

Wisconsin Legislative Council

ACT MEMO



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2023 Wisconsin Act 16 [2023 Assembly Bill 266]

Local Regulation of Property Development

2023 Wisconsin Act 16 addresses the following topics: (1) judicial review of local residential development decisions; (2) approval of permits for residential housing developments; (3) the procedure for amending a zoning ordinance; (4) appeal of county conditional use permit decisions; and (5) planned development district zoning.

JUDICIAL REVIEW OF LOCAL RESIDENTIAL DEVELOPMENT DECISIONS

Background

The following land use decisions of a local governing body may be challenged by an action for certiorari review¹ in circuit court under specified statutory procedures: the denial of a conditional use permit; a decision by a zoning board of appeals or zoning board of adjustment; a decision relating to, or in reliance on, an official map; and an objection to a plat or a failure to approve a plat.

The action may be commenced only by one of the following parties:

- A person aggrieved by a decision of a zoning board of appeals or zoning board of adjustment.
- A person aggrieved by an objection to a plat or a failure to approve a plat.
- A taxpayer.
- Any officer, department, board, or bureau of the municipality.

The action may be commenced only within 30 days after the land use decision is filed in the office of the relevant governing body. The reviewing court may reverse or affirm the decision, wholly or partly, or may modify it.

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The act establishes a new form of certiorari review for any final decision of a local governing body regarding an application for a permit or authorization for building, zoning, driveway, stormwater, or other activity related to residential development.²

The act requires that the action may be filed only within 30 days of the final decision, and it specifies timelines within which other steps in the action must proceed. The act authorizes the court to reverse or

¹ Certiorari review is a limited review of another entity's decision. The scope of review includes such matters as whether the entity stayed within its jurisdiction, whether it proceeded on a correct theory of law, whether its action was arbitrary, oppressive, or unreasonable, and whether the evidence reasonably supported its decision.

² "Residential development" means the development or redevelopment of land or buildings for the primary purpose of providing housing.

affirm the final decision, remand the final decision to the local governing body, or take any other action that the court deems appropriate in the interests of justice that is consistent with certiorari review.

The act specifies that the action may be commenced only by one of the following:

- The person who submitted the application.
- A person with an ownership interest in the real property that is the subject of the application.
- A person who, as a result of the final decision, sustains or will imminently sustain actual damages that are personal to the person and distinct from damages that impact the public generally, but only if the person either provided a statement in writing to the governing body before it issued the final decision or appeared and provided an oral statement at a public proceeding at which the permit or authorization was considered.
- Certain corporate bodies affiliated with any person belonging to the above-three categories.
- A local governmental unit.³
- To the extent authorized by law, a state agency that is aggrieved by the final decision.

The act provides that the new form of certiorari review generally is the only review available for a final decision on this type of application. However, effective January 1, 2025, a person aggrieved by the failure of a local governing body to approve certain residential housing developments may seek relief through an action for mandamus, as described below.

APPROVAL OF RESIDENTIAL HOUSING DEVELOPMENTS

Background

A zoning ordinance generally may specify permitted uses, conditional uses, and prohibited uses. A permitted use allows a landowner to use land in the specified manner as a matter of right. A conditional use allows a landowner to use land only under conditions specified in a conditional use permit. A prohibited use is not allowed under any conditions.

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The act requires a local governing body to grant an application for any permit or administrative approval required to proceed with a residential housing development⁴ if the application is complete and meets all existing requirements for the permit or approval.⁵ A person aggrieved by the failure of a local governing body to approve an application may seek relief through an action for mandamus. If the court finds that the local governing body improperly failed to approve the application, the court must order the local governing body to approve it.

These provisions take effect on January 1, 2025.

³ “Local governmental unit” means a political subdivision of this state, a special purpose district in this state, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

⁴ A “residential housing development” means a development for single- or multi-family housing for sale or rent.

⁵ For these purposes, a local governing body is not required to change existing zoning or to issue a conditional use permit.

PROCEDURE FOR AMENDING A ZONING ORDINANCE

Background

Prior law required a supermajority vote by the relevant governing body to amend a zoning ordinance in three instances. One of those instances was as follows:

- If 50 percent of certain affected landowners protested a proposed change to a county zoning ordinance or to a town zoning ordinance, the change could be adopted only if approved by a three-fourths vote.⁶

The other two instances, unaffected by the act, are as follows:

- A city, village, county, or town may enact a down zoning ordinance⁷ only by a two-thirds vote, unless the affected landowner requested or agreed to the ordinance, in which case it may be adopted by a simple majority vote.
- If the owner or operator of an airport protests a proposed change to a zoning ordinance affecting land within a certain distance from the airport, the change may be adopted only if approved by a two-thirds vote.

Beyond those three instances, prior law did not specify the minimum vote required to amend a zoning ordinance.

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The act repeals the supermajority vote requirement listed in the first bullet, above.

While leaving in place the supermajority vote requirements listed in the second and third bullets, above, the act specifies that—effective January 1, 2025—the enactment of a zoning amendment requires only a simple majority vote by the relevant governing body.

APPEAL OF COUNTY CONDITIONAL USE PERMIT DECISIONS

Background

Under prior law, if a county denied an application for a conditional use permit, the applicant could have appealed either to the county board of adjustment or to circuit court for certiorari review.

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Under the act, a county may, by ordinance, provide that such a decision can be appealed only to circuit court for certiorari review.

⁶ A similar supermajority requirement regarding a protest by 20 percent of affected landowners to a change in city zoning was repealed by 2017 Wisconsin Act 243.

⁷ A “down zoning ordinance” decreases allowable development density or reduces permitted uses. [s. 66.10015 (1) (as), Stats.]

PLANNED DEVELOPMENT DISTRICT ZONING

Background

A municipality may exercise a type of zoning known as a planned development district, sometimes also called a planned unit development. Under prior law, a planned development district was one that would tend to promote the maximum benefit from **each** of the following:

- Coordinated area site planning.
- Diversified location of structures.
- Mixed compatible uses.

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The act allows the establishment of a planned development district even if it does not contain mixed compatible uses.

Effective date: The act generally took effect on June 24, 2023, and initially applies to a final decision made by a local governing body on that date. Provisions relating to the requirement that a local governing body approve a residential housing development that meets all existing requirements, and relating to the establishment of a simple majority vote requirement for a zoning amendment, take effect on January 1, 2025.

For a full history of the bill, visit the Legislature's [bill history page](#).

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