



FDM 7-50-1 Overview

May 17, 2022

The department has authority under Ch. 236, Stats., to participate in the subdivision platting processes for certain lands. This chapter of the manual discusses the exercise of the department's police power authority in the subdivision platting process, and the administrative rule related to that process, Ch. Trans 233. Understanding the recent history of that chapter of the administrative code is essential to understanding why the Department applies the provisions of the rule promulgated prior to 1999 rather than the current printed text of the rule.

In the late 1990s, WisDOT rewrote Ch. TRANS 233 to provide that WisDOT would extend its plat review authority to Certified Survey Maps, condominium plats, and other types of land divisions. The new chapter was promulgated effective February 1, 1999 as [Clearing House Rule CR 98-121](#). WisDOT began applying the newly rewritten rule at that time. A judicial challenge to that new rule followed.

On January 28, 2004, the Dane County circuit court concluded that the version of Trans 233 promulgated as [CR 98-121](#) rule incorrectly assumed WisDOT had authority to regulate land divisions other than subdivisions. The court prohibited WisDOT from applying the rule to certified survey maps (CSMs) and other non-subdivision land divisions. It also concluded that WisDOT could only regulate subdivisions that abut or adjoin a STH. The decision resulted from a strict application and interpretation of then-existing statutory language. As a result of that decision, WisDOT stopped applying the new Trans 233 to CSMs and other non-subdivision land divisions as of January 28, 2004. The decision was affirmed by the court of appeals.¹

Subsequent to that decision, the appellants from that case and 11 others brought another suit against WisDOT and in 2009 that second court invalidated all of the [1999 Clearing House Rule CR 98-121](#) (and some subsequent 2001) rewrite of Ch. Trans 233. That decision "undoes" all of Clearing House Rule CR-98-121, including the repeal of the prior version of Ch. Trans 233. But, despite the court's conclusion that the clearinghouse rule was improperly promulgated and therefore invalid, the Revisor of Statutes has left that rule in the printed administrative code.

Consequently, WisDOT has put the prior rule, which was put back into effect and made enforceable by the second court decision, into the administrative code as a note to the printed and invalid CR 98-121 version of the rule with references to the court decisions. WisDOT is not permitted to use the language currently appearing in the printed administrative code but must use the pre-existing code appearing in the note of the rule to comply with the 2009 court ruling. Accordingly, all discussion of Trans 233 requirements in this HMM section refer to that 1956 rulemaking that currently appears as a note to Trans 233 in the administrative code. When the printed administrative code is eventually revised to show only the rule that is in effect, a note to the rule will make that evident.

1.1 Subdivisions

The Department of Administration (DOA) is the state clearinghouse for subdivision plat review. However, a local unit of government (county or municipality) can opt to take on this clearinghouse responsibility itself. All subdivision plats must follow the requirements of TRANS 233 or county/local requirements if they are more restrictive. Surveyors and municipalities submit plats for review and DOA has 20 to 30 days to review each plat for compliance with Chapter 236 of the Wisconsin State Statutes. DOA transmits copies of the plat and a plat information document to all state agencies involved in the review. (The review process is described in chapters 2 and 3 of DOA's Wisconsin Platting Manual.)

The Department of Transportation is an objecting agency for subdivision plat review under the provisions of Chapter 236 of the Wisconsin State Statutes and TRANS 233 of the Wisconsin Administrative Code. WisDOT reviews subdivision plats for their impact upon the existing or planned state trunk highway system and their conformance to statute 82.50 (Town Road Standards). The department either certifies that it has no objection or lists its objections for each plat submitted for review, including non-abutting plats. A letter of comment must be transmitted to DOA within 20 days of receiving the plat, unless a time extension has been negotiated by the surveyor and DOA. The letter of comment must also be sent to the landowner, surveyor, municipality, and

¹ *Wisconsin Builders Assn v. Wisconsin Dept of Transp.*, 2005 WI App 160, 285 Wis. 2d 472, 702 N.W.2d 433, 2005 WL 1404983.

county if appropriate. The official authority within the department is the Administrator of the Division of Transportation Infrastructure Development who has delegated this authority to the BHD Director. WisDOT maintains files on its response to all the plats reviewed.

WisDOT receives two copies of all abutting plats and one copy of all non-abutting plats. They are accompanied by a "green sheet" which provides basic information about the plat. WisDOT also receives weekly plat review status lists indicating the dates by which reviews must be completed. The department has 20 days to either certify the plat or list objections. DOA and the surveyor may negotiate extensions of the review time and DOA will advise all review agencies of any extensions that have been granted. Once the plat has been certified, DOA sends copies to WisDOT. When the plat has been recorded with the appropriate county, WisDOT receives a copy of the recording data (e.g., date, volume, page, document number) from DOA.

Restrictions imposed for the public benefit on a subdivision plat create an unusual set of enforcement rights for WisDOT. Section 236.293 provides WisDOT with enforcement rights similar to those a property owner in the subdivision would have to enforce the subdivision's mutual restrictions against other landowners in that subdivision. Unlike real estate covenants that WisDOT acquires through the acquisition of real property, which may only be modified by recorded instrument, s. 236.293 allows WisDOT to release or waive plat restrictions imposed under Ch. 236 by a simple written waiver. Although the statutes do not require using a recordable instrument to waive WisDOT enforcement rights, DTSD policy is to use a correction instrument that conforms to the Department of Administration's [Wisconsin Platting Manual](#) (page 283), which requires using a document that can be recorded.

Requiring those formalities provides some protection from inadvertent waiver of those rights. WisDOT policy is that only the BTS Director or the Secretary may waive subdivision restrictions. If asked, inform customers that access coordinators do not have authority to waive Ch. 236 restrictions. Carefully communicate with customers when using email or letters to not inadvertently provide the impression that WisDOT will waive Ch. 236 restrictions. Seek OGC assistance for help sorting through issues related to inquiries about subdivision plat restrictions, waiver of those restrictions, and the format for waiver documents.

1.2 Other Land Divisions

As discussed in the Overview to this chapter, in the late 1990s, WisDOT rewrote Ch. TRANS 233 to provide that WisDOT would extend its plat review authority for to Certified Survey Maps, condominium plats, or any and other types of land divisions. That rulemaking was determined to have been improperly completed and beyond WisDOT's statutory authority in two separate cases. Consequently, WisDOT is releasing some restrictions imposed on CSMs and other non-subdivision land divisions upon request. This section will discuss when such action is appropriate the mechanisms for accomplishing that end.

Restrictions imposed upon CSMs, on land divisions not abutting a STH, or on other non-subdivision land divisions, under the invalidated 1999 rule may be rescinded of record upon request to WisDOT. Correction instruments titled "Recission of Trans 233 Restriction" are prepared in recordable form and are supported by resolutions of the affected local town or municipality and county government that are referenced in the document for recording.

FDM 7-50-5 Abutting Subdivision Plats

May 17, 2022

Protecting the investment in Wisconsin's highways requires a pro-active approach to prevent future problems. Orderly and planned development is one of the goals of Administrative Rule Trans. 233. The abutting land division reviews required by Trans. 233 are a fundamental part of planning for the future and maintaining the safety and efficiency of our transportation system.

An abutting subdivision plat for land that is contiguous to the state trunk highway (STH) system is subject to Ch. Trans 233 review. Subdivisions which do not directly abut the STH system are considered abutting if the intervening property is owned by one or more of the persons who own the land being subdivided. Subdivisions which abut or cross proposed STH corridors are also considered to be abutting.

5.1 Subdivision Review Process

[currently under revision – see WisDOT regional office for details]

The land division is submitted to the Department of Transportation district office for the district in which the subdivision is located. Each district is responsible for reviewing subdivisions and certifying compliance with Trans. 233. The district must review the right-of-way shown to determine that it corresponds to their current right-of-way plat, local or county zoned width, and any future planned right-of-way needs. The district must get a dedication of right-of-way (fee title) for the existing and/or zoned right-of-way width. The future right-of-way needs should also be dedicated in the final plat. The department must not be in the position of making the new development nonconforming with future right-of-way acquisitions for planned or programmed projects.

[Attachment 5.1](#) is a checklist to assist the district in the review of the proposed subdivision plat. [Attachment 5.2](#) gives guidance on the implementation of Trans. 233. The guidance is organized according to the sections of the rule. For example, to find guidance on setback requirements and restrictions, go to section 233.08 of [Attachment 5.2](#).

After reviewing the proposed subdivision plat, the District Land Division Reviewer prepares a letter of certification or objection, forwards it to the approving agency and sends copies to the surveyor, owner, municipal clerks, county zoning agency, the Department of Administration, DOA (for subdivisions), and the central office Access Management Coordinator. That letter must include:

- The plat name, location and DOA permanent file number.
- A clear, concise description of any objections, including statute and administrative code references where possible.
- A specification of any additional material that must be submitted for review or executed prior to certification.
- If there are no objections, the letter should certify that the department has no objections to the plat as submitted.

In some cases, the developer submits both a preliminary and final plat. If so, this process is followed for each.

5.1.1 TRANS. 233 Effect on Sec. 84.09 Projects -Purchased Access Control

Access restrictions that were purchased under s. 84.09 may be modified during a Trans. 233 review if it is deemed necessary for safety or operational reasons. Because it is the property owner's action that is proposing the change, changes to access for the property, such as the removal or relocation of any existing access is not compensable. See [FDM 7-20-5](#) for more information on altering access acquired under s. 84.09. A conveyance reflecting any changes in the previously recorded purchased access control document should be drafted, executed and recorded.

5.1.2 TRANS. 233 Effect on Sec. 84.25 Projects -Administrative Access Control

Trans. 233 does not eliminate the need to use 84.25 controls on particular segments of highways. Trans 233 vests the Department with enforcement rights on private lands that are part of a subdivision plat and are therefore location-specific. Section 84.25 provides police-power access control over an entire corridor or highway segment.

Existing 84.25 projects must be updated if access is modified under a Trans. 233 review, or if an existing access point is revoked. See [FDM 7-15-5](#) for more information on altering access obtained on 84.25 projects.

5.1.3 Traffic Generation Analysis

The region must consider the traffic generation impact of the proposed land division on the existing state trunk highway system. When there is concern over traffic congestion and in all cases where a new traffic signal would be required, the developer shall have a Traffic Impact Analysis (TIA) prepared by a licensed professional engineer for the total development at full build out. (See [FDM 7-35-10](#) for a more detailed discussion of TIAs.) The completed TIA should be reviewed by the region for accuracy. All highway improvements needed will be made under a permit issued to the municipality with the developer or municipality bearing all the cost.

5.2 Modifications to Existing Land Divisions

A more formal process is required for modifying DOT restrictions on plats that have been certified by WisDOT, approved by the local government and recorded at the register of deeds. Some modifications require a formal variance; others do not.

1. The region receives the plat modification request from the developer, reviews it and makes a recommendation as to whether it should be approved (again considering whether or not it would have an adverse effect on the traveling public).
2. Both the request and recommendation are forwarded to the BHD Director, to the attention of the Statewide Access Management Engineer.
3. Central office then reviews the request and recommendation and indicates whether or not it should be supported by WisDOT.
4. If WisDOT supports the request, the petitioner must go to the local government which approved the plat (or now has jurisdiction over that geographic area) and request support for the change.
5. Local support for the modification takes the form of a resolution passed by the local governing body. This could be a town board, village board, city council, county board, or a zoning/planning

committee. The resolution must describe the land division and its location, outline the modification requested, provide a reason for the change and describe the public notification process used.

6. Anyone wishing to appeal the results of Steps 1-5 above should submit their appeal to the Director of the Bureau of Highway Development.
7. If WisDOT supported the request and the local unit of government resolved to support the requested change to the subdivision plat, WisDOT prepares an Affidavit of Correction ([Attachment 5.2 – under revision](#)) which is signed by the WisDOT BHD Director, notarized and then signed by the local government.
8. WisDOT then records the Affidavit of Correction with the Register of Deeds and sends a copy to the local government and to the Department of Administration - Plat Review Section.

5.3 Assessor's Plats

Assessor's Plats are a unique type of plat authorized by section 70.27 of the Wisconsin Statutes. This statute allows for the governing body to order the creation of a plat when the description of one or more parcels of any platted or unplatted land, owned by two or more persons, has major errors, or uses nonspecific language in the descriptions in such a manner that accurate accounting of the land for assessment, taxation or title purposes is difficult, or where use of metes and bounds descriptions in tax documents is required.

When a district is contacted by a surveyor who is in the process of creating an assessor's plat, the surveyor will generally be requesting right-of-way information. district planning and technical services staff should jointly provide this information.

- Planning - for access and setback information.
- Tech Services - for the correct right-of-way information, i.e., widths, bearings, distances, curves, etc.

Strong efforts should be made to provide the surveyor with the most accurate information available.

When these plats are created, the Department of Administration (DOA) forwards a complimentary copy to the appropriate WisDOT district office. WisDOT can voice concerns to the DOA during their 30-day review period, but WisDOT does not certify or object to the assessor's plat as it does with a subdivision plat. The district must then review it to ensure that the state's right-of-way and other interests, such as access controls, are accurately depicted and described and that town roads are depicted accurately. If the information on the plat is accurate, the district should email that information to the Access Management Coordinator and to the Plat Review Section of DOA.

It is critical that all reservations and restrictions on prior plats be shown on the assessor's plat. The old plat will be deemed vacated by the assessor's plat, so the failure to carry forward restrictions can make rights and restrictions shown in the prior plat unenforceable.

If the information is depicted incorrectly, the district must immediately notify the DOA Plat Review Section, the municipal clerk and the surveyor of the error(s) that must be rectified. Once an Assessor's Plat is recorded, the information on the plat supersedes any previously recorded documents. Therefore, if the interests owned by WisDOT are omitted from the recorded document, WisDOT would no longer have those interests.

5.3.1 Procedure for Processing Assessor's Plats

1. Review plat immediately.
 - Check for accuracy in depiction of right-of-way, access restrictions and setbacks.
 - Check to assure that town roads are accurately depicted.
2. Respond to the Department of Administration, the municipal clerk and the surveyor with WisDOT's concerns.
3. The assessor's plat must conform to ss. 236.15 and 236.20. Section 236.20 requires that exact widths of streets, easements and alleys be shown. If the municipality is willing to make changes to address WisDOT's concerns, the surveyor will then modify the plat.
4. If not then WisDOT will have a 30-day time period in which to bring suit to have the plat corrected. Alert management immediately upon receiving notice of a problem assessor's plat. 30 days is a very short timeframe for bringing an appeal. A DT-36 request for legal services should be promptly forwarded to the general counsel with a request to have the Department of Justice represent the department in the matter.

5.4 File Retention

All relevant documents associated with a land division review must be kept on permanent file. The land division

map or document must be kept permanently, along with any approved special exceptions or modifications.

Once a land division has been approved through the Trans. 233 review process, that approval stands for the life of the land division. Further division would require another Trans. 233 review. This is the same as the rules for Chapter 236.

5.5 Enforcement

When it is discovered that a surveyor, attorney, local municipality or others have apparently disregarded the requirements of Trans. 233 and have recorded a document that is not in compliance with Trans. 233, the department shall take action to correct the situation, and to prevent the situation from occurring again.

The first step shall be to notify the surveyor and land owner that the land division is not in compliance with Trans. 233, and request that the appropriate actions be taken to rectify the situation. This may be an Affidavit of Correction, an amended plat/map, or other corrective action. If the surveyor or land owner is not cooperative, the department will take the following progressive actions until the land division is altered to be in compliance:

1. Notify the County Surveyor
2. Write a letter of complaint to the Wisconsin Society of Land Surveyors, if applicable.
3. File a complaint with the Department of Regulation and Licensing or the Wisconsin Bar Association, if applicable.
4. Notify the District Attorney and request prosecution.

LIST OF ATTACHMENTS

Attachment 5.1	Subdivision Plat Review [under revision]
Attachment 5.2	Trans. 233 Implementation Guidance [under revision]
Attachment 5.3	Drainage Information Checklist for Trans. 233 Land Divisions [under
Attachment 5.4	revision] Drainage Design Summary for Trans. 233 Land Divisions [under
	revision]

FDM 7-50-10 Non-Abutting Subdivision Plats

November 16, 2004

[currently under revision – see WisDOT regional office for details]

A non-abutting subdivision plat is one which is not contiguous to any existing or proposed state trunk highway (STH).

The Department of Administration (DOA) sends a single copy of non-abutting plats directly to the appropriate WisDOT district. A copy of the "green (information) sheet" is sent to the Access Management Coordinator in the Bureau of Highway Development.

The district must submit its review of all non-abutting plats directly to the DOA, with a copy to the Access Management Coordinator within 20 days of receipt of the plat from the DOA. The 20 calendar days is a statutory requirement. If no comments are provided, the plat will be approved. The DOA prefers to receive a reply even if there are no comments. E-mail transmission of the comments is encouraged.

The district must review all non-abutting plats to see if they impact any official or planned STH routes. If they affect either, they should be reviewed as outlined for abutting plats ([FDM 7-50-5](#)). In that case, the district should immediately notify the Access Management Coordinator who will, in turn, notify the DOA that they are abutting plats. Usually no additional time is allowed for the review.

Plats that do not impact either official routings or planned facilities should be reviewed for compliance with Wisconsin State Statute 82.50 (Town Road Standards). The district must determine if the proposed public streets are in conformance with the statute. Special exceptions to the right-of-way requirements may be granted based upon a local request. This will normally require a time extension. The district should contact the surveyor directly to obtain it. The authority to grant or deny the request is given to the District Director.

District comments for each non-abutting plat should be sent to the Access Management Coordinator. Unless a variance is required, these are retained for one year, then discarded.

15.1 General

The district office receives notices of Planned Unit Developments (PUDs) and zoning changes along the state trunk highway (STH) system. (PUDs are defined in [FDM 7-35-10](#).) The extent to which this takes place is dependent on the district relationship with the municipalities and counties. ([FDM 7-35-10](#) includes a standardized letter for districts to send to local units of government, requesting that the department be given the opportunity to review proposals for developments that would generate significant impacts on state transportation facilities.) Some local units of government have a very minimal review process which may not provide for a timely WisDOT review. Each district has a driveway permit process which may indicate a proposed land use change.

15.2 Planned Unit Developments

Planned unit developments may come to the district office through any section. Developers who have previously dealt with a specific individual may use that person as an initial contact. All sections that have input into large scale developments should be involved in the district's decision.

There should be a thorough review of existing access controls and right-of-way plats. It may be important to involve the local unit of government or regional planning agency to gather appropriate information. Depending on the size of the development, expected traffic volumes and storm water runoff computations may be requested. Access to the STH should be reviewed in the context of full build-out. The district may require the developer to show how this development will fit existing or future local road plans. An access covenant may be the best instrument to control the number and location of access points to the highway. Traffic data should be analyzed to determine the development's impact on highway capacity and safety. (See [FDM 7-35-10](#) for a discussion of Traffic Impact Analyses.)

The developer may be expected to financially participate in necessary highway improvements. Storm water runoff should be detained within the development site to ensure no detrimental effects on cross drain culverts and to minimize pollutants to the highway.

15.3 Zoning Changes

Zoning changes go directly to the district office for review. They are an early notice of changing land use that could adversely affect highway intersections and safety. It is a good time to alert the land owner that a driveway request could lead to a review of any proposed development. The local authorities should be promptly notified if there are expected problems in traffic volumes, storm water runoff, safety, existing access controls or conflicts with any future highway plans. The response may be written or by telephone, depending on the extent of the issue or local preference.

Zoning changes for the purposes of allowing the construction of billboards are inappropriate under Wis. Stat. s. 84.30 and cannot be recognized by the Department under 23 CFR 750.708(b). In the event zoning for this purpose is observed, provide notice to the state billboard control coordinator in the Bureau of Highway Maintenance and coordinate communications regarding objections on that basis with any access-related communications.

15.4 Special Exceptions

Local zoning boards may also inquire about special exceptions for setbacks from state highways. The district office should consider proposed setback changes in light of future highway plans and current setbacks along the route. WisDOT may request that the local unit of government sign a "waiver of damages" which provides that when buying right-of-way for future highway construction, WisDOT would not pay proximity or direct damages to that part of any structure that is within the setback. See [Attachment 5.2](#) for more guidance on special exceptions within land divisions.