

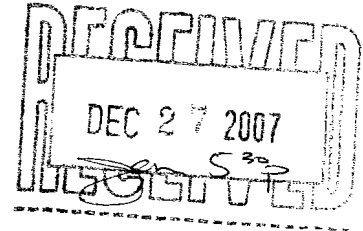
DALLENBACH & ANICH, S.C.
ATTORNEYS AT LAW
220 SIXTH AVENUE WEST
POST OFFICE BOX 677
ASHLAND, WISCONSIN 54806-0677
TELEPHONE (715) 682-9114
FAX NO. (715) 682-9504

KEITH W. DALLENBACH
MATTHEW F. ANICH
KEVIN L. OSTERBAUER

December 26, 2007

FAX: 715-747-6654

Jennifer M. Croonborg
Town of La Pointe-Zoning Administrator
P.O. Box 270
La Pointe, WI 54850



Dear Ms. Croonborg:

The Town of La Pointe Town Plan Commission is in the process of drafting a new zoning ordinance for the Town of La Pointe to bring it into conformance with the Town's Comprehensive Plan.

The question which has arisen is whether drafts of the proposed Town Zoning Ordinance which the Town Plan Commission is in the process of considering are records which are available to the public under Wisconsin's Public Records Law.

Wisconsin's Public Records Law is found in §§19.31-19.39 Wis. Stats.

Such law legislatively mandates a "presumption of complete public access". (§19.31 Wis. Stats.)

The flat rule is that any person who seeks access to "any" public record "has a right to inspect" that record unless the law otherwise provides. (§19.35(1)(a) Wis. Stats.)

Except as otherwise provided by law, any requester has a right to inspect a record and make or receive a copy of the record which appears in written form. If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original. (§19.35(1)(b) Wis. Stats.)

Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination or deny the request in whole or in part and the reasons therefor. (§19.35(4) Wis. Stats.)

§19.31 Wis. Stats. recognizes there may be circumstances where the "conduct of public business" requires that public access be denied or restricted, but it provides: "The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."

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An "authority" is defined by the Public Records Law as, inter alia, any "state or local office, elected official, agency, board, commission, committee, council, department or public corporate body or politic created by constitution, law, ordinance, rule or order." (§19.32(1) Wis. Stats.)

The Public Records Law defines "record" as "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. Record includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printout and optical disks."

"Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

The Town Plan Commission is provided for by Town Ordinance, so it is an "authority" as the term is defined in §19.32(1) Wis. Stats.

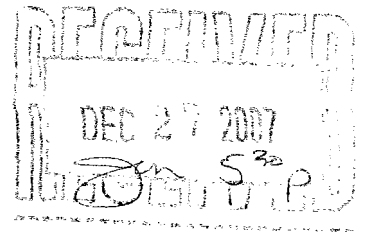
The issue would therefore seem to be whether the drafts of a proposed Town Zoning Ordinance constitute a "record" as defined in §19.32(2) Wis. Stats.

A person might consider a "draft" that he or she has made to be just that, a draft, and therefore not a "record". However, for the document to be a "draft" under §19.32(2) Wis. Stats., which is not a record, it must comply with the language in §19.32(2) Wis. Stats. or else it is a record.

This issue was addressed in the case of *Fox v. Bock*, 149 Wis. 2d 403, 413-14 (1989), which provides that any exceptions to the general rule of disclosure must be narrowly construed.

Fox states: "A determination that a document is a draft prepared for an originator's personal use creates an exception to the general rule of disclosure. It is a draft if it is prepared for and utilized for the originator's personal use." It is also a draft if it was prepared by the originator in the name of a person for whom the originator is working and is materials which are purely the personal property of the custodian and have no relation to his or her office.

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Merely labeling each page of a document “draft” does not make the document a draft as that term is defined in §19.32(2) Wis. Stats. See Page 417 of Fox.

So, the real question is whether the particular “draft” at issue was prepared only for the originator’s personal use as opposed to some other purpose.

If the “draft” of the proposed Town Zoning Ordinance was only for the originator’s personal use, then the exception would apply and such “draft” would not be a record under Wisconsin’s Public Records Law.

If, however, the “draft” of the proposed Town Zoning Ordinance was for the use or consideration of a person other than the originator, such as a second person, the Town Plan Commission, the Town Board or anyone else, then that document comes within the definition of a “record” and is available to be obtained and/or inspected by a requester under Wisconsin’s Public Records Law.

A copy of the Fox case is enclosed as is a copy of the Journal/Sentinel v. Shorewood School Board case at 186 Wis. 2d 443, which quotes the Fox decision with approval pointing out that in that case the consultant’s report was held not to be a “draft” even though it had not yet been put into final form (Page 455). When a document is not a “draft” as narrowly defined in §19.32(2) Wis. Stats., then it is a record covered by Wisconsin’s Public Records Law.

If this letter does not adequately address the question posed, kindly advise.

Yours truly,

DALLENBACH & ANICH, S.C.

Matthew F. Anich

MFA/hf

Enclosures