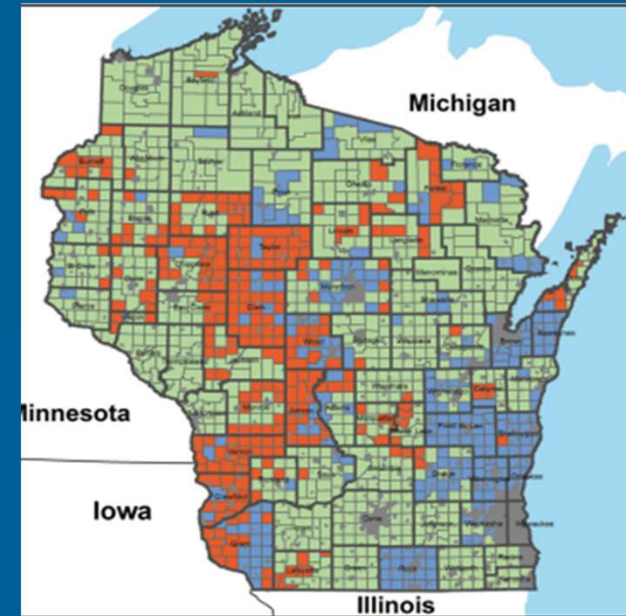


In the Board Room: Act 264 and Town Withdrawal From County Zoning, Part II – Going Beyond Zoning

March 26, 2025
Attorney Andy Phillips

ATTOLLES
LAW, s.c.

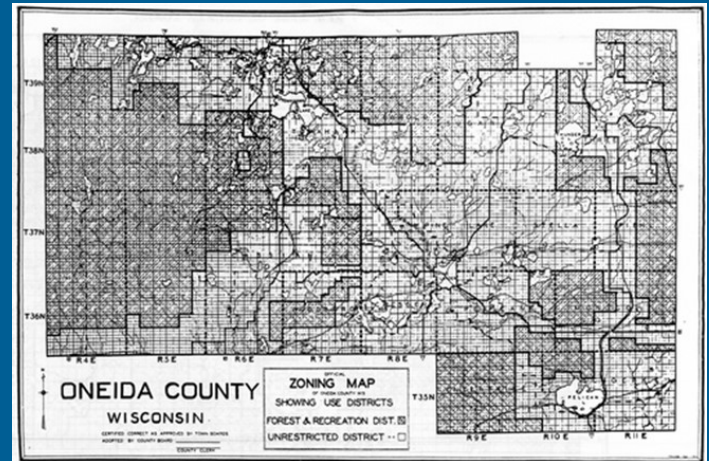


Presentation Overview:

1. Background – How Did We Get Here?
2. 2023 Wisconsin Act 264 - Overview
3. Special Issues
4. Questions?



Background: How Did We Get Here?





Background: How Did We Get Here?

Zoning Fundamentals:

“Zoning is one tool used to implement community *goals and objectives* set forth in the community’s *plan*. A zoning ordinance *identifies* different *districts* within a community and *regulates* the use of property within those districts to *advance* the public health, safety and welfare.”

- Brian Ohm, *Wisconsin Land Use and Planning Law*



Background: How Did We Get Here? (cont.)

Zoning Fundamentals - County General Zoning:

- Statutory authority: Wis. Stat. s. 59.69
- Impact on incorporated areas of the County
- Impact on unincorporated areas of the County



Background: How Did We Get Here? (cont.)

Zoning Fundamentals: Town Options

- “Opt-in” to county zoning by adopting the county’s zoning ordinance upon creation per Wis. Stat. s. 59.69(5)(c), or upon comprehensive revision per Wis. Stat. s. 59.69(5)(d)
- Adopt Village powers pursuant to Wis. Stat. s. 60.62

Key Point: Adoption of Village powers is not an “opt-out!”



Background: How Did We Get Here? (cont.)

2013 Wisconsin Act 287: The “Waukesha County Exception”:

- Wis. Stat. s. 60.62(3)(b): Allows for towns located in counties with a population of at least 380,000 and adjacent to a county with the population exceeding 800,000 (i.e., only Waukesha County) to adopt a zoning code
 - Requires town adoption of village powers under Wis. Stat. s. 60.62(1)
 - Requires county board approval of town zoning ordinance and amendments thereto



Background: How Did We Get Here? (cont.)

2013 Wisconsin Act 287: The “Waukesha County Exception”:

Based on these requirements, what is the difference between this section and a town exercising village powers under Wis. Stat. s. 60.62(1)?

- Even if a town withdraws from county zoning, it cannot adopt/amend its zoning ordinance without county approval.



Background: How Did We Get Here? (cont.)

2015 Wisconsin Act 178: The “Dane County Exception”

- Wis. Stat. s. 60.23(34): Allows for towns located in a county with a population of at least 485,000 to withdraw from county zoning and land division controls
 - Only Dane County meets the population requirements and still has townships
- Includes certain conditions and “safeguards”



Background: How Did We Get Here? (continued)

2015 Wisconsin Act 178: The “Dane County Exception” and Wis. Stat. s. 60.23(34)’s “Safeguards”:

- A town must adopt a comprehensive plan under Wis. Stat. s. 66.1001
- A town must enact a zoning ordinance under Wis. Stat. s. 60.62 and must meet specific criteria in Wis. Stat. s. 60.23(4)(c)1.-4.
- A town must establish an official map pursuant to Wis. Stat. s. 62.23(6)

2023 Wisconsin Act 264 Overview





Act 264: Summary

- In creating Wis. Stat. s. 60.23(35), the Legislature extended the “Dane County” exception to any town in a county with a county zoning ordinance.
- *However...*



Act 264: Backstory

Before the “However,” a brief note on the backstory of Act 264:

- Negotiation between several organizations
- Goals:
 - To foster corporation between towns and counties
 - To improve communications between towns and counties

“The goals are collaboration and communication. If this statute works, the there will be no towns withdrawing under Wis. Stat. s. 60.23(35).” – Andy Phillips



Act 264: The New Wis. Stat. s. 60.23(35)

TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to subds. 1. and 2., after March 31, 2029, enact an ordinance withdrawing the town from coverage of a county zoning ordinance that was approved under s. 59.69 (5) (c) and from coverage by a county development plan that was enacted under s. 59.69 (3) (a). An ordinance enacted under this paragraph may not take effect until all of the following occur:

1. Not later than 2 years before enacting an ordinance under this paragraph, the town adopts a resolution of the town's intent to enact an ordinance under this paragraph and provides a copy of the resolution to the county clerk.
2. Not earlier than 2 years and not later than 3 years after adopting the resolution under subd. 1., the town adopts a resolution informing the county of the town's withdrawal from coverage of the county's zoning ordinances, and the town sends certified copies of the documents under subd. 3. to the county clerk.
3. Not later than the effective date of the resolution adopted under subd. 2., the town enacts a zoning ordinance under s. 60.62, a comprehensive plan under s. 66.1001, and an official map under s. 62.23 (6).



Act 264: The Basics and Implementation Timeline

- Allows a town to withdraw from coverage of a county zoning ordinance and county development at *any* time.
- Timeline (*Enter the “However”...*):
 - Effective Date is March 31, 2024
 - Town may withdraw no sooner than five years after the Effective Date – March 31, 2029



Act 264: Implementation Timeline

- No later than two years before enacting a zoning code, a town must adopt a resolution of the town's intent to enact a zoning ordinance and send to the county clerk.
- No earlier than two years and no later than three years after adoption of the notice of intent to withdraw resolution, the town must adopt a second resolution notifying the county of its withdrawal.



Act 264: Implementation Timeline (cont.)

- Timeline (continued):

(Here comes the “Big However”...)

- No later than the effective date of Resolution No. 2, the town must also:
 - Enact a zoning ordinance under Wis. Stat. s. 60.62
 - Adopt a comprehensive plan under Wis. Stat. s. 66.1001
 - Adopt an official map under Wis. Stat. s. 62.23(6)

An aerial photograph of a city with various buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

Act 264: Implementation Requirements

Key Point: A town must adopt a zoning ordinance that complies with the requirements of Wis. Stat. s. 60.62, a comprehensive plan that complies with Wis. Stat. s. 66.1001, and an official map that complies with Wis. Stat. s. 62.23(6) in order for its withdrawal from county zoning to be effective.

Act 264 – Special Issues



An aerial photograph of a city with various buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

Act 264: Special Issues

1. What is not included in a town's "opt out"
1. Quarry operations
2. Land divisions
3. Land subject to cooperative plan
4. Farmland preservation



Act 264: Special Issues – Quarry Operations

Act 264 does not extend a town's "opt out" to the following:

- County shoreland zoning under Wis. Stat. s. 59.692
 - County does not lose approval or objecting authority over CSMs and plats in shoreland zoning areas
- County floodplain zoning under Wis. Stat. s. 87.30
 - County does not lose approval or objecting authority over CSMs and plats in floodplain zoning areas
- Stormwater management regulation
- Erosion control regulation
- POWTS permitting



Act 264: Special Issues – Quarry Operations

Wis. Stat. s. 60.23(35)(am) creates a specific exception to “quarry operations”:

The authority of a town board to withdraw a town from coverage of a county zoning ordinance and from coverage by a county development plan under this subsection does not apply to those portions of the county zoning ordinance or county development plan that regulate quarry operations as defined in s. 66.0441(2)(h).

“Quarry operations” means the extraction and processing of minerals at a quarry and all related activities, including blasting, vehicle and equipment access to the quarry, and loading and hauling of material to and from the quarry.



Act 264: Special Issues – Quarry Operations

- Impact: County zoning ordinances and county development plan regulating the extraction and processing of any mineral at a quarry, and all related activities, still fall within county zoning authority even if a town opts out of county zoning pursuant to Wis. Stat. s. 60.23(35).
- “Related activities” is broad and inclusive: *Including* blasting, vehicle and equipment access to the quarry, and loading and hauling of material to and from the quarry.



Act 264: Special Issues – Land Divisions

Wis. Stat. s. 236.10 - Preliminary and Final Subdivision Plats:

- Upon town withdrawal from county zoning, county no longer has objecting or approval authority of a preliminary or final subdivision plat
- Town withdrawal from county zoning must occur prior to preliminary plat is submitted for approval.
 - If no preliminary plat is submitted, town withdrawal must have occurred prior to final plat is submitted for approval.
- County maintains *objecting* authority to preliminary and final plan review for:
 - Any portion of the subdivision that is shoreland in the county.
 - Any portion of the subdivision that is in a 100-year floodplain in the county.



Act 264: Special Issues – Land Divisions

Wis. Stat. s. 236.34 - Certified Survey Maps:

- Upon town withdrawal from county zoning, county no longer has approval or objecting authority over certified survey map that divides land that is located in town.
- Town withdrawal from county zoning must occur prior to certified survey map is submitted for approval.
- County maintains *objecting* authority of certified survey maps for:
 - Any land shown on and subject to the certified survey map that is shoreland in the county.
 - Any land shown on and subject to the certified survey map that is in a 100-year floodplain in the county.



Act 264: Special Issues – Land Divisions

- Wis. Stat. s. 236.12(2)(b) – WisDOA must provide copy of a final plat to a county as an “objecting authority” if:
 - County has a full time planner or person responsible for implementing “planning legislation”; AND
 - County has adopted a policy “requiring submission so that the body may determine if it has any objection to the plat on the basis of a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments.”
- Wis. Stat. s. 236.12(2)(b) was not amended by Act 264, so county maintains “objecting authority” rights, and WisDOA must provide copy to a county as an objecting authority.



Act 264: Special Issues – Extraterritorial Plat Review

- Extraterritorial Plat Review – Wis. Stat. s. 236.10(1)(b):

236.10 Approvals necessary.

(1) To entitle a final plat of a subdivision to be recorded, it shall have the approval of the following in accordance with the provisions of s. [236.12](#):

(a) If within a municipality, the governing body, but if the plat is within an area, the annexation of which is being legally contested, the governing bodies of both the annexing municipality and the town from which the area has been annexed shall approve.

(b) Except as provided under s. [62.23 \(7a\) \(am\)](#), if within the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. The governing body of the municipality if, by July 1, 1958, or thereafter it adopts a subdivision ordinance or an official map

- Was *not* modified by Act 264, so a town that withdrew from county zoning and plat review per Act 264 is still subject to extraterritorial plat review (if applicable).



Act 264: Special Issues – Cooperative Plans

Cooperative Plans – Wis. Stat. s. 66.0307 and Boundary Changes

- Wis. Stat. s. 66.0307 permits cooperative plans between a town and a city or village, and the cooperative plan may allow a town to adopt a zoning ordinance pursuant to Wis. Stat. ss. 60.61, 61.35 or 60.23.
- Act 264 modified Wis. Stat. s. 66.0307 to recognize a town’s ability to withdraw from county zoning. Upon withdrawal:
 - Any town zoning ordinance adopted under the cooperative plan remains in effect until the town adopts its own zoning ordinance pursuant to Wis. Stat. s. 62.23(35).
 - However, Act 264 recognizes the cooperative plan and any restrictions the plan may place on a town’s authority to zone: “any ordinance...regulation, approval or conditions imposed under the ordinance is changed by an official actions of the town, city or village with authority to enact a zoning ordinance under the” cooperative agreement.



Act 264: Special Issues – Farmland Preservation

- General Goal: Preserve Wisconsin's agricultural history and economy while allowing continued growth and development.
- Provides land use tools to help ensure farmland remains viable for current and future generations.
- Protects soil and water resources.
- Cooperation between farmers and local governments.



Farmland Preservation Program

- Program Components set forth in Wis. Stat. Ch. 91:
 - Farmland Preservation Plans
 - Farmland Preservation Agreements
 - Farmland Preservation Zoning
 - Agricultural Enterprise Areas



Act 264: Special Issues – Farmland Preservation

Benefits of Farmland Preservation Plans:

- Orderly planning
 - Tax benefits/credits for land owners
 - \$10 per acre in Agricultural Enterprise Area
 - \$10 per acre in certified farmland preservation zoning districts
 - \$12.50 per acre if land is covered by a Farmland Preservation Agreement
- AND
- In an Agricultural Enterprise Area OR
 - Farmland Preservation Zoning District



Act 264: Special Issues – Farmland Preservation

Wis. Stat. s. 91.10 – County must have a farmland preservation plan

- Plan must meet elements of Wis. Stat. s. 91.10(--)
- Plan must be accepted and certified by DATCP

Wis. Stat. s. 91.36 – Zoning authority must adopt a farmland preservation zoning ordinance.

- Zoning ordinance must meet requirements of Wis. Stat. s. 91.38
- Zoning ordinance must be accepted and certified by DATCP



Act 264: Special Issues – Farmland Preservation

Traditionally, a county's farmland preservation plan serves as an overview of agricultural-related activities at the county level:

- Identifies the status of agriculture in the county
- Anticipates future trends
- Sets policy for agricultural development
- Identifies areas expected to remain as agricultural lands

What happens upon a town's withdrawal from county zoning?



Act 264: Special Issues – Farmland Preservation

Town may be an eligible authority for a farmland preservation plan, however, for owners to be eligible for credits, the town must:

- Adopt an appropriate comprehensive plan showing farmland preservation areas
- Adopt appropriate farmland preservation zoning ordinance
- Ensure DATCP certifies the farmland preservation zoning ordinance
- Comply with all required deadlines
- Wis. Admin. Code Ch. ATCP 49.12 – Town farmland preservation plan must be consistent with county’s farmland preservation plan



Resources: Farmland Preservation Program

- DATCP's Main Page:
https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx
- DATCP's Zoning Tools Page:
https://datcp.wi.gov/Pages/Programs_Services/FPZoningForPS.aspx



Act 264: Special Issues – Other Unique Issues

- Regulation of Renewable Energy Siting
 - Motivation to “opt-out” may be desired for greater control over renewable energy siting.
 - Even with “opt out,” statutory restrictions on siting still limit town’s ability to regulate.

Questions?

Thank You!



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