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Wisconsin Towns Association
December Land Use Seminars

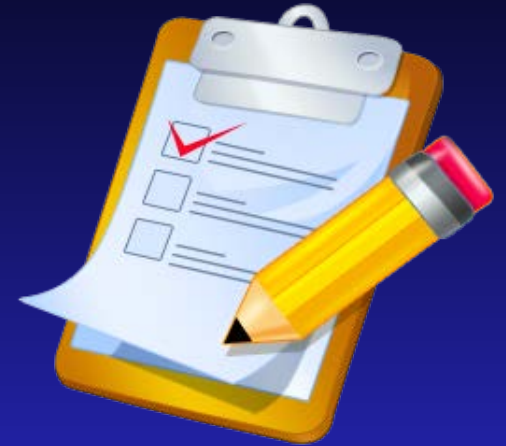
December 2010

Subdivision Ordinance Creation and Maintenance

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Objectives



- Subdivision Ordinance Basics
 - Policy and Need
 - Procedures
 - Important Elements of Ordinance
- Emerging Issues in Subdivision Regulation
 - Comprehensive Planning
 - New Legislation

Chapter 236 Wis. Stats: Platting Lands

- Regulates the subdivision of land
- Procedures for approving, drafting, laying out, recording and vacating plats & adopting local regulations
- Defines ‘Subdivision’
 - Creating 5 or more parcels,
 - 1.5 acres or less,
 - Successive divisions within 5 years

Purpose

Wis. Stat. §236.01

- Promote Health, Safety and General Welfare
- Further orderly layout and use of land
- Prevent overcrowding
- Lessen congestion in Streets and Highways
- Adequate Public Improvements: water and sewage and other
- Proper Surveying, Monumenting and Conveyancing

Local Subdivision Ordinance

Wis. Stat. § 236.45

- Municipalities and Towns have automatic approval power by statute
- Municipalities and Towns with a planning agency may enact Subdivision Ordinances
- May be more restrictive than Statute
 - For example: land divisions of 4 or less parcels
 - More restrictive time limits, deadlines, notices than statute or statute's other "protections for subdivider" are now prohibited

Local Subdivision Ordinance Significance

- Plat can be rejected only if it conflicts with specified statutes, administrative rules, local ordinances or master plan
 - *State ex rel. Columbia Corp. v Town of Pacific*,
92 Wis. 2d 767 (Ct. App. 1979)
- Developer can only be required to install Public Improvements by a subdivision ordinance
 - *Rice v City of Oshkosh*,
148 Wis. 2d 252 (1989)

Adopting or Amending Land Division Ordinance – Wis. Stat. 236.45(4)

- Receive recommendation from “Planning Agency”
- Hold Public Hearing preceded by Class 2 Notice
- These 2 steps are Mandatory
- “Planning Agency” may or may not be Plan Commission

Village Powers

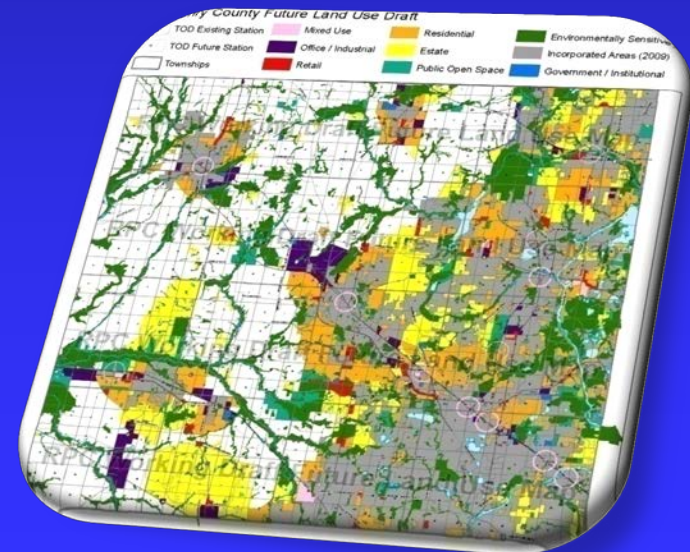
- Village Powers *not* required to adopt Subdivision Ordinance
- Town Subdivision Ordinance may regulate Lot Sizes
 - *Manthe v Town Bd. of Town of Windsor, 204 Wis. 2d 546 (Ct. App. 1996)*

Town Subdivision Ordinance may regulate Lot Sizes



Ordinance and Comprehensive Plan

- Ordinances created or amended after January 1, 2010, must be **consistent** with **Comprehensive Plan**



Ordinance and Comprehensive Plan

- Note: Towns can now create a Plan Commission and adopt a Comprehensive Plan without Village Powers

Wis. Stat. 60.23(33)

- Plan Commission required to create, amend or review Comprehensive Plan

Role of Comprehensive Plan: Plat Approval - Background

- Prior to June 2010 compliance with the Comprehensive Plan required by Wis. Stat. §236.13(1)(c)
- 2009 Act 372 repealed Wis. Stat. 236.13(1)(c)

Role of Comprehensive Plan: Plat Approval - Background

- Wis. Stat. § 236.11(1)(b) states:
 - **(b) 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.**

Current Role of Comprehensive Plan

- Does a Plat have to conform to Comprehensive Plan?
 - No longer appears in the Statute as a “Basis for approval”
 - Under “Submission of plats for approval” states entitled to approval if “conforms ...to local plans...adopted as authorized by law.”

Role of Comprehensive Plan: Plat Approval - Local Ordinance

- Most existing ordinances require compliance with comprehensive plan or master plan as basis of approval
- Comprehensive Planning Law requires Subdivision Ordinances to be consistent with Plan
- Good planning to make compliance with Plan explicit and plain

Significance of Plan Compliance Criteria

- *Lake City Corporation v. City of Mequon*
 - 207 Wis. 2d 155 (1997)
- Revised master plan: 37 lots for proposed plat
- Zoning at time: permitted 56 lots
 - Developer wanted 56 lots, *not* 37
 - City rejected plat based on Plan
- Court: Can rely on Plan to reject plat

Significance of Plan Compliance Criteria

- *Lake City Corporation v. City of Mequon*
 - 207 Wis. 2d 155 (1997)
- “... put legal teeth into master plan.”
- Court relied on the now repealed statute language *and* the remaining statute language on plan compliance
- Court decision fits planning goal of looking forward

Plan Compliance - Plat Approval Basis Ordinance

- Clear Standard
- Good Planning
- Keep Development consistent with Plan
- Plats approved for Tomorrow, *not* Yesterday



Plat Review Procedure: Preliminary Plat

- If required or submitted
- Review – 90 Days
- State in writing conditions for approval or reason for rejecting and deliver notice
- Unless time extended by agreement, no action is approval
 - Tabling is *not* action

Plat Review Procedure: Final Plat

- 36 months to submit after Preliminary Plat approval
 - Time for submittal extended – June 1, 2010 from 24 months
 - 2009 Act 376
- If not submitted may refuse or may extend time
- Apply ordinance as in effect when preliminary plat submitted

Plat Review Procedure: Final Plat

- Entitled to approval if conforms substantially to preliminary plat, local plans and ordinance
- 60 days after submission to approve or reject or may extend by agreement
- If fail to act within 60 days and no unsatisfied objection filed within that time shall be deemed approved

Final Plat

Professional Review

- Newly enacted law requires “professional engineer, a planner, or other person with responsibility” review plats, determine if conforms to preliminary plat and “make recommendation on approval”
- Conclusion shall be made part of the record, but need not be submitted in writing

- Wis. Stat. §236.11(1)(c),

2009 Act 376

“Conclusion shall be made part of the record, but need not be submitted in writing...”

- Clerk’s Minutes



Action Alert

- **09 Wis. Act 376, section 9:**
 - No ordinance may be more restrictive than Chapter 236's :
 - Time limits,
 - Deadlines,
 - Notice requirements, or
 - Provisions of chapter “that provide protections for a subdivider”

Action Alert

- **09 Wis. Act 376, section 12:**
 - (1) **INCONSISTENT ORDINANCE.** If, on or after January 1, 2011, a city, village, town, or county has in effect an ordinance that is inconsistent with this act, the ordinance does not apply and may not be enforced.

09 Act 376: Phase Construction

- Subdivider may construct in phases as *may* be approved
 - approval “may not be unreasonably withheld”
 - Financial security shall be limited to phase being constructed
 - Financial security shall not be required “sooner than necessary.”

“Not required sooner than necessary?”

- Wis Stat. § 236.29(2):
 - Dedications to public accepted by plat approval, including street dedications.
 - “Acceptance of Dedication” = Government Ownership
 - Would *before* the Town owns public street be a good time to be assured will be constructed and done properly?

Approval of phases unreasonably withheld?

- Local Governments will need “up front” assurances and security
- “Subdivider, what proof and security can you provide the later phases will be built?”
- Cannot provide satisfactory proof and security, then it will not be unreasonable for Town withhold approval of Subdivider’s phased development

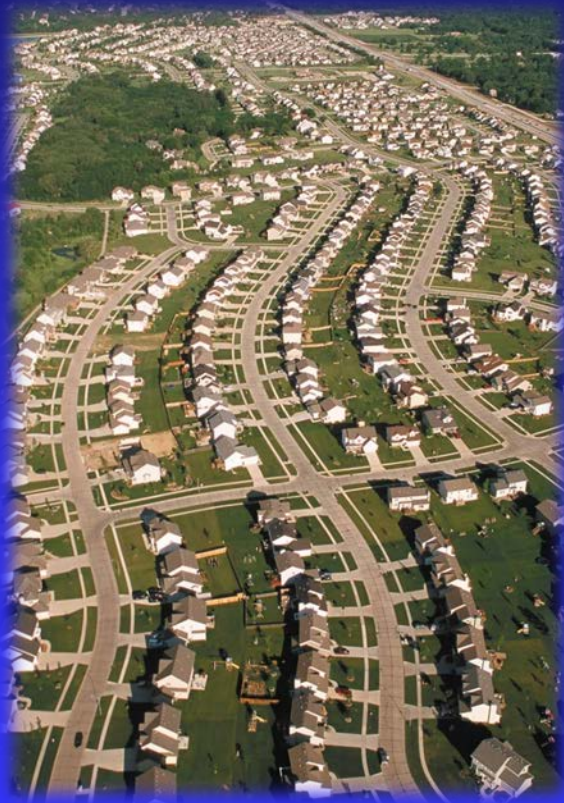
Phased Approval

- “Unreasonably withheld”; Security “not required ... sooner than necessary”; “protection of subdivider”
 - Vague and over broad language create likely grounds for future litigation or further legislation?
- Proceed Carefully

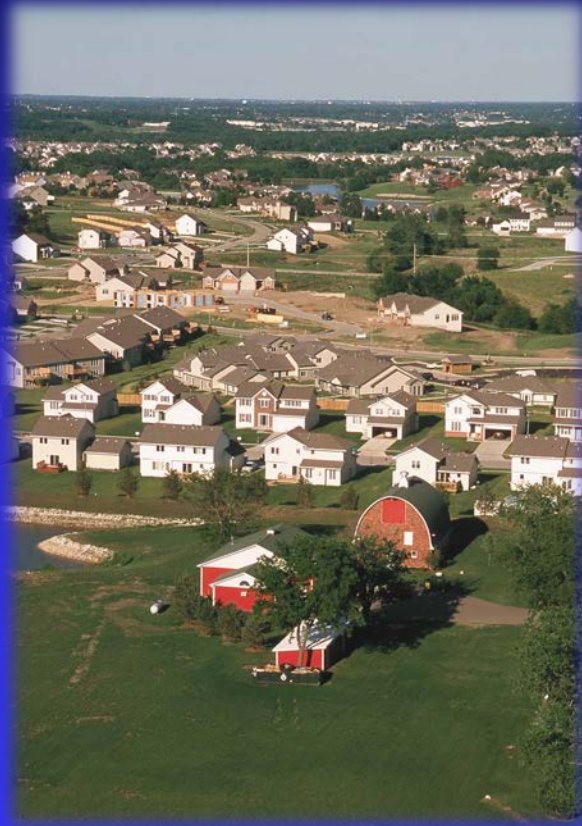
Ordinance Advantages Generally



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Ordinance Advantages Generally



Ordinance Advantages Generally

- Clearly direct progress of subdivision development
- Assure well planned development
- Require public dedications and improvements
- Allocate costs
- Address all land division that impact your community, not just 5 lots or more

Ordinance Advantages Public Improvements

- Design Standards
- Payment and Security
- Warranty
- Dedications to Public
- Improvements Necessary outside Subdivision
- Impact fees under Wis. Stat. §66.0617
- Development Agreement

Ordinance Advantages

Professional Cost

- Require Developer pay:
 - Review cost
 - Supervision and Inspections
 - Attorney
- Fee
 - Reasonably relate to cost of regulation
 - *Edgerton Contractors v. City of Wauwatosa*,
2010 WI App 45

Ordinance Advantages

- Suitability and Environmental Standards
- Pre submission Procedures
- Address Future Needs
- Condominiums – Wis. Stat. §703.27(1)
- Contractor Standards
- Title Evidence for Public Dedications



Objectives

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