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## The Wisconsin Supreme Court Strengthens Role of Master Plans

by Brian W. Ohm, J.D.

A recent decision by the Wisconsin Supreme Court held that a city plan commission<sup>1</sup> may rely on an element contained solely in a local master plan to reject a proposed plat. The decision, entitled *Lake City Corp. v. City of Mequon*, was filed by the Supreme Court on January 31, 1997. The decision strengthens the use of the local master plan as the basis for reviewing proposed subdivisions as explained below.

### THE FACTS BEHIND THE CASE

In 1977, Lake City purchased 59 acres of land in Mequon, Wisconsin, a northern suburb of Milwaukee. In 1984, at the request of Lake City, Mequon rezoned the property to allow multi-family, single family residential, and commercial development. In 1992, Mequon began a comprehensive revision of its master plan and zoning ordinances to address issues of growth in the community. During Mequon's planning process, Lake City applied to Mequon's plan commission for preliminary plat approval.<sup>2</sup> The plat conformed with the existing zoning ordinances. Before acting on Lake City's application, the plan commission amended its master plan to limit the area including Lake City's property to residential uses with a minimum lot size of 1.5 acres per dwelling unit. The plan commission then voted to deny Lake City's request for preliminary plat approval because the proposed plat conflicted with the newly amended master plan.

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<sup>1</sup>While the case involved a city, the decision should also apply to villages and towns exercising village powers consistent with Wis. Stat. § 62.23.

<sup>2</sup>Pursuant to Wis. Stat. § 236.10(3), the Mequon city council delegated its authority to review plats for subdivisions to the plan commission. In its opinion, the Supreme Court stated that its decision applies equally to communities whose governing body has retained plat approval authority.

Lake City then sued Mequon. The circuit court held that the plan commission had the authority to deny Lake City's application for preliminary plat approval based upon the amendment to the master plan. The Wisconsin Court of Appeals reversed the decision of the circuit court because it determined that state law did not allow a plan commission to use its master plan as the basis for denying a preliminary plat. The Wisconsin Supreme Court reversed the decision of the Court of Appeals.

### THE SUPREME COURT'S DECISION

The Supreme Court's decision that a plan commission may rely on an element contained solely in a master plan to reject plat approval seems fairly straightforward. Nonetheless, the magnitude of the Court's decision needs to be explored in light of the obstacles the Court had to overcome given the confused nature of Wisconsin's land use law.

The Wisconsin Statutes provide several factors upon which local communities may condition their approval of subdivision plats. The issue presented to the Supreme Court was whether the confusing language of one of those factors, found in section 236.13(1)(c) of the Wisconsin Statutes, authorizes a city plan commission to deny plat approval based solely upon an element contained in a master plan. When section 236.13(1)(c) of the Wisconsin Statutes was originally adopted in 1955, it read: "Approval of the preliminary or final plat shall be conditioned upon compliance with . . . any local master plan or official map." In 1979, the Wisconsin Legislature amended that section to read: "Approval of the preliminary or final plat shall be conditioned upon compliance with . . . [a]ny local master plan which is consistent with any . . . official map adopted under s. 62.23." The job for the Supreme Court was to determine what the 1979 amended language meant.

**Official maps**, authorized under section 62.23(6)(b) of the Wisconsin Statutes, may depict the layout of streets, highways, historic districts, parkways, parks, playgrounds, the location of railroad rights-of-way, waterways and/or public transit facilities. Building permits may not be issued in these mapped areas. Official maps are adopted by resolution or ordinance by the city council.

**Master plans**, as defined in section 62.23(2) of the Wisconsin Statutes, may show the general location of the elements contained in official maps as well as numerous other elements. Master plans also include descriptive and explanatory matter. Standing alone, the master plan has no legal teeth. Master plans are adopted by the plan commission and certified to the city council. Following customary planning practice, official maps are often used as one of several tools for implementing the master plan.

Lake City argued for an interpretation of the 1979 amendments whereby a city plan commission may deny plat approval based upon an element contained in a master plan only if that element is also contained in an official map. Mequon asserted that the use of the term "consistent" in the statutes meant that issues addressed in both a master plan and an official map must not be "otherwise inconsistent." Mequon further argued that a master plan is consistent with an official map even if the master plan addressed issues not contained in the official map.

The Supreme Court accepted Mequon's interpretation of the statute. In so doing, the Court confirmed the pre-1979 interpretation of the statute which put "legal teeth" into master plans. The Supreme Court found nothing in the drafting file for the 1979 amendment that indicated the legislature intended to reduce the power of plan commissions to rely on master plans when reviewing plats.

Besides clarifying the 1979 amendment, the Supreme Court also addressed the issue of whether zoning ordinances must always prevail over master plans when the two are inconsistent. The Court held that if there is a conflict between a zoning ordinance and a master plan, the plan commission can rely on the master plan and not the zoning ordinance to deny the plat. The Supreme Court cautioned, however, that a plan commission does not have extra-legislative power to override the city council on issues such as lot size which can be regulated through subdivision review and through zoning ordinances. It is unclear from the Court's opinion if this caution is necessary in situations where, based on local practice, the city council also adopts the master plan.

The Supreme Court further limited its decision by holding that master plans prevail over zoning ordinances only in the case of proposed subdivisions geographically located within the borders of a city or village. The zoning/master plan conflict portion of the Court's opinion does not apply to plats located within the extraterritorial jurisdiction of a city or village. Since

the facts of the case did not involve the extraterritorial jurisdiction of the city of Mequon, the Court avoided the complexities of trying to balance the competing interests and laws which can exist in the extraterritorial areas--the subdivision enabling law versus the extraterritorial zoning enabling act versus county zoning authority, etc. The Court left the resolution of issues related to the extraterritorial area to further court cases or to the legislature.

## IMPACT OF THE DECISION

Based on the *Lake City* decision, a municipality can rely on an element contained solely in a master plan as the basis for rejecting a plat, subject to the following:

- a. If a municipality has an official map, the plan commission can deny the approval of a plat that conflicts with the local master plan, so long as any common elements contained in both the master plan and official map are consistent (not contradictory);
- b. A master plan is consistent with an official map (if there is one) even if the master plan contains additional elements that the official map does not;
- c. If there is a conflict between a zoning ordinance and a master plan, the master plan prevails, except in the extraterritorial plat review jurisdiction of a municipality and a plan commission cannot override the zoning decisions of the governing body for the municipality.

Despite this guidance, there are still many unanswered questions. For example, while the Court's decision focuses on using the master plan as a basis to *reject* plats, the objective of the subdivision review process should be to insure *compliance* with the plans and regulations of a community. Query whether the outcome of the Mequon case would have been different if the developer was proposing to build a mixed use multifamily/commercial subdivision *consistent* with a master plan which called for that type of development but the property was zoned for low density residential development. Would the master plan still prevail over the zoning ordinance? When reviewing subdivisions, will a community follow its master plan or will the community follow its zoning ordinances?

Public planning needs to provide property owners with greater certainty than recognized by the Supreme Court. To provide greater certainty, communities need to follow a timely process for bringing land use regulatory tools (zoning, subdivision, official maps, etc.) into conformance with the master plan. Customary planning practice would also encourage the use of a moratorium to limit development during the planning process to avoid some of the problems encountered in this case. Hopefully the case will encourage rational decision making by local communities rather than arbitrary actions. ■

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