

New Rules for Land Divisions

Once upon a time, in a place far, far away, special people called "developers" used money borrowed from banks to improve raw land and create subdivisions.

Although current economic conditions render land development and the creation of subdivisions a distant memory, recent Wisconsin legislation (2009 Wisconsin Act 376) has altered the rules by which subdivision plats are reviewed and approved by local communities. Several of these changes are worthy of note as they will certainly affect project feasibility reviews.

Final Plat Submission Deadline

Under the prior statutory provisions, a final plat was entitled to approval if it conformed substantially to the approved preliminary plat, satisfied any conditions of preliminary plat approval, complied with local ordinances and plans, and was submitted within 24 months of the last required approval of the preliminary plat. In the case of some large projects, as well as those faced with economic roadblocks, completion of infrastructure improvements or satisfaction of conditions of approval within a 24-month period could prove challenging. This deadline has now been revised in two ways. First, the prescribed deadline for submission of a final plat has been extended to 36 months. Second, a community may now extend the time for submission beyond the 36-month deadline. Wis. Stats § 236.11(1)(b).

Required Review and Recommendation

A new provision has been added to the final plat review process. Before a community can approve a final plat, the community must first receive an opinion as to whether the final plat conforms substantially to the preliminary plat, as well as a recommendation on approval of the final plat. The opinion and recommendation must be provided by a professional engineer, planner, or another person charged with the responsibility to review plats. Although the opinion and recommendation need not be in writing, they must be made a part of the record of proceedings at which the final plat is considered. Wis. Stat. § 236.11(1)(c).

POSTED:

Aug 23, 2010

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Compliance with Law

A preliminary or final plat must comply with municipal, town, or county ordinances. Under the new law, the compliance requirement is fixed for ordinances in effect upon submission of the preliminary plat, or the final plat if no preliminary plat is submitted. Under this new provision, a developer is assured that the ordinances in effect for plat review are the same as were in effect at the time of submission. This would preclude later-enacted ordinances from affecting the plat review. Wis. Stat. § 236.13(1)(b).

Phased Developments

For any of a number of reasons—most prominently the inability to fully finance a large project—developers opt to construct a project in phases. Friction often exists between the developer who wants to lock in approval for a full project and the community that is hesitant to grant long-term approvals without assurances that all phases of a project will be completed. Many communities have required developers to post adequate funds or assurances of performance for the whole project, even though the developer would begin construction on a limited phase of the project.

The new statutory provisions provide relief to developers by allowing a project to be constructed in such phases as the community approves, but which approval may not be unreasonably withheld. When phased development is approved, the community may only require performance security for the phase that is currently being constructed. Security may not be required sooner than is "reasonably necessary" before construction of the improvements begins. Wis. Stats. § 236.13(2)(a).

Recording Deadlines

Previously, subdivision plats were to be recorded within 6 months of final approval and 24 months of first approval. The recording window has now been changed to within 12 months of final approval and 36 months of first approval. Wis. Stats. § 236.25(2)(b).

Preemption of Local Ordinances

Wisconsin statutes afford a community the opportunity to adopt local ordinances



that are more restrictive than the provisions of Chapter 236. However, this authority has been constrained such that local ordinances may not be more restrictive as to time limits, deadlines and notice requirements than are the statutes. The overall theme of the new provisions is demonstrated in that local ordinances may not be more restrictive than the statutes for any provisions "that provide protections for a subdivider." Wis. Stats. § 236.45(2)(ac).

Effective Dates

Unfortunately, the new statutory provisions are unlikely to provide relief to projects whose plats have already been submitted for approval. Except for the new recording deadlines, the revised statutes are effective for preliminary plats (or final plats if no preliminary plat is submitted) submitted for approval after June 1, 2010.

The provisions of 2009 Wisconsin Act 376 provide several instances of relief to developers. For a full explanation of these statutory provisions, or advice as to how they may apply to one of your projects, please contact your Reinhart attorney or any member of Reinhart's real estate team.

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