

State of Misconsin 2009 - 2010 LEGISLATURE

2009 ASSEMBLY BILL 260

- May 8, 2009 Introduced by Representatives SMITH, JORGENSEN, ROTH, HUBLER, SCHNEIDER, VRUWINK, DANOU, FIELDS, CLARK, DEXTER, RIPP, KERKMAN, KESTELL, BIES, BROOKS, GUNDERSON, A. OTT, BALLWEG and SUDER, cosponsored by Senators KREITLOW, VINEHOUT, HOLPERIN, HARSDORF and OLSEN. Referred to Committee on Renewable Energy and Rural Affairs.
- 1 AN ACT *to renumber* 236.45 (3); and *to create* 236.45 (3) (b) of the statutes;

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relating to: 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. However, if a subdivision lies in the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and one–half miles of a fourth class city or village, the governing body of the city or village 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, among other things, the plat's compliance with the local ordinances and a 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 Wisconsin 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

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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 or certified survey map 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.

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

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 or certified survey map under this section or s. 236.10

5 or 236.13 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, or amendments thereto, adopted by the governing body of the
municipality under s. 62.23 (7a) (c).

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SECTION 3. Initial applicability.

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

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(END)