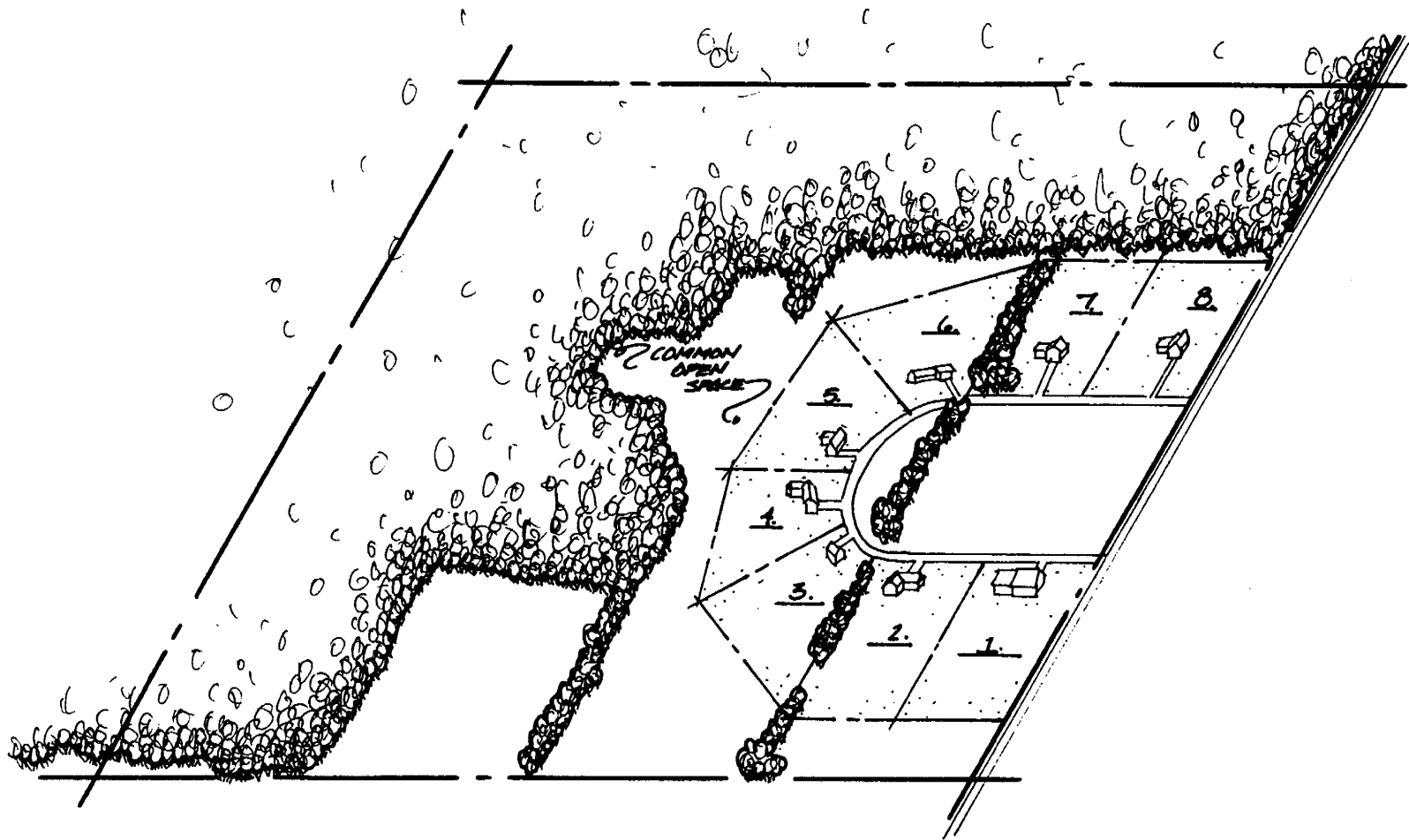

An Ordinance for a Conservation Subdivision



Section 66.1027 of the Wisconsin Statutes, part of Wisconsin's recent "smart growth" law, requires that the University of Wisconsin Extension prepare "an ordinance for a conservation subdivision." This ordinance was prepared in response to that law. When Wisconsin's comprehensive planning and "smart growth" law was enacted in October 1999, as part of 1999 Wisconsin Act 9, the law required that cities, villages and towns with a population of at least 12,500 needed to adopt an ordinance for a conservation subdivision. That requirement was subsequently eliminated by 1999 Wisconsin Act 148. Local governments are not required to adopt this ordinance. It is provided for educational purposes only.

Acknowledgments

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December 31, 2000

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Introduction To The Ordinance

This publication provides a brief introduction to the concepts, advantages and limitations of conservation subdivisions. The publication also includes an ordinance for a conservation subdivision. The text of the ordinance begins on page 7. The ordinance also includes a commentary on the ordinance text. The commentary is intended to make the document easier to read and understand while guiding local officials and others interested in pursuing conservation subdivisions for their communities.

The ordinance is meant as a guide and **is not** intended to be adopted “as is.” **Each community must adapt the language and concepts of the ordinance to fit the unique circumstances found in that community.** The ordinance is written as a **subdivision ordinance** that can be adopted by cities, villages, towns with village powers, and counties under section 236.45 of the Wisconsin Statutes. It is not written as a **zoning ordinance**. Since many communities may not have an existing subdivision (or land division) ordinance, this ordinance includes standard language for the platting of land under the process established in Chapter 236 of the Wisconsin Statutes. That language appears in *italics* in the text. The language that pertains more directly to the concept of conservation design appears in a regular font. Communities that have an existing subdivision or land division ordinance should examine the design process and standards of that ordinance in comparison to this ordinance. Communities can change those standards to reflect the conservation design concepts or they could include a separate section in their subdivision ordinance providing for conservation subdivisions. As with any subdivision ordinance, local governments must have a plan commission (in the case of cities, villages, and towns with village powers) or a plan committee (in the case of counties) to recommend adoption of this ordinance and to help in the administration of this ordinance. Communities also may need to adapt other applicable ordinances (such as zoning), to ensure they are consistent with principles of conservation development. For general information on subdivision regulations see Chapter 7 in Brian W. Ohm, *Guide to Community Planning in Wisconsin* published by the University of Wisconsin-Extension in 1999.

To better understand the context and build support for the use of conservation subdivisions, communities should provide the basis for a conservation subdivision ordinance through a comprehensive planning process. Through this planning process, local governments can understand how to craft their conservation subdivision ordinances to conserve the unique qualities of the Wisconsin landscape found in their community.

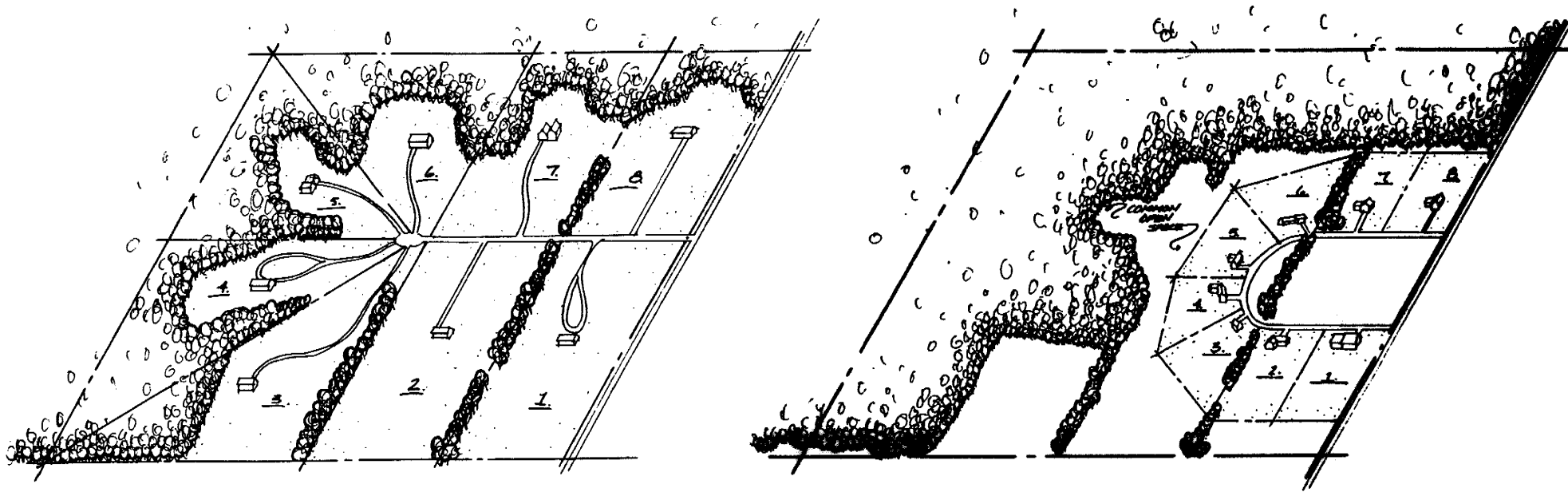
Brief Overview of Conservation Subdivisions

Conservation subdivisions can occur in a variety of settings, such as in urban areas, in a transition area between clearly rural and urban areas or in rural settings. Wisconsin’s “smart growth” law defines a “conservation subdivision” as: “a housing development in a rural setting that is characterized by compact lots and common open space, and where the natural features of land are maintained to the greatest extent possible.” This ordinance follows that definition of a conservation subdivision. There are also other ways to define and develop conservation subdivisions for other settings. Conservation design principles can also be incorporated in other local ordinances to help ensure that developments that do not constitute a “subdivision” meet conservation design principles.

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Generally, conservation subdivisions allow for an adjustment in the location of residential dwelling units on a parcel of land so long as the total number of dwelling units does not exceed the number of units otherwise permitted in the zoning district. The dwelling units are grouped or “clustered” on only a portion of a parcel of land. The remainder of the site is preserved as open space, farmland, or as an environmentally and culturally sensitive area. This clustering of the dwellings into a small area is made possible by reducing the individual lot sizes. The open space is permanently protected and held in common ownership. Sometimes additional dwelling units may be permitted if certain objectives are achieved. Conservation subdivisions are an alternative approach to the conventional lot-by-lot division of land in rural areas which spreads development evenly throughout a parcel with little regard to impacts on the natural and cultural features of the area. See Figure A. Conservation subdivisions enable a developer to concentrate units on the most buildable portion of a site, preserving natural drainage systems, open space, and environmentally and culturally sensitive areas.

Figure A.



Conventional subdivision

Conservation subdivision

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In order to determine the possible benefits of conservation subdivisions, while at the same time recognizing their limitations, it is important to understand their locational context. Comprehensive planning is essential for helping a community better understand the landscape, the unique issues affecting the community, and determining where conservation subdivisions are applicable and appropriate. Some of the issues communities need to think about include rural character and lifestyles, environmental protection, historic preservation, transportation, and compatibility with agriculture. **This ordinance should not be used as a substitute for comprehensive planning which can help determine the overall pattern of development in the community and the direction of growth.** The conservation subdivision is only one tool out of a mixture of different tools that communities can use to achieve the objectives of their comprehensive plan.

■ Open Space

Public concern has grown over the loss of open space and rural character that seems to inevitably accompany development. Conservation subdivision design concepts promote and encourage the clustering of homes so as to create an interconnected network of permanent open space. The open space and common facilities, such as joint septic and water systems, are generally managed through a homeowners association, non-profit conservation organization such as a land trust, a local unit of government, or an individual who complies with the permanent conservation restrictions.

Some of the advantages of using conservation subdivisions for these purposes are (1) fostering a sense of community through carefully sited smaller lots and shared spaces; (2) protecting and restoring significant resources such as prime farmland, historic buildings, archaeological sites, mature woodlands, streams, ponds or wetlands, and scenic views, and (3) preserving rural character, which has an external effect of increasing land values.

■ Farmland

As development pressures increase, property values of agricultural lands near developing areas have steadily increased. In many areas, the value of agricultural land for development is greater than the value of the land for agriculture. Land values, combined with the general uncertainties of the agricultural economy, create disincentives for farmers to stay in agriculture. Growth pressures have led to development in agricultural areas outside urban areas. As residential development encroaches on ongoing agricultural operations, conflicts arise between farmers and these new residents. These conflicts include: the generation of noise, lights and odor from farm operations; and traffic conflicts resulting from increased automobile traffic on narrow country roads.

Conservation subdivisions may not be the best means of protecting large blocks of agricultural land, nor are they the best measures to protect farming as a viable lifestyle. In order to sustain an agricultural community and ensure farming as a viable lifestyle, large blocks of contiguous land need to be protected and maintained. This would reduce the potential conflicts mentioned above. Conservation subdivisions can, however, protect small blocks of agricultural land and promote areas where agricultural and residential activities can co-

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exist. This is significant for particular types of agricultural practices that have some economic and aesthetic benefits. This might include pick-your-own operations, community supported agricultural programs, organic vegetable production, hay and straw production and other specialty products and activities that use low chemical and low intensity production.

■ Shoreland and Environmentally Sensitive Areas

The clustering of homes can direct development to areas more suitable for development and away from areas that are more environmentally sensitive, such as wetlands. Clustering can also provide for the preservation of archaeological sites, including Indian mounds and burial sites--which often occur near water--in the protected open space. In shoreland areas where residential development is permitted, conservation subdivisions can be instrumental in protecting and restoring desirable natural features, particularly scenic views of the water body concerned, and minimize negative environmental effects. Rather than providing a waterfront view for a limited number of very expensive homes, through the stringing out of houses along a lakefront or river's edge, the view can be preserved as a community amenity for all to enjoy, while still maintaining desired overall development densities. Scenic views from the waterway are also preserved. Finally, conservation subdivisions can help protect water quality through the maintenance of waterway buffers and better management of run off.

Conclusion

The challenge for landowners and local officials is how to continue to effectively meet the demand for rural housing in a way that respects and conserves the rural character, maintains natural resources, and protects environmental amenities. Conservation subdivisions are one tool that can be used to achieve these goals.

Additional Resources

In order to develop this ordinance, various *conservation*, *cluster*, and *open space* ordinances were collected from around Wisconsin and the Midwest from communities that have created and adopted a similar ordinance or are currently developing one. In addition, various regional, state and local organizations were contacted in order to develop a model that can easily be tailored to accommodate individual communities. Other reference materials on conservation subdivisions were also consulted.

The following ordinances and other materials were reviewed in preparation of this ordinance. These materials should be consulted for more detailed explanation and/or description of conservation subdivision principals and design guidelines.

Arendt, Randall, G., *Conservation Design for Subdivisions: A Practical Guide to Creating Open Space Networks* (1996).

Arendt, Randall, G., *Growing Greener: Putting Conservation into Local Plans and Ordinances* (1999).

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East Central Wisconsin Regional Planning Commission, *Rural Development Guide for East Central Wisconsin Governments and Landowners* (1999).

Freilich, Robert H. and Shultz, Michael M., *Model Subdivision Regulations* (1995).

Listokin, David and Walker, Carole, *The Subdivision and Site Plan Handbook* (1989).

Minnesota Planning, *From Policy to Reality: Model Ordinances for Sustainable Development* (2000).

Portage County (Wisconsin) Planning and Zoning Department, *Final Draft Portage County Subdivision Ordinance Amendment: Open Space Design Option* (2000).

Southeastern Wisconsin Regional Planning Commission, *Rural Cluster Development Guide* (1996).

Town of Greenville (Outagamie County, Wisconsin), *Subdivision Ordinance* (2000).

Town of Mt. Pleasant (Racine County, Wisconsin), *Zoning Ordinance*.

Town of Wayne (Washington County, Wisconsin), *Zoning Ordinance* (1999 Revisions).

Washington State Department of Community Development, *Evaluating Innovative Techniques for Resource Lands, Part I: Clustering* (1992).

Washington County (Minnesota) Planning and Administrative Services, Metropolitan Council, BRW, Inc., *Open Space Design Development: A Guide for Local Governments* (1997).

Wisconsin Department of Natural Resources, *Department Position on Cluster Development* (1999).

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1. General Provisions

1.1 Title. *These regulations shall officially be known, cited, and referred to as the Conservation Subdivision Ordinance of [name of local government], Wisconsin (hereinafter “ordinance”).*

Ordinances are often given an abbreviated title for reference purposes. This ordinance may be part of a larger set of ordinances governing land use.

- 1.2 Purposes.** This ordinance is adopted for the following purposes:
1. To guide the future growth and development of the community consistent with the [name of city, village, town, county]’s adopted comprehensive plan.
 2. To guide the detailed analysis of the development parcel so as to locate and coordinate appropriate areas for development and conservation.
 3. To preserve the rural character through the permanent preservation of meaningful open space and sensitive natural resources.
 4. To preserve scenic views by minimizing views of new development from existing roads.
 5. To preserve prime agricultural land by concentrating housing on lands that have low agricultural potential.
 6. To provide commonly-owned open space areas for passive and/or active recreational use by residents of the development and, where specified, the larger community.
 7. To provide for a diversity of lot sizes, housing choices and building densities to accommodate a variety of age and income groups.
 8. To provide buffering between residential development and non-residential uses.
 9. To protect and restore environmentally sensitive areas and biological diversity, minimize disturbance to existing vegetation, and maintain environmental corridors.
 10. To preserve significant archaeological sites, historic buildings and their settings.
 11. To meet demand for housing in a rural setting.

All references in the ordinance appearing between brackets [] are to be filled in with the appropriate reference by the jurisdiction adopting the ordinance.

The purposes statement should incorporate language contained in the community’s comprehensive plan.

1.3 Statutory Authorization. *This ordinance is adopted pursuant to the authority contained in section 236.45 of the Wisconsin Statutes.*

Cities, villages, towns with village powers and counties all have the authority to adopt subdivision regulations.

- 1.4 Jurisdiction.** *[For cities and villages] Jurisdiction of this ordinance shall include all lands within the corporate limits of the [City, Village of _____], Wisconsin, and those lands within the extraterritorial jurisdiction of the [city/village] as established in Sections 61.35 [include for villages] and 62.23(2), 66.32, and 236.10 of the Wisconsin Statutes.*
[For towns] Jurisdiction of these regulations shall include all lands within the corporate limits of the Town of _____, Wisconsin.
[For counties] Jurisdiction of these regulations shall include all lands within the unincorporated areas of the County of _____, Wisconsin, and those lands within the jurisdiction of cities and villages to determine if the county has an objection to a plat on the basis of planned public improvements under section 236.12 of the Wisconsin Statutes.

The ordinance does not apply to:

- 1. Transfers of interests in land by will or pursuant to court order.*
- 2. Cemetery plats under section 157.07 of the Wisconsin Statutes.*
- 3. The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this ordinance or other applicable laws or ordinances.*
- 4. Assessors' plats made under section 70.27 of the Wisconsin Statutes, but such assessors' plats shall comply with sections 236.15(1)(a)--(g) and 236.20(1), (2)(a)--(c), of the Wisconsin Statutes.*

- 1.5 Applicability and Compliance.** The conservation subdivision standards apply to all divisions of a parent parcel of [20] acres or more by a subdivider where the division creates at least [four] new parcels. The number of new parcels that can be created shall be consistent with the applicable zoning ordinance for the parent parcel. The overall development density for the parent parcel is the same as would be allowed for a conventional subdivision in the existing zoning district except for those conservation subdivisions which qualify for a development bonus under section 4.2. The provisions of this ordinance apply to residential development within the following districts established in the [city, village, town, county] zoning ordinance: [identify zoning districts within which the

The minimum size of the conservation subdivision must be large enough to allow for creative site design and the protection of open space. The minimum size and number of parcels needs to be tailored to the unique circumstances of each community. This ordinance uses 20 acres. Other ordinances use a minimum size ranging from 5 to 40 acres. It may be possible to not use a minimum size. A community may also want to make the ordinance apply to divisions creating 2 or 3 parcels. This ordinance is written to be mandatory for divisions of 20 acres or more into at least 4 parcels. A

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conservation subdivision ordinance should apply, such as agricultural and rural residential districts]. Conservation subdivisions shall not be permitted in the following districts established in the [city, village, town, county] zoning ordinance: [identify zoning districts within which the conservation subdivision ordinance should not apply (if any), such as higher density residential districts, Industrial districts and commercial districts].

community could also make the application of this ordinance optional.

The overall density of development needs to be established by the local comprehensive plan and the local zoning ordinance.

1. *No person shall divide any land under the provisions of this ordinance without compliance with all requirements of this ordinance and the following:*
 - a. *The provisions of Wis. Stats. ch. 236 and Wis. Stats. § 80.08.*
 - b. *The rules of the Wisconsin Department of Commerce, contained in Chapter COMM 83 and related chapters of the Wisconsin Administrative Code for land divisions not served by public sewer.*
 - c. *The rules of the Division of Transportation Infrastructure Development, Wisconsin Department of Transportation, contained in Chapter TRANS 233 of the Wisconsin Administrative Code for subdivisions that abut a state trunk highway or connecting street.*
 - d. *The rules of the Wisconsin Department of Natural Resources contained in Chapters 116, 117 [for cities and villages only], and 118 of the Wisconsin Administrative Code, for shoreland, shoreland-wetland, and floodplain management.*
 - e. *The comprehensive plan adopted by [name of city, village, town, county].*
 - f. *All applicable local and county regulations, including zoning, sanitary, building and official mapping ordinances.*
 - g. *All other applicable rules contained in the Wisconsin Administrative Code.*

1.6 Condominium Plats. *A condominium plat prepared under Chapter 703 of the Wisconsin Statutes, creating at least four units with a parent parcel size of 20 acres or more, shall be reviewed by the [city, village, town, county] in the same manner as a conservation subdivision as set forth in this ordinance and shall comply with the applicable design standards and required improvements of this*

Condominium plats are not subject to the requirements of Chapter 236 of the Wisconsin Statutes. Rather they are governed by Chapter 703 of the Wisconsin Statutes.

ordinance.

1.7 **Abrogation and Greater Restrictions.**

1. **Public Provisions.** *These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.*
2. **Private Provisions.** *These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement impose duties and obligations more restrictive than these regulations, and the private provisions are not inconsistent with these regulations, then the private provisions shall be operative and supplemental to these regulations and the determinations made under the regulations.*

When other regulations provide "dual" standards, the more stringent provisions should govern.

- 1.8 **Interpretation.** *In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly in favor of the [city, village, town, county] to promote the purposes for which they are adopted.*

In limited instances, special site conditions may require more stringent provisions to protect the public health, safety and welfare.

- 1.9 **Separability.** *If any part or provision of these regulations or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered. It shall not affect or impair the validity of the remainder of these regulations or the application of them to other*

A separability provision is often included in an ordinance to protect the whole if a section is declared invalid.

persons or circumstances. The [governing body of the city, village, town, county] hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid.

1.10 Enforcement, Violations, Penalties.

1. **Violations.** *It shall be unlawful to build upon, divide, convey, record, or monument any land in violation of this ordinance or state law, and no person shall be issued a building permit by the [city, village, town, county] authorizing the building on or improvement of any subdivision within the jurisdiction of this ordinance not of record as of the effective date of this ordinance until the requirements of this chapter have been fully met. The [city, village, town, county] may institute appropriate action or proceedings to enjoin violations of this ordinance or applicable state law.*
2. **Penalties.** *Penalties for violation of this ordinance shall be as follows:*
 - a. *Any person who fails to comply with this chapter shall, upon conviction, be subject to the penalties as provided by the [city, village, town, county].*
 - b. *Recordation improperly made has penalties provided in section 236.30 of the Wisconsin Statutes.*
 - c. *Conveyance of lots in unrecorded plats has penalties provided for in section 236.31 of the Wisconsin Statutes.*
 - d. *Monuments disturbed or not placed have penalties as provided for in section 236.32 of the Wisconsin Statutes.*
 - e. *Assessor's plat made under section 70.27 of the Wisconsin Statutes may be ordered by the [city, village, town, county] as a remedy at the expense of the subdivider when a subdivision is created by successive divisions.*
3. **Appeals.** *Any person aggrieved by an objection to a plat or a failure to approve a plat under this ordinance may appeal therefrom, as provided in sections 236.13(5) and 62.23(7)(e) 10, 14, and 15, of the Wisconsin Statutes, within 30 days of notification of the rejection of the plat. Where failure to approve is based on an unsatisfied objection, the agency making the*

This provision is intended to ensure that subdivision standards are enforced by stating clearly that there will be penalties for violations and outlining the available appeals processes.

objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving or objecting agency is arbitrary, unreasonable, or discriminatory.

1.11 Modifications.

1. Authority; application.

a. Where, in the judgment of the [governing body of the city, village, town, county], it would be inappropriate to apply literally the provisions of this ordinance because exceptional or undue hardship would result, the [governing body or plan commission of the city, village, town, county] may waive or modify any requirements to the extent deemed just and proper.

b. Application for any such modification or waiver shall be made in writing by the subdivider at the time when the preliminary plat is filed for consideration, stating fully all facts relied upon by the petitioner, and shall be supplemented with maps, plans, or other additional data that may aid the [governing body or plan commission] in the analysis of the proposed project.

2. Conditions for granting. *The [plan commission or governing body of the city, village, town, county] shall not grant modifications or waivers to this ordinance unless it shall make findings based upon the evidence presented to it in each specific case that:*

a. The granting of the modification will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located.

b. The conditions upon which the request for a modification is based are unique to the property for which the modification is sought and are not applicable generally to other property.

c. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, financial hardship, or self-imposed hardship, if the strict letter of this ordinance were carried out.

Subdivision ordinances should include a provision for modifications from the ordinances for unique situations that may impose a hardship on the applicant. The modification provision for subdivision ordinances should not be confused with the process and law governing variances from zoning ordinances.

The term "plan commission" is used in this ordinance to universally refer to city, village, town plan commissions, and county plan committees, etc.

- d. *Such modification is necessary for the preservation and enjoyment of substantial property rights possessed by other similar properties in the vicinity.*
- 3. *Granting by [plan commission or governing body].*
 - a. *The [plan commission or governing body], if it approves of the modification to this ordinance, shall do so by motion or resolution and shall instruct the [planning department or zoning administrator] to notify the subdivider.*
 - b. *Such relief shall be granted without detriment to the public good, without impairing the intent and purpose of this chapter or the desirable general development of the [city, village, town, county] consistent with the [city, village, town, county] comprehensive plan or this ordinance.*
 - c. *Any modification granted can only provide the minimum relief needed to alleviate the unnecessary hardship or obtain reasonable use of the property.*
- 4. *A majority vote of the entire membership of the [plan commission or governing body of the city/village/town/county] shall be required to grant any modification of this ordinance, and the reasons shall be entered in the minutes.*

1.12 Fees. *The [governing body of the city, village, town, county] may, by resolution, establish reasonable fees for the administration of this ordinance.*

In general, a fee schedule will be accepted by the courts if the community can demonstrate the charges bear a reasonable relationship to the costs of administering the ordinance.

2. Definitions

The following definitions shall be observed and applied, except when the context clearly indicates otherwise. Words used in the present tense shall include the future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular. The word "shall" is mandatory and the word "may" is permissive.

Definitions are intended to clarify the meaning of certain terms included in the ordinance.

- 2.1 Common open space.** Undeveloped land within a conservation subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space shall not be part of individual residential lots. It shall be substantially free of structures, but may contain historic structures and archaeological sites including Indian mounds, and/or such recreational facilities for residents as indicated on the approved development plan.
- 2.2 Condominium.** A community association combining individual unit ownership with shared use or ownership of common property or facilities, established in accordance with the requirements of the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes. A condominium is a legal form of ownership of real estate and not a specific building type or style.
- 2.3 Conservation easement.** The grant of a property right or interest from the property owner to a unit of government or nonprofit conservation organization stipulating that the described land shall remain in its natural, scenic, open or wooded state, precluding future or additional development.
- 2.4 Conservation subdivision.** A housing development in a rural setting that is characterized by compact lots and common open space, and where the natural features of the land are maintained to the greatest extent possible.
- 2.5 Development envelopes.** Areas within which grading, lawns, pavement and buildings will be located.

Wisconsin's law governing conservation easements is found at section 700.40 of the Wisconsin Statutes.

This definition is from Wisconsin "smart growth" law, Wis. Stat. § 66.1027(1)(a).

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- 2.6 Gross acreage.** The total area of a parcel including the area of perimeter street rights-of-way to the center line of the street.
- 2.7 Homeowners association.** A community association, incorporated or not incorporated, combining individual home ownership with shared use or ownership of common property or facilities.
- 2.8 Nonprofit conservation organization.** Any charitable corporation, charitable association or charitable trust (such as a land trust), the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.
- 2.9 Parent parcel.** The existing parcel of record, as identified by individual tax parcel numbers, as of the effective date of this ordinance.
- 2.10 Subdivider.** Any person, corporation, partnership, association, individual, firm, trust or agent dividing or proposing to divide land resulting in a conservation subdivision.

This definition is from Wisconsin's conservation easement law. Wis. Stat. § 700.40(1)(b)2.

3. Application Procedure and Approval Process

A similar application procedure and approval process should be required for all subdivisions in the community or it will be a disincentive for conservation subdivisions.

3.1 Initial Conference. Before submitting an application for a conservation subdivision, the subdivider shall schedule an appointment and meet with the [planning department, plan commission, other administrative staff] to discuss the procedure for approval of a conservation subdivision, including submittal requirements and design standards.

The basic purpose for the initial conference is to inform the applicant of the conservation subdivision approval procedures. The process outlined in this section is a collaborative process between the developer and the community which begins with this initial discussion. The community may also want to include staff from state agencies such as the Departments of Transportation and Natural Resources.

3.2 Initial Application. After the initial conference, the subdivider shall submit a series of maps and descriptive information to the [planning department, plan commission, other administrative staff] according to the following. Mapping for the initial application can be done in any combination of features as long as individual map components can be distinguished and the relationship between map components can be determined.

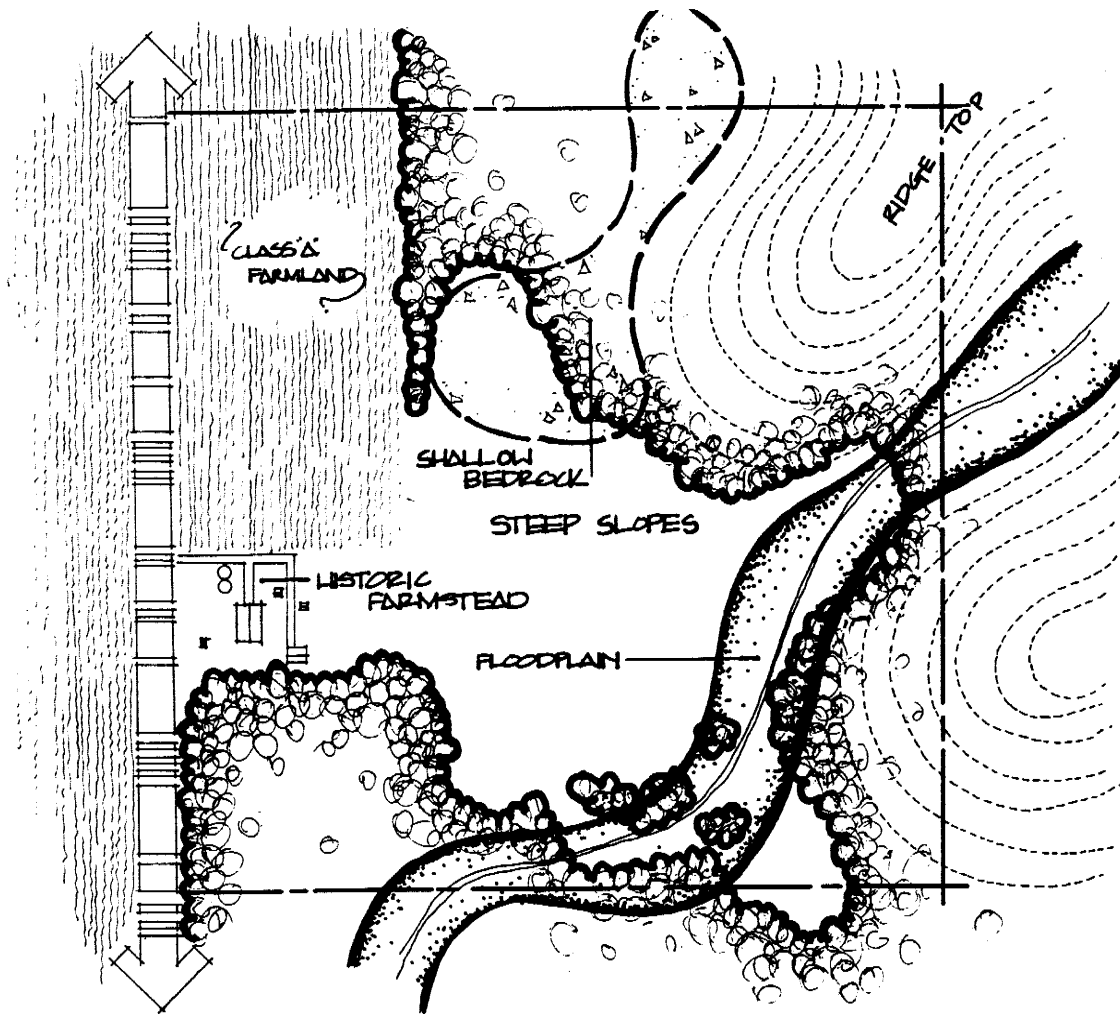
1. **Inventory and mapping of existing resources** including the following mapped at a scale of no less than one inch = 50 feet:
 - a. Topographic contours at 2-foot intervals.
 - b. United States Department of Agriculture, Natural Resource Conservation Service soil type locations and identification of soil type characteristics such as agricultural capability, depth to bedrock and water table, and suitability for wastewater disposal systems. Type and stability of bedrock should also be noted, particularly in karst areas and areas with high potential for groundwater contamination due to fractured bedrock or the presence of arsenic and mercury.
 - c. Hydrologic characteristics, including surface water bodies, floodplains, groundwater recharge and discharge areas, wetlands, natural swales, drainage ways, and steep slopes.
 - d. Land cover on the site, according to general cover type (pasture, woodland, etc.), and stand-alone trees with a caliper of more than [24] inches measured four feet off the ground. The inventory shall include comments on the health and condition of the vegetation.
 - f. Current and past land use, all buildings and structures on the land, cultivated areas, brownfields, waste sites, and history of waste disposal

The resource inventory identifies the land's features, including natural and cultural resources, scenic views, and other physical characteristics. The purpose of requiring the resource inventory is to ensure that the subdivision design takes into account the site's significant resources and to provide the plan commission with information to evaluate the subdivision's impact on those resources.

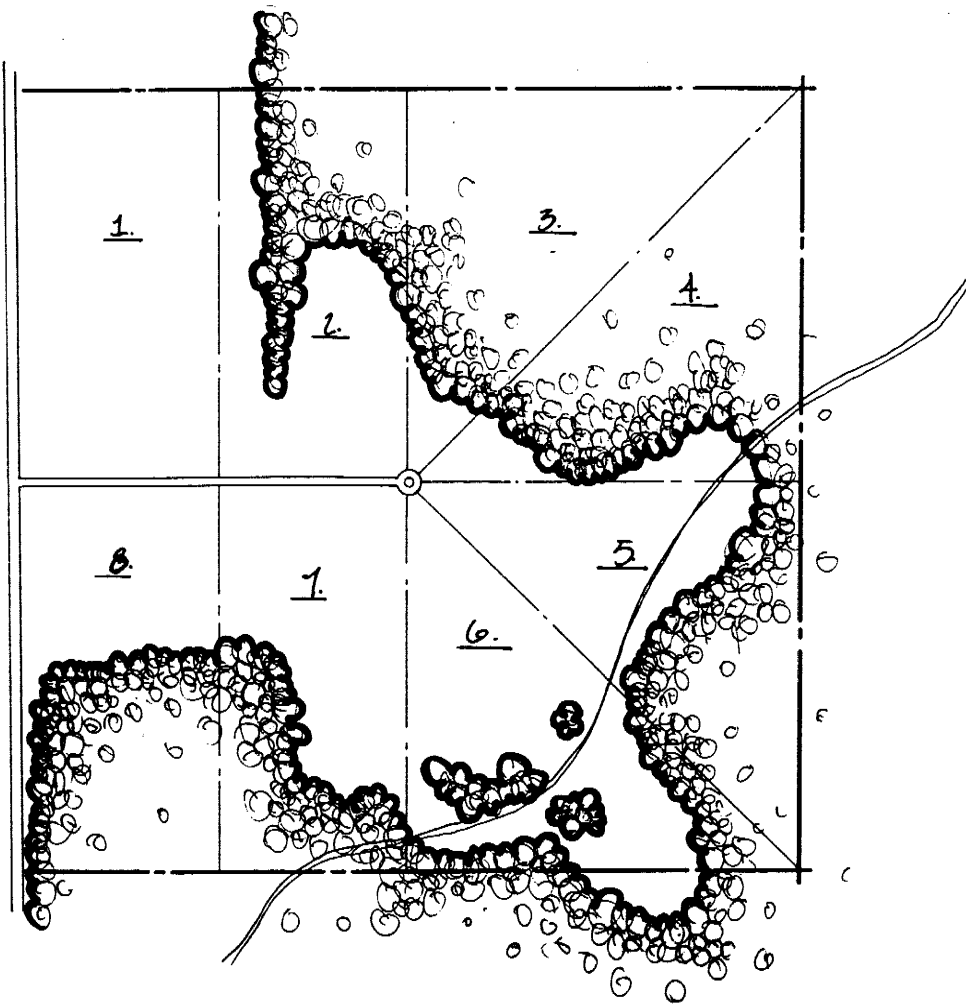
Communities with computerized land information systems may want to ask that the information be submitted in a digital format compatible with the local community's geographic information system.

- practices, paved areas, and all encumbrances, such as easements or covenants.
- g. Known critical habitat areas for rare, threatened or endangered species.
 - h. Views of the site, including views onto the site from surrounding roads, public areas and elevated areas, including photographs with a map indicating the location where the photographs were taken.
 - i. Unique geological resources, such as rock outcrops and glacial features.
 - j. Cultural resources: brief description of historic character of buildings and structures, historically important landscapes, and archeological features. This includes a review of existing inventories, including those the State Historical Society of Wisconsin maintains for historic buildings, archaeological sites, and burial sites.
2. **Development yield analysis.** The subdivider shall submit a table showing the maximum number of dwelling units that would be permitted under the [city, village, town, county] zoning ordinance, consistent with the minimum lot size, lot widths, set backs, and other provisions of the zoning ordinance and compare it to the number of dwelling units proposed. Land that is undevelopable because of other laws and ordinances that prohibit development in certain areas (e.g. floodplains, wetlands, steep slopes, and drainage ways) shall be excluded from the development yield analysis.
3. **Site analysis and concept plan.** Using the inventory provided in section 3.2(1), the development yield analysis provided in section 3.2(2), and applying the design standards specified in section 4 of this ordinance, the subdivider shall submit a concept plan including at least the following information at a scale of no less than one inch = 50 feet:
- a. Open space areas indicating which areas are to remain undeveloped and trail location.
 - b. Boundaries of areas to be developed and proposed general street and lot layout.
 - c. Number and type (i.e., single-family, multi-family) of housing units proposed.

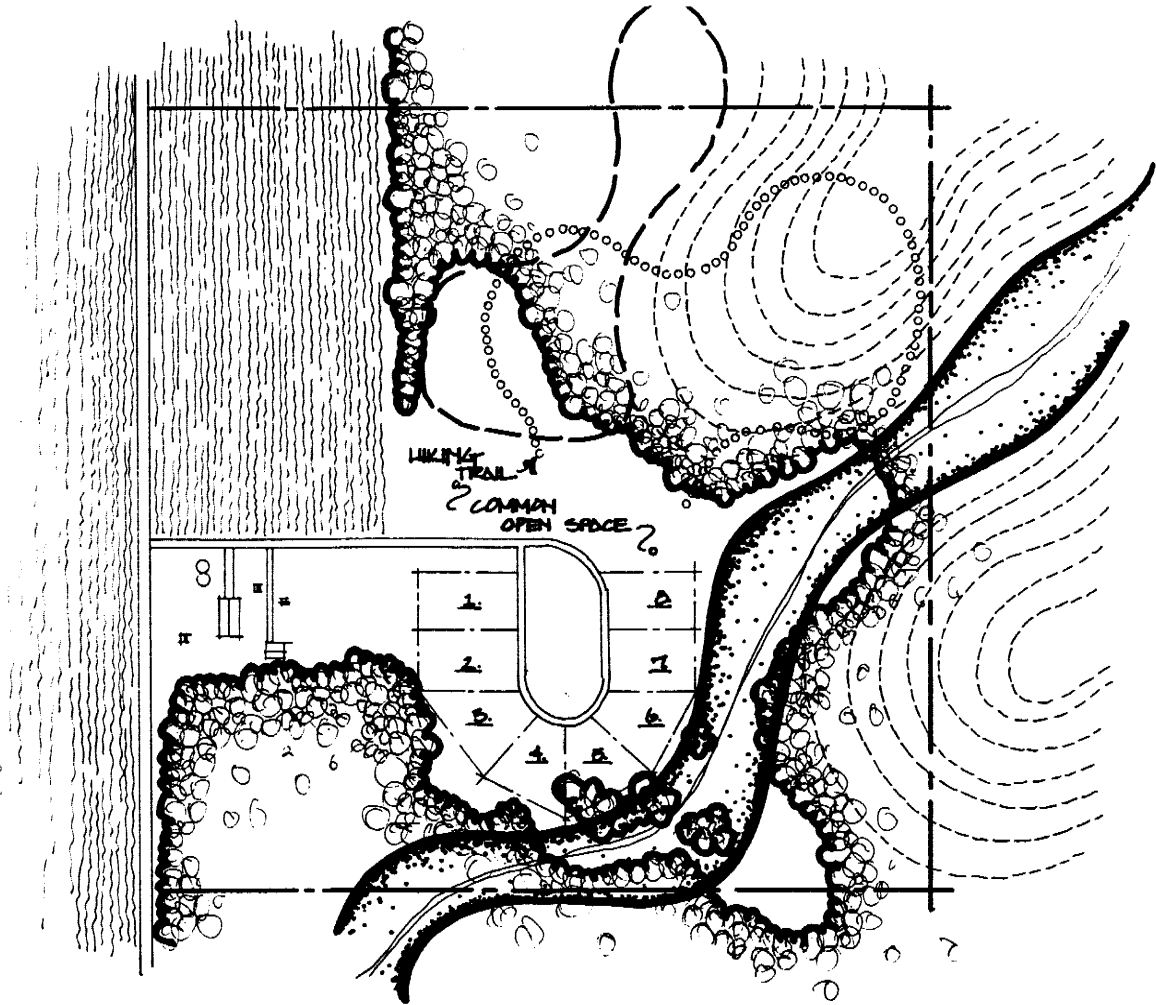
The development yield analysis shows the maximum number of dwelling units that would be permitted on a parcel under the applicable zoning ordinance. This analysis is used to ensure that conservation subdivisions are "development-neutral"--the number of units developed is the same as what would be permitted for conventional development.



Step 1: Inventory and mapping of existing resources for a hypothetical 40 acre site



Step 2: Development yield as permitted under existing ordinances (zoning, etc.) for the 40 acre site assuming a 5 acre minimum lot size zoning standard. 8 lots would be permitted under this scenario.



Step 3: Concept map of the conservation subdivision showing the 8 lots that would be permitted, plus the historic farmhouse, which would be preserved, for a total of 9 dwelling units.

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- d. Proposed methods for and location of water supply, stormwater management (e.g., best management practices), and sewage treatment.
- e. Inventory of preserved and disturbed natural features and prominent views.
- f. Preliminary development envelopes showing areas for lawns, pavement, buildings, and grading.
- g. Proposed methods for ownership and management of open space.

It is important to know how surface drainage will be managed (e.g., swales, detention ponds, etc.) And how wastewater will be managed (e.g. individual on-site private systems--mounds, conventional, on-site cluster systems, or publicly owned wastewater treatment facility).

4. **General location map.** The subdivider shall submit a map showing the general outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract. This information may be presented on an aerial photograph at a scale of no less than 1 inch: 400 feet.

- 3.3 Review of Initial Application.** Within 30 days following the filing of a complete initial application the [planning department, plan commission, other administrative staff] shall meet with the subdivider to review the initial application. Staff from appropriate state agencies may also be requested by the [city, village, town, county] to review the application. The [planning department, plan commission, other administrative staff] shall make the determination of whether the initial application is complete. The [planning department, plan commission, other administrative staff] may also schedule a visit to the site with the subdivider to review the existing features of the site and the concept plan. The visit shall occur prior to or as part of the meeting. Within 30 days following the meeting, the [planning department, plan commission, other administrative staff] shall provide a written report informing the subdivider of any additions, changes, or corrections to the concept plan submitted as part of the initial application.

- 3.4 Preliminary Plat Review and Approval Procedures.** *Following review and comment of the plan commission on the initial application, the subdivider or subdivider agent shall file an application for review and approval of the plan commission of a preliminary plat with the [planning department, zoning administrator].*

The purpose of preliminary plat approval is to enable the plan commission to review all substantive aspects of the subdivision without forcing the developer to prepare a final set of plat maps which will then be expensive to change. Preliminary plats are not required by state law.

1. **Referral.** *Administrative staff and utility commission reviews. The [planning department, zoning administrator] shall provide copies of the preliminary plat to [city, village, town, county] department heads, to the appropriate objecting agencies under Wis. Stat. § 236.12, and to the appropriate utilities for their review and comment. The [city, village, town, county] staff and utility comments will be forwarded to the plan commission and [governing body] for consideration during the review process.*
2. **Plan commission recommendation.** *After review of the preliminary plat and negotiations with the subdivider on changes and the kind and extent of public improvements that will be required, the plan commission shall recommend to the [governing body] disapproval, approval, or conditional approval of the preliminary plat within 60 days of the filing date.*
3. **Public hearing.** *The [planning department, zoning administrator] shall schedule a public hearing on the preliminary plat before the [plan commission, governing body]. The [planning department, zoning administrator] shall give notice of the [governing body's] review and public hearing on the preliminary plat by listing it as an agenda item in the [governing body]'s meeting notice published in the official local government newspaper. The notice shall include the name of the applicant, the address of the property in question, and the requested action. Property owners within 200 feet of the proposed land division shall receive written notice of the public hearing.*
4. **Board action.** *After receipt of the plan commission's recommendation, the [governing body] shall, within 90 days of the date the plat was filed with the [planning department, zoning administrator], approve, approve conditionally, or reject such plat and shall state, in writing, conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the [governing body] to act within 90 days or extension thereof shall constitute an approval of the preliminary plat, unless other authorized agencies object to the plat. The [planning department, zoning administrator] shall communicate to the subdivider the*

Though not required by statute, it is important to hold a public hearing at the preliminary plat stage to ensure broader participation by citizens and other interested agencies.

The local governing body could also authorize the plan commission to take final action on the preliminary plat without referring it to the governing body.

action of the village board. If the preliminary plat is approved, the [planning department, zoning administrator] shall endorse it for the [governing body].

5. ***Effect of approval.*** *Approval of a preliminary plat shall be valid for six months from the date of approval. Approval or conditional approval of a preliminary plat shall not constitute automatic approval of the final plat. The preliminary plat shall be deemed an expression of approval or conditional approval of the layout submitted as a guide to the preparation of the final plat, which will be subject to further consideration by the plan commission and [governing body] at the time of its submission.*

6. ***Amendment.*** *If the subdivider desires to amend the preliminary plat as approved, the subdivider may resubmit the amended plat, which shall follow the same procedure, except for the fee, unless the amendment is, in the opinion of the [plan commission, governing body], of such scope as to constitute a new plat, in which case it shall be refiled.*

3.5 ***Preliminary Plat Requirements.*** *The preliminary plat shall be prepared by a licensed land surveyor or engineer at a convenient scale not less than one (1) inch equals one hundred (100) feet. More than one (1) sheet may be used to present the information required in this section and shall include the following:*

1. ***Name of the Proposed Subdivision.*** *The proposed name of the subdivision shall not duplicate or be alike in pronunciation of the name of any plat previously recorded in the County.*

2. ***Project Ownership and Development Information.***

a. *Name, address, and telephone number of the legal owner and, if applicable, agent of the property.*

b. *Name, address, and telephone number of the professional person(s) responsible for subdivision design, for the design of public improvements, and for surveys.*

c. *Date of preparation.*

To eliminate uncertainties surrounding submission requirements for the preliminary plat, this subsection sets out the specific items that the applicant must submit to the government.

3. **Existing Site Conditions.** Provide this information on a property survey map.
 - a. Boundary line of the proposed site and all property to be subdivided. Include all contiguous land owned or controlled by the subdivider.
 - b. Location, width, and names of all existing platted streets and rights-of-way to a distance of 100 feet beyond the site.
 - c. Show the type, width and condition of street improvements; railroad or major utility rights-of-way; parks and other public open spaces; location and widths of existing snowmobile or other recreation trails; and permanent buildings and structures to a distance of 100 feet beyond the site, if any.
 - d. Location, widths, and names of all existing public and private easements to a distance of 100 feet beyond the site.
 - e. Identify by name and ownership boundary lines of all adjoining lands within 100 feet of the proposed plat.
 - f. Topographic data including contours at vertical intervals of not more than 2 feet. Elevation values shall be based on the National Geodetic Vertical Datum of 1929 (NGVD 29) or the North American Datum of 1988 (NAVD 88) or future adjustments to NAVD 88 as defined by the National Geodetic Survey and should also be so noted on the plat.
 - g. Significant natural resource features on the site, i.e. wetlands, floodplains, watercourses, existing wooded areas, steep slopes, drainage ways, rare, threatened and endangered species, and other natural resource features, views and other prominent visual features.
 - h. Burial sites categorized under Wis. Stat. § 157.70, Indian mounds, national and state register listed properties, and locally designated historic properties.
 - i. Existing soil classifications, including hydric soils.
 - j. Legal description of the property.
 - k. Existing zoning classifications for land in and abutting the subdivision.
 - l. Total acreage of the proposed site.
 - m. Provide graphic scale, north arrow, and date.

4. **Subdivision Design Features.** Provide this information on the Preliminary Plat.
 - a. Layout of proposed streets, showing right-of-way widths, types of improvements, street surface widths, and proposed street names.
 - b. Locations and type of proposed public easements (i.e. drainage, utility, pedestrian, public access to waterways, etc.); and all conservation easements.
 - c. Layout of proposed blocks and lots within the plat.
 - d. Basic data regarding proposed and existing (if applicable) lots and blocks, including numbers, dimensions, area.
 - e. Minimum front, side and rear yard building setback lines for all lots.
 - f. Indication of the use of any lot.
 - g. Location and size of all proposed and existing sanitary sewer lines and water mains, proposed community sewer and water system, or individual on-site septic systems and potable water sources.
 - h. Location and size of all proposed and existing storms sewers (lines, drain inlets, manholes), culverts, retention ponds, swales, infiltration practices and areas, and other stormwater facilities within the plat and to a distance of 100 feet beyond the site.
 - i. Development envelopes showing areas for grading, lawns, pavement and buildings.
 - j. Open space areas, other than pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres. Provide information on the conditions, if any, of the dedication or reservation.
 - k. Management plan for restoration and long-term management of the open space areas.

5. **Preliminary Construction Plans.** Provide information on one or more sheets.
 - a. Plan and Profile. Proposed street centerline profile grades, showing the existing and proposed profile grade lines.
 - b. Grading and Erosion Control Plan. A plan showing existing and proposed grades, drainage patterns, and stormwater facilities. The plan

shall show the location and extent of grading activities in and adjacent to the plat, overall area of the site in acres, total impervious surface area of project, total pervious area, stockpile locations, erosion and sediment control facilities, and a schedule for erosion and sediment control practices including site specific requirements to prevent erosion at the source. Major trees to be preserved, with a diameter of [24] inches or more measured twelve (12) inches above ground level, shall be shown on the preliminary grading and erosion control plan. Adequate measures for protecting major trees shall be shown on the plan.

- c. Provisions for sewage disposal, water supply, stormwater management, and flood control.

3.6 Final Plat Review and Approval Procedures. *A final subdivision plat shall be filed in accordance with the following:*

1. **Final Plat.** *The subdivider shall prepare a final plat and a letter of application in accordance with this ordinance and shall file 20 copies of the plat and the application with the [planning department, zoning administrator] at least 21 days prior to the meeting of the plan commission at which action is desired. The owner or subdivider shall file the final plat not later than six months after the date of approval of the preliminary plat; otherwise, the preliminary plat and final plat will be considered void unless an extension is requested in writing by the subdivider and for good cause granted by the [city, village, town, county]. The subdivider or subdivider's agent shall also submit at this time a current certified abstract of title or such other evidence as the [city, village, town, county] may require showing ownership or control in the applicant.*
2. **Objecting Agencies.** *The subdivider or the subdivider's agent shall submit the original plat to the Plat Review Section, Wisconsin Department of Administration, which shall forward two copies to each of the agencies authorized to object under section 236.12(2) of the Wisconsin Statutes. The department shall have the required number of copies made at the subdivider's expense.*

Review by the "objecting agencies" is required under Chapter 236 of the Wisconsin Statutes.

3. **Final Construction Plans.** *Simultaneously with the filing of the final plat, the owner shall file with the [planning department, zoning administrator] four copies of the final construction plans and specifications of public improvements required by the [city, village, town, county].*
4. **Installation, Protection and Maintenance Plans.** *The subdivider shall also submit plans for areas to be protected and/or introduced native vegetation.*
5. **Referral of Final Plat.** *The [planning department, zoning administrator] shall provide copies of the final plat to [city, village, town, county] department heads and to the appropriate utilities for their review and comment. The [city, village, town, county] staff and utility comments will be forwarded to the plan commission and [governing body] for their consideration during the review process.*
6. **Plan commission review.** *The plan commission shall examine the final plat as to its conformance with the preliminary plat; any conditions of approval of the preliminary plat; this chapter; and all applicable ordinances, rules, regulations, and comprehensive plan elements that may affect it and shall recommend approval, conditional approval, or rejection of the plat to the [governing body].*
 - a. *The plan commission shall, within 30 days of the date of filing of the final plat with the [planning department, zoning administrator], recommend approval, conditional approval, or rejection of the plat and shall transmit the final plat and application along with its recommendations to the [governing body]. The plan commission may hold the matter in abeyance if there is incomplete or inadequate information.*
7. **[Governing body] review and approval.** *The [governing body] shall, within 60 days of the date of filing the original final plat with the [planning department, zoning administrator], approve or reject such plat unless the time is extended by agreement with the subdivider. If the plat is rejected, the reasons shall be stated in the minutes of the meeting and a written*

Chapter 236 of the Wisconsin Statutes also allow the governing body to delegate final plat approval to the plan commission.

statement of the reasons forwarded to the subdivider. The [governing body] may not inscribe its approval on the final plat unless the [planning department, zoning administrator] certifies on the face of the plat that the copies were forwarded to objecting agencies as required in this section, the date thereof, and that no objections have been filed within 20 days or, if filed, have been met.

- a. The [governing body] shall, when it determines to approve a final plat, give at least ten days' prior written notice of its intention to the municipal clerk of any municipality within 1,000 feet of the final plat.*
- b. If the [governing body] fails to act within 60 days, without a time extension and no unsatisfied objections having been filed, the plat shall be deemed approved.*
- c. Recordation. After the final plat has been approved by the [governing body] and required improvements either installed or a contract and sureties ensuring their installation is filed, the [planning department, zoning administrator] shall cause the certificate inscribed upon the plat attesting to such approval to be duly executed and the plat returned to the subdivider for recording with the county register of deeds along with all conservation easements and deed restrictions. The register of deeds cannot record the plat unless it is offered within six months from the date of last approval.*
- d. Copies. The subdivider shall file eight copies of the final plat with the [planning department, zoning administrator] for distribution to the approving agencies, affected sanitary districts, and other affected agencies for their files.*

The Wisconsin Department of Transportation should receive a copy of the final plat if the property is adjacent to a state trunk highway.

3.7 Final Plat Requirements. *A final plat prepared by a registered land surveyor shall be required for all subdivisions. It shall comply with the requirements of Wis. Stats. § 236.20 and this ordinance.*

- 1. Additional information. The final plat shall show correctly on its face, in addition to the information required by Wis. Stats. § 236.20, the following:*
 - a. Exact length and bearing of the centerline of all streets.*

-
- b. *Exact street width along the line of any obliquely intersecting street.*
 - c. *Exact location and description of utility and drainage easements.*
 - d. *Railroad rights-of-way within and abutting the plat.*
 - e. *All lands reserved for future public acquisition or reserved for the common use of property owners within the plat, including public access to waterways.*
 - f. *Restrictions relating to access control along public ways.*
 - g. *Setback or building lines.*
 - h. *Restrictive covenants, deed restrictions, conservation easements for the proposed subdivision shall be filed with the final plat.*
 - i. *The legal instruments detailing the ownership of the common open space, as required in section 5, which shall be filed with the final plat.*
 - j. *All final plats shall meet all the surveying and monumenting requirements of section 236.15 of the Wisconsin Statutes.*
 - k. *State plane coordinate system. Where the plat is located within a quarter section, the corners of which have been relocated, monumented, and coordinated by the [city, village, town, county], the plat shall be tied directly to one of the section or quarter corners so relocated, monumented, and coordinated. The exact grid bearing and distance of such tie shall be determined by field measurements, and the material and state plane coordinates of the monument marking the relocated section or quarter corner to which the plat is tied shall be indicated on the plat.*
 - l. *Certificates. All final plats shall provide all the certificates required by section 236.21 of the Wisconsin Statutes. In addition, the surveyor shall certify that the surveyor has fully complied with all sections of this chapter.*
 - m. *Recording. The final plat shall be recorded within 30 days of its approval by the [name of governing body].*

3.8 Certified Survey Maps. Conservation subdivisions shall not be created by certified survey maps under section 236.34 of the Wisconsin Statutes.

Certified survey maps could be used if the same process and analysis of this ordinance is used.

4. Requirements for Design and Improvements

4.1 Land Suitability. No land shall be developed which is held to be unsuitable for any proposed use if identified as being environmentally sensitive. Areas identified as being environmentally sensitive include, but are not limited to:

1. All areas mapped as Floodplain by the Federal Emergency Management Agency (FEMA), Wisconsin Department of Natural Resources, or other public or private entity.
2. All wetlands as defined in NR 103.02(5) of the Wisconsin Administrative Code, including a [75] foot buffer.
3. All areas within [75] feet of the ordinary high-water mark of navigable streams and lakes, as identified by Wisconsin Department of Natural Resources Water Management Specialists.
4. All areas having slopes greater than [12] percent.
5. Areas that are known to provide habitat for rare, threatened or endangered species.
6. Burial sites and Indian mounds.
7. Drainageways that contain running water during spring runoff, during storm events or when it rains. A [25] foot buffer from the edge of the drainageway shall be included.

Areas determined to be environmentally sensitive may be included as common open space in a conservation subdivision but shall not be included in the development yield analysis in section 3.2. These lands shall be identified as an outlot or other designation that indicates the land is not available for development.

4.2 Development Yield. The number of residential units for a parcel shall be determined in accordance with the following:

1. The development yield analysis in section 3.2 shall establish the base development yield for the parcel.
2. The base development yield may be increased if the development complies with one or more of the following standards. Each standard provides a development yield bonus of [5]% in addition to the base development yield. The maximum bonus permitted is [20]%.

These are areas where development is normally prohibited under conventional ordinances. Local ordinances that prohibit development in certain areas (such as floodplain, shoreland zoning, and wetland ordinances) should be cited in this section of the ordinance. Communities especially interested in the goal of protecting significant natural resources may choose to add to this list of areas that should not be developed.

Not all counties use the 75 foot set back. Some counties have established more stringent set back provisions.

Protection of steep slopes is a local choice. In communities that prohibit development on steep slopes, the percent of slope protected ranges from 7 to 25 percent.

The purpose behind development bonuses is to provide an incentive for achieving certain public policy objectives.

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- a. Creating an endowment where the principal would generate sufficient annual interest to cover the conservation easement holder's yearly costs (taxes, insurance, maintenance, enforcement, etc.).
- b. Providing for access by the general public to trails, parks, or other recreational facilities, excluding golf courses.
- c. Providing affordable housing, to include a minimum of [25] percent of all units that would be affordable to moderate-income households, as defined by the U.S. Department of Housing and Urban Development.
- d. Reusing historical buildings and structures, including those sites inventoried by the State Historical Society of Wisconsin. The U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Properties shall apply.

Affordable housing needs should be addressed in the context of the housing element of the local government's comprehensive plan

4.3 Performance Standards

1. General considerations

- a. Conservation subdivisions shall identify a conservation theme or themes. This theme shall be identified at the time of the initial application. Conservation themes may include, but are not limited to, forest stewardship, water quality preservation, farmland preservation, natural habitat restoration, viewshed preservation, or archaeological and historic properties preservation. The plan commission shall have the ability to specify which areas shall be preserved.
- b. The residential lot shall be large enough to accommodate a house and two car garage.

The goals of any conservation subdivision ordinance will likely differ in each jurisdiction and may differ from development to development.

2. Residential Lot Requirements

- a. Minimum Lot Size
 - Septic on-site: [1] acre.
 - Septic off-lot: [1/4] acre
- b. Principal Building Setbacks
 - Front lot line: [30] feet
 - Side lot line: [10] feet
 - Rear lot line: [20] feet

The dimensions used here are one set. Other dimensions may be more appropriate for other communities.

- c. Accessory Building Setbacks
 - Side lot line: [15] feet
 - Rear lot line: [10] feet
- d. Lots shall be configured to minimize the amount of impervious surfaces. Maximum Lot Coverage: [35]% (includes buildings and other impervious surfaces).
- e. Maximum Building Height: [35] feet
- f. Most lots shall take access from interior local streets. Existing farmsteads to be preserved will have a driveway as part of the historic landscape that does not access a local street but should be preserved.
- g. Lots shall be configured to minimize the amount of road length required for the subdivision.
- h. Development envelopes shall be configured to minimize loss of woodlands.
- i. If agricultural uses are being maintained, lots shall be configured in a manner that maximizes the usable area remaining for such agricultural uses with appropriate buffers between agricultural uses and residential structures.
- j. All lots within a neighborhood shall abut open space on at least one side. A local street may separate lots from the open space.
- k. Lots shall be oriented around one or more of the following:
 - i. A central green or square.
 - ii. A physical amenity such as a meadow, a stand of trees, or some other natural or restored feature.
- l. Development envelopes should not be located on ridges, hilltops, along peripheral public roads or in other visually prominent areas.
- m. Residential structures shall be oriented to maximize solar gain in the winter months.
- n. A 30 foot native vegetation buffer shall be maintained around open water areas, unless a specific common beach or grassed area is identified.
- o. Stormwater management [BMPs]
 - i. Minimize the use of curb and gutter and maximize the use of open swales.
 - ii. Roof down spouts should drain to porous surfaces.
 - iii. Peak discharges during the 2 and 10 year storm events shall be no more than predeveloped conditions.
 - iv. The development should capture 80% of the sediments/pollutants from the 1 year storm event.

The challenge of providing standards is to foster creative design and protect key resources without "strait jacketing" the developer with too many requirements.

- v. Landscape plantings should be used to increase infiltration and decrease runoff.
- vi. Natural open drainage systems shall be preserved.

3. Residential Cluster Siting Standards

- a. All residential lots and dwellings shall be grouped into clusters. Each cluster shall contain no more than [20] dwelling units and no less than [5] units.
- b. Residential clusters shall be located to minimize negative impacts on the natural, scenic and cultural resources of the site and conflicts between incompatible uses.
- c. Residential clusters shall avoid encroaching on rare plant communities, high quality sites, or endangered species identified by the Department of Natural Resources.
- d. Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels and local or regional recreational trails.
- e. Residential clusters should be sited to achieve the following goals, to the extent practicable.
 - Minimize impacts to prime farmland soils and large tracts of land in agricultural use, and avoid interference with normal agricultural practices.
 - Minimize disturbance to woodlands, wetlands, grasslands, and mature trees.
 - Prevent downstream impacts due to runoff through adequate on-site storm water management practices.
 - Protect scenic views of open land from adjacent roads. Visual impact should be minimized through use of landscaping or other features.
 - Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.
- f. Landscaping around the cluster may be necessary to reduce off site views of residences.

The ordinance should set a maximum number of lots that can be grouped in a "cluster" to ensure development of a compact neighborhood of a manageable size.

4. Open Space Design

- a. Common Open Space. The minimum open space required shall be owned and maintained under one of the alternatives listed in section 5, as approved by the [city, village, town, county]. The uses within the open space shall be accessible to the residents of the development. These uses may also be available to the general public providing the proper approvals are received. The required open space shall

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- be undivided and restricted in perpetuity from future development, as specified in Section 5.
- b. Open space shall be designated as part of the development. The minimum required open space is 60 % of the gross acreage.
 - c. Open Space Conservation Ranking (in order of significance). The areas to be preserved shall be identified on a case-by-case basis in an effort to conserve and provide the best opportunities to restore and enlarge the best quality natural features of each particular site.
 - i. First priority will be given to intact natural communities, rare and endangered species, environmental corridors, natural and restored prairies, significant historic and archaeological properties, and steep slopes.
 - ii. Second priority will be given to areas providing some plant and wildlife habitat and open space values.
 - iii. Third priority will be given to areas providing little habitat but providing viewshed, recreation, or a sense of open space.
 - d. The following areas or structures may be located within the open space area and shall be counted toward the overall open space percentage required:
 - i. parking areas for access to and use of the open space developed at a scale limited to the potential users of the open space.
 - ii. privately-held buildings or structures provided they are accessory to the use of the open space.
 - iii. Shared septic systems and shared potable water systems.
 - e. Road rights of way shall not be counted towards the required minimum open space.
 - f. No more than 50 percent of the required open space may consist of water bodies, ponds, floodplain, or wetlands.
 - g. That portion of open space designed to provide plant and animal habitat shall be kept as intact as possible. Trails shall be designed to avoid fragmenting these areas.
 - h. Accessible open space in upland areas shall be available for recreational uses such as trails, play fields, or community gardens but should be designed in a manner that avoids adversely impacting archeological sites.
 - i. A pathway system connecting open space areas accessible to neighborhood residents, and connecting these areas to neighborhood streets and to planned or

The ordinance should prioritize which resources the community seeks to protect. With the exception of resources protected by federal and state regulations, this is largely a local decision.

Some impact on resources is probably unavoidable. The objective is to try to minimize those impacts.

The calculation of open space should not include the acreage of existing natural waterways. The existing open waterways are protected under the Public Trust Doctrine and would be open space regardless if a plat was developed or not. The open space should be located adjacent to existing natural waterways and include floodplain, wetlands, and uplands.

developed trails on adjacent parcels shall be identified in the plan.

5. Street Standards

- a. Neighborhood streets may take the form of a two-way street, a pair of one-way streets on either side of a landscaped median, or a one-way loop street around a small neighborhood green. Streets shall be developed according to the following standards that promote road safety, assure adequate access for fire and rescue vehicles, and promote adequate vehicular circulation:
- b. The applicant must demonstrate that access to the development has the capacity to handle traffic generated by the proposed project, and will not endanger the safety of the general public.
- c. Streets shall have the following design standards:
 - i. Right-of-way widths. The right-of-way width for each road shall be wide enough to provide for all public services, including roadway drainage, sidewalks, trails and walkways, utilities and snow storage. The minimum right-of-way shall be provided in accordance with the following:

<u>Right of Way</u>	<u>ADT less than 250</u>	<u>ADT over 250</u>
One-way roadway	20'	30'
Two-way roadway	40'	50'

- ii. Travel land widths for local roads shall be determined by the expected average daily traffic (ADT) and shall be within the following ranges:

<u>Travel Lanes</u>	<u>ADT < 100</u>	<u>100-250 ADT</u>	<u>> 250</u>
Two-way roadway*	18' - 24'	20' - 26'	22' - 28'
One-way roadway* (curbed sections**)	11' - 13' 13'	11' - 13' 13'	11' - 14' 13'
Shoulder or gutter pan width	2' - 4'	2' - 4'	2' - 4'

*Does not include shoulder or gutter pan.

**Measured from curb face to curb face.

This subsection discusses subdivision street standards. The design standards included in this subsection are merely one alternative. The transportation element of a local comprehensive plan should help each community define its own standards for the design of streets and how streets within the conservation subdivision connect to the local and regional roadway system.

Street widths and alignments should be carefully scaled to neighborhood size. The goal of a compact, pedestrian-friendly neighborhood can be undermined if the typically wider road and right-of-way standards of conventional suburban development are used. Wide streets can also contribute to stormwater runoff problems. The ordinance provides a range of right-of-way and roadway dimensions, depending on the expected levels of daily traffic.

In calculating average daily traffic (ADT), traffic engineers assume that a single-family detached house generates about 10 (one-way) vehicle trips per day, with lower numbers for attached and multi-family dwellings.

- d. Additional Standards:
 - i. Design Speed: Maximum 25 miles per hour.
 - ii. Vertical Curves: Minimum 50' (when grade difference less than 1%, no curve is needed).
 - iii. Horizontal Curves: Minimum radius of 125'
 - iv. Road Grades: Maximum grade 8%
 - v. Super-elevation: Maximum $e = 0.04$ feet/feet
 - vi. Pavement Strength: 7 ton minimum
 - viii. Clear Zones:
 - Shoulder sections: 10' from edge of travel lane
 - Curbed sections: 2' from face of curb
 - ix. Bridges: Width shall be traveled way, plus 2' each side. Design Loading for Structural Capacity HS-20, plus 5' sidewalk necessary to maintain pedestrian crossing.
 - x. Cul-de-sacs should be designed as semi-circular and circular loop roads. Minimum 30' outside radius around a landscaped island with an minimum 10' radius. Open space internal to these road features can be counted toward the open space requirements.
 - xi. Sidewalks, trails, and other walkways. Minimum 5 feet width.
 - e. If determined necessary by the [zoning administrator, planning department] shade trees shall be planted on both sides of the street.
 - f. Street connections to adjacent parcels shall be provided in logical locations to avoid creating landlocked parcels and provide for connecting street patterns.
 - g. Streets that serve as collectors, interconnecting subdivisions and other major traffic generators, shall be designed according to the [city/village/town/county]'s standards for collector roads.
 - h. Where streets will connect with streets having differing standards, the street dimensions shall be the same as those of the connecting street. All street widenings shall occur at the nearest intersection.
 - i. The developed area should have sidewalks on at least one side of the street.
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6. Sewage and Water Facilities

- a. Water for a conservation subdivision shall be provided by individual on-site wells or by one or more community wells meeting the permit requirements of the State of Wisconsin and the [city, village, town, county]. The use of shared or community wells is encouraged. Plans for shared or community wells should include a wellhead protection plan with separation distances for the zone of influence and sources of pollution.

- b. All conservation subdivisions shall be provided with adequate sewage treatment facilities meeting the standards of the [city, village, town, county] and the permit requirements of the Wisconsin Department of Commerce and the Department of Natural Resources. Where sewage treatment is not provided by a publicly owned wastewater treatment works, a common sewage treatment and disposal unit located on the common open space lands is encouraged.

Water and sewer facilities should be developed consistent with the local community's utilities and community facilities element of its comprehensive plan.

The ability to use shared or community wells rather than individual ones is one advantage of conservation subdivisions. Community wells can be sited in the most suitable locations on each parcel, with maximum separation from wastewater disposal treatment facilities. This feature is especially beneficial in areas where groundwater is highly sensitive to contamination.

4.4 *Financial Guarantee. A financial guarantee ensuring the construction and completion of the common facilities shall be submitted to the [planning department, zoning administrator].*

5. Ownership and Maintenance of Open Space and Common Facilities

This section outlines the options available for ownership and maintenance of the common open space.

- 5.1 Alternatives.** The designated common open space and common facilities may be owned and managed by one or a combination of the following:
1. A homeowners' association.
 2. A condominium association established in accordance with the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes.
 3. A nonprofit conservation organization.
 4. The [name of city, village, town, county] or another governmental body empowered to hold an interest in real property.
 5. An individual who will use the land for open space purposes as provided by a conservation easement.

- 5.2 Homeowners' Association.** A homeowners association shall be established if the common open space is proposed to be owned by a homeowners association. Membership in the association is mandatory for all purchasers of homes in the development and their successors.

A typical ownership option is a homeowners association. This method gives the residents the greatest degree of control over the use and management of common open space.

The homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners association shall be submitted for approval to the [name of city, village, town or county] as part of the information required for the preliminary plat. The homeowners' association bylaws or the declaration of covenants, conditions and restrictions of the homeowners association shall contain the following information:

A homeowners' association is a formally constituted non-profit corporation made up of the property owners and/or residents of the development for the purpose of owning and maintaining the common open space and facilities. This section of the ordinance describes provisions required to be included in the homeowners' association documents which must be submitted to the local government for review and approval.

1. The legal description of the common land;
2. A description of common facilities;
3. The restrictions placed upon the use and enjoyment of the lands or facilities;
4. Persons or entities entitled to enforce the restrictions;
5. A mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums;
6. A mechanism for resolving disputes among the owners or association members;
7. The conditions and timing of the transfer of ownership and control of land or facilities to the association;

8. Any other matter the developer deems appropriate.

5.3 Condominium Associations. If the common open space and facilities is to be held under the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, the condominium instruments shall identify the restrictions placed upon the use and enjoyment of the common open space. All common open space shall be held as a “common element” as defined in section 703.01(2) of the Wisconsin Statutes.

5.4 A Nonprofit Conservation Organization. If the common open space is to be held by a nonprofit conservation organization, the organization must be acceptable to the [city, village, town, county]. The conveyance to the nonprofit conservation organization must contain appropriate provisions for reversion in the event that the organization becomes unwilling or unable to uphold the terms of the conveyance.

The State Historical Society of Wisconsin can accept a historic preservation easement on properties listed or determined eligible for the state and national registers of historic places.

5.5 Public Dedication of Open Space and Streets.

1. The [city, village, town, county] may accept the dedication of fee title or dedication of a conservation easement to the common open space. The [city, village, town, county] may accept the common open space provided:
 - a. The common open space is accessible to the residents of the [city, village, town, county];
 - b. The [city, village, town, county] agrees to and has access to maintain the common open space.
2. Streets or other public ways which have been designated on a duly adopted official map or element of the [city, village, town, county] comprehensive plan shall be dedicated or reserved by the subdivider to the [city, village, town, county]. The street or public way shall be made a part of the plat in the locations and dimensions indicated in the comprehensive plan and as set forth in this ordinance.

5.6 Individual Ownership. An individual may hold fee title to the land while a nonprofit conservation organization or other qualified organization holds a conservation easement prescribing the acceptable uses for the common open space.

This provision, for example, would allow a farmer to continue farming a parcel of land which the use of that parcel for other purposes is limited by the conservation easement.

5.7 Maintenance Plan. Every conservation subdivision must include a plan that provides evidence of a means to properly manage the common open space in perpetuity and

evidence of the long-term means to properly manage and maintain all common facilities, including any storm water facilities. The plan shall be approved by, the [governing body, plan commission] prior to final plat approval.

1. The plan shall do the following:
 - a. Designate the ownership of the open space and common facilities in accordance with section 5.1.
 - b. Establish necessary regular and periodic operation and maintenance responsibilities.
 - c. Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.
 - d. Include a land stewardship plan specifically focusing on the long-term management of common open space lands. The land stewardship plan shall include a narrative, based on the site analysis required in section 3.2, describing:
 - i. Existing conditions including all natural, cultural, historic, and scenic elements in the landscape.
 - ii. The proposed end state for each common open space area; and the measures proposed for achieving the end state.
 - iii. Proposed restoration measures, including: Measures for correcting increasingly destructive conditions, such as erosion; and measures for restoring historic features and habitats or ecosystems.
 - iv. The operations needed for maintaining the stability of the resources, including: mowing schedules; weed control; planting schedules; clearing and cleanup; at the [city, village, town county]'s discretion, the applicant may be required to place in escrow sufficient funds for the maintenance and operation costs of common facilities for a maximum of one year.
2. In the event that the organization established to own and maintain the open space and common facilities, or any successor organization, fails to maintain all or any portion of the common facilities in reasonable order and condition in accordance with the maintenance plan and all applicable laws, rules, and regulations, the [city, village, town, county] may serve written notice upon such organization and upon the residents and owners of the open space and common facilities, setting forth the manner in which the organization has failed to maintain the common facilities in reasonable condition. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made. Upon failure to comply within the time specified, the organization, or any successor organization, shall be considered in violation this

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Ordinance Language

Commentary

Ordinance, in which case the bond, if any, may be forfeited, and any permits may be revoked or suspended. The [city, village, town, county] may enter the premises and take corrective action.

- a. The costs of corrective action by the [city, village, town, county] shall be assessed ratably, in accordance with tax assessments, against the properties that have the right of enjoyment of the common facilities and shall become a lien on said properties. The [city, village, town, county], at the time of entering upon such common facilities for the purpose of maintenance, shall file a notice of such lien in the office of the County Register of Deeds upon the properties affected by such lien.
3. Management plans can be amended by the owner identified under section 5.1 with the approval of the [plan commission, governing body].