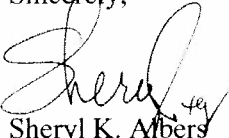
AB 423 would reverse *Wood v. City of Madison* and require the mutual agreement of the city or village and the town on plat approval in sec 62.23 (7)(a). It is supported by the Wisconsin Towns Association.

Furthermore, AB 423 would encourage agreement and cooperation among different units of government, particularly between towns and cities/villages, and more cooperation reduces duplication in property zoning. Also, current law has led to delays in development in the extraterritorial areas and losses in tax revenue and profits for property owners.

AB 423 unanimously passed the Assembly Rural Affairs Committee, and it passed the full Assembly on a strongly bipartisan vote of 70-26.

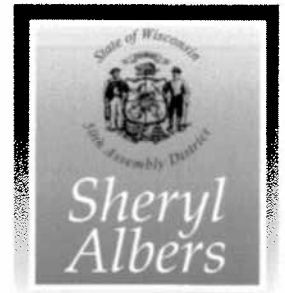
Once again, I am asking that you schedule a public hearing for AB 423 at your earliest convenience. Please contact me or my office if you have any questions or concerns.

Sincerely,


Sheryl K. Albers
State Representative
50th Assembly District

SKA:kms





**Testimony of State Representative Sheryl Albers
On AB 423 to the Senate Committee on Campaign Finance Reform,
Rural Affairs, and Information Technology
March 3, 2008**

Good afternoon, and thank you Chairman Kreitlow and members of the committee for allowing a public hearing on Assembly Bill 423.

Subsequent to the Wisconsin Supreme Court decision of *Wood v. City of Madison* (2003), planning bodies of cities and villages more often than not denied proposed plats (the map of a subdivision) if any of the subject property is situated within the extraterritorial plat area of the city or village. Additionally, city and village planning bodies frequently impose conditions on a property owner, regarding subject properties, which the township has neither demanded, or which a township opposes. This results in a town's master plan being rejected by cities and villages, when certain statutes (Section 59.69(2) Wis. Stat.) require otherwise.

Post-*Wood*, decisions of a city or village's planning body are controlling on land use determinations, though the property subject to the decision is not within the city or village's boundaries, even though a town said yes, the village or city said "no" to the proposed use. This means that persons who own property that is just outside a city or village, within that city or villages extraterritorial property zone, must approach multiple units of government (town, city or village, and county) to determine whether approval might be granted. This causes undue delays, and can prevent sales, when a planning administrator is not willing or unable to predict what type of action its planning board may take. The concept underlying planning is to provide for transparency, as well as ensure efficiencies and predictability of government.

The *Wood* decision instead creates havoc, in that town plans, which the Legislature provides funding for, no longer carry any influence, making the expenditures for planning wasteful; furthermore having to approach multiple units of government translates into less predictability. And, cities' and villages' planning bodies apparently now maintain that they can entirely disregard decisions made by a town planning board, even decisions that are entirely consistent with the town's plan.

Prior to *Wood*, cities and villages, exercised control under Section 62.23 (7)(a) Wis. Stat. – the extraterritorial zoning statute which gives elected bodies of cities and villages a right to have input over decisions outside of their boundaries, limited however to either the 1.5 miles or 3 miles outside of the boundary line, dependent upon a particular municipality's population. The statute was intended to compel agreement.

The *Wood* decision appears to render this particular section of the statutes meaningless, for currently larger cities and some villages, via their planning boards, are exercising zoning powers within extraterritorial areas unilaterally and without agreement or cooperation of the impacted township.

Passage and enactment of AB 423 would reverse *Wood v. City of Madison*, breathing life to the language that was intended to require mutual agreement of the city or village, in regards to plat approval in Section 62.23 (7)(a) Wis. Stat. Mutual agreement would require cooperation and conversation, and it would prevent unilateral decision-making which ultimately precludes or restrains development. Based on the 2007-09 budget we adopted, all units of government must rely on growth in equalized values, which means each government must allow some development in order to receive any increase in shared revenue.

This change would restore **representative government** to individuals who own property within a township, as any property owner may attend and speak at a town's annual meeting. Cities and villages are not likewise required to hold an annual meeting, so the input of a person who owns property subject to extraterritorial zoning is extremely limited. Some property owners have requested that legislation be considered to vote in a municipality where they own property but do not reside as long as that is the only vote they cast, and I have drafted such legislation (AJR 101). That alone will not produce a fix.

However, AB 423 is of importance, for these types of change would make some headway to ensure that property rights are protected under state law, while at the same time, protecting laws which equate to "one-man/one-vote."

Bottom line – a plat should only be denied by cities and villages with the agreement of the town where the proposed plat would come to be located if approved. If a town supports a plat, backed by a town's plan, a city or village should not have veto authority over the town – for such action destroys representative government!

One amendment has been introduced that will include certified survey maps, in addition to the plats already covered by the bill. I would ask that the committee embrace the amendment as well as the bill. AB 423 passed the Assembly Rural Affairs Committee on a unanimous vote, and passed the full Assembly on a strongly bipartisan vote of 70-26.

Thank you for your time. I hope that you will take prompt executive action on AB 423, and I would be happy to answer any of your questions at this time.



Wisconsin Towns Association

Richard J. Stadelman, Exec. Director

W7686 County Road MMM

Shawano, Wis. 54166

Tel. (715) 526-3157

Fax. (715) 524-3917

Email: wtowns@frontiernet.net

To: Senate Committee on Campaign Finance, Rural Issues
& Information Technology

From: Richard J. Stadelman, Executive Director

Re: AB 423 relating to "extraterritorial plat approval"

Date: March 3, 2008

Wisconsin Towns Association fully supports passage of AB 423 relating to extraterritorial plat approval on the basis of the land's use. This bill would reverse the effect of the Wisconsin Supreme Court decision in Wood v. City of Madison, 2003 Wis. 24, 260 Wis. 2d 71, 659 N.W. 2d 31 (Wis. Sup. Ct. 2003). The Wood case overruled the Court of Appeals decision in Boucher Lincoln-Mercury v. Madison Plan Comm., 178 Wis. 2d 74, 503 N.W. 2d 265 (Ct. App. 1993) which had held that extraterritorial plat approval or denial based on the use of the land in the plat is unilateral land use control (i.e. 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. Passage of AB 423 would return to the legal standard before the Wood decision and reinstate the legal holding of the Boucher case which had been the law for nearly 50 years or more.

Extraterritorial plat approval is the authority cities over 10,000 in population have to review land divisions/plats within three miles of their corporate borders and cities under 10,000 and villages authority to review land divisions/plats within 1 ½ miles of their corporate borders. Extraterritorial plat approval has been in state law since 1909 in some form, initially only being available to cities within 1 ½ miles of their borders and eventually being extended to three miles for cities over 10,000 in population and 1 ½ miles for cities under 10,000 and villages.

A very detailed history of the extraterritorial plat authority is described in Justice David T. Prosser's concurring decision in the Wood case. This history notes the focus of extraterritorial plat authority of cities and villages over the years was how land was "divided and developed" in the extraterritorial areas, it was not focused on the proposed "land use." Justice Prosser quoted a 1959 law review article of Marygold Melli entitled *Extraterritorial Planning and Urban Growth*, 1959 Wis. L. Rev {see paragraph 78 at page 107-108 of 260 Wis. 2d as follows:

In Wisconsin, a municipality may adopt a master plan covering any area beyond the municipal boundaries related to the development of the municipality. In addition, the specific grants of extraterritorial power have been made by the legislature for subdivision approval and official maps to cover certain limited areas. ***Zoning remains the major field in which no extraterritorial power has been granted. (Emphasis added by Justice Prosser.)***

Justice Prosser's detailed history points out that Chapter 241, Laws of 1963 created Sec. 62.23 (7a) of Wis. Statutes which created extraterritorial zoning. This same section exists today. In the 1993 case of Boucher Lincoln-Mercury, Court of Appeals Judge Robert D. Sundby (who

had served as a former Attorney for the League of Wisconsin Municipalities) noted that Sec. 62.23 (7a) of Wis. Statutes does not give a municipality “unilateral authority to zone” land in an unincorporated town within municipality’s extraterritorial jurisdiction. **“Rather, the statute {Sec. 62.23 (7a) of Wis. Statutes} required that extraterritorial zoning be a cooperative effort of the city plan commission and the town in which the zoning ordinance will be in effect.”** (See page 109 of 260 Wis. 2d 71)

Judge Sundby in the Boucher case went on to point out that the Legislative Council Urban Problems Committee prior to adoption of Sec. 62.23 (7a) {extraterritorial zoning} had “rejected a proposal giving populous counties authority to adopt comprehensive zoning ordinances and would apply throughout the unincorporated areas without the approval of the individual towns” Judge Sundby in the Boucher case at page 101 of 178 Wis. 2d wrote, **“while Chapter 236 and Sec. 236.45... confer broad regulatory authority upon local governing bodies, that authority relates to the quality of the subdivision or land division and not to the use to which lots in the subdivision or land division may be put.”** (emphasis added by Judge Sundby)

Justice Prosser in his concurring decision stated at paragraph 97 at page 118 of 260 Wis. 2d, that while extraterritorial subdivision authority was a broad authority:

There is a point, however, at which the legislature’s grant of authority to Madison and other municipalities to actually control land use extraterritorially comes to an end, unless these municipalities have exercised lawful authority to zone the land. The court of appeals concluded in the Gordie Boucher case that this point had been reached.

Justice Prosser in the Wood decision quoted Judge Sundby’s unanimous decision in Boucher as follows:

The legislature has not given the city’s master plan, a planning tool, pre-eminence over county zoning, a regulatory tool.... There is no authority for the commission’s contention that a county zoning ordinance is subordinate to the city’s master plan. We reject the commission’s contention; it has no support in the statutes or case law. (See paragraph 102 at page of 260 Wis. 2d, Wood case)

Justice Prosser went on to say that “this analysis is unassailable.... It is fundamental Wisconsin Law. He stated further:

There can be no dispute that the legislature has given Wisconsin municipalities expansive subdivision regulatory powers to encourage broad land use objectives and sometimes to enforce them. It has given municipalities substantial planning authority, even beyond three miles of the municipality. But it has not authorized municipalities to in effect-rezone land by means of extraterritorial subdivision regulation and/or extraterritorial planning. It has not given municipalities power to veto use of land that are consistent with lawful existing zoning, absent reasonable quality concerns or subdivision defects. That is what Gordie Boucher held, and there is no reason to overrule the case.

Justice Prosser agreed with the majority that the property owners in the Wood case were properly denied their request for a plat under the city subdivision ordinance as the ordinance applied how the plat proposed to be developed, but not based upon the majority’s holding of a proposed use, thus reversing the Boucher case. Justice Prosser wrote at paragraph 111 of page 122 of 260 Wis. 2d:

*...A municipality may not seek to compel a particular land use that contradicts a validly enacted zoning ordinance by arbitrarily rejecting a plat under the extraterritorial component of its subdivision ordinance. This is the core teaching of the Gordie Boucher case. FN 11
FN11 A municipality may condition its approval of a plat on the plat's compliance with the municipality's master plan, but the municipality may not enforce a master plan that exceeds its authority. In addition a municipality may not block an otherwise valid subdivision until the subdivider donates 75 percent of the land to the public.*

Attached to this memo are the last two pages of Justice Prosser's concurring decision in the Wood case in which he points out the consistency of Judge Sundby in the Boucher case, Marygold Melli in the 1959 law review article, and Professor Beuscher, a renowned land use expert in the 1950's and 1960's in his report "Land Use Controls" published in 1967 by the Wisconsin Department of Resource Development that there is a distinction between "subdivision/land division control" and "zoning."

It is Wisconsin Towns Association position that Wisconsin Supreme Court majority decision wrongly decided the Wood v. City of Madison case by holding that the city may deny the subdivision/plat on the use of the land and reversing the Boucher case. The Wood case overturned nearly 50 years of legal history and a unanimous court of appeals decision. Note the Wood case was a 4-3 split decision on the reversal of the Boucher case. AB 423 will reinstate the fifty years of limiting extraterritorial subdivision/plat approval to how the land is "divided and to be developed" not the proposed "use" of the land.

The practical result of the Wood decision since 2003 has been that cities and villages across the state have used the newly created extraterritorial power has rendered the extraterritorial zoning statute as meaningless. There is no incentive for cities and villages to even talk to their neighboring towns about cooperative efforts on their borders. Extraterritorial zoning under Sec. 62.23 (7a) of Wis. Statutes is based upon a negotiation and cooperation to reach an extraterritorial agreement. AB 423 will restore the incentive to return to the use of Sec. 62.23 (7a) to regulate land use.

Wisconsin Towns Association believes that AB 423 should be passed to restore the historical significance of cooperation under extraterritorial zoning pursuant to Sec. 62.23 (7a) of Wis. Statutes. To allow the Wood case holding to stand results in less cooperation and more conflict on municipal boundaries.

Thank you for your consideration.

FROM JUSTICE PRUSSER'S CONCURRING DECISION

declarations of purpose or declarations of legislative intent are different from sections or subsections that clearly ***121** grant power. As an example, Wis. Stat. §§ 236.01 and 236.45(1) should be compared to Wis. Stat. § 62.23(7)(a), a provision which clearly grants power.

¶ 108 Second, the language in the declarations is conditional language. To illustrate, both declarations list a purpose to "further the orderly layout and use of land." To "further" something is to "help the progress of" or "advance" something. *The American Heritage Dictionary of The English Language* 737 (3d ed.1992). It does not imply control of something. Moreover, the word "orderly" modifies "use," just as "orderly" modifies "layout." Furthering the orderly use of land is different from controlling the use of land.

¶ 109 Looking at the other language relied upon, we see the terms "reasonable consideration" and "encouraging the most appropriate use of land." "Reasonable" implies that not all "consideration" will pass muster. "Encourage" is a conditional verb like "further," different from "control" or "effect." These words do not connote the unlimited subdivision regulatory authority the majority appears to embrace. This is especially evident when all the passages relied upon are returned to the context from which they have been taken. [FN10]

FN10. "[I]t is ... well established that courts must not look at a single, isolated sentence or portion of a sentence, but at the role of the relevant language in the entire statute." *Alberte v. Anew Health Care Servs.*, 2000 WI 7, ¶ 10, 232 Wis.2d 587, 605 N.W.2d 515 (citing *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987)).

**56 ¶ 110 Third, the very existence of conditional words in the declarations recognizes the limits on subdivision regulation and the need to harmonize it with zoning, both extraterritorial and otherwise. Zoning, like subdivision regulation, is an exercise

of the police power. When a municipality is given statutory ***122** authority to pass a subdivision ordinance to "promote the public health, safety, and general welfare of the community"--words reflective of the police power--the municipality is not thereby given authority to include explicit zoning in the subdivision ordinance.

¶ 111 The certified question before this court is stated by the majority: "Does Wis. Stat. ch. 236 authorize a municipality to reject a preliminary plat under its extraterritorial jurisdictional authority based on a subdivision ordinance that considers the plat's proposed use?" Majority op. at ¶ 2. The key word in this question is "reject." The obvious answer to the question is "sometimes," depending upon the facts and whether the rejection is "reasonable." There is no absolute "yes" or "no" answer. A municipality may not seek to compel a particular land use that contradicts a validly enacted zoning ordinance by arbitrarily rejecting a plat under the extraterritorial component of its subdivision ordinance. This is the core teaching of the *Gordie Boucher* case. [FN11]

FN11. A municipality may condition its approval of a plat on the plat's compliance with the municipality's master plan, but the municipality may not enforce a master plan that exceeds its authority. In addition, a municipality may not block an otherwise valid subdivision until, say, the subdivider donates 75 percent of the land to the public.

¶ 112 "Consider" is not the key word in the certified question. The majority opinion observes that "any regulation relating to the 'quality' of a subdivision must necessarily *consider* 'the most appropriate use' of land. We cannot fathom how an ordinance can *consider* the most appropriate use of land if it cannot *consider* the use of land." Majority op. at ¶ 30 (emphasis added). Of course, a platting authority may *consider* the use of land, but it may not impose an authorized end by an ***123** unauthorized means. The certified question is not the correct

question because it is not a question susceptible to a precise answer.

¶ 113 Judge Robert Sundby was an architect of the Wisconsin subdivision statute. He was a zealous advocate of municipalities. The majority's failure to acknowledge Judge Sundby's pivotal role in reforming chapter 236 of the Wisconsin Statutes is surprising. In *Gordie Boucher*, Judge Sundby faithfully applied the provisions of chapter 236, including Wis. Stat. § 236.45 in pari materia with Wis. Stat. § 62.23(7a).

¶ 114 Even scholars who have sought to minimize the distinction between subdivision control and zoning have understood and respected the distinction. Marygold Melli wrote forthrightly that "Zoning relates to the type of building development which can take place on the land; subdivision control relates to the way in which the land is divided and made ready for building development." Melli, *Subdivision Control in Wisconsin*, 1953 Wis. L.Rev. 389, 389.

¶ 115 Professor Beuscher, a tireless advocate for land use planning, nonetheless was careful to recognize property rights:

Though planning and plan implementation of necessity focus on public needs and desires, it is important to be aware of and understand private property rights which exist and are protected by both the federal and state constitutions. **57 The goal of the courts as arbiter between the public actions which are in conflict with or encroach upon alleged private property rights has been to strike a balance--a balance which will on one hand allow needed public programs to be carried out and at the same time preserve as large a sphere as possible within which the private decision-maker and private property rights may be exercised.

*124 Beuscher, *Land Use Controls*, *supra*, at 1-2.

¶ 116 Beuscher also wrote that "it must be conceded that literal application of the requirement that the subdivision comply with the approved master

plan would violate the 14th Amendment in some instances ... because the regulatory impact on the particular landowner [would be] so great as to constitute an invalid taking of property in his case." *Id.* at IV-23. "If the plan commission stands pat and refuses to approve the plat and the council does not buy or condemn the land, the owner may be left in the position of not being able to earn a fair return on his land; and a court would probably declare the *application* of the master plan unconstitutional." *Id.* (emphasis added). A subdivision ordinance may be unconstitutional *as applied* to specific facts. [FN12]

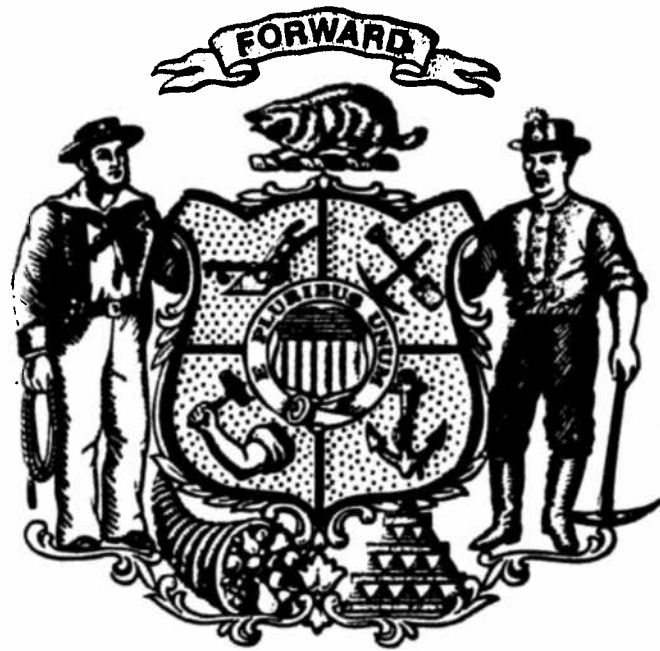
FN12. The Woods have not advanced an argument relating to the constitutionality of Madison's rejection of their plat and, therefore, the parties did not brief this issue.

¶ 117 The City of Madison has repeatedly shown hostility to unapproved development in its extraterritorial plat approval jurisdiction. Consequently, a subdivider in Madison's extraterritorial jurisdiction will have to submit meticulous quality plats if it hopes to prevail in the face of City opposition.

¶ 118 I am authorized to state that Justice JON P. WILCOX and Justice DIANE S. SYKES join this concurrence.

260 Wis.2d 71, 659 N.W.2d 31, 2003 WI 24

END OF DOCUMENT





122 W. Washington Avenue
Suite 300
Madison, Wisconsin 53703-2715

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Senate Committee on Campaign Finances, Rural Issues, and Information
Technology

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: March 3, 2008

Re: Assembly Bill 423, Limiting Municipal Extraterritorial Plat Approval Powers

The League of Wisconsin Municipalities strongly opposes AB 423, which prohibits a municipality from denying a proposed land division within its extraterritorial plat approval jurisdiction because of concerns over the proposed use of the land. The bill overturns *Wood v. City of Madison* in which the Wisconsin Supreme Court held that a municipality can consider land use in conjunction with a subdivision ordinance as part of the extraterritorial plat review process.

In the *Wood* case the Woods sought approval from the City of Madison to divide a 52 acre parcel of land they owned in the Town of Burke into 11 lots. The Woods sought to change the zoning of nine of the proposed new lots from agriculture to commercial. The city rejected the proposed ordinance on the basis of standards within its subdivision ordinance designed to control sprawl. The City concluded that the subdivision of the bulk of the agricultural lands that exist on the Wood property would be a significant expansion of commercial land use in that particular area and create additional pressures on the conversion of the remaining agricultural lands that exist on the Wood parcel, as well as adjacent agricultural lands.

AB 423 significantly reduces municipal extraterritorial plat approval powers. Municipalities need effective tools for controlling growth occurring on their fringes. The best tool currently available for controlling sprawl is a municipality's ability to reject a proposed land division within its extraterritorial jurisdiction based on a subdivision ordinance that considers the plat's proposed use.

We urge you to vote against recommending passage of AB 423. Thanks for considering our comments.



Daggs, Kathy

From: Saxler, Charles
Sent: Tuesday, March 11, 2008 11:00 AM
To: Daggs, Kathy; Pagel, Matt; Buhrandt, Jeff
Subject: FW: AB 423

From: Curt Witynski [mailto:witynski@lwm-info.org]
Sent: Tuesday, March 11, 2008 10:47 AM
To: Sen.Lassa
Cc: Sen.Kreitlow
Subject: AB 423

Senator Lassa: I wanted to follow up on our conversation last week about AB 423, the bill sought by the towns that limits municipal extraterritorial land division approval powers. You pointed out to me that the bill passed by a large margin in the Assembly. I think the vote outcome in the Assembly reflects that many members assumed there was no way this anti-municipal Republican authored bill with only one Democrat co-sponsor would advance in the Senate. So, many members of the Assembly, who otherwise would have voted "no," likely considered it a free vote without consequences.

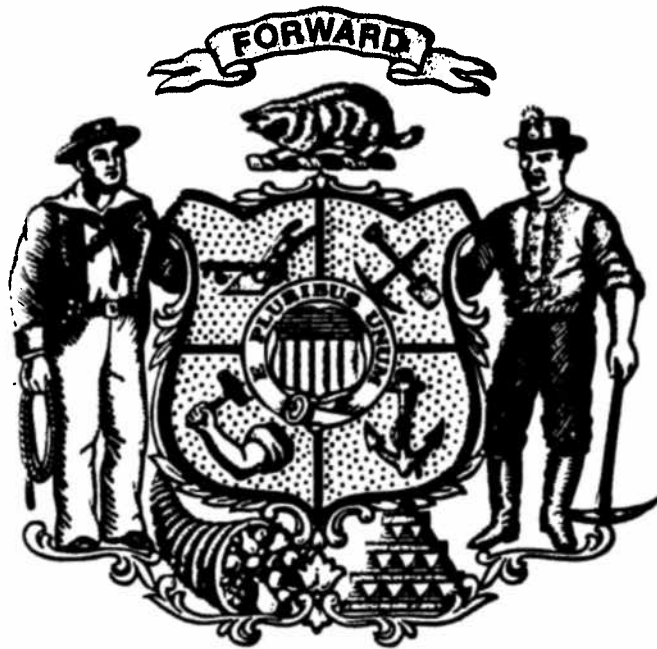
The towns are arguing that they should be treated more like equals to cities and villages. Yet, there are important differences between the two. A "yes" vote on this bill means turning economic development in our state over to unincorporated towns designed by statute for providing limited services to large lot rural use. Once a full service municipality like Stevens Point, Plover or Wisconsin Rapids is surrounded by such growth, future large employers or developers looking for sewer, water and other urban facilities will have no effective location available to attach their projects to the municipality.

We urge you to vote "no" on AB 423.

Thanks for considering our comments.

Curt Witynski
Assistant Director
League of Wisconsin Municipalities
122 West Washington Ave.
Madison, WI 53703

(608) 267-2380



Daggs, Kathy

From: Curt Witynski [witynski@lwm-info.org]
Sent: Tuesday, March 11, 2008 12:35 PM
To: Sen.Kreitlow; Sen.Kanavas; Sen.Kapanke; Sen.Erpenbach; Sen.Lassa
Cc: Lundie, Shawn; Laundrie, Julie; Daggs, Kathy; Supple, Ryan
Subject: AB 423

To: Senate Committee on Campaign Finance, Rural Issues, and Information Technology
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: March 11, 2008
RE: Opposition to AB 423, Limiting Municipal Extraterritorial Plat Review Powers

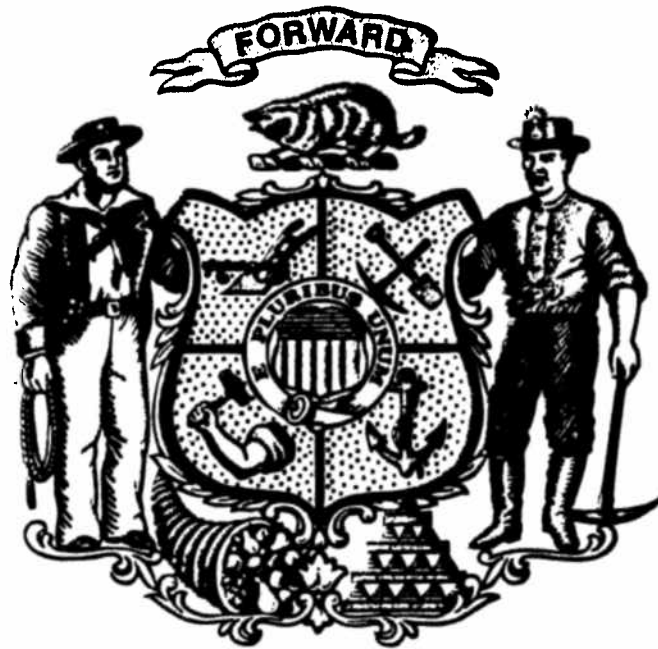
The League of Wisconsin Municipalities strongly urges you to vote "no" on AB 423 at tomorrow's executive session for the following reasons:

- ◆ Passage of this bill will thwart economic development in this state. It would mean turning economic development over to unincorporated towns designed by statute for providing limited services to large lot rural uses. Once a full service municipality like Stevens Point, Eau Claire, or Brookfield is surrounded by such growth, future large employers or developers looking for sewer, water and other urban services and infrastructure will have no effective location available to attach their projects to the municipality.
- ◆ The bill overturns a well reasoned 2003 Supreme Court decision concluding, as the two courts below it had, that state law clearly allows a municipality to reject a proposed subdivision under its extraterritorial jurisdictional authority based upon a subdivision ordinance that considers the proposed use of the land.
- ◆ Notwithstanding the towns' argument to the contrary, this bill will intensify jurisdictional conflicts. Legislation that truly makes it easier for neighboring communities to enter into border agreements has already been enacted this session. Act 43 creates a tool for towns to use to push municipalities to the bargaining table on boundary issues. Act 43 was a product of the Legislative Council Study Committee process and had input from all of the interested stakeholders. This bill in contrast is designed to benefit only the towns.

Thanks for considering our comments.

Curt Witynski
Assistant Director
League of Wisconsin Municipalities
122 West Washington Ave.
Madison, WI 53703

(608) 267-2380





METROPOLITAN BUILDERS ASSOCIATION

N16 W23321 Stone Ridge Drive Waukesha, WI 53188
Phone: (262) 436-1122 • Fax: (262) 436-1110 • www.mbaonline.org

Memorandum

To: Committee: Campaign Finance Reform, Rural Issues, and Information Technology

From: J. Scott Mathie *Director, Government Affairs*

Date: March 11, 2008

Re: AB 423 – Extraterritorial plat approval on basis of land's use

I appreciate the opportunity to share our thoughts on Assembly Bill 423 relating to extraterritorial plat approval on the basis of a land's use. Extraterritorial planning is essential to ensure proper long-term development mixes in areas that border towns and municipalities. Municipalities have the responsibility to evaluate developments based on the land use plan that covers the hard borders of the municipality and 3 miles surrounding the municipality.

It is important to understand that extraterritorial areas serve to ensure that development patterns will properly match the development already occurring within a municipality by being consistent with the municipality's land use plan. While cooperation between communities is important, it is not the purpose of the extraterritorial areas.

The extraterritorial areas serve an additional purpose in that they allow the municipality to plan for future service extensions that are likely to be requested or required of those neighborhoods into the future. When municipalities expand their facilities, they are generally based on a certain density level, which helps to keep costs low to the homes that need to tap in and it promotes efficient service patterns that keep facility costs low for the community.

Our Association represents over 1,500 member companies working in the residential construction industry (remodeling, building, and land development). Our industry cooperates with towns, cities, villages, and counties to ensure development patterns occur in a manner that promotes good long-term planning and is sustainable into the future. While our members work with all units of government, it is our belief that in this case municipalities should have the final determination in these areas to ensure that planning and development is seamless as municipalities grow.

The Metropolitan Builders Association encourages you to vote "no" on AB 423 at tomorrow's executive session. Please feel free to contact me directly at 262.436.1122 ext. 209 or jmathie@mbaonline.org with any questions or comments relating to this issue or any other.



- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Thursday, January 24, 2008

2007-2008 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Assembly Bill 423

extraterritorial plat approval on basis of land's use.

TEXT
sponsors
LBR analysis

STATUS
committee actions
and votes
text of amendments

COST & HOURS
of lobbying efforts
directed at this
proposal

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
◆	◆	Dane County Cities & Villages Association	10/5/2007	↓	
◆	◆	League of Wisconsin Municipalities	6/25/2007	↓	
◆	◆	Wisconsin Alliance of Cities Inc	11/21/2007	↓	
◆	◆	Wisconsin Builders Association	6/22/2007	↑	
◆	◆	Wisconsin Farm Bureau Federation	11/28/2007	↑	
◆	◆	Wisconsin Realtors Association	7/18/2007	↑	
◆	◆	Wisconsin Towns Association	7/26/2007	↑	💬

Select a legislative proposal and click "go"

House	Assembly Senate
Proposal Type	Bill Joint Resolution Resolution
Proposal Number	423 (enter proposal number)
Legislative Session	2007 Regular Session
	<input type="button" value="Go"/>

- ▶ Home
- ▶ Lobbying in Wisconsin
- ▶ Organizations employing lobbyists
- ▶ Lobbyists



as of Monday, March 03, 2008

2007-2008 legislative session

Legislative bills and resolutions

(search for another legislative bill or resolution at the bottom of this page)

Assembly Bill 423

extraterritorial plat approval on basis of land's use.

TEXT sponsors LBR analysis	STATUS committee actions and votes text of amendments	COST & HOURS of lobbying efforts directed at this proposal
---	---	--

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
◆	◆	City of Madison	2/27/2008	↓	
◆	◆	Dane County Cities & Villages Association	10/5/2007	↓	
◆	◆	League of Wisconsin Municipalities	6/25/2007	↓	
◆	◆	Wisconsin Alliance of Cities Inc	11/21/2007	↓	
◆	◆	Wisconsin Builders Association	6/22/2007	↑	
◆	◆	Wisconsin Farm Bureau Federation	11/28/2007	↑	
◆	◆	Wisconsin Realtors Association	7/18/2007	↑	
◆	◆	Wisconsin Towns Association	7/26/2007	↑	

Select a legislative proposal and click "go"

House	Assembly Senate
Proposal Type	Bill Joint Resolution Resolution
Proposal Number	423 (enter proposal number)
Legislative Session	2007 Regular Session <input type="checkbox"/>
	<input type="button" value="Go"/>



Missio Hampton
 6420
 24960

Village of Cottage Grove
 Town of Cottage Grove
 City of Madison

Future Development Areas

Minor Roads
 Major Roads
 Planned Roads
 Highways

Glacial Drumlin State Trail
 Long-Term City & Village
 Municipal Boundary Limits
 Cottage Grove Extra Territorial Jurisdiction
 Madison Extra Territorial Jurisdiction
 Vilas Hope Road Preliminary Lift Station
 Service Area as of April 11, 2007

Current Municipal Boundaries
 Water

Environmental Corridors
 Contours (10-foot intervals)
 Current Development
 Consensus Development Areas I - XI
 Possible Future Development Areas or Preservation Areas 1-6
 Town Subdivision Development Areas
 Preservation Area (Sending Areas)

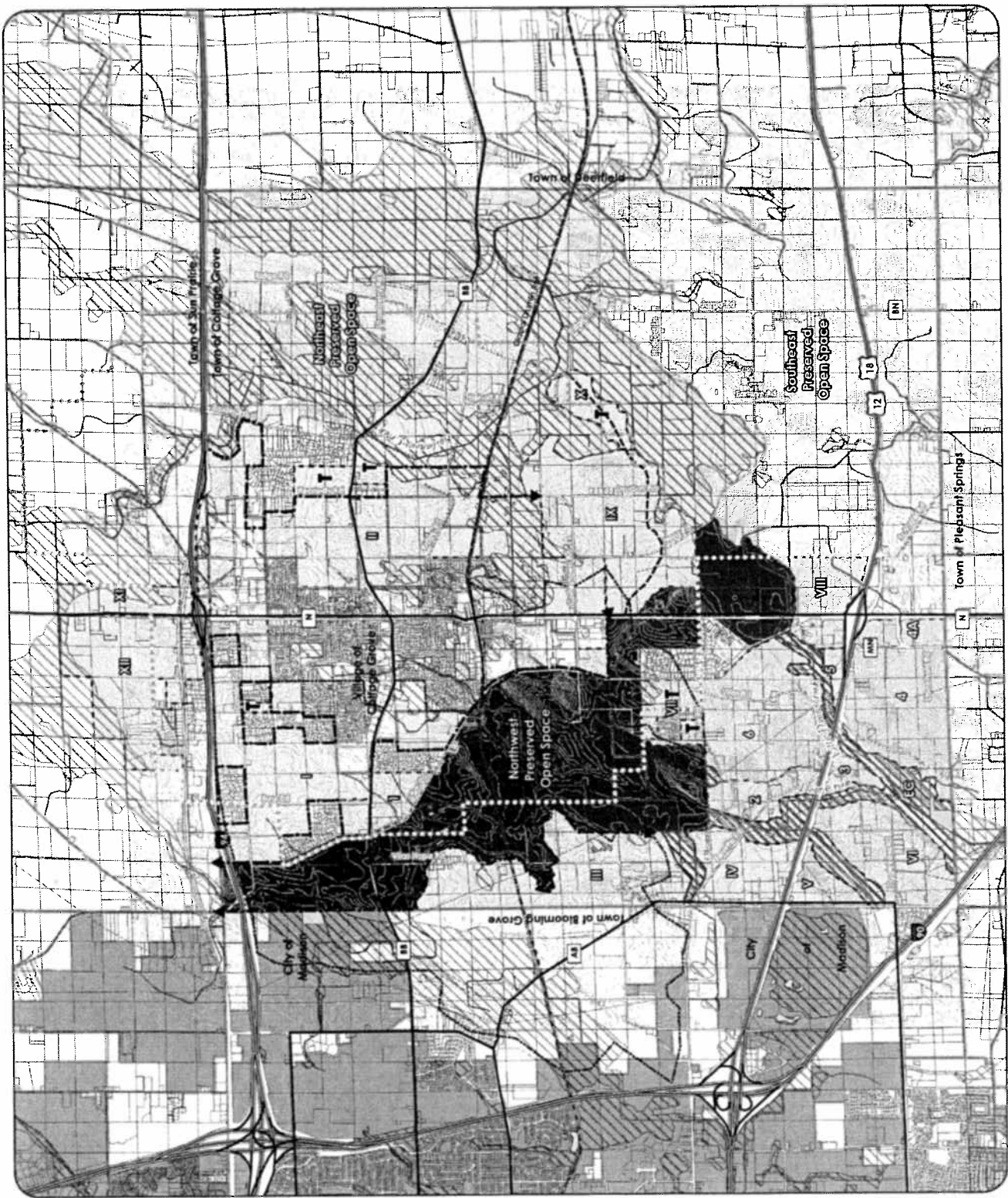
Northwest
 Northeast
 Southeast
 Environmental Corridor

CONCEPTUAL DRAFT

Type	Inside	Outside	Total
Current Development	211	2,796	3,007
Consensus Area I	6	97	103
Consensus Area II	313	1,222	1,535
Consensus Area III	3	65	68
Consensus Area IV	6	125	131
Consensus Area V	1	379	380
Consensus Area VI	17	123	140
Consensus Area VII	2	231	233
Consensus Area VIII	39	76	115
Consensus Area IX	3	122	125
Consensus Area X	65	114	179
Consensus Area XI	93	59	152
Consensus Area XII	5	1,724	1,729
Environmental Corridor	1,251	1,656	2,907
Northwest Preservation Area	124	4,278	4,402
Southwest Preservation Area	6	156	162
Possible Future 1	6	157	163
Possible Future 2	6	79	85
Possible Future 3	6	536	542
Possible Future 4	6	101	107
Possible Future 5	6	37	43
Possible Future 6	6	11,154	11,160
Total	4,188	11,154	15,342

Total Developable Area: 1,148
 Total Preservation Area: 12,463

Date: October 9, 2007
 Scale: 1" = 1000' 2000'
 Source: Doherty Co. IUC, MCA
 Ref: [Symbol]



077
/6

(3) THE COUNTY DEVELOPMENT PLAN. (a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted in whole or in part and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan. Beginning on January 1, 2010, if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).

(b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change.

(c) The development plan may be in the form of descriptive material, reports, charts, diagrams or maps. Each element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.

(d) The county zoning agency shall hold a public hearing on the development plan before approving it. After approval of the plan the county zoning agency shall submit the plan to the board for its approval and adoption. The plan shall be adopted by resolution and when adopted it shall be certified as provided in sub. (2)

f. The development plan shall serve as a guide for public and private actions and decisions to assure the development of public and private property in appropriate relationships.

(e) A master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan.

66.1001 Comprehensive planning.

(1) DEFINITIONS. In this section:

(a) "Comprehensive plan" means:

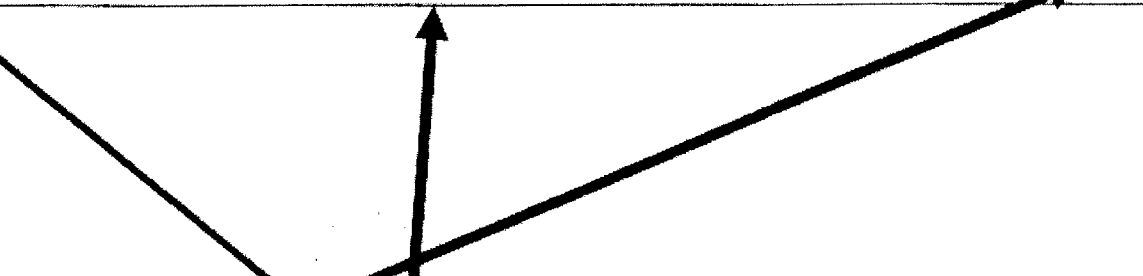
1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).

2. For a city or a village, or for a town that exercises village powers under s. 66.0309 (2) or (3), a master plan that is adopted or amended under s. 62.23 (2) or (3).

3. For a regional planning commission, a master plan that is adopted or amended under s. 66.0309 (8), (9) or (10).

(b) "Local governmental unit" means a city, village, town, county or regional planning commission that may adopt, prepare or amend a comprehensive plan.

(c) "Political subdivision" means a city, village, town, or county that may adopt, prepare, or amend a comprehensive plan.





Kurt Witynski
witynski@lwm-info.org

Jolene Plautz
jplautz@aol.com
608-241-1208

Ann Jablonski
annjablonski1@charter.net

Richard Stadelman
rtowns@frontiernet.net

From AB423 folder.


AB-423
Kurt League of
Muni
City's & Villages
takes away power
already have.
267-3294

Jolene
576-1870 cell

WWW.IEWC.COM
800-344-2323

WWW.IEWC.COM
800-344-2323

Wisconsin Towns Association
W7686 County Road MMM
Shawano, WI 54166
Ph: 715-526-3157 Fax: 715-524-3917



Richard J. Stadelman
Executive Director

Email: wtowns@frontiernet.net Web: www.wisctowns.com