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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Assembly Bill 266**

**Assembly  
Amendment 2**

### CURRENT LAW

Certain local land use decisions may be appealed to circuit court for certiorari review. These decisions include the following five types: (1) the grant or denial of a conditional use permit; (2) a decision by a zoning board of appeals or zoning board of adjustment; (3) a change to an official map; (4) an objection to a plat; and (5) a failure to approve a plat.

An action seeking certiorari review must be commenced within 30 days of the decision. Such an action may be commenced only by one of the following:

- A person aggrieved by a decision of a zoning board of appeals or zoning board of adjustment.
- A person aggrieved by an objection to a plat or a failure to approve a plat.
- A taxpayer.
- Any officer, department, board, or bureau of the municipality.

Certiorari review is a limited review of another entity's decision. The scope of review includes such matters as whether the entity stayed within its jurisdiction, whether it proceeded on a correct theory of law, whether its action was arbitrary, oppressive, or unreasonable, and whether the evidence reasonably supported its decision.

### 2023 ASSEMBLY BILL 266

Among other provisions, 2023 Assembly Bill 266 establishes a new procedure for certiorari review of local land use decisions regarding residential development.

Specifically, the bill provides that the new procedure for certiorari review is the only review available for a decision of a political subdivision<sup>1</sup> regarding an application for an "approval." An "approval" means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development.

As with certiorari review under current law described above, the bill requires the new certiorari action to be filed within 30 days of the decision, but the bill also establishes timelines within which other steps in the certiorari action must proceed. Also under the bill, the court may reverse or affirm the determination brought up for review, or it may remand to the political subdivision for further proceedings consistent with the court's decision. Finally, the bill specifies that the certiorari action may be commenced only by one of the following:

- The person who submitted the application for approval.

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<sup>1</sup> A city, village, town, county, board of appeals, or board of adjustment.

- A person with an ownership interest in the real property that is the subject of the application for approval.
- A person who would, as a result of the decision, sustain actual damages that are personal and distinct from damages to the public generally, but only if the person provided a written statement to the governing body before it acted on the application or provided an oral statement at the proceeding at which the application was considered.
- Certain corporate bodies affiliated with any person belonging to the above three categories.
- A local governmental unit.
- To the extent authorized by law, a state agency that is aggrieved by the decision on the application for approval.

With regard to the five types of land use decisions mentioned in the current law section, above, the bill specifies that certiorari review of those decisions occurs under the new procedure for certiorari review of an “approval” (even if the decision did not involve an application for a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development).

## **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 clarifies which certiorari procedure applies to the review of the five types of land use decisions mentioned in the current law section, above. Like the bill, a land use decision involving an application for an “approval” (that is, an application for a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development) occurs under the new certiorari procedure. Unlike the bill, a land use decision that does not involve an application for an “approval” occurs under current law certiorari procedure rather than the new certiorari procedure.

Assembly Amendment 2 also specifies that a court, when conducting certiorari review of an application for an “approval,” may take any other action that the court deems appropriate in the interests of justice that is consistent with judicial review of an action in certiorari (in addition to reversing, affirming, or remanding, as provided by the bill).

## **BILL HISTORY**

Representative Brooks introduced Assembly Amendment 2 on June 12, 2023. On June 14, 2023, the Assembly adopted the amendment and passed the bill, as amended, each on a voice vote.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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