



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: February 18, 2000
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: William Ford, Senior Staff Attorney
SUBJECT: Agreements Reached to Amend Ch. Trans 233

1. Introduction

This memorandum describes agreements to amend Wis. Adm. Code ch. Trans 233 reached between the Coalition to Reform Trans Ch. 233 ("the Coalition") and the Department of Transportation (DOT) at the February 17, 2000 meeting of the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. It is the intent of the subcommittee that the DOT, the Coalition and other interested parties will cooperate in developing draft administrative rules to implement the agreements described in this memorandum and that DOT will promulgate these as amendments to ch. Trans 233. It is also the intent of the subcommittee that the DOT, the Coalition and other interested parties will continue to work together to develop amendments to s. Trans 233.08, relating to setback requirements and restrictions.

A more detailed description of the issues discussed by the subcommittee is contained in a memorandum I provided to you, dated January 1, 2000, entitled *Issues Raised With Respect to Chapter Trans 233*.

2. Process for Approving Land Divisions

- a. DOT will transfer the authority to review land divisions under ch. Trans 233 from the state office to its district offices by a date that is no later than February 14, 2001.
- b. DOT will provide an appeal process under which persons not satisfied with a district decision with respect to a land division may appeal to DOT's central office.
- c. DOT will develop implementing procedures at the district level to assure consistency and will provide uniform guidance in DOT's facility development manuals and in other manuals specified and cross-referenced in ch. Trans 233.

d. A request for review of a land division will receive an automatic certificate of nonobjection if DOT does not act on the request within 20 days of its submission, unless an extension of the 20-day time period is mutually agreed to.

e. DOT shall request any additional information it determines is necessary to review a proposed land division within five working days after receiving a request for a review. Upon receipt of the additional information, the 20-day time period will again begin running. The 20-day review procedure shall be specified in ch. Trans 233.

f. DOT's central office will not, on its own initiative, reverse a certificate of nonobjection provided by a DOT district office with respect to a proposed land division. However, if an affected third party objects to a certificate of nonobjection provided by a DOT district office, DOT's central office may reverse the district office's decision if it finds the objection by a third party to be meritorious.

3. Explicit Approval of Plats Approved Prior to the Effective Date of Ch. Trans 233 and of Improvements and Structures Placed Prior to the Effective Date of Ch. Trans 233

a. DOT will revise ch. Trans 233 to give explicit approval to structures and improvements legally placed in a setback area prior to February 1, 1999. (Chapter Trans 233 took effect on February 1, 1999.)

b. DOT will revise ch. Trans 233 to explicitly state that plats that have received preliminary or final approval prior to February 1, 1999 will not be subject to the new standards under ch. Trans 233 as promulgated effective February 1, 1999.

4. Exclude Condominium Developments From Ch. Trans 233

DOT agrees to revise ch. Trans 233 to state that condominium conversion plats on existing developed property are exempt from ch. Trans 233 and are not subject to fees under s. Trans 233.13 if the existing development has been in existence five years and if the condominium development has traffic impacts similar to the existing development.

5. DOT Guidelines for Administering Ch. Trans 233

DOT agrees that its drafted guidelines for interpreting ch. Trans 233 will be incorporated by reference into ch. Trans 233. Furthermore, DOT states that these incorporated guidelines will be referenced by date such that future revisions to the guidelines will only become effective if ch. Trans 233 is amended, which requires legislative review.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:jal:wu;ksm;rv

MEMORANDUM

TO: Charles H. Thompson, Secretary

FROM: James S. Thiel, General Counsel, State Bar #1012582
John Haverberg, Director, Bureau of Highway Development

DATE: February 14, 2000

RE: Trans 233 Agreement with Wisconsin Realtors, Coalition and Others

BACKGROUND. On July 13, 1999, you responded to the initial concerns of the Wisconsin Realtors Association (Realtors) with revised Trans 233, Wis. Admin. Code, regarding land divisions abutting state trunk and connecting highways. The Realtors expressed a number of initial concerns shortly after these revisions went into effect on February 1, 1999. Your July 13, 1999 letter expressed your gratitude for the Realtors' willingness to cooperatively refine the implementation of the new provisions of Trans 233 for mutual private and public benefit. You also pledged a four step approach to address the Wisconsin Realtors' concerns on a continuing basis. In brief:

1. **Education, Training, and Meetings with Interested Groups.**
2. **Specific Responses to Specific Questions.**
3. **Uniform Implementation.**
4. **Then, Refine Rule As Necessary.**

Your letter also included a memorandum from WISDOT responding to specific legal and operational concerns expressed by the Realtors in Tom Larson's 12-page memo of February 19, 1999. William Malkasian, Executive Vice President of the Realtors, sent us a copy of this memo on March 30, 1999. A copy of your letter with the accompanying memorandum is attached.

On January 24, 2000, as a follow-up to this continuing cooperative process, you reached further agreement with the Realtors. Tom Larson of the Realtors has summarized our progress, discussions and the Realtors' understanding of our mutual conceptual solutions. The purpose of this memorandum to you is to confirm this agreement with the Realtors, with comments and corrections for clarification, as requested by the Realtors. This memorandum also represents what WISDOT agreed at committee and subcommittee meetings, e.g. January 27, 2000, and discussions with Legislators, the Coalition and other interested groups participating in this process. It also serves as a response to the Coalition's memo of November 22, 1999 and the Realtors' memo by Tom Larson of November 24, 1999. The following page summarizes all the agreements in principle on all the general issues to date:

February 14, 2000

Agreement in Principle on TRANS 233 Issues
General issues

Following is the "agreement in principle" on a list of issues reached by the Department, the Realtors, and several organizations/groups:

Issue	"Agreement in Principle"
Lack of certainty provided by conceptual review process	<ul style="list-style-type: none">• The department will develop implementing procedures at District level to assure the desired consistency, while still providing for an appeal process to the department's central office.• Uniform guidance will be published in the department's Facilities Development Manual and other manuals as appropriate and expressly cross-referenced in the Rule.
Inclusion of "condominium plats" in definition of "land division"	<ul style="list-style-type: none">• Rule will be clarified to say that condominium plats on existing developed properties are exempt from the Rule, with set minimum period of existence and similar traffic impact.
Noise barrier requirements place excessive burden on land dividers	<ul style="list-style-type: none">• Rule will be clarified to say that responsibility to construct or finance needed noise barriers for new land divisions next to existing highways applies to owner rather than land divider.• Rule will also be clarified to say that that noise resulting from expansion of the highway (more lanes) is not responsibility of the land divider or owner.
Land dedication requirements for vision corners are unreasonable	<ul style="list-style-type: none">• Rule will be clarified to say that permanent easements for vision corners may be allowed in lieu of dedication if the dedication creates a problem for the land divider in complying with local ordinances.
Drainage provisions expose land dividers to excessive liability	<ul style="list-style-type: none">• The Rule will be revised to make it clear that land dividers are not required to accept legal responsibility for all unforeseen acts of nature or forces beyond their control.• The Rule will be clarified to inform land dividers of their responsibilities for providing the drainage computations and information under state statutes. Various methods may be used for estimating runoff.
Lack of criteria for determining "desirable traffic access pattern"	<ul style="list-style-type: none">• Technical guidance is available in the department's Facilities Development Manual and other manuals and will be expressly cross-referenced in the Rule. For any given site, several patterns may work.
Variance process is too restrictive	<ul style="list-style-type: none">• Rule will be changed to allow exceptions in some instances based on defined criteria, e.g. existing community ordinances and development patterns.• Rule will be changed to provide a different name ("special exception"?) and criteria for variances to avoid the strict legal standards applied by courts when reviewing the granting of variances.

The following is a specific response to each point in the Realtors' (Tom Larson's) summary of agreements of January 24, 2000:

SETBACK REQUIREMENT

In addition to the agreements outlined above [i.e. variance name, criteria and legal standard, conceptual review, uniform guidelines, and the appeal process], WISDOT is continuing negotiations regarding various options and criteria relating to the scope and applicability of setbacks to various highway situations.

CONCEPTUAL REVIEW PROCESS

WISDOT Agreement in bold:

1. Transferring the authority to review land divisions from the state office to its district offices by a yet-to-be-determined date (not to exceed 12 months from the date of this memo). This will allow the entire review process to occur at the local level by those who are most familiar with the specific land-division proposal [**WISDOT AGREES**].

EXISTING IMPROVEMENTS AND PLATS

WISDOT Agreement in bold:

1. Grandfather existing improvements and structures [**WISDOT AGREES**], and clarify that WISDOT may not request the removal or movement of these items as part of the land-division process [**DIFFICULT TO GENERALIZE**];
2. Modify current variance process to avoid the strict legal standard for variances [**WISDOT AGREES**]; and
3. Clarify that existing plats (plats that have received either preliminary or final approval prior to February 1, 1999) will not be subject to the standards under the new rule [**WISDOT AGREES, CAVEAT – NO SUBSTANTIAL CHANGE BETWEEN PRELIMINARY AND FINAL**].

CONDOMINIUM PLATS

WISDOT Agreement in bold:

1. Exempt from Trans. 233 existing buildings that are later converted into condominiums [**WISDOT AGREES, BUT BUILDING MUST EXIST FOR SPECIFIED PERIOD OF TIME AND HAVE TRAFFIC IMPACT CHARACTERISTICS SIMILAR TO CONDOMINIUM**]; and
2. As discussed above, grandfather condominium plats in existence prior to February 1, 1999 [**WISDOT AGREES**].

20-DAY REVIEW PERIOD

WISDOT Agreement in bold:

1. State that a request for review will be entitled to a certificate of non objection if WISDOT fails to act within the 20-day time period for reviewing land divisions [**WISDOT AGREES UNLESS EXTENSION MUTUALLY AGREED**].

NOISE BARRIERS

WISDOT Agreement in bold:

1. Revising the section to state that WISDOT is not responsible (rather than making the land divider responsible) for any noise barriers to abate excessive noise from existing state trunk highways or connecting highways [**WISDOT AGREES - OWNER RESPONSIBILITY**]; and
2. Clarifying that WISDOT is responsible, not the land divider, for abatement of excessive noise resulting from WISDOT's expansion of an existing highway, in accordance with Wis. Admin. Code sec. Trans. 405 (?) [**WISDOT AGREES - TRANS 405 IS CORRECT**].

VISION CORNERS

WISDOT Agreement in bold:

1. Deleting the dedication requirement from the rule (WISDOT is able to achieve the same level of public safety through easements) [**WISDOT AGREES THAT ALTERNATIVES ACHIEVE SAME PURPOSE.**]

DRAINAGE PROVISIONS

WISDOT Agreement in bold:

1. Clarifying that the land divider will NOT be asked to guarantee that anticipated discharge ("estimate") is correct. (The intent is to eliminate any liability resulting from an incorrect estimate that was made in good faith.) [**WISDOT AGREES THAT "GUARANTEE" IS WRONG WORD.**]

"DESIRABLE TRAFFIC ACCESS PATTERN"

WISDOT Agreement in bold:

1. Reference to the multi-volume set of standards WISDOT uses to determine whether a particular traffic access pattern is "desirable." [**WISDOT AGREES.**]

Attachments:

July 13, 1999 Letter and Memorandum from Secretary to Realtors
January 24, 2000 Memorandum from Tom Larson of Realtors

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1 BEFORE THE
2 STATE OF WISCONSIN
3 DEPARTMENT OF TRANSPORTATION
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8 In re:
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10 Revisions to Trans 233
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19 Jules Johnson, Administrative Rules Coordinator, Presiding
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21 Hearing held August 4, 1999
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23 4802 Sheboygan Avenue
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25 Madison, Wisconsin

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1 RECORDER: We're on the record. My name is Frank
 2 Wiener. I'm employed by Textnet. We're at the Hill Farms
 3 State Office Building in Madison, Wisconsin, for a hearing at
 4 the Department of Transportation before Mr. Thiel. Time
 5 showing in the camera is 9:01 a.m. We can proceed.
 6 MS. JOHNSON: Thank you, Frank. Good morning,
 7 everyone. This is going to be a public hearing to consider
 8 the amendment of Chapter Trans 233 relating to division of
 9 land abutting a state trunk highway or connecting highway.
 10 Today is Friday, August 4th, and it's about 9:04 a.m. My name
 11 is Jules Johnson. I'm the administrative rules coordinator
 12 for the department. And on my immediate right is Jim Thiel,
 13 general counsel for the department. On Jim's right is John
 14 Haverberg, the director of the Bureau of Highway Development.
 15 And on my left is Bob Cook, the department's executive
 16 assistant. Notice for today's hearing was published in the
 17 July 15th, 2000, Wisconsin Administrative Register, as
 18 required by statute. I'll be conducting the hearing today in
 19 accordance with section 227.18 of the statutes. All
 20 interested persons will be given an opportunity to comment on
 21 and give their views concerning this rule. The department
 22 wants your comments and encourages your participation in this
 23 hearing. The information we receive today will be given
 24 serious consideration in deciding how to proceed with the
 25 proposed rule. This hearing is being recorded by way of

1 hearing unless we're going to change what we've already
 2 submitted, or at least entertain any suggestions for change.
 3 Then we'll draft up a -- what we call our final draft rule,
 4 and we send that down to the legislature who distributes it to
 5 the appropriate standing committees in the legislature. They
 6 have a period of time which they can hold hearings on it. And
 7 if everything goes pretty much like clockwork, the rule can be
 8 published and go into effect December 1st.
 9 The other document -- another document you'll see back
 10 there is a -- a map showing normal and reduced setbacks. If
 11 you would, write August 4th, 2000, down at the bottom of it so
 12 you know what date this map is. This is an update to the
 13 draft map that was included with the proposed rule that was
 14 sent out June 30th.
 15 This document is just your registration for appearance or
 16 who was here. And then there's the -- actually what we sent
 17 down to the legislative rules clearinghouse by June 30th.
 18 One other thing you'll find back there which is our
 19 existing brochure on how Trans 233 works, and it is based on
 20 the rule that's currently in effect, not on the proposed rule.
 21 But we thought it might be helpful just to have it. It has a
 22 map in it and some contact numbers, even though the names have
 23 already changed as to the contacts within our districts. And
 24 it's a pretty straightforward description of what this rule
 25 actually does.

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1 videotape and a court reporter, and all oral statements will
 2 be made a part of the record. In addition to oral comments,
 3 anyone wishing to provide a written statement may do so. We
 4 will accept written statements until close of business on
 5 August 11. The secretary of the department will make the
 6 final decision on this proposed rule subject to review by the
 7 legislature. The secretary is not present at this hearing,
 8 but any person here today who would like the opportunity to
 9 present their comments directly to the secretary may provide
 10 us with a written request no later than the close of this
 11 hearing. The secretary does have the option of limiting
 12 comments in writing rather than orally.
 13 Anyone wishing to give testimony today should fill out a
 14 registration form, which is located in the back, and hand it
 15 to me. For those who do not wish to speak, we'd like you to
 16 fill out a form anyway just to let us know that you were here
 17 and to indicate whether you're for the rule, against the rule
 18 or whether you're just here for information. That way we'll
 19 have it for the record that you appeared at the hearing.
 20 We'll follow this format for the hearing: Jim Thiel will
 21 start off by summarizing the rule for you so you get a better
 22 understanding of what the rule's about. After that, anyone
 23 wishing to speak will be given an opportunity to do so. As I
 24 call your name, please come forward to the podium in front of
 25 this mic and clearly identify yourself and what organization

1 So now what I'd like to try to do is summarize our --
 2 what is in the revisions to the existing rule. I don't know
 3 how much detail I should go into. I recognize some faces here
 4 who have been intimately involved with these discussions for
 5 over a year, who probably know exactly what's in here and may
 6 be a little bit bored by my tedious description. Others may
 7 not have seen this until they walked in today. So I'd like to
 8 try to balance it with enough information without going into
 9 too much detail, and then hear from you folks.
 10 So if you -- if you pull this one out, I'll kind of walk
 11 through the outline in it. Back -- backing up maybe, what is
 12 the purpose of Trans 233, just overall, without, you know,
 13 talking about these revisions. It's to protect the investment
 14 in the existing highway system, the public's investment. It's
 15 to provide for the safety of entrance and departure upon the
 16 highway. It's to provide for corridor planning. It's to
 17 provide for, to some degree, fire protection, light, access
 18 for work on utilities, vision corners, safety. It's intended
 19 to provide a tool to -- to have a long-range view of how major
 20 highway systems will be developed in the future, considering
 21 all the local plans and all the economic development plans.
 22 On page 8, there's a conclusion in the analysis that says in
 23 more detail exactly all the things that it intends to do. But
 24 basically, it's a way to look at developments adjacent to the
 25 state trunk highway system and connecting highways and try to

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1 you represent, and then state your position on the rule, and
 2 then provide your testimony.
 3 We will attempt to answer any questions you may have
 4 during your testimony. If time permits at the conclusion of
 5 the hearing -- or the conclusion of your testimony, we will
 6 also accept questions from anyone present. Does anyone have
 7 any comments so far or questions? Okay. Jim.
 8 MR. THIEL: Okay. In the back, there are about four
 9 or five documents. This document shows the schedule for
 10 making the rule and for it to become effective December 1st.
 11 And you'll see we're right kind of in the middle of this
 12 procedure. What has happened so far is we've had a lot of
 13 meetings since the revisions to the rule went into effect in
 14 early 1999, with a whole lot of interested parties. I'll go
 15 into more detail on those later. But the actual official
 16 revisions to that rule didn't commence until February 29th
 17 when we published a scope statement. That's a requirement of
 18 law that you say what you intend to do before you do it so
 19 people won't be surprised or you'll change horses in
 20 midstream. And then from that point on, you'll see that we're
 21 -- we sent the copy of the draft rule to the legislative rules
 22 clearinghouse June 30th; that's part of the legislature. They
 23 make comments on it. We received their comments back.
 24 We have a public hearing. After this public hearing, we
 25 consider what you say -- there's no sense having a public

1 work with developers and land dividers to make their land
 2 divisions compatible with the purposes of the highway safety
 3 and the public investment in the highway.
 4 Now, the proposed revision to the rule had three
 5 objectives. The first objective is a -- we had all these
 6 meetings starting in probably May or June of last year,
 7 through and including meetings in the fall with various
 8 interest groups, meetings in December with interest groups,
 9 meetings with the assembly sub-committee on Trans 233 of the
 10 assembly committee on transportation, meeting with what's
 11 known as the Coalition -- I think they call themselves --
 12 Against Trans 233 --
 13 MR. HAVERBERG: To revise.
 14 MR. THIEL: -- To Revise -- more positive -- To
 15 Revise Trans 233. The realtors, the merchants' federation,
 16 local units of government, planners. We also had a followup
 17 meeting with the assembly subcommittee and they and all these
 18 groups we'd met with, came up with a documented -- a document
 19 saying this is what we've all agreed to do that makes sense.
 20 There was one item that was -- that was not resolved at that
 21 time in February of this year, and that was setbacks. So we
 22 had another series of meetings regarding setbacks from the
 23 state trunk highway system and connecting highway system,
 24 followed up with a further hearing before the joint committee
 25 for review of administrative rules, in which setbacks were

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1 discussed. That testimony and those meetings were taken into
 2 consideration. And those ideas are also shown in this rule.
 3 So what we're trying to do here is implement all those
 4 agreements we reached before, strike a balance between
 5 individual and government interest in setbacks and what
 6 controls there are on property, and just, while we're at it,
 7 to recognize the many recent changes in federal and state laws
 8 that affect transportation planning.
 9 Just as a quick look at that, the federal government
 10 requires for all metropolitan planning organizations and all
 11 state DOTs around the country to develop long-range plans with
 12 a minimum of 20 years' planning horizon, and also to have
 13 transportation improvement programs with a shorter horizon.
 14 But the emphasis has been on looking way, way out in the
 15 future because there are so many restrictions on what you can
 16 do and so many difficulties that result if you don't have some
 17 sort of comprehensive coordinated and continuing planning
 18 process, you just have havoc. Now, what is havoc. Havoc, in
 19 my opinion, is Tree Lane on Mineral Point Road -- for those
 20 familiar with the Madison area and the Target store out there;
 21 and havoc -- it's not as bad as it used to be, but the corner
 22 of Whitney Way and Odana. Both of those locations over the
 23 last six or seven years have had the highest crash rates in
 24 Madison. I'm trying to pick something maybe folks are
 25 familiar with locally. I don't know where you're all from.

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1 out to our own folks, respond to specific questions. And
 2 then, you know, after all that, the objective was let's --
 3 okay, now that we've got this experience for about a year and
 4 a half, let's refine the rule and make it work better, you
 5 know, weighing all things we've -- we've come up with.
 6 I can go through all of the things we agreed to, if
 7 that's useful, just to kind of tick those off, if I'm not
 8 losing the crowd here. I'm not seeing an overwhelming -- one
 9 of the issues was a lack of certainty provided regarding the
 10 conceptual review process for land divisions abutting state
 11 trunk and connecting highways. And what we said we would do
 12 is to develop implementing procedures at the district level to
 13 assure that there was consistency and to also provide an
 14 appeal process. But we wanted to delegate out to our
 15 districts around the state -- and this map shows what the
 16 district boundaries are, if you unfold this brochure -- and
 17 get up some uniform guidance to make sure we were implementing
 18 this throughout the state in a uniform fashion, but to
 19 delegate it so we could have quicker responses and people
 20 could rely on an interaction at the conceptual review process.
 21 There was a question about condominium plats. Well, if
 22 all you're doing is changing an apartment to a condominium,
 23 why -- why -- which is actually a change in the type of
 24 ownership from just being a tenant to actually owning
 25 property. It's technically a land division, but there's

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1 But what we -- what has been found and documented year after
 2 year, is the more access points you have to highways, the more
 3 crashes you have. And it goes up pretty fast. You have to --
 4 you have to try to get internal circulation so there's one
 5 entryway to major through-fares. And the concept between
 6 Trans 233 is the state trunk highways are primarily major
 7 arterials, principal arterials. Let me -- let me back up a
 8 second.
 9 In the state of Wisconsin, there are about 112,000 miles
 10 worth of highways. And by highways, I mean streets in cities
 11 and villages. I mean town roads. I mean country trunk
 12 highways and state trunk highways and the interstate system.
 13 All total there are about 112,000 center line miles of those
 14 highways. The jurisdiction over those highways, there are
 15 about 12,000 miles that under state of Wisconsin, the state
 16 DOT's jurisdiction. Those highways under our jurisdiction
 17 carry about 50 percent of the travel even though it's -- in
 18 center line miles, it's lower than -- than the rest.
 19 Then you have the country trunk highway system of about
 20 20,000 miles. Those are the lettered highways you've seen.
 21 Then you have cities and villages with their streets, which I
 22 think is probably 30,000 miles, something like that. And then
 23 you have town roads, which is about 70,000 miles of highways
 24 in Wisconsin, center line miles. Now, those are
 25 jurisdictional responsibilities. But rather than just

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1 really no change. So why do we got to go through this process
 2 to look at condominium plats. So for re-platting an
 3 apartment, we agreed well, we'll take care of that -- that
 4 problem, so that that won't have to be a -- a real issue.
 5 Noise barriers. It appeared that the way we wrote the
 6 noise barrier provision placed an excessive burden on land
 7 dividers. So we changed -- we agreed we'll change the wording
 8 there to say the responsibility for noise barriers next to
 9 existing highways applies to the owner not the land divider.
 10 And it's more of a warning, that, you know, if this -- if you
 11 live here, you have to be aware that there's going to be some
 12 noise. If you want to accept that, fine. If -- if in the
 13 future we expand the highway, put on an extra lane and cause
 14 more noise, we'll have to buy a noise easement from you. But
 15 if it's just the existing -- existing lanes and we're not
 16 doing anything, just be aware that the owner kind of is, on
 17 notice that it's going to be kind of noisy there.
 18 There was a question about land dedication requirements
 19 for vision corners. And the idea was well, instead of a land
 20 dedication for public use at a vision corner, how about just
 21 giving a vision easement. That way it will be easier for us
 22 to comply with some local ordinances and restrictions. We
 23 said sure, that makes sense.
 24 Drainage provisions. The way it was written, it sounded
 25 like the drainage analysis that was to be provided with the

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1 thinking of governmental responsibilities for a particular
 2 highway system, you should think about what function the
 3 highways have. State trunk highways and the connecting
 4 highways, which are the ones that connect the state trunk
 5 highways through cities and villages, primarily are arterials.
 6 They -- they serve through traffic almost exclusively. Then
 7 you get down to the country trunk highways, and
 8 jurisdictionally, they are more of the collector system of
 9 highways, you know, collector and some local. Then you get
 10 down to the towns, the cities and villages, and their primary
 11 function is to serve local access, almost exclusively. Now,
 12 that's not 100 percent rule, but in those three categories is
 13 basically where things end up. So this deals with the state
 14 trunk highway system, major highways, principal arterials,
 15 mainly to serve through traffic. It's not an absolute rule,
 16 but I would say 95 percent of the state trunk highway system's
 17 primary function is principal arterial through traffic, more
 18 or less.
 19 Okay. Now, when did Trans 233 start. It's actually been
 20 in existence since 1956. And it was first amended -- between
 21 1956 up till February 1999, it was never amended. It was
 22 amended in February 1999 to actually just bring it up to date
 23 and make it work and make it uniform. And since then we've
 24 been trying to meet with people, educate them about how it
 25 works, the update, train our own folks, get uniform guidance

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1 land division had to be guaranteed there'd be no problem with
 2 drainage whatsoever forever, and if there was, you'd certainly
 3 be liable for it. And we said no, no, no, we just want a
 4 reasonable engineering judgment, look at it from the
 5 perspective of, you know, sound judgment, if it's negligible,
 6 fine, you know. But if it's really a major problem, let's
 7 have an analysis and take a look at it. We don't want to
 8 drain our highways on abutting property and abutting property
 9 owners have a responsibility not to wash out the highways. So
 10 we adjusted that language so it's a, you know, engineering
 11 judgment -- do the best you can. We've got guidance. We
 12 refer to the guidance. We will take a look at that. That's
 13 -- that change is in there.
 14 There was a question about a phrase that we wanted a
 15 desirable traffic pattern, in the rule, and say, okay, what is
 16 a desirable traffic pattern. Well, you actually have to look
 17 at each situation, but also in our Facilities Development
 18 Manual -- and I brought an example of one of the volumes along
 19 -- has guidance in it, not only for drainage but also for
 20 traffic patterns. This comes in about a six-volume set. It's
 21 available for purchase. It's also available -- those chapters
 22 I think we offered to just provide upon request. In the
 23 future, it will also be on the internet or the extranet. It's
 24 not there yet, but if you -- there are references in the rule
 25 where you can get this -- the information from us. And that's

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1 taken care of in the amendments to the rule.
 2 Then there was the question about variances. It said,
 3 look, you know, the variance process is much too restrictive.
 4 And one of the reasons for that is that the Wisconsin Supreme
 5 Court, much to the surprise of a lot of folks, in 1998, said
 6 the only time a -- an entity can grant a variance to a zoning
 7 ordinance or a similar setback requirement was if the property
 8 owner had absolutely no reasonable use for their property
 9 whatsoever unless that variance was granted. And that was a
 10 much steeper hill to climb than most folks thought, nor was it
 11 the -- what was taking place in practice. All governments had
 12 been, I think, more lenient than that. From a governmental
 13 perspective, the neat thing about was -- about it was, if you
 14 said no, boy, that no stuck. On the other hand, it created an
 15 opportunity where the government body and the land divider
 16 would say, look -- or the property owner would say look, we
 17 both agree we ought to be able to do something here, give us a
 18 variance; and then some third party for other reasons would
 19 object to it and have a legal ability to make that objection.
 20 So we addressed that by creating a less restrictive criteria
 21 for granting variances, which we called special exceptions and
 22 with the criteria to be applied, so that it's not a -- such an
 23 absolute steep hill to climb. It has criteria spelled out in
 24 the rule as to when that special exception can be granted.
 25 The setback requirements I'll get back into in more

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1 and we've got to give you something that says that. Now,
 2 there's the question well, what if it's not complete. Well,
 3 we put into the rule that we've got five days to get back to
 4 you and say it's complete or not. If we don't get within --
 5 back to you within five days of submission to us -- our
 6 receipt of it, I should say, we're going to have to say it's
 7 complete; sorry, we didn't get back to you. And frankly, what
 8 we hope is this conceptual review process where people come in
 9 and just talk with us first, we'll try to get things in order
 10 ahead of time, try to work things out, say we're going to be
 11 doing this on this highway, you -- you want to do this, and
 12 probably better if you did it over here or made this entrance
 13 point down here, because we're going to cut of this corner in
 14 about five or six years, or -- or hey, this just isn't going
 15 to work because we're going to widen this road in a year and a
 16 half, or five years, and we know we will, it is the major
 17 arterial. We know we will in ten years. We know that the
 18 level of service is going to go to hell in a handbasket within
 19 20 years. You just have to preserve this corridor, we can't
 20 allow you to put something within the setback area which is
 21 going to destroy the operation of your business or require us
 22 to take, you know -- take out a hospital or something,
 23 something like that, which is -- you know, destroys a
 24 community.
 25 With regard to if you ask for a special exception. Now,

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1 detail in a moment. We talked about the conceptual review
 2 process and agreed to transfer that authority to the
 3 districts. We agreed to grandfather existing improvements and
 4 structures. Now, that's kind of the concept, it's worded very
 5 carefully, and I can point that out as to how that was done.
 6 We not only exempted condominium plat provisions where it went
 7 from an apartment to condominium plat but also similar
 8 situations we wrote into the rule. For example, if two
 9 abutting property owners are just trying to resolve mutual
 10 encroachments with an exchange of deeds, fine, that's not a
 11 land division subject to this rule. All we ask is geez, send
 12 it in to us, though, so we can tell you're not playing games
 13 here. Another example would be a -- a shopping -- a little
 14 strip mall going from rental occupancy to actual ownership by
 15 the tenants, similar to a condo change. If there's no --
 16 really no significant -- if the traffic generated and uses are
 17 similar, no problem; we'll give you a declaration of exemption
 18 or approval and refund any fee paid with the document provided
 19 to us.
 20 I mentioned with regard to noise barriers we'll accept an
 21 easement -- excuse me, with regard to vision corners, an
 22 easement; noise barriers, we clarified whose responsibility it
 23 was; drainage provisions and desirable traffic pattern.
 24 So I think I've hit the high points of the agreements.
 25 Oh. We also provided an appeal process, an internal appeal

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1 that means you're asking for a -- a way to get away from
 2 what's in the rule itself, and not a -- you know, you say
 3 there's a situation where if you really look at it, this makes
 4 sense from everybody's perspective. We say fine, we'll do
 5 that. But give us -- you've got to give us some more time if
 6 you're asking for a special exception. The districts will be
 7 able to grant special exceptions. I think we wrote in there
 8 60 days. My memory is failing me right now, but -- 60 days.
 9 And if we don't answer you within 60 days on the special
 10 exception, it's deemed approved. So we've got to get back to
 11 you. Unless by mutual agreement you say well, let's work on
 12 it a little bit more, and continue working on that special
 13 exception. Give us some more time. But it has to be mutual
 14 agreement. Better be in writing, too, so we can all prove it.
 15 We will not in the central office unilaterally change the
 16 decision of a district. We will not initiate a reversal of a
 17 district's opinion or approval. If a municipality grants an
 18 approval or a certificate of non-objection and proves a
 19 special exception, all of which have to be recorded so we --
 20 everybody knows this goes with the property, if that happens
 21 with a district, we won't entertain a unilateral appeal by our
 22 central office. If it happens with a municipality, we have
 23 two restrictions on that: One, we can review it to make sure
 24 the municipality's abiding by the agreement where we delegated
 25 them the authority. This is cities and villages only, not

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1 process, where the district, when we delegate out to a
 2 district, or a municipality, authority to review a land
 3 division abutting a state trunk or connecting highway. They
 4 -- they will be able to make the decision in accordance with
 5 guidelines that we provide. These are guidelines which will
 6 actually be published in the Facilities Development Manual.
 7 There's been drafts circulated of those guidelines. I should
 8 also point out that the -- as to subdivision plats, which is a
 9 category that's been in existence a long time, the Department
 10 of Administration has a Wisconsin Platting Manual, which many
 11 of you have probably seen, but there is -- there is another
 12 source of guidance with regard to subdivision plats as well as
 13 ours. We also abide by this because we're an objecting
 14 authority under the subdivision plat. That is all part of
 15 Trans 233. But you just should know, if you don't already,
 16 that this comes from the Department of Administration, and it
 17 also has a whole bunch of guidelines, rules, opinions,
 18 materials. I think it cross-references what we do, too.
 19 If we do not act upon a land divider's request for review
 20 and approval within 20 days, if it's a subdivision plat, by
 21 statute it's automatically deemed approved when the
 22 preliminary plat is submitted, as long as it's complete. Same
 23 thing with any other land division abutting a state trunk
 24 highway. We're going to put in the rule that 20 days -- if we
 25 don't tell you it's bad within 20 days, it's deemed approved

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1 counties. That's the only place we have authority to
 2 delegate. With regard to a district approval of a special
 3 exception or an approval, if somebody outside, a third party,
 4 you know, a governmental entity or a legislator or a member of
 5 the public objects, we will entertain that objection, though.
 6 But we won't initiate it. And that seemed to be necessary to
 7 at least allow that one possibility that something happened
 8 that the governmental body really objected to or a legislator
 9 or a member of the public. Doesn't mean that we'll agree with
 10 them, but at least they have an opportunity to come and talk
 11 with us. And, frankly, they will anyway. So we need to build
 12 in something so we can respond to that.
 13 Now, let's see. Shall we get to the setbacks. Over the
 14 approximately year, year and a half that the existing rule had
 15 been in place, I think about -- what were then called
 16 variances, about 1200 variances were requested, I think all of
 17 which were granted except about -- what?
 18 MR. HAVERBERG: About seven percent.
 19 MR. THIEL: About seven percent for some reason or
 20 another we didn't grant. And of that seven percent, frankly,
 21 very few of them were setback, ones that weren't granted.
 22 Most of the ones that weren't granted were access requests.
 23 So you kind of -- even though we've been concentrating a lot
 24 in our discussions on setbacks, most of the time they were
 25 granted. It really didn't seem to be the issue. The issue

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1 seemed to be more of access, you know, how can you -- where
 2 you can put a driveway. The concept of course is driveways
 3 for private properties abutting a state trunk highway ought to
 4 go to some other street and the street ought to connect with
 5 the state trunk highway, because ours is the through highway;
 6 it's the arterial.
 7 One of the questions that came up, says, well, if -- you
 8 know, if you're being that reasonable or that loose about
 9 granting variances, why do you people through the rigmarole of
 10 asking for it; why don't you actually try to lay out where
 11 you're going to allow changes in setbacks. We said, okay,
 12 we'll take a hard look at that. And that was pretty much
 13 following the hearing before the joint committee for review of
 14 administrative rules in late June. And what we came up with
 15 was a -- a decision well, okay, where do we really need the
 16 normal setback 50 feet from the right of way line or 110 feet
 17 from the centerline. Where do we normally need that. We need
 18 that on the major systems, the national highway system. We
 19 need that on the interstate, which is part of the national
 20 highway system. Wisconsin corridors 20-20 is part of the
 21 national highway system. We need it on state trunk highways
 22 that have an average daily traffic of 5,000 or more. We need
 23 it on state trunk and connecting highways within incorporated
 24 areas. And we picked within one mile outside of the corporate
 25 boundaries, because, frankly, that's where the development's

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1 way it's been for years. And that's not changed. But just
 2 for clarification. You also find -- we found that there's a
 3 -- a -- kind of funny situations where there might be 10 feet
 4 between one category and another and we put in -- we just
 5 filled in those gaps where, you know, it's very minor,
 6 technical. You shouldn't have a little jump out for half a
 7 block.
 8 With regard to setbacks, we also wrote into the rule two
 9 -- two ways of granting special exceptions to the setback
 10 requirements. With regard -- we will entertain special
 11 exceptions to the setback requirements under either category
 12 -- the normal setback or the reduced setback. In the case of
 13 the normal setback, we will first of all take a look at it and
 14 say well, can we just adjust the setback line. You know, is
 15 there really any reason in this specific location that we need
 16 that much setback. Take a look at everything else that is
 17 going on around there. Take a look at the local ordinances.
 18 Take a look at the long-range plans. Look at all the
 19 information that's available and say, well, first of all, if
 20 everything else in that area is within 42 feet of the right of
 21 way line, why don't we just reduce the setback line to 42
 22 feet. Fine. We can do that. That's step number one.
 23 Step number two, okay, so we've gone through that, is
 24 there something that we could actually allow within this
 25 setback which is otherwise prohibited. Something, which, if

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1 occurring. It occurs at the boundaries, so we wanted to have
 2 it there. We wanted to also take into account a consideration
 3 expressed by a large number of folks was look, you can't just
 4 look at immediacy, you have to look at what you project will
 5 happen over 20 years. And if you project that the level of
 6 service is going to fall off to below level of service C --
 7 now, how am I going to explain level of service C. It's A to
 8 F. F is absolute gridlock. You don't even move. A is -- is
 9 you're zipping along just fine. And C is where you're going
 10 to have platoons and stopping and starting and kind of the
 11 things that you wonder about when you're -- you're on an
 12 interstate and it just stops and you don't seem to see
 13 anything blocking you, but that's kind of level of service C.
 14 And it can be really frustrating. But if we project that to
 15 happen, then that is where we will have the normal setback,
 16 because that is where, if we look at this objectively, it will
 17 be where we'll have to have a corridor to work with. Now,
 18 we're going to print -- that's where there'll be the normal
 19 setback.
 20 The other system will be where we've looked at it and say
 21 well, we really don't think over a 20-year period that
 22 anything is going to happen here that will require more than a
 23 15-foot setback. So we've designated this. And if you look
 24 at page 6, it describes these highways where the normal
 25 setback is, then the map shows them. Where they're red is the

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1 it's removed, won't affect the integrity of that abutting
 2 business or cause just sheer havoc because it's a drainage
 3 pond or something like that, a collection basin of some sort,
 4 which we can't tolerate in there, because if we remove it,
 5 where are we going to put the water, and where's the abutting
 6 property owner going to put it. So in those -- if it does not
 7 affect the continuity of the business by removal, if it does
 8 not affect and kind of destroy the local and state long-range
 9 plans, we can allow some exceptions to what's put within the
 10 reduced setback. Anything that's outside this reduced
 11 setback, once we make that determination -- and it will be
 12 recorded, once we make that determination, if we subsequently
 13 come along and decide -- say, look, we made a mistake, there's
 14 something beyond that setback that we're going to have to
 15 acquire anyway, we're going to pay for it. However, if within
 16 that reduced setback, we do allow you to put something in
 17 there and we come along later and we say, hey, listen, this is
 18 at your risk, you did ask for this. Normally, we wouldn't
 19 require it, but part of this consideration is we can tell you
 20 about when we think we might be needing this, but when time
 21 comes that we will need it, you got to decide whether it was
 22 worth your time and trouble and money to put it in that
 23 location, because we're not going to pay you when we take it
 24 out. That's the tradeoff there. Now, within the area, the
 25 some -- like a -- 60 percent of the system is the normal

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1 major highways where you'll have the normal setback which has
 2 been in existence, frankly, since 1956, and then the reduced
 3 setback is the black lines. This is not in a detail where
 4 you're going to be able to go metes and bounds to find exactly
 5 where you are on this, of course. But we can tell you. And
 6 we will have -- we have existing maps which show where
 7 boundaries are and we have -- to bring this down to a scale by
 8 geographic areas where it's a lot more useable. But frankly,
 9 what controls is the language in the rule rather than the map.
 10 The map's to get you in the ballpark, and it will be published
 11 every two years. What controls is what's in the rule. Okay,
 12 so you say, geez, out of your 12,000 or so miles of state
 13 trunk and connecting highways, how much is within each
 14 category, kind of hard to tell from this. And you'll see on
 15 page 6, there's a note that says insert mileage numbers. So
 16 if you'd like to insert them, here's what it is. The national
 17 highway system is 3,962 miles with the normal setback. Other
 18 principal arterials, 1,230 miles. Level of service worse than
 19 C on 20-20, 521 miles. Now, average daily traffic greater
 20 than 5,000 today, 236 miles. That is if, you know, it's not
 21 included in the previous categories. The ones within cities
 22 and villages, 337 miles. One mile on either side of cities
 23 and villages, 595 miles. And you should also know that the
 24 subdivision plat law and the Trans 233 do not apply within the
 25 city of Milwaukee. That's just by statute, that's just the

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1 setback, about 40 percent of the whole system is the reduced
 2 setback. If you say look, I would like a special exception as
 3 to that reduced 15-foot setback, we say okay, but the only
 4 thing we will allow you to do is for maybe putting something
 5 within that reduced setback. We are not going to pull that in
 6 closer to the right of way line. In that case, that's it,
 7 that setback line is going to stay there.
 8 MR. HAVERBERG: With the exception of city
 9 ordinance.
 10 MR. THIEL: Yes. Unless -- unless of course there's
 11 a city ordinance which is less. We will also write -- wrote
 12 into the rule a -- a case where we will be able to issue
 13 blanket special exceptions if we've had some experience in an
 14 area and we say we know what's going to happen here, if
 15 anybody comes in with a land division anywhere within this
 16 stretch of maybe two or three miles, it's going to be
 17 absolutely the same provision, why not just record right now
 18 that there's a reduced setback, and we'll figure out some way
 19 to get that to the register of deeds, some way that it'll be
 20 on a transportation plat of some sort that, you know, people
 21 will know that it's reduced in this area. And, of course, the
 22 local authorities will know about it, because we work with
 23 them very closely.
 24 Now, what else did we change here. And now, as I said,
 25 there have been a lot of changes in laws over the years which

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1 make this process even more important than it used to be
 2 before. We are under an obligation under federal law and
 3 state law to make sure that when we do a project, we do not
 4 adversely affect low income groups, minority groups, other
 5 groups of people. We have been accused many times that look,
 6 you go out and you -- you build this highway right through a
 7 minority neighborhood or a low income neighborhood and you
 8 don't put up any noise walls and you don't provide for
 9 adequate transit for that area. You're discriminating against
 10 us. And that's the allegation. We are also under a
 11 requirement to make sure that we don't adversely affect the
 12 environment. Farmland restrictions, taking a -- take a hard
 13 look at that. Don't go into wetlands. Don't affect
 14 endangered species. Don't affect wild and scenic rivers.
 15 Don't affect archeological sites of importance. Don't affect
 16 natural life. Then the many federal agencies have asked us
 17 when we're doing something to mitigate the impacts of our
 18 construction. And they say well, look, if you're going to go
 19 through here, why don't you buy five acres of land and set it
 20 aside for archeological, historic preservation and have
 21 somebody manage it. We said okay, we'll do that. Well, the
 22 Supreme Court of Wisconsin says oh, no, you can't. You can't
 23 expand your authority to acquire property for highway purposes
 24 just by agreeing with someone else. Forget it. So we very
 25 imaginatively decided okay, but we still have to do something

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1 As an association and as individual members, we are fully
 2 aware of the vast needs that exist in our entire
 3 transportation system, including our state trunk highway
 4 system. We are also aware of the fact that current revenues,
 5 even under the most optimistic scenarios, fall far short of
 6 meeting documented needs. In the most -- in that light we
 7 feel that investments in every segment of our transportation
 8 system must be preserved and protection to make sure that they
 9 are not lost prematurely. Controlling access points along our
 10 higher function routes and maintaining adequate setbacks are
 11 two ways that we can protect our investment in roads. Public
 12 rights of way must be preserved and protected so that roads
 13 can function as planned and key corridors can be properly
 14 maintained and upgraded when necessary. We owe it not only to
 15 those currently using and paying for our roads, but also those
 16 that will need good transportation well into the future. We
 17 must not burden our children with unnecessary costs so that we
 18 can experience immediate or short-term financial gain.
 19 Wisconsinites and others are fully aware of the
 20 relationship between transportation and land use, as well as
 21 the relationship between transportation and our economy. That
 22 understanding has led to the completion of local and regional
 23 plans that coordinate land use and transportation, to numerous
 24 highway corridor studies and to passage of a comprehensive
 25 planning package in the state's recently passed biennial

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1 in situations like that, so we imaginatively found another
 2 statute which says well maybe we can't do it, but we can
 3 reimburse local units of government when they do it. And the
 4 legislature said hmm, we don't think that's such a good idea
 5 either. So they said well, from now on, you can't do it that
 6 way either except within one-quarter mile of the highway
 7 project. So that restriction was put on-us. And, you know,
 8 the basic truth of the fact is we're going to have to use
 9 existing corridors, we don't want to have to go make bypasses.
 10 We want to work with existing corridors within cities. We're
 11 going to have to come up with systems that work better. We're
 12 going to have to use these for transportation corridors for
 13 utilities, not just for vehicles. We've got to think about
 14 high-occupancy vehicle lanes. We have to think about other
 15 opportunities for transport within that corridor. We're going
 16 to try to develop an intelligent transportation system which
 17 requires an additional infrastructure of lines going through
 18 there. We need to provide an opportunity for folks to access
 19 all these utilities within the high -- these arterial highways
 20 from the backside of the right of way line rather than
 21 stopping in the traffic lane and getting off there and work --
 22 work there. So we need that setback area. So, I mean, those
 23 changes in laws have brought home to us that we're just going
 24 to have to be a lot more careful about planning. The
 25 legislature also enacted the smart growth legislation, which

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1 budget. Clearly, good planning and related land use tools are
 2 needed to make sure development and transportation are well
 3 coordinated. Basic among those efforts must be the
 4 development of programs, ordinances, administrative rules and
 5 other tools that avoid unnecessary conflicts, maximize
 6 utilization of the existing system, and preserve options
 7 necessary to address our growing mobility needs. Unless we
 8 preserve and protect our existing transportation corridors and
 9 other transportation facilities, we may well be forced to look
 10 at relocating businesses or homes to undertake needed
 11 improvements. In some cases, the local government or the
 12 state may be forced to relocate existing highways and other
 13 facilities simply because they can no longer function as
 14 planned. The cost of such activities from a financial,
 15 political and environmental perspective is enormous. We must
 16 take steps to avoid having to spend public funds for the
 17 purchasing of homes or businesses to improve or widen a
 18 highway or extend a runway or some other transportation
 19 facility, simply because we did not take the precautions
 20 necessary to preserve and protect key corridors. Simply
 21 stated, we must do good planning. Trans 233 as amended and
 22 under consideration here today reflects a reasonable
 23 compromise and a rational approach to the issue of preserving
 24 and protecting key state trunk highway corridors. The
 25 criteria outlined in section 8 of the currently proposed rule

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1 says we're all going to have to work together in a partnership
 2 with local governments to -- to use our resources better.
 3 And well, to cut off a long story, that's what this
 4 amendment attempts to do. Whew. Okay.
 5 MS. JOHNSON: Thank you, Jim.
 6 MR. THIEL: At last.
 7 MS. JOHNSON: Okay, has everyone had an opportunity
 8 to fill out a registration form and hand it to me? One more.
 9 Okay. Charlie -- I'm going to attempt to pronounce your last
 10 name -- Causer?
 11 MR. CAUSER: Yep.
 12 MS. JOHNSON: Is that correct?
 13 MR. CAUSER: Close enough. Well, good morning. My
 14 testimony today is here as a member of the Transportation
 15 Development Association. TDA is a statewide alliance of
 16 approximately 500 agencies, groups, local governments, and
 17 others committed to the development and maintenance of a
 18 responsive transportation system for the state. Among our
 19 members we have cities, counties, towns, villages, chambers,
 20 economic development organizations, businesses, industries,
 21 organized labor, planning agencies, many others. We have
 22 interest in all modes of transportation and in transportation
 23 needs throughout the state. We are committed to a
 24 transportation system that meets our mobility and economic
 25 needs in an environmentally responsible manner.

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1 are critical to the protection of key routes and should be
 2 retained. The appeal process for variances as outlined in 233
 3 is reasonable and fair. TDA does, however, recommend that the
 4 Wisconsin Department of Transportation use extreme caution in
 5 granting variances which could limit future improvements.
 6 Trans 233 should err on the side of caution, protecting not
 7 only those roads with currently programmed improvements, but
 8 also any state trunk highway that might need to be improved in
 9 the future, whether that be 10, 20 or 30 years from now.
 10 Thank you. I'll leave this with you.
 11 MS. JOHNSON: Thank you, Charlie. Do you want them
 12 marked?
 13 MR. THIEL: Do you want to mark them?
 14 RECORDER: You want to mark an exhibit?
 15 MR. THIEL: Yeah, sure.
 16 RECORDER: Start with Exhibit Number 1.
 17 MR. THIEL: Sure. That way we'll be able to keep
 18 track of them better.
 19 MS. JOHNSON: Okay. Arden Sandsnes.
 20 MR. SANDSNES: Good morning. I'm Arden Sandsnes
 21 with Royal Oak Engineering. I've been following these
 22 hearings very closely for -- as Mr. Thiel puts it -- several
 23 -- several months. And his description of what's going on
 24 here is very accurate, I think, from our perspective, at
 25 least. But it would appear that the department has

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1 continually missed the concept that a condominium is not a
 2 land division. There is no trigger, there is no necessary
 3 requirement for anybody to review it in many places in this
 4 state. It is not, under any circumstances, a land division;
 5 it's a difference in ownership. Therefore, on the many pages
 6 of this document where you refer to land divisions and
 7 condominiums synonymously is meaningless. There is absolutely
 8 no government intervention in most condominiums in this state.
 9 There are some in areas where in fact the unit of government
 10 has a chance to look at it. So what I'm saying to you is that
 11 there is nothing to trigger a review of a condominium by the
 12 Department of Transportation whatsoever unless somebody
 13 chooses to do so. And it will only come to your light after
 14 your fact when the problem has already been created;
 15 therefore, you have avoided nothing. Very clear point. The
 16 only way that it could possibly come to your attention is if
 17 they came to you for a highway access right of way permit for
 18 a driveway. But if I own 40 acres and I was going to put up
 19 128 condominium units abutting a state highway, I would not
 20 take access to your highway; I would take it off the adjacent
 21 street, and therefore still no trigger for you to review this
 22 condominium. There is absolutely nothing in this thing
 23 whatsoever that applies to chapter 703. And if you read 703,
 24 you'll find out it's not a land division. So in each case
 25 where you're speaking of land divisions in here, it does not

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1 trying to make the statement. If I perform an American Land
 2 Title Association survey for John Blow the lender out in
 3 Virginia; he sends me a bunch of documents that came out of
 4 the register of deeds. I don't know that they send anybody
 5 out to the local DOT to see if there's a document on file.
 6 And if I suggest that there is no impact on this property and
 7 all of a sudden some restriction crops up out of nowhere,
 8 who's on the hook? Well, it certainly isn't the attorney
 9 sitting in his office in -- in Fairfax, Virginia, I can tell
 10 you. They're going to be looking to us. And you put an undue
 11 impact upon the professional surveyor of this state. Yeah.
 12 MR. THIEL: Can I ask you a question?
 13 MR. SANDSNES: Sure.
 14 MR. THIEL: We did try to address that. But I think
 15 you're right, what we didn't address is how are you going to
 16 prove it.
 17 MR. SANDSNES: That's right.
 18 MR. THIEL: And if you look on page 12 on section 3,
 19 is how we tried to address it.
 20 MR. SANDSNES: I don't think it did it, however.
 21 MR. THIEL: We said if they are legally placed in
 22 the setback area prior to February 1st --
 23 MR. SANDSNES: Mm-hmm.
 24 MR. THIEL: -- explicitly allowed to continue to
 25 exist.

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1 apply to a condominium except in some rare instances.
 2 There is another point that I think is as important, and
 3 that does not have anything to do with any changes in chapter
 4 230 -- or Trans 233. Prior to the February date of the
 5 enforcement of this last draft, there was a policy that was
 6 rampant throughout the Department of Transportation whereby
 7 certain permitted uses of the setback area were permitted
 8 without any special documentation, without any form of an
 9 application -- it was just done. Parking lot. As long as
 10 that parking area was not the necessary number of spaces to
 11 keep that business in business. If I had a hotel and required
 12 128 units of parking and I put in 5 in front of building, DOT
 13 never stepped into that. Ever. Now, what is the consequence
 14 of that? Many subdivisions that were recorded prior to that
 15 February date used that concept in providing the depth of the
 16 lots that would allow certain uses on that backside as long as
 17 it wasn't a salient feature or a structure or one of those
 18 things that would make that property useless or
 19 non-conforming; it was just ignored. I'm talking about a
 20 policy. Now, it is my contention then that as a surveyor and
 21 an engineering company, that we would have designed that plat
 22 substantially different had we known that that policy was
 23 going to change and future purchases would be impacted by
 24 that. The fact of the matter is that policy did change. And
 25 I think that this Trans 233 ought -- today ought to be written

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1 MR. SANDSNES: That's true.
 2 MR. THIEL: And if they had preliminary or final
 3 approval of a plat prior to February 1st, 1990, they're not
 4 subject to this chapter as first promulgated February 1st --
 5 MR. SANDSNES: I --
 6 MR. THIEL: -- but are subject to the old one. But
 7 how --
 8 MR. SANDSNES: You're correct.
 9 MR. THIEL: I mean, I think you got a good point.
 10 How do we identify that so people can find it?
 11 MR. SANDSNES: Therein lies the sticky wicket here.
 12 This section 3 on page 12 does very clearly attempt to do what
 13 we just discussed. However, it does not address those cases
 14 where the lot is empty, but having been created prior to that
 15 time and now up for sale, and the old policy as to how it was
 16 to be used in that setback area. This is not covered here.
 17 And this part of the rule hasn't changed. It just was a
 18 policy. Now, I also find that in several districts they --
 19 they approach the review process a little different. Some of
 20 the reviewers at districts will not issue the exception number
 21 until after they've seen the final document and all this
 22 verbiage has to be on the document itself, and then he'll
 23 finally give you -- or she will give you this approval number.
 24 That creates a time frame that gets to be very difficult.
 25 What it's saying is that we are now responsible in some way of

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1 to recognize that prior use policy so that those documents of
 2 land divisions that were recorded prior to the February 1999
 3 would have some variance or some allowance automatically
 4 granted to them for that use. Now, a most recent case that
 5 many of the people at this table are aware of, I suspect, is
 6 the case in the city of Stoughton, one of the land divisions
 7 down there, and there's one just north of it exactly the same
 8 set of circumstances. And I submit that that is true
 9 throughout the state where there are a lot of certified
 10 surveys and subdivisions that have come underneath the review
 11 process. To that end, I think that needs to be addressed. At
 12 the last hearing before the joint rules committee, I stopped
 13 one of the staff here long enough to suggest that there be
 14 some provision for any variances ending up recorded in the
 15 register of deeds office. I don't see that again. It's
 16 missed again. And I would say that if the department could
 17 say to us they've never lost a document, that probably
 18 wouldn't be too bad. I don't think they can say that. And
 19 second of all, it makes a tremendous difficulty for the
 20 attorneys and the real estate people giving opinion on title
 21 to trace this matter to have to chase it out at the DOT to see
 22 if something does magically exist, and god forbid, it should
 23 be lost and not found. Now you've got an obligation that's a
 24 legal obligation that you're throwing off onto the insurance
 25 or the surveyor or the developer or somebody else that's

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1 seeing to it all the i's and all the t's are crossed and that
 2 this person hasn't missed any of them and that we haven't
 3 missed any of them, and we have to go back to them two or
 4 three times in order to accomplish this. However, if the
 5 document as issued by the department were on record in the
 6 register of deeds office, they would be crafting it; there
 7 would be a cross reference of the number to that document in
 8 the register of deeds and there would be no question as to
 9 what it says or who made the mistake, if there be one. We're
 10 trying to avoid those troublesome hurdles that we're going to
 11 see down the road. I don't see those as unreasonable requests
 12 to look at, and I think you have to find some trigger -- and I
 13 have no idea what the trigger will be -- on condominiums. The
 14 condominium law is so wide open that unless you make a change
 15 in 703, it isn't going to -- it isn't going to come up.
 16 You're just not going to see them until it's too late. And
 17 that isn't what we're trying to do here, I don't think. We're
 18 trying to avoid the problem instead of trying to address it
 19 after the fact. So I would leave those as my few points, and
 20 I speak from having discussions across the state with a great
 21 number of land surveyors that have been involved in this, and
 22 I truly don't think you had any advising you or these subject
 23 matters would have even come up. Or if you did, they weren't
 24 from the private sector. Anything else?
 25 MR. THIEL: Thank you very much.

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1 MR. COOK: Thank you. We appreciate that.
 2 MS. JOHNSON: Did you have a written statement you'd
 3 like to provide us or not?
 4 MR. SANDSNES: No, I do not.
 5 MS. JOHNSON: Okay. Francis Thousand.
 6 MR. THOUSAND: Good morning. My name is Francis
 7 Thousand. I'm a land surveyor. I'm representing myself today
 8 even though I've been involved with discussions on Trans 233
 9 with the Wisconsin Society of Land Surveyors. We did meet
 10 with the DOT, but as far as I know, there was never any
 11 agreements between the DOT and WLS -- correct me if I'm
 12 wrong. I'd like to thank you for the opportunity to speak
 13 this morning. I do oppose the provisions of this -- of rule
 14 -- of Trans 233. I felt the original rule was confusing and
 15 unclear, and I think the proposed rule is worse. On page 12,
 16 the part you referred to, about structures placed prior to
 17 February 1st, there's no way that I can walk out in a field
 18 now -- I might be able to do it today and I might have been
 19 able to do it in '99 -- but in five years, and be able to
 20 identify what structures were placed there prior to November
 21 -- or February 1st. And I don't know if the property owner's
 22 going to advise me, if my client will tell me what's there, if
 23 they know what's there; it's real confusing from my
 24 perspective as how that's going to be handled. The other --
 25 with your conceptual review, you use the term intend in there,

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1 confusing to me as to what you want to show or what you need.
 2 The other issue that -- that is a concern to me is the
 3 issue of putting it in to the -- the details into the
 4 Facilities Development Manual. With the platting -- with the
 5 DOA's platting manual, all of the stuff that's in there is in
 6 the statute, and that's a rehash of the statute. There's
 7 things that will go into the guidelines that are not
 8 identified in the rule. Specifically, the policy about
 9 requiring access restrictions on all of the property that a
 10 land divider owns not just the property involved in the
 11 certified survey map, and that's a policy that I know is being
 12 enforced and I know that there's -- I have not seen that, any
 13 reference to that in any of the rule, either form, prior, now,
 14 before the proposed amendment. So I'm not sure how you do
 15 that, and if those details, you put them in the guideline,
 16 plat reviews, the last time I think it was 20 bucks, your
 17 facilities manual, the last time I looked at it was about 225
 18 or 230. There's a little bit of difference there. And I
 19 don't know how many farmers could buy that FDM and figure out
 20 what it said. And that's -- they're -- if they come to me and
 21 ask me if they abut a front -- they abut a state trunk
 22 highway, my direction to them is that they have to get a copy
 23 to find out what they know or what the -- what impacts it can
 24 be on their property, then I'm not taking the complete
 25 responsibility of explaining every detail of that manual to

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1 as you intend to have it done in 30 days of the review. I
 2 told the state trooper that I intended to be going 65, but
 3 that didn't seem to cut the mustard for me. So I don't know,
 4 you know. It seemed a little confusing to me what that meant.
 5 Does that really mean you intend to do it or is that just a
 6 way of opening up the time frame.
 7 In the noise -- under the noise section, you added users as
 8 well as owners to who's responsible for barrier walls or
 9 whatever. I'm not sure what the users means in that. Is that
 10 a public utility with a line across, is he now responsible to
 11 build a retaining wall or a berm or something? Is that a
 12 user? If I visit a public park, am I user and going to get a
 13 bill in the mail for a barrier on that structure? If I go to
 14 the convenience store? What is a user and who are those
 15 people? And you added to the notes, the notes -- the last one
 16 I did was -- they take up essentially a full page on a
 17 certified survey map, and now you've added some more language
 18 to the notes. I would -- would suggest that maybe you just
 19 add -- that the surveyors add to the certification that
 20 they've met the requirements of Trans 233, similar to what it
 21 says where they meet the requirements of Chapter 236 without
 22 listing each individual requirement to 236 on the sheet. We'd
 23 have, you know, volumes if we had to rehash the thing. And
 24 again saying the DOT is not responsible, I thought the note
 25 was clear when it said the owner is responsible, that there

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1 them so that they understand level of service C or some of the
 2 other references in, with good planning or good highway design
 3 and some of the other comments that you've made and pointed at
 4 sections.
 5 MR. COOK: If we can just address that point real
 6 quickly. We will put the Facilities Development Manual on the
 7 internet so it will be accessible; you won't have to pay that
 8 money. Understanding it may be a different issue, but it will
 9 certainly be available.
 10 MR. THOUSAND: The advantage that Chapter 236 has is
 11 that it's all in one spot and you just go there. They have
 12 the same 20-day time review that the DOT is looking at. It's
 13 in a central office. And we get a consistent review every
 14 time. Now, I would suggest that you not send it to all the
 15 districts as your agreements with other people have. I don't
 16 think it's a time review problem, because plat review can get
 17 it into the state and back out within the 20 days; the same
 18 time frame that you're using, and that's why you had selected
 19 the 20 days. So all of these things could come to the central
 20 office. They could be reviewed by people who knew what they
 21 were doing, and would give them a consistent review, if a
 22 consistent review is what you're after. I -- my last one at
 23 district one, I got two different reviews from two different
 24 reviewers I talked to on the same parcel. So I -- I can't see
 25 how you can possibly get a consistent review across the state

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1 was -- wasn't any confusion. And again, it just seems to me
 2 to add extra verbiage to that particular note that I have to
 3 add to all my surveys, and it doesn't really change anything
 4 or make it clear. But the users is beyond -- I don't know
 5 what a user is. The birds, are you going to give -- I don't
 6 know.
 7 In the section on drainage, you added phrases about
 8 engineering certainty or degree of engineering certainty and
 9 sound engineering judgment. I'm a land surveyor, my license
 10 says I can practice land surveying; it doesn't say I can
 11 practice engineering. Does that mean I now have to get an
 12 engineer to create the drainage plans or show that there is a
 13 drainage problem or not. It's not clear in the rule. I don't
 14 know that if you wanted to have a PE do it, say PE, you know,
 15 I don't know -- and then the section about indirect --
 16 directly or indirectly affects water, storm water on the right
 17 of way. My house dumps its water into Lake Monona and that
 18 goes underneath the South Beltline, which is -- crosses the
 19 right of way, and so the water coming off of my driveway is
 20 impacting indirectly the state right of way. So I'm not sure
 21 what -- if, you know, my house wouldn't -- wouldn't need to be
 22 covered by Trans 233, and I don't live anywhere within six
 23 blocks of a state trunk highway. But I'm indirectly
 24 contributing to that if I pave over my backyard, it's going to
 25 be more water to the lake. So I -- you know, again, it's

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1 between the eight districts. I also am aware that the -- many
 2 employees of the department feel that the FDM is a guideline
 3 and not a rule. Having worked for the DOT, it was my
 4 experience that some of the people that I worked with didn't
 5 recognize language out of the Facilities Development Manual,
 6 and in fact told me they would never do that, that it's in
 7 fact based on the environment in the local district how the
 8 Facilities Development Manual gets implemented. So I see a
 9 real problem with having this spread around the state. I'm
 10 going to have to learn who the people are in each district or
 11 each municipality, now that you're giving it to them, too, to
 12 figure out how that is going to be consistently applied. The
 13 other -- another point, traffic impact analyses are not
 14 mentioned in the rule anyplace, and my understanding is
 15 they're being required on reviews on Trans 233. Now, again, I
 16 don't know how you can make people do things that aren't
 17 covered by the rule if you're consistently doing the rule. I
 18 don't know that TIAs are being consistently required across
 19 the state. I don't know that. But I wonder.
 20 The other issue -- or another issue that doesn't seem to
 21 be anywhere in there is a waiver from the rule entirely. On a
 22 number of occasions I've done CSMs on top of subdivision lots
 23 on top of CSMs, and where -- in those cases, where the
 24 setbacks are in place, the noise notes will be in place,
 25 everything is there, there's no access -- access restrictions

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1 are in place, why would I need to come to you and pay you
 2 another \$110 for you to say yeah, all that stuff is on the
 3 last one, why do I have to -- and I just see no provision
 4 anywhere. There was some provision of that in the guidelines,
 5 but again, if that's actually going to be something that
 6 you're going to do, I'd like to see it in the rule, not in
 7 some -- buried in some guideline someplace.
 8 I think that's basically all of the things I thought of
 9 last night. I'm -- you'll probably be hearing from me again
 10 at the -- at the next series of hearings, and I will probably
 11 still -- I don't disagree with the concepts and what you're
 12 trying to do, but the rule, the way it's written, is just
 13 making it impossible. Back to the other part that I'd like to
 14 see you change was in talking about when is the land abutting
 15 a state trunk highway, abutting a state trunk highway. You
 16 use the term formal or informal agreement. I have a formal
 17 agreement with the city of Madison; I give them money every
 18 year for that formal agreement; they provide me that street in
 19 front of my house, and that goes and hooks on to the state
 20 trunk highway. Does that mean that I have a formal agreement
 21 with somebody that's abutting a state trunk highway so that
 22 all land in the state would have to be reviewed?
 23 Thank you.
 24 MS. JOHNSON: Thank you, Mr. Thousand. Did you have
 25 a written statement you'd like to provide us?

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1 they come underneath a whole different set of categories. So
 2 I think the majority of those in Wisconsin could be handled by
 3 the DOT because I think almost all of the airports are under
 4 your jurisdiction except for a very few privates. And I think
 5 they have some licensing requirements with the FAA. So I
 6 don't see that as anything that you can't handle
 7 interdepartmentally.
 8 MR. COOK: Well, thank you. If there are no other
 9 questions, I'd like to thank everyone for coming today. We've
 10 heard some very constructive comments that we will take into
 11 consideration and address in the rule where it's feasible.
 12 This debate will likely continue, so we look forward to
 13 hearing from you in the future with suggestions as we continue
 14 the rule promulgation process. Feel free to contact the
 15 department.
 16 MR. THIEL: If you look at this document, on the
 17 second page, it has Julie Johnson's name and address. If --
 18 if you want to send in followup written comments, please send
 19 them to her at that address. We wanted a single point so
 20 they're not scattered all over the place and nobody knows
 21 where they all are. But if you send them to Julie, everybody
 22 will see them. So if you'd like, if you could get those to us
 23 by August 11th, we can keep on schedule. I -- my impression
 24 is there's a lot of good stuff in here that people would like
 25 to see go into effect December 1st, and what we're hoping

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1 MR. THOUSAND: Pardon?
 2 MS. JOHNSON: Did you have a written statement you'd
 3 like to provide us?
 4 MR. THOUSAND: I added a bunch of notes to it so --
 5 MS. JOHNSON: Okay.
 6 MR. THOUSAND: -- it isn't written anymore.
 7 MS. JOHNSON: All right. Thank you. I have a
 8 number of registration forms that people checked they did not
 9 wish to speak. Has anyone changed their mind? No. Okay.
 10 Does anyone have any questions of us or of anyone who provided
 11 testimony? Mr. Sandsnes.
 12 MR. SANDSNES: In the section where you're speaking
 13 about impacts one mile outside of corporate limits, I'm
 14 curious as to why you didn't use the same language as -- as --
 15 I'm sorry.
 16 RECORDER: That's okay.
 17 MR. SANDSNES: I'm curious as to why you didn't use
 18 the same language as the extraterritorial jurisdiction, which
 19 is three miles outside of --
 20 MR. THIEL: At the one -- one and a half miles?
 21 MR. SANDSNES: Well, it's one and a half miles on --
 22 on smaller communities; three miles in the larger. And it
 23 would seem to me that that's as far as larger units of
 24 government plan, and you would then be in concert with that
 25 that is in another part of the statutes.

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1 we're doing is refining this, and personally I heard some very
 2 good comments, and I don't know what a user is either. We
 3 tried to get it away from land divider, said, well, it ought
 4 to be the owner, but what if somebody's got a long-term lease.
 5 Well, they're an owner, but they're not the only owner, so.
 6 MR. SANDSNES: A user could be confused with a
 7 renter, too.
 8 MR. THIEL: Yep. Which might be appropriate, if
 9 it's a long-term lease.
 10 MR. SANDSNES: Well, other than in Wisconsin, a
 11 lease beyond ten years is a land division. So you only have
 12 nine years, 11 months and 28 days or something like that.
 13 MR. COOK: That -- that concludes our hearing for
 14 today. Thank you very much for coming.
 15 RECORDER: We're off the record at 10:19. This
 16 hearing was 78 minutes long.
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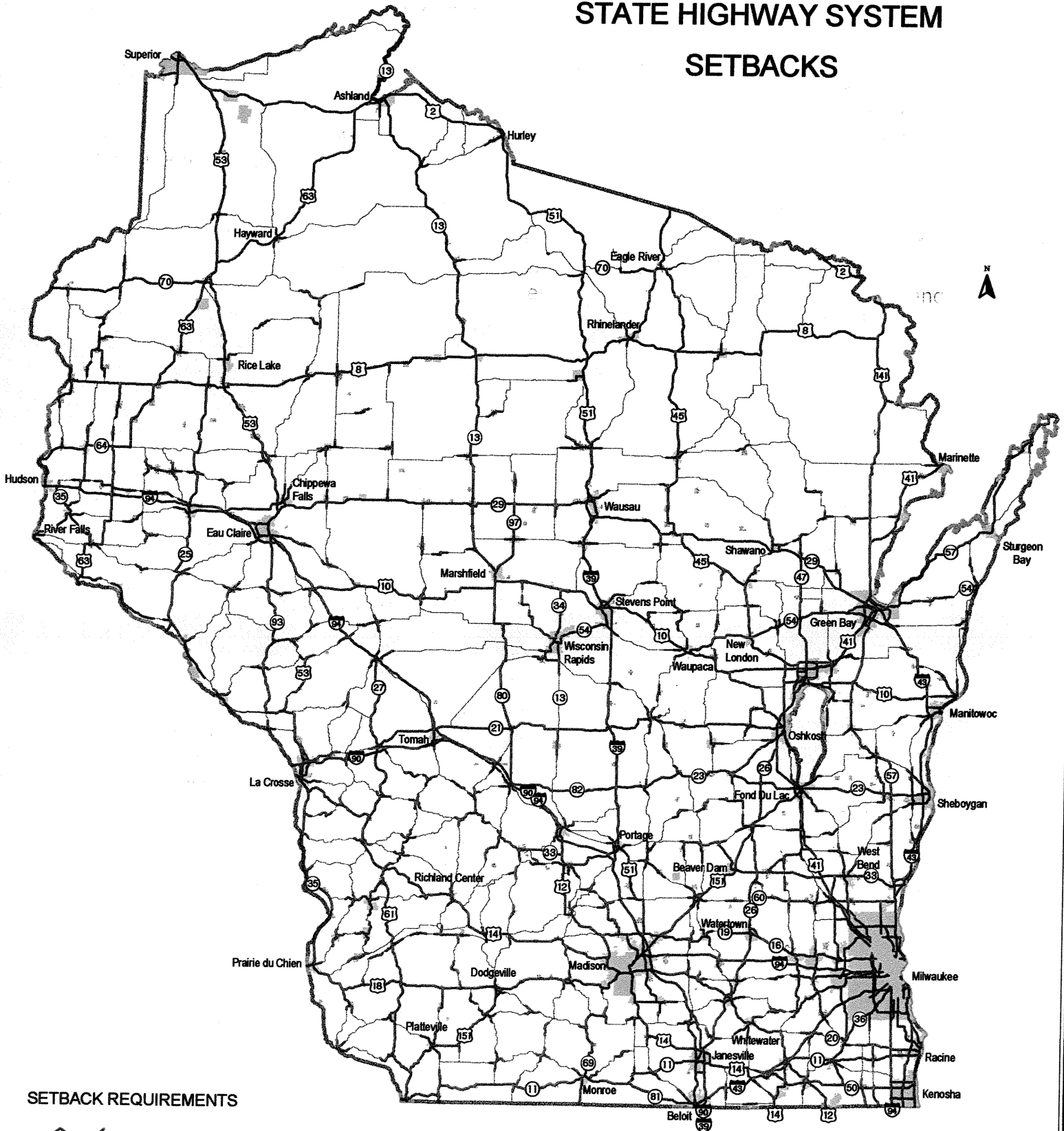
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1 MR. THIEL: I think that's a reasonable
 2 consideration. I hadn't thought of that. Had you?
 3 MR. HAVERBERG: We just took one mile because it was
 4 something that we've been experiencing, it wasn't associated
 5 with the rest of the statutes, but that was what we'd been
 6 experiencing over the last year and a half, two years.
 7 MR. THIEL: Yeah.
 8 MR. HAVERBERG: It's where the issues are. Rarely
 9 have we seen issues going further out, Arden. It's right at
 10 the edges of the corporate, and usually it's -- that's where
 11 the city's going to annex the next piece of land, so that's
 12 where we're --
 13 MR. SANDSNES: That's true, but each time they annex
 14 one, it does reach another --
 15 MR. HAVERBERG: Then it keeps going out.
 16 MR. SANDSNES: It keeps moving out. And if you're
 17 in concert with the requirement of the city planners on
 18 extraterritorial jurisdiction, then at least we're playing
 19 with the same ball and the same racket.
 20 MR. THIEL: Another thought that that leads to in my
 21 mind is the extraterritorial zoning around airports, too.
 22 MR. SANDSNES: I don't believe that's an
 23 extraterritorial jurisdiction problem. That happens to be a
 24 navigation requirement to the Wisconsin DOT, and the fed --
 25 federal FAA. So that's a little different set of rules, and



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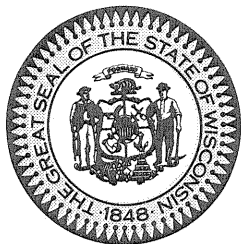
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 5 Transcription company, and as a Notary Public in and for the
 6 State of Wisconsin, that I directed the transcription of the
 7 proceedings given before the Department in the foregoing case
 8 from the original audiotape cassette recording the hearing
 9 held on August 4, 1999, in Madison, Wisconsin, and that the
 10 foregoing transcript is a true and correct transcript of the
 11 whole proceedings.
 12
 13
 14
 15 Frank J. Wiener
 16 Notary Public, State of Wisconsin
 17 My Commission is permanent
 18 August 6, 2000

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DAVID BRANDEMUEHL

*State Representative
49th Assembly District*

TO: MEMBERS OF TRANSPORTATION COMMITTEE
FROM: REP. DAVID A. BRANDEMUEHL
SUBJECT: CHR 109
DATE: 09/21/00

Dear Bob Cook:

This memo is to confirm the Committee's procedures from here on out for Clearinghouse Rule 109 which was presented by the DOT today. As I suggested at the hearing there will be one week to respond to CHR 109. The department has agreed to modify the following parts of CHR 109: Items 6 and 7 in Bill Ford's memo to the committee dated September 15, 2000. The department will also be sending a memo outlining changes for those two items to the committee members as well as a clarification of item five of that same memo.

Committee members will have until 5:00pm Tuesday, September 26, 2000 to submit proposed changes or acceptance of CHR 109 to my office 317 North, State Capitol. I would stress that I need a response from you stating your position on CHR 109 so that I can determine whether an executive hearing is necessary. Please be as timely as possible as we have a limited time to respond.

Thank you for your consideration of the issue.

Committee Memberships:

Transportation (Chair); Education; Highway Safety; Natural Resources; Urban & Local Affairs; Rustic Roads Board; Transportation Projects Commission

Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-1170 • Rep.Brandemuehl@legis.state.wi.us

Home: 13081 Pine Road • Fennimore, Wisconsin 53809 • (608) 822-3776

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P.O. BOX 7910, MADISON, WI 53707-7910
PHONE: (608) 266-8810 FAX: (608) 267-6734

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Wisconsin Department of Transportation

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Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

Office of the Secretary
4802 Sheboygan Ave., Rm. 120B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-1113
FAX: 608-266-9912
E-Mail: sec.exec@dot.state.wi.us

September 28, 2000

Representative David Brandemuehl
Chair, Assembly Transportation Committee
Room 317 North, State Capitol
Madison, WI

Senator Roger Breske
Chair, Senate Transportation Committee
Room 18 South, State Capitol
Madison, WI

Re: **Proposed Administrative Rule
Chapter Trans 233, Wisconsin Administrative Code
Clearinghouse Rule No. 00-109**

Gentlemen:

At the Committee hearing on September 20, 2000, the Department agreed to modify parts of CR 00-109 relating to Items 6 and 7 of Legislative Council Attorney William Ford's memo dated September 15, 2000. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following germane modifications to the rule:

ITEM 6. On page 29, amend TRANS 233.105(2)(intro.) as follows:

TRANS 233.105(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

ITEM 7. On page 28, amend TRANS 233.105(1) as follows:

TRANS 233.105(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, ~~the land divider shall be~~ department is not responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, ~~the owner shall include~~ the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting

Representative David Brandemuehl, Chair
Senator Roger Breske, Chair

September 28, 2000

highways, in the absence of any increase by the department to the highway's through-lane capacity."

NOTE: Some land divisions will result in facilities located in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that they are the department is not responsible for further noise abatement for traffic and traffic increases on the existing highway, in the absence of any increase by the department to the highway's through-lane capacity.

ITEM 5 of Mr. Ford's memo deals with "grandfather" rights and initial applicability of the original 1956 rule, the February 1, 1999 rule, and this rule revision. The Department has proposed to create s. Trans 233.012(2) on page 18 of the rule to clarify applicability as follows:

Trans 233.012(2). Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist. Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and the effective date of this chapter...[revisor insert date] are subject to ch. Trans 233 as it existed February 1, 1999. [The above sentence is shown in bold in this letter for emphasis.]

If WISDOT did not object to the preliminary plat; it cannot object to the final plat. Statutory law, sec. 236.11(1)(b), Stats., reads in part:

"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."

The language in Trans 233.012 is consistent with the statute and the changes previously agreed to and documented in the Legislative Council Memorandum by Mr. Ford.

In addition to the above changes requested at the hearing, the Department has agreed to other requests submitted by members to the Committee Chair. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following additional germane modifications to the rule:

On page 18, insert SECTION 11M as follows:

SECTION 11M. TRANS 233.012(3) is created to read:

Representative David Brandemuehl, Chair
Senator Roger Breske, Chair

September 28, 2000

Trans 233.012(3). Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

On page 27, insert SECTION 21M as follows:

SECTION 21M. TRANS 233.08(2)(d) is created to read:

Trans 233.08(2)(d). In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

NOTE: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

Thank you for your consideration of this proposal.

Sincerely,


Terrence D. Mulcahy, P.E.
Secretary

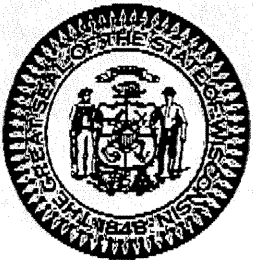
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DAVID BRANDEMUEHL

State Representative
49th Assembly District

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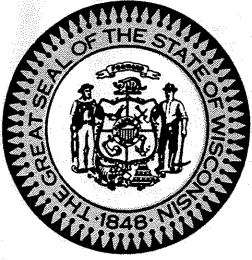
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DAVID BRANDEMUEHL

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49th Assembly District

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Jim Thiel

FAX NUMBER OF ADDRESSEE: 267-6734

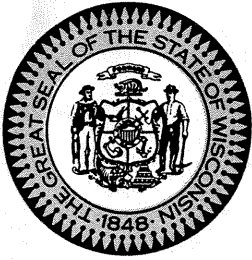
FROM: Martin Machtan, Office of Rep. Brandemuehl

MESSAGE:

Jim,

I sent the following memo from Dave, along with Secretary Mulcahy's September 28th memo to all the Assembly Transportation Committee members, Sen. Broske, Bill Ford and Bob Cook on Friday, September 29th. A hard copy of these two memos will be arriving via inter-D mail to your office early next

week.



DAVID BRANDEMUEHL

State Representative
49th Assembly District

FACSIMILE COVER SHEET

Number of pages attached, including cover page: 7

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PLEASE DELIVER TO:

Bob Cook

FAX NUMBER OF ADDRESSEE: 266-9912

FROM: Martin Machtan, Office of Rep. Brandemuehl

MESSAGE: Bob,

I sent the following memo from Dave, along with Secretary Mulcahy's September 28th memo to all the Assembly Transportation Committee members, Sen. Breske, Bill Ford and Jim Thiel on Friday, September 29th. A hard copy of these two memos will be arriving via inter-A mail to your office early next week.



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TRANSMISSION OK

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CONNECTION ID
START TIME 09/29 15:54
USAGE TIME 02'55
PAGES 7
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DAVID BRANDEMUEHL
State Representative
49th Assembly District

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PLEASE DELIVER TO:

Bob Cook

FAX NUMBER OF ADDRESSEE: 266-9912

FROM: Martin Machtan, Office of Rep. Brandemuehl

MESSAGE: Bob,

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION
FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation
RE: Clearinghouse Rule 00-109
DATE: September 29, 2000

The purpose of this memorandum is to inform you of the agreements reached with the Department of Transportation (DOT) with respect to Clearinghouse Rule 00-109 (CR 109) and to explain my decision not to hold an executive session of the Assembly Committee on Transportation on the rule. In response to concerns expressed at the Committee's September 20, 2000 meeting on CR 109, and concerns expressed by some members of the Transportation Committee in letters to my office, the DOT has agreed to make the following amendments to CR 109:

1. Prohibit the DOT from requiring an owner of land to *dedicate land* for vision corners at the intersection of a highway with a state trunk or connecting highway. Under the amended rule, an owner of land would have a right to provide for vision corners by means of granting an *easement*, rather than dedication of land, at the owner's option.
2. Address the concerns expressed by businesses that *users* of land should not be held responsible for installing noise barriers. This would be done by *deleting* the language in s. Trans 233.105 (1) that owners or users of land adjacent to a state trunk highway are responsible for any noise abatement measures warranted under ch. Trans 405 unless the noise

results from geographic expansion of the through lane capacity of a highway. The amended rule will only state that the DOT is not responsible for noise abatement measures unless the noise results from geographic expansion of the through lane capacity of a highway.

3. Allow structures or improvements lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999 or lawfully placed within a setback area prior to a land division to be maintained or, if unintentionally or tortiously destroyed, to be substantially replaced in kind.
4. Require DOT to produce, at least once every two years, detailed reference maps to be used in DOT district offices identifying state trunk and connecting highways subject to the setback requirements (generally 50' or 110') of s. Trans 233.08 (2) (c). In a note to s. Trans 233.08 (2) (d), DOT also states its intent to make these maps, as well as the more general maps identifying the highways subject to s. Trans 233.08 (2) (c), "readily available to the public through the internet and through other effective means of distribution."

In deciding not to hold an executive session on CR 109, I am fully aware that there are other issues some legislators think should be addressed in the rule. However, a great deal of time and effort has been put into the revisions contained in CR 109 that substantially improve ch. Trans 233 from the standpoint of persons who own land adjacent to highways. As you know, CR 109 contains 10 revisions to ch. Trans 233 that were worked out in extensive negotiations between the subcommittee I established to review ch. Trans 233, the Coalition to Reform Chapter Trans 233, and the DOT. In addition, the DOT has agreed to adopt the four amendments to CR 109 explained above, all of which improve ch. Trans 233 from the standpoint of landowners.

The position of the DOT is that they would not agree to other amendments to CR 109 suggested at our September 20 meeting and by individual members of this committee. Therefore, if we were to hold an executive session on this rule, our only option would be to vote to object to CR 109 in whole or in part. This would have the effect of referring CR 109 to the Joint Committee for Review of Administrative Rules. In turn, this would have the effect of either delaying or killing all of the concessions favorable to landowners that we have worked so hard to include in CR 109. I think the changes we negotiated provide a good balance between the needs of landowners and the needs of the state and I do not want to risk losing them.

Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION
FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation
RE: Clearinghouse Rule 00-109
DATE: September 29, 2000

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Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.



STATE REPRESENTATIVE
STEVE KESTELL

27TH ASSEMBLY DISTRICT

September 26, 2000

Representative David Brandemuehl, Chairman

Room 317 North
State Capitol

Dear Chairman Brandemuehl,

We are writing to share our continuing concerns with Rule Trans 233 and CHR 109. Please consider this letter to be our request that the Assembly Transportation Committee be convened in Executive Session to address CHR 109.

Although we continue to have serious concerns with the larger question of Trans 233, we understand that the issue before us at this time is CHR 109. Accordingly, our recommendations relative to CHR 109 are listed below.

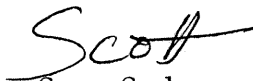
1. Trans 233.11(3)(b) Specify that the Department *shall* consider all of the following.
2. Trans 233.11(3)(D) Require changes that allow property owners the full use of their land. Property owners should not be required to waive their rights to just compensation.
3. Trans 233.012(2) Require that existing structures and improvements be grandfathered and that maintenance and replacement be allowed.
4. Require the DOT to publicize the details of Trans 233 and inform those property owners affected by the rule.
5. Require that the procedure manual be part of the rule.
6. We are also concerned about the wording detailing the time limits for review of a land division. The time should not be reset after each request

for information that is made by the Department. The Department should be allowed one opportunity to request additional information.

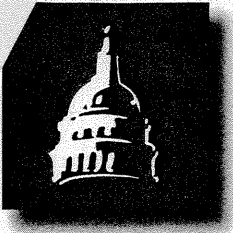
Sincerely,



Steve Kestell
State Representative



Scott Suder
State Representative



JEFF STONE

STATE REPRESENTATIVE
82ND DISTRICT

September 26, 2000

Representative David A. Brandemuehl, Chair
Assembly Transportation Committee
Room 308 North, State Capitol

Re: CHR 109

Dear Representative Brandemuehl:

I would like to take this opportunity to advise you of my outstanding concerns with Clearinghouse Rule 00-109. Moreover, please consider this communication to represent a request that you convene a meeting of the Transportation Committee in Executive Session to take action of CR 00-109.

Hopefully, the executive session could yield a simple written request from our Committee that the Department of Transportation finds the following concerns well taken and agree to modify CR 00-109. Such an action will avoid objections to the rule and delays in implementation of the provisions contained therein.

I would like to see modifications made to CR 00-109, which would:

- Allow landowners the ability to place improvements within the setback area at their own risk by waiving their right to future compensation. A recording with the register of deeds would ensure that property transfers would not allow future owners of the same property to seek compensation. DOT would and should continue to maintain ultimate veto authority if there is a legitimate safety concern.
- State specifically that "like-kind replacements" are included in the grandfathering of a property. Therefore, if a grandfathered improvement, such as a sign, wears out or is damaged, a new similar replacement could be erected without making landowner subject to a T233 review of their property.

CAPITOL OFFICE:
POST OFFICE BOX 8953
MADISON, WISCONSIN 53708-8953
(608) 266-8590
TOLL-FREE: (888) 534-0082
FAX: (608) 282-3682
REP.STONE@LEGIS.STATE.WI.US

HOME:
7424 W. FOREST HOME AVENUE
GREENFIELD, WISCONSIN 53220
(414) 321-7299



JEFF STONE

STATE REPRESENTATIVE
82ND DISTRICT

- Require the DOT to provide notice to landowners when the setback distance is modified.
- Provide applicants with greater certainty as to when a special exception will be granted.

Thank you for your favorable consideration of my requests.

Sincerely,

Jeff Stone
Representative 82nd District

CAPITOL OFFICE:
POST OFFICE BOX 8953
MADISON, WISCONSIN 53708-8953
(608) 266-8590
TOLL-FREE: (888) 534-0082
FAX: (608) 282-3682
REP.STONE@LEGIS.STATE.WI.US

HOME:
7424 W. FOREST HOME AVENUE
GREENFIELD, WISCONSIN 53220
(414) 321-7299



JOHN TOWNSEND

STATE REPRESENTATIVE • 52ND DISTRICT

September 26, 2000

**Representative David Brandemuehl
Chairman, Transportation Committee
Wisconsin State Assembly
Room 317 North
State Capitol
Madison, WI 53708**

Dear Chairman Brandemuehl:

CR 109 contains several proposals that will address citizen concerns about Trans 233. However, if certain provisions of CR 109 are restated the citizen concerns will be better addressed.

One provision that needs better clarification is related to grand fathering of improvements. Will these improvements be allowed to be replaced with "like-kind replacements" in the event they are damaged or need to be replaced because of wear? This issue needs to be clarified.

The criteria for granting a special exception needs to be amended so there is greater certainty that a special exception will be approved. Nebulous criteria will generate many requests for special exceptions. This will create additional costs both for the DOT and the public sector.

Under CR 109 DOT will issue public notices when it changes highway classifications. The requirement for public notice is often accomplished by placing the notice in a designated publication. However, the designated publication may not be widely read. The DOT should notify each affected property owner when a highway classification change is made.

Page two

The most contentious issue is related to property owners waiving any compensation claims against the State of Wisconsin should they make any improvements in the set back zone without the granting of a special exception. This is an area where compromise needs to be further explored. A possible area of compromise is to give the DOT veto authority when there is legitimate safety concern.

Your consideration of these points will be greatly appreciated.

Cordially,

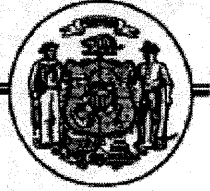
A handwritten signature in black ink, appearing to read "John F. Townsend", with a large, stylized flourish at the end.

**John F. Townsend
Representative 52nd Assembly District**

Larry Balow

State Representative

68th Assembly District



September 22, 2000

Representative David Brandemuehl
Chair, Committee on Transportation
Room 317 North, State Capitol
Madison, WI 53708

Dear Representative Brandemuehl:

In response to your recent memo I am writing to respectfully request an executive hearing on CH 109. I believe a hearing is needed to address set back and variance issues related to Trans 233, that in my mind, remain unresolved.

Currently I am working on specific language to provide for you and committee members as early as next week. If you have any questions please do not hesitate to contact me at home or in Madison.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Larry Balow".

LARRY BALOW
State Representative
68th Assembly District

EUGENE HAHN

State Representative • 47th Assembly District



Chairman:
Assembly Committee on
Tourism & Recreation

9-21-2000

Dear Dave,

I still am not sure where we are going with "CR 109" and expect there is something cooking that I am not aware of.

Like Pat Osborne suggestion of "landowners ability to have improvements in the setback area". I believe D.O.T. had some alternatives but that could be wrong. They should not be eligible for compensation.

Plus D.O.T. stating special set backs could be accommodated for places like the New Bug Village Testimony.

So if the answers are not in print to a satisfaction of the legal beagles we better not allow this Rule to move forward.

P.S. With 9 registered in opposition we better take care!

Sincerely,





**STATE OF WISCONSIN
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS**

P.O. BOX 8952
STATE CAPITOL
MADISON, WISCONSIN 53708-8952
608-266-7015
TOLL-FREE 1-888-534-0091
FAX: 608-266-7038
E-MAIL: rep.gronemus@legis.state.wi.us

DISTRICT ADDRESS:
P.O. BOX 676
WHITEHALL, WI 54773-0676
715-538-4130
FAX: 715-538-4070

September 19, 2000

Representative David Brandemuehl
Chairman – Assembly Committee on Transportation
Room 317 North, State Capitol
Madison, WI 53708

Mr. Chairman and Dear Dave:

As I have indicated to your office, I will be unable to be present for the committee hearing this Wednesday, September 20th, on Clearinghouse Rule 00-109 due to district commitments made prior to receiving notice of the hearing.

I have reviewed the documents provided to me on the rule by you and communications I have received from interested parties to the rule. It is my analysis that there is still a need for more work to be done on the rule to address remaining apparent concerns and objections to it. Therefore, I would like to urge you and the committee membership to formally Object to the rule and thus set in motion the process for the committee and the department to formulate a final rule more acceptable to all.

Once again, my regrets that district commitments keep me from being present on September 20th, and I appreciate your consideration of my analysis of the rule and request for committee Objection to it.

Sincerely,

BARBARA GRONEMUS
State Representative
91st Assembly District
Member: Assembly Committee on Transportation

BG/wrc

Machtan, Martin

From: VanderSanden, Patrick
Sent: Wednesday, September 27, 2000 9:30 AM
To: Machtan, Martin
Subject: CHR 109

Marty,

In response to Rep. Brandemuehl's memo about CHR 109, Joe just wanted to check that you know he had hoped for an exec on the rule. He is concerned about the setback & special exemption portions of the rule.

I know this is past the deadline on the memo, but Joe said he had indicated this at the committee last week. So I hope that is ok?

Thanks.

Patrick Vander Sanden
Legislative Assistant
Office of State Representative Joseph K. Leibham
(608) 266-0656



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TELECOPY TRANSMITTAL LETTER

Please deliver the following page(s):

To: Rep. Brandemuehl

From: Tom Larson

Date: 9-26-00

Total # of Pages Including Transmittal Page 3

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Web Site URL <http://www.wra.org>

WILLIAM MALKASIAN, CAE, Executive Vice President
E-mail • wem@wra.org

Memorandum

To: Members of Assembly Transportation Committee
From: Tom Larson and Mike Theo
Date: September 26, 2000
Re: Trans. 233

As you know, Section Trans. 233 of the Wisconsin Administrative Code ("Trans. 233") has generated a number of concerns from groups and individuals from around the state. For the past eighteen months, we have been working closely with the Department of Transportation ("DOT") to amend the rule to address these concerns. The DOT has been very receptive to these concerns and has made a number of changes to the rule. However, we have been unable to reach an agreement on one of the fundamental concerns – setbacks.

Like the current version of Trans. 233, the proposed rule continues to deny landowners the reasonable use of their property along all state and connecting highways in an effort to preserve an inexpensive source of land for future highway expansion. While we recognize and support the need to expand highways to provide a safe and effective transportation systems, we believe that this need must be balanced with the rights of individual landowners to enjoy the reasonable use of their property.

Primary Concern

- Preservation of land for possible future expansion of highways at the expense of individual landowners (Trans. 233.11(3)(d))– The proposed rule unjustly requires landowners to waive their right to future compensation related for the removal or damage of improvements placed within the setback area in exchange for a special exception. In addition, the propose rule denies those landowners who do not receive a special exception the reasonable use of their property located along highways even if they agree to waive their rights to compensation resulting from future highway expansion.

Recommended Solution

- Grant landowners the ability to enjoy the reasonable use of their property by allowing them to place improvements within the setback area: (1) without waiving their right to future compensation if they receive a variance, and (2) by waiving their right to future compensation if they are denied a variance.

Obviously, this is a very important issue to our members and the thousands of individual landowners they represent. We have not contacted you in the past on this issue because we were hopeful that we could resolve this issue directly with the DOT. At this point, we are no longer optimistic that such a result will occur. We are asking for your help in stopping this rule from proceeding until the concerns of individual landowners are adequately addressed.

Thank you in advance for your time and consideration of this issue. If you have any questions or comments, please contact Tom Larson or Mike Theo at (608) 241-2047.



September 22, 2000

Dave Brandemuehl
317 North
State Capitol
Madison, WI 53708

1837 West Wisconsin Ave.
P.O. Box 1297
Appleton, Wisconsin 54912-1297
Phone (920) 731-4168
Fax (920) 731-5673

RE: Trans 233

Mr. Brandemuehl,

After working under the above named administrative rule for over a year, evidently someone decided that more paperwork and wasted time is a good thing. I already have to do much more additional work for my clients to complete the previous requirements of Trans 233. Now the D.O.T. requires the property owner to sign with a notary on an agreement drafted by the D.O.T., which requires additional mailings and time. The D.O.T. also now requires a driveway permit application to be completed after a variance for the same driveway has been requested and approved by the D.O.T. office. This same driveway is shown on our maps with no access shown along the remainder of the frontage. The application again requires more time to complete and more mailings.

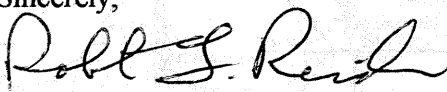
The driveway in one particular project I worked on was located in the City of Appleton serving an existing residence but yet the D.O.T. in their infinite wisdom decides it makes more sense to waste our time and our clients' money to complete a bunch of wasted paperwork.

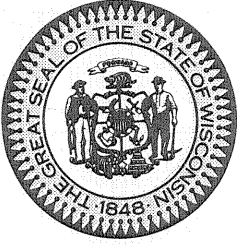
I know that Trans 233 in concept is a good planning tool for the D.O.T., but someone needs to pull back the reins and let them know that they are overstepping their limits in many situations. Limiting driveways on highways and especially high volume highways does definitely improve the flow of traffic, but it makes no sense for the D.O.T. to impose their stupid requirements in areas that already have been developed.

The highway setback area is also an issue, which I have problems with because it can have such a large impact on the value of a parcel of land. An existing parcel is not subject to the highway setback requirements except as a building setback requirement. However if one existing business buys the same existing adjoining parcel to improve their business, that same parcel is now subject to the highway setback requirement which limits everything but landscaping. That makes no sense to me because the requirements apply for one party but not another.

I would appreciate anything you could do to have this rule reviewed and revised with input from more sources than just the D.O.T. in hopes of making its implementation more practical.

Sincerely,


Robert F. Reider, PLS



DAVID BRANDEMUEHL

*State Representative
49th Assembly District*

TO: Members, Assembly Committee on Transportation

FROM: Rep. David Brandemuehl, Chair

DATE: September 18, 2000

RE: Mr. William Ford's Legislative Council Staff Memorandum on TRANS 233 for upcoming Committee Hearing

Attached you will find a Legislative Council Staff Memorandum regarding proposals to revise Clearinghouse Rule 00-109 (TRANS 233). Mr. William Ford has prepared the memorandum in order to "provide, for the September 20, 2000 meeting of the Assembly Committee on Transportation, a concise description of the various provisions of CR 109 that are proposed to be amended and what those proposed revisions are." Please bring the memo to the hearing on Wednesday. Thank you for your time and attention.

Committee Memberships:

Transportation (Chair); Education; Highway Safety; Natural Resources; Urban & Local Affairs; Rustic Roads Board; Transportation Projects Commission

Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-1170 • Rep.Brandemuehl@legis.state.wi.us

Home: 13081 Pine Road • Fennimore, Wisconsin 53809 • (608) 822-3776

Toll-Free: (888) 872-0049 • **Fax:** (608) 282-3649



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVE DAVID BRANDEMUEHL, CHAIRPERSON, ASSEMBLY COMMITTEE ON TRANSPORTATION

FROM: William Ford, Senior Staff Attorney *wf*

RE: Proposals to Revise Clearinghouse Rule 00-109

DATE: September 15, 2000

INTRODUCTION

This memorandum describes eight proposals to revise Clearinghouse Rule 00-109 (CR 109). CR 109, which has been referred to the Assembly Committee on Transportation, revises ch. Trans 231 and 233 of the Wisconsin Administrative Code. Chapter Trans 231 designates standards used by the Department of Transportation (DOT) in issuing permits for constructing or altering driveways between state trunk and connecting highways (state trunk highways) and abutting property. Chapter Trans 233 establishes DOT standards for review of divisions of land (e.g., the creation of a subdivision) that abut state trunk highways.

CR 109 is being promulgated by DOT in response to concerns expressed with respect to ch. Trans 233 as revised effective February 1, 1999. Many of the provisions of CR 109 implement agreements to amend Trans 233 reached between the Coalition to Reform Trans 233 and the DOT in meetings with the Subcommittee on Review of Chapter Trans 233 of the Assembly Committee on Transportation. These are described in a memorandum I wrote to you, dated February 18, 2000. (Copy attached.) Other provisions of CR 109 are being adopted by the department in response to testimony and written comments received by DOT with respect to Trans 233.

This memorandum describes proposals to revise CR 109 made in a memorandum, dated August 11, 2000 (copy attached), from a coalition ("the coalition") of businesses and associations listed in the attachment to this memorandum. Note that some of the proposals to revise CR 109 made in the August 11, 2000 memorandum are no longer at issue because DOT has included them in drafting the current version of CR 109. I have not included these resolved proposals in this memorandum.

The memorandum does not attempt to reiterate the arguments made by the coalition in favor of its proposals to revise CR 109 or the rationale presented by DOT for the provisions of CR 109. The coalition arguments in favor of its proposals are made in its memorandum and DOT's rationale for CR 109 is contained in its analyses submitted to the Legislature with CR 109 (copy attached). The purpose

of this memorandum is to provide, for the September 20, 2000 meeting of the Assembly Committee on Transportation, a concise description of the various provisions of CR 109 that are proposed to be amended and what those proposed revisions are.

PROPOSALS TO REVISE CR 109

1. Further Narrow the List of Highways With Respect to Which a 50 or 110 Foot Setback is Required

Section Trans 233.08 generally provides that no person may (without obtaining a "special exception") "erect, install or maintain a structure or improvement within a setback area." A "setback area" is defined to mean an area within 110 feet of the centerline of the state trunk highway or within 50 feet of the nearer right-of-way line of a state trunk highway, whichever is furthest from the centerline. (Setback areas may be eight or 10 feet less if certain local ordinances are applicable.)

CR 109 would provide that the 50- or 110-foot setback requirement would apply only to specific state trunk highways. According to DOT, CR 109 would reduce the number of miles to which the setback requirement applies to 4,312 miles of highway from the 7,320 miles of highway under current ch. Trans 233. The highways to which the 50- or 110-foot setback would apply (and which would be identified on a map) are:

- a. State trunk highways that are part of the national highway system.
- b. State trunk highways that are classified as principal arterial highways.
- c. State trunk highways in cities and villages, within three miles of the limits of a first-, second- or third-class city, or within 1-1/2 miles of a fourth-class city or village.
- d. State trunk highways with average daily traffic of 5,000 or more.
- e. State trunk highways with current and forecasted congestion projected to be worse than level of service "C" within the following 20 years. (DOT classifies highways based on current and forecasted traffic congestion from levels "A" to "F". Level of service "A" represents the best operating conditions, and level of service "F" the worst operating conditions. Level of service "C" is the middle level of service within this categorization.)

The coalition proposes to delete the highways identified in pars. c. and d., above from the list of highways subject to a 50- or 110-foot setback requirement. The coalition proposes that DOT not impose a setback requirement with respect to these highways. [See item 2., below.]

2. Delete the 15-Foot Setback Requirement for State Trunk and Connecting Highways Not Subject to the 50- or 110-Foot Setback Requirement

CR 109 would provide that those state trunk highways not subject to a 50- or 110-foot setback requirement would be subject to a 15-foot setback requirement (unless a "special exception" applies).

The coalition proposes to delete the 15-foot setback requirement for these highways.

3. Revise the "Special Exception" Process for Reducing the Setback Area and for Authorization to Place a Structure or Improvement in the Setback Area

CR 109 would implement a system under which an owner of land adjacent to a highway subject to a setback requirement could apply to DOT for a "special exception" either to reduce the setback area or to place a structure or improvement within a setback area. The "special exception" procedure is intended by DOT to make it easier for a landowner to place a structure adjacent to a highway than is possible under the current procedure for obtaining a "variance" under existing ch. Trans 233.

CR 109 would authorize a special exception in "appropriate cases when warranted by specific analysis of the setback needs." CR 109 provides that the following may be considered when considering a request for a special exception:

- a. The structure or improvement proposed and its location.
- b. The vicinity of the proposed land division and its existing development pattern.
- c. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
- d. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C" within the following 20 years.
- e. The objectives of the community, developer and owner.
- f. The effect of the proposed structure or improvement on other property or improvements in the area.
- g. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
- h. The impact of removal of all or part of the structure or improvement on the continued viability or conforming use of the business, activity or use associated with the proposed structure or improvement.
- i. Transportation safety.
- j. Preservation of the public interest and investment in the highway.
- k. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of the neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.

If a special exception is granted to *reduce a setback* area, CR 109 provides that the DOT shall pay compensation for any subsequently required removal of a structure or improvement placed outside the reduced setback area on land that the DOT acquires for a transportation improvement. If a special exception is granted to allow a structure or improvement within a setback area, CR 109 provides that

DOT will not compensate the owner for removal of the structure or improvement. In addition, CR 109 provides that a structure or improvement will be granted a special exception to be placed within a setback area only if it is determined that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business activity or use associated with the proposed structure or improvement and will not adversely affect the community in which it is located.

The coalition proposes to delete criteria "B, C, D, E and G" from CR 109.

4 Allow the Placement of a Structure or Improvement in a Setback Area Without Obtaining a Special Exception, Unless it Would Create a Safety Hazard, if the Landowner Waives any Right to Compensation for Required Removal of the Structure or Improvement. Require That DOT Compensate a Landowner for any Structure or Improvement Placed Within a Setback Area Under a Special Exception

The coalition proposes that CR 109 be revised so that a landowner who wishes to place a structure or improvement within a setback area must request a special exception from DOT. If the special exception is granted, the landowner would be entitled to compensation if DOT requires removal of the improvement or structure in the future. If the DOT determines not to grant the special exception, the landowner may construct the improvement or structure within the setback area, unless it would present a safety hazard, but the landowner must waive any right to compensation for removal of the structure or improvement in the future.

5. Clarify Which Version of ch. Trans 233 Land Division Plats are Subject to Depending Upon the Date DOT Approved the Land Division

Section Trans 233.012 (2) provides that land division plats that received *final* approval prior to February 1, 1999 are subject to Trans 233 as it existed before February 1, 1999 rather than the rules as revised effective February 1, 1999. This section also provides that land division plats that received *preliminary* approval prior to February 1, 1999 are not subject to ch. Trans 233, as revised effective February 1, 1999, if there is no substantial change between the preliminary and final plat.

The coalition proposes that land division plats that received *preliminary* approval prior to February 1, 1999 be subject to Trans 233 as it existed before February 1, 1999, regardless of any change between the preliminary plat and the final plat. In addition, the coalition proposes that CR 109 be clarified to explicitly state that if a land division is given final approval prior to February 1, 1999, it is subject to ch. Trans 233 as it existed before February 1, 1999, regardless of when the preliminary plat was approved by DOT.

6. Provide That DOT May Require a Land Divider to Provide "Vision Corners" Only by Creation of an Easement and Not by Dedication of Land

Section Trans 233.105 (2) (intro.) authorizes DOT to require an owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway. The purpose of a vision corner is to provide for the unobstructed view of highway intersection by approaching vehicles. This section also provides that DOT shall allow an owner of land to grant a permanent vision corner easement in lieu of dedication whenever dedication makes it difficult for the owner to comply

with local ordinances.

A "dedication" of land requires an owner to transfer possession of the land. An "easement" allows the owner to retain title to the land, but prohibits either the owner or a subsequent transferee from undertaking activities or placing structures on the land that would interfere with the vision corner.

The coalition proposes that the provision authorizing DOT to require the dedication of land for vision corners be deleted from s. Trans 233.105 (2) (intro.).

7. Delete the Provision That a User of Land May be Responsible for Installing Noise Barriers

Section Trans 233.105 (1) provides that owners or users of land adjacent to a state trunk highway are responsible for any noise abatement measures warranted under ch. Trans 405 unless the noise results from geographic expansion of the through lane capacity of a highway. If noise levels on a highway exceed the levels specified in ch. Trans 405, table 1, the land division map is required to provide notice of this fact and that owners or users of land adjacent to the state trunk highway who desire noise abatement are responsible for providing it.

The coalition proposes that only owners, not users, of land may be held responsible for noise abatement.

8. Exempt Land Divisions That Are Changes in the Form of Ownership of Existing Plats, Structures and Improvements From Being Reviewed by the DOT Under ch. Trans 233

Section Trans 233.03 (5) (a) 1. provides that if a land division map submitted for review under ch. Trans 233 is a "technical land division," the reviewing authority shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map. Section Trans 233.015 (7m) defines "technical land division" as a land division involving a structure or improvement that has been situated on the real property for at least five years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at least five years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least five years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.

The coalition proposes that land divisions that involve changes in the form of ownership of existing plats, structures and improvements not be submitted to DOT for review under ch. Trans 233.

Attachments



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: February 18, 2000
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: William Ford, Senior Staff Attorney
SUBJECT: Agreements Reached to Amend Ch. Trans 233

1. Introduction

This memorandum describes agreements to amend Wis. Adm. Code ch. Trans 233 reached between the Coalition to Reform Trans Ch. 233 ("the Coalition") and the Department of Transportation (DOT) at the February 17, 2000 meeting of the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. It is the intent of the subcommittee that the DOT, the Coalition and other interested parties will cooperate in developing draft administrative rules to implement the agreements described in this memorandum and that DOT will promulgate these as amendments to ch. Trans 233. It is also the intent of the subcommittee that the DOT, the Coalition and other interested parties will continue to work together to develop amendments to s. Trans 233.08, relating to setback requirements and restrictions.

A more detailed description of the issues discussed by the subcommittee is contained in a memorandum I provided to you, dated January 1, 2000, entitled *Issues Raised With Respect to Chapter Trans 233*.

2. Process for Approving Land Divisions

a. DOT will transfer the authority to review land divisions under ch. Trans 233 from the state office to its district offices by a date that is no later than February 14, 2001.

b. DOT will provide an appeal process under which persons not satisfied with a district decision with respect to a land division may appeal to DOT's central office.

c. DOT will develop implementing procedures at the district level to assure consistency and will provide uniform guidance in DOT's facility development manuals and in other manuals specified and cross-referenced in ch. Trans 233.

d. A request for review of a land division will receive an automatic certificate of nonobjection if DOT does not act on the request within 20 days of its submission, unless an extension of the 20-day time period is mutually agreed to.

e. DOT shall request any additional information it determines is necessary to review a proposed land division within five working days after receiving a request for a review. Upon receipt of the additional information, the 20-day time period will again begin running. The 20-day review procedure shall be specified in ch. Trans 233.

f. DOT's central office will not, on its own initiative, reverse a certificate of nonobjection provided by a DOT district office with respect to a proposed land division. However, if an affected third party objects to a certificate of nonobjection provided by a DOT district office, DOT's central office may reverse the district office's decision if it finds the objection by a third party to be meritorious.

3. Explicit Approval of Plats Approved Prior to the Effective Date of Ch. Trans 233 and of Improvements and Structures Placed Prior to the Effective Date of Ch. Trans 233

a. DOT will revise ch. Trans 233 to give explicit approval to structures and improvements legally placed in a setback area prior to February 1, 1999. (Chapter Trans 233 took effect on February 1, 1999.)

b. DOT will revise ch. Trans 233 to explicitly state that plats that have received preliminary or final approval prior to February 1, 1999 will not be subject to the new standards under ch. Trans 233 as promulgated effective February 1, 1999.

4. Exclude Condominium Developments From Ch. Trans 233

DOT agrees to revise ch. Trans 233 to state that condominium conversion plats on existing developed property are exempt from ch. Trans 233 and are not subject to fees under s. Trans 233.13 if the existing development has been in existence five years and if the condominium development has traffic impacts similar to the existing development.

5. DOT Guidelines for Administering Ch. Trans 233

DOT agrees that its drafted guidelines for interpreting ch. Trans 233 will be incorporated by reference into ch. Trans 233. Furthermore, DOT states that these incorporated guidelines will be referenced by date such that future revisions to the guidelines will only become effective if ch. Trans 233 is amended, which requires legislative review.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:jal:wu;ksm;rv