

Wis. Stat. 66.1002 Development Moratorium

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact **a development moratorium ordinance** if the municipality **has enacted a comprehensive plan**, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a **substantial change in conditions in the municipality**, or is exempt from the requirement as described in s. [66.1001 \(3m\)](#), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) **The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated activity specified under sub. (4) presents such a significant threat to the public health or safety that the need for a moratorium is justified.**

What is a “development moratorium”?

- Under Wis. Stat. 66.1002(1)(b), development moratorium has the definition:

“Development moratorium” means a moratorium on rezoning or approving any **subdivision** or other **division of land by plat** or certified survey map that is authorized under ch. [236](#).

Process to enact a development moratorium

- A registered engineer or public health professional submits a written report to the Common Council stating that in his or her opinion the proposed or anticipated activity specified under sub. [\(4\)](#) presents such a significant threat to the public health or safety that the need for a moratorium is justified

“public health professional” is defined as a physician or registered nurse

- Common Council adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity.
- Municipality must hold at least 1 public hearing about the proposed ordinance preceded by a Class 1 Notice – meaning noticed at least 30 days before the hearing
- Common Council adopts an ordinance which must contain all the following elements:
 - Statement describing the problem giving rise to the need for the moratorium
 - A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium
 - Subject to par. (b), the length of time during which the moratorium is to be in effect.
 - A statement describing how and why the governing body decided on the length of time
 - A description of the area in which the ordinance applies.
 - An exemption for any activity (request for rezoning, plat or certified map, subdivision plat or other land division) that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium
- Timeframe for moratorium: Not more than 12 months, can enact an extension ordinance for up to 6 months

If adopted, what next?

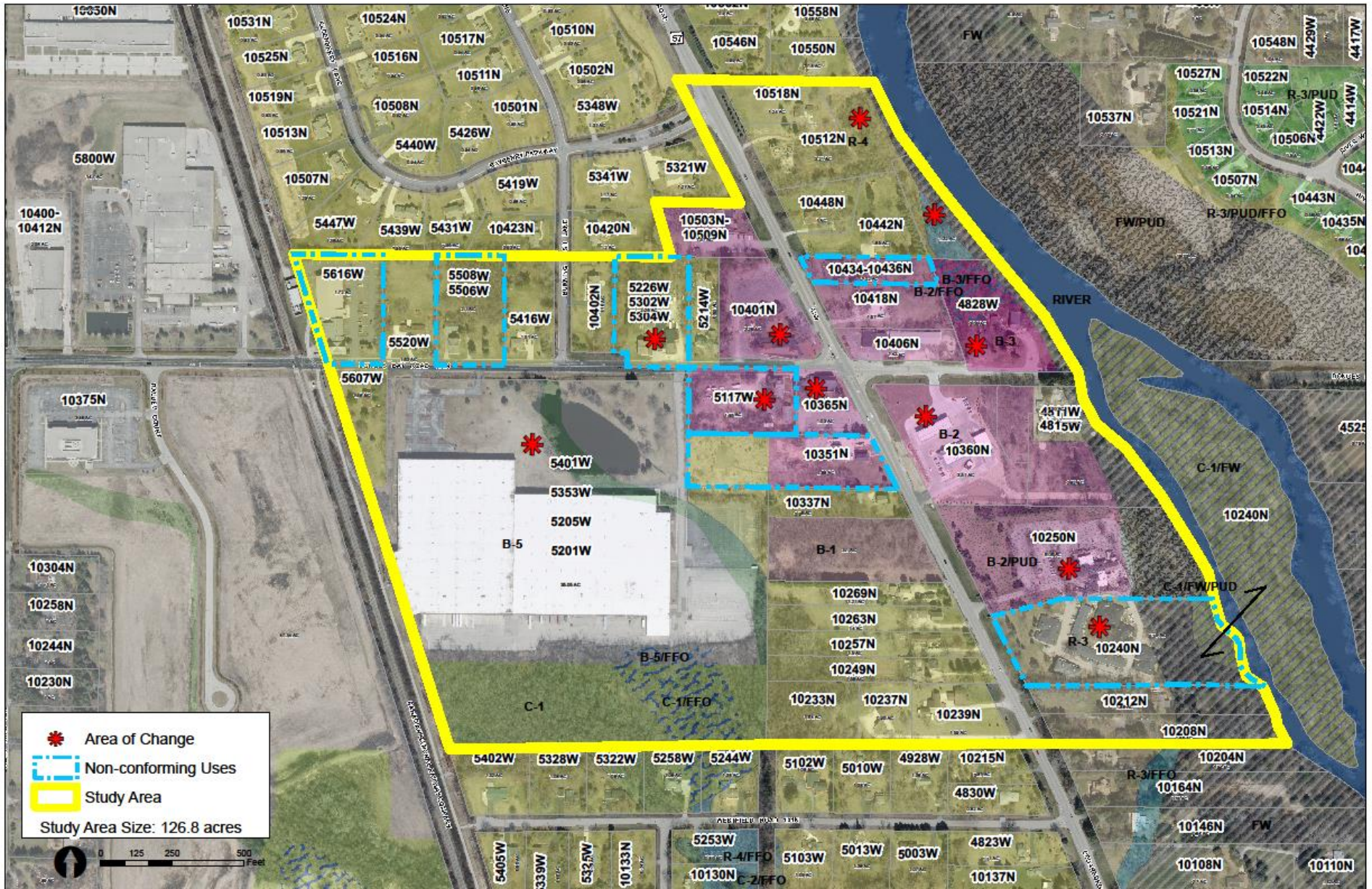
- *Potential* legal challenges
 - Ordinance must include all the elements – potential elements that could pose a challenge:
 - “A statement of the *specific action* that the municipality intends to take to alleviate the need for the moratorium” because it requires specificity
 - The problem is still hypothetically modeled
 - Requirement that a medical professional declare there be a **significant threat** to the public health or safety that the need for a moratorium is justified – are there public records and testimony that discredit this?
 - Do other parts of the City allow above 65 dB?
 - A winning legal challenge could mean the moratorium is voided or a damage penalty against the City
 - What activities would this impact? (Heather Stouder)
- (4) Applicability. A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:
- (a) A request for rezoning.
 - (c) A plat or certified survey map.
 - (d) A subdivision plat or other land division.

Example of Development Moratorium

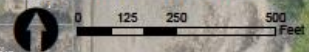
- Mequon, WI enacted a development moratorium in 2018 halting development in an area of the city that had substantial increases based on the increase in police calls in area (letter from City Engineer):

“The Mequon Police Department data represents an overall increase in public safety calls to the subject area of 123.2% between 2015 and 2017. In the one year from 2016 through 2017, the increase in calls to the area is 87.7%. In addition, during the same overall timeframe, the Department has responded to 17 new types of calls, including what is typically considered a substantial crime within the City. Further, the Department has increased the number of business checks within the subject area 389.7% since 2015 and 263.8% from 2016 through 2017. The increase is in part due to the number of businesses that are open to the public 24 hours a day and the concentration of these and similar type uses, which include bars, hotels and gas stations. In the interest of the public health and safety of the City of Mequon, based upon the data from the Mequon Police Department, a development moratorium is hereby recommended.”

- The moratorium, which was lifted in January 2019, was intended to give the city an opportunity to develop a comprehensive plan that would guide development along a key entryway to the city that now has vacant properties on two corners of the intersection. The Common Council approved a package of zoning changes for the area, designating many of the properties in a new zoning district called Neighborhood Commercial



★ Area of Change
 Non-conforming Uses
 Study Area
 Study Area Size: 126.8 acres



WHEREAS, On March 12, 2018, the City of Mequon Planning Commission approved a Resolution, after obtaining a written report from City Engineer Lundeen that a significant threat to public health and safety exists in the City's designated Neighborhood Commercial Node of Donges Bay and Cedarburg Roads; and

WHEREAS, based on data received from the Mequon Police Department, public safety calls have increased over 123% from 2015 through 2017 and 17 new categories of crime are present during the same timeframe for the subject Neighborhood Commercial Node, as geographically defined in Exhibit A: Donges Bay Road and Cedarburg Road; and WHEREAS, the City of Mequon is granted the authority to enact a Development Moratorium ordinance under 66.1002 Wis. State Statutes; and

WHEREAS, in anticipation of City enacted regulatory changes including rezoning, land use management, licensing, enforcement, nuisance and police powers, the City imposes a moratoria effective for 12 months and charges the Planning Commission, or special study committee if desired, with the research and analysis of the public safety issues to and make recommendations to the Common Council by January 15, 2019;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Mequon, Wisconsin, that a development moratoria effective on properties identified in Exhibit A is needed to address public health and safety issues present in the subject Neighborhood Commercial Node of Donges Bay Road and Cedarburg Road as identified by the City Engineer.

Ordinance 2018-1517

- Prohibited the expansion or change of commercial, industrial and residential uses, operations or structures beyond the existing operational and physical dimensions and on-site conditions for the properties as part of the Study Area
- Prohibited rezoning, land division, licensing, use and building and site plan changes for the development of any new commercial, industrial and residential uses, operations or structures during the duration of this moratorium.
- Established a temporary stay on the acceptance, review, and approval by the City of Mequon staff, consultants and officials of any applications or any permits for operations or structures for commercial, industrial, or residential uses.
- Exempted some applications and building permits
- Created an end date to the ordinance and established what committees/staff would study and report on during the duration of the moratorium

Ordinance 2019-1536

- Terminated the development moratorium ordinance
- In December 2018/January 2019 Planning Commission and Common Council adopted regulatory and zoning changes as measures to achieve development and public safety goals for the moratorium area based on the input of the City of Mequon Police Department, Planning Division and specific property owners of the moratorium area

Regulating New Residential Construction

- Noise mitigation requirements
 - Construction standards would violate min/max building code – unless there is a new state law creating a carve-out allowing municipalities require noise mitigation standards adjacent to airport
- Overlay district
 - Residential use
 - Residential structures

Residential Use

- M.G.O. § 28.211 defines “Nonconforming Use” as “any principal use of land or building which does not comply with all the regulations for this ordinance or of any amendment hereto governing use for the zoning district in which such use is located.”
- When a use is no longer allowed, existing use becomes non-conforming - if the City determines that an area is no longer appropriate for a particular use, it can amend the zoning code to prohibit that use and then, the law of nonconforming uses works to eventually eliminate it
 - What if include date? M.G.O. 28.004(3) states that wherever conditions imposed by a provision of this ordinance are more or less restrictive than other comparable provisions, the more restrictive provision shall apply. Here, the more restrictive ordinance would be M.G.O. § 28.191, which would work to eliminate nonconforming uses until all uses in the area are compatible
 - Real world challenge

Residential Structure

2011 Wis. Act 170 introduced a statutory definition of “nonconforming structure”

- Dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance
- “Development regulations” means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.
- Also included first definition of “nonconforming use”
- Municipalities can not prohibit cost-based limitations on repairs of non-conforming structures

MGO 28.192 – “a lawful nonconforming building or structure existing on the effective date of this ordinance may be continued although it does not conform to the provisions of this ordinance with respect to bulk characteristics including, but not limited to, setback, open space, floor area ration, height, density, parking facilities, amount of parking, and style, provided that any additions or enlargements shall conform to the provisions of this ordinance”

MGO Subchapter 28K: Building Form Standards – Matt Tucker discussion