

# New Law of O.H.W.M

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# New Law of O.H.W.M

## 59.692 (1 h)

If a professional land surveyor licensed under ch. 443, in measuring a setback from an ordinary high-water mark of a navigable water is required by an ordinance enacted under this section, relies on map, plat, or survey that incorporates or approximates, the ordinary high-water mark in accordance with s.236.025, the setback measured is the setback with respect to a structure constructed on that property if all the following apply:

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- (a) The map, plat, or survey is prepared by a professional land surveyor, licensed under ch. 443, after April 28, 2016. The same professional land surveyor may prepare the map, plat, or survey and measure the setback.
  
- (b) The department has not identified the ordinary high-water mark on its Internet site as required under s.30.102 at the time the setback is measured.

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## 236.025 Ordinary high water marks

Ordinary high water marks. (1) For purposes of ss. 236.15 (1) (ag) and (d) and 236.20 (2) (g), a professional land survey may do any of the following:

- (a) Incorporate in a map, plat, or survey an ordinary high water mark that has been determined by the department of natural resources or otherwise determined pursuant to law.
- (b) Approximate the ordinary high water mark and incorporate that mark into a map, plat, or survey.

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## 236.025 (cont.)

(2) For the purposes of sub. (1) (b), the location of the approximate ordinary high water mark shall be the point on the bank of a navigable stream or on the shore of a lake up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics. If the approximate location of the ordinary high water mark is difficult to determine, a professional land surveyor may consider other points on the bank or shore for purposes of approximating the location of the ordinary high water mark.

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## 236.025 (cont.)

(3) For the purpose of this section, a map, plat, or survey that shows an approximate ordinary high water mark shall state on its face that the mark is shown for reference only.

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## 59.692 (1 h) (b)

- ▶ We need to verify that the DNR has not identified the ordinary high-water mark on its Internet site.
- ▶ We do this by going to the WDNR Surface Water Data Viewer (SWDV)
- ▶ [www.dnr.wi.gov/topic/surfacewater/swdv/](http://www.dnr.wi.gov/topic/surfacewater/swdv/)
- ▶ Once we “Launch” the site we have to search the body of water in question by “Zooming” into the location.
- ▶ Now highlight the layer “Permits & Determination”
- ▶ Determinations are identified by a blue pentagon symbol

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- ▶ Click on the blue pentagon symbol to identify the information about the determination, normally a Docket # will be shown
- ▶ You can now click on “Additional Information” and information about the Docket # will be brought up in the window.
- ▶ Any determinations made prior to 2014 usually no information will be provided
- ▶ If no information is provided you will need to contact the local WDNR Office and request copies of the Docket # which will provide who and what was done during this determination.

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- ▶ If no WDNR determination is shown on the body of water that is in question you as the surveyor have a choice to make.
  - Request a determination by the WDNR or local municipality.
  - Survey and determine your own location for the OHWM or Approximate OHWM

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## Ordinary High Water Mark Definition

- ▶ The ordinary high water mark shall be the point on the bank of a navigable stream or on the shore of a lake up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics

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## Common Indicators of the OHWM

- ▶ Stains on rocks or other shoreline structures
- ▶ Bare dirt, marks on trees
- ▶ Exposed roots running along the shore
- ▶ Changes in vegetation from water plants to upland plants.

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## No indicators found on Site

- ▶ If none of the previous indicators are located within the surveyed site you may need to go off site to find visible indicators and then carry that elevation onto the surveyed site. This can be done from one side of the lake to another.

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## OHWM vs. Waters Edge

- ▶ Remember that the Ordinary High Water Mark may not be the “Waters Edge”
- ▶ Chances are you may have both OHWM and Waters Edge identified on your map, plat or survey.

# New Law of O.H.W.M

**IF YOU DO NOT FEEL CONFIDENT IN DETERMINING AN ORDINARY HIGH WATER MARK ALWAYS CONTACT THE LOCAL OFFICE OF THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES!**

# Basics of the WI Platting Law

Going back to the basics  
strengthens your foundation.

# Basics of the WI Platting Law

## ▶ *Purpose and Intent of Ch. 236, Wis. Stats.*

- Further orderly layout and use of land;
- Provide safe streets and highways;
- Provide for proper ingress and egress;
- Ensure proper monumentation of boundaries
- Convey by accurate legal descriptions
- Provide public access to navigable water
- Ensure adequate sewer, water and utilities

# Basics of the WI Platting Law

*When is a subdivision plat required?*

A subdivision plat is required any time a landowner or landowner's agent divides a lot, parcel, or tract of land for the purpose of sale or building development, where:

# Basics of the WI Platting Law

*When is a subdivision plat required?*

- ▶ The division creates five or more parcels or building sites (lots or outlots) of 1.5 acres each or less in area, –OR–
- ▶ Successive divisions within a five year period create five or more parcels or building sites (lots or outlots) of 1.5 acres each or less in area.

# Basics of the WI Platting Law

*More restrictive “definitions of subdivision”*

- ▶ Local ordinances may be more restrictive, and may require a subdivision plat when creating larger or fewer parcels or building sites than defined by statute. Always check local subdivision requirements.

# Subdivision Plat Review Process

- ▶ The “process” is laid out in Ch. 236, Wis. Stats.
  - “flow of information”
  - “time limits”
- ▶ Governs state and local level review.

# Plat Review Authorities

## Approving vs. Objecting

- ▶ Who are they?
- ▶ What is the difference?

# Approving vs. Objecting Authorities

- ▶ Approving Authorities are:
  - Cities & Villages
  - Towns & Counties... when the plat is in the town
    - Exception...
- ▶ Approving Authorities **“Approve Plats”**

# Approving vs. Objecting Authorities

- ▶ Approving Authorities
  - extensive and detailed requirements
  - can require public improvements (limitations)
  - s. 236.13, Wis. Stats. Specifies the “basis for approval” for plats

# Approving vs. Objecting Authorities

- ▶ An Approving Authority's ordinance may have more restrictive surveying, monumenting, mapping and approving requirements.

*....may not have more restrictive time limits, deadlines, notice requirements or be more restrictive in other provisions that provide protections for the subdivider.*

# Approving vs. Objecting Authorities

- ▶ Objecting Authorities are:
  - state agencies: DOA & DOT
  - county planning agencies (currently 18 in WI)
    - exceptions...
- ▶ Objecting Authorities **“Certify Plats”**

# Approving vs. Objecting Authorities

## Objecting Authorities

Review plats for conflicts with “General Requirements”

- consistency with parkland plan
- county highways
- airports
- schools
- *other planned public developments*

# Approving vs. Objecting Authorities

## ▶ Frequently Asked Questions:

- What is a “primary” approving authority?
- What is a County Planning Agency?

# Submittal Process for State & Local Review

- ▶ Subdivider or their agent (surveyor) submits plat to “approving authorities”.
  - (s. 236.11, Wis. Stats.)
- ▶ Subdivider or their agent (surveyor) submits plat to Dept. of Administration.
  - (s. 236.12, Wis. Stats.)

# Submitting Plats for Approval

When a final plat is submitted, the approving authority must act within 60 calendar days of a complete submittal:

- ▶ Approve, approve with conditions, or reject the plat.
- ▶ Provide conditions of approval or reasons for rejection in writing to the subdivider.

# Submitting Plats for Approval

- ▶ Frequently Asked Questions – Final Plats
  - Can local ordinances have different time limits?
  - What is a complete submittal?
  - Is “tabling” consideration of a plat within the time limit sufficient?
  - Basis for denying a plat?

# Submitting Plats for State Certification

- ▶ Within **2 calendar days**, the Dept. of Administration(DOA). Transmits the plat to the “objecting review authorities”.
- ▶ These objecting authorities must act within **20 calendar days** by notifying the department of their certification or objection.
- ▶ DOA must certify or object to the plat within **30 calendar days** and acts on behalf of all objecting authorities.

# "Certified Plat" -- Certified for What?

- ▶ *“There are no objections to this plat with respect to s. 236.15, 236.16, 236.20, 236.21 (1) and (2), Wis Stats. as provided by s. 236.12, Wis. Stats.”*

There are no objections to this plat with respect to  
Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2),  
Wis Stats. as provided by s. 236.12, Wis. Stats.

Certified \_\_\_\_\_, 20\_\_\_\_

Department of Administration



# "Certified Plat" -- Certified for What?

Plats are certified for compliance with:

- ▶ *s. 236.15, Wis. Stats.*
  - *Surveying Requirements*
- ▶ *s. 236.16, Wis. Stats.*
  - *Layout Requirements*
- ▶ *s. 236.20, Wis. Stats.*
  - *Final Plat Requirements*
- ▶ *s. 236.21 (1) & (2), Wis. Stats.*
  - *Certificates to Accompany Plat*

# "Certified Plat" -- Certified for What?

Plat Review certifies compliance with:

- ▶ Surveying Requirements (s. 236.15, Wis. Stats.)
  - *Monuments*
  - *Accuracy of Survey*
  
- ▶ Layout Requirements (s. 236.16, Wis. Stats.)
  - *Min. Lot Width*
  - *Min. Street Width*
  - *Lake and Stream Shore Plats*

# "Certified Plat" -- Certified for What?

Plat Review certifies compliance with:

- ▶ Final Plat (s. 236.20, Wis. Stats.)
  - *General Requirements*
  - *Map & Engineering Information*
  - *Name, Location and Position*
  - *Roads & Public Spaces*
  - *Site Conditions & Topography*
  - *Public Trust Information*

# "Certified Plat" -- Certified for What?

Plat Review certifies compliance with:

- ▶ Certificates (s. 236.21, (1) & (2) Wis. Stats.)
  - *Surveyor's Certificate*
  - *Owner's Certificate*

*Language for the Surveyor's and Owner's Certificates are prescribed by statute.*

# "Certified Plat" -- Certified for What?

## ▶ Surveyor's Certificate

- Who directed the survey, subdivision and plat.
- Description by govt. subdivision and county.
- Metes and bounds description (unless in a previously recorded subdivision plat or CSM).
- Surveyor states that it's a correct representation of all the exterior boundaries.
- The surveyor has fully complied with the provisions of Ch. 236, Wis. Stats.

# "Certified Plat" -- Certified for What?

## ▶ OWNER'S CERTIFICATE

- As owner(s), I (we) hereby certify that I (we) caused the land described on this plat to be *surveyed, divided, mapped and dedicated as represented on the plat.*
- I (we) also certify that this plat is required by s. 236.10 or s. 236.12 to be submitted to the following for approval or objection: (list the governing bodies required to approve or who may object to the plat)

# "Certified Plat" -- Certified for What?

## ▶ Consent of Mortgagee

- If the land is mortgaged, the mortgagee of record must sign an Owner's Certificate (Mortgagee Certificate).
- All Owner's Certificates must be acknowledged in accordance with *s. 706.07, Wis. Stats. (Notarized)*

# "Certified Plat" -- Certified for What?

- ▶ Plat Review certifies plats on behalf of :
  - Department of Transportation
  - 18 County Planning Agencies with 'objecting review authority' in cities and villages.

# "Certified Plat" -- Certified for What?

- ▶ What information is shown on the plat that IS NOT part of our “certification” ?
- ▶ Is this information important? If so, to whom and why?

# "Certified Plat" -- Certified for What?

- ▶ Some examples of information shown on plats that doesn't require our certification:
  - *Treasurer's Certificates*
  - *Approval Certificates*
  - *Coordinate Systems*
  - *Wetland Limits*
  - *Environmentally Sensitive Areas*
  - *Floodplain Delineations*
  - *Restrictive Covenants*
  - *Zoning Delineations*
  - *And many other items.....*

# Recording Plats

Recording time limits:

- Plats must be recorded:
  - **within 12 months** of the last approval and;
  - **within 36 months** of the first approval

# Recording Plats

## ▶ Frequently Asked Questions:

- When does the “recording time limit” start?
- What happens if there is only 1 approval?
- What if the plat or map is not recorded in time?
- Are Treasurers considered ‘approving authorities’?
- Can the Register of Deeds or Property Lister review the map or plat?

# Effect of Recording a Plat

## Description of Lots

236.28 Upon recording, all lots within the plat shall be described by the name of the plat, and by lot or block and lot within the plat, for all purposes of conveyance, devise, descent, assessment, taxation, and all other purposes.

All portions of subsequently vacated streets and alleys abutting said lots shall be conveyed to the lot owner, unless language exists to indicate otherwise.

# Effect of Recording a Plat

## Effect of Recording on Dedications

236.29 (1) When any plat is certified, signed, acknowledged and recorded as prescribed in this chapter, every donation or grant to the public or any person, society or corporation marked or noted as such on said plat *shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted.....*

# Effect of Recording a Plat

## Effect of Recording on Dedications

..... and shall be considered a general warranty against such donors, their heirs and assigns to the said donees for their use for the purposes therein expressed and no other;

# Effect of Recording a Plat

## Effect of Recording on Dedications

.....the land intended for the streets, alleys, ways, commons or other public uses as designated on said plat shall be held by the town, city or village in which such plat is situated *in trust to and for such uses and purposes.*

# Effect of Recording a Plat

## Dedications to Public Accepted by Approval

236.29 (2) When a final plat of a subdivision has been approved by the governing body ..... ..and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications.

# Basics of the WI Platting Law

*"Pick your battles big enough to matter, small enough to win."*

*Jonathan Kozol*

Time for Q & A

# Basics of the WI Platting Law

THANK YOU !!

## Plat Review

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