



# Trans 233 Revision: Changes Coming to State Highway Setback Requirements

March 18, 2026

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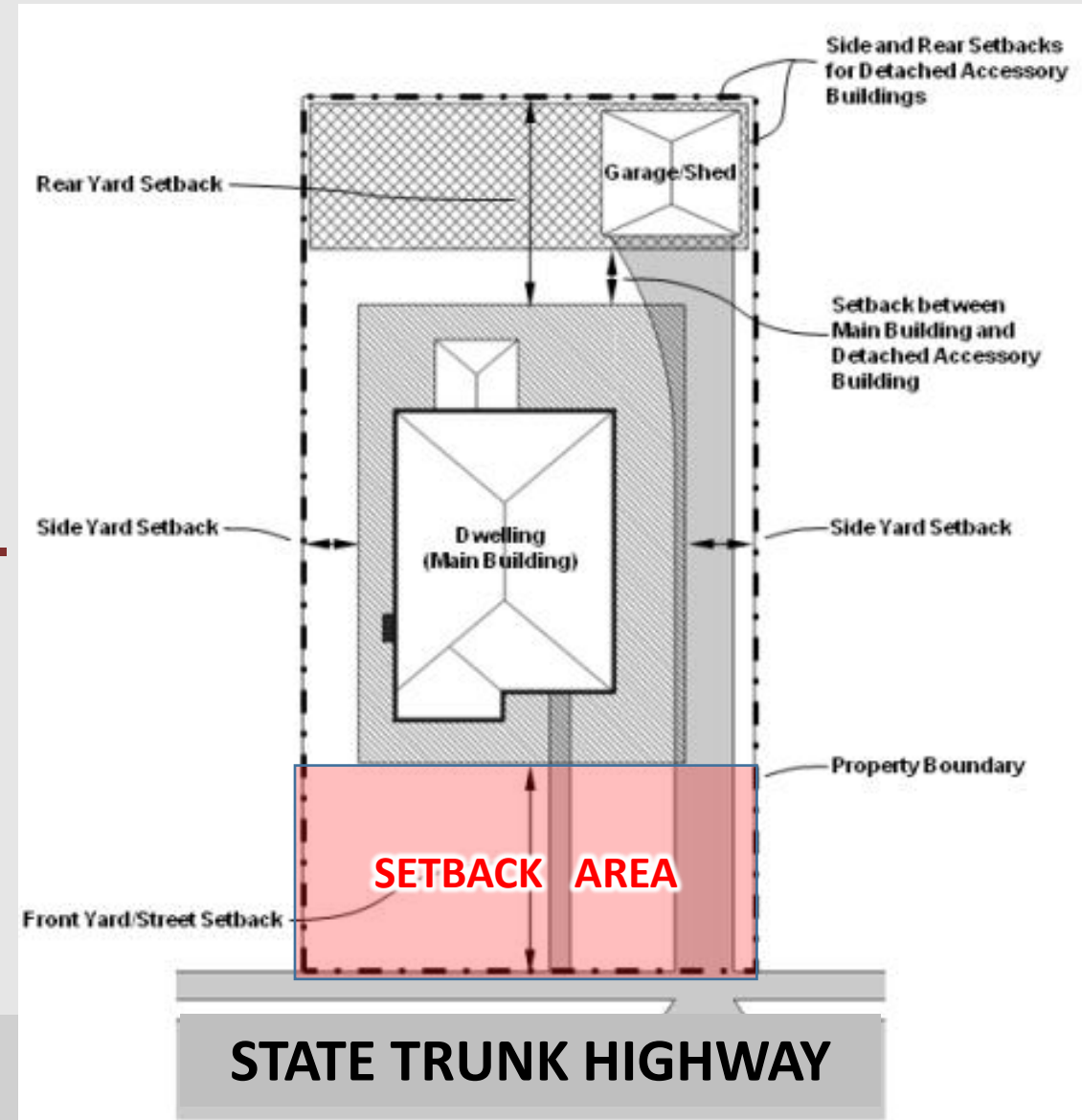
- **September 11, 2025 –**
  - **Statement of scope approved to revise Wisconsin Administrative Code Trans 233.**
- Why do this?
- How did we get here?
- What does this mean?

# Need for a Rule Change: Why Revise Trans 233?



# Trans 233 History

- 1956 – Hy 33 (Trans 233) created
  - Under authority of s.236
- 1999 – Trans 233 revised
  - Applied to all abutting land divisions
  - Clearly defined “improvements”
  - Allowed utilities in setback
- 2001 – minor revisions
  - Reduced setback to 15’ on lower-level highways.
- 2005 – court ruled Feb 1999 revision invalid, reverts back to 1956 rule.
  - Any setbacks placed on lands other than subdivision plats are invalid.
  - WisDOT only reviews “subdivisions”



## Chapter Trans 233

### DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

**Note:** Chapter Hy 33 was renumbered chapter Trans 233, under s. 13.93 (2m) (b) 1., Stats., [Register, August, 1996, No. 488](#). Chapter Trans 233 as it existed on January 31, 1999, was repealed and a new Chapter Trans 233 was created effective February 1, 1999.

**Note:** In the case of [Wisconsin Builders Association, et al. v. Wisconsin Department of Transportation 2005 WI App 160](#), the Court of Appeals ruled that the rules in Ch. Trans 233 were invalid to the extent that they apply to land divisions other than subdivisions.

**Note:** On April 16, 2009, in Dane County Circuit Court Case No. 06-CV-4294, *Madison Area Builders Association, et al. v. Wisconsin Department of Transportation; et al.*, it was ordered and adjudged that the 1999 and 2001 amendments to Chapter Trans 233 were declared to be invalid and unenforceable, but that that order had no effect on the legal validity or enforceability of Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999.

Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999, is printed as a note following section Trans 233.13.

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for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider

**Note: Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999, is printed below.**

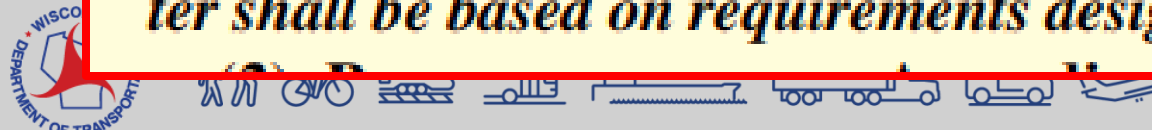
## Chapter Trans 233

# LAND SUBDIVISION PLATS ABUTTING STATE TRUNK HIGHWAYS AND CONNECTING STREETS

**Trans 233.01 Purpose. (1) PURPOSE OF CH. 236, STATS.** The purpose of ch. 236, Stats., is *“to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes.”*

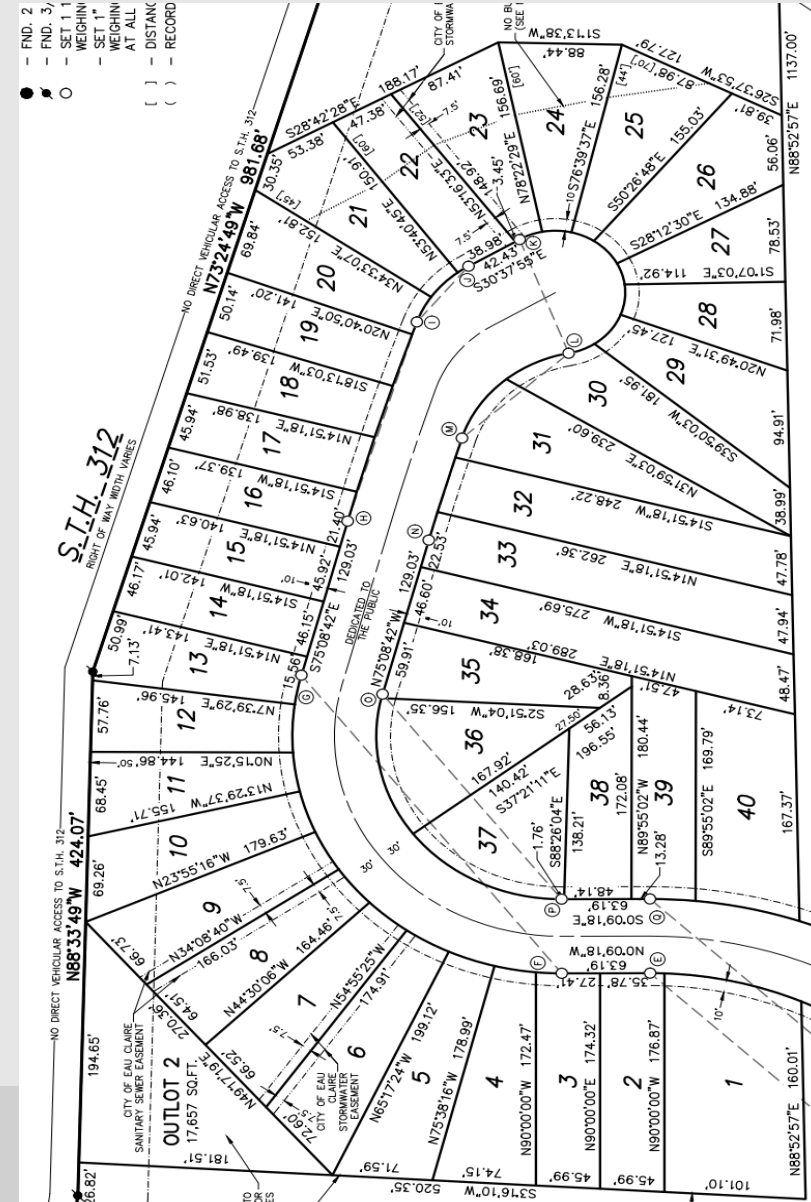
Under the word “variance.” The Supreme Court defined “unnecessary hardship” in a variance context as an owner having “no reasonable use of the property without a variance.” See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 413, 577

mission review of land subdivision plats abutting the state trunk highway system as provided under s. 236.13 (1) (e), Stats., as follows:



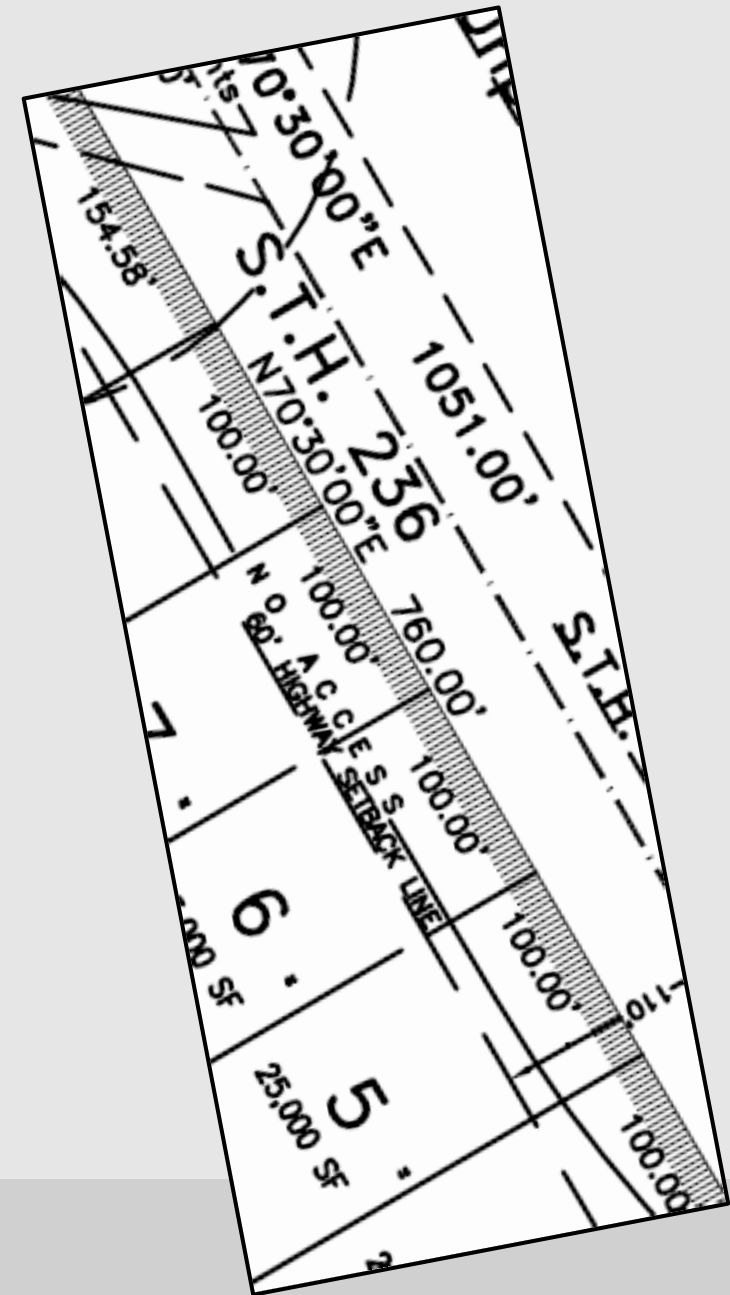
# Trans 233 Today

- Back to 1956 setback language:
  - “There shall be no improvements or structures placed between the highway and the set back line.”
  - “Improvements”
    - The language defining “improvements” in 233.08 was removed from the rule in 2004 ruling.
    - The language allowing utilities in 233.08 was also removed, so they legally were considered “improvements”
    - Legally includes almost anything (increases value of the land)



# Trans 233 Today

- **Limited criteria to approve a variance:**
  - “practical difficulty or unnecessary hardship” - court defined as “no reasonable use of the property without a variance.”
  - “Will defeat an orderly overall development plan of a local unit of government.”



# Trans 233 Today

- March 22, 2024 - §.86.074 signed into law
- Limits setback area to “no more than 50 feet” from the ROW line.
  - Only on subdivisions approved after effective date.
- Defines structures and improvements allowed within setback area.
- Creates a “Special Exception” process

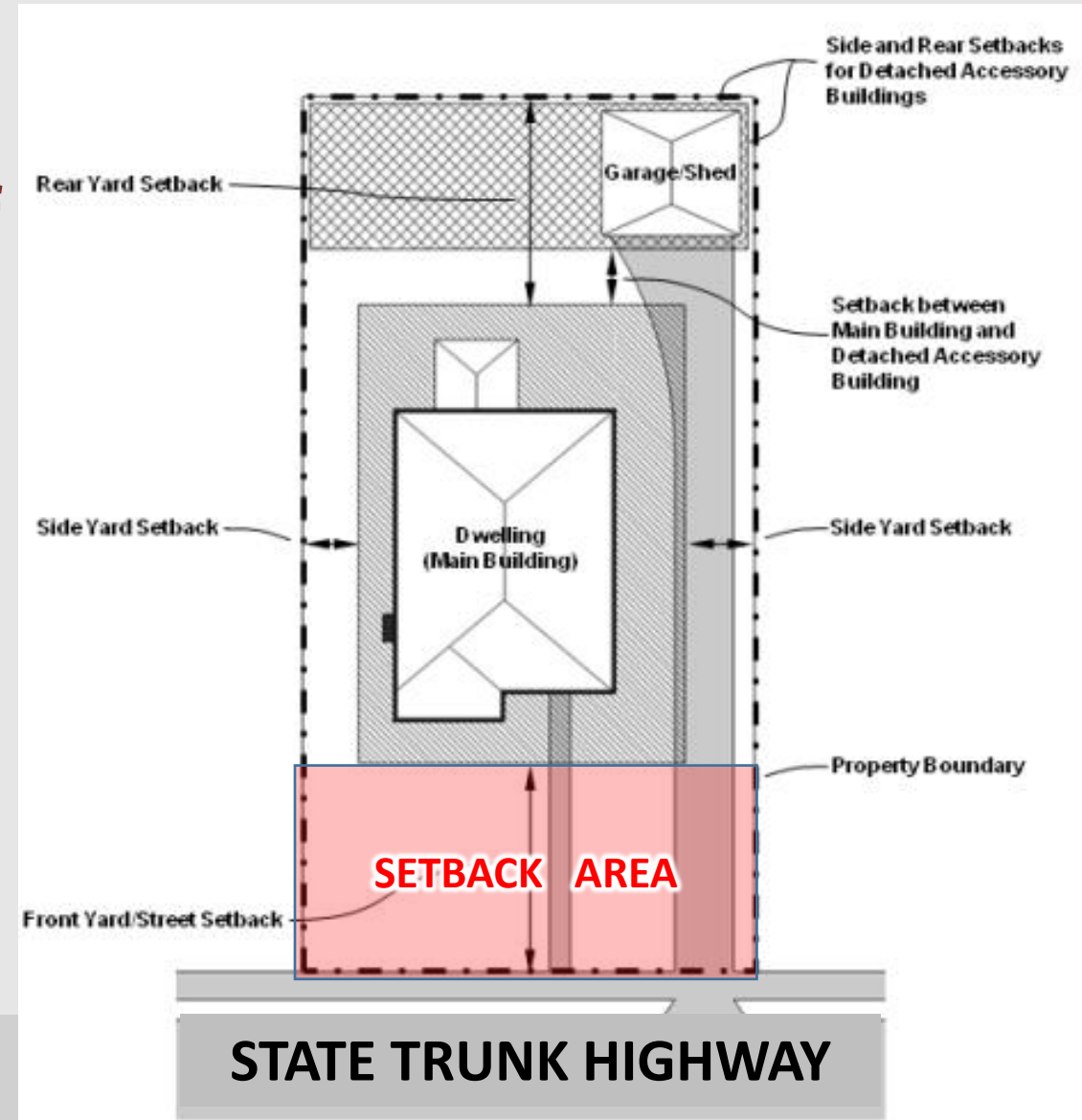


**FDM 7-50**  
**Attachment**  
**5.3**  
**page 9**

|   | <b>Prohibited Improvements<br/>(without a Special Exception)</b>   | <b>Acceptable Features Allowed</b>  |
|---|--|---|
| Specifically listed in 86.074(1)  | <ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Parallel driveways</li> <li>• Surface or sub-surface utility structures</li> <li>• Storm water facilities</li> <li>• Loading docks</li> <li>• In-ground swimming pools</li> <li>• Wells</li> <li>• Septic systems</li> <li>• Retaining walls</li> <li>• Signs</li> <li>• Buildings</li> <li>• Building appendages such as porches</li> <li>• Drainage facilities</li> </ul> | <ul style="list-style-type: none"> <li>• Terraces</li> <li>• Patios</li> <li>• Landscaping</li> <li>• Open fences</li> <li>• Portable swing sets</li> <li>• Moveable lawn sheds without pads or footings</li> <li>• Above ground swimming pools without decks</li> <li>• Sidewalks</li> <li>• Bike paths</li> <li>• Natural features, including landscaping or berms</li> </ul>         |
| Determined by the department based on definitions and examples in 86.074(1) | <ul style="list-style-type: none"> <li>• Subdivision entry walls or gatehouses</li> <li>• Sheds with pads or footings</li> <li>• Garages</li> <li>• Privacy fences</li> </ul>  | <ul style="list-style-type: none"> <li>• Gardens and flower beds</li> <li>• Playground equipment without pads or footings.</li> <li>• Residential satellite dishes</li> <li>• Trailer-mounted signs</li> <li>• Gazebos without pads or footings</li> <li>• Bus stop shelters without pads or footings.</li> <li>• Decks without pads or footings.</li> <li>• Multi-use paths</li> </ul> |

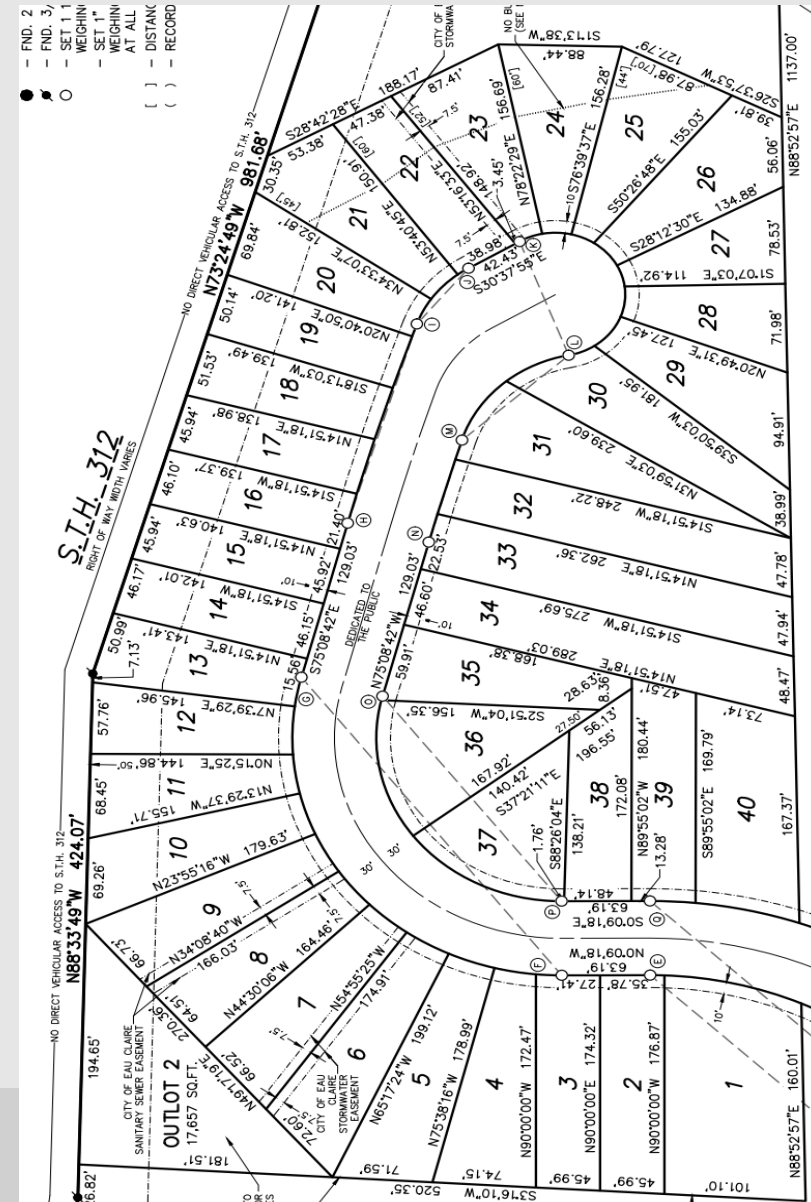
# §.86.074 – Impacts

- “Special Exception” process
  - WisDOT can allow prohibited improvements within setback area if owner signs a Waiver of Damages.
  - Owner waives all right to compensation for improvements within setback area, including
    - Relocation assistance
    - Any damages outside setback caused by removal.



# §.86.074 – Impacts

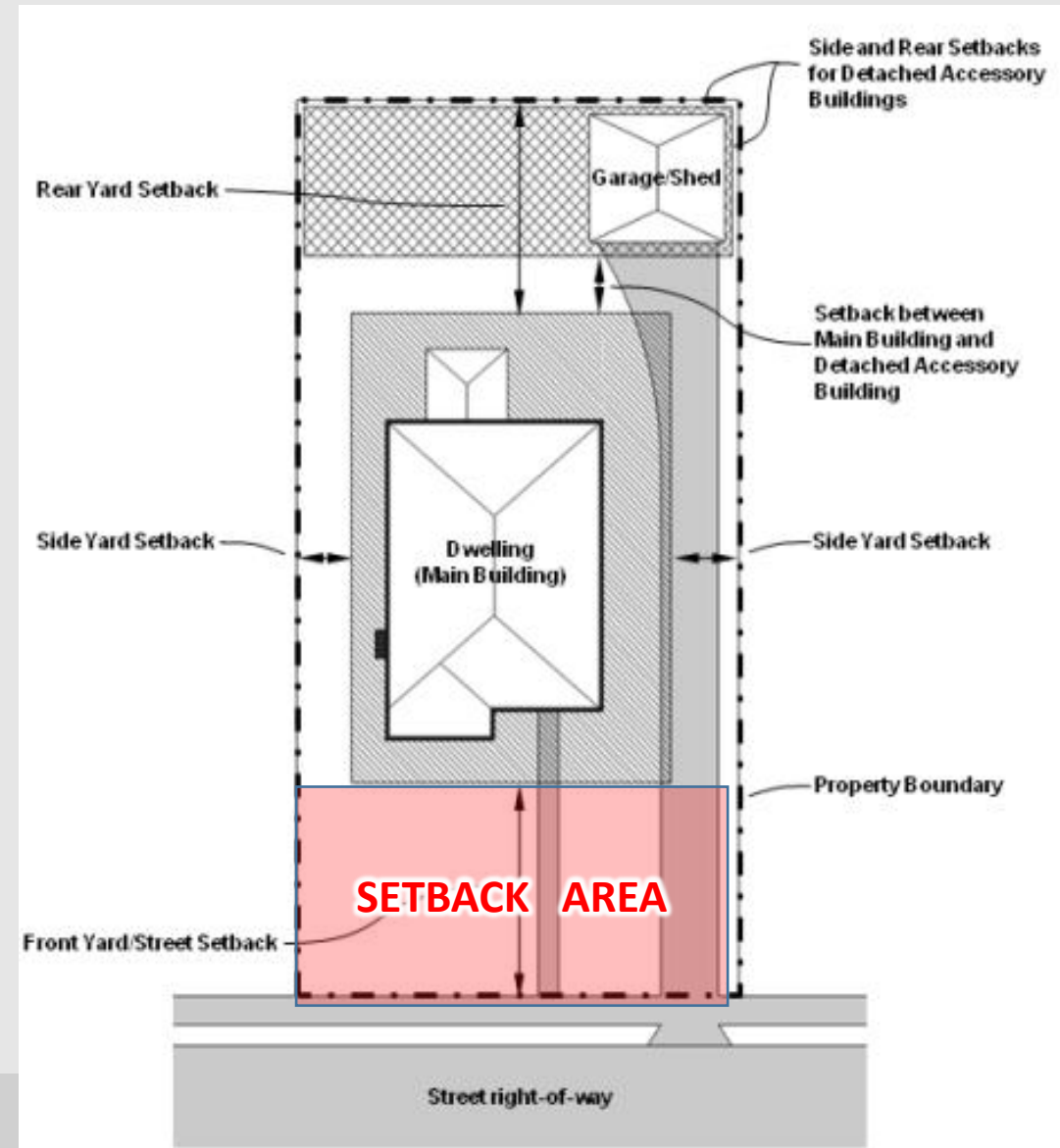
- “Special Exception” continued:
  - Waiver applies for 20 years
  - WisDOT can renew one time up to another 20 years only if WisDOT has
    - Future project(s) planned in program
    - Documented future plans for the corridor or spot improvements
  - Can only deny Special Exception for
    - Public safety (clear zone, vision corner, etc.)
    - Public interest & investment in highways (drainage features that would impact downstream or off-highway properties if they had to be removed, etc.)





# §.86.074 – Impacts

- Any other changes to setback (reduction, etc.) still require a **variance** under Trans 233.11.
- Criteria for variances unchanged (still 1956 language):
  - practical difficulty or unnecessary hardship
  - will defeat an orderly over-all development plan of a local unit of government (Trans 233.11)



- **September 11, 2025 –**
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- **What does this mean?**



# Scope Statement

- **Bring Trans 233 into conformity with new statutory requirements for state highways per 2023 Act 157 (s.86.074).**
- **Update Trans 233 definitions and terminology to current references and remove obsolete language;**
- **Clarify requirements, conditions, and procedures on activities which may include, but are not limited to, requirements for subdivision plats, special exception requests, waivers, and appeals.**



# Scope Statement (cont):

- Clarify guidance to improve the overall process for addressing preexisting and new structures and improvements within the highway setback area.
- Review and evaluate the 1956 code language for opportunities to align with present day practices, new developments in land use and transportation planning principles, and for consistency with Wisconsin State Statutes.



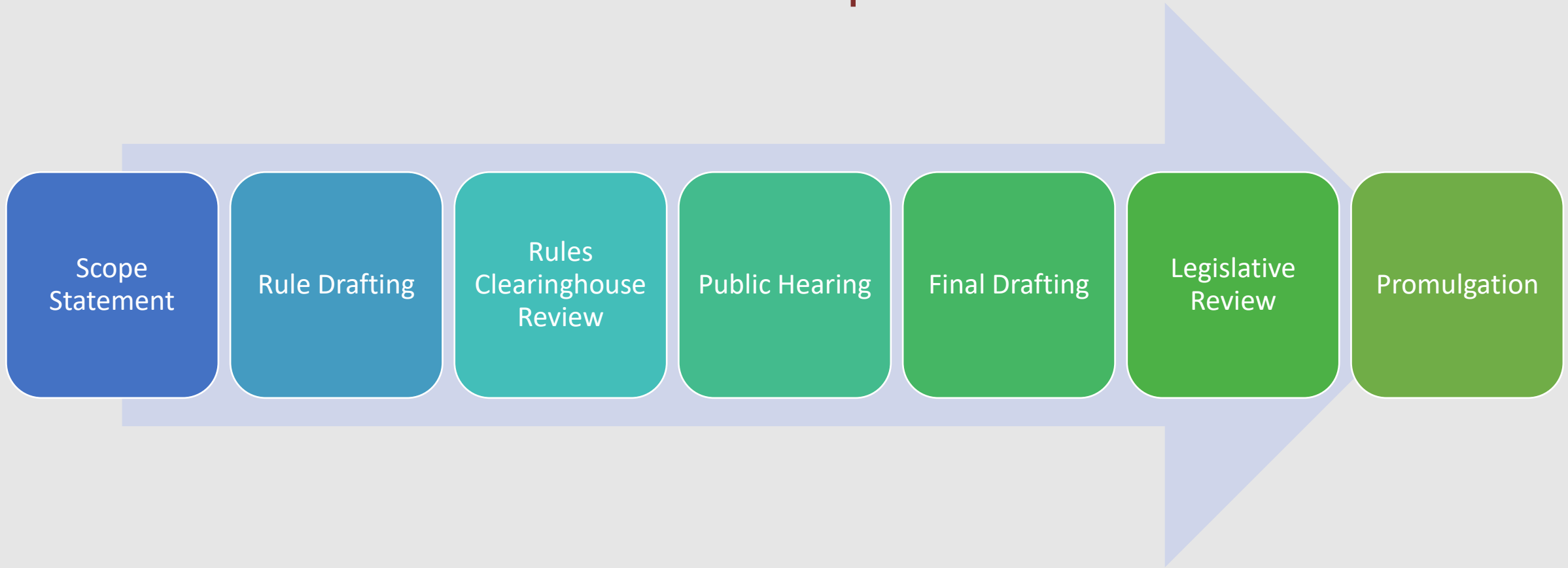
# Scope Statement - Comments

- We need to stay within the scope statement with any changes
- Scope was intentionally left broad to allow flexibility
- If things are determined to be out of the scope:
  - *Document for future rule update consideration*
  - *Consider updates to WisDOT guidance, specifications, and/or policies (FDM, etc.)*



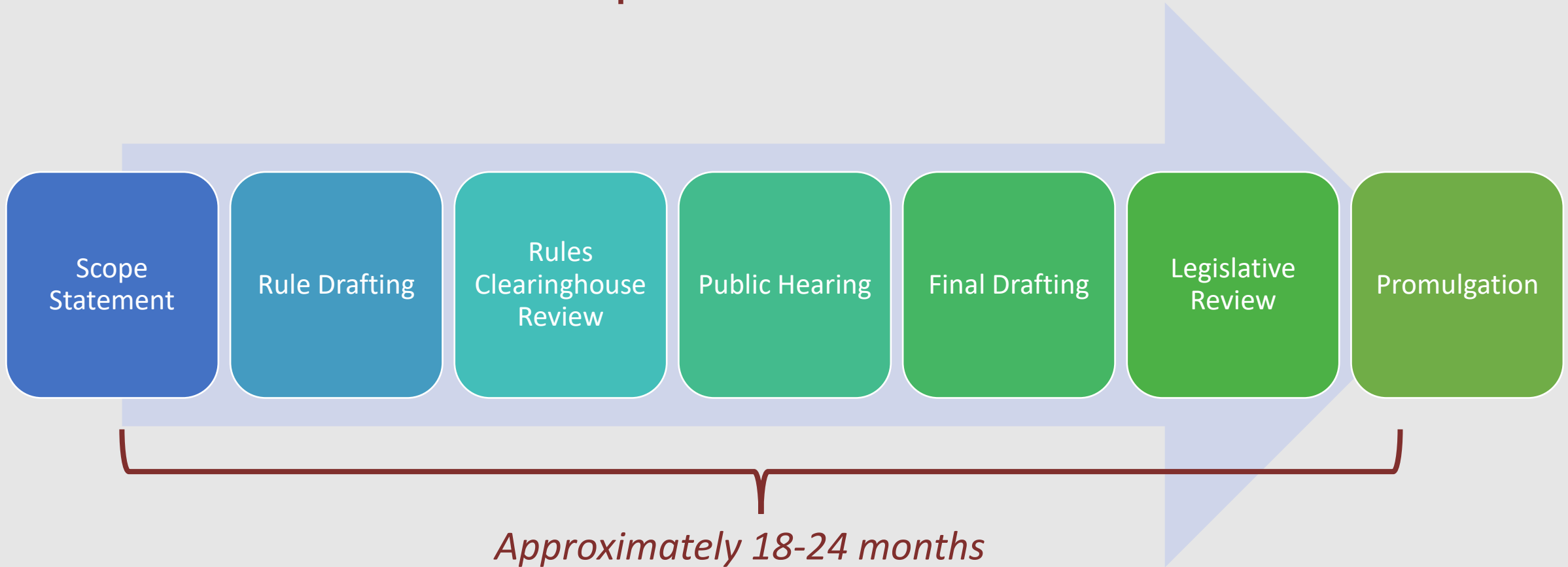
# Administrative Rules Process

## Basic Steps



# Administrative Rules Process

## Basic Steps – Permanent Rule



# Administrative Rules Process

## Phases



*Approximately 18-24 months*



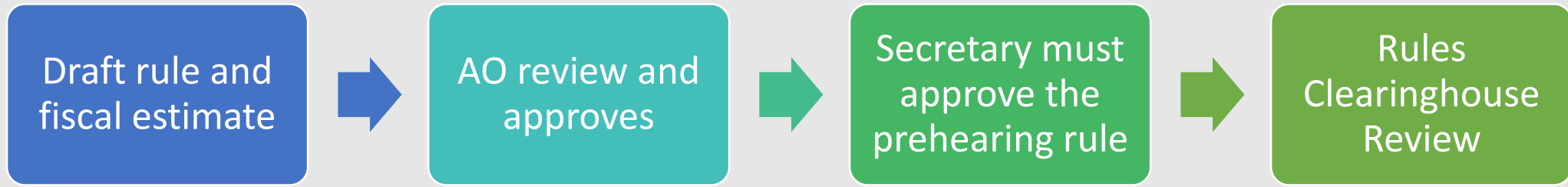
# Administrative Rules Process

## Phases



# Administrative Rules Process

## Rule Drafting Phase



*Varies on how long to draft rule*

# Rule Drafting Components

## First Draft of Rule

### 1. Rule Text

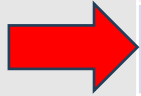
- Objective for the rule (what the rule will do, what it will not do)
- Focus on points, not drafting language
- Must stay within scope

### 2. Rule Analysis & Fiscal Estimate



# General Schedule

| Action  | Target Date   |
|---|---|
| Scope Statement   | Approved on September 11, 2025  |
| Email outreach to stakeholders  | Sent on November 24, 2025   |
| Internal Stakeholder Kick-Off Meeting   | December 9, 2025  |
| External Stakeholder Kick-Off Meeting   | December 15, 2025   |
| <b>Initial rule drafting and editing</b>  | <b>January – May 2026</b>   |
| Initial draft edits to stakeholders for review & comment  | May 2026  |
| <b>Stakeholder meetings/draft revisions/review &amp; comment</b>  | Summer 2026   |
| Prehearing rule package for legislative review process<br>(Rules Clearinghouse Review, Public Hearing)  | Fall 2026   |
| Final Drafting, Final Approvals (potential stakeholder assistance)                                      | Fall 2026 – Summer 2027   |
| <b><i>Final draft submittal to legislature (wrap-up internal of department rule work)</i></b>           | <b><i>Must occur before scope statement expires. (January 2028)</i></b> <span style="color: red;"><i>*hard deadline*</i></span> |
| Two successive legislative committee review periods (standing senate and assembly committees and JCRAR) | Rule effective date - Spring 2028   |



# Stakeholder Participation

## Groups we reached out to:

- Madison Area Builders Association
- Wi Chapter of the National Assoc. of Industrial and Office Property Management
- Wi Builders Association
- Wi Realtors Assn / Commercial Association of Realtors, Wi
- Realtors Association of South Central Wi
- National Federation of Independent Businesses, Wi Chapter
- Outdoor Advertising Association of Wi
- Timber Producers Association of Wi & Mi
- Wisconsin Towns Association
- Wisconsin Counties Association
- Wisconsin Dept. of Administration (Plat Review)
- Wi Grocers Association
- Wi Manufacturers and Commerce
- Wisconsin Retail Merchants Association
- Wisconsin Land Surveyors
- We Energies and Wisconsin Public Service
- Alliant Energy



# Stakeholder Participation

- Actively participate in discussions relevant to area of expertise.
- Openly share input and information to support the rulemaking process.
- Review proposed changes and provide comments.
- Share updates to relevant groups.



# Anticipated Changes

## General:

- Add section regarding applicability of rule (dates of previous rules, s.86.074, etc.)
- Remove any application of rules to land divisions other than abutting subdivision plats (CSMs, etc.)
- Update definitions to agree with s.86.074.
- Include process and application if a previous land division now falls under the definition of a subdivision plat according to s.236.
- Expand section on recommended procedures to include process for preliminary and final plats, time limits for review, and appeals process.
- Apply vision corners and drainage requirements.



# Anticipated Changes (cont.)

## Setback:

- Expand section on Setback requirements to
  - agree with s.86.074 (max 50')
  - Allow for reduced (15') setback on lower volume/function highways.
  - Clearly define applicability on frontage roads, connecting highways, business routes, etc.
  - Clarify allowed improvements, including guidance on utilities.



# Anticipated Changes (cont.)

## Variations:

- Revise variance requirements
- Expand on and refine variance / special exception criteria and process.



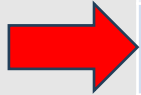
# We're Looking for Input!

- With the current rule, what works? What doesn't?
- What would you like to see changed?
- Additional thoughts on what we have talked about?
- Anything else that should be addressed or discussed?
- Any other stakeholders who should be involved?



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# Thank You!!

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