

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

OPINION 2001-02

April 3, 2001

MEMORANDUM

TO: Mark A. Olinger, Director of Planning and Development

FROM: Eunice Gibson, City Attorney

SUBJECT: **Payment of Unpaid Accrued or Delinquent Real Property Taxes as a Condition of Recording an Approved Certified Survey Map**

You have asked my opinion on the following issue: How can Madison's Land Subdivision Regulations provision in § 16.23(5)(e), MGO, be reconciled with § 74.11(2), Wis. Stats.? The ordinance requires a certificate of taxes paid and payment of any unpaid accrued or delinquent real estate taxes on lands included in a land division creating less than five (5) new parcels prior to recording of a certified survey map or CSM for such land division. The statute allows real property taxes to be paid either in full on or before January 31, or in 2 equal installments payable on or before January 31 and July 31, respectively.

Under § 236.21(3), Wis. Stats., for a final subdivision plat creating five or more new parcels to be entitled to recording, a certificate of taxes paid must be included on the face of the plat. This certificate must show that there are **no unpaid taxes** on any of the lands included in the final plat owing to either the local municipality or the county--this includes any unpaid taxes accrued and levied against the lands, even if payable in installments which are otherwise not yet delinquent.

The policy behind this statutory requirement for payment of accrued taxes prior to recording of a plat creating new parcels is sound. The lien of those taxes attaches to the respective parcels comprising all of the original lands included in the plat, rather than to the several newly created parcels. Consequently, any responsible title insurance company will insist upon the full payment of any outstanding property taxes prior to recording of a new plat, because the alternative of local tax collection officials, land developers, multiple new parcel owners, title companies and their respective agents having to decide which of the new parcels are to be responsible for those prior taxes is potential chaos. The same reasoning applies to land divisions which create four or fewer new parcels by recorded certified survey maps.

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The § 236.21(3) statutory platting requirement for payment of any unpaid taxes does not appear in § 236.34, Stats., as a technical requirement for CSM's. However, § 236.45(2)(a), Stats., allows cities with planning agencies, such as the City of Madison, to adopt ordinances governing the subdivision **or other division of land which are more restrictive than the provisions** of the land subdivision regulations statute. Such more restrictive ordinances may also specifically apply to land divisions or CSM's of less than five (5) parcels.

Therefore, Madison's ordinance requirement for prepayment of all unpaid accrued taxes on lands included in land divisions prior to recording a certified survey map covering such lands is authorized by the enabling legislation of Sec. 236.45(2)(a), Stats., and is consistent with the legislative intent set forth therein.

Eunice Gibson
City Attorney

eg:jmv

CAPTION: The Land Subdivision Regulation ordinance requirement of § 16.23(5)(e), MGO, which requires payment of all unpaid accrued real property taxes on lands included in a land division prior to recording of the certified survey map is authorized by § 236.45(2)(a), Stats., and consistent with legislative intent contained therein.

cc: Mayor Bauman
City Clerk