

LAND DIVISION CONTROL GUIDE



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LAND DIVISION CONTROL GUIDE

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PREFACE

In 1963, the Commission published SEWRPC Planning Guide No. 1, *Land Development Guide*. That guide was the first in a series of six published by the Commission in its early years for use by cities, villages, towns, and counties within the seven-county Southeastern Wisconsin Region. The purpose of the land development guide was twofold. First, it was intended to explain clearly the fundamentals of good land subdivision practice, procedure, and design. Second, it was intended to assist county and local units of government, and land developers, engineers, and surveyors in achieving higher standards of land subdivision throughout the Region. To that end, the guide included a model land subdivision control ordinance.

The importance of land subdivision regulation is indicated by the high levels of land subdivision activity that have taken place within the Region from 1960 through 1999, the period over which the Regional Planning Commission has monitored such activity within the Region. Over this 40-year period, an average of 3,342 residential lots have been created each year within the Region through subdivision plats. The platting activity has ranged from a low in 1982, when 481 lots were created, to a high in 1960, when 6,272 lots were created. The locations of these subdivision plats, their design, and the quality of the attendant improvements have had a major impact on environmental quality and on the cost of providing essential public facilities and services within the Region. Clearly, land subdivision is an activity which deserves the careful attention of county and local elected and appointed officials.

In 2000, the Commission determined to revise and republish the guide. Because the focus of the guide is clearly land division control, the title has been changed accordingly. This new guide is particularly important given the current development context in which innova-

tive forms of development are often proposed. For example, the use of cluster neighborhood design elements in a proposed development may require subdivision design improvements that do not conform to subdivision codes developed over the last forty years. It is the intent of this guide to provide information that would allow county and local governments and the private sector to properly accommodate such innovative forms of development.

The guide is not intended to be applied indiscriminately without regard for local conditions; nor is it intended to replace necessary professional planning, engineering, and legal advice at the county and local levels of government. The guide assumes the existence of duly constituted county and local planning agencies charged with carrying out the public planning function and is intended to assist those agencies in the performance of their functions and duties.

The guide includes illustrations and photographs which are intended to provide examples of successful designs and improvements that may be incorporated into land division designs. These designs and improvements can be used to improve the quality of life for residents of the land division, protect natural resources, and make the land division more compatible with its surroundings.

The guide was prepared by the staff of the Southeastern Wisconsin Regional Planning Commission, with assistance from Thompson Dyke & Associates, Ltd., under the direction of an Advisory Committee established by the Regional Planning Commission. The membership of this Committee is listed on the inside front cover of this report. Any questions concerning its contents and use should be addressed to the Commission. Commission staff is available to assist counties and local

municipalities in applying this guide in the development of good procedures and practices relative to the regulation of land division activity in the public interest. It is the hope of the Commission that this land division

control guide will be a helpful and informative aid to all those interested in developing more attractive, as well as safe, healthful, efficient, and prosperous communities within the Region.

Chapter I

INTRODUCTION

BASIC DEFINITION

There are three basic means by which real property boundaries may be described: by reference to adjoining lands or waters; by courses and distances; or by reference to a plat. When numerous smaller parcels of land are involved, particularly in urban areas, legal description by reference to a recorded plat becomes the only practical means of describing ownership parcels. Although not commonly recognized as such, legal descriptions of properties expressed in terms of U.S. Public Land Survey system sections and aliquot parts of such sections are actually descriptions by reference to a plat. The U.S. Government Surveys represented the first division of the Federal lands made in several states, including Wisconsin, for the purpose of transferring ownership from the public to the private sector. The later preparation of plats for the further division of land into smaller parcels, primarily for the purpose of urban development, has, therefore, become known as land subdivision.

In Wisconsin, subdivision plats and certified survey maps must be referenced to at least two monumented corners set in the Government survey. Both subdivision plats and certified survey maps must be recorded and filed in the office of the Register of Deeds in the county concerned. Legal descriptions of individual parcels can then be readily expressed in terms of numbered or lettered blocks and numbered lots and outlots in a titled subdivision plat or numbered certified survey map and the resulting building sites easily identified, readily marketed, and efficiently taxed.

REASONS FOR PUBLIC REGULATION

Land division is far more than a means of describing, marketing, and taxing land; it is the first step in the process of building a community. Much of the form and character of a community is determined by the quality of its land divisions. Once land has been divided into blocks and lots, streets constructed, schools and parks created, and utilities installed, the development pattern is firmly established and is unlikely to be changed. Residential, commercial, and industrial structures will be built on the sites created by the land division. After many decades of use, some of these structures may be razed to make way for new structures and thereby accommodate new uses. Yet, the street pattern established by the initial land division will probably remain basically unchanged. For generations the entire community, as well as the individuals who occupy a land division, will be influenced by the quality of its design and by the character of its improvements.

Thus, land division has far-reaching impacts upon the community. A variety of interests are involved in, concerned with, and affected by land division. These include homeowners; mortgage lending institutions; realtors; developers; builders; public and private utilities; special-purpose governmental districts; general-purpose, municipal, county, and state governments; and sometimes the Federal government.

The purchase of a home is a major investment for the average citizen and the debt normally incurred in such a purchase is usually amortized over many years. Good

land division design and improvement will help to protect the security of that investment for all concerned. In protecting the investment of the homeowner against premature obsolescence, good land division practice also provides protection against inaccurate and ambiguous titles and costly boundary disputes; indicates to buyers of individual building sites in undeveloped areas what the area will be like when it is fully developed; and discourages later changes in streets and public places incorporated in a land division plat.

Good land division practices benefit realtors, developers, and builders by requiring compliance by all with established layout and improvement standards, thereby avoiding arbitrary regulation. Moreover, good land division practices prevent poorly designed and inadequately improved divisions from deteriorating and causing nearby well-designed developments to depreciate.

Most importantly, good land division practices benefit the community as a whole. The act of land division establishes the pattern for future community development. The community is required to furnish public facilities and services to newly platted areas. Therefore, the community should be able to require that streets are wide enough to accommodate fire-fighting, emergency, solid-waste collection, and snow-removal equipment; that street configurations, grades, and curves are adequate for the safe movement of traffic, access to building sites, and snow storage; that building sites are adequately drained and not subject to flooding; and, if public sanitary sewerage facilities are not to be provided, that lots are of sufficient size to accommodate onsite sewage disposal facilities without creating a public health problem. Proposed land divisions may have impacts extending beyond the site boundaries of the land division itself, and the community should be able to require that the developer bear a fair and proportionate share of required offsite improvement costs considering the impacts of the proposed development on arterial traffic; on sewage conveyance, storage, and treatment facilities; on water supply transmission and treatment facilities; on stormwater management facilities; and on school and park facilities. The impacts that a proposed development will have on the community infrastructure system may also be

reflected in fiscal impacts. These impacts may be positive or negative depending upon whether the revenues obtained from the new development exceed the costs of the facilities and services to be provided or are less than those costs. In the latter case, some developments may result in higher incremental costs of services than the taxable value of the development may provide in revenues.

Clearly, land division has far-reaching impacts, particularly upon municipal and county government. Many of the perplexing problems which face communities, such as traffic congestion; poor drainage; flooding; high street and utility maintenance costs; inadequate park and school sites and facilities; high fire, emergency, and police protection costs; and rural and urban deterioration may be directly attributable to the manner in which the areas of the community concerned were originally subdivided. Just as important, in this respect, as the design of land divisions is the issue of whether or not the areas concerned should have been subdivided at all. The scattering of land divisions located too far from essential community services, such as sanitary sewerage; water supply; fire, emergency, and police protection; public transportation; and schools not only creates less desirable places in which to live and work, but also taxes the resources of the community in attempting to furnish the necessary public facilities and services. The viability of agricultural areas may also be destroyed through scattered land division and development. Also important in this respect is the issue of whether an excess of building sites is being created at any one time, thereby leaving the community with widely scattered, partially developed neighborhoods.

PURPOSE OF PUBLIC REGULATION

Because land division affects a broad spectrum of interests and, particularly, the welfare of the community in so many respects, its regulation has become widely accepted as a function of municipal, county, and state government. Land division regulation is the exercise of control by the community over the conversion of undeveloped land into buildable lots. It is through such

regulation that the public interest in land division is expressed and protected.

Land division regulation is intended to accomplish the following purposes:

1. Ensure that proposed land divisions will fit harmoniously into the existing land use pattern and will serve to implement the comprehensive plan and its various components for the physical development of the community;
2. Ensure that adequate provision is made for necessary and planned community and neighborhood facilities, including parks, accessways to navigable waters, schools, and shopping areas, so that an attractive and efficient environment results;
3. Ensure that sound standards for the development of land are met, with particular attention to such factors as street layouts, widths, and grades; bicycle and pedestrian circulation; park and open space requirements; block configurations; lot sizes; and street, utility, stormwater management, and transit improvements;
4. Provide a basis for clear and accurate property boundary line records;
5. Ensure the fiscal stability of the community, minimizing the cost of public facilities and services and protecting against the development over time of blighted areas;
6. Promote the public health, safety, and general welfare; and
7. Balance private property rights against the need to protect and preserve the public health, safety, and general welfare.

Land division should be regarded as an important means of implementing community comprehensive plans. Accordingly, land division control regulations should be prepared and administered within the context

of, and be consistent with, such a plan. This integration of land division control with comprehensive planning assists the community in avoiding ad hoc and irresponsible development decisions, and is consistent with the requirements of the comprehensive planning legislation adopted by the State of Wisconsin in 1999.

Historically, in communities that do not have a comprehensive plan, the zoning and land division control ordinances have often been substituted for such a plan and thus had to bear the full weight of guiding and shaping the physical development of the community. Zoning relates to the type of building development which can be placed on the land; whereas land division control relates to the way in which land is divided and made ready for building development. The substitution of these plan implementation devices for the plans themselves has been particularly common in smaller communities; and in such situations the preparation and administration of good land division control regulations is all the more important. Although land division control is far more effective if based upon a comprehensive plan, substantial benefits may be derived from enacting a land division control ordinance even in the absence of such a plan. In the absence of a plan, such regulations may either promote or retard change, an influence that may be either good or bad, depending upon the validity of the assumptions on which the controls are based. It should be noted that, under the State's new comprehensive planning legislation, communities must have an adopted plan in order to enforce land division regulations beginning on January 1, 2010.

In considering public regulation of land division, it must also be recognized that land division design is a dynamic art. New ideas and continually emerging community concerns must be integrated into the land division design and infrastructure improvement process. Examples of good quality land division design practices are presented in Chapter V.

If land division design is to be amenable to new direction, then the land division control regulations imposed must be reasonably flexible. Land division control regulations should not be regarded as set

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formulae from which developers can cheaply and mechanically extract the best solution to a given development problem. Good land division design is never a process of simply following a standard set of regulations. The concern should be with the effect of the land division produced, rather than with the regulations per se. Accordingly, the intent of a land division control ordinance should be to ensure compliance with at least minimum standards for new

development and to prevent further occurrences of the abuses in land development which occurred in the past, while at the same time facilitating the best site design possible. The quality of each land division design will be a reflection of the developer's ingenuity in creating a functional development that meets or exceeds the requirements of public regulation, while respecting the natural characteristics of the site.

Chapter II

HISTORICAL OVERVIEW

The use of land division plats for the purpose of describing real property ownership parcels, facilitating the transfer of title to such parcels, and for the development of both rural and urban areas in North America extends back into the early colonial era. Indeed, land division plats constituted the plans for colonial towns and the platting layout was often rigidly prescribed by royal or gubernatorial decree, by acts of colonial legislatures, or in some cases by proprietary companies. Such decrees or acts often specified the site for the town, street patterns and widths, block and lot sizes, the location, orientation and size of squares and plazas, and the location of public buildings. This was true in the English, French, and Spanish colonies. Some of the most farsighted, as well as elegant, plans for the development of colonial cities were expressed in the form of land division plats, such as the plans for Philadelphia, Pennsylvania; Savannah, Georgia; and Williamsburg, Virginia. Early plats for the latter two cities are shown on Figures II-1 and II-2. These plans incorporated design principles that are still recognized today as valid, including the differentiation between major and minor streets, the provision of parks and open spaces, and the location of public buildings on commanding sites, often at the end of formal axes. The drafters of these colonial plans managed the economic and political forces that led to their establishment remarkably well, and produced aesthetically pleasing, as well as functionally sound, communities.

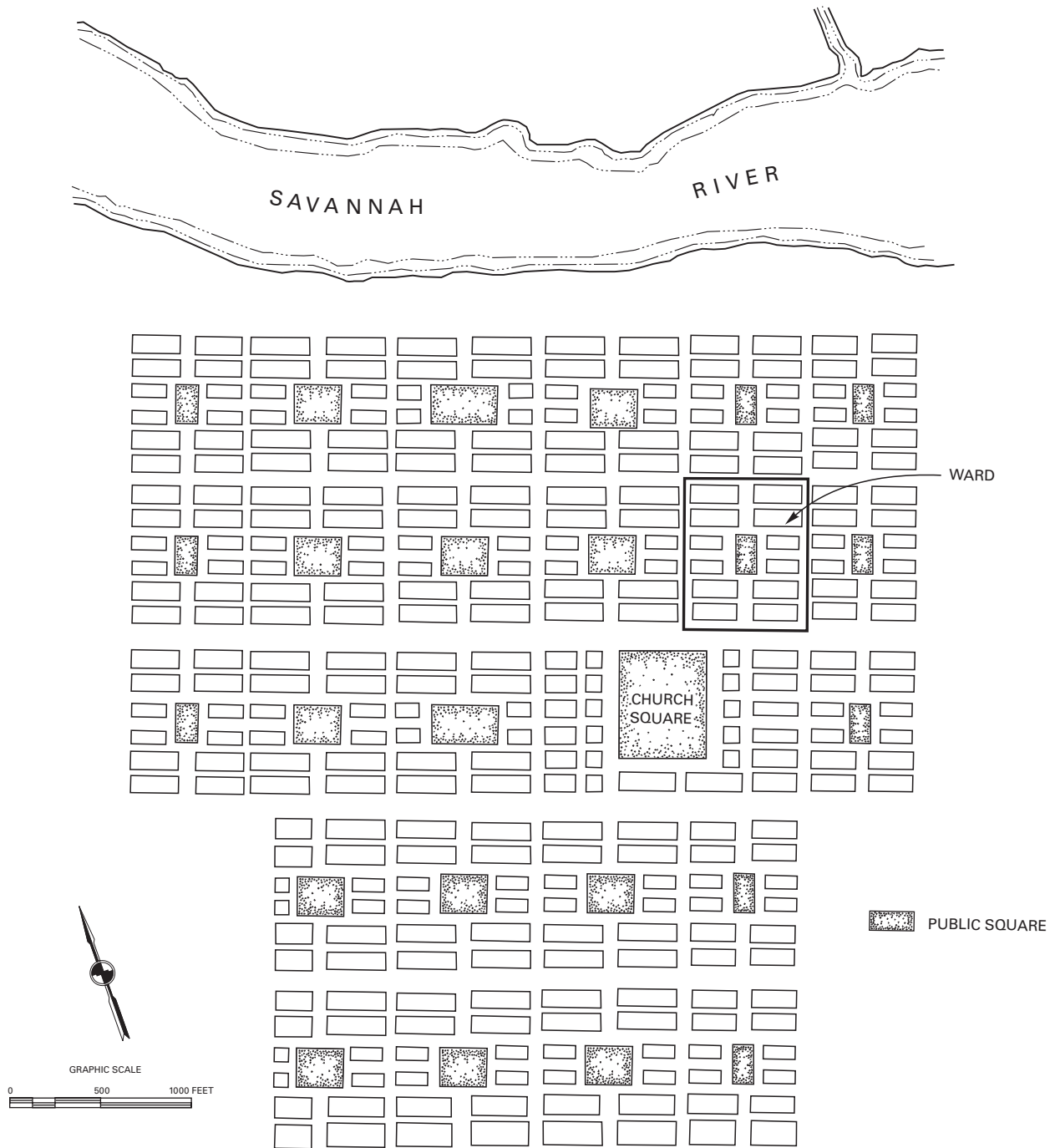
The colonial planning era reached its culmination in the preparation of the land division plan for the City of Washington, D. C., a remarkably visionary plan. That plan has been the basis for the development of one of the most beautiful national capitals, and has served the Federal heart of Washington, D.C. and the Nation well for over 200 years.

The use of land division plats for the purpose of describing real property ownership parcels, of facilitating the transfer of title to such parcels, and of developing urban areas was continued after the end of the colonial era. Indeed, the first set of revised statutes of the State of Wisconsin, adopted during the second session of the Legislature commencing on January 10, 1849, included as Chapter 41 an extensive section entitled, "Of Recording Town Plots." The inclusion of this section in the first set of revised statutes indicated the importance that elected officials and citizens of the newly created State placed on the division of land. The statute was remarkably complete, requiring a survey and plat for all land divisions or additions to any town; specifying the information to be shown on subdivision plats and the manner in which the plats were to be monumented; requiring certificates by the surveyor; the recording of the plat; the dedication of streets, alleyways, and commons to the municipal corporation; and providing for substantial sanctions associated with the enforcement of the provisions of the chapter.

In the post-colonial period, the land division process was often grossly abused by land speculators and promoters of urban developments, including railway companies and manufacturing firms. One railway company alone, the Illinois Central, used a standard rectangular grid platting layout, shown on Figure II-3, which specified depot locations, street widths, block and lot sizes, and even street names. This standard plat was used to establish 33 towns along its railway lines. Developers often subdivided land into very small lots, 25 feet in width by 100 feet in depth, and promoted the sale of unimproved lots to unwary, absentee, and speculating buyers. Many individuals lost lifetime savings in land speculation, and local governments were often left with large areas of platted, but unimproved,

Figure II-1

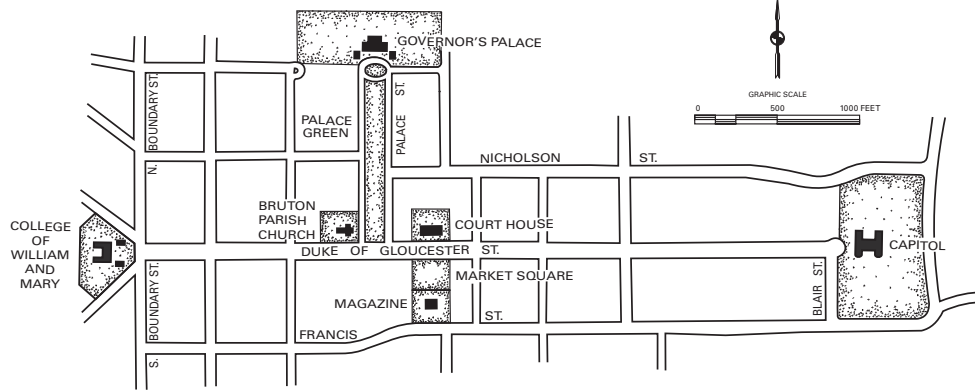
HISTORIC PLAN FOR SAVANNAH, GEORGIA



General James Oglethorpe produced a plan for Savannah, Georgia, in 1733 in which each neighborhood unit, or ward, was centered around a public square. In addition to the square, each ward included residential lots and "trustee" lots for institutional or commercial uses. The plan recognized major and minor streets and provided ample open space and an attractive setting for buildings. Importantly, wards could be added as market conditions dictated without disrupting existing development. General Oglethorpe's plan guided development of the City for over 100 years, and has made Savannah one of the most attractive cities in the United States.

Figure II-2

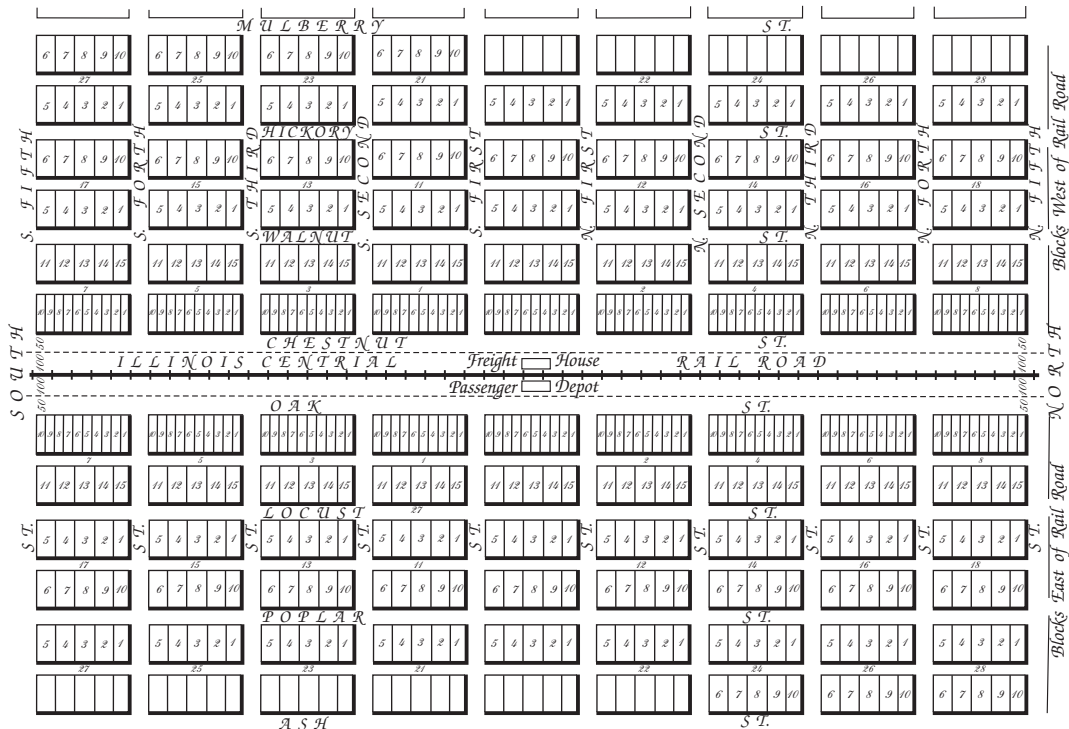
HISTORIC PLAN FOR WILLIAMSBURG, VIRGINIA



The plan for Williamsburg, Virginia was designed by General Francis Nicholson, then the Royal Governor of Virginia. The City's major east-west axis, the Duke of Gloucester Street, is anchored on the west by William and Mary College and on the east by the Capitol Building. The minor north-south axis, Palace Street, encompasses the Palace Green and leads to the Governor's Palace--or House--on the north end. Each of these public buildings is surrounded by green space. Williamsburg served as the capital of Virginia from 1699 until 1780. In its presently reconstructed form, Williamsburg provides a fine example of coordinated land subdivision and architectural design.

Figure II-3

STANDARD TOWN PLAT FROM THE ILLINOIS CENTRAL RAILROAD



The Illinois Central Railroad used a standard rectangular grid design to establish 33 virtually identical towns along its railway lines. The layout specified locations for the passenger depot and freight house as well as street widths, block and lot sizes, and even street names. Lots for commercial development lined each side of the tracks.

lots which imposed an obsolete and costly development pattern on the community. Often such plats were located in areas that should not have been developed at all.

The most serious problems attendant to this uncontrolled land division were often the result of the land being divided without the installation of necessary improvements, such as sanitary sewers, water mains, and stormwater drains; street pavements; and curbs, gutters, and sidewalks. In many cases, no provision was made for adequate school and park sites or for other necessary public facilities. Other manifestations of the misuse of land in the past have included the lack of adequacy and uniformity in street width, alignment, and continuity; and a generally inferior arrangement of blocks and lots with inadequate consideration being given in the platting layout to the topography, drainage pattern, and natural assets of the site, such as woodlands, wetlands, floodplains, streams, and water-courses. In many cases, streets were laid out with little thought as to function, resulting in unnecessary traffic conflicts and also in an unnecessarily excessive area being devoted to streets. Poor surveying and survey monumentation practices gave rise to disputes over land ownership, and public versus private rights with respect to land use regulations.

The net results of this widespread misuse of land resources, which occurred during the Industrial Revolution in the late 19th and early 20th Centuries, are evidenced today in many of the older, deteriorating urban areas of the Country. In terms of costs to the individual taxpayer, the damage has been incalculable. The community has often been left with the responsibility for installing and maintaining improvements which may never be fully used. Poor land division and the resulting development has often made areas generally undesirable as places in which to live and work, with the result that the areas contribute less and less over time to the municipal tax base by virtue of premature obsolescence, lower property values, high costs of municipal services, and high rates of vacancies and tax delinquencies. The social cost of poor land division and development may also be significant where that physical deterioration has led to social deterioration. The results have been reflected in

increased fire and police protection and public welfare costs.

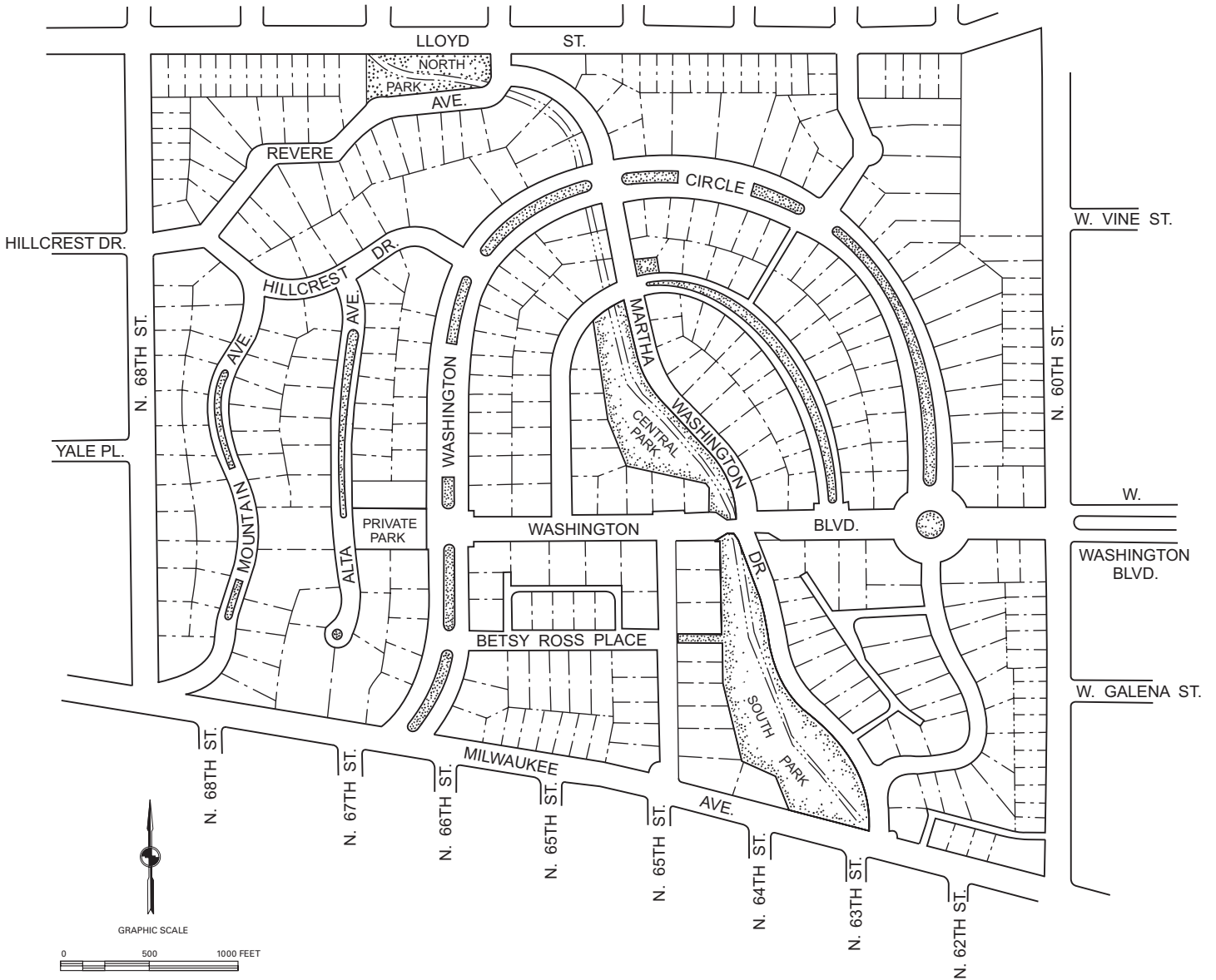
It was in this context that civic-minded individuals and organizations began, in the early 1900s, to awaken the public to the need for adequate land division regulation. In 1928, the Federal government promulgated a Standard City Planning Enabling Act, which shifted the emphasis of land division regulation from its narrow focus as a means for facilitating the description of real property boundaries and the transfer of land ownership to a broader one of shaping urban growth in the public interest. The Washington Highlands subdivision, platted in 1916 in the City of Wauwatosa and shown in Figure II-4, is one of the first subdivisions in the Region to incorporate sound design principles into the subdivision layout.

In a 1932 report entitled, "Report of a Presidential Conference on Home Building and Home Ownership," the prominent civil engineer and city planner, Harland Bartholomew, presented key subdivision design principles; suggested design standards for street widths and alignment based on functional need; and demonstrated the cost savings inherent in good subdivision design. This report is sometimes viewed as the beginning of effective modern municipal land division regulation in the United States. Subsequent to its publication, and in accordance with the report, municipalities across the Country began to adopt subdivision control ordinances. However, it was not until the massive land development and housing construction period which followed the end of World War II that modern land division regulations were widely adopted by municipalities, particularly in metropolitan areas.

The Federal Housing Administration (FHA), through the administration of its mortgage insurance program, and the Federal Housing and Home Finance Agency, through its planning grant program, were important proponents of local subdivision regulations. These agencies published recommended subdivision regulations during the 1950s that increased public understanding of the benefits of good subdivision design.

Figure II-4

WASHINGTON HIGHLANDS



Washington Highlands, located on the eastern edge of the City of Wauwatosa, was designed in 1916 by Werner Hegemann and Elbert Peets. Elbert Peets was later involved in the planning of Greendale as a Federal greenbelt new town. The layout reflects then new concepts in subdivision design, including curvilinear streets, boulevards, and a greenway. Washington Highlands has remained an attractive and desirable residential area for almost 85 years.

In the 1960s, infrastructure improvement requirements were commonly incorporated into land subdivision control ordinances. Municipalities began to require developers to install onsite improvements, such as street pavements, sanitary sewers, water mains, and storm drains. Land dedication requirements for school and park sites were also incorporated into local ordinances. Some municipalities required developers to provide offsite improvements as well. The timing and location, as well as the design and improvement, of subdivisions were also addressed in some municipal regulatory programs. Subdivisions were approved only if a finding was made by a cognizant public agency that the existing public facilities and services were adequate to serve the needs created by the proposed subdivisions. In the 1980s, subdivision regulations were further expanded to address certain environmental protection needs, such as the conservation of woodland, wetland, and floodplain areas. The use of impact fees and financial exactions, such as the payments in lieu of dedication for municipal off-site infrastructure and social needs, particularly schools and parks, was also introduced to assist municipalities in meeting the costs attendant to urban development.

DESIGN CONCEPTS RELATED TO SUBDIVISION REGULATIONS

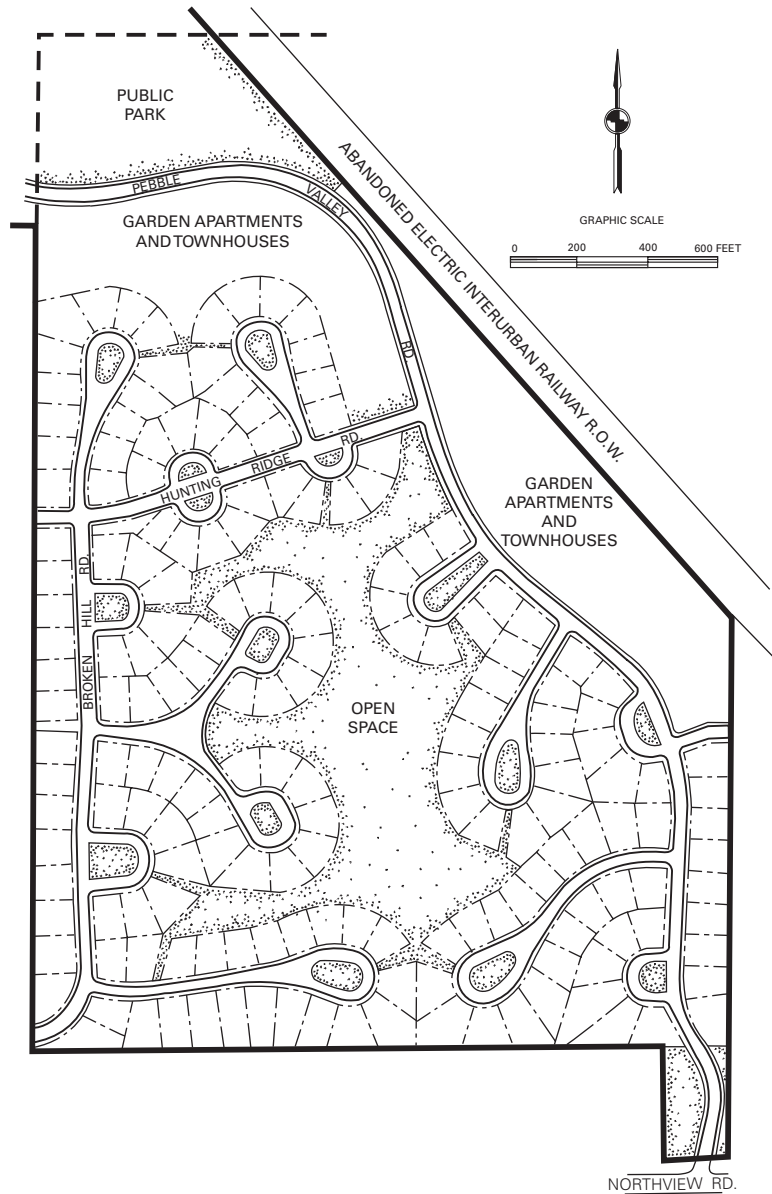
Four subdivision design concepts are in general use: conventional; cluster; neo-traditional; and coving. Conventional designs are generally marked by curvilinear and modified grid street layouts. Conventional subdivision design has been the most widely used concept in Southeastern Wisconsin. Cluster subdivisions, also known as “conservation design” or “open space” subdivisions, are generally marked by the use of relatively small lots and relatively large common open spaces. Although the cluster concept has been recognized for many years, few subdivisions using this design option have been developed in Southeastern Wisconsin. Recently, there has been a growing interest on the part of local governments, developers, and citizens in encouraging cluster development as an alternative to conventional development, particularly in rural and environmentally sensitive areas. Because of the difficulty in accommodating such development under sub-

division ordinances that were designed for conventional subdivisions, cluster subdivisions are sometimes reviewed as planned unit developments under the zoning code. County and local governments have begun to incorporate specific provisions for cluster subdivisions into the municipal subdivision ordinance. Although more common in rural areas, where they are used to protect natural resource areas and rural landscapes, cluster subdivisions may also be developed in urban areas to provide more flexibility in subdivision design, and often more accessible greenspace for subdivision residents. Figures II-5 and II-6 illustrate an urban and rural cluster subdivision, respectively, that have been developed in the City of Waukesha and in the Town of Ottawa.

Beginning in the 1990s, some planners and land developers, together with community activists and local officials, focused on the desire to create a sense of place, and advocated “neo-traditional,” “new urbanism,” or “smart growth” techniques that were intended to make communities more compact and livable. Frequently, such plans were based on the creation of a neighborhood containing a mix of uses that were within walking distance of each other. In such developments, traffic circulation patterns were based on a grid, or modified grid, pattern of streets rather than the widely accepted curvilinear patterns of the previous 40 years. However, the grid pattern of streets often makes sensitivity to existing land forms and other natural features difficult or impossible to incorporate into the subdivision design. Furthermore, this pattern of development is often not feasible for infill or small projects.

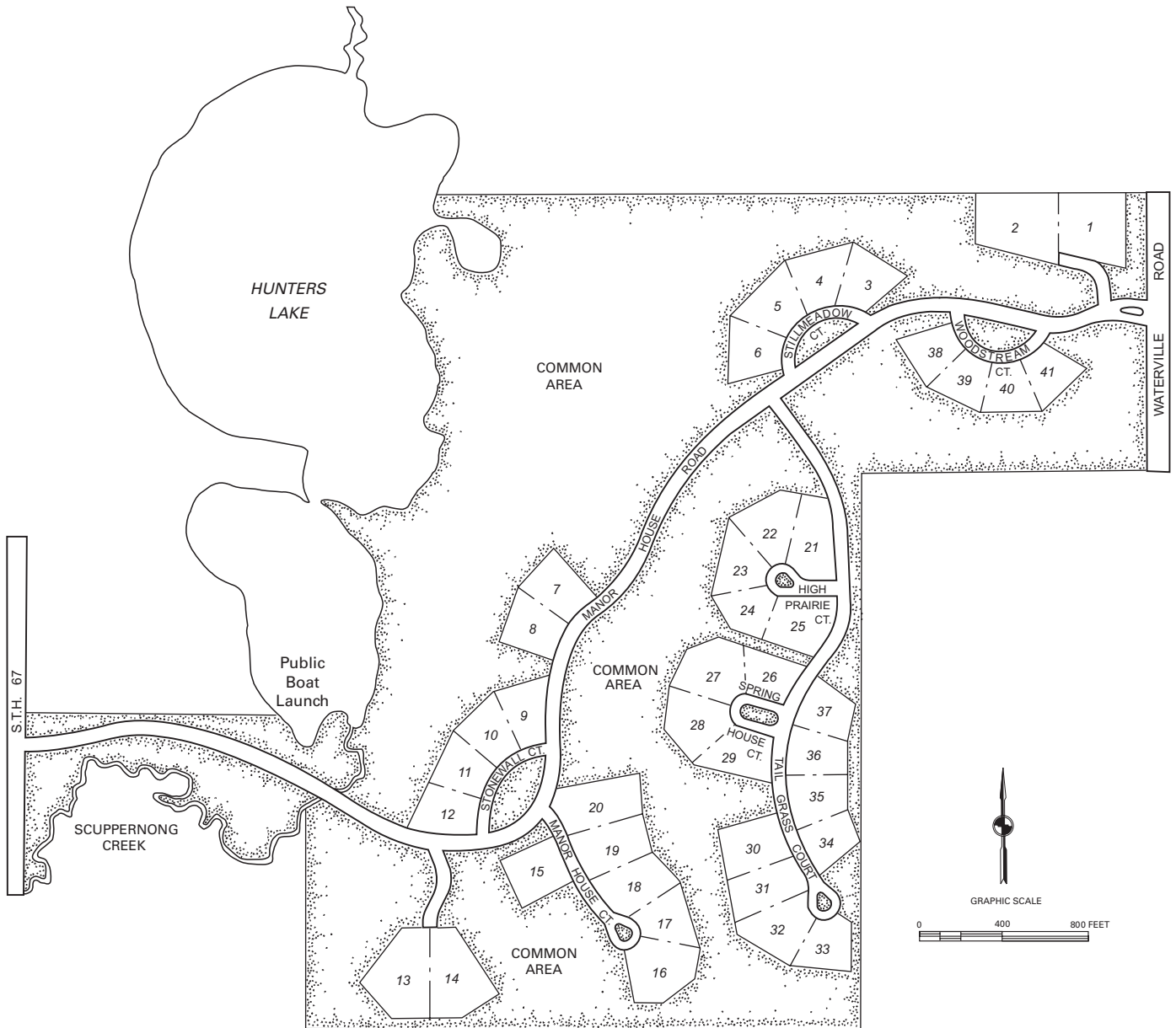
The Village of Greendale, designed in 1936 by a team lead by Elbert Peets, presaged the “new urbanist” concepts of a sense of place and a compact neighborhood with services within walking distance of homes. The Village layout utilized a combination of curvilinear streets and modified grid street patterns, carefully adjusting the design to the topography and other natural features. The plan, shown on Figure II-7, provided for a shopping area, school and community building, administration building, fire and police building, and public works building, all conveniently grouped in a community center. The plan included a variety of housing

Figure II-5
URBAN CLUSTER SUBDIVISION



Pebble Valley, located on the northwest side of the City of Waukesha, is one of the first urban cluster subdivisions developed in Southeastern Wisconsin. Platted in 1968, the subdivision includes a mix of single, two, and multi-family dwellings and a public park. The subdivision also includes private recreational facilities, open space, and a trail network. The plat also included a school site, which was never developed; however, a public elementary school and community shopping facilities are located nearby.

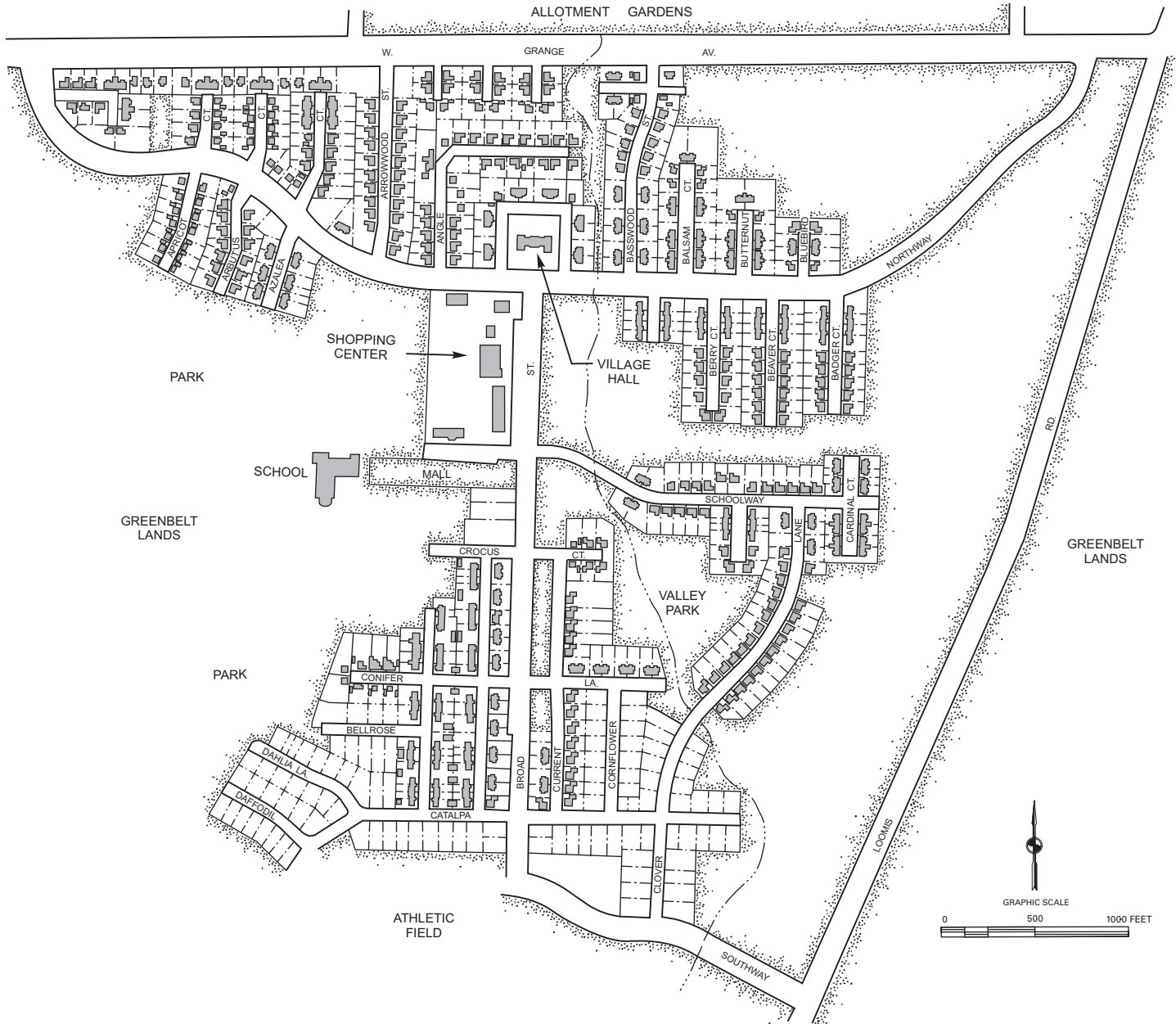
Figure II-6
RURAL CLUSTER SUBDIVISION



The Preserve at Hunter's Lake is a 271-acre rural cluster subdivision located in the Town of Ottawa in southwestern Waukesha County. The subdivision was developed in 1994 and includes 41 single-family residential lots. About 66 percent of the site has been preserved as open space, with an average density of one dwelling unit per 6.6 acres. The subdivision design preserves mature hardwood forest, wetlands, and floodplains, and provides lake and trail access for all subdivision residents.

Figure II - 7

PLAN FOR THE VILLAGE OF GREENDALE



Greendale is one of four “greenbelt” communities planned in the 1930’s by the U.S. Department of Agriculture’s Resettlement Administration. Three of the four communities were developed: Greenbelt, Maryland; Green Hills, Ohio; and Greendale, Wisconsin. The fourth planned community, Greenbrook, New Jersey, was never developed. The greenbelt communities were intended to provide affordable housing combined with subsistence gardening for industrial workers in nearby cities. Greendale was intended to provide housing for Milwaukee workers. Residential areas were surrounded by extensive open space areas, or “greenbelts.” Greendale, designed by Elbert Peets in 1936, contained 335 acres of land for residential development and a 2,000-acre greenbelt. The original plan called for a development density of about 15 persons per gross acre, or 30 persons per net residential acre, with 572 dwelling units proposed to house a resident population of 2,500 persons in a townsite of 170 acres. The plan included provision for a variety of housing types; for a carefully designed functional street pattern which separated arterial, collector, and land access streets; and pedestrian ways separate from streets. The Federal government disposed of the community in 1953, and it was acquired by a consortium of Milwaukee corporations. The greenbelt was subsequently developed, albeit with careful planning. The village core, as designed by Peets, remains an attractive and desirable residential area.

types, a street pattern that separated arterial and local traffic, and a system of pedestrian ways that were often separate from roadways.

A design concept known as “coving” has been recently introduced. This concept seeks to maximize lot yield and minimize street length by the use of variable front yards and a winding street pattern. This concept has not been used to date within Southeastern Wisconsin.

These four design concepts are further described and illustrated in Chapter V of this guide. Although not subdivision design concepts as such, two related development types have implications for land division control practices: planned development districts and condominium developments.

Beginning in the 1980s, the use of Planned Development Districts, also known as Planned Unit Developments or PUDs, became a more common type of land development. PUDs generally consist of sites of five acres or more developed under a unified site plan, and contain an integrated mix of land uses and housing densities. Recreational areas and facilities and open space may also be provided. Larger PUDs, like large subdivisions, may be developed in phases. PUDs are generally regulated under the community zoning ordinance, but would require review under the land division control ordinance if lots are to be created within the PUD. Some communities regulate all PUDs under the land division ordinance, to ensure that the community’s design and improvement standards are met. As noted in Table II-1, two villages and seven towns within the Region include provisions for PUDs in the local land division ordinance.

The regulation of condominium development has emerged as another issue of concern to county and local governments in recent years. Although condominiums are a type of ownership rather than a specific type of development, it is possible for a condominium development to resemble a conventional single-family residential subdivision. State law establishes a separate review procedure for condominiums under Chapter 703 of the Wisconsin Statutes, which is not as detailed as the requirements in many local land division ordinances.

To help address this concern, a number of county and local governments have specified that their land division ordinance applies to proposed condominium developments (see Table II-1). Condominiums are thereby subject to the same review procedure as land divisions and must comply with applicable design and improvement requirements.

LAND DIVISION CONTROL WITHIN THE REGION

Under Section 236.45 of the current Wisconsin Statutes, first adopted in essentially its present form in 1955, cities, villages, towns, and counties are authorized to adopt land division control ordinances regulating the manner in which land is divided and mapped for development. Villages and cities are permitted and may or may not choose to impose certain land division regulations in unincorporated areas within their extra-territorial plat approval jurisdiction. The land division control powers of towns are confined to their own unincorporated areas. Counties may exercise land division control in unincorporated areas, and may exercise limited land division control within incorporated areas.

In 1964, local land division control ordinances had been adopted by 66 cities and villages, 24 towns, and one county, Racine County, within the seven-county Southeastern Wisconsin Region. Many of these ordinances were based on the model land division ordinance prepared by the Regional Planning Commission in 1963 and contained in the first edition of this guide.

In 2000, the Commission conducted a survey of county and local governments in the Region to determine the existence and scope of land division control ordinances. The results of the survey are summarized on Table II-1. A total of 134 of the 154 county and local governments in the Region responded to the survey, for a response rate of 87 percent. Of the 134 county and local governments that responded to the survey, 117, or 87 percent, had adopted land division control regulations, including all 26 of the cities that responded, 47 of the 49 villages, 52 of the 63 towns, and all six counties having unincorporated areas. The land division control regulations adopted by Ozaukee and Waukesha

Table II-1

SCOPE OF SUBDIVISION CONTROL ORDINANCES IN SOUTHEASTERN WISCONSIN: 2000

Governmental Unit	Governing Body Has Adopted a Subdivision Control Ordinance	Ordinance Applies to Divisions of Land Other than Subdivisions as Defined in State Statutes ^a	Scope of Ordinance if Different from Statutory Scope
Kenosha County County Cities Kenosha Villages Paddock Lake Pleasant Prairie Silver Lake Twin Lakes Towns Brighton Bristol Paris Randall Salem Somers Wheatland	Yes Yes Yes Yes Yes Yes No -- ^b -- No No Yes Yes No	Yes Yes Yes Yes Yes Yes -- -- -- -- Yes Yes --	In unincorporated areas only; any land division resulting in parcels of five acres or less Any land division resulting in five or more parcels of 1.5 acres or less, or other land division resulting in less than five parcels; condominiums All land divisions All land divisions; condominiums; any development requiring improvements or involving dedication to the public Any land division resulting in a parcel less than 35 acres; condominiums All land divisions -- -- -- -- Any land division resulting in a parcel less than 35 acres; condominiums Any land division resulting in a parcel less than 20 acres; condominiums --
Milwaukee County County Cities Cudahy Franklin Glendale Greenfield Milwaukee Oak Creek South Milwaukee St. Francis Wauwatosa West Allis Villages Bayside Brown Deer Fox Point Greendale Hales Corners River Hills Shorewood West Milwaukee Whitefish Bay	No -- ^b Yes -- ^b Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes No	-- -- Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes --	-- -- All land divisions; condominiums -- All land divisions All land divisions All land divisions; condominiums All land divisions All land divisions All land divisions All land divisions All land divisions All land divisions Any land division resulting in a parcel of four acres or less All land divisions All land divisions; condominium conversions All land divisions resulting in parcels 1.5 acres or less -- All land divisions All land divisions; condominiums --
Ozaukee County County	Yes	Yes	In unincorporated shoreland areas only; any land division resulting in five or more parcels of five acres or less

Table II-1 (continued)

Governmental Unit	Governing Body Has Adopted a Subdivision Control Ordinance	Ordinance Applies to Divisions of Land Other than Subdivisions as Defined in State Statutes ^a	Scope of Ordinance if Different from Statutory Scope
Ozaukee County (continued) Cities Cedarburg Mequon Port Washington Villages Belgium Fredonia Grafton Saukville Thiensville Towns Belgium Cedarburg Fredonia Grafton Port Washington Saukville	Yes Yes Yes Yes Yes Yes Yes Yes No Yes Yes -- ^b Yes Yes	Yes Yes Yes Yes Yes Yes Yes Yes -- Yes Yes -- Yes Yes	Any land division resulting in a parcel less than 35 acres All land divisions; condominiums All land divisions; condominiums Any land division resulting in a parcel less than 10 acres Any land division resulting in a parcel of four acres or less; condominiums All land divisions Any land division resulting in five or more parcels of 1.5 acres or less, or other land division resulting in a parcel less than 10 acres All land divisions -- All land divisions All land divisions -- All land divisions; condominiums Any land division resulting in a parcel less than 35 acres; condominiums
Racine County County Cities Burlington Racine Villages Elmwood Park North Bay Rochester Sturtevant Union Grove Waterford Wind Point Towns Burlington Caledonia Dover Mt. Pleasant Norway Raymond Rochester Waterford Yorkville	Yes Yes Yes Yes Yes Yes Yes Yes -- ^b -- ^b -- ^b Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	Yes Yes Yes Yes Yes No Yes Yes Yes Yes -- -- -- Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	In unincorporated areas only; any land division resulting in five or more parcels of three acres or less; condominiums Any land division resulting in a parcel less than 35 acres Any land division resulting in a parcel of three acres or less -- -- -- Any land division resulting in a parcel of five acres or less -- Any land division resulting in two or more parcels of 1.5 acres or less Any land division resulting in three or more parcels, with the exception of divisions of land for agricultural use into parcels of at least 10 acres -- -- -- All land divisions; condominiums All land divisions Any land division resulting in five or more parcels of five acres or less, or any other land division resulting in a parcel of 20 acres or less Any land division resulting in three or more parcels of two acres or less Any land division resulting in a parcel less than 35 acres Any land division resulting in a parcel of 35 acres or less Any land division resulting in five or more parcels of three acres or less, or other land division resulting in a parcel of 10 acres or less

Table II-1 (continued)

Governmental Unit	Governing Body Has Adopted a Subdivision Control Ordinance	Ordinance Applies to Divisions of Land Other than Subdivisions as Defined in State Statutes ^a	Scope of Ordinance if Different from Statutory Scope
Walworth County County	Yes	Yes	In unincorporated areas only; any land division resulting in a parcel of 15 acres or less
Cities			
Delavan	Yes	Yes	All land divisions; condominiums
Elkhorn	Yes	Yes	All land divisions
Lake Geneva	Yes	Yes	All land divisions; condominiums
Whitewater	-- ^b	--	--
Villages			
Darien	Yes	Yes	Any land division except the division of land into parcels of 35 acres or more for agricultural use
East Troy	Yes	Yes	Any land division resulting in a parcel of 1.5 acres or less; condominiums; planned unit developments
Fontana-on-Geneva Lake	Yes	Yes	All land divisions
Genoa City	Yes	Yes	All land divisions; condominiums
Sharon	Yes	Yes	All land divisions
Walworth	Yes	Yes	Any land division except the division of land into parcels of 35 acres or more for agricultural use
Williams Bay	Yes	Yes	All land divisions; condominiums
Towns			
Bloomfield	No	--	--
Darien	Yes	No	--
Delavan	Yes	Yes	Any land division resulting in a parcel of 15 acres or less; condominiums; planned unit developments
East Troy	Yes	Yes	Any land division resulting in a parcel of 15 acres or less; condominiums; planned unit developments
Geneva	No	--	--
LaFayette	No	--	--
LaGrange	Yes	Yes	Any land division resulting in a parcel less than 35 acres; condominiums
Linn	No	--	--
Lyons	Yes	Yes	All land divisions, condominiums, planned unit developments
Richmond	No	--	--
Sharon	No	--	--
Spring Prairie	No	--	--
Sugar Creek	Yes	Yes	Any land division resulting in a parcel of 15 acres or less
Troy	No	--	--
Walworth	Yes	Yes	Any land division resulting in five or more parcels of five acres or less, or other land division resulting in four or fewer parcels of 15 acres or less; condominiums; planned unit developments
Whitewater	No	--	--
Washington County County	Yes	Yes	In unincorporated areas only; land divisions resulting in five or more parcels of five acres each or less
Cities			
Hartford	Yes	Yes	Any land division resulting in five or more parcels of five acres or less, or other land division resulting in two to four parcels where any parcel is 10 acres or less

Table II-1 (continued)

Governmental Unit	Governing Body Has Adopted a Subdivision Control Ordinance	Ordinance Applies to Divisions of Land Other than Subdivisions as Defined in State Statutes ^a	Scope of Ordinance if Different from Statutory Scope
Washington County (continued)			
Cities (continued)			
West Bend	Yes	Yes	Any land division resulting in five or more parcels of 1.5 acres or less, or other land division resulting in two to four parcels where any parcel is 10 acres or less
Villages			
Germantown	Yes	Yes	Any land division resulting in a parcel of 20 acres or less; condominiums
Jackson	Yes	Yes	Any land division resulting in two or more parcels, any one of which is less than 1.5 acres
Kewaskum	Yes	Yes	All land divisions
Newburg	Yes	Yes	Any land division resulting in five or more parcels of five acres or less, minor land divisions (not defined)
Slinger	Yes	Yes	All land divisions
Towns			
Addison	Yes	Yes	Any land division resulting in four or more parcels of 20 acres each or less
Barton	Yes	Yes	All land divisions
Erin	Yes	Yes	All land divisions
Farmington	Yes	Yes	Any land division resulting in four or fewer parcels of less than 10 acres
Germantown	--b	--	--
Hartford	Yes	Yes	All land divisions
Jackson	Yes	Yes	All land divisions; planned unit developments
Kewaskum	--b	--	--
Polk	Yes	Yes	Any land division resulting in five or more parcels of 1.5 acres or less, or other land division resulting in two to four parcels where any parcel is 10 acres or less
Richfield	--b	--	--
Trenton	--b	--	--
Wayne	Yes	Yes	Any land division resulting in four or fewer parcels of less than 10 acres
West Bend	Yes	Yes	All land divisions
Waukesha County County	Yes	Yes	In unincorporated shoreland areas only: land divisions resulting in three or more parcels of five acres or less, and other land divisions resulting in a parcel of 20 acres or less
Cities			
Brookfield	Yes	Yes	Any land division except those resulting in parcels of 10 acres or more for agricultural purposes
Delafield	Yes	Yes	All land divisions; condominiums
Muskego	Yes	Yes	All land divisions; condominiums
New Berlin	Yes	Yes	All land divisions
Oconomowoc	Yes	Yes	Any land division except those resulting in parcels of five acres or more for agricultural purposes
Pewaukee	Yes	Yes	Any land division resulting in five or more lots of any size, or those resulting in less than five lots where any parcel is less than 20 acres
Waukesha	Yes	Yes	All land divisions
Villages			
Big Bend	Yes	Yes	All land divisions
Butler	Yes	Yes	All land divisions; condominiums; planned unit developments

Table II-1 (continued)

Governmental Unit	Governing Body Has Adopted a Subdivision Control Ordinance	Ordinance Applies to Divisions of Land Other than Subdivisions as Defined in State Statutes ^a	Scope of Ordinance if Different from Statutory Scope
Waukesha County (continued)			
Villages (continued)			
Chenequa	Yes	Yes	Any land division resulting in four or more parcels of 10 acres or less
Dousman	Yes	Yes	Any land division resulting in a parcel of 10 acres or less
Eagle	-- ^b	--	--
Elm Grove	Yes	Yes	All land divisions
Hartland	Yes	Yes	All land divisions
Lac La Belle	-- ^b	--	--
Lannon	Yes	Yes	All land divisions
Menomonee Falls	Yes	Yes	All land divisions
Merton	-- ^b	--	--
Mukwonago	Yes	Yes	Any land division resulting in a parcel of five acres or less
Nashotah	Yes	Yes	Any land division resulting in a parcel of less than 20 acres
North Prairie	Yes	Yes	All land divisions; condominiums
Oconomowoc Lake	Yes	Yes	All land divisions
Pewaukee	Yes	Yes	Any land division resulting in a parcel of four acres or less
Sussex	Yes	Yes	All land divisions
Wales	Yes	Yes	Any land division resulting in a parcel of five acres or less
Towns			
Brookfield	-- ^b	--	--
Delafield	Yes	Yes	All land divisions
Eagle	Yes	Yes	All land divisions; planned unit developments
Genesee	Yes	Yes	All land divisions
Lisbon	Yes	Yes	Any land division resulting in five or more parcels of 1.5 acres or less, or other land division resulting in a parcel of less than 20 acres
Merton	-- ^b	--	--
Mukwonago	-- ^b	--	--
Oconomowoc	Yes	Yes	All land divisions
Ottawa	Yes	Yes	All land divisions
Summit	Yes	Yes	All land divisions; planned unit developments
Vernon	Yes	Yes	Any land division resulting in two or more parcels of five acres or less
Waukesha	Yes	Yes	All land divisions; condominiums

^aUnder Chapter 236 of the Wisconsin Statutes, a subdivision is defined as the division of a lot, parcel or tract of land where the act of division creates five or more parcels or building sites of 1.5 acres each or less in area; or where five or more parcels or building sites of 1.5 acres each or less in area are created by successive divisions within a period of five years.

^bLocal government did not respond to SEWRPC survey.

Source: SEWRPC.

Counties, it should be noted, apply only to statutorily defined shoreland areas.

Chapter 236 of the Wisconsin Statutes defines a subdivision as a division of land that creates five or more parcels or building sites of one and one-half acres each

or less in area or where five or more parcels or buildings sites one and one-half acres each or less in area are created by successive divisions within a period of five years. Chapter 236 authorizes county and local units of government to adopt more restrictive ordinances regulating other divisions of land. County and

local ordinances may also define subdivisions in terms of fewer lots or larger lot sizes than specified in State Statute.

Of the 117 county and local land division control ordinances provided to the Commission for review in 2000, only two ordinances were confined in scope to the review of subdivisions as defined in Chapter 236. As shown in Table II-1, of the 115 ordinances that exceeded the minimum statutory scope, 62 ordinances governed all land divisions and the remaining 53 ordinances, while not regulating all land divisions, governed land divisions beyond those defined as subdivisions by State Statute. Each of the six county land division control ordinances in effect in the Region in 2000 exceeded the minimum regulatory scope set forth in Chapter 236, although none of the county ordinances regulated all land divisions. In addition, the land division ordinances enacted by Racine County and 28 local governments regulated condominiums and nine local ordinances regulated planned unit developments. The Village of Pleasant Prairie ordinance was the broadest in scope, regulating any development that requires improvements or involves a dedication to the public.

Land division control ordinances, like other comprehensive plan implementation devices, and like the plans themselves, should be periodically reevaluated. Such reevaluation should be undertaken whenever the community comprehensive plan is revised in order to assure that the land division control ordinance continues to properly reflect current land division practice, State enabling legislation, and the objectives and policies of the comprehensive plan. Such reevaluation should also be undertaken if changing development conditions and changing land division design and improvement practices so dictate.

SUMMARY

The use of subdivision and other land division plats for the purpose of describing real property ownership parcels, facilitating the transfer of title to such parcels, and for the development of urban areas in North America extends back into the early Colonial era. In

Wisconsin, State Statutes adopted in 1849 included an extensive section regulating land divisions and plats, indicating the importance that elected officials and citizens of the newly created State placed on the regulation of land division.

In the post-Colonial period, the land division process was often grossly abused by land speculators and promoters of urban developments. Developers often subdivided land into very small lots and promoted the sale of unimproved lots to unwary absentees and speculating buyers. Many individuals lost lifetime savings in land speculation, and local governments were often left with large areas of platted, unimproved lots which imposed an obsolete and costly development pattern on the community. Often such plats were located in areas with environmental constraints that should not have been developed at all.

In reaction to this abuse, and subversion of the public interest, municipalities began in the 1930s to adopt subdivision control ordinances. It was not until the massive land development and housing construction period which followed the end of World War II, however, that modern land division regulations were widely adopted by municipalities. Under Section 236.45 of the Wisconsin Statutes, first adopted in essentially its present form in 1955, cities, villages, towns, and counties are authorized to adopt land division control ordinances regulating the manner in which land is divided and mapped for development. Villages and cities can extend the applicability of their land division control ordinances into extraterritorial areas within outlying towns. Land division control by towns is essentially confined to their own unincorporated areas. Counties may exercise land division control powers in unincorporated areas, and may exercise limited land division control powers in incorporated areas.

In 2000, the Commission conducted a survey of county and local governments in the Region to determine the existence and scope of land division control ordinances. Of the 134 county and local governments that responded to the survey, 117, or 87 percent, had adopted land division control regulations. Of these 117 ordinances,

only two were confined in scope to the review of subdivisions as defined in Chapter 236 of the *Wisconsin Statutes*. Of the 115 ordinances that exceeded the minimum statutory scope, 62 ordinances governed all land divisions and the remaining 53 ordinances, while not regulating all land divisions, governed land divisions beyond those defined as subdivisions in State Statute. In addition, 29 land division ordinances regulated condominiums and nine ordinances regulated planned unit developments.

Land division control ordinances, like other comprehensive planning devices and like plans themselves, should be periodically reevaluated and revised as may be found necessary. Such reevaluation and possible revision should always be undertaken whenever the community comprehensive plan is revised in order to assure that the land division control ordinance continues to properly reflect current land division practice, State enabling legislation, and the objectives and policies set forth in the comprehensive plan.

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Chapter III

LEGAL FRAMEWORK FOR LAND DIVISION CONTROL IN WISCONSIN

STATUTORY AUTHORITY

Land subdivision in Wisconsin is regulated by Chapter 236 of the *Wisconsin Statutes*, entitled “Platting Lands and Recording and Vacating Plats.” Under this *Statute*, cities, villages, towns, and counties in Wisconsin are given the authority to regulate the subdivision of land. A copy of Chapter 236, as published in the 1999-2000 issue of the *Wisconsin Statutes*, is provided in Appendix A. The Statute is of the mandatory type, rather than the enabling type, and requires that all subdivisions, as defined in the *Statutes*, be approved by specified governmental agencies in order to be entitled to be recorded. The Statute requires that any division of land which results in a subdivision shall be, and provides that any other division may be, surveyed and a plat thereof approved and recorded. The Statute makes exceptions for cemetery plats, assessors’ plats, and the sale or exchange of parcels of public utility or railway right-of-way to adjoining property owners, provided certain conditions are met.

Section 236.02(12) of the *Wisconsin Statutes* defines a subdivision as “a division of a lot, parcel or tract of land by the owner thereof or the owner’s agent for the purpose of sale or of building development, where:

- a) the act of division creates five or more parcels or building sites of 1.5 acres each or less in area; or,
- b) five or more parcels or building sites of 1.5 acres

each or less in area are created by successive divisions within a period of five years.” A plat is defined as “a map of a subdivision.” It is important to note that city, village, town, and county subdivision control ordinances can use a more restrictive definition of subdivision than that used in Chapter 236, and can, indeed, require the preparation and recording of a subdivision plat for any land division.

Required Plat Approvals

The *Statute* provides for two categories of review authorities with quite different functions in the platting process: approving authorities and objecting agencies. Approving authorities must demonstrate their acceptance of the subdivision by signing the plat before it can be recorded. Objecting agencies are provided the opportunity to review the plat and are allowed to object to the subdivision if it fails to comply with regulations. It should be noted, however, that subdivision plats within a city of the first class, that is, within the City of Milwaukee, are exempt from any State or County review.

Approving Authorities

For subdivisions located within a city or village, the governing body of the municipality is the approving authority. If within an unincorporated area, the approving authorities include the town board and the county

planning agency, if such agency employs, on a full-time basis, a professional engineer, planner, or other person charged with the duty of administering zoning or other planning regulations. If within the extraterritorial plat approval jurisdiction of a city or village, that is, if within three miles of the corporate limits of a city of the first, second, or third class, or within 1.5 miles of the corporate limits of a city of the fourth class¹ or a village, the proposed subdivision plat must be approved by the town board, the governing body of the city or village concerned if it has adopted a subdivision control ordinance or an official map,² and the county planning agency. In accordance with Section 66.0105 of the *Wisconsin Statutes*, in situations where the extraterritorial plat approval jurisdiction of two or more cities or villages would otherwise overlap, the extraterritorial jurisdiction between the municipalities is divided on a line, all points of which are equidistant from the boundaries of each municipality concerned, so that no more than one city or village exercises extraterritorial jurisdiction over any unincorporated area. City and village extraterritorial plat approval authority does not extend to requiring public improvements in the plats concerned.

Approving authorities have 90 days in which to review and approve, approve conditionally, or reject preliminary plats; and 60 days in which to review and approve or reject final plats. If an approving authority fails to act within the specified time periods and there are no unsatisfied objections and the review time has not been extended by mutual agreement, the plat shall be deemed to have been approved.

¹ *Cities of the first class are those with a population of at least 150,000 residents; cities of the second class are those with a population of 39,000 to 150,000 residents; cities of the third class are those with a population of 10,000 to 39,000 residents; and fourth class cities have a population of less than 10,000 residents.*

² *See SEWRPC Planning Guide No. 2 (2nd Edition), Official Mapping Guide, June 1996, for information on preparing and adopting an official map.*

In Southeastern Wisconsin, county approving authorities consist of the Kenosha County Department of Planning and Development, the Ozaukee County Zoning Committee, the Racine County Department of Planning and Development, the Walworth County Land Management Department, the Washington County Planning, Conservation, and Parks Committee, and the Waukesha County Parks and Land Use Department.

The *Statute* permits a city, village, or town to delegate the authority to approve or reject preliminary or final plats to a planning committee or plan commission. Final plats involving the dedication of streets or other public lands, however, must be approved by the governing body of the city, village, or town in which the plat is located.

Section 236.10(5) of the *Wisconsin Statutes* allows a city or village to waive the right to approve plats within any portion of its extraterritorial plat approval jurisdiction. In order to waive this authority, the governing body must adopt a resolution and file with the county register of deeds both the resolution and a map or metes and bounds description of the area outside its corporate limits within which the municipality will approve plats. The resolution may be rescinded at any time.

Objecting Agencies

The *Statute* identifies the Wisconsin Departments of Administration, Commerce, and Transportation as objecting agencies. If the original plat is submitted to the Department of Administration, the Department has 30 days, and the Departments of Commerce and Transportation 20 days within that 30-day period, to review a final plat to determine if the proposed plat meets agency requirements. If copies of the plat are provided to the Department of Administration by the clerk of the approving authority for distribution to the other objecting agencies, all objecting agencies, including the Department, have 20 days in which to review the plat.

It is the intent of the *Wisconsin Statutes* that the time period provided for State agency review fall within the 90- and 60-day periods, respectively, for approving authority review of preliminary and final plats, as shown

by Figures III-1 through III-4. If the State agencies concerned do not act within the specified time periods, the subdivider may demand certification by the Department of Administration. State agencies may, with the consent of the approving authorities concerned, delegate to those authorities the State agency review and certification functions.

The Wisconsin Department of Administration reviews all plats for compliance with the statutory surveying and layout requirements, and with respect to the data required to be shown on final plats and the certificates that are required to accompany a final plat. The Department acts as the “clearinghouse” for transmitting plats to the other objecting agencies concerned.

The Department of Commerce has the statutory responsibility to review, with respect to lot size and elevation, plats of subdivisions that will not be served by public sewer. Historically this review was conducted by the Department to determine compliance with Chapter Comm 85 of the *Wisconsin Administrative Code*. In July 2000, Chapter Comm 85 of the *Administrative Code* was repealed and recreated. The new version of Comm 85 does not include any provisions for Department of Commerce review of proposed land division plats. Pending corrective measures, this current lack of State review in the area of concern places a greater burden on local approving authorities to ensure that the development of proposed land division plats that are not to be served by public sewer do not create a public health hazard or contribute to surface or ground water pollution. If lots in a land division are to be served with public sewers, the city, village, or town clerk must certify that public sewer is available and that private onsite sewage disposal systems are prohibited.

The proper siting, design, installation, inspection, and maintenance of private onsite sewage disposal systems is governed by Chapter Comm 83 of the *Administrative Code*. The suitability of individual lots for such systems was historically based on percolation tests and supporting soils data. An extensive set of new regulations set forth in Comm 83 took effect on July 1, 2000. The new regulations include the recognition of new technologies,

which will provide more options for the type of onsite sewage disposal systems available for use, and may open lands to development which, in the past, did not meet the criteria for onsite private sewerage systems.

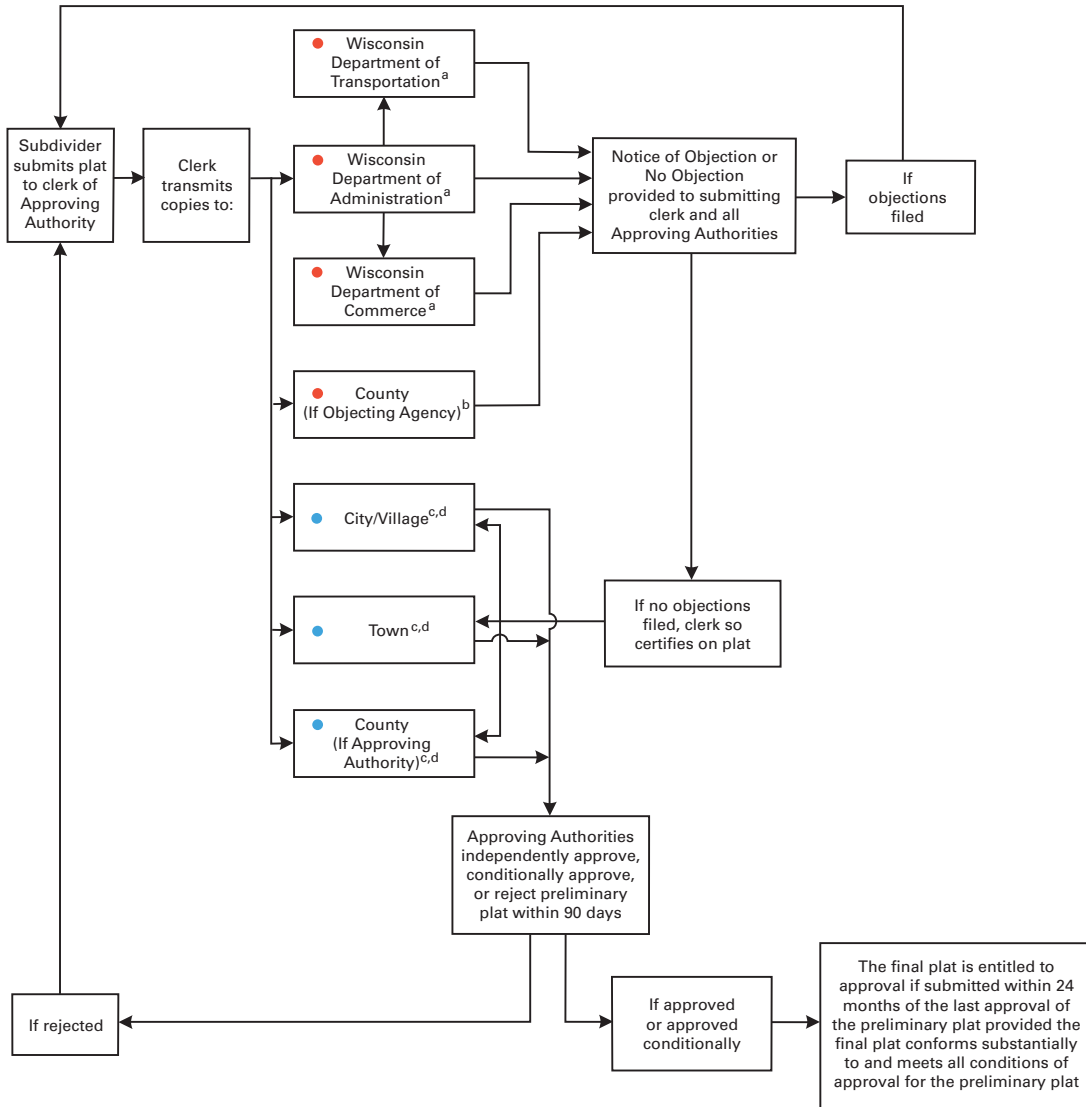
The Wisconsin Department of Transportation reviews all subdivision plats abutting a state trunk highway, interstate highway, or connecting highway for compliance with the access regulations set forth in Chapter Trans 233 of the *Wisconsin Administrative Code*. These regulations are intended to provide for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and are directed at such concerns as traffic safety, protection of arterial capacity, and right-of-way reservation. The Department’s review consists of a determination of how the proposed plat will affect the adjacent highway, with consideration given to access requirements and agreements, drainage features, setback requirements, vision corners, and the spacing of intersecting streets along the highway.

In addition to subdivision plats defined as such in Chapter 236, the requirements of Chapter Trans 233 of the *Wisconsin Administrative Code* apply to all land divisions reviewed by a city, village, town, or county, the Department of Administration, and the Department of Transportation. Section 233.012 of the *Administrative Code* specifies that Certified Survey Maps created under Section 236.34 of the *Wisconsin Statutes* and condominium plats created under Chapter 703 of the *Statutes* are subject to review and approval by the Wisconsin Department of Transportation for compliance with the requirements of Chapter Trans 233. A copy of Chapter Trans 233 is included in Appendix A of this report.

The *Statutes* also provide that counties, on the basis of the status of county planning and county park administration, may be objecting agencies to subdivision plats located within cities and villages, as well as approving authorities for plats located in unincorporated areas. The county agencies may review proposed plats for conflicts with existing or proposed parks, parkways, highways, airports, drainageways, schools, or other planned public improvements. It is unclear whether or

Figure III-1

PRELIMINARY PLAT REVIEW PROCESS AND TIME FRAME WHEN SUBDIVIDER SUBMITS PLAT TO THE CLERK OF AN APPROVING AUTHORITY



- Objecting Agency
- Approving Authority

^a State agencies have 20 days in which to review a preliminary plat and forward notice of objection or no objection to all approving authorities.

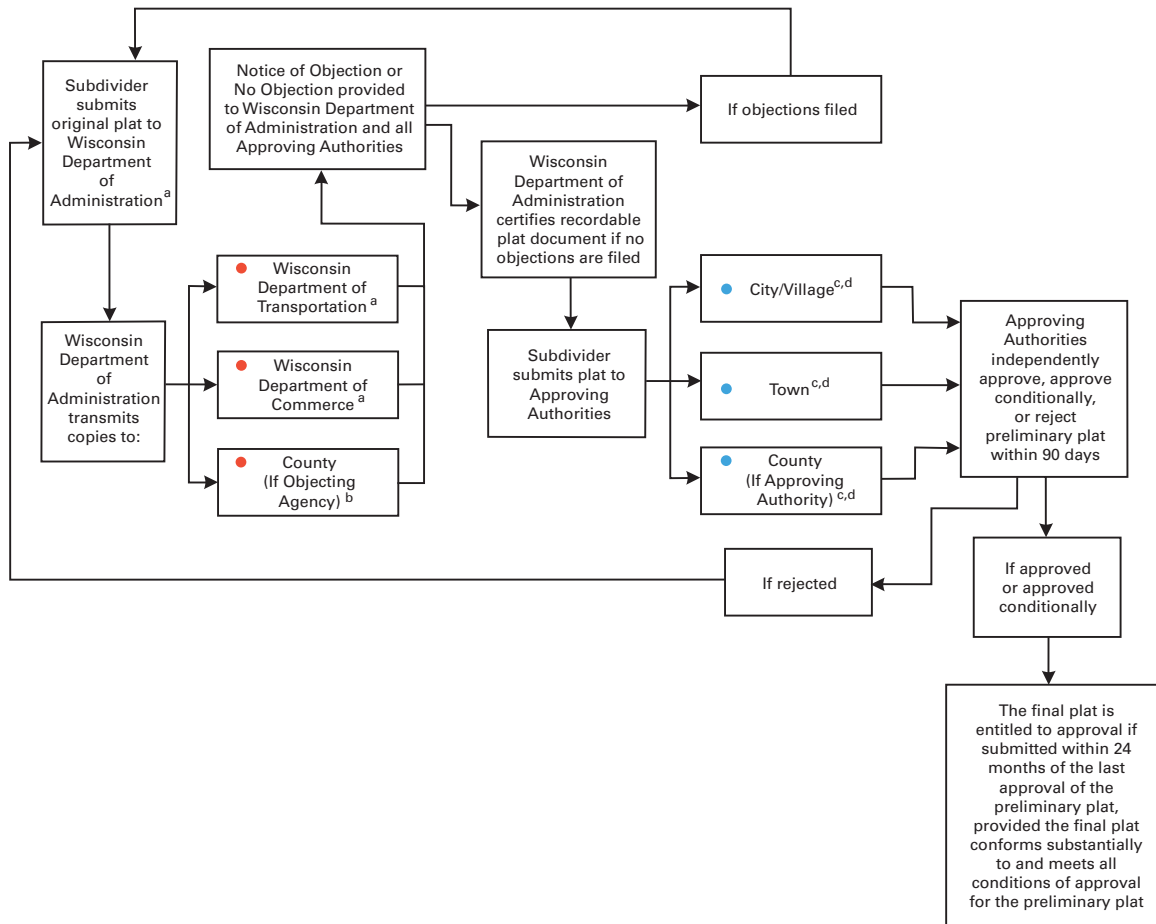
^b All counties in Southeastern Wisconsin, except Kenosha and Ozaukee, are objecting agencies for plats located within cities and villages within the County. Counties that are objecting agencies have 20 days in which to review a preliminary plat.

^c Approving authorities have 90 days in which to review a preliminary plat. For plats located in a city or village, the city or village is the sole approving authority. For plats located in a town, both the town and county are approving authorities. In cases where a plat in a town is located within the extraterritorial plat approval jurisdiction of a city or village, the city or village is also an approving authority.

^d The authority to approve or reject preliminary plats may be delegated by the governing body to a plan commission or planning committee, however, final plats dedicating streets, highways, or other public lands must be approved by the governing body.

Figure III-2

PRELIMINARY PLAT REVIEW PROCESS AND TIME FRAME WHEN SUBDIVIDER SUBMITS PLAT TO THE WISCONSIN DEPARTMENT OF ADMINISTRATION



- Objecting Agency
- Approving Authority

^a When the original of a preliminary plat is submitted to the Wisconsin Department of Administration, the Department has 30 days in which to review the plat. The other objecting agencies concerned have 20 days, within that 30-day period, in which to review the plat. The Department of Administration coordinates the objecting agency review.

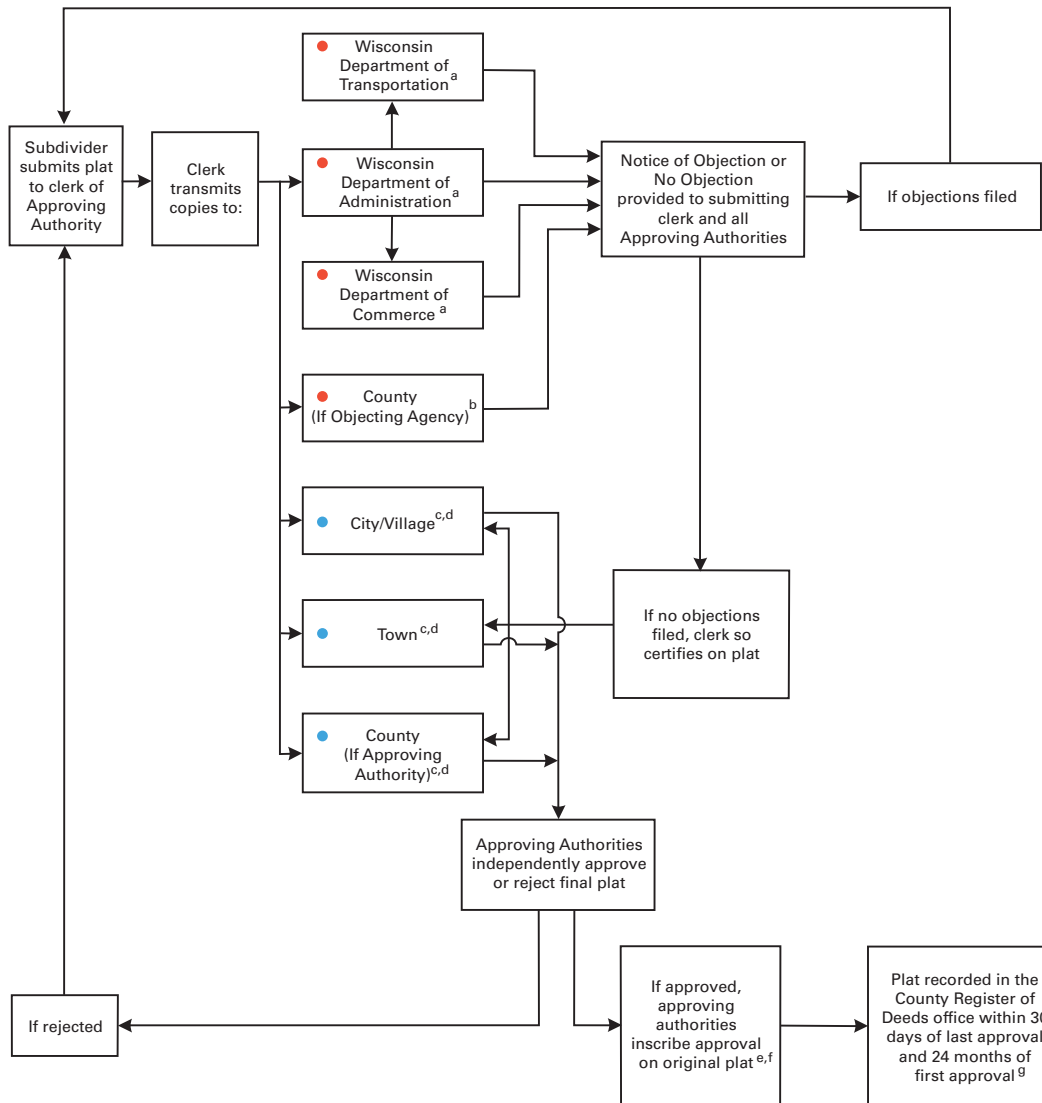
^b All counties in Southeastern Wisconsin, except Kenosha and Ozaukee, are objecting agencies for plats located within cities and villages within the County. Counties that are objecting agencies have 20 days in which to review a preliminary plat.

^c Approving authorities have 90 days in which to review a preliminary plat. For plats located in a city or village, the city or village is the sole approving authority. For plats located in a town, both the town and county are approving authorities. In cases where a plat in a town is located within the extraterritorial plat approval jurisdiction of a city or village, the city or village is also an approving authority.

^d The authority to approve or reject preliminary plats may be delegated by the governing body to a plan commission or a planning committee, however, final plats dedicating streets, highways, or other public lands must be approved by the governing body.

Figure III-3

FINAL PLAT REVIEW PROCESS AND TIME FRAME WHEN SUBDIVIDER SUBMITS PLAT TO THE CLERK OF AN APPROVING AUTHORITY



- Objecting Agency
- Approving Authority

^a State agencies have 20 days in which to review a final plat and forward notice of objection or no objection to all approving authorities.

^b All counties in Southeastern Wisconsin, except Kenosha and Ozaukee, are objecting agencies for plats located within cities and villages within the County. Counties that are objecting agencies have 20 days in which to review a final plat.

^c Approving authorities have 60 days in which to review a final plat. For plats located in a city or village, the city or village is the sole approving authority. For plats located in a town, both the town and county are approving authorities. In cases where a plat in a town is located within the extraterritorial plat approval jurisdiction of a city or village, the city or village is also an approving authority.

^d The authority to approve or reject final plats may be delegated by the governing body to a plan commission or planning committee, however, final plats dedicating streets, highways, or other public lands must be approved by the governing body.

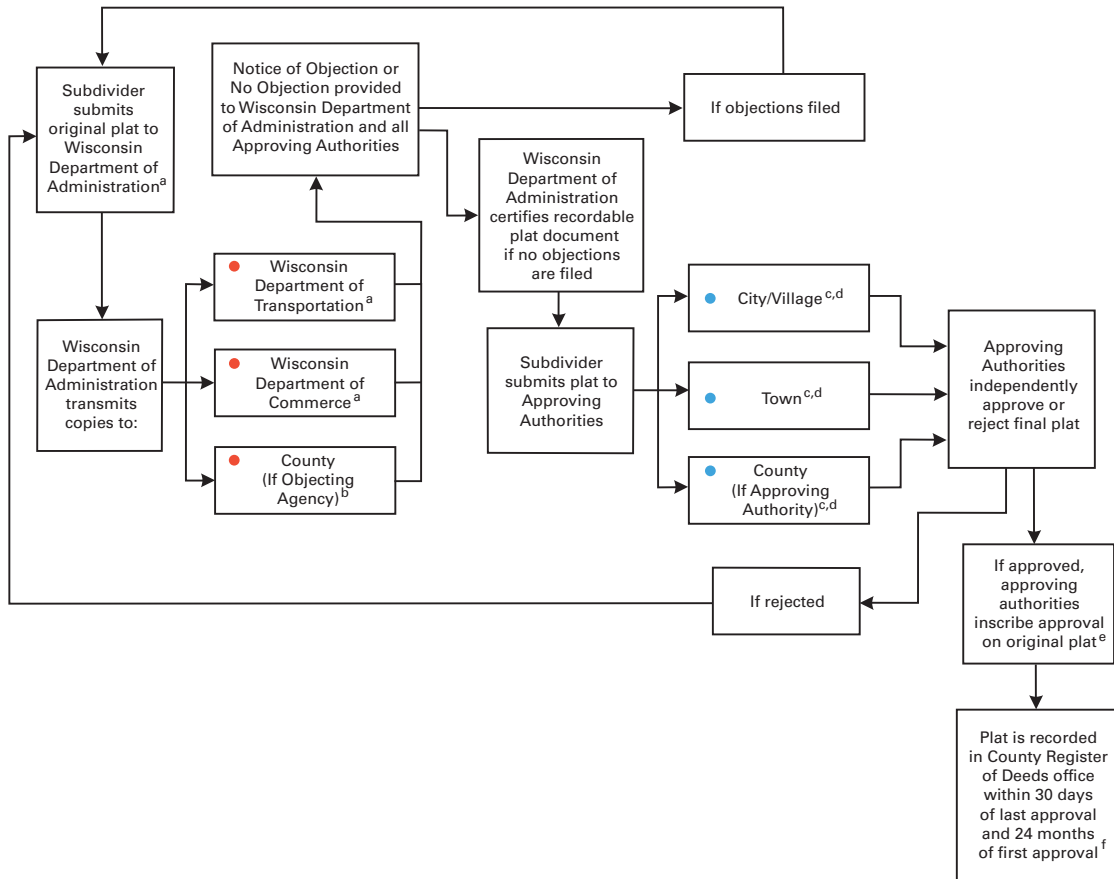
^e If a preliminary plat for a subdivision has been approved, the final plat is entitled to be approved if submitted within 24 months of the last approval of the preliminary plat, provided the final plat conforms substantially to and meets all conditions of approval placed on the preliminary plat.

^f No approving authority may inscribe its approval on a plat prior to the clerk executing the certificate that no objections were filed.

^g The document recorded in the Register of Deeds office is a photographic silver haloid image mylar.

Figure III-4

FINAL PLAT REVIEW PROCESS AND TIME FRAME WHEN SUBDIVIDER SUBMITS PLAT TO THE WISCONSIN DEPARTMENT OF ADMINISTRATION



- Objecting Agency
- Approving Authority

^a When the original of a final plat is submitted to the Wisconsin Department of Administration, the Department has 30 days in which to review the plat. The other objecting agencies concerned have 20 days, within that 30-day period, in which to review the plat. The Department of Administration coordinates the objecting agency review.

^b All counties in Southeastern Wisconsin, except Kenosha and Ozaukee, are objecting agencies for plats located within cities and villages within the County. Counties that are objecting agencies have 20 days in which to review a final plat.

^c Approving authorities have 60 days in which to review a final plat. For plats located in a city or village, the city or village is the sole approving authority. For plats located in a town, both the town and county are approving authorities. In cases where a plat in a town is located within the extraterritorial plat approval jurisdiction of a city or village, the city or village is also an approving authority.

^d The authority to approve or reject final plats may be delegated by the governing body to a plan commission or a planning committee, however, final plats dedicating streets, highways, or other public lands must be approved by the governing body.

^e If a preliminary plat for a subdivision has been approved, the final plat is entitled to be approved if submitted within 24 months of the last approval of the preliminary plat, provided the final plat conforms substantially to and meets all conditions of approval placed on the preliminary plat.

^f The document recorded in the Register of Deeds office is on muslin-backed white paper bearing the Wisconsin Department of Administration certificate of no objection.

not such improvements must be included in a county development plan or other county plan element adopted by ordinance. The revisions to the State planning enabling act adopted in 1999, however, require that after January 1, 2010, land division control be exercised within the context of adopted comprehensive plans.

In Southeastern Wisconsin, county objecting agencies consist of the Milwaukee County Department of Public Works; the Racine County Department of Planning and Development; the Walworth County Land Management Department; the Washington County Planning, Conservation, and Parks Committee; and the Waukesha County Parks and Land Use Department.

Advisory Agencies

The Wisconsin Department of Natural Resources is given an advisory role in the review of proposed subdivision plats abutting navigable lakes or streams. The Department advisory review is related to public access requirements and shoreland management regulations. The *Statutes* also provide that any city, village, town, or county may agree to have a regional planning commission review plats and submit advisory recommendations with respect to their approval.

Basis for Plat Approval

The *Statutes* provide for, but do not require, the submittal of a preliminary plat. If, however, a preliminary plat is submitted and approved, the *Statutes* provide that the final plat is entitled to approval, provided it conforms substantially to the approved preliminary plat, including any conditions of approval, and provided it is submitted within 24 months of the date of the last approval of the preliminary plat. The *Statutes* also provide specific time limitations for consideration and action by approving authorities and objecting agencies, and provide that, if the agencies concerned do not act within those time limitations, the plat is considered to be approved.

Under Section 236.13 of the *Wisconsin Statutes*, review and approval of a preliminary or final plat must be based upon compliance with:

- the provisions of the *Statutes*;
- any applicable city, village, town, or county ordinance;
- the local comprehensive plan, master plan, county development plan, or official map;
- the rules of the Wisconsin Department of Commerce relating to lot size and lot elevation in subdivisions not served by public sewer³;
- the rules of the Wisconsin Department of Transportation relating to the provision of safe entrance onto, and departure from, abutting state trunk highways and connecting highways;
- the installation of public improvements if and as required by the city, village, or town, or the execution of a surety bond or other security to ensure installation within a reasonable time; and
- the payment by the developer of the cost of any necessary alterations of existing utilities, if required by a city, village, town, or county.

Where more than one governing body or public agency has authority to approve or object to a plat, and the requirements of such bodies or agencies are conflicting, the plat must comply with the most restrictive requirements. Provision is made for the appeal of any rejection of a plat, provided the appeal is made within 30 days of the rejection. The appeal follows the procedure set forth in Section 62.23(7)(e) 10, 14, and 15 of the *Wisconsin Statutes*, which provides appeal to a circuit court. Parties to the appeal include the approving authorities

³As already noted, due to the adoption of new versions of Chapters Comm 83 and Comm 85 of the *Wisconsin Administrative Code* in July 2000, the Wisconsin Department of Commerce was not, as of the date of publication of this guide, reviewing plats for compliance with rules relating to lot sizes and elevations in subdivisions not served by public sewer.

and, where the failure to approve is based on an unsatisfied objection, the agency making the objection.

Monumentation, Surveying and Layout Requirements

The *Statutes* provide detailed specifications for monumentation and for survey accuracy. The *Statutes* also specify a minimum lot width of 50 feet and a minimum lot area of 6,000 square feet in counties having a resident population of 40,000 persons or more and of 60 feet and 7,200 square feet, respectively, in counties having a resident population of less than 40,000 persons. Cities, villages, towns, and counties adopting subdivision control ordinances may reduce these minimums if the lots are served by public sanitary sewer. It should be noted, however, that lots created within areas subject to County shoreland zoning regulations must comply with the minimum lot sizes and widths established by Section NR 115.05(3)(a) of the *Wisconsin Administrative Code*, which requires a minimum lot size of 10,000 square feet and a minimum width of 65 feet for lots served by sanitary sewer, and a minimum lot size of 20,000 square feet and a minimum width of 100 feet for lots not served by sanitary sewer. Any lots created must also be large enough to comply with applicable zoning ordinances and county and local ordinances regulating private sewage systems.

The *Statutes* also provide that all streets shall be of the width specified on the local master plan or official map, or at least as wide as that of connecting existing streets if there is no master plan or official map. No street right-of-way, however, may be less than 60 feet in width unless otherwise permitted by local ordinance. Widths of town road rights-of-way must comply with the minimum standards prescribed by Section 86.26 of the *Wisconsin Statutes*. This section requires a right-of-way width of 66 feet for streets when the annual average 24-hour traffic (ADT) using the street totals 100 vehicles or more, and of 49.5 feet for streets having an ADT of less than 100 vehicles. Auxiliary frontage roads must be at least 49.5 feet in width. The Department of Transportation may waive these minimum right-of-way requirements at the request of an approving authority.

Proposed subdivisions abutting a navigable lake or stream must provide a public accessway at least 60 feet in width to the low water mark, and the accessway must connect to existing public streets at not more than one-half-mile intervals as measured along the shoreline. The *Statutes* also provide that lands lying between a meander line and the shoreline must be included as part of the lots, outlots, or public dedications in any plat abutting a lake or stream. The Department of Administration may waive this statutory requirement at the request of a developer and upon agreement by the Department of Natural Resources.

No plat may be referenced to a Wisconsin coordinate system unless it is based on a datum that the approving authority concerned has selected for use by ordinance. The *Statutes* specify three allowable systems, one of which, the Wisconsin Coordinate System based upon the North American Datum of 1927, is the system recommended for use within Southeastern Wisconsin by the Regional Planning Commission.

Final Plat Data

The *Statutes* also provide detailed specifications for the preparation of a final subdivision plat. Specifications include the type of media on which the plat is to be drawn; the margins to be used; the provision of a graphic scale of not more than 100 feet to one inch; the name and location of the plat by government lot, recorded private claim, or U.S. Public Land Survey System quarter-section, section, township, range, and county; and by bearing and distance referenced to a boundary line of a quarter section, recorded private claim, or federal reserve in which the subdivision is located, the monumentation at the ends of the boundary line being described and the bearing and distance between those ends being shown. The *Statute* specifies in great detail the survey data to be shown on the plat to accurately define the length and bearing of the exterior boundaries of the subdivision and the lengths and bearings of the boundary lines of all blocks, public grounds, streets and alleys, lots, and easements. The *Statute* also specifies the manner in which blocks and lots are to be designated.

The *Statutes* also specify certain certificates which must be provided on the face of a subdivision plat to entitle the plat to be recorded. These must include a surveyor's certificate stating by whose direction the subdivision plat was made; a description of the land surveyed, divided, and mapped; a statement that the plat is a correct representation of the exterior boundaries of the land surveyed and the subdivision made; and a statement that the surveyor has fully complied with the provisions of the *Wisconsin Statutes* in surveying, dividing, and mapping the land.

The certificates must also include an owner's certificate stating that the owner caused the land described on the plat to be surveyed, divided, mapped, and dedicated as represented on the plat and listing the approving authorities that must act in order to entitle the plat to be recorded. The certificate must be executed by the owner, the owner's spouse, and all persons holding an interest in the fee of record, or by possession and, if the land is mortgaged, by the mortgagee of record.

The certificates must include a certificate of the clerk or treasurer of the municipality or town in which the subdivision is located and a certificate of the treasurer of the county in which the subdivision is located, stating that there are no unpaid taxes or unpaid special assessments on any of the lands located in the plat. The plat must also show on its face certificates relative to the actions of all of the approving and objecting authorities concerned. Importantly, these certificates must include a certified copy of the action of the common council, village board, or town board required to approve the plat and accept the dedications provided by the plat, and, as may be necessary, a certificate of the county clerk or other designated county official certifying approval actions by the county agencies concerned. The certificates must also include statements by the city, village, or town clerks concerned that copies of the plat were forwarded to the concerned State and county objecting agencies, and that either no objections to the plat were filed or all objections filed were met. A similar certificate may be required by the county planning agency. In some cases, a certificate restricting direct vehicular ingress or egress from specified lots and blocks to and from state trunk highways may be

required. Special certificates relating to the use of any outlots on the plat may also be required.

Recording of Plats

The *Statutes* require that the final plat be recorded and filed in the office of the Register of Deeds of the county in which the subdivision is located. The Register of Deeds shall not accept a plat unless it is offered for recording within 30 days of the date of the last approval and within 24 months of the date of the first approval. The plat shall also contain the necessary certificates and otherwise conform to the statutory requirements. The subdivider must provide a copy of the final plat to the clerk of the city, village, or town in which the subdivision is located. Upon recording, the lots in the plat shall be described by the name of the plat and the lot and block descriptions for all purposes, including assessment, taxation, devise, descent, and conveyance. The act of recording the plat also, in effect, conveys all of the dedications to the public noted on the plat to the city, village, or town concerned, to be held by those bodies in trust for the uses and purposes intended by the plat.

Penalties and Remedies

Section 236.30 of the *Wisconsin Statutes* provides specific penalties and remedies for the act of transferring lots without a recorded plat, including fines and forfeitures and the use of court injunctions to stop violations. The *Statutes* further allow a local or county government with subdivision review authority to institute an injunction or other legal action to enjoin a violation of the platting *Statutes*, and to impose a fine for violation.

Vacating or Altering a Plat

The term "to vacate" means to annul or make void. The basic purpose, then, of the vacation of a recorded subdivision plat, or a portion of such a plat, is to void the existing legal divisions within the boundaries of the plat or portion thereof. Vacating a plat is, in effect, an act of unplatting land. Except as provided in Section 70.27(1) of the *Wisconsin Statutes*, no part of a recorded

land division plat may be replatted if it alters areas dedicated to the public, unless proper court action has been taken to vacate the original plat or part thereof concerned. A recorded land division may be replatted without court action where the replat does not alter areas dedicated to the public, or alters only discontinued public streets vacated under Section 66.1003 of the *Statutes*.

There are usually two reasons for vacating a plat of record. The plat may not have been developed, or may have been only partially developed; and the owner, or owners, may wish, because of obsolescence, to abandon the original layout and replat the area. Similarly, a governmental agency may wish to vacate a plat after clearance of the land concerned in order to permit the redesign of the area to accommodate proposed new land uses.

Because of the numerous private and public rights which may be affected by a plat vacation, the procedure for such vacation is specified in detail in Sections 236.36 through 236.445 of the *Wisconsin Statutes*. Under the *Statutes*, owners of a parcel, or parcels, of land within a plat, or a county which has acquired an interest in a plat by tax deed, are the only parties that may propose, and make application for, a plat vacation or alteration. Application is made to the circuit court of the county in which the plat lies. A copy of the plat of which all, or a portion, is to be vacated or altered should accompany the application. A legal description of the vacation or alteration prepared by a registered land surveyor must also accompany the application. Public notice of the application of a hearing before the court must be given at least three weeks prior to the hearing date, as provided in Section 236.41 of the *Statutes*. After due consideration, the court may at its discretion grant an order vacating or altering the plat concerned, or part thereof. If the court grants the vacation or alteration, the applicant must record the granted order, together with a copy of the plat showing the part vacated or altered, with the county Register of Deeds.

Vacation or alteration of areas dedicated to the public, or the discontinuance of public streets, requires special consideration under Sections 236.42 and 236.43 of the

Statutes. There is no provision in the *Statutes* which requires review by the local planning agency within whose jurisdiction the plat proposed to be vacated or altered lies. Therefore, it behooves the local planning agency to make itself aware of plat vacation applications so that it may make recommendations, in the public interest, at the required court hearings.

CERTIFIED SURVEY MAP

Under Chapter 236, land may be divided into no more than four parcels through the preparation and recording of a Certified Survey Map. A Certified Survey Map may also be used to change the boundaries of lots and outlots within recorded plats and other recorded certified survey maps if the redivision does not result in a subdivision and is permitted under local and county land division ordinances. A Certified Survey Map may not alter the exterior boundary of a recorded plat, areas previously dedicated to the public, or the terms of any restrictions placed on the platted land.

The *Statutes* provide detailed specifications for monumentation, survey accuracy, the preparation of a certified survey map, and for the information to be shown on such a map. The map must include a surveyor's certificate and, following recording, may be used to convey title by reference to the certified survey map. Certified survey maps are useful for making minor land divisions, that is, land divisions that create less than five parcels or building sites, providing for public regulation of such minor land divisions and facilitating good surveys and legal descriptions. Certified survey maps do not require the review of objecting agencies, as do preliminary and final subdivision plats; however, such maps must be reviewed by the Wisconsin Department of Transportation for compliance with the requirements of Chapter Trans 233 of the *Wisconsin Administrative Code*.

LOCAL LAND DIVISION REGULATION

Chapter 236 of the *Wisconsin Statutes* grants wide latitude to local units of government in the adoption of regulations governing land division. The platting statute specifically empowers cities, villages, towns, and

counties which have established planning agencies to adopt ordinances governing the division of land which are more restrictive than the *Statutes*.

Section 236.45 of the *Wisconsin Statutes* states that the purpose of local subdivision regulations shall be to: “promote the public health, safety, and general welfare of the community...; to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic, and other dangers; to provide adequate light and air...; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land.” The *Statutes* further provide that local ordinances are to be made “with reasonable consideration, among other things, of the character of the municipality, town, or county with a view of conserving the value of buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town, or county.”

Scope of County and Local Land Division Regulations

As described in the previous section of this chapter, the *Wisconsin Statutes* set forth requirements for monumentation and surveying of plats, data to be shown on plats, plat review and approval by State and local units and agencies of government, recording approved plats, and penalties and remedies for failure to comply with platting requirements. Given these provisions of the *Statutes*, which regulate the procedural and technical aspects of land division, county and local land division control ordinances should be viewed primarily as a means of implementing local comprehensive or master plans. As such, county and local ordinances should be particularly concerned about good location, good design, adequate improvements, and design criteria for such improvements. Design requirements may include those for lots, streets, bicycle and pedestrian facilities, public sewerage and water supply systems, and storm-water management facilities.

In addition to regulating subdivisions as defined by the *Statutes*, local ordinances may include provisions regulating the division of land into parcels larger than 1.5 acres or into fewer than five parcels. County and local land division ordinances may also prohibit the division of land in areas where such prohibition will carry out the purposes of the *Wisconsin Statutes*.

County and local land division ordinances should regulate the division of land so as to avoid the creation of parcels that would be substandard under the local zoning ordinance concerned. This requires that the definitions in the local ordinance of the terms “subdivision” and “certified survey map” be such that the size of the proposed parcels created by a division to come under regulation be equal to the largest lot or parcel size permitted by the zoning ordinance. For example, if the local zoning ordinance includes a rural residential zoning district with a minimum lot size of five acres, any division of land that proposes to create parcels of five acres or less in area should be subject to review and approval under the land division control ordinance. Such a requirement would assist in preventing the creation of lots that do not conform to the zoning ordinance.

Condominium Development

Under Section 703.27 of the *Wisconsin Statutes*, county and local land division ordinances may also regulate condominium development if the intent to do so is specifically stated in the county or local ordinance. At the State level, condominium development is regulated under Chapter 703 of the *Statutes* rather than Chapter 236. Under Chapter 703, a condominium plat must be prepared and recorded in order to create a condominium. Section 703.27 of the *Statutes* prohibits local land use ordinances or regulations from imposing any requirements on a condominium that would not be imposed on a physically identical development under a different form of ownership. County and local governments may wish to include the regulation of condominiums in their land division ordinances to ensure that condominium projects provide the same improvements, and meet the same design standards, that the community would require for a similar project

developed as a subdivision. A copy of Chapter 703 is included in Appendix A of this report.

In addition, Section 703.115 of the *Wisconsin Statutes* allows a county to adopt an ordinance to require staff of the county, or a city, village, or town within the county, to review the condominium instruments before recording and charge a fee for that review. The *Statutes* provide that the review must be completed within 10 working days of submission, and limits the review to specific mapping and referencing requirements set forth in Chapter 703. This limited review of condominium instruments under Section 703.115 does not affect the ability of a county or local government to review proposed condominium plats under a local land division ordinance.

Improvements

Under Section 236.13(2) of the *Wisconsin Statutes*, the governing body of a city, village, or town within which a subdivision is located may require that the subdivider make and install such public improvements reasonably necessary to serve the proposed subdivision, and may further require that such improvements be installed at no cost to the local government. Both on- and off-site improvements may be required under this provision of the *Statutes*. Such improvements may, among others, include roadways, sidewalks, street lighting, street trees, street signs, stormwater management facilities, and sanitary sewerage and water supply facilities.

Dedications, Fees-In-Lieu, and Impact Fees

Although not specified in the *Wisconsin Statutes*, Section 236.45 has been interpreted by the Wisconsin Supreme Court as providing local governments the authority to require a subdivider to dedicate land for park or school purposes, or pay a fee in lieu of land dedication as a condition of plat approval.⁴ The Court also determined that the amount of land to be dedicated, or the fee paid in lieu of dedication, must bear a

reasonable relationship to the increased demand for such sites attributable to the subdivision.

In 1994, the Wisconsin Legislature adopted statutory provisions that authorize county and local governments to impose impact fees. The impact fee law, set forth in Section 66.0617 of the *Wisconsin Statutes*, took effect on May 1, 1995. Impact fees are defined in Section 66.0617(1)(c) as “cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision.” County and local governments must prepare a needs assessment and adopt an impact fee ordinance before imposing such fees. Impact fee ordinances may be adopted separately from a community’s land division ordinance, and may be applied to subdivisions, certified survey maps, planned unit developments, condominium developments, and other land developments that create a need for new, expanded, or improved public facilities.

Impact fees can be used to finance the following facilities, specified in Section 66.0617(1)(f) of the *Statutes*: facilities for collecting and treating sewage, storm water, and surface water; facilities for pumping, storing, and distributing water; parks, playgrounds, and other recreational facilities; solid waste and recycling facilities; fire protection and law enforcement facilities; emergency medical facilities; and libraries. Cities, villages, and towns may also impose impact fees for highways, traffic control devices, and other transportation facilities. School facilities are specifically excluded from the list of facilities that can be funded through the imposition of impact fees.

Section 66.0617(6) of the *Wisconsin Statutes* requires that impact fees bear a reasonable relationship to the need for new, expanded, or improved public facilities required to serve a land development, and the fees may not exceed the proportionate share of the capital costs required to serve a land development, as compared to existing development within the county or local government. The needs assessment is intended to ensure that these requirements are met.

⁴ Jordan vs. Village of Menomonee Falls, 28 Wis. 2d 608, (1965).

There are some distinctions between dedication and fee-in-lieu requirements in land division ordinances and

impact fee ordinances. With the exception of fees-in-lieu of dedication for park sites, impact fee ordinances are generally used to pay the costs of off-site municipal facilities needed to serve a development, while land division ordinances generally require the subdivider to pay for on-site improvements. Fees-in-lieu of dedication of land for parks collected under the provisions of local land division ordinances must be used to acquire park lands to serve the residents of the subdivision concerned, while impact fees may be used both to acquire park sites and to develop recreational facilities. Dedication or fee-in-lieu payments for school sites may be required in land division ordinances, but the imposition of impact fees for school facilities is specifically prohibited under the State *Statute* governing impact fees.

Adoption of a County or Local Land Division Ordinance

Before adopting a land division control ordinance or any amendments thereto, the governing body concerned must receive the recommendation of its planning agency and must hold a public hearing on the proposed ordinance or amendment. Land division control ordinances should always be reevaluated and, if necessary, updated at the time a community revises its comprehensive plan.

SUMMARY

The *Wisconsin Statutes* governing the regulation of land subdivisions grants wide latitude to county and local governments in the adoption of regulations governing land division. The *Statutes* specifically authorize, for example, the adoption by cities, villages, towns, and counties of land division control ordinances that may regulate land divisions outside the scope of the State requirements, that is, the division of land into parcels larger than 1.5 acres or divisions of land into fewer than five parcels. County and local land division ordinances may also prohibit the division of land in areas where such prohibition will carry out the purposes of the *Wisconsin Statutes*.

Chapter 236 of the *Wisconsin Statutes* sets forth detailed and complete requirements for plat review and approval, monumentation and surveying, data to be shown on plats, and recording of plats. County and local land division control ordinances should, therefore, be viewed primarily as a means of implementing community comprehensive or master plans and as such, should be particularly concerned about good location, good design, and adequate improvements.

Chapter IV

PRINCIPLES OF GOOD LOCATION

INTRODUCTION AND BACKGROUND

The population of the United States is not only increasing rapidly, but is being concentrated in the large metropolitan areas of the country. Yet within those metropolitan areas, the population is being diffused across municipal and county boundary lines. Large regions of the country are becoming mixed rural-urban areas, creating areawide developmental and environmental issues and problems of an unprecedented scale. The forces contributing to this areawide diffusion of urban development include:

- The development of onsite sewage treatment and disposal systems;
- The widespread availability of electric power and communication networks;
- The development of freeways and of all-weather arterial street and highway systems;
- The widespread use of the automobile for personal transportation;
- The widespread use of the motor truck for the movement of goods and the delivery of services;
- The lower cost of developable land in the rural-urban fringe areas of large metropolitan regions;
- The clear preference of the public for single family dwelling units on large lots with the attendant privacy and environmental quality;
- The increasing affluence of a large segment of the population with attendant changes in lifestyles and in housing and transportation preferences;
- Public dissatisfaction with certain problems and conditions in central cities and older first-ring suburbs, including traffic congestion, air and water pollution, the quality of elementary and secondary education, high property taxes, and the perceived prevalence of crime and other forms of social breakdown; and
- The response of the urban land market to the realities of public preferences and land costs.

Under the effects of these forces, the division of land for urban development is no longer confined to the periphery of existing urban areas, but occurs in a widely scattered manner throughout urbanizing regions in a largely random and formless fashion. The term, “urban sprawl” is often applied to a diffused pattern of urban development. This pattern of urban development requires that rural, as well as urban, elected and appointed officials and citizens increasingly concern themselves with the problems attendant to such development, or face possible irreparable damage to the land and water resources and to the social and economic health of their communities.

The Regional Planning Commission’s historic urban growth inventory provides insight into the overall pattern of urban development in the Region and how that pattern has evolved over the last 150 years. The Commission’s urban growth inventory delineates areas of urban development in the Region at various points in

time between 1850 and 1995. Areas considered “urban” under this analysis include areas where residential structures and other buildings have been constructed in relatively compact groups, thereby indicating concentrations of residential, commercial, industrial, institutional, or other urban land uses.

As shown on Map IV-1, over the 100-year period from 1850 to 1950, urban development within the Region occurred in what may be considered to be concentric rings around existing urban centers, resulting in a relatively compact regional settlement pattern. After 1950, there was a significant change in the pattern of urban development in the Region. Between 1950 and 1970, while substantial amounts of development continued to occur adjacent to established urban centers, considerable development also occurred at lower urban densities in isolated enclaves in outlying areas of the Region. This pattern of development has continued in many areas of the Region through 1995.

This scattered urban development took place largely without the benefit of public sanitary sewer and water supply facilities. This diffusion of land development has resulted in the creation of serious sanitation, water quality, and drainage problems, has made the provision of mass transit services to newly developing areas impractical, and has significantly increased the reliance upon the automobile as a form of personal transportation with an attendant need for costly, and sometimes controversial, highway improvements and maintenance practices. This diffusion of urban development is a contributing factor undermining the continued viability of agriculture as an economic enterprise in many areas of the country. A special study committee created by the Regional Planning Commission concluded in late 1992 that:

“...there is a significant need to strengthen efforts to channel urban land market forces so as to provide a more compact, contiguous, and efficient urban development pattern. In terms of total land area, only about one-half of the new urban residential development is occurring in areas recommended for such development in the regional plan, with less than one-half of the new

urban development being provided with public sanitary sewer and water supply services. The continued diffusion of unsewered, low density, residential development throughout much of the Region needs to be significantly abated.”¹

The inefficiencies and impaired environment resulting from poorly located land development, which is commonly the result of poorly located land divisions, ultimately burdens everyone, since both public and private continuing costs are greatly increased. The possible lowering of such continuing costs through reduced public service levels provides little hope for significant economies, since the public is generally unwilling to accept the lower levels of service that would have to accompany the cost reductions. National trends toward higher standards for environmental quality, education, safety, health, and recreation effectively preclude such economies. The presence or absence of adequate public infrastructure facilities and services are an important factor in industrial and commercial location decisions and no community is able to depart significantly from what are widely accepted as adequate standards without quickly becoming substandard and economically distressed.

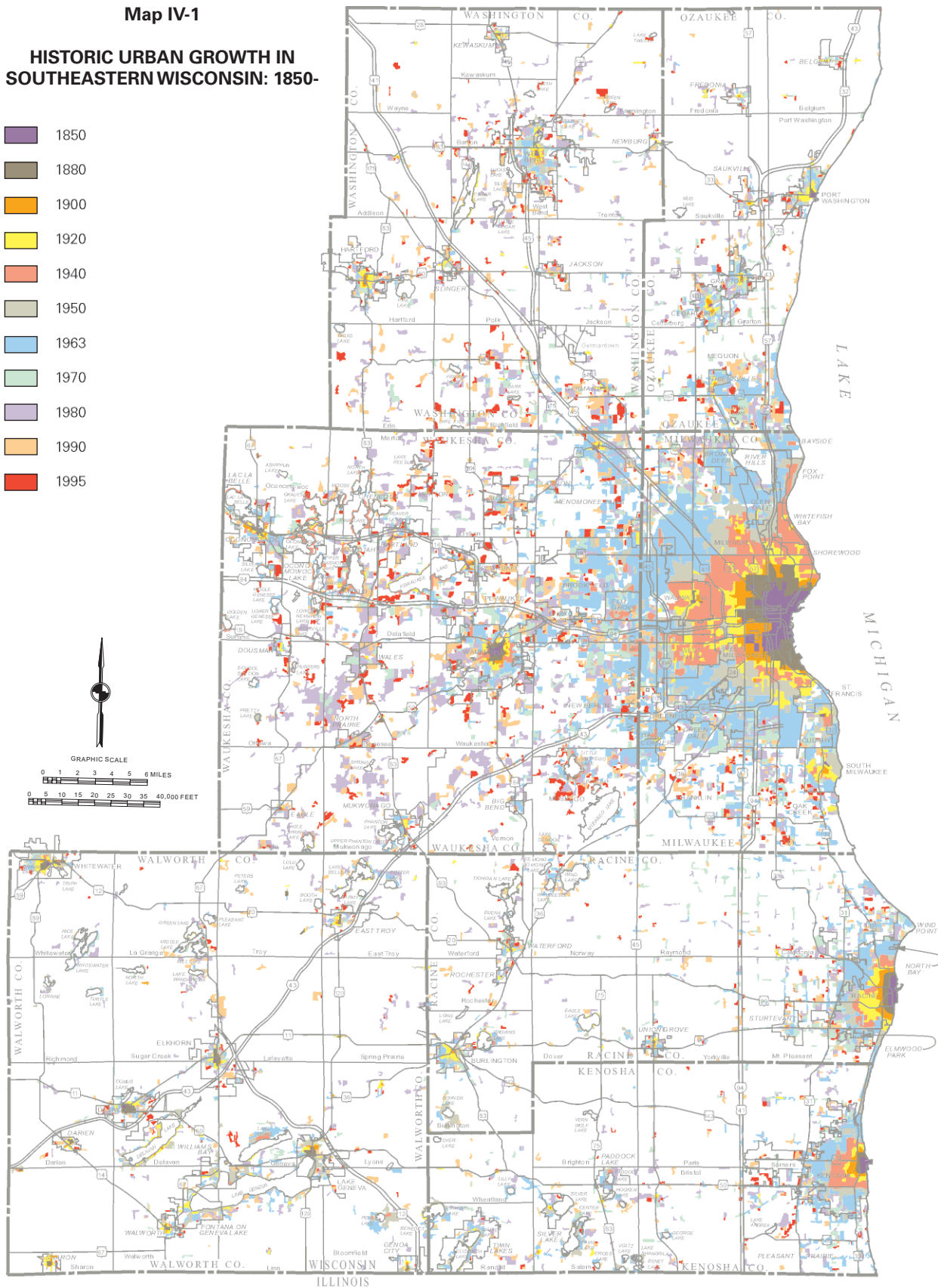
Significant reductions in public and private overhead costs are, therefore, possible only through good planning policy and proper land division regulation; that is, through the coordination of the type and location of development with the availability of public utilities and services and with the ability of the natural resource base to sustain the development without significant deterioration. Such coordination requires comprehensive planning and the advanced design and programming of such major public facilities as highways, trunk sewers, stormwater drainageways, water supply systems, and outdoor recreation facilities. Only then can the pattern and density of development be properly tied to the availability and capacity of public services.

¹ See *SEWRPC Memorandum Report No. 68, Regional Land Use Plan Implementation in Southeastern Wisconsin: Status and Needs, May 1993.*

Map IV-1

HISTORIC URBAN GROWTH IN SOUTHEASTERN WISCONSIN: 1850-

- 1850
- 1880
- 1900
- 1920
- 1940
- 1950
- 1963
- 1970
- 1980
- 1990
- 1995



Until 1950, urban development within Southeastern Wisconsin occurred in a fairly compact pattern, marked by concentric rings of relatively high-density urban development contiguous to existing urban areas and readily served by established transit, utility, and community facility systems. Soon after World War II, however, the character of urban growth in the Region changed to a much more diffused pattern of development. Much of the new development occurred at relatively low urban densities in isolated locations, which were difficult and costly to provide with urban services. This diffusion of land development has resulted in the creation of serious sanitation problems, has made the provision of mass transit services to newly developing areas impractical, and has significantly increased the reliance upon the automobile as a form of personal transportation with an attendant need for costly, and sometimes controversial, highway improvements.

RELATIONSHIP BETWEEN COMPREHENSIVE PLANNING AND LAND DIVISION

The location, proposed use, and proposed density of a subdivision or other land division should be consistent with the use and density specified in the community comprehensive plan for a particular site, and, in particular, with the land use element of such a plan. Other locational considerations include accessibility to work, schools, and shopping facilities; availability of supporting public facilities and services; and site suitability. Each of these factors should be considered and addressed during the preparation of the community comprehensive plan.

Historically, planners, as a matter of principle, have long held that such land use control devices as zoning, land division control, and official map ordinances should be adopted and exercised as plan implementation devices. The State Legislature and some courts have not always been in accord with this principle of practice. Under the planning legislation adopted by the Wisconsin Legislature in 1999, all land use-related regulatory actions taken by county and local governments—including land division control ordinances—must, by January 1, 2010, be consistent with an adopted comprehensive plan. The law requires that such plans be adopted by ordinance of the governing body after review and recommendation by the county or local plan commission concerned. The comprehensive plan is to consist of nine elements: issues and opportunities; housing; transportation; utility and community facilities; agriculture, natural, and cultural resources; economic development; intergovernmental cooperation; land use; and implementation.

The land use element of the plan is the most basic element, identifying, quantifying, and graphically illustrating the community land use objectives and how these objectives are to be achieved through development and redevelopment. The land use element is fundamental, providing the basis for structuring and quantifying such other plan elements as the transportation and utility and community facilities elements. The land use element should provide guidance to local officials, developers, landowners, and citizens as to the

type and intensity of land uses desired in a particular area, as well as providing guidance as to how the various land uses in a community are to relate to each other and to those in the surrounding area.

County and local comprehensive plans should be developed within the context of a regional plan, which delineates distinct areas of existing and planned urban development. The development density within a community should fall within the density range specified in the regional land use plan, and should reflect any environmental and agricultural land preservation recommendations set forth in the regional plan.

Comprehensive plans for urban areas should reflect an appropriate mixture of land uses within each community. Taking into account local market demands for residential, commercial, and industrial land uses, the plan should allocate sufficient land to accommodate such demands. The residential component of the plan should reflect an appropriate range of densities and an appropriate mixture of dwelling unit types.

Urban residential uses should be located in well-planned neighborhood units served by centralized public sanitary sewerage, water supply, and stormwater management facilities. Supporting local services such as parks, schools, and shopping areas should be provided within reasonable walking and bicycling distances. Residents should have reasonable access through mass transit and the arterial street and highway system to employment centers, community and major shopping centers, cultural and governmental centers, and secondary schools and higher educational facilities.

The development of sound neighborhoods and the land subdivision design process can both be facilitated by the preparation of detailed neighborhood unit development plans as integral parts of local comprehensive plans. Such neighborhood unit development plans should show required park, school, stormwater management sites, and other required open space; and should show a proposed street block and lot configuration. The block and lot arrangement as shown on such plans is intended to be a point of departure for the

preparation of land subdivision designs as development proceeds in a neighborhood.

Land uses outside planned urban areas should be limited to agriculture and very low-density residential uses, with an overall density of no more than one dwelling unit per five acres. Subdivisions and other land development should be located in a manner that is consistent with the recommendations of the comprehensive plan.

Urban and rural land divisions and other development should also be properly related to the natural resource base. Environmentally sensitive areas, including wetlands, woodlands, floodplains, and areas of steep slope which are inappropriate for intensive urban development should be identified as part of the agricultural, natural, and cultural resources element of a comprehensive plan and reflected on the map of planned land uses. Careful layout and site planning for individual subdivisions and other development should also be used to avoid development in environmentally sensitive areas. Development that is not properly related to the natural resource base will progressively degrade the overall quality of the environment, resulting in serious problems, such as flooding and water pollution, and require costly corrective measures.

One of the most important tasks completed by the Regional Planning Commission was the identification and delineation of those areas in the Region in which concentrations of the best remaining elements of the natural resource base occur. These areas, known as environmental corridors, encompass concentrations of natural resource base elements, including woodlands, wetlands, wildlife habitat areas, and surface waters and associated shorelands and floodlands, as shown in Figure IV-1. The intrusion of intensive urban land uses into such areas may result in the creation or intensification of serious and costly environmental and developmental problems, such as water pollution, wet and flooded basements, excessive operation of sump pumps, excessive clear water infiltration into sanitary sewerage systems, poor drainage and flood damages, and building and pavement foundation failures. Similarly, the destruction of ground cover may result in soil erosion,

stream siltation, more rapid runoff and increased flooding, as well as the destruction of wild-life habitat. The preservation of environmental corridors is essential to the maintenance of a high level of environmental quality within the Region; preservation of its natural heritage and beauty; and provision of opportunities for recreational and educational pursuits. Environmental corridors should be identified in community comprehensive plans and the protection and preservation of these corridors should be ensured through the proper design and development of land divisions.

Communities should develop policies and procedures to ensure the coordinated timing of the provision of needed utility and community facilities with acceptance of new increments of urban development and redevelopment, including land divisions, as part of the utility and community facilities element of the comprehensive plan. The availability of necessary public facilities, particularly sanitary sewerage and water supply facilities, is an important consideration in the location of subdivisions and other land development. Development for intensive urban use without providing necessary public facilities at the time of development is both costly and wasteful. This is because the costs of retrofitting developed urban areas with basic public facilities are much higher than when such facilities are installed at the time of development. In addition, costly investments in private facilities may have to be abandoned when public facilities are provided at a later date.

Because comprehensive plans must be long range, setting forth a design for development of a community over a 20-year or longer period, the land use pattern adopted as part of a community comprehensive plan will not be developed immediately, but will emerge gradually over time. Proper placement of proposed subdivisions and other development in time as well as geographic location will permit essential utilities and public facilities to be extended in an efficient and economical manner, and will maximize the use of existing utilities and facilities. The conversion of land from rural to urban use is best controlled through a coordinated combination of zoning, land division control, and official map ordinances, coupled with a sound

Figure IV-1



Environmental corridors contain concentrations of the best remaining elements of the natural resource base, and provide an attractive setting for adjacent residential development.

capital improvement program. Farm land and other open land having potential for future urban development should be placed in a rural use or “holding” zone, and rezoned for urban development only when the need for such development is demonstrated; when the development of the land is formally proposed; and when public urban facilities and services can be readily provided.

SUMMARY

The location, proposed use, and proposed density of a subdivision or other land division should be consistent with the use and density specified in the community comprehensive plan for a particular site. Other locational considerations include accessibility to work, schools, and shopping facilities; availability of supporting public facilities and services; and site suitability. Each of these factors should be considered and addressed during the preparation of the community comprehensive plan.

Unless both the location and design of land divisions are carefully considered and controlled, serious environmental and developmental problems will be created. The availability of necessary public facilities and services, including sanitary sewerage, water supply, stormwater drainage, and transportation facilities, is particularly important in respect to the location of land divisions. Development for intensive urban use without provision of necessary public facilities and services at the time of development is both costly and wasteful. Also particularly important with respect to location of land subdivisions is the natural resource base and the ability of that base to sustain development without the creation of costly environmental and developmental problems. Effective planning policies are needed, therefore, to place urban development properly in both time and space relative to the public utility facilities and urban services and the natural resource base of an area.

The inefficiencies and impaired environment resulting from poorly located subdivisions and other urban development ultimately burdens everyone, since both public and private overhead costs are greatly increased. The possible lowering of such overhead costs through reduced public service levels provides little hope for significant economies. Significant reductions in public

and private overhead costs are possible only through good planning policy and proper land division regulation. Such policy and regulation should coordinate the type and location of development with the availability of public utilities and services and with the ability of the natural resource base to sustain development without significant deterioration.

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Chapter V

PRINCIPLES OF GOOD DESIGN

INTRODUCTION

Good land division design is both an art and a science requiring a high degree of technical skill and full realization of the importance of the design to the various interests involved and affected. Good land division design requires imagination and creativity, as well as adherence to sound principles of land planning and engineering practice and to sound development standards. For these reasons, public regulation alone is no guarantee of good land division design.

Good land division design must create building sites that meet the requirements of modern living. The building sites created should not only be immediately marketable, but also capable of competing favorably with future development, thereby providing a stable investment. Building sites should be so arranged in relation to the rest of the community and to the natural resource base in order to provide a good environment for living, working, and recreating.

The role of government should be to create conditions amenable to good land division design, provide a framework for such design, and to encourage and support endeavors to achieve such design. County and local governments not only have the right to regulate land division, they have an obligation to assure that the public interest is served and that the greatest possible good results from a proposed land division. The land division design and development process requires that local governments and developers work together to bring about development that meets both the objectives of the community master, or comprehensive, plan and of its component parts, and the objectives of the developer.

THE CONTEXT OF LAND SUBDIVISION DESIGN

Land subdivision design is a process requiring professional knowledge and experience. In undertaking a subdivision design, the designer may face one of three situations which will determine the manner in which the design must be approached:

- The land proposed to be subdivided is located within a community that has not adopted a comprehensive plan;
- The land proposed to be subdivided is located within a community which has adopted a comprehensive plan, but that plan does not include as a component detailed neighborhood unit development plans or platting layouts;
- The land proposed to be subdivided is located within a community that has adopted a comprehensive plan and that plan includes detailed neighborhood development plans or platting layouts.

In the case where a community has not adopted a comprehensive plan, the subdivision designer has no planning framework within which to work. Accordingly, adherence to all five principles of good design enunciated in the following section of this chapter is particularly important. Such adherence, moreover, will require substantially greater effort than would be the case if sound local planning has provided a framework for the design process. The designer will have

to consider the potential need for adaptation of the design to potential external features of communitywide concern; may have to research framework plans prepared by county, regional, and state agencies and by private utilities; may have to conduct inventories and analyses relating to onsite soil and bedrock conditions, to potential flood hazards along streams and watercourses, and to the presence of wetlands, woodlands, and wildlife habitat areas. Large-scale topographic maps meeting National Map Accuracy Standards—always essential to good design—become particularly important in this case.¹ Although the lack of a planning context may be regarded by some developers and designers as fortuitous, such a lack of framework plans will make good design and the attendant creation of long term stability in the development difficult to achieve. A good local comprehensive plan should recognize and incorporate market research concerning the demand for building sites to accommodate various types of housing styles and costs. However, market research by itself cannot substitute for the framework provided by a good local comprehensive plan.

In the case where the land proposed to be subdivided is located within a community which has adopted a comprehensive plan but has not adopted detailed neighborhood development plans or platting layouts as an element of that plan, the adopted community plan will provide broad but important guidance to the designer. This is particularly true with respect to the first three of the five design principles herein enunciated, calling for adapting the design to external features of communitywide concern including the need for external and internal public infrastructure; for effecting a proper relationship between the proposed subdivision and existing and proposed surrounding land uses; and for effecting a proper relationship between the proposed subdivision and the natural resource base. The comprehensive plan should contain specific recommendations relative to such matters important to good subdivision design as the location and width of arterial streets, the

generalized location of needed school and park sites, and the generalized location and configuration of needed drainageways and stormwater retention areas. The plan should also provide much of the information essential to good design, including aerial photographs; large-scale topographic and cadastral maps; detailed soil maps with attendant use in interpretations; definitive information on the location and configuration of flood hazard areas; and on the location and configuration of such elements of the natural resource base as wetlands, woodlands, and wildlife habitat areas. Importantly, the comprehensive plan should specify the type and intensity of land uses to be accommodated within specified subareas of the community—the intensity for residential uses usually being expressed as the number of dwelling units per gross acre. In this case, the designer can focus on the creation of a sound and attractive street, block, and lot layout and on the creation of a unified design for the proposed land subdivision.

Beginning on January 1, 2010, all county and local units of government in Wisconsin regulating land divisions, or exercising other land use regulatory authority, must have an adopted comprehensive plan in place, as required by Section 66.1001 of the *Wisconsin Statutes*. Until that date, adoption of a comprehensive plan is discretionary. Local governments may also choose to prepare and adopt a master plan pursuant to Section 62.23 of the *Statutes*, and county governments may choose to prepare and adopt a county development plan pursuant to Section 59.69 of the *Statutes*. These latter two types of plans typically include recommendations related to land use, development density, arterial streets, environmental corridors, location of school and park sites, and other recommendations affecting the design of land divisions.

In the case where the land proposed to be subdivided lies within a community that has adopted a comprehensive plan that includes detailed neighborhood unit development plans or platting layouts, the local government concerned will have provided not only data concerning the types and intensities of land uses to be accommodated on the land concerned, but proposed specific locations for schools, parks, and drainageways

¹For information concerning the recommended accuracy standards for mapping, see *SEWRPC Planning Guide No. 2, 2nd Edition*, Official Mapping Guide, June 1996.

and a specific layout for streets, blocks, and lots within the proposed subdivision. In this case, the designer will be responsible for reviewing and refining the design provided in the comprehensive plan and for ensuring a unity of design within the subdivision itself.

The Regional Planning Commission has long recommended that an urban area be developed as a number of individual neighborhood units rather than as a formless mass. This is partly an aesthetic principle, partly a matter of efficiently organizing and supplying public services, partly a matter of convenience in living and traveling, and partly a matter of bringing the size of the area in which an individual lives into a human scale, thereby promoting a sense of community. Ideally, each neighborhood unit should have its own civic and commercial center. Such a center may include an elementary school, which may also serve as a community center, a neighborhood park, and, if practicable, a neighborhood shopping center. Its size should be such as to provide housing for that resident population for which one public elementary school is required. The size will, therefore, vary with the size of the school, the density of development, the ratio of public elementary school population to total population, and the desirable maximum walking distances to school. Each neighborhood unit should have identifying boundaries, such as arterial streets, major parks or parkways, or stream or lake shorelines to separate it from other such neighborhood units. Its internal street pattern should facilitate vehicular and pedestrian circulation within the neighborhood, but discourage use by through traffic. There should be a central focal point, such as a school or park site, around which the neighborhood is built. Persons entering the area should realize they are entering an integrated environment. Such a design is aesthetically pleasing, helps to promote stability, reduces the demand for travel, and helps minimize the cost of providing public facilities and services.

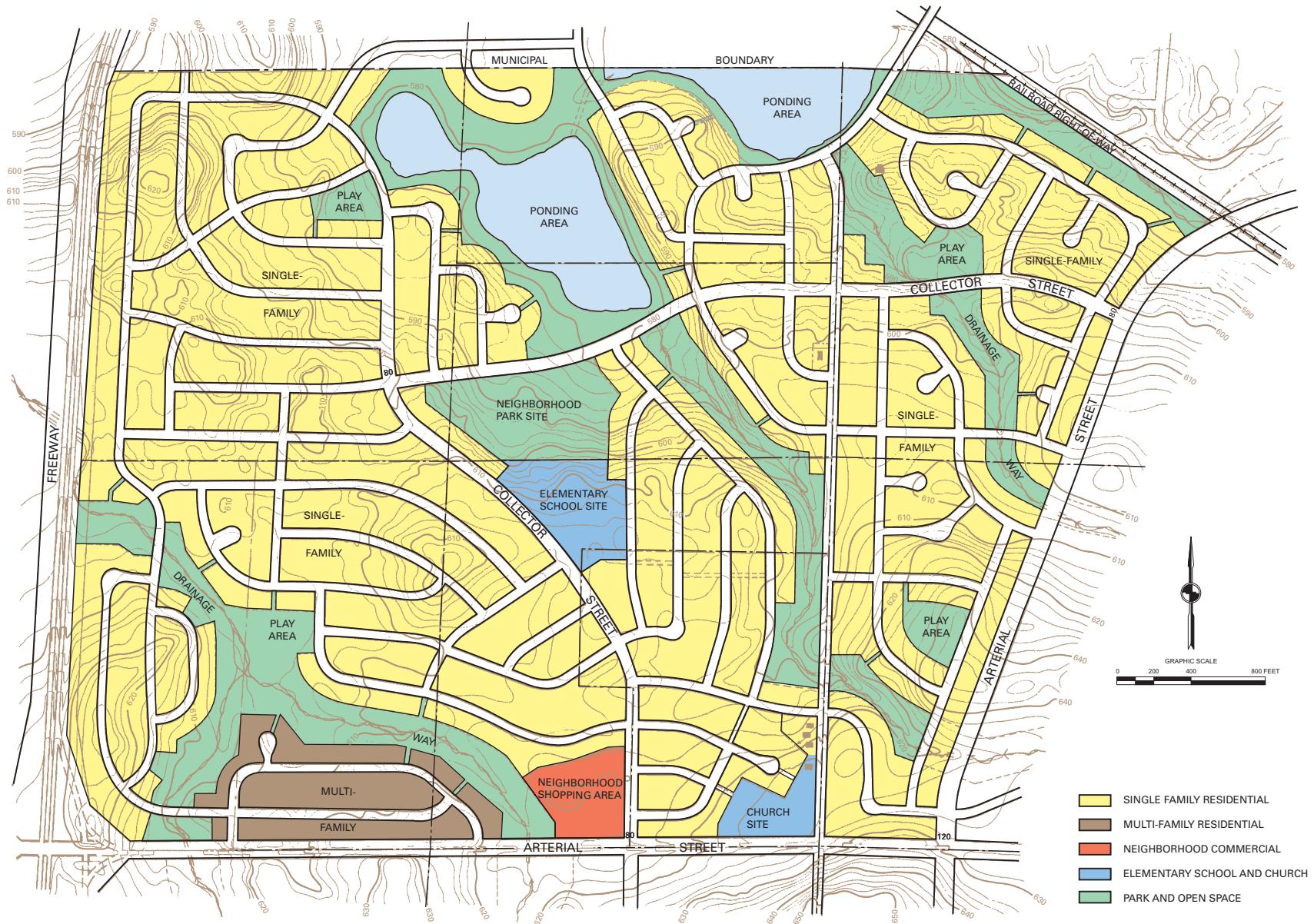
The adopted neighborhood unit development plan or platting layout should be viewed as a point of departure for the design of subdivisions of individual tracts of land included within the neighborhood unit. The adopted neighborhood unit plan or platting layout should not unduly constrain a designer who may find a more

creative or cost effective approach to the design of a particular subdivision within the neighborhood unit. A proposed alternative design, however, should not be permitted by the local planning agency unless it conforms to the recommendations of the adopted community comprehensive plan with respect to the types and intensities of land uses concerned; to the provision for arterial street and highway system development; and to the protection of environmentally sensitive areas. In addition, recommendations contained in the adopted neighborhood unit development plan relative to the connectivity of collector and land access streets, the provision of school and park sites, and the location of drainageways should be reflected in any alternative land subdivision design considered.

It is important to note that an adopted comprehensive plan, and particularly the detailed neighborhood unit design or platting layout element of such a plan, may not always adequately reflect current land market conditions. It should be expected that proposed land subdivision designs will propose minor changes in adopted detailed neighborhood unit design plans relating particularly to the precise details of the block and lot layouts, and such minor changes should be accommodated without resort to a plan amendment. However, when a land developer or subdivision designer proposes major departures from the adopted plan—such as changes in the type and intensity of land use, the location and configuration of proposed school sites, park sites, and drainageways, or the locations of streets providing connections into adjacent undeveloped parcels—the proposed departures should not be approved until the comprehensive plan or plan component concerned has been formally amended to reflect the proposed departures. The amendment process in such cases should include necessary public hearings and action by the local plan commission and governing body.

Map V-1 depicts a neighborhood design that incorporates the five design principles herein enunciated. It provides, for example, a centrally located neighborhood park in conjunction with a neighborhood school site, allowing dual use of the facilities and efficient maintenance. The collector street layout is designed to

LAKE HIGHLANDS NEIGHBORHOOD UNIT DEVELOPMENT PLAN



MapV-1 depicts a neighborhood unit design that incorporates the five design principles described herein. It provides, for example, a centrally located neighborhood park in conjunction with a neighborhood school site, allowing dual use of the facilities and efficient maintenance. The collector street layout is designed to carry traffic into, and out of, the neighborhood, rather than through it. A neighborhood shopping center convenient to the collector and arterial street system is provided. The collector and land access streets are carefully adjusted to the topography of the site to minimize grading and destruction of tree growth and ground cover. Access to arterial streets is limited by backing lots against such streets. The street layout facilitates good lot layout. A system of natural drainageways, together with the street rights-of-way, form a viable major stormwater drainage system. The preliminary plat shown on MapVII-1 and the final plat shown on MapVII-2, both in ChapterVII, are for a part of this neighborhood.

carry traffic into, and out of, the neighborhood, rather than through it. A neighborhood shopping center convenient to the collector and arterial street system is provided. The collector and land access streets are carefully adjusted to the topography of the site to minimize grading and destruction of tree growth and ground cover. The street layout facilitates good lot layout. Access to arterial streets is limited by backing lots against such streets. A system of natural drainageways, together with the street rights-of-way, form a viable major stormwater drainage system.

The neighborhood unit shown has an area slightly larger than one square mile, and a development density of eight persons per gross acre (5,120 persons per square mile). The ultimate population approximates 5,000 to 6,000 persons with a probable elementary school enrollment of approximately 450 children. The preliminary plat shown on Map VII-1 and the final plat shown on Map VII-2, both in Chapter VII, encompass a part of this neighborhood.

PRINCIPLES OF GOOD DESIGN

Good land division design can be achieved through the effective application of five basic design principles. These principles are easy to enumerate but quite difficult to apply:

1. Provision for external features of community-wide concern;
2. Proper relationship to existing and proposed surrounding land uses;
3. Proper relationship to the natural resource base;
4. Proper design of internal features and details; and
5. Creation of an integrated design.

Provision for External Features of Communitywide Concern

The first principle of good land division design is that the design must properly provide for certain external features of community and areawide concern which affect the proposed land division. Land division design must provide for the proper extension of arterial streets; for the location of sanitary trunk sewers, water transmission mains, and other utilities; for the preservation of major drainageways; for adequate management of the quantity and quality of stormwater runoff; for needed school and park sites; and for convenient access to public transit facilities. Consideration should also be given in the design to the relationship of the proposed land division to such external factors as neighborhood, community, and regional shopping facilities; places of employment; and higher educational facilities.

The proper incorporation of these external public infrastructure needs and services in the design is greatly enhanced if the community has adopted a comprehensive or master plan; and lack of such a plan can be a severe handicap to good land division design. The practice of arbitrarily requiring the dedication of a set percentage of land for school or park purposes in the absence of a comprehensive plan is particularly poor planning practice, may adversely influence land division design, and may be illegal.

Proper Relationship to the Existing and Proposed Surrounding Land Uses

The second principle of good land division design is that the design must be properly related to existing and proposed surrounding land uses. Moreover, adjacent land uses must be carefully considered in the design. Parks, parkways, and certain types of institutional uses are a definite asset and can increase the value of a land division. Others, such as railways, freeways, electric power transmission lines and other utility easements or rights-of-way, poorly subdivided and developed areas, and unsightly strip commercial and open industrial development, may be detriments, particularly to residential land divisions, and require

special consideration in the design to minimize adverse impacts.

Proper Relationship to the Natural Resource Base

The third principle of good land division design is that the design must be properly related to the natural resource base. Woodlands, wetlands, wildlife habitat areas, areas covered by unstable soils, areas of shallow bedrock or bedrock outcrop, areas of steep slopes, and areas subject to special hazards, such as flooding and stream bank, bluff, ravine, and lakeshore erosion, must receive careful consideration in the design. In this respect, good subdivision design may present opportunities for the restoration and expansion of areas containing valuable elements of the natural resource base. Within Southeastern Wisconsin, such natural resource areas are included within the primary and secondary environmental corridors and isolated natural resource areas delineated by the Regional Planning Commission. Good land division design should seek to exclude intensive urban development from these corridors, utilizing the corridors for recreation and open space and thereby avoiding the creation of serious and costly environmental and developmental problems.

Proper Design of Internal Features and Details

The fourth principle of good land division design is proper attention to internal detailing. This includes careful attention to the proper layout of streets, blocks, lots, and open space areas; the organization of larger subdivisions into smaller sections; and careful adjustment of the design to the topography and the natural and cultural resource characteristics of the site.

Street System

The street system is one of the most important elements of land division design, as it is indeed one of the most important elements of the community comprehensive plan. The street pattern forms the framework for community development and to a considerable extent determines the efficiency of the other functional parts of the community. In the individual land division, the street pattern determines the shape, size, and orientation of each building site, and, to a considerable extent, influences the character and attractiveness of the

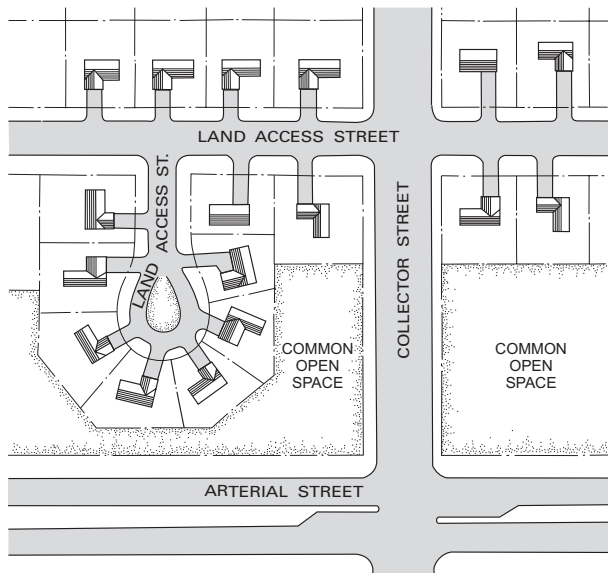
land division. The street system must also serve a number of sometimes conflicting purposes. The street system must provide for the efficient movement of vehicular and pedestrian traffic throughout the community while providing for convenient access to individual building sites, including access by emergency vehicles such as police, fire fighting equipment, and ambulances, and by service vehicles such as snow plows and solid waste and recycling collection trucks. The street system must also serve as an integral part of the community drainage system, and must provide the location for such utilities as public sanitary and storm sewers, water distribution mains, gas mains, and electric power, telephone, and other communication cables. The efficiency and cost of these facilities and services will be determined to a considerable extent by the layout of the street system and, where appropriate, alley system. In high density urban areas, the street system has also historically served to provide light, air, and fire breaks to and for individual building sites. The importance of the street system is accentuated by the permanence of street dedications and the difficulties inherent in changing the street pattern once established by land division.

The land division layout should carefully adjust the collector and land access streets to the topography in order to minimize drainage problems and rough grading, and in order to permit the most economical provision of sanitary sewer, water supply, and stormwater drainage facilities. Generally, collector streets should follow valley lines, while land access streets should cross contour lines at right angles. Side hill street locations should generally be avoided. Skillful adjustment of the street pattern to the topography can do much to preserve the natural beauty of the site and to lend charm and beauty to a residential area. Probably the greatest weakness of the rigid rectangular street pattern so widely used in older land divisions is the fact that such a pattern cannot be adjusted well to fit the varied topography of an area.

The street pattern for any land division should be functional, providing as may be necessary for at least three principal types of streets: arterial streets, collector streets, and land access streets, as illustrated by Figure V-1.

Figure V-1

HIERARCHY OF STREET TYPES



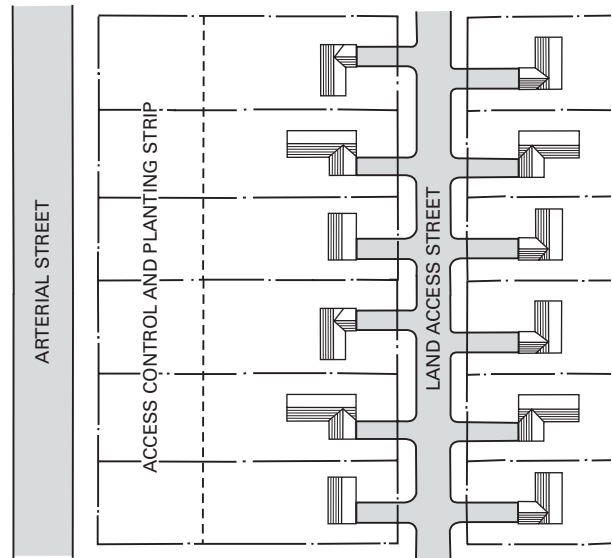
Streets may be classified on the basis of function into three principal types: arterial streets, collector streets, and land access streets. These three types are illustrated in this figure. Arterial streets are intended to interconnect the various areas of the community and form its major circulation system. Collector streets are intended to collect traffic from, and distribute traffic to, the land access streets, and to provide the necessary connections to the arterial street system. Collector streets are often the principal entrance streets to residential land divisions. Land access streets are intended to serve primarily as a means of access to, and egress from, abutting property.

Arterial Streets

Arterial streets are intended to interconnect the various areas of the community and form its major circulation system. Arterial streets should be designed to move traffic efficiently and safely; should be of generous width as specified in the community comprehensive plan; and should be of proper grade, alignment, and continuity. Direct access to these streets

Figure V-2

DOUBLE FRONTAGE LOTS WITH ACCESS CONTROL AND PLANTING STRIP



Access control reservations are permanent reservations that can be used to deny access to abutting lots from public street. Such access control reservations should be used to control ingress and egress from double frontage lots platted along major arterial streets, thereby protecting the capacity and enhancing the safety of the arterials. As shown above, the access control reservation should be located along and through the rear yards of the double frontage lots concerned and should also function as a planting strip at least 30 feet wide. Normal lot depths should be increased by the width of the planting and non-access reservation strip. Access control reservations should be clearly shown on the face of a large division plat. The prohibition of access should be annotated on the face of the plat and included in the deed for each lot concerned.

from adjacent property should not be permitted. Such access should be prohibited in residential areas through the use of a planting screen in a nonaccess reservation strip along the rear property line, as shown on Figure V-2, or through the use of cul-de-sac or loop streets. Intersections with other streets should be held to a minimum. Right-of-way and pavement widths for arterial streets should be determined on

the basis of existing and probable future traffic demands, as determined through the preparation of the street and highway system element of the regional transportation system plan. Right-of-way widths for urban surface arterial streets are often set at 120 feet, and at this width can accommodate divided pavements.

The highest level of arterial service is provided by freeways. The function of freeways is to accommodate high volumes of intra- and interregional travel at high speeds. There is no access to adjacent parcels and all intersections are grade-separated with access limited to periodic, properly spaced interchanges with surface arterials. Careful attention should be given in land subdivision design to the location of street intersections along arterials connecting to freeway on- and off-ramps. Proper spacing relative to such ramps is important to achieving both traffic safety and good block and lot arrangements.

Collector Streets

Collector streets are intended to collect traffic from, and distribute traffic to, the land access streets, and to provide the necessary connections to the arterial street system. Collector streets are often the principal entrance streets to residential land divisions. Collector streets should be designed to carry moderate traffic volumes at moderate speeds, and may in some instances carry bus routes. The desirable right-of-way width for a collector street is 80 feet.

Land Access Streets

Land access streets are intended to serve only as a means of access to, and egress from, abutting property. Land access streets should be designed to discourage use by through traffic and, therefore, should be discontinuous with relatively narrow pavement widths. In residential areas, the land access streets should be designed to promote quiet and attractive neighborhoods. Land access street rights-of-way may range in width from 50 feet to 66 feet and are often designed as loop or cul-de-sac streets. Figure V-3 illustrates three different types of minor land access streets. Minor land access

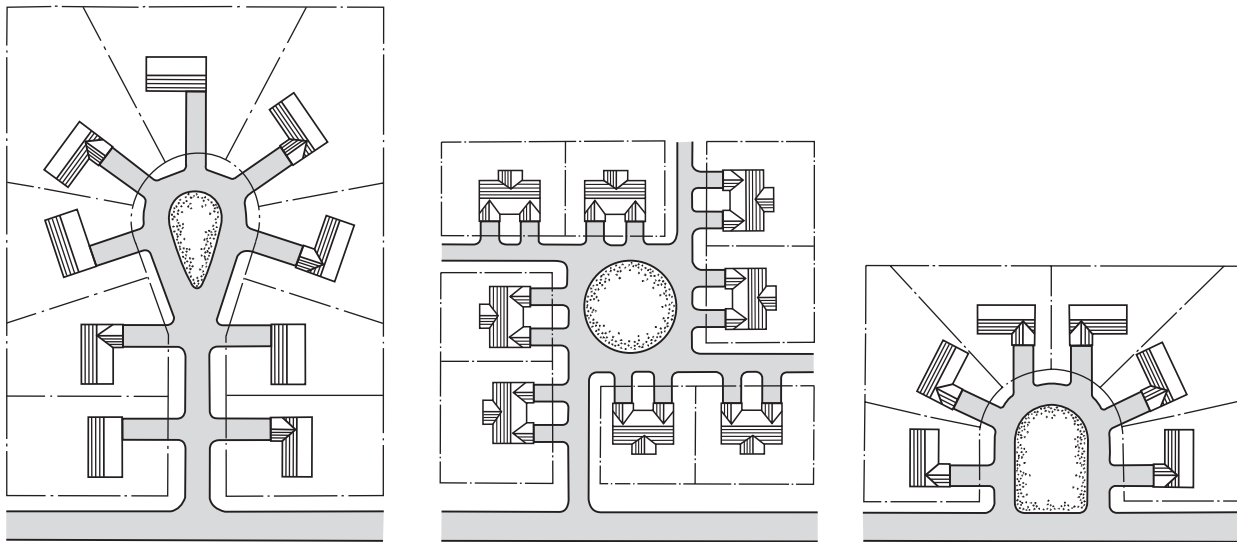
streets are generally short cul-de-sac or loop streets carrying very low traffic volumes.

Stormwater Management

Particularly careful attention must be given in the land division design to stormwater management. The location of each stream or watercourse channel to be preserved should be carefully determined, as should the boundaries of the attendant 100-year recurrence interval flood hazard area and the boundaries of any proposed stormwater detention or retention basins. Each open channel right-of-way to be preserved in the design should be of adequate width to hydraulically accommodate peak runoff storage and conveyance requirements, to provide space along the channel for the access and proper operation of construction and maintenance equipment, and to adequately protect any related elements of the natural resource base, such as wetlands. Proper land division design may require some relocation or reconfiguration of natural water courses and the integration of the smaller uppermost reaches of some channels and swales into a planned system of storm sewers or open drainage channels. Particular care must be taken that the proposed development will not obstruct drainage or cause flooding. Stream or watercourse channels and detention and retention basins should generally be included within dedicated parks, parkways, or other public or common open space lands.

An urban stormwater management system should be comprised of a major and a minor component. The minor component should be designed to avoid nuisance level flooding of building sites, streets, and street intersections, avoid undue disruption of traffic, and facilitate access to various land uses by emergency vehicles. The minor component should also be designed to abate the surcharging of sanitary sewers due to excessive clearwater infiltration and inflow. The minor component, although functioning during all rainfall and snowmelt events, should be designed to accommodate runoff from rainfall events up to and including the 10-year recurrence interval event. The minor component will generally consist of piped storm sewers and appurtenant inlets and catch basins.

Figure V-3

SPECIAL TYPES OF MINOR LAND ACCESS STREETS

In residential areas, the land access streets should be designed to promote quiet and attractive neighborhoods. Land access streets should be designed to discourage use by through traffic and, therefore, should be discontinuous with relatively narrow pavement widths. Land access streets are often designed as loop or cul-de-sac streets. Three different types of minor land access streets, each designed to eliminate or limit through traffic, are illustrated in this figure. Loop and cul-de-sac streets can also be helpful tools in developing otherwise awkward remnant areas in a subdivision layout.

The major component of the stormwater management system consists of the minor component plus street cross-sections and associated surface swales and waterflow paths to receiving streams and watercourses. Portions of the street system, therefore, serve as parts of both the minor and major components of the urban stormwater management system. When providing conveyance of overland runoff to piped storm sewers, the streets function as part of the minor component. When utilized to convey excess flow from surcharged piped storm sewers and culverts and overflowing roadside swales and ditches, the street system functions as part of the major component. This major component should be designed to avoid the flooding of basements and first floors of buildings, with the attendant monetary damages and hazards to public health and safety. The major component is intended to function only when the capacity of the minor component is exceeded, and should be designed to accommodate runoff from rainfall events greater than the 10-year and up to and including

the 100-year recurrence interval rainfall event. The proper design of the major component requires careful attention to the establishment of street grades, the delineation of attendant surface waterflow paths and, particularly, the avoidance of midblock sags in street profiles. If such midblock sags are to be permitted, then adequate overland drainage from the sag should be provided to accommodate the runoff attendant to a 100-year recurrence interval rainfall event without flooding the basements or first floors of buildings.

Both the minor and major components of a stormwater management system may, under certain conditions, utilize both constructed and natural stormwater retention or detention basins as well as constructed conveyance facilities for temporary storage of stormwater runoff. When such constructed facilities—which include storm sewer and dry detention basins—are intended solely to control the rates of stormwater flow, the facilities are generally designed to drain completely between rainfall

events, providing little or no reduction in nonpoint source pollution loadings to receiving watercourses. When such facilities are integrated with nonpoint source pollution abatement facilities, such as wet detention basins, a significant reduction in nonpoint source water pollution loadings may be achieved. In any case, such facilities must be designed to function as integral parts of both the minor and major components of the stormwater management system.

Lot Layout

The primary purpose of land division is the production of building sites; ideally every lot in a land division should provide a good building site. In every land division, however, there will be areas where the lots will be comparatively more valuable than in other areas due to the proximity to such features as wooded areas, parks and parkways, stream and lake shorelines, commanding views and open space, and to such characteristics as the directional orientation of the lot and the potential for the use of exposed basements. Great skill is required to produce comparable value in the less attractive areas of the same land division.

Generally, all lots within a given land division should have approximately the same or similar lot area. The minimum lot area and width will usually be specified by the local or county zoning ordinance. Lots must provide an appropriate building envelope for the type of housing to be constructed and lot lines should be configured in a geometric manner so as to be more or less rectangular in shape, and side lot lines should be perpendicular or radial to street right-of-way lines. Corner lots should be somewhat wider than interior lots in order to accommodate adequate building setbacks for both street yards. The size and width of the lot should also be appropriate to the type of structure to be constructed on the lot; for example, ranch style homes generally require a wider lot than two-story homes. The ratio of depth to width of lots should generally approximate two to one.

Building setback requirements should be modest to avoid unnecessarily costly driveways and large front yard areas that reduce the size of more private outdoor living areas in rear yards. In determining building setback distances, consideration should be given to off-

street parking needs. Lots should be well shaped and the creation of narrow unusable slivers should be avoided unless necessitated by the need to provide access while protecting and preserving the natural resource base. Generally, lots should drain either entirely toward the street, or both toward the street and rear lot line. In the latter case, lateral drainage along the rear lot lines will be required, necessitating careful attention to grading to accommodate both drainage and utility easements along the rear lot lines. The topography may also require the occasional provision of side lot line drainage easements.

Creation of An Integrated Design

The fifth principle is the achievement of integrity in the design of the land division. Design elements that may contribute to an integrated design include focal points such as historic buildings or structures; specimen trees; schools, parks, or other public buildings; thematic architectural design of homes or other buildings; landscaping; street cross-sections and improvements; landscaping and street trees; and street furniture such as street lights and sign posts.

SUBDIVISION DESIGN PATTERNS

There are four basic subdivision designs in use today:

- The grid pattern, typified by a prominence of straight streets intersecting at approximately right angles with the streets being generally laid out in the cardinal directions; and by the use of fairly uniform rectangular lots fronting on the grid streets, often with alleys provided as a secondary means of access to the lots;
- The curvilinear pattern, typified by a predominance of curved streets, the locations of which have been adapted to the terrain; and by the use of a variety of lot sizes and shapes often fronting on loop and cul-de-sac streets;
- The cluster pattern, also known as conservation subdivisions, typified by lots tightly grouped or

clustered around loop and cul-de-sac streets with each group of clustered lots separated from other similar groups by open space areas owned in common by residents of the subdivision; and

- The coving pattern, typified by curving streets with relatively large front yards abutting the street. In coving subdivisions, home sites are delineated first to take advantage of topography and views, and the street pattern is then designed to serve the homesites. Street lengths are generally reduced, largely due to the elimination or reduced use of cul-de-sac and loop streets.

The foregoing subdivision design types are categorized on the basis of the basic street patterns used in the designs. It should be noted in this respect, however, that modifications or combinations of the street pattern types listed are often used in subdivision design, particularly when the subdivision involves a large tract of land. Thus, a subdivision design may utilize a grid pattern oriented in the cardinal directions in one area of the plat, combined with a grid pattern oriented in other directions in another part of the plat; or a subdivision design may combine a grid pattern in one part of the subdivision with a curvilinear pattern in another. Cluster pattern or conservation subdivisions and coving pattern subdivisions, however, tend to utilize only the curvilinear street pattern.

Historically, the grid pattern was the most common pattern used in subdivision design in Southeastern Wisconsin, but was largely replaced by the curvilinear pattern beginning in the 1950s. The grid subdivision pattern is the subject of renewed interest in recent years, in so-called “neo-traditional” or “new urbanism” development. Such development is intended to make communities more compact and livable, and is based on the creation of a neighborhood containing a mix of uses that are within walking distance of each other. In such developments, traffic circulation patterns are on a grid, or modified grid, pattern of streets rather than the more commonly used curvilinear pattern.

The first subdivision in the Region to use a curvilinear pattern, Washington Highlands, was platted in 1916. As

noted above, the curvilinear pattern has been the most common type of subdivision in the Region since the 1950s. Although the cluster concept has been recognized for many years, few subdivisions using this design option have been developed in southeastern Wisconsin. Recently, there has been a growing interest on the part of local governments, developers, and citizens in encouraging cluster subdivisions, particularly in rural and environmentally sensitive areas.

The subdivision design concept known as “coving” has been recently introduced. This concept seeks to maximize lot yield and minimize street length by the use of variable front yards and a winding street pattern. This concept has not been used to date within Southeastern Wisconsin.

ALTERNATIVE SUBDIVISION DESIGNS

Subdivision Design Overview

As noted above, at least four distinct subdivision design types are in general use: conventional curvilinear; cluster; coving; and new urbanism. Selection of the subdivision design type that should be used for any given parcel of land is dependent upon many factors, including market identification and conditions, surrounding land uses, and site conditions. Site conditions are a particularly important consideration in this respect as some sites are more suited to a certain design type due to the topography and the natural resource features present. For example, the new urbanism subdivision design type is more conducive for use in sites that are relatively level; while the curvilinear and coving design types can be more readily adapted to varied terrain. A cluster subdivision is a good alternative design type to use on sites with environmentally sensitive areas that should be avoided, or natural resource features that must be protected, because lots can be clustered away from such areas without changing the overall development density.

In order to assist in a comparative evaluation of the four design types referenced in the preceding section, a subdivision layout using each of four design types was prepared. The same tract of land, encompassing

approximately 80 acres, was used as the basis for each of the designs. While the four alternative layouts presented are representative of their type, it should be understood that there are numerous alternative layouts that could have been created for each of the four subdivision types. Each layout presented represents just one way in which that particular type of subdivision could have been designed on the particular parcel chosen as the development site.

It is important to note that the subdivision layouts were prepared assuming that a local comprehensive plan was available to establish the type and density of land use to be accommodated, but also assuming that the comprehensive plan did not include a neighborhood unit development plan or platting layout. The comprehensive plan was assumed to set forth a specified overall residential density for the subdivision; identify the arterial street pattern and related right-of-way widths; and identify the location and extent of environmental corridors and other environmentally sensitive areas to be preserved. It is particularly important for the comprehensive plan to set forth a recommended density of development in order to ensure that public infrastructure and services are adequate and appropriate to serve development within the community. Such supporting infrastructure and services include, among others, the arterial street system, sanitary sewerage and water supply systems, stormwater management facilities, and park sites and facilities. For that reason, each of the four subdivision layouts was designed to provide a common development density of approximately two dwelling units per gross acre—or a total of 160 dwelling units—consistent with an assumed overall density recommended by the comprehensive plan.

In evaluating the four alternatives and identifying the advantages and disadvantages of each, it is evident that there are certain elements of such an evaluation that are more subjective than objective. For example, the importance of architectural controls may seem like a disadvantage to someone interested in building a house in a style, material, and color of their own choosing. On the other hand, a very real sense of place can be achieved by building a neighborhood of homes of the

same style but with reasonable options for specific designs and colors.

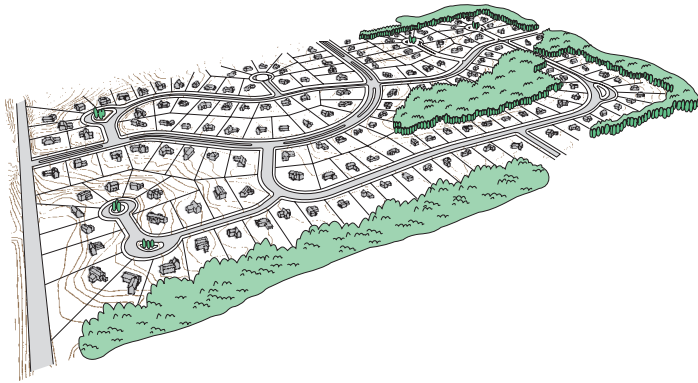
Oblique aerial views of the four subdivision designs are presented on Figure V-4. Table V-1 sets forth a comparative analysis of the four designs. As indicated by the Table, the curvilinear and coving subdivisions were comparable in terms of average lot size, the percentage of the site occupied by lots, and the amount of earthwork required for development. The urban cluster and new urbanism subdivisions were comparable in terms of average lot size and the percentage of the site occupied by lots, which were both significantly less than those for the curvilinear and coving subdivisions. The percentage of the site maintained in open space varied significantly depending on the type of subdivision, from a low of about 5 percent in the curvilinear subdivision to a high of about 57 percent in the urban cluster subdivision. The percentage of the site required for street rights-of-way varied from about 15 percent for the coving subdivision to about 21 percent for the new urbanism subdivision. The variation in the amount of earthwork required to develop each of the designs is also quite dramatic, ranging from a low of 51,000 cubic yards for the curvilinear subdivision to 130,000 cubic yards for the new urbanism subdivision.

Site Analysis

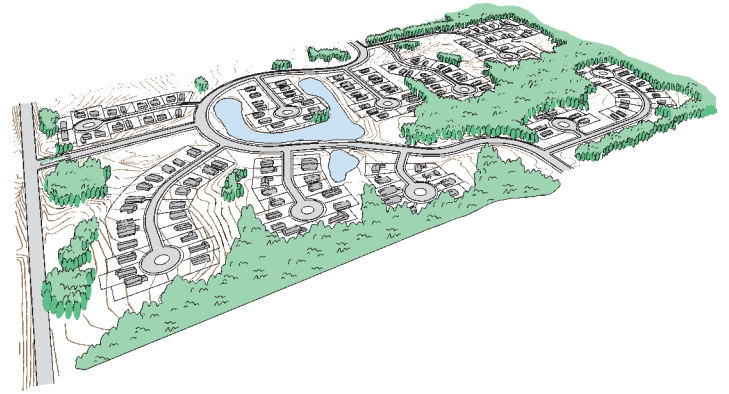
An analysis of the site to be developed is presented in Figure V-5. Such an analysis should be conducted before a subdivision design type is selected and any subdivision layout created. In general, the analysis should include a topographic analysis, identifying areas of steep slopes; the locations of hilltops, ridges, and scenic overviews; an analysis of drainage patterns; a vegetation analysis; a delineation of soil types and characteristics; an identification of water bodies, wetlands, woodlands and flood hazard areas; an identification of the boundaries and characteristics of environmental corridors; and identification of structures having historic or other cultural value. The site analysis should also identify the classification of existing streets and highways adjacent to the development parcel, the location of desirable and the location of undesirable points of entrance to and exit from the site. Any proposed

Figure V-4

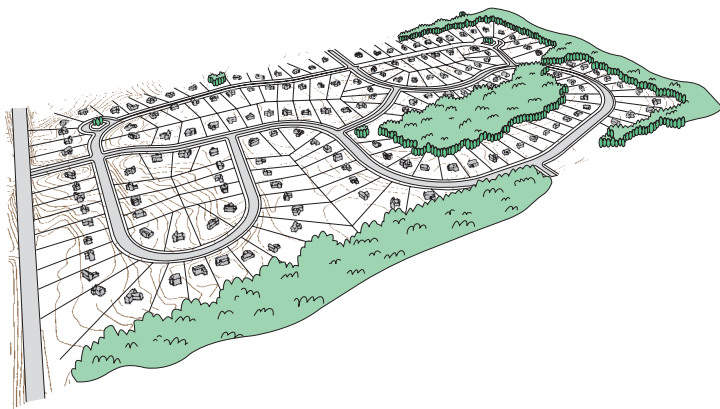
OBLIQUE AERIAL VIEW OF FOUR SUBDIVISION DESIGNS



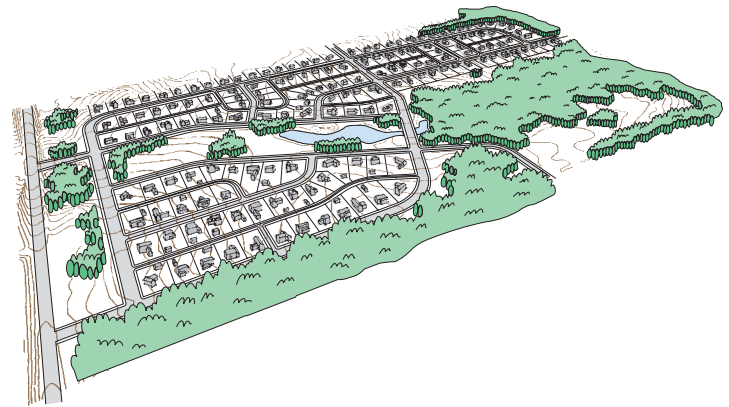
CURVILINEAR SUBDIVISION



URBAN CLUSTER SUBDIVISION



COVING SUBDIVISION



NEW URBANISM SUBDIVISION

Figure V-4 provides an oblique aerial view of the four subdivision designs described in this chapter: the curvilinear, urban cluster, coving, and new urbanism patterns. The same tract of land, encompassing approximately 80 acres, was used as the basis for each of the designs. Each of the four subdivision layouts was designed to provide a common development density of approximately two dwelling units per gross acre—or a total of 160 dwelling units—consistent with an assumed overall density recommended by the local comprehensive plan. All of the subdivisions were designed to avoid direct access from residential lots to the adjacent arterial street. Although the amount of common open space varies significantly among the designs, each of the four subdivision designs would preserve existing wetlands on the site. The curvilinear and coving subdivision patterns provide larger individual lots but a smaller amount of common open space in comparison to the urban cluster and new urbanism subdivisions. Although both the urban cluster and new urbanism subdivisions provide substantial amounts of common open space, the open space within the urban cluster subdivision is more readily accessible to subdivision residents.

Table V-1

COMPARATIVE ANALYSIS OF SUBDIVISION DESIGNS

Subdivision Information	Subdivision Type			
	Conventional Curvilinear	Urban Cluster	Coving	New Urbanism
Lot Information				
Number of Lots.....	160 lots	160 lots	160 lots	160 lots
Average Lot Size.....	17,002 square feet	6,028 square feet	16,517 square feet	7,325 square feet
Average Lot Width	95 feet	60 feet	81 feet	62 feet
Average Lot Depth	179 feet	101 feet	204 feet	118 feet
Total Area within Lots.....	62.5 acres	22.1 acres	60.7 acres	27.3 acres
Percent of Site Area Within Lots	77.0 percent	27.3 percent	74.8 percent	33.2 percent
Street Information				
Total Street Length.....	10,363 lineal feet	10,730 lineal feet	9,865 lineal feet	17,154 lineal feet
Total Area within Street Rights-of-Way.....	14.7 acres	12.8 acres	12.4 acres	16.6 acres
Percent of Site Area within Street Rights-of-Way.....	18.1 percent	15.8 percent	15.3 percent	20.7 percent
Open Space Information				
Total Area within Open Space.....	4.0 acres	46.4 acres	8.0 acres	37.4 acres
Percent of Site Area in Open Space.....	4.9 percent	57.2 percent	9.9 percent	46.1 percent
Grading Information				
Volume of Earthwork	51,000 cubic yards	93,000 cubic yards	55,000 cubic yards	130,000 cubic yards

Source: Thompson Dyke and Associates, Ltd., and SEWRPC.

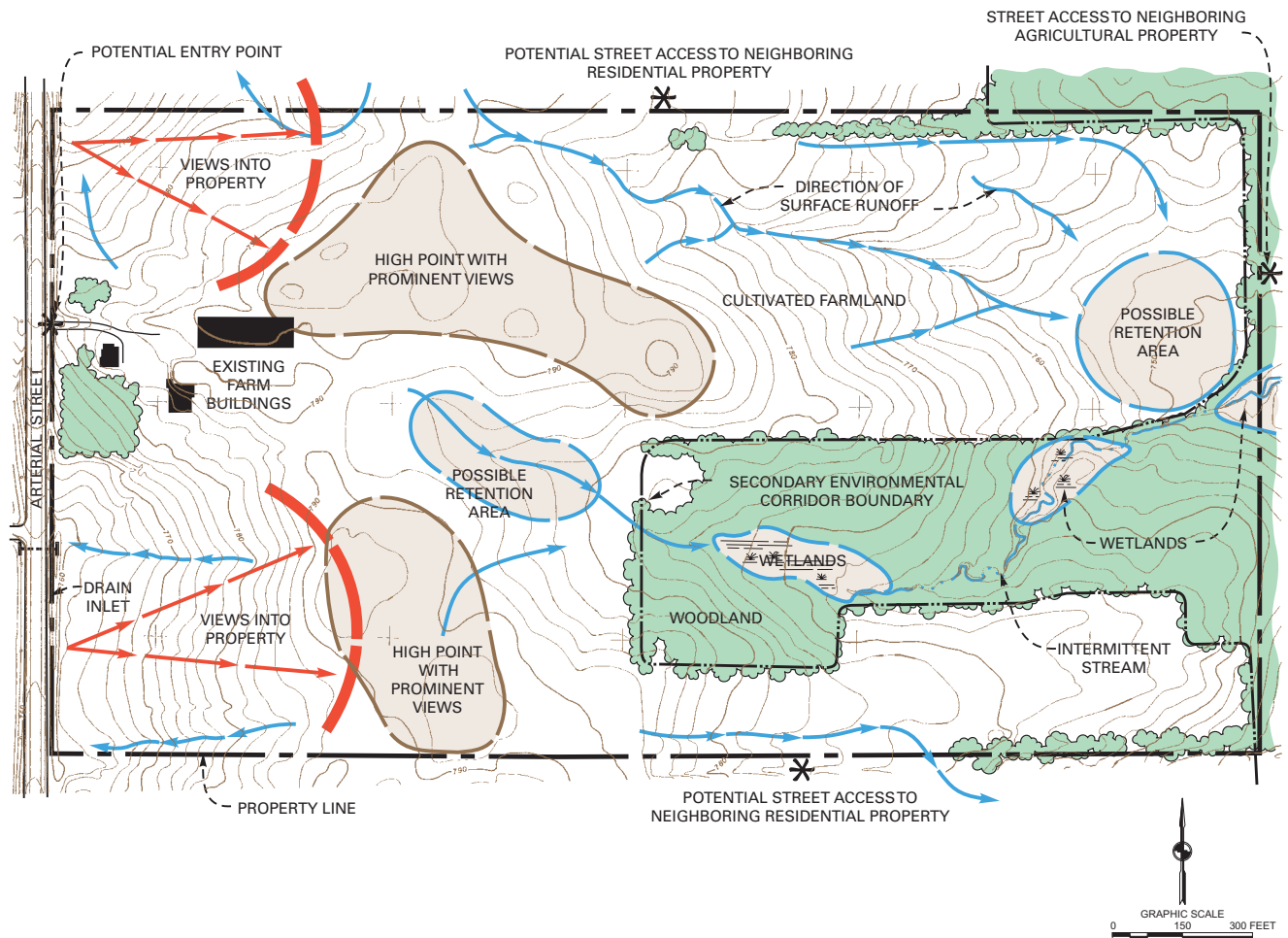
streets within or adjacent to the parcel shown on the local comprehensive plan or official map should also be identified. Pertinent existing physical conditions surrounding the parcel and recommendations in municipal or areawide plans affecting the parcel should also be identified.

Certain areas within a proposed subdivision should be considered for maintenance in permanent open space; including lands within 100-year recurrence interval flood hazard areas, or floodplains; wetlands; and slopes of 12 percent or greater. Primary environmental corridor lands should be preserved in accordance with the recommendations of the Regional Planning Commission, which generally require lowland portions of primary environmental corridors to be preserved in natural, open uses and which permit upland portions of such corridors to be developed for residential or recrea-

tional use at very low densities. Lands that have been identified as secondary environmental corridor or isolated natural resource areas should be considered for preservation, particularly when the opportunity is presented to incorporate such areas into urban stormwater detention areas, drainageways, neighborhood parks, or trail corridors. Those portions of secondary environmental corridors or isolated natural resource areas consisting of floodplains, wetlands, or steeply sloped lands, however, must be preserved and protected. Those portions of secondary environmental corridors or isolated natural resource areas that consist of upland woods that are not steeply sloped can, at the discretion of the local government, be used to accommodate development.

As shown on Figure V-5, the development site chosen consists of gently rolling topography, and includes approximately 12 acres of secondary environmental

Figure V-5
SITE ANALYSIS



A site analysis should be conducted before a subdivision design type is selected and any subdivision layout created. In general, the analysis should include a topographic analysis, identifying areas of steep slopes; the locations of hilltops, ridges, and scenic overviews; an analysis of drainage patterns; a vegetation analysis; a delineation of soil types and characteristics; an identification of water bodies, wetlands, woodlands, and flood hazard areas; an identification of the boundaries and characteristics of environmental corridors; and identification of structures having historic or other cultural value. The site analysis should also identify the classification of existing streets and highways adjacent to the development parcel, and the location of desirable and undesirable points of entrance to and exit from the site.

corridor consisting of woodlands, a small intermittent stream, and wetlands. There is no floodplain associated with the stream, however, the stream is considered navigable; hence the three wetlands are shoreland wetlands that must be protected in accordance with Section 62.231 of the *Wisconsin Statutes*. No shoreland setbacks or other shoreland restrictions, other than protective zoning of shoreland-wetlands, apply to shoreland areas located in a city or village. If the development site were located in an unincorporated area, or in a shoreland area annexed to a city or village after May 7, 1982, shoreland regulations related to lot size, vegetation clearing, shoreyard setbacks, and other shoreland protection requirements set forth in the applicable County shoreland zoning ordinance would have to be accommodated in the design of a proposed subdivision.

An arterial street borders the west side of the site. The site analysis identified a preferred access point from the arterial street into the tract being subdivided. Selection of the preferred access point was based on consideration of safe stopping sight distances along the arterial street. Potential access points, and connections to adjacent tracts, were also identified on the north, east, and south sides of the site.

In addition to natural resource features and potential street connections, the site analysis also took into consideration the topography of the site, identifying drainage patterns, high points, scenic overviews, and potential stormwater retention areas. With respect to stormwater retention areas, it was assumed that the stormwater management plan prepared for the drainage basin within which the site is located did not recommend the construction of retention areas within the site.

Conventional Curvilinear Subdivision

The curvilinear design type subdivision layout for the site is presented in Figure V-6. The curvilinear subdivision design concept is intended to maximize the use of developable land for lots while limiting open space to environmentally sensitive areas that must be protected based upon recommendations contained within the local comprehensive plan, or restrictions set forth in the local zoning ordinance. The design process

focuses on the street layout, considering desired block lengths and widths and lot depths along exterior boundaries of the subdivision and around environmentally sensitive areas. The street network is designed in a curvilinear pattern that uses topographic features to create as much interest as possible, while minimizing earthwork and assuring good drainage along the streets. Connections to adjacent residential subdivisions or future compatible uses are provided. Cul-de-sac and loop streets are utilized as necessary or desirable. Lot lines are then added based upon consideration of minimum frontage and lot size requirements, which are commonly specified in the local zoning and land division control ordinances. The configuration of the streets, blocks, and lot lines are designed to maximize use of the developable land, in an efficient and effective manner.

The curvilinear subdivision design illustrated provides relatively large lots that permit larger homes with more private open space on each lot. The larger lots result in greater street frontage for each lot and may result in a greater total street length. Common open space within the subdivision is limited to preservation of the wetlands and stream channel and a portion of the secondary environmental corridor surrounding these lowland areas. Small portions of the wetlands are located in the rear of certain lots in the subdivision, and deed restrictions would be required to ensure that the wetlands would not be disturbed. In order to provide an efficient design with lots on both sides of any proposed street, portions of the environmental corridor are made a part of the adjacent lots, thus maximizing the number of lots and minimizing the common open space. Grading for a curvilinear subdivision is typically minimal and preserves much of the existing topography and vegetation. The design illustrated in Figure V-6 utilizes an 80-foot right-of-way width for the collector street, a 60-foot right-of-way width for the through and loop land access streets, and a 50-foot right-of-way width for the cul-de-sac land access streets.

The design of a curvilinear subdivision facilitates adjustment to fit the topography and minimizes the required grading of a site. The relatively large lots within a curvilinear subdivision provide more land for

the private use of individual homeowners, and can accommodate larger homes.

Disadvantages of a curvilinear subdivision layout may include a higher cost of infrastructure per lot, due to the relatively large size of the individual lots. Also, such subdivisions usually provide smaller amounts of land for public or common open space.

Urban Cluster Subdivision

The urban cluster design type subdivision layout is presented in Figure V-7. The urban cluster subdivision design type maximizes the provision of common open space by minimizing individual lot sizes while maintaining the required overall density of development. The cluster subdivision, whether located in an urban or rural area, can effectively protect environmentally sensitive areas by maintaining such areas in open space, while concentrating lots into small groups or “clusters.”

The design process begins with identification of a typical ‘model’ cluster that, while varying in the number of lots, maintains a similar lot and street layout. Areas on the parcel that should be maintained in permanent open space are then identified, followed by identification of areas appropriate for development, with consideration given to prominent views, topography, and drainage patterns. Once cluster locations are identified, a major collector street is laid out that will link the clusters. Final layout of the lots completes the design process.

The urban cluster design provides small lots fronting on a public street, with all lots adjacent to common open space. While substantial street length is required to provide access throughout the site, the urban cluster subdivision design results in the lowest percentage of combined land area to streets and individual lots, thus providing the greatest amount of common open space. The design is somewhat more conducive to flatter sites, where terracing of the small lots comprising the clusters is not necessary. Grading requirements may be significant, particularly if water features are included as an amenity. The design presented in Figure V-7 utilizes an

80-foot right-of-way width for the collector street and a 50-foot right-of-way width for the cul-de-sac streets.

The rectangular lots shown in the layout around the cul-de-sac turnabouts are not typical within Southeastern Wisconsin. The rectangular lot design was used to maximize the amount of land retained in common open space. A radial lot line design, where side lot lines are perpendicular to the street right-of-way line of the cul-de-sac bulb, is more commonly used in this Region. The more typical lot arrangement is illustrated on the inset on Figure V-7.

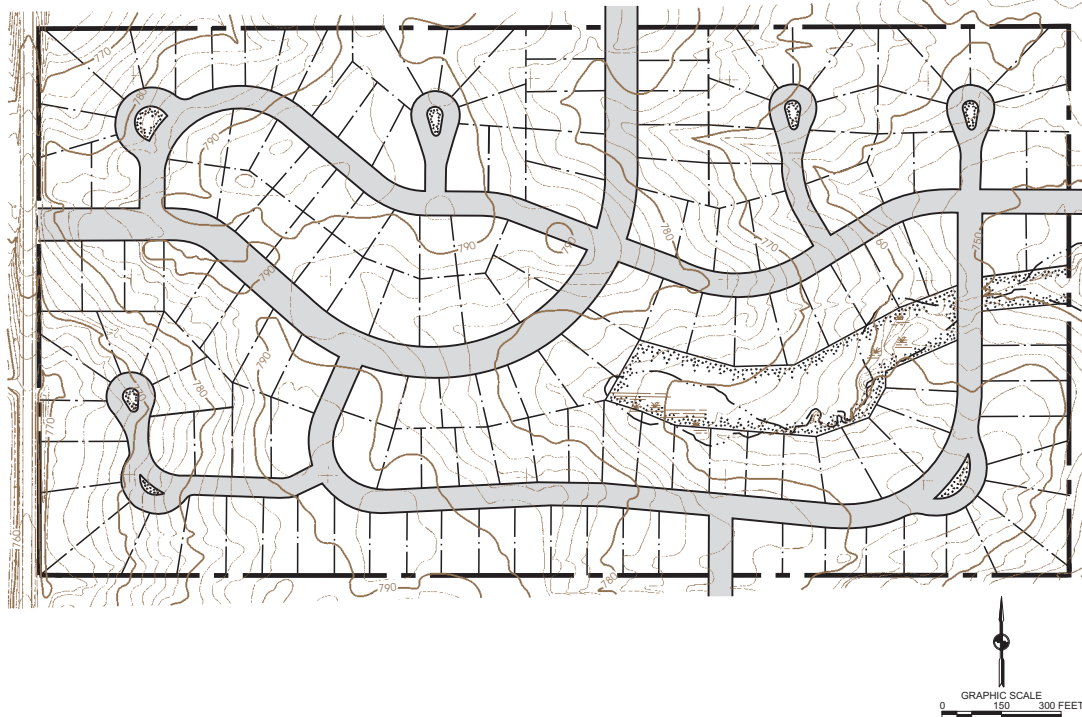
Because the subdivision is assumed to be located in an area with a full range of urban services available, including public sewer and water, the design presented is for an urban cluster subdivision. Cluster subdivisions may also be appropriate in rural areas, where they can help meet the market demand for housing in an efficient development pattern that preserves environmentally sensitive areas and rural views, and perhaps even prime agricultural areas, while maintaining desirable overall development densities. Information and model ordinance provisions concerning the development and review of rural cluster subdivisions is provided in SEWRPC Planning Report No. 7, *Rural Cluster Development Guide*, published in 1996.

The advantages of a cluster subdivision design include protection of natural resource features and the opportunity to maintain a significant portion of a site in common open space. This can provide attractive recreational opportunities for residents of the subdivision; maintain scenic beauty and biodiversity; and decrease the amount of impervious surface area. In situations where the cluster subdivision is laid out in a way that concentrates lots on a limited portion of the site, the costs of providing infrastructure to the subdivision may be less than that required for a curvilinear subdivision.

Disadvantages of cluster subdivisions may include relatively small lots, which require careful design of lot arrangements and building placement to provide privacy for the individual residences. The design is not as conducive to sites in urban areas with significant topographic variation and steeper slopes as is a curvi-

Figure V-6

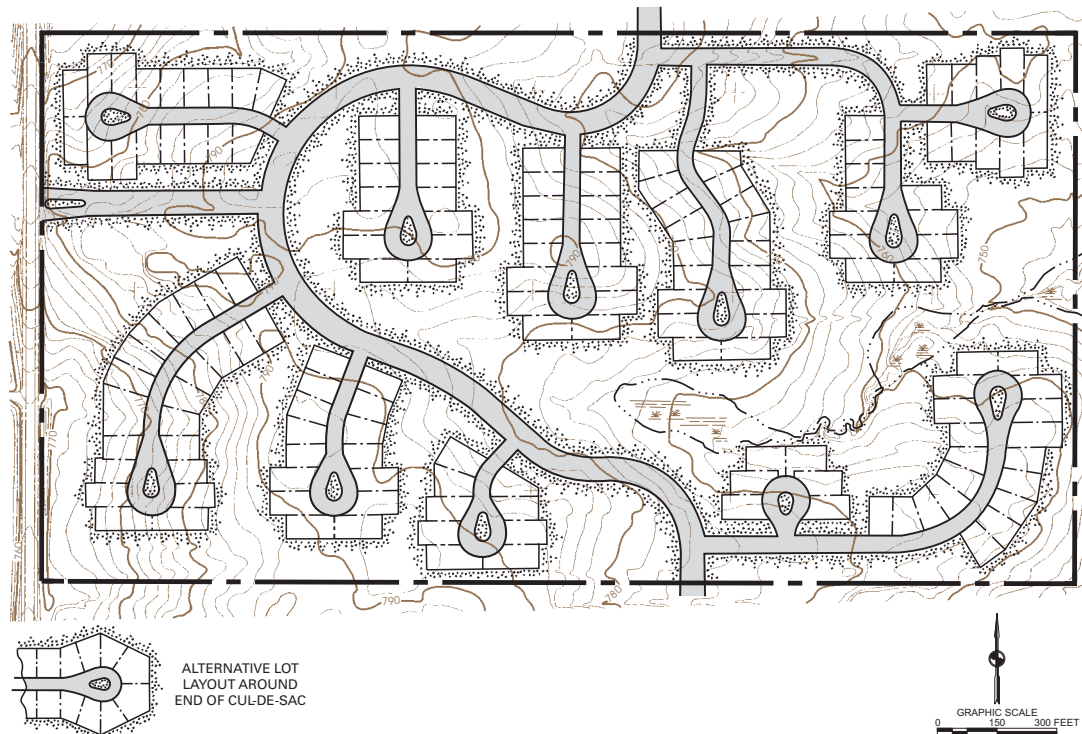
CONVENTIONAL CURVILINEAR SUBDIVISION LAYOUT



The curvilinear subdivision design type has been the most common type of subdivision developed in Southeastern Wisconsin in the post World War II era. The curvilinear subdivision has generally been designed to provide relatively large lots that permit larger homes with more private open space on each lot. The design of a curvilinear subdivision facilitates adjustment to fit the topography and minimize required grading while providing good drainage and efficient sewerage.

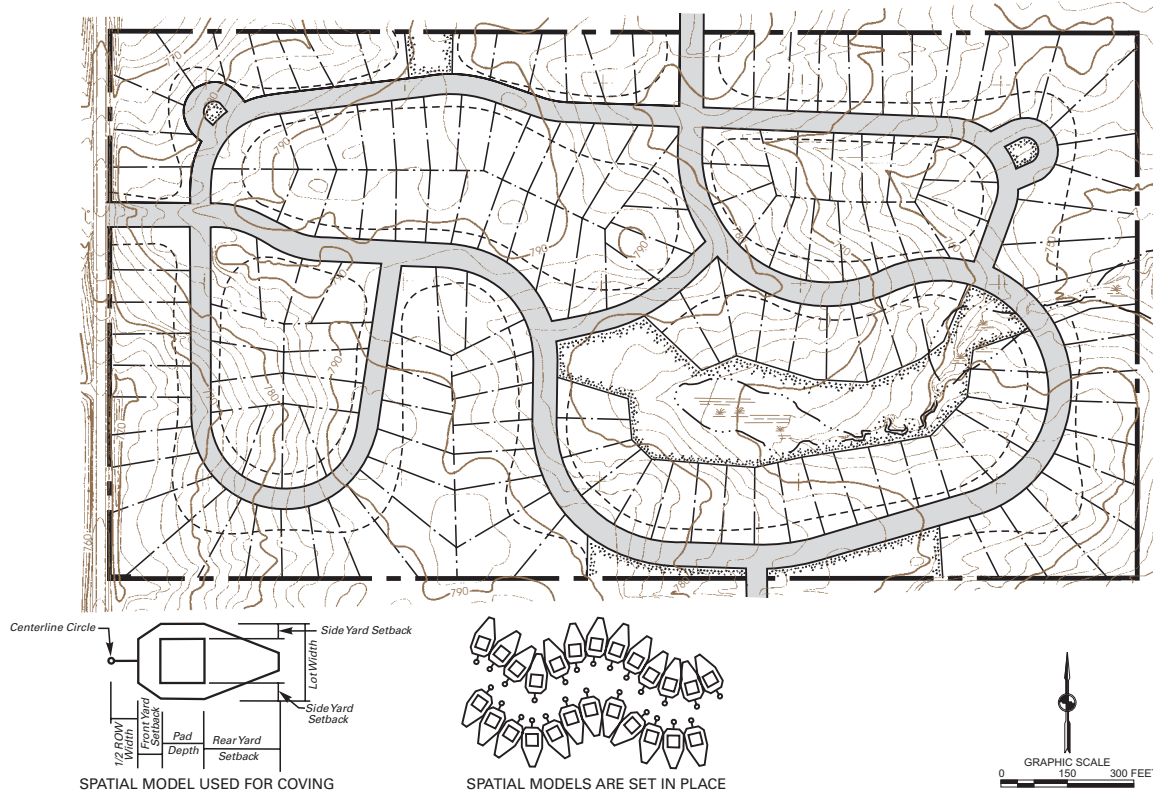
Figure V-7

URBAN CLUSTER SUBDIVISION LAYOUT



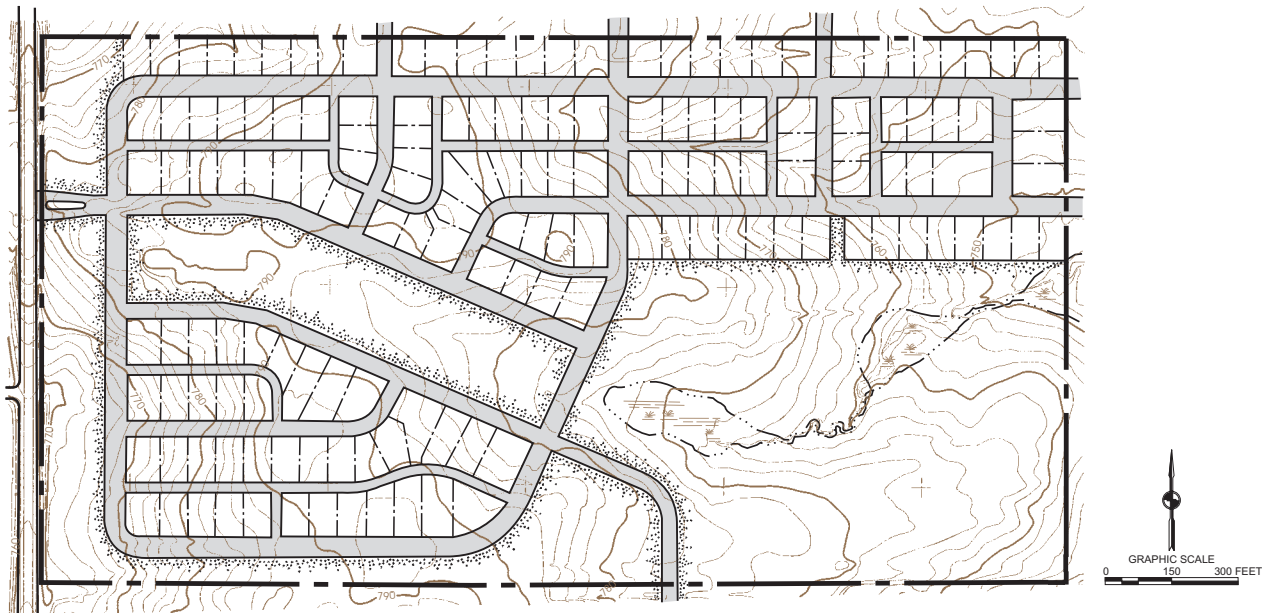
The urban cluster subdivision design type maintains a significant portion of a site in common open space by minimizing individual lot sizes while maintaining the required overall density of development. The cluster subdivision, whether located in an urban or rural area, can effectively protect environmentally sensitive areas by maintaining such areas in open space, while concentrating lots into small groups or "clusters." Each residential lot in this subdivision layout has direct access to the common open space, and the use of cul-de-sac streets enhances residential quiet, privacy, seclusion, and safety.

Figure V-8
COVING SUBDIVISION LAYOUT



The coving subdivision design type is a relatively new design concept. In a coving subdivision, the proposed buildings are located on the site first, and then a park-like streetscape is created that flows through the property by varying the distance from the street pavement lines to the facades of the homes. With the homes placed in flowing lines with varying setbacks along each side of the street rather than in an arrangement with uniform setbacks, large open areas--or coves--appear alternately from one side to the other as the street curves through the site. The design process starts with a template, illustrated in the first inset, that identifies the minimum lot size, the building envelope, required minimum setbacks, and one-half the required street right-of-way width. The templates are set to fit the building locations to the topography; and so that no portion of the templates or the centerline circles overlap, as shown in the second inset. Building setbacks are illustrated with a dashed line on the layout. The coving subdivision provides larger lots but less area in streets than other subdivision types. The large front yards also increase the lengths of sanitary sewer and public water connections to each home, increasing the cost of such connections, and may cause an increase in the amount of clearwater infiltration into the sanitary sewer system.

Figure V-9
NEW URBANISM SUBDIVISION LAYOUT



The new urbanism subdivision design type is based on urban development patterns of the past, with consideration given to the open space concerns of the present. New urbanism subdivisions attempt to provide a central public common that is surrounded by residential lots or, in some larger subdivisions, may provide for a neighborhood business or civic center. Residential lots are often double-fronted, with one face to the street and one to a utility corridor or alley running behind the lots, where garages are located. The new urbanism design is better suited to relatively level sites where the desired density of development is easily achieved without substantial grading. The grid street pattern provides more connections to adjoining tracts, and often results in shorter walking and bicycling distances, but may also result in higher volumes of through traffic using subdivision streets, increasing noise levels and safety concerns.

linear subdivision because of the need to terrace the small lots. Architectural design controls may be needed in urban cluster subdivisions, due to the relatively small lots and the proximity of the clustered homes. Such controls may also be used to develop an appealing neighborhood character.

A homeowners association should be formed to own and maintain the common open space and related facilities. In the alternative, the local government concerned must be willing to accept public dedication and responsibility for maintenance of the open space and related facilities. Homeowners association documents must be carefully reviewed by the municipality to ensure that any common areas and facilities will be properly maintained. The documents must assume that each lot in the subdivision has an undivided interest in the common open space. Provision must be made for public assumption of the maintenance if the homeowners association fails to meet its responsibilities, with the cost assessed back to the lots in the subdivision.

Coving Subdivision

The coving design type subdivision layout is presented on Figure V-8. In the layout of this type of subdivision, the proposed buildings are located on the site first, and then a park-like streetscape is created that flows through the property by varying the distance from the street edges to the façades of the homes. With the homes placed along flowing lines on each side of the street rather than in a linear arrangement, large open areas—or coves—appear alternately from one side to the other as the street curves through the site. The design process is the inverse of a curvilinear subdivision process, and starts with a template that identifies the minimum lot size, the building envelope, required minimum setbacks, and one-half the required street right-of-way width. An example of the template is shown as an inset on Figure V-8. Prime view areas or environmental corridors are identified and templates are arranged to utilize those features. Once all of the templates are arranged on the property, the street centerline is set, with ‘coves’ identified at the outside edges of street curves. Building

setback lines are then established in a continuous flowing pattern and lot lines are added last.

The coving subdivision provides large lots but less area in streets than other subdivision types. The process for coving design results in lots that are often very narrow at the front or rear of the lot, so it is important to identify a specific building envelope on each lot. Because of the particular layout of the subject parcel, the location of the stream and wetlands, and lot placement and depth, the design presented in Figure V-8 uses a similar percentage of the overall land area for streets and lots as the curvilinear subdivision. The design utilizes an 80-foot right-of-way width for the collector street and a 60-foot right-of-way width for the land access streets.

Advantages of the coving design include the creation of interesting character by varying front yard setbacks. Cost savings can be achieved through the overall shorter street length, in comparison to other subdivision designs. The coving design also tends to create a variety of lot sizes, and this may promote development with a desirable variety of housing styles and costs.

The relatively large front yards associated with the coving design may also be considered a disadvantage, because the increased depth of the front yard may decrease the size of the backyard. Most homeowners prefer a larger backyard, which commonly offers more privacy than the front yard. The large front yards also increase the lengths of sanitary sewer and public water connections to each home, increasing the cost of such connections. The longer connections may also cause an increase in the amount of clearwater infiltration into the sanitary sewer system. Other disadvantages include lots with odd shapes and relatively few common rear lot lines, which may complicate landscaping and maintenance by homeowners. Lastly, because most of the area within the subdivision is devoted to streets and lots, only a portion of the secondary environmental corridor would be preserved. As is the case in the curvilinear subdivision, small portions of the wetlands are located in the rear of certain lots in the subdivision, and deed restrictions would be required to ensure that the wetlands would not be disturbed.

New Urbanism Subdivision

The new urbanism design type subdivision layout is presented in Figure V-9. The concept is based on urban development patterns of the past, with consideration given to the open space concerns of the present. New urbanism subdivisions attempt to provide a central public common that is surrounded by residential lots or, in some larger subdivisions, might provide for a neighborhood business or civic center. Residential lots are often double-fronted, with one face to the street and one to a utility corridor or alley running behind the lots, where garages are located. The new urbanism design is better suited to relatively level sites where the desired density of development is easily achieved without substantial grading. The design process begins with identification of natural areas and other existing site features that may become a part of common open space. The common open space is defined by a parallel, linear urban street pattern.

The subdivision shown on Figure V-9 is designed to provide a large area of common open space for recreational use. The lots are smaller than typical lots in a curvilinear or coving subdivision, and homes are intended to be located closer to the front property line to provide a more usable back yard between the house and the garage. Because the hierarchy—or functional classification—of streets is less distinct in a new urbanism subdivision than in other subdivision types, a 60-foot right-of-way was used for all streets, and a 25-foot right-of-way was used for alleys.

The advantages of the new urbanism design include more common open space than is provided in a curvilinear or coving design, due to use of relatively small lots. The grid street pattern provides more connections to adjoining tracts, and often results in shorter walking and bicycling distances. The closely spaced lots may lead to an increased sense of neighborhood for subdivision residents.

The disadvantages associated with the new urbanism design include smaller lot areas for private outdoor use, due both to the smaller lot sizes and the location of garages adjacent to the alley. The grid street pattern may

encourage the use of residential land access streets by heavy volumes of fast through traffic, reducing desirable residential quiet, privacy, seclusion, and safety. Furthermore, the grid street pattern cannot be adjusted to the topography of the site, and may require excessive grading. The smaller lots and more dense development pattern may also require controls on architectural design and home placement to ensure an attractive development. A homeowners association must also be formed to own and maintain any common areas and facilities.

Utility Service

The type of subdivision design will affect the location of the utilities serving the site. In each of the four designs presented, sanitary sewers, water mains, and storm sewers would be located in the street rights-of-way. In a curvilinear subdivision, electric power and communication utilities would likely be located within easements along side and rear lot lines. In a coving subdivision design, electric power and communication utilities may be located within easements along side and rear lot lines, as in a curvilinear subdivision, or may be located within the front-yard setback, near the street right-of-way. In the new urbanism subdivision, the electric power and communication utilities would likely be located within the right-of-way of streets and alleys. The location of electric power and communication facilities in an urban cluster subdivision requires particularly careful consideration on a case-by-case basis. Where narrower street rights-of-way are used in any subdivision design type, the utilities can only be located within the street rights-of-way to the extent that horizontal separation distances can be maintained within the narrower streets.

HISTORIC PATTERNS OF DEVELOPMENT AND LOT YIELD EFFICIENCIES

The Regional Planning Commission in 1971 undertook an inventory of historic residential land division activity within the Region. The findings of this inventory are reported in SEWRPC Technical Report No. 9, *Residential Subdivision in Southeastern Wisconsin*, September 1971. Unfortunately, the inventory has not

been updated by the Regional Planning Commission so that the findings are almost 30 years old. However, the factual findings of this inventory should still be largely valid and, in any case, should be of interest particularly to land developers and to planners, engineers, and surveyors engaged in land division activities.

For the purposes of the inventory, three residential land division patterns were identified on the basis of the predominant street layout used in the land division: the grid pattern, the curvilinear pattern, and the cluster pattern. The inventories found that the most prevalent land division pattern within the Region had been the grid pattern, which accounted for about 75 percent of the total plats recorded from 1920 through 1969, and for about 60 percent of the total acreage platted as of 1970. The curvilinear pattern accounted for about 24 percent of the total plats recorded, and about 40 percent of the total acreage platted. The cluster pattern of development, which was a recent innovation within the Region at the time of the conduct of the inventory, accounted for less than 1 percent of either the plats recorded or the total area platted. Over the 50-year inventory period, the average size of the grid pattern land division was about 15 acres; the average size of the curvilinear pattern land divisions about 31 acres; and the average size of cluster pattern land divisions about 104 acres.

Public streets and alleys were found to comprise about 23 percent of the gross area of grid pattern residential land divisions; about 20 percent of the gross area of curvilinear land divisions; and about 16 percent of the gross area of cluster land divisions. Areas dedicated for purposes other than streets and alleys were found to average only about 1.7 percent of the gross area platted, including areas dedicated for parks and schools. Other nonlotted areas within land divisions were found to comprise about 3.1 percent of the area platted.

One of the factors affecting the cost of improved building sites is the land division design efficiency; that is, the yield expressed in terms of the number of lots per acre that can be obtained from a particular tract of land. This yield is affected by many factors, some direct, such as lot size, block length, and street width; and some

indirect, such as street pattern, topography, the size and shape of the tract to be divided, park, school, and drainageway requirements, and the skill of the designer.

Design efficiency factors are computed by comparing the actual lot yield provided by a given design for a given tract to the maximum possible yield from that tract for any given set of lot dimensions and street widths. The Commission inventory indicated that the efficiency factors of recorded plats within the Region over the 50-year inventory period ranged from a low of 61.4 to a high of 92.5, consistently approximating 75 percent, regardless of the type of land division. The efficiency of land division design affects the cost of the improved building sites, and the Commission has in the aforereferenced report provided tables of maximum theoretical yields for given lot widths and depths which can be used to compute the efficiency of any given design and to compare that efficiency with a goal ranging between 75 and 85 percent.

COMMON ISSUES OF CONCERN

Certain concerns related to land division design are relatively common and are found to recur frequently in land division layouts submitted within Southeastern Wisconsin to approving and reviewing authorities. These concerns, together with suggested solutions, are addressed in this section.

Consistency with Comprehensive Plan

If land division control is to function as an effective comprehensive plan implementation device, it is essential that the land division location and design be consistent with the development objectives expressed in adopted local, county, and regional comprehensive plans. Key issues to be addressed in this respect include:

- Does the proposed land division conflict with recommendations contained in adopted local, county, and regional plans with respect to such considerations as major arterial street locations and widths, trunk sanitary sewer and water transmission main locations and configurations,

delineated environmental corridors and the woodlands, wetlands, floodlands, and wildlife habitat areas contained within such corridors?

- Is the design consistent with the land use types and intensities envisioned by the adopted comprehensive plan?
- Can public sanitary sewerage, water supply, stormwater management, other public utilities, and mass transit services be readily extended to the proposed land division?
- Are the soils of the tract proposed to be divided suitable for the type of development proposed?
- Is the proposed land division design consistent with an adopted neighborhood unit development plan for the area?
- Does the street layout provide adequate connections to adjacent tracts and to the arterial street system?
- Are proposed land uses compatible with existing uses on surrounding areas?
- Does it minimize adverse impacts on the environment?

The issues entailed in conflicts between a land division design and an adopted plan can best be resolved through a pre-application conference and concept review between the developer and the local planning staff. Some circumstances make this pre-application conference and design concept review a more formal step in the subdivision approval process, requiring submittal of a sketch plan for local plan commission review and approval prior to submittal of a preliminary plat. Such a conference and design concept review provides an efficient way to achieve consistency between land division designs and adopted comprehensive plans.

Design and Improvement Considerations

Private Streets

Private streets should be avoided. Such streets may not be constructed to municipal standards in terms of right-of-way or pavement width, type of cross-section, or type or thickness of pavement. Because the streets are privately owned, the residents of the land division, generally through a homeowners association, are responsible for maintaining the streets, including snow removal. Often, residents along private streets later request that the municipality assume ownership of the street, including associated maintenance responsibilities. Such requests create difficulties for the municipality, because the streets may not have been designed to accommodate snow removal equipment or snow storage, or may have been constructed to lower standards than public streets, resulting in higher repair costs.

The use of private streets also introduces other concerns, including—in addition to the adequacy of the design and improvement of the streets—the location and adequacy of the design and construction of public utilities, such as sanitary sewers, water mains and stormwater drains, and minimum building setbacks from the private streets. A strict prohibition of the use of private streets may, however, act as a constraint on the development of “gated community” subdivisions, which seek to exclude the general public from the development by walls, gates, and private security measures. Given the problems attendant to the use of private streets, a sound public policy would be to prohibit the use of such streets and to require proposed gated community subdivisions to be designed and developed as planned unit developments under the local zoning ordinance. This requirement would make the location, configuration and width, and the improvement standards related to private drives within the development that would function as streets, as well as the setback and other locational attributes of the buildings, subject to local plan commission review and approval.

Half Streets

It is not uncommon for developers to propose dedication of only half of the required right-of-way for a street located on the perimeter of a tract proposed to be

divided. Developers will often argue that, since the proposed lots front only on one side of the proposed perimeter street, the developer should only have to dedicate one-half of the street right-of-way, and assume responsibility for only one-half of the attendant full street improvement costs. Such dedication of, and improvement cost allocations related to, half streets present the local municipality and the lot purchasers and homeowners with awkward construction, use, and maintenance problems.

The most expedient solution is to simply prohibit the platting of half streets. If a street must be provided along the perimeter of a tract, then the full right-of-way should be dedicated and improved. A one-foot development control strip may be dedicated to the municipality to facilitate the equitable recovery of improvement costs from the developer of the abutting property at such time as the abutting property is proposed for development.

Stub End Streets

Land division designs commonly include temporary stub end streets that extend to the boundary of the land division and are intended to provide future street connections to abutting lands. Such streets are intended to provide continuity in the street layout of the neighborhood and to provide access to otherwise land locked tracts of land.

The location, configuration, and dedication of stub end streets normally will present no problems if the local community has prepared a detailed neighborhood development plan that provides for such stub ends where needed. Problems may, however, be presented with respect to the manner in which improvements of the stub end streets are provided. At least three options are presented for such provision:

- Require the developer to fully improve the stub end street;
- Leave the stub end street unimproved but require the developer to provide a surety for the improvement of the stub end at such time as the abutting property is developed; or
- Leave the stub end street undeveloped and require the developer of the abutting tract to pay for its improvement at such time as the adjacent tract is developed.

Experience has shown that the first alternative is preferable, resulting in the least controversy. The alternative has a particular advantage in making it clearly evident to prospective lot and home purchasers that a street is proposed to be extended to the adjoining property to ensure the continuity and integrity of the street system.

In some cases, provision should be made for a temporary turnabout at the end of stub streets. Such a temporary turnabout may be “T”-shaped, “L”-shaped, or circular, and should be designed to fit within the right-of-way of the stub end street. Provision should be made that at such time as the stub end street is extended, the turnabout will be removed and that the cost of such removal will be borne by the developer of the adjacent tract into which the stub end street is to be extended. It may also be helpful to require that a notation be placed on the face of the final plat that the stub end street may be extended at some future time.

Access Control Restrictions

Access control restrictions are permanent reservations that can be used to deny access to abutting lots from public streets, and should never be permitted to remain under private control. Such access control restrictions may be used to legitimately control ingress to and egress from double frontage lots platted along arterial, and in some cases, collector streets; and to and from lots, or portions of lots, located at street intersections.

Access control restrictions should be clearly shown on the face of the land division plat. The prohibition of access should be annotated on the face of the plat and included in the deed for each lot concerned.

Cul-de-Sac Streets

Cul-de-sac streets constitute a valuable aide in subdivision design, permitting lots to be extended into awkward remnant areas that may be created by a street layout. Far more importantly, however, cul-de-sac streets provide privacy and minimize vehicular traffic,

which results in a safe and quiet residential environment. Lots fronting on cul-de-sac streets are highly desirable as places on which to live, and such lots often command the highest values in a subdivision. The use of cul-de-sac streets in subdivision design, however, requires skill and careful attention to detail. Used improperly, cul-de-sac streets may create problems related to traffic, water supply, emergency access, and drainage. All but the last of these potential problems are related to the density of development to be served and the length of the cul-de-sac street. Because of these potential problems, many land division ordinances specify a maximum length for cul-de-sac streets.

Traffic volumes on land access streets should generally not exceed 1,500 vehicle trips per day, but should be substantially lower for cul-de-sac streets, desirably as low as 250 vehicles per day. Traffic volumes in excess of this amount may impair the ability of the cul-de-sac street to provide the desired safe and quiet residential environment. At this lower limit, assuming an average trip generation rate of 10 vehicle trips per dwelling unit per day, a cul-de-sac should serve a maximum of 25 dwelling units. Thus, a cul-de-sac in an area to be developed for single-family residences with lot widths of 50 feet should not exceed about 500 feet in length, while a cul-de-sac so developed with lot widths of 100 feet should not exceed about 1,000 feet in length. Cul-de-sac streets serving areas to be developed for multi-family residences should be substantially shorter than 500 feet.

Adequate access for police, fire, and other emergency vehicles is also affected by the length of cul-de-sac streets if the entrance to the street becomes blocked. Cul-de-sac streets exceeding about 1,000 feet should be provided with an emergency vehicle access way from the rest of the street system to the closed end, with the access way closed to normal traffic.

Cul-de-sac streets may present pressure, taste, and odor problems in water mains if the water distribution system is not properly designed. Fire hydrant location may also present a potential problem. These problems, however, can all be solved by proper water main configuration.

Cul-de-sacs should be laid out so as to drain toward the open-end junction with the rest of the street system, and not toward the closed end. This important principle may be violated in some situations, but only if adequate provisions for drainage, including necessary easements, are made. Finally, it should be noted that the circular turnabout area at the end of the cul-de-sac should not extend to the land division boundary, but should be so located as to provide for the layout of lots around the full periphery of the turnabout.

Various designs may be used for the cul-de-sac turnabout area. Three of the more commonly used designs are illustrated in Figure V-10. Use of a landscaped island in the center of the turnabout enhances the appearance of the cul-de-sac and the value of the lots fronting on the turnabout.

OTHER DESIGN CONSIDERATIONS

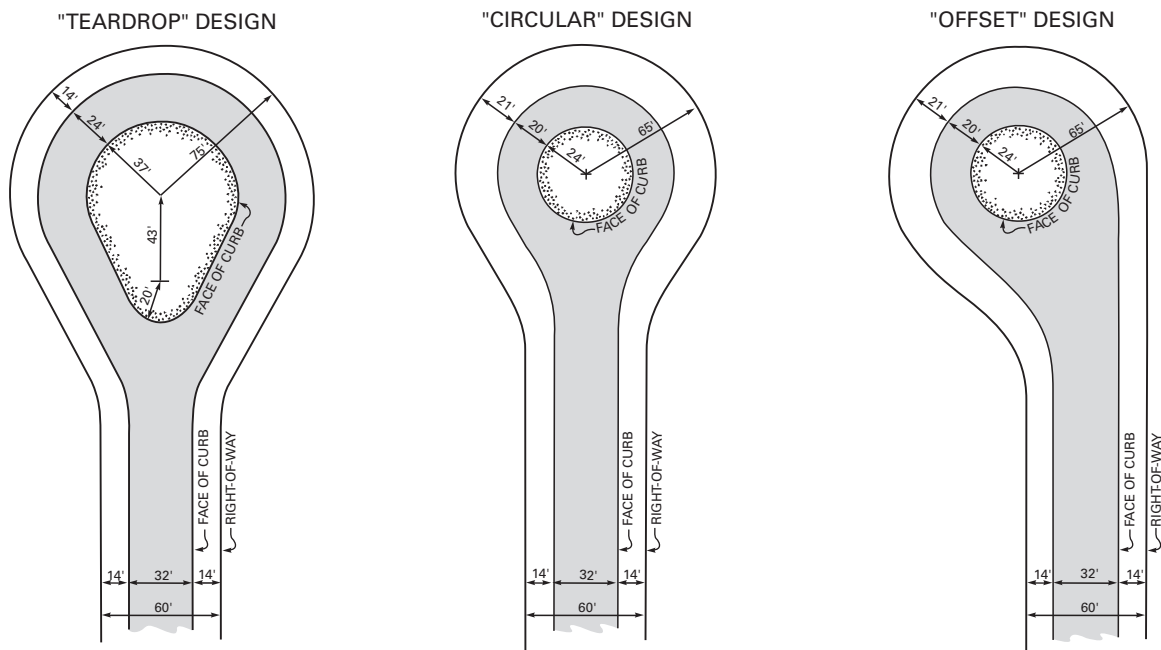
Many contemporary land division plats do not provide for convenient pedestrian circulation within the neighborhood of which the land division is an integral part. Land access street configurations should be supplemented as necessary by the provision of cross block pedestrian ways to facilitate pedestrian access to local parks and schools; local shopping facilities; and, as needed, to mass transit stops. Blocks having a length in excess of 900 feet should have a 10- to 20-foot wide pedestrian right-of-way provided in mid-block.

Careful consideration should be given to integrating bicycle ways into the design of subdivisions. Desirably, such bicycle ways should be located on exclusive rights-of-way, although they may, in some situations, be combined with pedestrian ways or located on streets.

Streams and watercourses should be located in dedicated parkways and drainageways wide enough to accommodate the stream channel and the adjacent 100-year recurrence interval flood hazard area. Where lots include ravines or other nonbuildable terrain, the development may be required to have a specified percentage of buildable land.

Figure V-10

CUL-DE-SAC DESIGNS



This figure illustrates three of the more commonly used designs for cul-de-sac turnabout areas, also known as cul-de-sac "bulbs." The use of a landscaped island in the center of the turnabout can greatly enhance the appearance of the cul-de-sac street.

Short blocks should generally be avoided in order to avoid excessive dedication of land for streets and excessive street improvement costs. Acute angle intersections, more than four-way intersections, and jogs in street alignments should be avoided. Excessively deep or excessively shallow lots should also be avoided.

Design deficiencies include too many homesites on long, straight streets or lots fronting on arterial streets, failure to organize development parcels into smaller sections around natural or built features, failure to provide oversized lots on corners, lack of streetscape detailing on arterial streets on the perimeter of a land division, undersized or oversized streets, failure to provide properly sized and located park and school sites,

and failure to effectively use site amenities such as entrance landscaping, decorative lighting, or site furniture to complement the design of the land division.

SUMMARY

Good land division design is both an art and a science requiring considerable technical skill and full realization of the importance of the design to the various interests involved and affected. Good land division design requires imagination and creativity, as well as adherence to sound principles of planning and engineering practice and sound development standards. The role of government should be to create conditions amenable to good

land division design and to encourage and support endeavors to achieve such design. County and local governments not only have the right to regulate land division, they have an obligation to assure that the public interest is served and the greatest possible good results from a proposed land division. Ideally, county and local governments should have an adopted comprehensive plan in place that would provide a framework for the design of the land division.

The Regional Planning Commission has long recommended the preparation of neighborhood unit development plans to refine and detail a community comprehensive plan. A proposed land division should, depending upon its size, either constitute a complete neighborhood unit or an integral part of such a unit. Ideally, each neighborhood unit should have its own elementary school site, park area, and local shopping area. Its size should be such as to provide housing for that resident population for which one public elementary school is required. Each neighborhood unit should have identifying boundaries and an internal street pattern that discourages use by through traffic, while facilitating vehicular and pedestrian circulation within the unit.

Good land division design can be achieved through the effective application of five basic design principles. The first principle is that the design must properly provide for external factors of community and areawide concern which may affect the proposed land division. Provision should be made in the design for the proper extension of arterial streets; for the location of sanitary trunk sewers and water transmission mains; for the preservation of major drainageways; for adequate school and park sites; and for the provision of, and ready access to, public transit facilities. Consideration should also be given in the design to the relationship of the proposed land division to such external factors as neighborhood, community, and regional shopping facilities; places of employment; and higher educational facilities.

The second principle of good land division design is that the design must be properly related to existing and proposed land uses. That land division design is closely related to land use planning and zoning is axiomatic,

and the design of a land division must be carefully adjusted to the proposed land uses.

The third principle of good land division design is that the design must be properly related to the natural resource base. Woodlands, wetlands, wildlife habitat areas, areas covered by unstable soils, areas of shallow bedrock or bedrock outcrop, areas of steep slopes, and areas subject to special hazards, such as flooding and streambank and lakeshore erosion, must receive careful consideration in the design.

The fourth principle of good land division design is proper attention to internal features and details. This includes careful attention to the proper layout of streets, blocks, lots, and open space areas; and careful adjustment of the design to the topography and natural resource characteristics of the site.

The fifth principle of good land division design is the achievement of integrity in the design of the land division. Design elements that may contribute to an integrated design include focal points such as historic buildings or structures; specimen trees; schools, parks, or other public buildings; thematic architectural design of homes or other buildings; landscaping; street cross-sections and improvements; landscaping and street trees; and street furniture such as street lights and sign posts.

At least four distinct subdivision design types are in general use: curvilinear, cluster, coving, and new urbanism. Selection of the subdivision design type that should be used for any given parcel of land is dependent upon many factors, including market identification and conditions, surrounding land uses, and site conditions. Site conditions are a particularly important consideration in this respect as some sites are more suited to a certain design type due to the topography and the natural resource features present. For example, the new urbanism and urban cluster subdivision design types are more conducive for use in sites that are relatively level, while the curvilinear and coving design types can be more readily adapted to varied terrain. A cluster subdivision is a good alternative design type to use on sites with environmentally sensitive areas that

should be avoided, or natural resource features that must be protected, because lots can be clustered away from such areas without changing the overall development density.

Certain deficiencies in land division design are relatively common, and should be looked for and guarded against in the review of proposed land division plats. These include the proposed land division being inconsistent with adopted comprehensive plans;

the use of half street dedications; the improper treatment of stub end streets; the improper use of access control restrictions; the lack of provision for convenient pedestrian and bicycle circulation; the improper treatment of streams and watercourses; the use of excessively short or long blocks; the use of acute angle street intersections; the use of more than four-way street intersections; the use of jogs in street alignments; and the use of excessively deep or excessively shallow blocks.

Chapter VI

PHYSICAL IMPROVEMENTS

INTRODUCTION

The creation and maintenance of attractive and stable urban areas require that good land division design be accompanied by the proper installation of adequate public utilities and facilities. Requiring such improvements at the time of land division benefits the future residents of the land division. The installation of good quality improvements also has a direct bearing on future operation and maintenance costs, which will be incurred by the community virtually in perpetuity. Requiring developers to install adequate improvements also tends to discourage excessive land division, which in the past has created serious problems for many local governments.

RECOMMENDED MINIMUM IMPROVEMENTS

Improvement standards should vary with the type of development, differing for rural and urban areas, and for single-family residential, multi-family residential, commercial, and industrial areas. All improvements should be designed and installed in accordance with good municipal engineering standards, and the design and installation of what will become an integral part of the public infrastructure system should be subject to the approval of the city, village, town, or county engineer concerned.

Minimum improvements in urban residential areas should include: survey monuments; street grading to the full street width in accordance with community-approved cross-sections and to established street grades; permanent roadway pavements; adequate stormwater management facilities; and public sanitary sewers and public water supply distribution mains. In higher density urban areas, concrete curb and gutter and piped storm sewers may be required. Curbs may be

vertical face, roll face, or mountable, as illustrated in Figure VI-1. Improvement standards may also require the installation of sidewalks, street lights, street signs, the planting of street trees and seeding of terraces, and other landscaping. A land division ordinance may also require the installation of sanitary sewer, stormwater, and water supply laterals to the lot lines, in order to protect newly installed roadway pavements.

In rural residential areas, onsite sewage disposal systems and private wells may be installed in lieu of public sanitary sewer and water supply facilities under suitable topographic and soil conditions. Careful attention must, however, be given to lot size in order to properly accommodate the necessary onsite sewage treatment and disposal facilities. Figure VI-2 illustrates the minimum separation distances for conventional onsite sewage disposal systems required by Chapters Comm 83 and NR 812 of the *Wisconsin Administrative Code*. In rural and low-density residential areas, in lieu of the use of curb and gutter and storm sewers, the stormwater management system may take the form of roadside ditches and culverts discharging to open drainage channels.

STREET IMPROVEMENTS

The creation of a desired appearance or character in the finished land division requires careful attention to the details of proposed street improvements and landscaping. The appearance of the land division will be affected by, for example, the use of asphalt, as opposed to Portland cement concrete, for roadway and sidewalk pavements; the use of vertical face, as opposed to rolled face or mountable, curb and gutter; the use of decorative, as opposed to utilitarian, street lighting fixtures; the design of street name signs; and the type and spacing of street trees and other landscaping.

Figure VI-1

VARIOUS CURB AND GUTTER SECTIONS



Careful attention should be given to the details of street improvements. Such details are important determinants of the overall appearance of a subdivision and of the neighborhood community formed by the subdivision. Such details are an effective means of achieving an integrated appearance and expressing the intended character of a subdivision. These photographs illustrate three types of curb and gutter that may be used in urban street cross-sections. A vertical-face curb is shown in the top left photograph; a roll-face curb is shown in the top right photograph; and a mountable curb is shown in the photograph to the right.



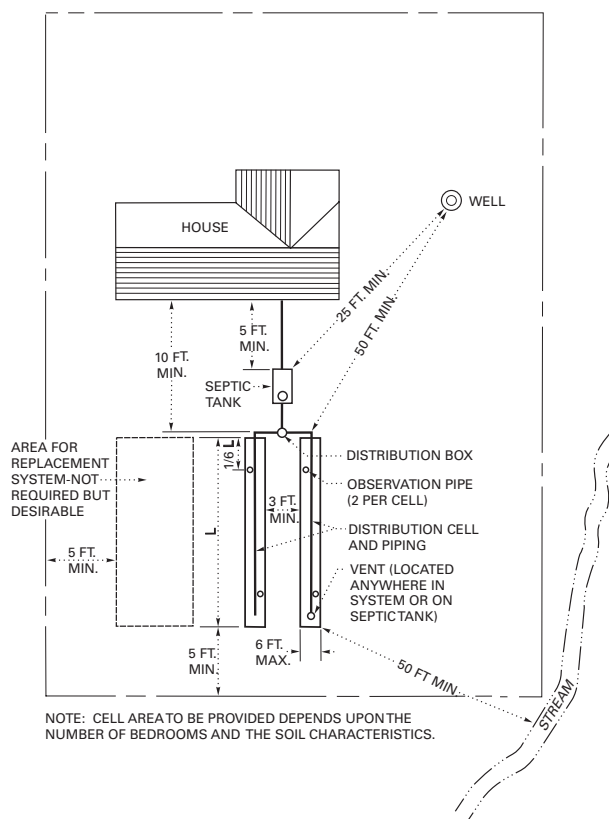
Street improvements should be carefully related to the function that each street in a land division is intended to perform. Roadway widths should be determined on the basis of the functional classification of the street, the anticipated traffic volume, the number of parking and traffic lanes to be accommodated, the type of bicycle improvements to be provided, and the anticipated volume of bus or truck traffic. Right-of-way widths should be established on the basis of the roadway width required and attendant areas needed for terraces and sidewalks in urban areas and road side drainage swales in rural areas, as well as requirements for storm

and sanitary sewers, water distribution lines, and other utilities to be installed in the street right-of-way. In addition to the street cross-sections, careful attention should be given to street alignments and grades and to the treatment of intersections with respect to the configuration of the curb returns and the treatment of pavement crowns.

Arterial Streets

The arterial street and highway system is intended to provide a high degree of travel mobility, serving the

Figure VI-2
MINIMUM DISTANCE STANDARDS FOR
CONVENTIONAL ONSITE SEWAGE
TREATMENT AND DISPOSAL SYSTEM LOCATION ON
A SINGLE-FAMILY RESIDENTIAL LOT



This figure illustrates the minimum separation distances required by Chapters Comm 83 and NR 812 of the *Wisconsin Administrative Code* for conventional onsite sewage treatment and disposal systems located on a single-family residential lot. Ordinances adopted by a county, or a city or village in a county with a population of 500,000 or more—Milwaukee County in the Southeastern Wisconsin Region—may impose more restrictive requirements, including a requirement that an adequate area be located on the lot for a replacement distribution cell. The minimum separation requirements are important considerations in determining appropriate lot sizes and lot configurations in a land division proposed to be developed using onsite sewage treatment and disposal systems.

through movement of traffic between and through urban areas. The right-of-way width and pavement widths and configurations of arterial streets and highways should be based upon detailed transportation system plans and refinements to those plans, as set forth in county jurisdictional highway system plans, in local comprehensive plans, and in detailed neighborhood unit development plans. The regional transportation system plan¹ identifies the location, number of lanes, and the level of government recommended to exercise responsibility for each arterial street and highway in the seven-county Southeastern Wisconsin Region.

Although the recommended number of traffic lanes for each arterial street is specified in the regional plan, the plan recommends that county and local public works agencies undertake more detailed planning to refine and detail the recommended urban and rural arterial street and highway cross-sections and the right-of-way requirements attendant to such sections. If, as a result of such more detailed planning, it is proposed to change the number of traffic lanes to be provided, the county or local public works agency concerned should work through the Regional Planning Commission to change the regional plan.

Desirable cross-sections for arterial streets are set forth in Figure VI-3. It should be noted that the widths shown on the arterial street and highway cross-sections for traffic lanes are desirable widths and may be reduced to a minimum width of 11 feet if necessitated by site-specific considerations.

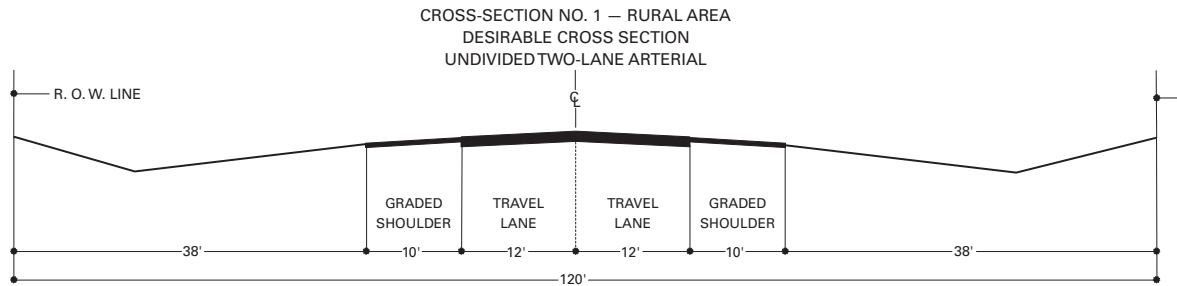
Bicycle Accommodation

The need to accommodate bicycle travel should also be considered when establishing rights-of-way and pavement widths, based on recommendations set forth in the regional bicycle plan, a local bicycle plan, or a

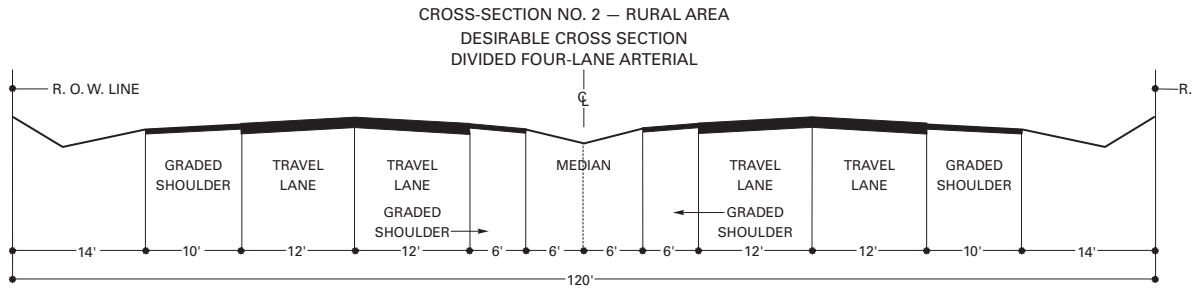
¹ *The most recent regional transportation system plan is documented in SEWRPC Planning Report No. 46, A Regional Transportation System Plan for Southeastern Wisconsin: 2020, December 1997. The regional transportation system plan is updated periodically, generally every ten years.*

Figure VI-3

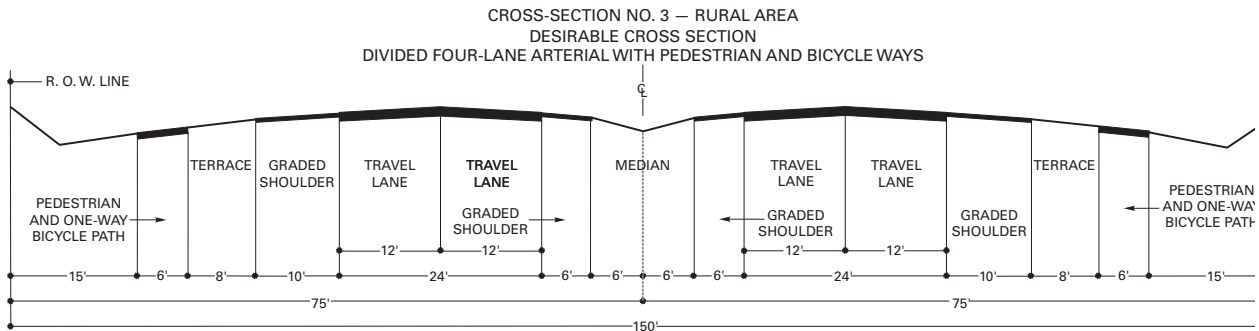
DESIRABLE RURAL AND URBAN ARTERIAL STREET AND HIGHWAY CROSS-SECTIONS



NOTE: IF BICYCLE WAYS ARE TO BE PROVIDED, A MINIMUM OF FOUR FEET OF EACH SHOULDER SHOULD BE PAVED.



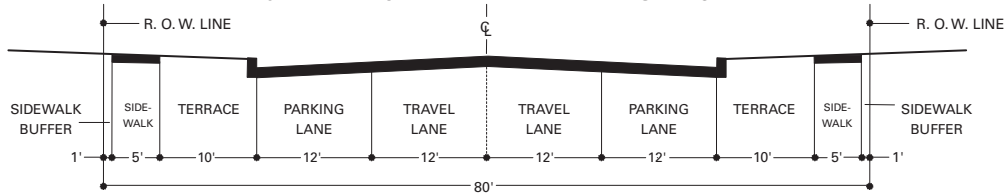
NOTE: IF BICYCLE WAYS ARE TO BE PROVIDED, A MINIMUM OF FOUR FEET OF EACH OUTSIDE SHOULDER SHOULD BE PAVED.



NOTE: AN 8-TO 12-FOOT WIDE TWO-DIRECTIONAL BICYCLE WAY ON ONE SIDE OF THE ROADWAY MAY BE PROVIDED IN PLACE OF THE TWO ONE-DIRECTIONAL PEDESTRIAN AND BICYCLE P

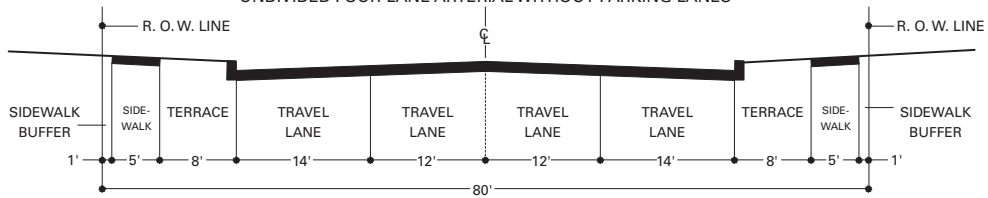
Figure VI-3 (continued)

CROSS-SECTION NO. 4 – URBAN AREA
DESIRABLE CROSS SECTION
UNDIVIDED TWO-LANE ARTERIAL WITH PARKING LANES



NOTE: ON THIS CROSS SECTION, BICYCLE TRAFFIC SHARES MOTOR VEHICLE TRAVEL LANES.

CROSS-SECTION NO. 5 – URBAN AREA
DESIRABLE CROSS SECTION
UNDIVIDED FOUR-LANE ARTERIAL WITHOUT PARKING LANES



NOTE: ON THIS CROSS SECTION, BICYCLE TRAFFIC SHARES THE OUTSIDE MOTOR VEHICLE TRAVEL LANES.

CROSS-SECTION NO. 6 – URBAN AREA
DESIRABLE CROSS SECTION
UNDIVIDED FOUR-LANE ARTERIAL WITHOUT PARKING
BUT WITH BICYCLE LANES

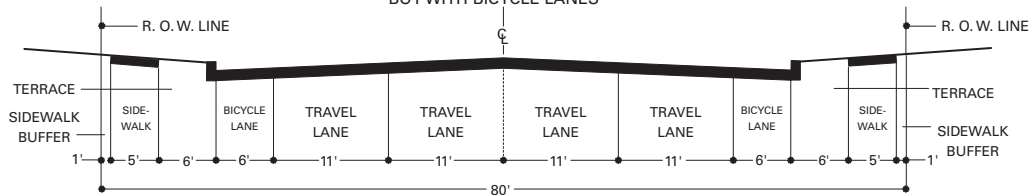
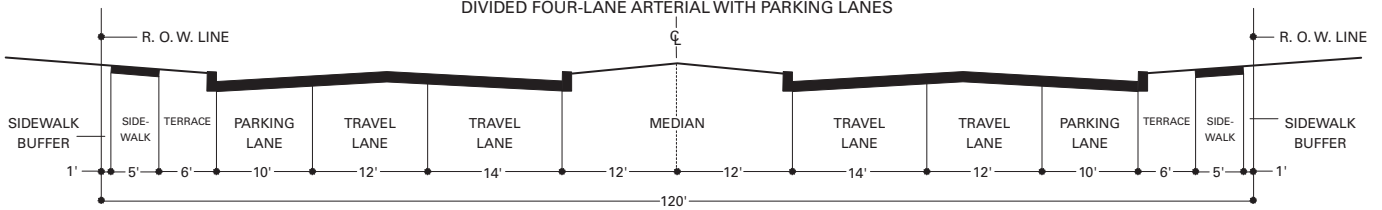


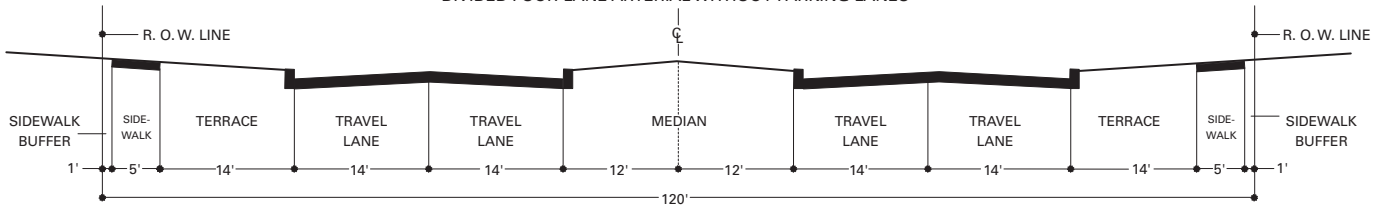
Figure VI-3 (continued)

CROSS-SECTION NO. 7 — URBAN AREA
DESIRABLE CROSS SECTION
DIVIDED FOUR-LANE ARTERIAL WITH PARKING LANES



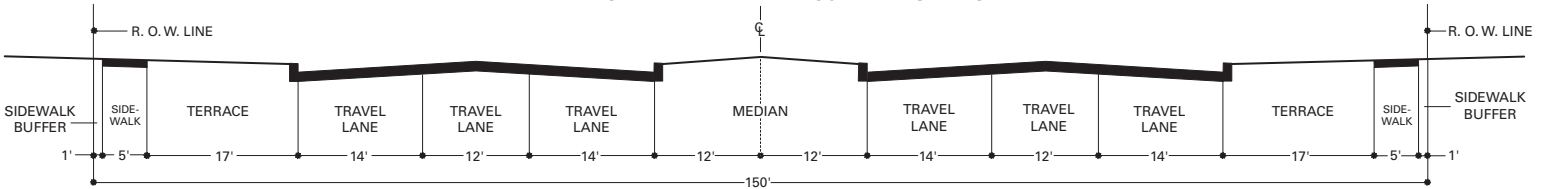
NOTE: BICYCLES AND MOTOR VEHICLES WOULD SHARE THE OUTSIDE TRAVEL LANE.

CROSS-SECTION NO. 8 — URBAN AREA
DESIRABLE CROSS SECTION
DIVIDED FOUR-LANE ARTERIAL WITHOUT PARKING LANES



NOTE: BICYCLES AND MOTOR VEHICLES WOULD SHARE THE OUTSIDE TRAVEL LANE.

CROSS-SECTION NO. 9 — URBAN AREA
DESIRABLE CROSS SECTION
DIVIDED SIX-LANE ARTERIAL WITHOUT PARKING LANES



NOTE: IF BICYCLE TRAVEL IS TO BE ACCOMMODATED, A BICYCLE AND PEDESTRIAN PATH A MINIMUM OF SIX FEET WIDE SHOULD BE PROVIDED WITHIN THE TERRACE IN LIEU OF THE SIDEWALK ON BOTH SIDES OF THE STREET.

local park plan. Collector and land access streets can generally accommodate bicycle travel without special provisions for bicycle ways due to the lower traffic speeds and volumes on such streets. Arterial streets and highways may require special provisions to accommodate bicycle travel such as bicycle paths, bicycle lanes, paved shoulders, or wider outside travel lanes to accommodate bicycle travel, as illustrated by Figure VI-3. A desirable cross-section for a bicycle path located outside a street right-of-way is shown in Figure VI-4.

Collector and Land Access Streets

The primary function of land access streets is to provide access to abutting property. Collector streets are intended to serve primarily as connections between the arterial street system and the land access streets. In addition to collecting and distributing traffic from and to the land access streets, collector streets usually perform a secondary function of providing access to abutting property. Collector and land access streets should be designed to carry only locally generated traffic, and cross-sections for such streets should be specified in the local land division ordinance. Desirable cross-sections for collector and land access streets are shown in Figure VI-4.

Collector streets should have a right-of-way width of 80 feet. In urban areas, pavement widths for collector streets may vary from 36 feet to 48 feet. The narrower pavement width is applicable in single-family residential areas with minimal truck and bus traffic—where such traffic is limited to school buses and service and delivery trucks—and limited demand for on-street parking. The 48-foot pavement width is applicable to collector streets which may be expected to carry traffic volumes of 3,000 or more vehicles per average weekday and experience significant regular demand for on-street parking. This wider pavement may also be applicable to segments of collector streets abutting elementary, middle, and high schools, parks, and retail areas where on-street parking may be regularly expected, particularly during peak traffic periods. The wider pavement width would also be applicable to those collector streets that may be expected to serve as routes for transit buses.

In urban areas, land access streets should have a pavement width ranging from 28 feet to 36 feet, and a right-of-way width of 50 feet to 60 feet. The 36-foot pavement width for a land access street is intended to be used on those land access streets which may be expected to carry traffic volumes of 1,500 or more vehicles per average weekday; which may be expected to carry more significant volumes of truck traffic than just occasional school buses and service and delivery trucks; or which may be expected to experience significant regular demand for on-street parking. The wider pavement may also be applicable to segments of land access streets adjacent to neighborhood schools, parks, or retail areas where on-street parking, particularly during peak traffic periods, may be regularly expected. This wider pavement width would also be applicable to those residential streets abutting multi-family development which may be expected to regularly experience on-street parking by residents and visitors. A minimum pavement width of 34 feet may be used in place of the more liberal 36-foot widths.

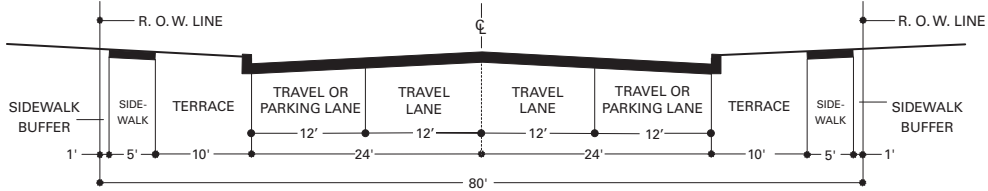
The narrowest 28-foot recommended pavement width would be applicable to streets with very low traffic volumes and little on-street parking demand, such as short cul-de-sac and loop streets within areas of single-family dwellings with attached garages and driveways, on lots of at least 10,000 square feet, and front-yard setbacks of at least 25 feet. It is important that adequate area be available on each lot for off-street parking and snow storage. No bus or truck traffic other than occasional school buses and service or delivery trucks should be expected to operate over the street. The right-of-way for such streets may be reduced to 50 feet, but such a minimum right-of-way width may present utility location problems, particularly on curved streets. The appropriateness of such a reduced right-of-way should be carefully considered by the local government concerned before such cross-sections are permitted within a proposed land division.

Within the constraints of good engineering practice, it is generally desirable to hold pavement widths to a minimum. Use of minimum pavement widths reduces capital and maintenance costs, reduces the amount and rate of stormwater runoff, and reduces nonpoint source

Figure VI-4

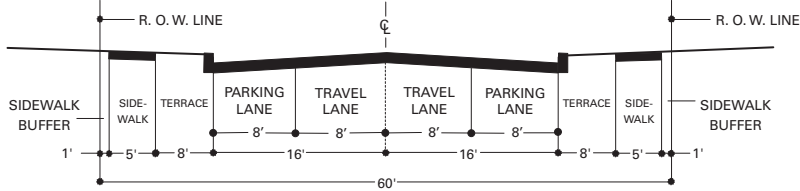
DESIRABLE CROSS-SECTIONS FOR COLLECTOR AND LAND ACCESS STREETS, ALLEYS, AND BICYCLE AND PEDESTRIAN WAYS

CROSS-SECTION NO. 1 — URBAN AREA
DESIRABLE CROSS SECTION
COLLECTOR STREET



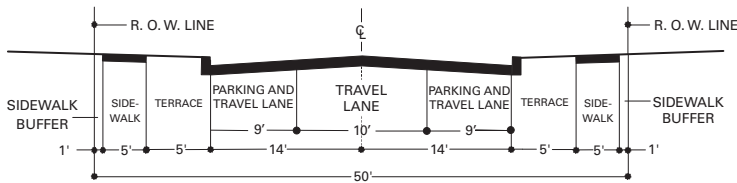
NOTE: THE PAVEMENT WIDTH OF AN URBAN CROSS SECTION COLLECTOR STREET MAY VARY FROM 36 FEET TO 48 FEET. THE NARROWER WIDTH WOULD APPLY TO COLLECTOR STREETS CARRYING AVERAGE WEEKDAY TRAFFIC VOLUMES OF UNDER 3,000 VEHICLES PER AVERAGE WEEKDAY AND MINIMAL TRUCK OR BUS TRAFFIC. THE WIDER WIDTH WOULD APPLY TO COLLECTOR STREETS CARRYING TRAFFIC VOLUMES EXCEEDING 3,000 VEHICLES PER AVERAGE WEEKDAY AND/OR CARRYING SIGNIFICANT BUS OR TRUCK TRAFFIC.

CROSS-SECTION NO. 2 — URBAN AREA
DESIRABLE CROSS SECTION
LAND ACCESS STREET

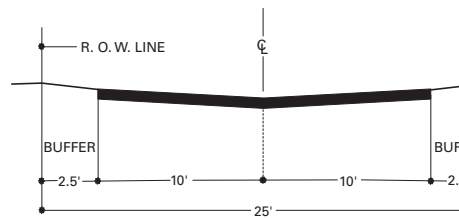


NOTE: THE PAVEMENT AND RIGHT-OF-WAY WIDTH OF AN URBAN CROSS SECTION LAND ACCESS STREET MAY VARY FROM 32 FEET TO 36 FEET OF PAVEMENT WIDTH, AND FROM 60 FEET TO 66 FEET OF RIGHT-OF-WAY WIDTH. THE NARROWER WIDTH WOULD APPLY TO LAND ACCESS STREETS CARRYING AVERAGE WEEKDAY TRAFFIC VOLUMES OF UNDER 1,500 VEHICLES PER AVERAGE WEEKDAY, WITH LITTLE TRUCK AND BUS TRAFFIC AND LIMITED DEMAND FOR ON-STREET PARKING. THE WIDER WIDTH WOULD APPLY TO LAND ACCESS STREETS WITH AVERAGE WEEKDAY TRAFFIC VOLUMES OF 1,500 OR MORE VEHICLES PER AVERAGE WEEKDAY, DEMAND FOR ON-STREET PARKING, AND SOME TRUCK TRAFFIC.

CROSS-SECTION NO. 3 — URBAN AREA
DESIRABLE CROSS SECTION
MINOR LAND ACCESS STREET



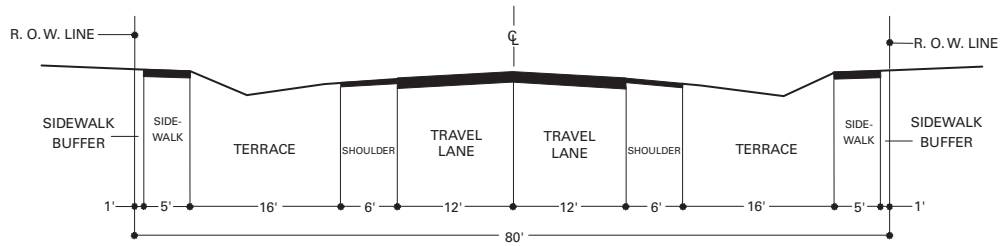
CROSS-SECTION NO. 4 — URBAN AREA
DESIRABLE CROSS SECTION
ALLEY



NOTE: SIDEWALKS MAY BE ELIMINATED, AT THE DISCRETION OF THE MUNICIPAL PLAN COMMISSION OR GOVERNING BODY, IN AREAS WHERE SUCH WALKS ARE NOT REQUIRED BECAUSE OF THE PROVISION OF A SEPARATE NETWORK OF PEDESTRIAN WAYS, LOW VEHICULAR OR PEDESTRIAN TRAFFIC VOLUMES, OR LOT ARRANGEMENT.

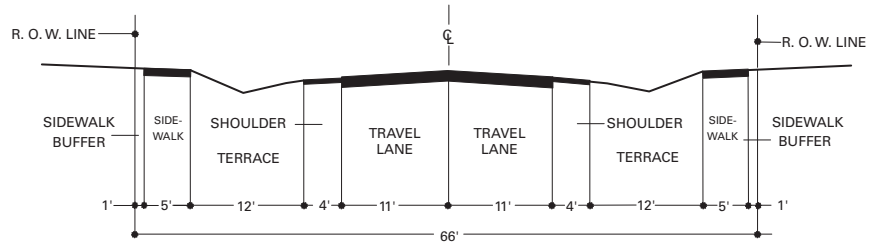
Figure VI-4 (continued)

**CROSS-SECTION NO. 5 — RURAL AREA
DESIRABLE CROSS SECTION
COLLECTOR STREET**



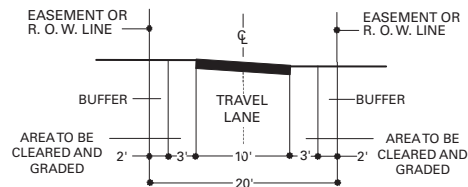
NOTE: THE CROSS-SECTION INDICATES DESIRABLE SIDEWALK LOCATIONS IF SIDEWALKS ARE REQUIRED BY THE MUNICIPAL PLAN COMMISSION OR GOVERNING BODY.

**CROSS-SECTION NO. 6 — RURAL AREA
DESIRABLE CROSS SECTION
LAND ACCESS STREET**



NOTE: THE CROSS-SECTION INDICATES DESIRABLE SIDEWALK LOCATIONS IF SIDEWALKS ARE REQUIRED BY THE MUNICIPAL PLAN COMMISSION OR GOVERNING BODY.

**CROSS-SECTION NO. 7
TWO-WAY BICYCLE AND PEDESTRIAN PATH
OUTSIDE STREET RIGHT-OF-WAY**



NOTE: PAINTED CENTERLINES ARE NOT NORMALLY REQUIRED ON BICYCLE PATH. WHERE CONDITIONS SUCH AS LIMITED SIGHT DISTANCE MAKE IT DESIRABLE TO SEPARATE TWO DIRECTIONS OF TRAVEL, A SOLID YELLOW LINE SHOULD BE USED TO INDICATE NO TRAVELING TO THE LEFT OF THE CENTERLINE

Table VI-1

STATE OF WISCONSIN STANDARDS FOR TOWN ROADS

Traffic Volume	Minimum Right-of-Way	Minimum Roadway Width
Less than 100 ADT ^a	49.5 feet	18-foot pavement with three-foot shoulders Variable width for roadside swales ^b
100 to 250 ADT ^a	66.0 feet	20-foot pavement with three-foot shoulders Variable width for roadside swales ^b
251 to 400 ADT ^a	66.0 feet	22-foot pavement with five-foot shoulders Variable width for roadside swales ^b
401 to 1,000 ADT ^a	66.0 feet	22-foot pavement with six-foot shoulders Variable width for roadside swales ^b
1,001 to 2,400 ADT ^a	66.0 feet	24-foot pavement with 10-foot shoulders Variable width for roadside swales ^b
Over 2,400 ADT	State Trunk Highway Standards	

^aADT refers to average daily (24-hour) motor vehicle traffic. A typical single-family detached dwelling may be expected to generate about 10 vehicle trips during a 24-hour weekday.

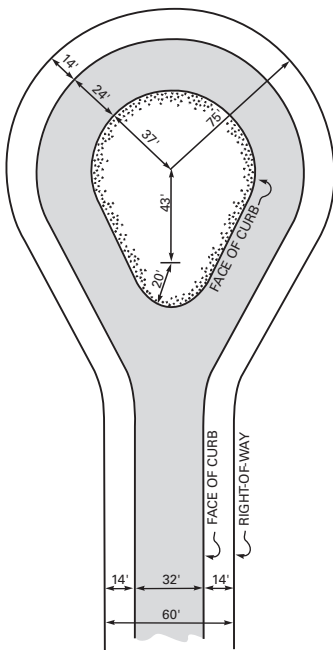
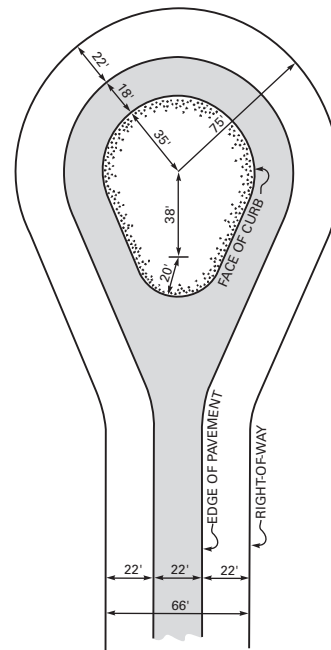
^bThe width of roadside swales may vary based upon a number of considerations, including topography, existing vegetation, street trees, the accommodation of pedestrian and bicycle ways, and the peak rate of stormwater discharge to be accommodated.

Source: Wisconsin Statutes and Wisconsin Department of Transportation Facilities Development Manual.

water pollution. Collector and land access street right-of-way and pavement widths should be determined on the basis of careful consideration of the street pattern and abutting development. A detailed neighborhood unit development plan provides the best source of information required to identify specific traffic and parking conditions related to each proposed land access and collector street, and permits attendant desirable right-of-way and pavement widths to be properly selected.

The collector and land access street cross-sections described above are applicable in urban areas. Cross-sections No. 5 and No. 6 in Figure VI-4 illustrate desirable cross-sections for collector and land access streets, respectively, in rural areas. The cross-sections illustrated are consistent with the minimum right-of-way and roadway requirements for new town roads specified by the *Wisconsin Statutes* and the Department of Transportation, as summarized on Table VI-1. Local ordinances

Figure VI-5

DESIRABLE CUL-DE-SAC TURNABOUT DESIGNTURNABOUT DETAIL FOR CUL-DE-SAC
WITH URBAN CROSS-SECTIONTURNABOUT DETAIL FOR CUL-DE-SAC
WITH RURAL CROSS-SECTION

Although cul-de-sac turnabouts can be constructed without center islands, the provision of such islands greatly enhances the appearance of the cul-de-sacs, and lends value to the lots fronting on the turnabout. The dimensions shown permit the ready use of the turnabout by fire engines and solid waste collection trucks, and facilitate snow plowing. In such plowing, the snow should be cast inward towards the landscaped island, thus avoiding the creation of "windrows" of snow along the lot frontages and in front of driveways.

may specify wider roadway and right-of-way widths than the minimums set forth in Table VI-1.

Particular attention should be given to the improvement of cul-de-sac streets. Desirable layouts for cul-de-sac streets are shown in Figure VI-5. A landscaped island in the center of the cul-de-sac turnabout enhances the appearance of the cul-de-sac, as illustrated in Figure VI-6. Maintenance responsibilities for the center island should be specified in the local land division

ordinance. Landscaping within the center island may include new plantings or may involve preservation of existing vegetation, including mature trees, and should be installed in accordance with a landscaping plan approved by the local government concerned.

Terraces

In urban areas, terraces should be provided between the curb and the inside edge of the sidewalk, as

Figure VI-6

COMPARISON OF FULLY PAVED AND LANDSCAPED CUL-DE-SAC TURNABOUTS



These two photographs illustrate the effect provided by the use of a landscaped island in a cul-de-sac turnabout as opposed to the use of a simply paved turnabout. The landscaped island is clearly the more visually appealing of the two.

shown by Figure VI-7. Such terraces provide separation between vehicular and pedestrian traffic and thereby a more pleasant environment for pedestrian traffic. Such terraces also provide an area for the location of street sign posts, street lights, utility poles, fire hydrants, buried utility lines and mains, and mailboxes; for street trees and other landscaping; for driveway aprons; and for snow storage. Terraces that are to contain trees should be at least six feet wide, and desirably eight feet or wider, to allow sufficient space for the tree root system and to minimize damage by tree growth to adjacent pavements, especially sidewalks.

Street Lamps

Generally, street lamps should be required at each street intersection and at such interior block spacing as may be required by the municipal engineer. Developers should be given the option of installing street lamps designed to complement the neighborhood or type of development proposed or to help establish the character of the land division, as an alternative to standard

utilitarian street lights, subject to the approval of the municipality concerned. The municipality may also allow the developer to require by covenant the installation of private post lighting in the front yard of each residence, in lieu of or to complement public street lamps. This is both an attractive and effective way of privatizing street lighting. Examples of decorative public street lamps, including a higher-intensity lamp; a more conventional type of public street lamp; and a private post light alternative, are shown in Figure VI-8. Care should be taken to avoid overly intensive lighting, and fixtures should be selected that direct light downward onto pavement and walk surfaces, reducing glare, and avoiding what has been termed “light pollution.”

Street Name Signs

Street name signs should be installed at all street intersections. Such signs should meet municipal design specifications and should be uniform along arterial streets and highways and, generally, throughout a municipality. The municipality may permit use of variations in street signage on the interior streets of land divisions

Figure VI-7

STREET TERRACES



The photograph on the left illustrates the use of a terrace, or curb lawn, with street trees within an urban street cross-section. The photograph on the right illustrates the use of a terrace and walkway within a rural street cross-section.

to lend character to a development, provided such signs are clearly legible as well as attractive. A municipality may also require the use of a special street sign design approved for use throughout the municipality, as shown in Figure VI-9. Care should be given to the selection of street names and to the assignment of street addresses within land divisions. Desirably, local municipalities

should have adopted street naming and address numbering plans to guide such selection and assignment.

Street Trees

Generally, the planting of trees along new land division streets should be required at a minimum average spacing

Figure VI-8

STREET LAMPS



Lighting fixtures, like types of curb and gutter, are improvement details that contribute to achieving an integrated appearance; expressing the intended character of a subdivision. The photograph at the upper left illustrates the use of decorative public light fixtures within a public street right-of-way. The photograph at the upper right illustrates the use of private post lighting within a subdivision in lieu of public street lamps. The use of private post lights is growing, owing to both the character that such lights can lend to a development and to the, in effect, "privatization" of street lighting that such use provides. An example of a conventional high-intensity public street lamp is illustrated in the lower left photograph, while the photograph on the lower right illustrates the use of more decorative high-intensity lamps within the street median, combined with decorative post lamps within the terraces.

Figure VI-9

STREET NAME SIGNS

Street name signs should be installed at all street intersections. Such signs should meet municipal design specifications and should generally be uniform throughout a municipality. Several local governments in the Southeastern Wisconsin Region have designed special street name signs to be used throughout the municipality. Municipal signs often include a logo or other design that identifies and distinguishes the municipality, such as the unique shape of the street name sign, shown in the photo on the left, used by the Village of Fox Point. In areas where the municipality has not adopted its own street sign design, a local government may allow the use of variations in street signage on the interior streets of land divisions. Care should be taken to ensure that such signs are both attractive and clearly legible. The photo on the right illustrates a well-designed subdivision street sign installed within an attractive post and bracket, which helps to establish the character and identify of the subdivision.

of one tree per 50 feet of street frontage. Municipalities may require such trees to be planted at regular intervals or allow the trees to be grouped in irregular or informal patterns, in accordance with a landscaping plan submitted by the developer. Street trees should be planted between the curb and sidewalk along streets having an urban cross-section and between the drainage swale and the outside edge of the right-of-way for streets having a rural cross-section. Requirements for street tree spacing may be waived on the basis of an approved landscaping plan that provides substantial alternative landscaping, including trees. Care should be used to ensure that trees and other landscape materials do not interfere with the location and maintenance of public and private utility lines.

LANDSCAPING

Landscaping within a land division enhances the overall attractiveness of the land division and the community as a whole, as illustrated by Figure VI-10. Landscaping should be provided within or adjacent to easements used to control access to arterial and collector streets, along the rear of double frontage lots along arterial streets to provide screening between residences and the arterial street, and within street medians and islands of cul-de-sac turnabouts. Landscaping should also be required at entrances to land divisions and within common open space areas. Landscaping should be considered an important element of required improvements. The provision of trees and other plant

Figure VI-10

SUBDIVISION LANDSCAPING



These two photographs illustrate how the use of landscaping, including fences, at the entrances to or within a subdivision, can contribute to the character of the subdivision. The preparation and implementation of a good landscaping plan can do much to assure an attractive and stable development.

materials by the developer, in accordance with a landscaping plan approved by the local government, should be required by the local land division ordinance. The landscaping plan should provide for the maintenance of vision clearance areas at street intersections. Requirements regarding the quantity, spacing, maintenance, environmental management, and type of plant materials should be set forth in the land division ordinance. The use of land division entrance signs and attendant landscaping has become common. Care should be taken that such signs are made attractive, are not located in public rights-of-way, and that arrangements for proper maintenance are provided.

GRADING

A land division ordinance should require that plans for the rough and finish grading of a land division be submitted by the developer for approval by the municipal engineer. Such grading plans should provide for a proper relationship of the elevation of finished building pads to street grades and environmental

features, thereby creating a good architectural setting for finished buildings. Grading plans must also carefully consider such details as desirable driveway grades and good drainage of each building site. Great care must be taken in the preparation of grading plans to assure adequate overland flow paths where such paths are required as an integral part of the major stormwater management system. Such paths must provide effective routes to receiving watercourses and have adequate capacity to carry peak rates of discharge without flooding adjacent buildings. Every effort should be made to minimize grading in site preparation and to preserve existing desirable trees, which can lend value to the finished lots and greatly enhance the appearance of the land division. Grading of, and the operation of heavy construction equipment across, areas to be used for onsite sewage treatment and disposal should be avoided. Certification by a registered land surveyor of conformance of the finished grading to an approved grading plan may be required by the local government prior to the issuance of any building permits.

STORMWATER MANAGEMENT

Stormwater management facilities should be adequate to serve a proposed land division. Such facilities may include curbs and gutters, catch basins and inlets, storm sewers, culverts, stormwater storage facilities for both quantity and quality control, roadside swales or ditches, overland flow paths, other open channels, and infiltration facilities. As shown in Figure VI-11, drainageways may be vegetated, or may use other materials to line the bed of the channel. Drainage facilities should be of adequate size and grade to accommodate runoff from the specified design rainfall event and should be configured so as to prevent and control soil erosion and sedimentation. The undesirable effects of such erosion are illustrated in Figure VI-12. Ideally, stormwater management facilities within a land division should be part of an integrated system of stormwater management and flood control facilities for the entire watershed within which the land division is located. Stormwater management facilities within a land division must comply with the requirements of any adopted county or municipal stormwater management system plans and stormwater management ordinances.

Drainage Considerations

Some communities have adopted a policy of employing rural cross-sections for street improvements in what are really urban areas, as shown by Figure VI-13. Such rural cross-sections employ roadside ditches for drainage as opposed to curb and gutter and storm sewers. Although such rural cross-sections generally have a lower initial cost than typical urban sections, the rural cross-sections typically are significantly more costly in the long term and are, in many respects, less satisfactory than an urban cross-section. The use of rural cross-sections may be justified, however, in residential areas which have a relatively low density of population and which desire to maintain a rural appearance for aesthetic reasons, as shown in Figure VI-14. When so employed, the use of rural cross-sections presents design problems which are not encountered in the use of the urban cross-section and which require careful engineering for proper resolution. These problems relate to the establishment of street grades and the design of attendant drainageways

and structures. Since the use of a rural cross-section usually dictates that all stormwater must be carried and disposed of by means of surface drainage channels, the proper establishment of street grades becomes more critical than when storm sewers are available, and it is absolutely essential that the street grades be established in accordance with an overall plan encompassing the entire drainage area involved. The necessary areawide street grade study is best accomplished on the basis of a detailed neighborhood unit development plan or platting layout, which shows all planned streets in the drainage area, together with topographic contour lines having a vertical interval of no more than two feet.

Failure to carefully consider drainage in the land division design and improvement may result in costly property damages when major rainfall events occur. Runoff may accumulate in low spots in the street system and in the center of blocks, may flow across low-lying lots and blocks, and sometimes into and through buildings. Developers should be required by the land division ordinance to provide the municipal engineer with a thorough analysis of how both the minor and major stormwater drainage facilities are expected to function during major rainfall events.

Stormwater Storage and Infiltration Facility Considerations

Stormwater storage facilities may be designed as “dry ponds,” “wet ponds,” or infiltration basins. Dry ponds temporarily store and later release stormwater runoff, draining dry between rainfall events in order to reduce peak rates of runoff. Wet ponds, while functioning like dry ponds to control the rate of stormwater runoff, maintain a permanent pool to also provide water quality control. Infiltration basins, which store runoff for infiltration and evaporation, may be designed to provide for no release of runoff, except under excessive rainfall events; and, like wet ponds, provide both water quality and quantity control. The application of any of these types of facilities requires careful systems and project development engineering and sound long-term arrangements for proper maintenance.

Figure VI-11

PAVED AND UNPAVED DRAINAGEWAY CHANNELS



The use of natural materials to line drainageways, such as the rocks and vegetation shown in the photograph on the left, slows and filters runoff. Paved inverts, such as shown in the photograph on the right, may sometimes be required to provide needed capacity and control erosion. Paved linings are intended to be used as necessary in conjunction with constructed drainageways and not in conjunction with natural streams, where the preservation of biota is an important consideration.

Figure VI-12

BANK EROSION AND SEDIMENTATION



Unightly and costly erosion and sedimentation may result from improperly designed and improved drainageways. The effects of such erosion and sedimentation will contribute to the pollution of receiving natural streams and to the destruction of desirable biota in such streams.

Figure VI-13

ROADSIDE DRAINAGE DITCHES IN URBAN AREAS



These two photographs illustrate the use of roadside drainage ditches in urban areas. In urban areas developed at relatively high densities, the maintenance of such ditches will be more costly over time than the maintenance of curb and gutter drainage facilities.

Figure VI-14

RURAL STREET CROSS-SECTION



If development densities are sufficiently low, rural street cross-sections can be appropriately used. Great care must be taken, however, in the design of street patterns and in the setting of street grades to assure that good drainage is provided while ensuring traffic safety and containing maintenance costs.

Figure VI-15

STORMWATER STORAGE FACILITIES



This figure shows both “wet” and “dry” stormwater storage facilities. Dry ponds temporarily store and later release stormwater runoff, draining dry between rainfall events, in order to reduce downstream peak rates of runoff. Wet ponds, while functioning like dry ponds to control the rate of stormwater runoff, maintain a permanent pool to also provide water quality control. Dry storage ponds may be used for recreational purposes, such as informal playfields during dry weather. Stormwater storage facilities require careful engineering and legal and physical arrangements for sound long-term maintenance.

Where stormwater storage or infiltration facilities are required for control of the rate and quality of stormwater runoff, the construction plans and specifications should be subject to review and approval by the municipal engineer. The general shape of required storage or infiltration ponds should blend into the surrounding topography, as shown by Figure VI-15. Care should be taken to provide an adequate safety shelf around the perimeter of storage and infiltration ponds.

Although landowners and developers may be required to bear the capital and maintenance costs attendant to stormwater storage and infiltration facilities, it should be recognized that such facilities may present future problems with respect to water quality and water level conditions and may create public safety and health hazards. Serious problems may be created if the landowners do not properly maintain the facilities. Accordingly, legal and physical provisions should be made for maintenance by the municipality, permitting

the assessment of the costs entailed to the landowners concerned.

PUBLIC AND PRIVATE UTILITIES

The location and installation of private utilities in a new land division is normally the responsibility of the private utility companies concerned. Gas mains can normally be accommodated in public street rights-of-way. Electric power and communication cables are usually accommodated in easements across rear and side lot lines. For aesthetic reasons, the underground placement of electric power and communication cables should normally be required.

Sanitary sewers, water distribution mains, and storm sewers can also normally be accommodated within public street rights-of-way. These utilities should, however, be carefully sized in accordance with municipal sanitary sewerage, water supply, and stormwater

drainage system plans. In some cases, developers may be required to install oversized sanitary sewers, water mains, or storm sewers in order to assure implementation of the system plans. The developer should be fairly reimbursed for the excess costs associated with oversized facilities not required to serve the land division concerned.

Land division improvement costs will vary widely, not only with required standards, but also with location, site characteristics, and the quality of the land division design itself. While high quality improvement standards are generally desirable, requiring over-improvement may do as much to impede good development as under-improvement. As already noted in this respect, it is manifestly unfair to require developers to install oversized utility lines for the benefit of areas that may develop beyond the limits of a proposed land division without assessing the excess costs of such oversized utilities to the benefited area or to the community at large.

Construction plans and profiles for required sanitary sewers, water mains, and storm sewers may be prepared by municipal engineering staffs, by consulting engineering firms employed by the municipality, or by consulting engineering firms employed by the developer. In any case, the improvement plans and profiles should be prepared to good municipal engineering standards. Careful attention should be given to such details as, for sewer systems, manhole spacings and locations, manhole rim and inlet grate elevations, and depths to sewer crowns and inverts. For water supply systems, careful attention should be given to such details as the number and location of valves and hydrants, the avoidance of dead end mains that may result in future water quality and maintenance problems, and to the location of any needed air release valves.

IMPROVEMENT GUARANTEES

Improvement guarantees ensure that required land division improvements, such as survey monuments, grading, street pavements, sanitary sewers, water mains,

and storm sewers, are properly constructed and maintained. Municipalities in Wisconsin have the authority to require the installation of improvements before final plat approval. This procedure is, however, costly to the developer because it precludes the sale of any lots until all improvements are constructed, inspected, and accepted by the municipality.

In lieu of requiring the installation of improvements before final plat approval, the municipality may require the posting of an irrevocable letter of credit. The amount of the letter of credit must be adequate to allow the municipality to design and install the required improvements if the developer defaults. An alternative to the use of a letter of credit is the use of a performance bond. The letter of credit is issued by an independent financial institution and the municipality concerned is made the beneficiary of the credit. The municipality is entitled to collect on the credit prior to pursuing any claims against a developer who may default on the installation of required improvements. The issuer is obligated to make payment whenever the beneficiary presents the letter of credit and any related documents required by the letter. In many cases, the accompanying documents may consist solely of an affidavit by the municipality stating that the developer is in default.

Balanced and reasonable improvement guarantees should have dollar amounts that do not exceed 120 percent of the estimated cost of the improvements. The guarantees should be released promptly once the improvements are completed, inspected, and accepted by the municipality.

SUMMARY

The creation and maintenance of attractive and stable urban areas and rural communities require that good land division design be accompanied by proper installation of adequate utility and street improvements. Requiring such improvements at the time of land division development benefits the future residents of the land division. It also has a direct bearing on the cost of needed improvements and on the public infrastructure operation and maintenance costs that will be incurred by the community in perpetuity.

Improvement standards should vary with the type of development. All improvements should be designed and installed in accordance with good municipal engineering standards, and subject to the approval of the municipal engineer.

Street improvements should be carefully related to the functions that each street in a land division is intended to perform. The creation of a desired appearance in the finished land division requires careful attention to the details of the street improvements, including the type of curb and gutter, the type of street lighting fixtures, the design of street name signs, the type and spacing of street trees, and the planting of medians, cul-de-sac turn-about islands, and other open spaces. Careful attention

should also be paid to the rough and finished grading of the land division.

Sanitary sewers, water distribution mains, and storm sewers should be carefully sized in accordance with municipal utility system plans. In some cases, developers may be required to install oversized utilities in order to ensure implementation of the system plans.

Improvement guarantees should be required to ensure that required land division improvements are properly constructed. In lieu of requiring the installation of improvements before final plat approval, the municipality may require the posting of a letter of credit or submission of a performance bond.

Chapter VII

ABOUT THE MODEL ORDINANCE

INTRODUCTION

Included in this Guide, as Appendix B, is a suggested Model Land Division Control Ordinance. The purpose of this model ordinance is to assist county and local units of government within Southeastern Wisconsin in preparing or modifying their own land division control ordinances. It is not intended to promote the use of a standard land division control ordinance within the Southeastern Wisconsin Region.

Southeastern Wisconsin is a large and diverse region. There are major differences throughout the Region in the type and character of existing residential, commercial, and industrial land development; in topography and soil capability; in the type and level of public services and facilities; in community traditions; and in citizen desires. Such diversity enriches the Region. Standardization of development, therefore, is not desirable even if it were attainable. The intent of the model ordinance is to help local communities strengthen desirable differences, while setting forth basic development standards and procedures that can help to bring about the best possible development and achieve the best possible environments for both rural and urban life within the Region.

There are, however, certain aspects of land division that can and should be uniform throughout the Region; and that should, therefore, be incorporated into all county and local land division regulations within the Region. It is highly desirable that procedures for the administration and enforcement of land division control regulations be standardized. The resulting uniformity becomes increasingly important as land subdividers extend their operations throughout the Region. Variations in design standards and improvement specifications, although often justified, may be confusing enough to subdividers,

without further complicating the development process by utilizing totally dissimilar definitions, administrative processes, and approval procedures.

It is, therefore, recommended that the county and local units of government within the Region use the model ordinance as a guide for organizing local ordinances, for common definitions, and for providing uniform plat review and approval procedures and uniform plat preparation specifications. Specific regulations concerning design and improvement standards should reflect local preferences and be left to careful formulation by each county and local government. This is the context in which it is suggested the model ordinance and the following commentary on that ordinance be considered.

STATUTORY FRAMEWORK

As described in Chapter III of this Guide, Chapter 236 of the *Wisconsin Statutes (Statutes)* sets forth requirements for plat review and approval, surveying and monumentation, data to be shown on plats and certified survey maps, and recording of plats and maps. The *Statutes* require the preparation of a final plat for all subdivisions, as that term is defined in Chapter 236, and also specifies the review and approval procedure to be used for such plats. Although preliminary plats are not required by the *Statutes*, a review and approval process for preliminary plats is set forth in Chapter 236 and must be followed by those county and local governments that choose to require such plats by local ordinance. Chapter 236 also sets forth requirements for the review and approval of certified survey maps, which apply to land divisions that create four or fewer parcels. The procedures set forth in the model ordinance are, of course, consistent with the requirements of Chapter 236 of the *Statutes*.

ORGANIZATION OF THE MODEL ORDINANCE

A model land division control ordinance is provided in Appendix B. General provisions, submittal requirements, and review and approval procedures for subdivision plats and certified survey maps are presented in Sections 1.00 through 6.00 of the model ordinance. Section 7.00 presents design standards for lots, blocks, streets, pedestrian and bicycle ways, protection of natural resources, and requirements for the dedication or reservation of public sites. Section 8.00 presents requirements for improvements, including roadways, sidewalks, street trees, and lamps; sewer, water, and stormwater management facilities; and landscaping and erosion control facilities. The design and improvement standards presented in Sections 7.00 and 8.00 should be carefully considered by county and local municipal officials and staff, and incorporated directly into local land division control ordinances, where appropriate, or modified to reflect local standards and conditions. Section 9.00 presents construction standards, which primarily refer to the standard specifications adopted by a municipality and the judgement of the municipal engineer to ensure high-quality improvements. Section 10.00 sets forth fees for the various components of the land division and development process, which should also be revised as needed to reflect local practices. Section 11.00 includes definitions of terms used in the ordinance, and Section 12.00 provides for the adoption of the ordinance.

PLAT REVIEW AND APPROVAL PROCEDURES

The procedure for dividing land in a city, village, town, or county within the Region, as set forth in the model ordinance, should entail three basic steps. These three steps will provide for a smooth and expeditious development process that will be satisfactory to both the municipality and the subdivider, and will avoid poorly planned and executed land development. Following these three basic steps, which should be built on a foundation of good development standards, will help to ensure the evolution over time of an efficient, healthful, and attractive community.

The first step, which is discretionary, should consist of a pre-application meeting of the subdivider with the plan commission and/or its staff to discuss in a preliminary manner the proposed land division. The second step should consist of the submission of a preliminary plat to the plan commission for review and recommendation to the governing body for approval, approval with conditions, or rejection. The third step should consist of the submission of a final plat to the plan commission and governing body concerned for review and approval or rejection. Local review and approval procedures for preliminary and final plats must comply with the requirements set forth in the *Statutes*. The pre-application procedure is not governed by the *Statutes*.

Under the model ordinance, the local plan commission has primary authority for the review of proposed land divisions and the application of the design standards set forth in the ordinance. Local plan commissions are, however, advisory agencies and must forward commission recommendations regarding the land division to the governing body for action. In this respect, it should be noted that although Chapter 236 of the *Statutes* permits a city, village, or town to delegate the authority to approve or reject preliminary plats, final plats, and certified survey maps to a planning committee or plan commission, final plats or certified survey maps involving the dedication of streets or other public lands must be approved by the governing body. Furthermore, the *Statutes* provide that a final plat is entitled to approval if it conforms substantially to the approved preliminary plat, including any conditions of approval, and is submitted within 24 months of the date of the last approval of the preliminary plat. In effect, the subdivider is entitled to have a final plat approved if it is in substantial conformance with a previously approved preliminary plat. Because virtually all land divisions will involve dedication of land to the public and will therefore require approval of the final plat by the governing body, it is recommended that the governing body take final action on both preliminary and final plats in all cases.

Section 236.02(12) of the *Statutes* defines a subdivision as “a division of a lot, parcel or tract of land by the owner thereof or the owner’s agent for the purpose of

sale or of building development, where the act of division creates five or more parcels or building sites of 1.5 acres each or less in area; or five or more parcels or building sites of 1.5 acres each or less in area are created by successive divisions within a period of five years.” The model ordinance defines a subdivision as the “division of a lot, parcel, or tract of land by the owner thereof or the owner’s agent for the purpose of sale or of building development, including condominium development, where the act of division creates five or more parcels or building sites, inclusive of the original remnant parcel, any one of which is five acres or less in area, by a division or by successive divisions of any part of the original property within a period of five years; or the act of division creates six or more parcels or building sites, inclusive of the original remnant parcel, of any size by successive divisions of any part of the original property within a period of five years.” The definition used in the model ordinance differs from the statutory definition in four respects: it regulates a land division where any one of the parcels created is less than five acres; it uses a maximum parcel size of five acres rather than 1.5 acres; it specifically regulates condominium development under the subdivision regulations; and it includes any division of land resulting in the creation of six or more parcels or building sites of any size within a period of five years.

It should be noted that the appended model ordinance recommends that the city, village, or town engineer concerned be delegated the responsibility of making certain professional judgments and decisions concerning the design and funding of required improvements. It should be further noted that some communities within Southeastern Wisconsin do not employ, on either a full-time or a part-time consulting basis, a municipal engineer appointed as an officer of the municipality and authorized to exercise certain powers, duties, and functions as prescribed in the *Statutes* and in local ordinances. It is recommended that every municipality employ a registered professional engineer on staff or on a consulting basis as the municipal engineer. The municipal engineer should be duly appointed by the governing body and authorized to exercise the powers, duties, and functions of that office.

Step 1 - Pre-Application Conference

The land division development process should be initiated by the subdivider contacting the local plan commission to discuss the proposed land division plat informally with the commission and its staff. The subdivider may prepare a conceptual or “sketch” plan to illustrate proposed street and lot layouts, open space areas, and other development concepts. This meeting allows the plan commission an opportunity to advise the subdivider as to the platting procedures to be followed and the regulations governing the platting of land in the municipality concerned. It also affords the plan commission an opportunity to provide the subdivider with pertinent information concerning the adopted comprehensive plan for the community as that plan and its various elements, including, importantly, utility services elements that may affect the land proposed to be developed. The plan commission or its staff may also furnish the subdivider with a checklist of requirements relating to the format and content of the preliminary and final plats to help the subdivider’s surveyor in the preparation of the plats and to guide the subdivider through the platting procedure. This step should be, in all respects, an informal one and is intended to save both the subdivider and local government much time in moving through the subsequent steps in the land development process.

Step 2 - Submission of A Preliminary Plat

The submission of a preliminary plat for approval is the first formal step toward land division. In many respects, it is also the most important step because it offers the plan commission an opportunity to review proposed private developments and to achieve conformance of such developments with the adopted comprehensive plan of the community and the neighborhood unit development element of such a plan. For the subdivider, it offers the opportunity to obtain general acceptance of the proposed land division by the affected governmental agencies before large expenditures of time and money are made.

The preliminary plat should include all of the contiguous lands owned or controlled by the subdivider

even though only a small part of such lands are intended to be immediately subdivided and developed. This is necessary in order to develop a picture of the entire area as it will be eventually developed and to thereby ensure that any single development, no matter how small, will properly form an integral part of the whole. The plat must show on its face all of the information pertinent to the proper review of the proposed development as specified in the local land division control ordinance. A sample preliminary plat is shown on Map VII-1. The preliminary plat is for a portion of the area included within the neighborhood unit development plan shown on Map V-1 in Chapter V. Under the model ordinance, a site analysis must accompany a preliminary plat if the area within the plat is not included within a neighborhood unit development plan.

An application for approval should accompany the preliminary plat. Platting fees based upon the number of lots in the proposed plat, or upon the acreage of the proposed plat, may be required by the municipality concerned at this time in order to help defray the cost of review.

Upon submission of the preliminary plat, copies should be distributed by the local government concerned to other approving agencies, if the plat is located in an unincorporated area; to the objecting agencies; and to other concerned local officials, agencies, and organizations (see Section 3.02 of the model ordinance) for review and comment. As an alternative to the municipal clerk distributing plats to the objecting agencies, the subdivider may file the original plat with the Wisconsin Department of Administration, who is then responsible for transmitting copies of the plat to all objecting agencies.

After a reasonable length of time, sufficient to allow the reviewing agencies the required 20 days to provide comments and for the local government planning and engineering staffs to complete their review, a public hearing may be held before the local plan commission. Based upon the recommendations of the reviewing agencies; the relationship of the proposed plat to the community's comprehensive plan, including the neighborhood unit development element of such a plan; and

upon other local considerations; the plan commission determines whether it should recommend to the governing body that the preliminary plat be approved; be approved conditionally; or be rejected. The plan commission then forwards its recommendation to the governing body, which must act on the plat within 90 days of plat submission. If the plat is rejected, the subdivider may resubmit a revised preliminary plat for approval at a later date. If the preliminary plat is approved, or approved conditionally, the subdivider may proceed to prepare and submit for approval a final plat.

Step 3 - Submission of A Final Plat

A sample final plat is provided on Map VII-2. The area included within the final plat is for a part of the area included within the preliminary plat. In the submission of a final plat, the subdivider must, under the suggested model ordinance, follow one of two alternative procedures regarding the installation of improvements. Each of these alternatives is intended to achieve a high standard of development and a low initial cost to the local government concerned.

Under the first alternative, the subdivider elects to install the required improvements in accordance with the approved preliminary plat and to municipal specifications. The subdivider then submits the final plat along with accompanying documents, fees, and evidence of approval of the installed improvements by the affected governmental agencies to the clerk of the local municipality. This alternative presents some risks to both the developer and the municipality concerned. These risks relate to potential changes in factors affecting the timing of the development and the layout of the plat, and in market conditions, during the time between preliminary and final plat approval. Moreover, the survey control which is, in effect, provided by the final plat is required if street and utility improvements are to be properly constructed in the precise intended locations. Such precision, important to the creation of automated public works management and parcel-based land information systems, cannot be achieved if improvements are permitted to be installed on the basis of a preliminary plat.

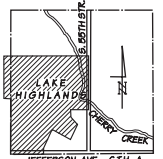
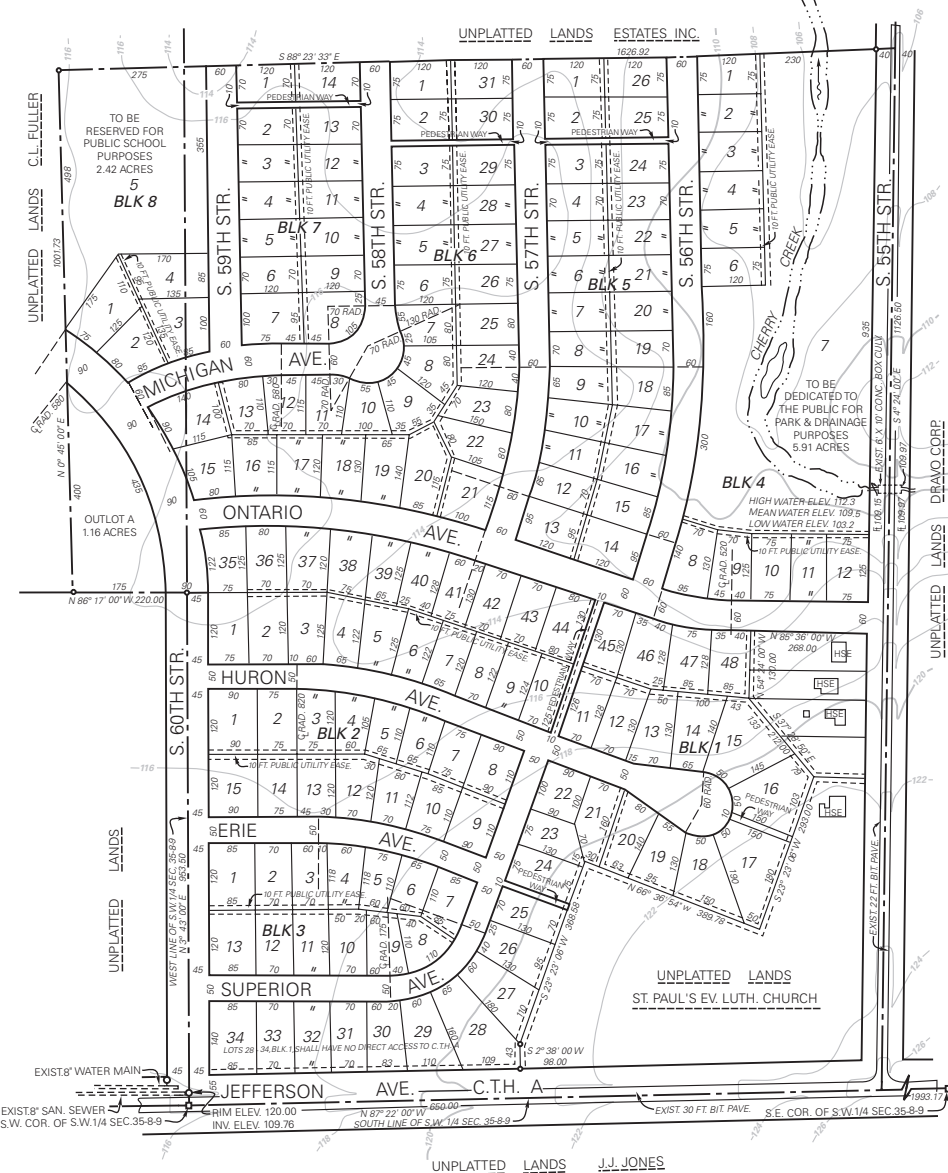
Map VII-1

PRELIMINARY PLAT OF LAKE HIGHLANDS BEING A PART OF THE SE 1/4 SECTION 34 AND SW 1/4 SECTION 35, T8N, R9E CITY OF LAKE LAKE COUNTY, WISCONSIN

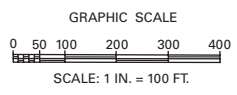
HIGHLANDS DEV. CO. OWNER AND SUBDIVIDER P.O. BOX 1103 LAKE, WISCONSIN

JOHN W. DOE, LAND SURVEYOR P.O. BOX 1607 LAKE, WISCONSIN

NOVEMBER 15, 1999



LOCATION MAP S.W. 1/4 SEC. 35, T8N, R9E SCALE 1 IN. = 1000 FT.



GENERAL NOTES AND LEGEND

- 1. ALL ELEVATIONS REFERENCED TO NATIONAL GEODETIC VERTICAL DATUM (1929)
2. TOTAL TRACT AREA = 59.424 ACRES.
3. LOTS 1 THROUGH 34, BLK. 1 AND ALL OF BLKS. 2 & 3, TO BE USED FOR SINGLE FAMILY DWELLINGS UNLESS OTHERWISE NOTED. MIN. LOT AREA = 7200 SQ. FT.
4. THE CO-ORDINATES OF THE S.W. CORNER OF S.W. 1/4 SECTION 35, TOWNSHIP 8 NORTH, RANGE 9 EAST, ARE, ON THE WISCONSIN STATE PLANE CO-ORDINATE SYSTEM SOUTH ZONE NAD 27 NORTHING 41455785 FT., EASTING 218506750 FT.; THE CO-ORDINATES OF THE S.E. CORNER OF S.W. 1/4 SECTION 35, TOWNSHIP 8 NORTH, RANGE 9 EAST, ARE, SIMILARLY NORTHING 414436.41 FT., EASTING 2187716.88 FT.; ALL BEARINGS ARE REFERENCED TO SAID CO-ORDINATE GRID.
5. DENOTES LIMITS OF 100 YEAR RECURRENCE INTERVAL FLOODPLAIN ALONG CHERRY CREEK. CHERRY CREEK HAS NOT BEEN IDENTIFIED AS NAVIGABLE BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES.

I, JOHN W. DOE, REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE FULLY COMPLIED WITH THE PROVISIONS OF THE SUBDIVISION REGULATIONS OF THE CITY OF LAKE IN PREPARING THIS PRELIMINARY SUBDIVISION PLAT.

JOHN W. DOE, REGISTERED LAND SURVEYOR S-157

UNPLATTED LANDS J.J. JONES

The clerk of the local municipality refers the plat to the local plan commission. The clerk also, within two days of submittal, transmits copies of the plat to the statutory approving and objecting agencies, unless the subdivider has filed the original plat with the Wisconsin Department of Administration, which then transmits copies to the objecting agencies. The objecting agencies are given 20 days within which to provide comments, if any, to the local unit of government, after which the local plan commission meets to review and recommend final action to the governing body. The plan commission then determines whether the plat is to be recommended for approval or rejection, and forwards the plat, together with its recommendations, to the governing body. The governing body must approve or reject the final plat within 60 days after the plat has been submitted to the local government. If approved, the municipal clerk must so certify and the subdivider can then present the plat to the county Register of Deeds for recording. After recording, lots may be sold.

The subdivider may elect to proceed with final platting by using the alternative set forth above, or by using the preferred alternative set forth in Section 9.08 of the model ordinance. Under that second alternative, the subdivider may enter into a Development Agreement with the local government and submit a letter of credit, a performance bond, or a certified check covering the total cost of required improvements. Then the same procedure is followed, as in the first alternative, to recording of the final plat. After recording, the subdivider must install the required improvements to municipal specifications within specified time limits. If the improvements have not been installed at the end of the specified time limits, the local government concerned may obtain the funds from the letter of credit or performance bond, or use the funds in escrow, to install the improvements. In no case, under either approach, should installation of improvements commence before construction plans have been approved by the municipality, a Development Agreement entered into, and financial guarantees provided. A sample Development Agreement is provided in Appendix C.

CERTIFIED SURVEY MAPS

The model ordinance requires the preparation of a certified survey map for any minor land division. A minor land division is defined in the ordinance as “any division of land that creates more than one, but less than five, parcels or building sites, inclusive of the original remnant parcel, any one of which is five acres or less in area, by a division or by successive divisions of any part of the original property within a period of five years; or divides a block, lot, or outlot within a recorded subdivision plat into more than one, but less than five, parcels or building sites, inclusive of the original remnant parcel, without changing the exterior boundaries of said plat or the exterior boundaries of blocks within the plat, and the division does not result in a subdivision.” A certified survey map is defined in the ordinance as “a map, prepared in accordance with Section 236.34 of the *Wisconsin Statutes* and this ordinance, for the purpose of dividing land into not more than four parcels; or used to document for recording purposes survey and dedication data relating to single parcels.” The distinction between these two definitions is the recognition that certified survey maps may be, and are, used to document survey and dedication data relating to single parcels. Requirements for certified survey maps are noted in Section 236.34 of the *Statutes* and in Section 6.00 of the model ordinance.

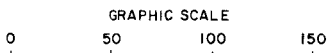
The certified survey map process is intended to expedite the land division process, combining elements of the preliminary and final plat approval steps into a single step. The basic procedure for recording a certified survey map is similar to that for a final subdivision plat. Indeed, where a proposed certified survey map involves the dedication of land for public purposes, or the construction of municipal improvements, the same procedures for review and approval should be followed as required for subdivision plats. The time and expense involved in preparing and reviewing the map is, however, somewhat reduced. Following the minor land division procedures recommended in the model ordinance will not only permit the community to ensure compliance with its adopted comprehensive plan, but will result in better legal descriptions and property

LAKE HIGHLANDS

BEING A SUBDIVISION OF A PART OF THE
SOUTHWEST ONE QUARTER OF THE
SOUTHWEST ONE-QUARTER OF SECTION 35,
TOWNSHIP 8 NORTH, RANGE 9 EAST
CITY OF LAKE, LAKE COUNTY, WISCONSIN

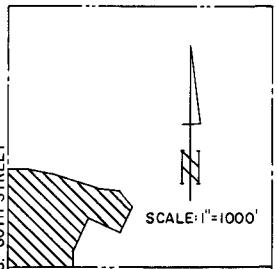
LEGEND:

- DENOTES 4" x 4" x 30" CONCRETE MONUMENT SET
- DENOTES 2" IRON PIPE 30" LONG, MIN. WT. 3.65 LBS. PER FOOT SET
- ALL OTHER CORNERS MARKED BY 1" IRON PIPE 24" LONG, MIN. WT. 1.68 LBS. PER FOOT SET

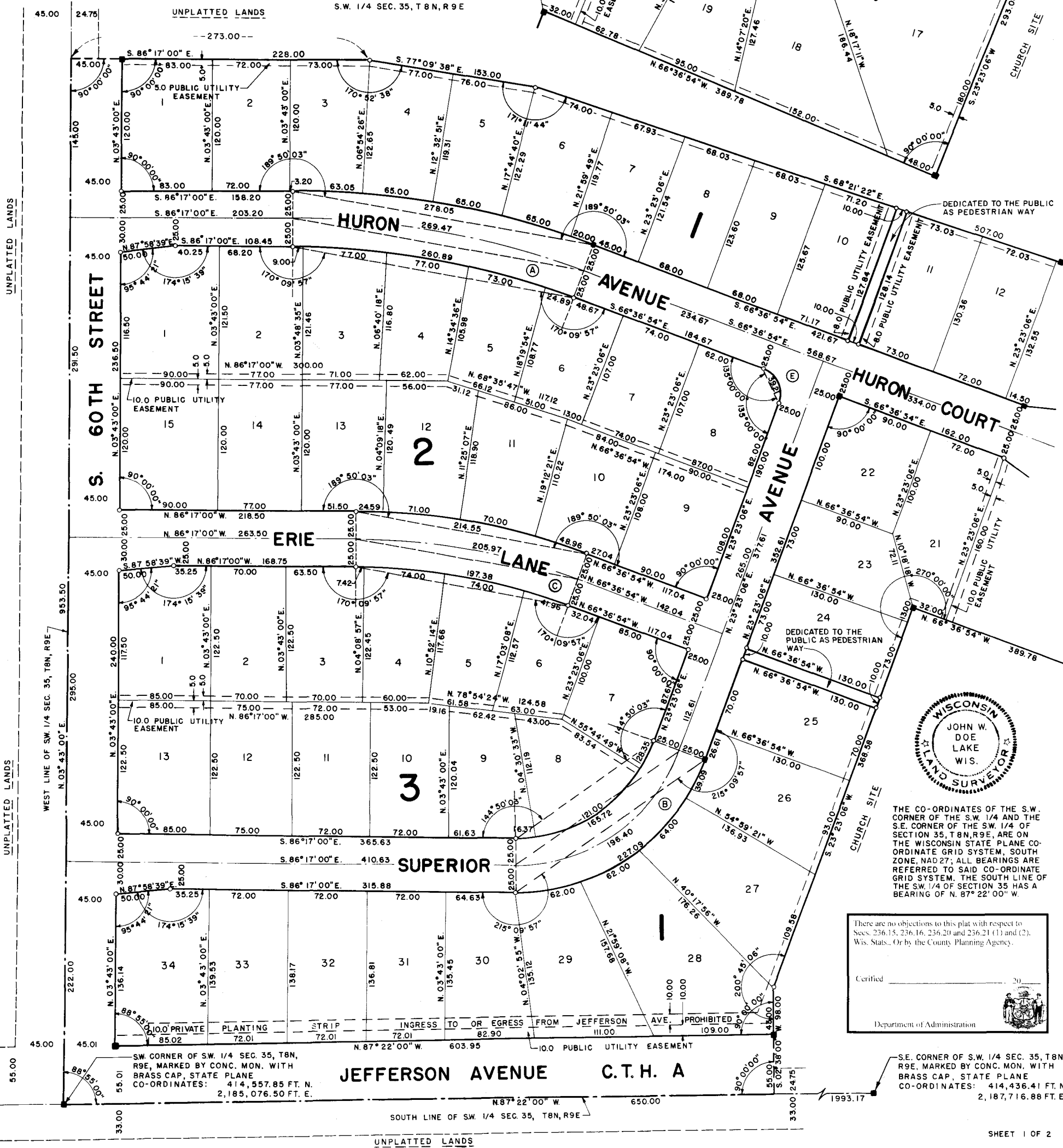


SCALE: 1 IN. = 50 FT.

GRID NORTH



LOCATION MAP
S.W. 1/4 SEC. 35, T 8 N, R 9 E



THE CO-ORDINATES OF THE S.W. CORNER OF THE S.W. 1/4 AND THE S.E. CORNER OF THE S.W. 1/4 OF SECTION 35, T 8 N, R 9 E, ARE ON THE WISCONSIN STATE PLANE CO-ORDINATE GRID SYSTEM, SOUTH ZONE, NAD 27; ALL BEARINGS ARE REFERRED TO SAID CO-ORDINATE GRID SYSTEM. THE SOUTH LINE OF THE S.W. 1/4 OF SECTION 35 HAS A BEARING OF N. 87° 22' 00" W.

There are no objections to this plat with respect to Secs. 236.15, 236.16, 236.20 and 236.21 (1) and (2), Wis. Stats., Or by the County Planning Agency.

Certified _____
Department of Administration

S.E. CORNER OF S.W. 1/4 SEC. 35, T 8 N, R 9 E, MARKED BY CONC. MON. WITH BRASS CAP, STATE PLANE CO-ORDINATES: 414,436.41 FT. N, 2,187,716.88 FT. E.

JEFFERSON AVENUE C.T.H. A

SOUTH LINE OF SW. 1/4 SEC. 35, T 8 N, R 9 E

UNPLATTED LANDS

LAKE HIGHLANDS

BEING A SUBDIVISION OF A PART OF THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 35, TOWNSHIP 8 NORTH, RANGE 9 EAST

CITY OF LAKE, LAKE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)
COUNTY OF LAKE) SS

I, John W. Doe, registered land surveyor, being first duly sworn, on oath hereby depose and say: THAT I have surveyed, divided, and mapped "LAKE HIGHLANDS," being a Subdivision of a part of the SW 1/4 of the SW 1/4 of Section 35, T 8 N, R 9 E, in the City of Lake, Lake County, Wisconsin, which is bounded and described as follows: Beginning at the Southwest corner of said 1/4 Section; running thence North 03°43'00" East along the West line of said 1/4 Section 953.50 ft. to a point; thence South 86°17'00" East at right angles to the West line of said 1/4 Section 273.00 ft. to a point; thence South 77° 09' 38" East 153.00 ft. to a point; thence South 68° 21' 22" East 507.00 ft. to a point; thence South 82° 49' 10" East 192.00 ft. to a point; thence South 37° 28' 50" East 212.00 ft. to a point; thence South 23° 23' 06" West 293.00 ft. to a point; thence North 66° 36' 54" West 389.78 ft. to a point; thence South 23° 23' 06" West 368.58 ft. to a point; thence South 02° 38' 00" West, at right angles to the South line of said 1/4 Section 98.00 ft. to a point in the South line of said 1/4 Section; thence North 87° 22' 00" West along the South line of said 1/4 Section 650.00 ft. to the point of beginning. EXCEPTING therefrom those parts heretofore dedicated for road and highway purposes.

The coordinates of the southwest corner of the said 1/4 section are on the Wisconsin Plane Coordinate System, South Zone NAD 27: 414557.85 feet North, 2185 076.50 feet East, and all description bearings are referred to said coordinate grid. THAT I have made such survey, land division and plat by the direction of HIGHLANDS INVESTMENT CORP., owner of said land. THAT such plat is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof. THAT I have fully complied with all the provisions of Chapter 236 of the Wisconsin Statutes and all the provisions of the Land Division Ordinances of the City of Lake and of Lake County, in surveying, dividing and mapping the same.

(SEAL) John W. Doe, Registered Wisconsin Land Surveyor No. S-157 Signed this ___ day of ____, 2000

CORPORATE OWNER'S CERTIFICATE OF DEDICATION

HIGHLANDS INVESTMENT CORP., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, does hereby certify that said Corporation caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on this plat. HIGHLANDS INVESTMENT CORP., as owner, does further certify that this plat is required by S. 236.10 and S. 236.12 to be submitted to the following for approval or objection: (1) COMMON COUNCIL OF THE CITY OF LAKE (2) COUNTY PLANNING AGENCY (3) WISCONSIN DEPARTMENT OF ADMINISTRATION

IN WITNESS WHEREOF, the said HIGHLANDS INVESTMENT CORP., has caused these presents to be signed by JOSEPH C. SMITH, its President, and countersigned by JOHN BROWN, its Secretary, at Lake, Wisconsin, and its Corporation seal to be hereunto affixed this ___ day of ____, 2000.

In the presence of: HIGHLANDS INVESTMENT CORP. (SEAL) /s/ JOSEPH C. SMITH Joseph C. Smith, President COUNTERSIGNED (SEAL) /s/ JOHN D. BROWN John D. Brown, Secretary

STATE OF WISCONSIN)
COUNTY OF LAKE) SS

On this the ___ day of ____, 2000, before me, _____, the undersigned officer, personally appeared JOSEPH C. SMITH, who acknowledged himself to be the President of the abovenamed corporation and also personally appeared JOHN D. BROWN, who acknowledged himself to be the Secretary of the abovenamed corporation, and that they, as such, being authorized to do so, executed the foregoing Corporate Owner's Certificate for the purposes therein contained, by signing the name of the corporation by themselves as President and Secretary.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public, JANE E. GREY, Lake County, Wisconsin My Commission Expires December 31, 2002

ACCESS RESTRICTION

HIGHLANDS INVESTMENT CORP., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, does hereby restrict Lots 28 through 34 of Block 1, in that no owner, possessor, user, licensee nor any other person shall have any right of direct vehicular ingress or egress with County Trunk Highway A (Jefferson Avenue), as shown on the plat. This access restriction is expressly intended to constitute a restriction for the benefit of the public according to Section 236.293 of the Wisconsin Statutes and shall be enforceable by the City of Lake and by Lake County.

In the presence of: HIGHLANDS INVESTMENT CORP. (SEAL) /s/ JOSEPH C. SMITH Joseph C. Smith, President COUNTERSIGNED (SEAL) /s/ JOHN D. BROWN John D. Brown, Secretary

CERTIFICATE OF CITY TREASURER

STATE OF WISCONSIN)
COUNTY OF LAKE) SS

I, JOHN F. BLACK, being duly appointed, qualified and acting City Treasurer of the City of Lake, Wisconsin, do hereby certify that the records in my office show no unpaid taxes or unpaid special assessments as of _____ on any of the lands included in the plat of LAKE HIGHLANDS.

Date /s/ JOHN F. BLACK John F. Black, Treasurer, City of Lake, Wisconsin

CERTIFICATE OF COUNTY TREASURER

STATE OF WISCONSIN)
COUNTY OF LAKE) SS

I, JOSEPH G. BLACK, being the duly elected, qualified and acting Treasurer of the County of Lake, Wisconsin, do hereby certify that the records in my office show no unredeemed tax sales and no unpaid taxes or special assessments as of _____ affecting the lands included in the plat of LAKE HIGHLANDS.

Date /s/ JOSEPH G. BLACK Joseph G. Black, Treasurer, Lake County, Wisconsin

COMMON COUNCIL RESOLUTION

RESOLVED, that the plat of LAKE HIGHLANDS, being a Subdivision of a part of the SW 1/4 of the SW 1/4 of Section 35, T8N, R9E, in the City of Lake, Lake County, Wisconsin, having been approved by the Plan Commission is hereby approved by the Common Council of the City of Lake, Wisconsin, on this ___ day of ____, 2000.

Date /s/ JOHN H. GRAY John H. Gray, Mayor, City of Lake, Wisconsin

I, JOAN J. CLAY, do hereby certify that I am duly appointed, qualified and acting City Clerk of the City of Lake and the foregoing is a true and correct copy of a resolution passed and adopted by the Common Council of the City of Lake, Lake County, Wisconsin, this ___ day of ____, 2000.

AND I DO further certify that copies of this plat were forwarded as required by S. 236.12 (2) on the ___ day of ____, 2000, and that no objections to the plat have been filed or, if filed, have been met.

AND I DO further certify that the City Plan Commission has approved the use of 50-foot-wide streets in the Lake Highlands subdivision, and that such street widths comply with the City subdivision ordinance.

Date /s/ JOAN J. CLAY Joan J. Clay, Clerk, City of Lake, Wisconsin

CERTIFICATE OF COUNTY REGISTER OF DEEDS

RECEIVED for record this ___ day of ____, 2000, at ___ o'clock __M., and recorded in Volume ___ of Plats on Page ___.

(SEAL) /s/ JOSEPH K. WHITE Joseph K. White, Register of Deeds, Lake County, Wisconsin

Table with 5 columns: CURVE, RADIUS, ARC, CHORD, CHORD BEARING, CENTRAL ANGLE. It lists curve data for various line segments and blocks.

Table with 6 columns: BLOCK NUMBER, LOT NUMBER, AREA IN SQUARE FEET, BLOCK NUMBER, LOT NUMBER, AREA IN SQUARE FEET. It lists lot areas for various blocks.



There are no objections to this plat with respect to Secs. 236.15, 236.16, 236.20 and 236.21 (1) and (2), Wis. Stats., or by the County Planning Agency. Certified _____, 20____ Department of Administration

boundary survey records. A sample certified survey map is shown on Map VII-3.

Section 6.03L of the model ordinance would allow the Plan Commission to require the submittal of a sketch plan showing the entire contiguous holdings owned or controlled by the subdivider, identifying future development of the parcel, including general street and parcel locations. The sketch plan is intended to avoid the creation of future undesirable development patterns, including rows of residential parcels fronting on, and having direct access to, arterial streets; and to avoid the creation of land-locked parcels or “flag” lots in the area behind a row of parcels with street frontage.

REQUIRED INFORMATION FOR PLATS AND CERTIFIED SURVEY MAPS

The data required to be shown on preliminary plats, final plats, and certified survey maps are set forth in Sections 4.03, 5.02, and 6.02, respectively, of the model ordinance. In addition to the information required to be shown on a preliminary plat, Section 4.02 of the ordinance requires that a site analysis be submitted for the area included within the preliminary plat, unless the area within the plat is included within a neighborhood unit development plan. In addition to the information required to be shown on certified survey maps under Section 6.02, Section 6.03 of the model ordinance sets forth data that the Plan Commission may, at its discretion, require be shown on a proposed certified survey map. Table VII-1 provides a summary and comparison of the data to be provided on preliminary and final plats and certified survey maps. Certain of the data to be provided are described in more detail in the following sections.

Topography and Steep Slopes

Section 4.03B of the model ordinance requires that existing topographic contours be shown on a preliminary plat. Section 6.03A of the model ordinance provides that the Plan Commission may require such information to be shown on a certified survey map. The provision of topographic information can assist reviewing and approving agencies and officials in

determining if a proposed land division is properly related to the topography of the site to be developed. Moderately-sloped sites are best suited to urban development. If the site is too level, drainage difficulties may be encountered that will require careful design to overcome; and if the site is too steep, it will be difficult to construct streets and buildings without extensive grading. Generally, urban development should not occur on slopes of 12 percent or more.

Floodplains

Sections 4.03C and 5.02G of the model ordinance require that preliminary and final plats, respectively, include the boundaries of the 100-year recurrence interval floodplain and related regulatory stages, as determined by the Federal Emergency Management Agency or the Southeastern Wisconsin Regional Planning Commission. Where such data are not available, the floodplain boundaries and related stages are to be determined by a registered professional engineer retained by the subdivider and the engineer’s report providing the required data is to be submitted with the plat for review and approval by the municipal engineer. Under Section 6.03G, the Plan Commission may require floodplain delineations to be shown on a proposed certified survey map. Floodplain areas are generally not well suited to intensive development, not only because of the flood hazard, but also because of the presence of high water tables and, often, of poor soils. Ideally, floodplain areas should be retained in natural, open space uses. Uses within the floodplain are governed by Chapter NR 116 of the *Wisconsin Administrative Code* and, in many cases, locally-adopted floodplain zoning regulations.

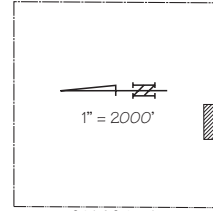
Wetlands

Wetlands perform an important set of natural functions, including stabilizing lake levels and stream flows; reducing stormwater runoff by providing areas for floodwater impoundment and storage; providing groundwater recharge and discharge areas; trapping soil particles and soil nutrients in runoff, thus reducing stream sedimentation and the rate of enrichment of surface waters; and providing habitat for many plant and

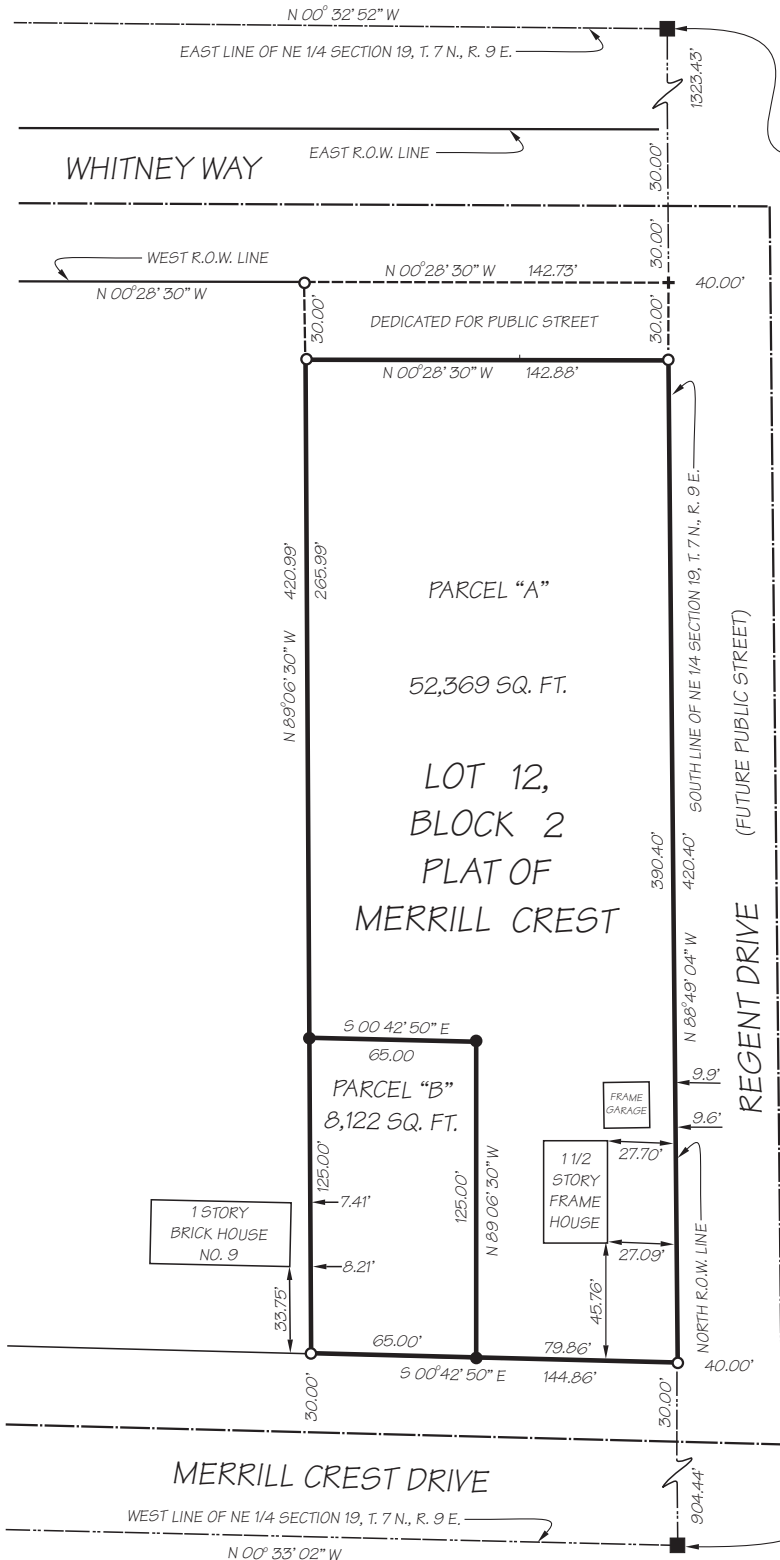
Map VII-3

CERTIFIED SURVEY MAP NO. _____

OF A PART OF THE
 SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 19,
 TOWNSHIP 7 NORTH, RANGE 9 EAST,
 CITY OF LAKE, LAKE COUNTY, WISCONSIN
 MAY 1, 2000



LOCATION MAP
 NE 1/4 SEC. 19, T. 7 N., R. 9 E.



SE CORNER OF NE 1/4 OF SEC. 19,
 T. 7 N., R. 9 E., MARKED BY
 CONCRETE MONUMENT
 WITH BRASS CAP
 STATE PLANE COORDINATES:
 389,787.69 FT. N
 2,143,375.38 FT. E

LEGEND:

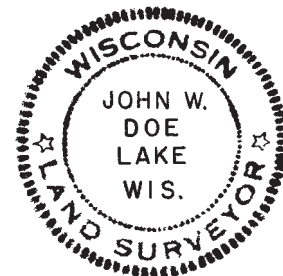
- 1" IRON PIPE FOUND
- + CROSS IN PAVEMENT FOUND
- CONCRETE MONUMENT WITH BRASS CAP FOUND
- 1"x24" IRON PIPE 1.68 lbs/ lin ft. SET

THE CO-ORDINATES OF THE SE CORNER OF THE NE 1/4 AND THE SW CORNER OF THE NE 1/4 OF SECTION 19, T. 7 N., R. 9 E., ARE ON THE WISCONSIN STATE PLANE CO-ORDINATE GRID SYSTEM, SOUTH ZONE, NAD 27; ALL BEARINGS ARE REFERRED TO SAID CO-ORDINATE GRID SYSTEM. THE SOUTH LINE OF THE NE 1/4 OF SECTION 19 HAS A BEARING OF N 88° 49' 04" E.



GRID NORTH

SCALE: 1 INCH = 60 FEET



SHEET 1 OF 2

SW CORNER OF NE 1/4 OF SEC. 19,
 T. 7 N., R. 9 E., MARKED BY
 CONCRETE MONUMENT
 WITH BRASS CAP
 STATE PLANE COORDINATES:
 389,733.06 FT. N
 2,140,727.92 FT. E

Map VII-3 (continued)

CERTIFIED SURVEY MAP

OF A PART OF THE

SOUTHWEST 1/4 OF THE NORTHEAST 1/4 SECTION 19, TOWNSHIP 7 NORTH, RANGE 9 EAST,

CITY OF LAKE

LAKE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN) SS
LAKE COUNTY)

I, John Doe, registered land surveyor, do hereby certify:

THAT I have surveyed, divided and mapped Lot 12, Block 2, Plat of Merrill Crest, in the Southwest one-quarter of the Northeast one-quarter of Section 19, Township 7 North, Range 9 East, in the City of Lake, Lake County, Wisconsin, more particularly bounded and described as follows:

COMMENCING at the Southeast corner of the said one-quarter section; running thence S 88°49'04" W along the South line of the said one-quarter section 1323.43 feet to the point of beginning of the land about to be described; continuing thence S 88°49'04" W along the South line of the said one-quarter section, said line also being the Northerly line of Regent Drive, 420.40 feet to a point on the Easterly line of Merrill Crest Drive; thence N 0°42'50" W along the Easterly line of Merrill Crest Drive 144.86 feet to a point; thence N 86°06'30" E 420.99 feet to a point, said point being 90 feet West of the Easterly line of Whitney Way; thence S 0°28'30" E along a line 90 feet West of and parallel to the Easterly line of Whitney Way 142.73 feet to the point of beginning.

The coordinates of the Southeast corner of said one-quarter section are, on the Wisconsin State Plane Coordinate System, South Zone: 389 787.69 feet North and 2 143 375.38 feet East; and all description bearings are referred to said coordinate grid.

THAT I have made such survey, land division, and this map by order and direction of Joseph C. Smith, owner of said land.

THAT such map is a correct representation of all the exterior boundaries of the land surveyed and of the land division thereof made.

THAT I have fully complied with the provisions of Section 236.34 of the Wisconsin Statutes and the subdivision regulations of the City of Lake in surveying, dividing and mapping the same.

John W. Doe, Land Surveyor (SEAL)
No. S-157

OWNER'S CERTIFICATE

AS OWNERS, WE hereby certify that we have caused the land described above to be surveyed, divided, mapped, and dedicated as represented on this map in accordance with the requirements of the subdivision regulations of the City of Lake, Lake County, Wisconsin.

WITNESS the hand and seal of said owners this ___ day of ___, 2000.

In the presence of:

Joseph C. Smith (SEAL)
Mary M. Smith (SEAL)

STATE OF WISCONSIN) SS
COUNTY OF LAKE)

PERSONALLY came before me this ___ day of ___, 2001, the above-named Joseph C. Smith and Mary M. Smith, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Jane E. Gray, Notary Public, Lake Co., Wisconsin (SEAL)
My commission expires December 31, 2002

CERTIFICATE OF CITY TREASURER

STATE OF WISCONSIN) SS
COUNTY OF LAKE)

I, JOHN F. BLACK, being the duly appointed, qualified and acting City Treasurer of the City of Lake, Wisconsin, do hereby certify that the records in my office show no unpaid taxes or unpaid special assessments as of ___ on any of the lands included in Lot 12, Block 2, Plat of Merrill Crest.

Date John F. Black, Treasurer, City of Lake, Wisconsin

CERTIFICATE OF COUNTY TREASURER

STATE OF WISCONSIN) SS
COUNTY OF LAKE)

I, JOSEPH G. BLACK, being the duly elected, qualified and acting Treasurer of the County of Lake, Wisconsin, do hereby certify that the records in my office show no unredeemed tax sales and no unpaid taxes or special assessments as of ___ affecting the lands included in Lot 12, Block 2, Plat of Merrill Crest.

Date Joseph G. Black, Treasurer, County of Lake, Wisconsin

COMMON COUNCIL RESOLUTION

RESOLVED, that the certified survey map dividing Lot 12, Block 2, Plat of Merrill Crest, being a division of a part of the SW 1/4 of the NE 1/4 of Section 19, T2N, R9E, in the City of Lake, Lake County, Wisconsin, having been approved by the Plan Commission is hereby approved by the Common Council of the City of Lake, Wisconsin on this ___ day of ___, 2000.

Date John H. Gray, Mayor, City of Lake, Wisconsin

I, JOAN J. CLAY, do hereby certify that I am duly appointed, qualified and acting City Clerk of the City of Lake and the foregoing is a true and correct copy of a resolution passed and adopted by the Common Council of the City of Lake, Lake County, Wisconsin, this ___ day of ___, 2000.

Date Joan J. Clay, Clerk, City of Lake, Wisconsin

CERTIFICATE OF COUNTY REGISTER OF DEEDS

RECEIVED for record this ___ day of ___, 2000, at ___ o'clock __.M., and recorded as C.S.M. No. ___ in Volume ___ of Certified Survey Maps on Page ___.

Joseph K. White, Register of Deeds, Lake County, Wisconsin

Table VII-1

**COMPARISON OF INFORMATION TO BE SHOWN
ON CERTIFIED SURVEY MAPS, PRELIMINARY PLATS, AND FINAL PLATS
UNDER THE MODEL LAND DIVISION CONTROL ORDINANCE**

Required Information	Certified Survey Map	Preliminary Plat	Final Plat
Name of Subdivision	-- ^a	R	S
Location by U.S. Public Land Survey Quarter Section	R	R	S
Date, Scale, and North Point	R	R	S
Name and Address of Owner, Subdivider, and Surveyor	R	R	S ^b
Entire Contiguous Ownership to be Shown	D	R	--
Length and Bearing of Exterior Boundaries	S	R	S
Topographic Features	D	R	--
Floodplain Limits	D	R	R
Water Elevations	--	R	S
Navigability Determination	D	R	--
Lake and Stream Meander Lines	S	R	S
Location of Environmental Corridors/Isolated Natural Resource Areas	D	R	--
Location of Wetlands	D	R	--
Name of Agency or Firm that Delineated Wetlands	R ^c	R	--
Location of Woodlands	D	R	--
Location, Width, and Names of Existing and Proposed Streets, Alleys, and Pedestrian and Bicycle Ways	R	R	R
Length and Bearing of the Centerline of All Streets	R	--	R
Location, Width, and Ownership of Utility Rights-of-Way	R	R	R
Location, Width, and Ownership of Active and Abandoned Railway Rights-of-Way	R	R	R
Type, Width, and Elevation of Existing Street Pavements and Legally Established Centerline Elevations	R	R	--
Radii of All Curved Lines Within the Land Division	R	R	S
Location and Names of Adjoining Subdivisions, Parks, Cemeteries, Public Lands, and Watercourses	R	R	S ^d
Location and Use of Existing Structures	R	R	S ^e
Location of Wells Within the Land Division and within 50 Feet of the Exterior Boundaries	R	R	--
Locations of Civil Division Boundaries and U.S. Public Land Survey System Section and Quarter-Section Lines within the Land Division and Within 100 Feet of the Exterior Boundaries	--	R	--
Approximate Lot Dimensions	--	R	--
Lot Area and Dimensions	S	--	S
Lot and Block Numbers	S	R	S
Location of Building and Setback Lines	R ^f	R ^f	R ^f
Location, Dimensions, and Area of Sites to be Reserved or Dedicated for Public Use	R	R	R
Location, Dimensions, and Area of Common Areas and Facilities	--	R	R
Location, Dimensions, and Area of Sites to be Used for Multi-Family Housing, Shopping Centers, Church Sites, or Similar Uses	--	R	--
Location, Size, and Invert Elevation of Existing Sanitary or Storm Sewers and Related Facilities, Electric and Communication Facilities, and Water and Gas Mains	--	R	--
Proposed Lake and Stream Access	R ^g	R	S
Proposed Lake and Stream Improvement or Relocation	--	R	--

Table VII-1 (continued)

Required Information	Certified Survey Map	Preliminary Plat	Final Plat
Approximate Location of Existing Onsite Sewage Treatment and Disposal Facilities.....	D	R	--
Approximate Location of Proposed Onsite Sewage Treatment and Disposal Systems.....	D ^h	--	--
Street Plans and Profiles.....	R ^h	D	R ^h
Soil Borings and Tests.....	D	R ⁱ	--
Easements for Public Sanitary Sewers, Water Mains, Stormwater Management Facilities, or Accessways.....	R	R	R
Restrictions Required by Approving Authority.....	R	--	R
Soil Types.....	D	A	--
Square Footage and Elevation of Existing Buildings to be Retained.....	D	--	--
Historic, Cultural, and Archeological Features.....	D	A	--
Existing Vegetation.....	--	A	--
Scenic Vistas.....	--	A	--
Desirable and Undesirable Entry Points Into Land Division.....	--	A	--
Public Parks Within or Adjacent to Land Division.....	--	A	--
Existing and Proposed Zoning On and Adjacent to the Land Division.....	--	A	--
Monumentation.....	R/S	--	R/S
Surveyor’s Certificate.....	R/S	R	R/S

NOTE: “R” indicates information that is required to be shown on the certified survey map or plat; “D” indicates information that may be required at the discretion of the local government; “S” indicates information that is required by Chapter 236 of the Wisconsin Statutes; and “A” indicates information that is required to be submitted as part of the Site Analysis accompanying a Preliminary Plat for sites that are not included within a neighborhood unit development plan.

^aSection 236.34(2) of the Statutes requires the County Register of Deeds to consecutively number certified survey maps as they are recorded.

^bThe Statutes do not require the addresses of the owner, subdivider, or surveyor to be provided on the final plat.

^cRequired only if Plan Commission requires the location of wetlands to be shown on the Certified Survey Map.

^dThe Statutes require the names of adjoining streets and subdivisions to be shown on the final plat.

^eThe Statutes require the location of existing buildings, but not their use, to be shown on the final plat.

^fBuilding and setback lines must be shown only if they are more restrictive than those required by the applicable zoning ordinance.

^gOnly those stream and lake accessways proposed to be dedicated to the public must be shown.

^hStreet plans and profiles for all land divisions are required by Section 9.04A of the model ordinance.

ⁱSoil borings and tests are required for subdivisions that will not be served by public sanitary sewer, and may be required by the Plan Commission for any subdivision in order to determine the suitability of soils for the construction of buildings and streets.

Source: SEWRPC.

animal species. Wetlands also have severe limitations for residential, commercial, and industrial development. Generally, these limitations are due to the erosive character, high compressibility and instability, low bearing capacity, and high shrink-swell potential of wetland soils, along with the inherent high water table. Wetlands should therefore be protected from development. A number of local, State, and Federal regulations have been adopted to protect wetlands, particularly wetlands within shoreland areas and wetlands associated with navigable streams.

Section 4.03F of the model ordinance requires that the location of wetlands be shown on preliminary plats. Under Section 6.03F, the Plan Commission may require such delineations to be shown on a proposed certified survey map. Sections 4.03F and 6.03F further provide that the person, agency, or firm identifying such wetlands be provided on the plat or certified survey map, together with the date of the field survey.

Navigability Determinations

Section 4.03D of the model ordinance requires that the status of the navigability of waterbodies and watercourses within a proposed subdivision be provided on the preliminary plat. Under Section 6.03K, the Plan Commission may require such determinations to be shown on a proposed certified survey map. The determination of navigability in the State of Wisconsin is made by the Department of Natural Resources, subject to court review. The primary criterion used to determine navigability is whether the waterbody or watercourse is capable of floating a recreational craft of the shallowest draft on an annually recurring basis during the spring high-water period.¹ Ideally, determinations of navigability would be made on an areawide basis and those determinations displayed upon maps prepared for that purpose. Indeed, the Regional Planning Commission has, for a number of years, recommended

that the Department, in cooperation with the Commission, prepare such a map for each of the seven counties in the Region. The Department, however, continues to make navigability determinations on a case by case basis.

The determination of navigability may result in areas within a proposed land division being located within a shoreland area. Shoreland areas include those lands lying within the following distances from the ordinary high water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream, or to the landward edge of the floodplain, whichever distance is greater. Under Chapter NR 115 of the *Wisconsin Administrative Code*, shoreland areas in unincorporated territory, or in territory incorporated or annexed after May 7, 1982, are subject to special shoreland zoning requirements. These requirements relate to minimum lot sizes and widths, setbacks from the ordinary high water mark, and vegetation clearing, all of which affect land subdivision design. All wetlands of five acres or larger in a shoreland area, in both incorporated and unincorporated territory, are subject to additional restrictions set forth in the *Administrative Code*. State regulations for shoreland-wetlands in cities and villages are set forth in Chapter NR 117 of the *Wisconsin Administrative Code*; and in Chapter 115 for shoreland-wetlands in unincorporated areas.

The model ordinance therefore requires that a determination of navigability be obtained at the preliminary plat stage of the land division review process. While this may entail substantial delay to the subdivider, it is warranted because examples exist within the Region where a determination was made after a final plat was approved and development commenced. This unfortunate situation results in great expense, due to the need to redesign the subdivision layout and, in some cases, to remove buildings and improvements.

Environmental Corridors

Section 4.03F of the model ordinance requires that the location of primary and secondary environmental corridors and isolated natural resource areas be shown on preliminary plats. Under Section 6.03F, the Plan

¹ See *Muench vs. Public Service Commission*, 26 Wis. 492 (1952) and *DeGayner and Company vs. Department of Natural Resources*, 70 Wis. 2d 936 (1975) for additional information regarding the basis for establishing navigability.

Commission may require such delineations to be shown on a proposed certified survey map.

As noted in Chapters IV and V, primary environmental corridor lands should be preserved in accordance with the recommendations of the Regional Planning Commission, which generally require floodplain, wetland, and steeply-sloped portions of primary environmental corridors to be preserved in natural, open uses and which permit upland portions of such corridors that are not steeply sloped to be developed for residential uses at very low densities, or for low-intensity recreational uses. Lands that have been identified as secondary environmental corridor or isolated natural resource areas should be considered for preservation, particularly when the opportunity is presented to incorporate such areas into urban stormwater detention areas, drainageways, neighborhood parks, or trail corridors. Those portions of secondary environmental corridors or isolated natural resource areas consisting of floodplains, wetlands, or steeply sloped lands, however, must be preserved and protected. Those portions of secondary environmental corridors or isolated natural resource areas that consist of upland woods that are not steeply sloped can, at the discretion of the local government, be used to accommodate development, if not required for stormwater management, park, parkway, trail development, or other open space use.

Plat Restrictions

Any restrictions placed on a plat or certified survey map to prohibit development within environmental corridors or other environmentally sensitive areas, or measures approved by the Plan Commission to otherwise protect such areas, should be noted on the plat or certified survey map as provided in Sections 5.02H and 6.02K of the model ordinance.

DESIGN CONSIDERATIONS

Section 7.00 of the model ordinance sets forth design standards for proposed land divisions. The design standards are consistent with, and would serve to implement, the principles of good design presented in Chapter V, including standards related to street widths, lot shape

and configuration, access control restrictions, pedestrian and bicycle ways, provision for park and school sites, and protection of drainageways and environmentally significant lands.

The design standards included in the model ordinance would also accommodate any and all of the four alternative subdivision designs illustrated in Chapter V, namely, the conventional, new urbanism, cluster, and coving designs. Ordinance provisions intended to accommodate such designs include subsection 7.06B, which would allow the plan commission to vary the design of lots to approve a nonconventional subdivision layout, and Section 7.07, which would allow increased setbacks to accommodate a coving design. The model ordinance does not include a clause prohibiting alleys in residential subdivisions, which is common in local land division ordinances, in order to accommodate this design feature of new urbanism subdivisions.

Although the model ordinance was prepared with the intent of accommodating alternative subdivision designs, changes to county and local zoning ordinances may also be required to accommodate the alternative designs, particularly the cluster design. Model zoning ordinance provisions for rural cluster subdivisions are included in SEWRPC Planning Guide No. 7, *Rural Cluster Development Guide*, December 1996.

IMPROVEMENTS

Section 8.00 of the model ordinance includes requirements for improvements related to survey monuments; street improvements, including surfacing, curb and gutter, sidewalks, lamps, signs, and trees; sewage disposal; water supply; stormwater management; other utilities; erosion and sedimentation control; and landscaping. The requirements of the model ordinance should be modified to reflect local standards and conditions. Town governments, in particular, may wish to add requirements to land division ordinances related to sanitary sewer or stormwater management facilities provided by lake or sanitary districts.

IMPROVEMENT COSTS

As noted in Chapter III, Chapter 236 of the *Statutes* allows the governing body of a city, village, or town within which a land division is located to require that the subdivider make and install those public improvements reasonably necessary to serve the proposed land division, and may further require that such improvements be installed at no cost to the local government. Both on- and off-site improvements may be required under the *Statutes*. It is normally expected that the subdivider will bear the costs of installing all improvements needed to serve the land division. The details related to required improvements should be specified in a Development Agreement between the subdivider and local government.

Oversized Streets and Utilities

In some cases, a subdivider may be required to install oversized streets, sanitary sewers, water mains, or storm sewers in order to assure implementation of municipal transportation, sanitary sewerage, water supply, and stormwater drainage system plans. The model ordinance addresses the allocation of the costs associated with oversized facilities by requiring the municipality, or other unit or agency of government having jurisdiction, to pay for facilities larger than the size that would normally be expected to be adequate to serve a land division. The municipality may then recover the cost of the larger facilities from the owners of the properties benefiting at the time of development.

Off-Site Improvements

The courts have generally decided the legality of the imposition of off-site improvement costs on a subdivider on the basis of one of three tests. The first of these tests, the reasonable relationship test, allows the most liberal interpretation. It permits an exaction if there is a relationship, even though general and long-term, between the identified improvement and a proposed new development. The second test, the rational nexus test, requires a closer demonstrated association between the proposed development and the identified improvement, to the extent of showing a reasonable linkage between

the two. The third test, the specific and unique test, is the most stringent. Under this test, a subdivider may be made to pay a share of off-site improvement costs only if an actual need can be shown and specifically attributed to the proposed development.

If an off-site improvement is needed solely because of a proposed new development, and that development will be the sole beneficiary of the improvement, then it should be clear that the subdivider should pay the full cost of the improvement. In most cases, however, the needed improvement will benefit more than just the proposed development and a fair means of allocating the cost of the improvement among the beneficiaries is required, with the proposed new development paying only its proportionate share. The assessment of impact fees is one method used by county and local governments to recoup the cost of off-site improvements from subdividers and developers in an equitable way.

Impact Fees

In 1994, the Wisconsin Legislature adopted statutory provisions that authorize county and local governments to impose impact fees. The impact fee law is set forth in Section 66.0617 of the *Statutes*. County and local governments must prepare a needs assessment and adopt an impact fee ordinance before imposing such fees. The impact fees must bear a reasonable relationship to the need for new, expanded, or improved public facilities required to serve a land development, and the fees cannot exceed the proportionate share of the capital costs required to serve a land development, as compared to existing development within the county or local government. The needs assessment is intended to ensure that these requirements are met.

Section 10.00 of the model ordinance does not address impact fees. Separate impact fee ordinances should be prepared and adopted by those local and county governments who wish to assess such fees. If fees for park acquisition and development are included in the impact fee ordinance, Section 10.06 of the model ordinance should be deleted or revised to refer to the impact fee ordinance. Section 10.06 authorizes local

plan commissions to require payment of a fee by a subdivider for the acquisition of public sites to serve a proposed land division. Provision for payment of a public site fee equal to an amount determined by the governing body for each dwelling unit to be accommodated within a land division or condominium should be included in a land division control ordinance. The amount involved should be set by the governing body concerned to meet local conditions; should be subject to review and revision from time to time, based upon experience; and, desirably, should be published by the municipality in an approved fee schedule.

Dedication or Fees In Lieu of Dedication for Park and School Sites

Section 236.45 of the *Statutes* has been interpreted by the Wisconsin Supreme Court as giving local governments the authority to require a subdivider to dedicate land for park or school purposes, or pay a fee in lieu of land dedication as a condition of plat approval. The Court has also determined that the amount of land to be dedicated, or the fee paid in lieu of dedication, must bear a reasonable relationship to the increased demand for such sites attributable to the land division.

Local governments have historically relied upon dedication or fees in lieu of dedication to acquire park and school sites needed to serve new land divisions. With the adoption of the impact fee legislation described in the previous section, local governments now have the option of continuing to require the dedication of park and school sites or a fee in lieu of dedication in the land division ordinance, or assessing an impact fee for parks under a separate impact fee ordinance. It should be noted that dedication or fee in lieu payments for school sites may be required in land division ordinances, but the imposition of impact fees for school facilities is specifically prohibited under the statute governing impact fees.

Section 7.10 of the model ordinance requires that a proposed public school site designated on the local government's official map or comprehensive plan and encompassed within a proposed land division be made a part of the plat and reserved at the time of final plat or

certified survey map approval for a period not to exceed three years, unless extended by mutual agreement, for acquisition by the School Board at a price agreed upon and set forth in the Development Agreement. No dedication or fee-in-lieu payment is required for school sites under the model ordinance.

Section 7.10 further requires that a proposed public playground, park, parkway, trail corridor, public open space site, or other public lands designated on a locally-adopted official map or comprehensive plan and encompassed within a proposed land division be made a part of the subdivision plat, certified survey map, or condominium plat and dedicated to the public by the subdivider. Should the value of the land to be dedicated be less than the value of the public site fee that would be required for the land division under Section 10.06, the model ordinance would require the subdivider to pay the local government the difference between the value of the land dedicated and the public site fee. Should the value of the land to be dedicated exceed the public site fee, any lands in excess of the value of the public site fee would be reserved for a period not to exceed three years, unless extended by mutual agreement, for purchase by the local government at the price agreed upon and set forth in the Development Agreement. If no proposed park lands are located within a proposed land division, the subdivider would be required to pay the public site fee set forth in Section 10.06.

It does not appear fair to require the community at large to purchase sites for neighborhood parks for which only a segment of the entire community population may be expected to derive direct benefit. On the other hand, it does not appear fair to require a subdivider of, say, a 80-acre tract of land to dedicate a park site which will benefit an entire neighborhood comprising in addition to the 80-acre tract, say, 560 acres of surrounding lands. Sometimes, however, the most desirable locations for such needed public facilities may lie within one or two specific tracts, while adjacent tracts may have no such proposed facilities within their boundaries. It would seem, therefore, that the most equitable way to accomplish the acquisition of needed sites for public use is by levying a uniform fee per acre, or per dwelling unit, in

lieu of dedication. Such fees can then be pooled toward the purchase of the park lands necessary to serve a particular neighborhood unit. In this way, each subdivider pays an equitable share of the total cost of the public sites and can pass this cost on to the purchasers of lots that will directly benefit from the facilities.

The legality of a required dedication, or fee in lieu of such dedication, will be enhanced if the dedication or fee bears a reasonable relationship to the stated purpose of the regulation concerned; that is, to the provision by the subdivider of those park sites which are reasonably required for use by future residents of the proposed land division. Accordingly, any fees collected and pooled should be used to serve the neighborhood within which the proposed land division is located.

REVIEW FEES

Section 10.00 of the model land division ordinance requires the payment by the subdivider of review fees at the time a preliminary plat, final plat, or certified survey map is submitted. These fees are intended to defray the expenses incurred by the local government in the review of submitted plats and certified survey maps. The imposition of such fees have generally been upheld by the courts if the fees bear a reasonable relationship to the actual costs of administering the local land division control ordinance. It is recommended that review fees for land development activities be set forth in a fee schedule adopted by the governing body of each local government. The model ordinance refers to such a fee schedule for the review of plats and certified survey maps. The fee schedule should also set forth the required public site fee, if the municipality has not adopted a separate impact fee ordinance establishing such a fee.

Under the model ordinance, fees for the review of improvement plans, construction, and engineering work would be equal to the actual cost incurred by the municipality. Under Section 10.08, the municipality could also assess a fee for any special legal and fiscal review services. This section is intended to recover the

costs of non-routine review services, such as, for example, the fiscal impact of a large land division that is proposed to be annexed to a municipality prior to development. Lastly, Section 10.09 provides for the appeal of the amount of any fees levied for improvement plans, construction, engineering work, or special legal and fiscal review services to the governing body of the municipality.

ADOPTION PROCEDURE

The adoption procedure for a land division control ordinance or an amendment thereto is set forth in Section 236.45(4) of the *Statutes*. The *Statutes* provide that the governing body receive the recommendation of its planning agency before acting on the ordinance, and that a public hearing be held before adopting the ordinance. These requirements are set forth in Section 11.00 of the model ordinance. Notice of the public hearing must be given by publication of a Class 2 notice under Chapter 985 of the *Statutes*. Upon adoption, the ordinance must be published in a form suitable for public distribution.

Each local government should consult with its municipal attorney as to whether the complete text of the land division control ordinance or an amendment thereto should be published prior to adoption of the ordinance or amendment. Under Section 66.0103 of the *Statutes*, a municipality may adopt an ordinance incorporating by reference a land division control ordinance into the municipal code of ordinances, provided the municipality has authorized the preparation of a code containing some or all of its ordinances. A copy of the land division control ordinance, or any amendments thereto, must be available for public inspection at least two weeks before adoption. It is recommended, however, in the interest of desirable public participation, that a proposed land division control ordinance or proposed amendments to such an ordinance be published in their entireties prior to the required public hearing.

EXTRATERRITORIAL PLAT APPROVAL JURISDICTION

In Wisconsin, cities and villages that have adopted land division control regulations or an official map are given the authority to review plats that lie outside their corporate limits. Under Section 236.10(1)(b) of the *Statutes*, the extraterritorial plat approval jurisdiction extends 1.5 miles beyond the corporate limits of villages and of cities of the fourth class; and three miles beyond the corporate limits of cities of the first, second, and third class. This extended jurisdiction allows incorporated municipalities the opportunity to regulate land development in areas which may be of immediate concern to the community.

If a proposed land division lies within the limits of the extraterritorial plat approval jurisdiction, but outside of the corporate limits of a city or village, the land division must conform to the requirements of both the town and the city or village land division regulations, and must be reviewed and approved by the city or village and by the town before recording. The Wisconsin Supreme Court has, however, placed limitations on the scope of the extraterritorial plat approval jurisdiction of cities and villages; the Court holding that the town in which a proposed plat is located has the specific authority to determine public improvement requirements. This is important because there may be major differences in the improvement requirements of the incorporated municipality and of the town concerned.

If the county in which the land division lies has adopted a land division ordinance, the requirements of the county ordinance also apply within unincorporated areas. In cases of conflicting requirements between a county, town, and city or village ordinance, the more restrictive requirement applies, with the exception of improvement requirements as noted in the preceding paragraph.

Towns do not have extraterritorial plat approval authority. The model ordinance is written as though prepared for a City, and should be modified to delete references to extraterritorial plat review and approval if a town is considering adoption of the model ordinance.

SURVEYING REQUIREMENTS

Local units of government may wish to adopt surveying accuracy requirements more stringent than those set forth in Section 236.15(2) of the *Statutes*. The statutory requirements reflect state-of-the-art surveying technology in effect at the time of enactment and were then, and are still now, appropriate in areas of relatively low land values where the uncertainties of title resulting from surveys of relatively low accuracy are not apt to present serious problems. The statutory requirements, however, may be unsatisfactory in areas of higher land values and of intensive urbanization. Where more stringent accuracy requirements are considered more desirable, the provisions set forth in Section 5.04 of the model ordinance may be adopted.

WISCONSIN STATE PLANE COORDINATE SYSTEM

The Regional Planning Commission has long recommended the development within the seven-county Southeastern Wisconsin Region of a monumented system of survey control which combines the U.S. Public Land Survey system with the State Plane Coordinate System. This survey control system requires the relocation and monumentation of all U.S. Public Land Survey system section and quarter-section corners, and the establishment by high order surveys of State Plane Coordinates for these monumented corners. The survey control system thus ties the U.S. Public Land Survey corners into the national geodetic datum, and, specifically, the North American Datum of 1927. The control system establishes the precise lengths and bearings of all quarter-section lines, as well as the geographic position of the section and quarter-section corners expressed in terms of State Plane Coordinates, and thus provides a basic horizontal survey control network for land and public works surveys; for topographic and cadastral mapping; and for the establishment of automated parcel-based land information systems.

When such a control survey has been performed within a community or part thereof, it is recommended that the community adopt survey requirements similar

to those contained in Sections 5.06 and 6.04 of the model ordinance.

ELECTRONIC FILING OF PLATS

Many local governments within the Region, and each of the seven counties, have or are in the process of developing automated parcel-based land information systems. Consideration has been given by some units of government in the Region to requiring digital submissions of new plats so that they may be more readily incorporated into the county or municipal land information system. A requirement for such digital files may be included as a new subsection at the end of Section 5.00, for final plats, and at the end of Section 6.00 for certified survey maps. The ordinance requirement should specify that digital files be provided to the municipal or county land information officer, in the format specified by the land information officer, at the time a plat or map is recorded.

It should be noted, however, that such plats often require extensive changes to make the digital information submitted by the subdivider conform to the mapping specifications used by the county or local government. The discrepancies are often due to the differences between the computer-aided drafting (CAD) software programs typically used by subdividers to prepare plats and the geographic information system (GIS) software programs typically used by units of government to establish and maintain land information systems. Before requiring the digital submittal of plats, the unit of government concerned should determine if such digital submissions would actually result in significant savings.

PROTECTIVE COVENANTS

Protective covenants are a way of ensuring continuing appeal and stability in residential neighborhoods by private rather than public action. Such covenants are legal agreements between the subdivider and the lot purchasers in which all parties seek to gain certain advantages: the subdivider to aid his or her development program, and the purchasers to protect their investments. It is an agreement to which all homeowners in

the area are bound; and it gives assurance that no owner may use his or her land for any purpose which tends to reduce the environmental quality of the area, lower property values, or create a nuisance. To assure the legality and validity of the covenants, they should be drawn by a qualified attorney, and should then be recorded as a public declaration of restrictions with the county register of deeds in order that they may be transferred by deed from one owner to another. If restrictive covenants are required by a local government to protect and manage common open space within a proposed land division or condominium, the covenants should be reviewed as to form by the municipal attorney.

Protective covenants may be used as supplements to city, village, town, or county zoning regulations. Whereas zoning districts and regulations may be modified at any time by the local government, protective covenants are agreements binding on all parties owning lands in the land division for a given period of time, usually from 15 to 30 years. After such time, the covenants are usually automatically extended for successive periods of a set number of years unless changes are agreed upon by a majority of the property owners within the restricted land division. In order to achieve design and development objectives, the protective covenants can be more restrictive than the local zoning ordinance and land division regulations.

Protective covenants should be required by local governments to protect common open space or other common areas retained in private ownership within a subdivision or condominium. A homeowner or condominium association should be created by the subdivider to manage and maintain the common open space and any facilities located within common areas. Section 2.06 of the model ordinance sets forth regulations governing the creation of homeowner and condominium associations. Importantly, as set forth in Subsection 2.06J, the local government should reserve the right to maintain common open space and facilities and to assess that cost to the owners of property within the land division, should the homeowner or condominium association fail to properly maintain such areas and facilities. A sample declaration of

restrictive covenants is provided in Appendix D of this report to assist interested parties in the preparation of such covenants.

The proper management of common open space within subdivisions and condominiums, including a land stewardship plan to protect natural resources in environ-

mentally sensitive areas, is a fairly new issue for many local government officials. A thorough discussion of this subject is provided in Chapter V of SEWRPC Planning Guide No. 7, *Rural Cluster Development Guide*, December 1996. The recommendations provided in that chapter apply to the management of common open space in any subdivision or condominium.

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APPENDICES

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Appendix A

SELECTED STATE STATUTES AND ADMINISTRATIVE CODE REQUIREMENTS AFFECTING LAND DIVISIONS

Wisconsin Statutes:

- Chapter 236: Platting Lands and Recording and Vacating Plats
- Chapter 703: Condominiums
- Section 66.0617: Impact Fees
- Section 66.1001: Comprehensive Planning

Wisconsin Administrative Code:

- Chapter Trans 233: Division of Land Abutting a State Trunk Highway or Connecting Highway

CHAPTER 236

PLATTING LANDS AND RECORDING AND VACATING PLATS

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VACATING AND ALTERING PLATS

- 236.36 Replats.
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- 236.445 Discontinuance of streets by county board.

SUBDIVISION REGULATION AND REGIONAL PLANS

- 236.45 Local subdivision regulation.
- 236.46 County plans.

GENERAL PROVISIONS

- 236.50 Date chapter applies; curative provisions as to plats before that date.

PRELIMINARY PROVISIONS

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

Discussion of the circumstances under which the statutory platting standards set forth in 236.16 (1), (2) and (3) and 236.20 (4) (d), may be waived or varied, with specific reference to the approval of island subdivision plats. 62 Atty. Gen. 315.

"Outlots" under ch. 236 discussed. 66 Atty. Gen. 238.

Chapter 236 discussed in reference to the platting, replatting and division of lots within a recorded subdivision. 67 Atty. Gen. 121.

236.015 Applicability of chapter. This chapter does not apply to transportation project plats that conform to s. 84.095.
History: 1997 a. 282.

236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:

(1) "Alley" means a public or private right-of-way shown on a plat, which provides secondary access to a lot, block or parcel of land.

(2) "Copy" means a true and accurate copy of all sheets of the original subdivision plat. Such copy shall be on durable white matte finished paper with legible dark lines and lettering.

(3) "County planning agency" means a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03 (2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use.

(4) "Department" means the department of administration.

(5) "Extraterritorial plat approval jurisdiction" means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.

(6) "Municipality" means an incorporated city or village.

(7) An "outlot" is a parcel of land, other than a lot or block, so designated on the plat.

(8) "Plat" is a map of a subdivision.

(9) "Preliminary plat" is a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(9c) "Record" means, with respect to a final plat or a certified survey map, to record and file the document with the register of deeds.

(9m) "Recorded private claim" means a claim of title to land based on a conveyance from a foreign government made before the land was acquired by the United States.

(11) "Replat" is the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of said block, lot or outlot is not a replat.

(12) "Subdivision" is a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where:

(a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or

(b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

(13) "Town planning agency" means a town zoning committee appointed under s. 60.61 (4) (a) or any agency created by the town board and authorized by statute to plan land use.

History: 1979 c. 221; 1979 c. 233 s. 8; 1979 c. 248 ss. 2, 25 (4); 1979 c. 361; 1983 a. 189, 473, 532, 538; 1985 a. 29; 1987 a. 399; 1993 a. 490; 1995 a. 27 ss. 6307m, 6308, 9116 (5); 1995 a. 201; 1997 a. 27; 1999 a. 96.

In determining lot sizes under sub. (8), 1981 stats. [now sub. (12)], such lots may not extend across navigable waters or public easements of passage nor include any

land whose servitude is inconsistent with its integrated functional use and unified ownership. 66 Atty. Gen. 2.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8), 1981 stats. [now sub. (12)] Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.03 Survey and plat; when required. (1) Any division of land which results in a subdivision as defined in s. 236.02 (12) (a) shall be, and any other division may be, surveyed and a plat thereof approved and recorded as required by this chapter. No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter.

(2) This chapter does not apply to cemetery plats made under s. 157.07 and assessors' plats made under s. 70.27, but such assessors' plats shall, except in counties having a population of 500,000 or more, comply with ss. 236.15 (1) (a) to (g) and 236.20 (1) and (2) (a) to (e), unless waived under s. 236.20 (2) (L).

(3) Subsection (1) shall not apply to the sale or exchange of parcels of public utility or railroad right-of-way to adjoining property owners if the governing body of the municipality or town in which the property is located and the county planning agency, where such agency exists, approves such sale or exchange on the basis of applicable local ordinances or the provisions of this chapter.

History: 1983 a. 189 s. 329 (23); 1983 a. 473; 1993 a. 490.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors' plats under s. 70.27. Once properly filed and recorded an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. *Schaetz v. Town of Scott*, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998).

A replat of a recorded subdivision must comply with the formal platting requirements of ch. 236, relating to new subdivision plats, including those relating to the survey, approval and recording. 63 Atty. Gen. 193.

APPROVAL OF PLAT

236.10 Approvals necessary. (1) To entitle a final plat of a subdivision to be recorded, it shall have the approval of the following in accordance with the provisions of s. 236.12:

(a) If within a municipality, the governing body, but if the plat is within an area, the annexation of which is being legally contested, the governing bodies of both the annexing municipality and the town from which the area has been annexed shall approve.

(b) If within the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and
2. The governing body of the municipality if, by July 1, 1958, or thereafter it adopts a subdivision ordinance or an official map under s. 62.23; and
3. The county planning agency if such agency employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.

(c) If outside the extraterritorial plat approval jurisdiction of a municipality, the town board and the county planning agency, if there is one.

(2) If a subdivision lies within the extraterritorial plat approval jurisdiction of more than one municipality, the provisions of s. 66.0105 shall apply.

(3) The authority to approve or object to preliminary or final plats under this chapter may be delegated to a planning committee or commission of the approving governing body. Final plats dedicating streets, highways or other lands shall be approved by the governing body of the town or municipality in which such are located.

(4) Any municipality, town or county may under s. 66.0301 agree with any other municipality, town or county for the cooperative exercise of the authority to approve or review plats. A municipality, town or county may, under s. 66.0301, agree to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval. A municipi-

ality, town or county may agree with a regional planning commission for the cooperative exercise of the authority to approve or review plats only as provided under s. 66.0309 (11).

(5) Any municipality may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the governing body recorded with the register of deeds incorporating a map or metes and bounds description of the area outside its corporate boundaries within which it shall approve plats. The municipality may rescind this waiver at any time by resolution of the governing body recorded with the register of deeds.

History: 1979 c. 248; 1993 a. 301; 1999 a. 150 s. 672.

City improperly included lots which were not within its extraterritorial plat approval jurisdiction in city's calculation of fee assessed developer. *Brookhill Development, Ltd. v. City of Waukesha*, 103 Wis. 2d 27, 307 N.W.2d 242 (1981).

Artificial lakes and land subdivisions. *Kusler*, 1971 WLR 369.

236.11 Submission of plats for approval. (1) (a) Before submitting a final plat for approval, the subdivider may submit, or the approving authority may require that the subdivider submit, a preliminary plat. It shall be clearly marked "preliminary plat" and shall be in sufficient detail to determine whether the final plat will meet layout requirements. Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or extension thereof, constitutes an approval of the preliminary plat.

(b) If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 24 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time.

(2) The body or bodies having authority to approve plats shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons supplied the subdivider. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority which has failed to act.

History: 1979 c. 248; 1997 a. 332.

Under s. 236.11 (1) (a), 1967 stats., a village must act within 40 days as to a preliminary plat, even though the plat allegedly violates the official city map. Tabling consideration of the plat within 40 days is not sufficient. *State ex rel. Lozoff v. Board of Trustees*, 55 Wis. 2d 64, 197 N.W.2d 798.

236.12 Procedure for approval of plats. (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 500,000 or more.

(2) Within 2 days after a preliminary or final plat is submitted for approval, legible copies, together with a list of the authorities to which the plat must be submitted for approval under s. 236.10 or objection under this subsection, furnished by the subdivider at the subdivider's expense, shall be sent, by the clerk or secretary of the approving authority to which the plat is submitted, to the following agencies which have authority to object to the plat:

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(a) Two copies for each of the state agencies required to review the plat to the department which shall examine the plat for compliance with ss. 236.15, 236.16, 236.20 and 236.21 (1) and (2). If the subdivision abuts or adjoins a state trunk highway or connecting highway, the department shall transmit 2 copies to the department of transportation so that agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. If the subdivision is not served by a public sewer and provision for that service has not been made, the department shall transmit 2 copies to the department of commerce so that that agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. In lieu of this procedure the agencies may designate local officials to act as their agents in examining the plats for compliance with the statutes or their rules by filing a written delegation of authority with the approving body.

(b) Four copies to the county planning agency, if the agency employs on a full-time basis a professional engineer, a planner, or other person charged with the duty of administering planning legislation and adopts a policy requiring submission so that body may determine if it has any objection to the plat on the basis of conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. If no county planning agency exists, then 2 copies to the county park commission except that in a county with a county executive or county administrator, 2 copies to the county park manager, if the subdivision abuts a county park or parkway so that body may determine if it has any objection to the plat on the basis of conflict with the park or parkway development.

(3) Within 20 days of the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider and all approving or objecting authorities of any objection based upon failure of the plat to comply with the statutes or rules which its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the approving authority from which it was received. The plat shall not be approved or deemed approved until any objections have been satisfied. If the objecting agency fails to act within the 20-day limit it shall be deemed to have no objection to the plat. No approving authority may inscribe its approval on a plat prior to the affixing of the certificates under either sub. (4) or (6).

(4) The clerk or secretary of the approving authority forwarding copies of the plat under sub. (2) shall certify on the face of the plat that the copies were forwarded as required and the date thereof and that no objections to the plat have been filed within the 20-day limit set by sub. (3) or, if filed, have been met.

(5) Where more than one approval is required, copies of the plat shall be sent as required by sub. (2) by the approving authority to which the plat is first submitted.

(6) In lieu of the procedure under subs. (2) to (5), the subdivider or the subdivider's agent may submit the original plat to the department which shall forward 2 copies to each of the agencies authorized by sub. (2) to object. The department shall have the required number of copies made at the subdivider's expense. Within 20 days of the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider, and all agencies having the authority to object, of any objection based upon failure of the plat to comply with the statutes or rules which its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the department. After each agency and the department have certified that they have no objection or that their objections have been satisfied, the department shall so certify on the face of the plat. If an agency fails to act within 20 days from the date of the receipt of copies of the plat, and the department fails to act within 30 days of receipt of the original plat it shall be deemed that there are no objections to the plat and, upon demand, it shall be so certified on the face of the plat by the department.

(7) The department and the state agencies referred to in s. 236.13 (1) may charge reasonable service fees for all or part of the costs of activities and services provided by the department under this section and s. 70.27. A schedule of such fees shall be established by rule by each such agency.

(8) In order to facilitate approval of the final plat where more than one approval is required, the subdivider may file a true copy of the plat with the approving authority or authorities with which the original of the final plat has not been filed. The approval of such authorities may be based on such copy but shall be inscribed on the original of the final plat. Before inscribing its approval, the approving authority shall require the surveyor or the owner to certify the respects in which the original of the final plat differs from the copy. All modifications in the final plat shall be approved before final approval is given.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27.

"Planned public development" under (2) (b) is one which county board has adopted by ordinance. *Reynolds v. Waukesha County Park & Plan. Comm.* 109 Wis. 2d 56, 324 N.W.2d 897 (Ct. App. 1982).

236.13 Basis for approval. (1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

(a) The provisions of this chapter;

(b) Any municipal, town or county ordinance;

(c) A comprehensive plan under s. 66.0295 [s. 66.1001] or, if the municipality, town or county does not have a comprehensive plan, either of the following:

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

1. With respect to a municipality or town, a master plan under s. 62.23.

2. With respect to a county, a development plan under s. 59.69.

(d) The rules of the department of commerce relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made;

(e) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

(2) (a) As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider execute a surety bond or provide other security to ensure that he or she will make those improvements within a reasonable time.

(b) Any city or village may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality, but which are constructed according to municipal specifications and under municipal inspection, such as, without limitation because of enumeration, sewerage, water mains and laterals, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the governing body, or that a specified portion of such costs shall be paid in advance as provided in s. 66.0709.

(c) Any county, town, city or village may require as a condition of approval that the subdivider be responsible for the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey map, fall within the public right-of-way.

(d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

(2m) As a further condition of approval when lands included in the plat lie within 500 feet of the ordinary high-water mark of any navigable stream, lake or other body of navigable water or if land in the proposed plat involves lake or stream shorelands referred to in s. 236.16, the department of natural resources, to prevent pollution of navigable waters, or the department of commerce, to protect the public health and safety, may require assurance of adequate drainage areas for private sewage disposal systems and building setback restrictions, or provisions by the owner for public sewage disposal facilities for waters of the state, as defined in s. 281.01 (18), industrial wastes, as defined in s. 281.01 (5), and other wastes, as defined in s. 281.01 (7). The public sewage disposal facilities may consist of one or more systems as the department of natural resources or the department of commerce determines on the basis of need for prevention of pollution of the waters of the state or protection of public health and safety.

(3) No approving authority or agency having the power to approve or object to plats shall condition approval upon compliance with, or base an objection upon, any requirement other than those specified in this section.

(4) Where more than one governing body or other agency has authority to approve or to object to a plat and the requirements of such bodies or agencies are conflicting, the plat shall comply with the most restrictive requirements.

(5) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10., 14. and 15., within 30 days of notification of the rejection of the plat. For the purpose of such appeal the term "board of appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the 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 authority or objecting agency is arbitrary, unreasonable or discriminatory.

(6) An outlot may not be used as a building site unless it is in compliance with restrictions imposed by or under this section with respect to building sites. An outlot may be conveyed regardless of whether it may be used as a building site.

History: 1977 c. 29 ss. 1384, 1654 (8) (c); 1977 c. 162; 1979 c. 221, 248; 1981 c. 289 s. 19; 1981 c. 354; 1993 a. 414; 1995 a. 27 ss. 6310, 6311, 9116 (5); 1995 a. 227; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672.

Local units of government may not reject proposed plats under this section unless plat conflicts with existing statutory requirement of this chapter or with existing written ordinance, master plan, official map, or rule under (1). *State ex rel. Columbia Corp. v. Pacific Town Board*, 92 Wis. 2d 767, 286 N.W.2d 130 (Ct. App. 1979).

Under (2) (a) authority to condition plat approval on public improvements is with governing body of territory in which subdivision is located. *Rice v. City of Oshkosh*, 148 Wis. 2d 78, 435 N.W.2d 252 (1989).

Municipalities have no authority to impose conditions upon a subdivider that extend beyond its borders. *Pedersen v. Town of Windsor*, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (2) (a) does not grant a municipality the power to establish public improvement requirements without an ordinance. *Pedersen v. Town of Windsor*, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (1) (d) does not prevent municipalities from enacting more restrictive sewer regulations than the rules cited in that paragraph. *Manthe v. Town of Windsor*, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996).

So long as any issues addressed in both a master plan and an official map are not contradictory, for purposes of sub. (1) (c), the master plan is consistent with the official map. A master plan is not inconsistent with an official map if the plan contains elements the map does not. *Lake City Corp. v. City of Mequon*, 207 Wis. 2d 156, 558 N.W.2d 100 (1997).

In the area of minimum lot size regulation, the power of a plan commission authorized to review plats is not limited or detracted by zoning regulations. *Lake City Corp. v. City of Mequon*, 207 Wis. 2d 156, 558 N.W.2d 100 (1997).

As sub. (5) does not expressly designate the "appealing authority" to whom appeal papers should be directed, the appellant's service of the appeal on the county Planning and Development Department rather than the Planning and Development Committee, which had made the disputed decision, was not grounds for dismissal when there had been pervasive use of Department personnel and stationery in the process. *Weber v. Dodge County Planning and Development Dept.* 231 Wis. 2d 222, 604 N.W.2d 297 (Ct. App. 1999).

LAYOUT REQUIREMENTS

236.15 Surveying requirements. For every subdivision of land there shall be a survey meeting the following requirements:

(1) MONUMENTS. All of the monuments required in pars. (a) to (h) shall be placed flush with the ground where practicable.

(a) The external boundaries of a subdivision shall be monumented in the field by monuments of concrete containing a ferrous rod one-fourth inch in diameter or greater imbedded its full length, not less than 30 inches in length, not less than 4 inches square or 5 inches in diameter, and marked on the top with a cross, brass plug, iron rod, or other durable material securely embedded; or by iron rods or pipes at least 30 inches long and 2 inches in diameter weighing not less than 3.65 pounds per lineal foot. Solid round or square iron bars of equal or greater length or weight per foot may be used in lieu of pipes wherever pipes are specified in this section. These monuments shall be placed at all corners, at each end of all curves, at the point where a curve changes its radius, at all angle points in any line and at all angle points along the meander line, said points to be not less than 20 feet back from the ordinary high water mark of the lake or from the bank of the stream, except that when such corners or points fall within a street, or proposed future street, the monuments shall be placed in the side line of the street.

(b) All internal boundaries and those corners and points not required to be marked by par. (a) shall be monumented in the field by like monuments as defined in par. (a). These monuments shall be placed at all block corners, at each end of all curves, at the point where a curve changes its radius, and at all angle points in any line.

(c) All lot, outlot, park and public access corners and the corners of land dedicated to the public shall be monumented in the field by iron pipes at least 24 inches long and one inch in diameter, weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 24 inches long and weighing not less than 1.13 pounds per lineal foot.

(d) The lines of lots, outlots, parks and public access and land dedicated to the public that extend to lakes or streams shall be monumented in the field by iron pipes at least 24 inches long and one inch in diameter weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 24 inches long and weighing not less than 1.13 pounds per lineal foot. These monuments shall be placed at the point of intersection of the lake or stream lot line with a meander line established not less than 20 feet back from the ordinary high water mark of the lake or from the bank of the stream.

(f) Any durable metal or concrete monuments may be used in lieu of the iron pipes listed in pars. (c) and (d) provided that they are uniform within the platted area and have a permanent magnet embedded near the top or bottom or both.

(g) In cases where strict compliance with this subsection would be unduly difficult or would not provide adequate monuments, the department may make other reasonable requirements.

(h) The governing body of the city, village or town which is required to approve the subdivision under s. 236.10 may waive the placing of monuments under pars. (b), (c) and (d) for a reasonable time on condition that the subdivider executes a surety bond to ensure that he or she will place the monuments within the time required.

(2) ACCURACY OF SURVEY. The survey shall be performed by a land surveyor registered in this state and if the error in the latitude and departure closure of the survey or any part thereof is greater than the ratio of one in 3,000, the plat may be rejected.

History: 1979 c. 221, 248; 1979 c. 355 s. 240; 1981 c. 390.

All permanent survey monuments required by 236.15 (1) (a), (b), (c) and (d), Stats. 1969, must be placed in the field prior to submission of a final subdivision plat for state level review; provided, however, that in the event of a waiver under sub. (1) (h), the placement of all permanent monuments other than those required by sub. (1) (a), may be temporarily deferred. 59 Atty. Gen. 262.

236.16 Layout requirements. (1) MINIMUM LOT WIDTH AND AREA. In counties having a population of 40,000 or more, each lot in a residential area shall have a minimum average width of 50 feet and a minimum area of 6,000 square feet; in counties of less than 40,000, each lot in a residential area shall have a minimum average width of 60 feet and a minimum area of 7,200 square

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feet. In municipalities, towns and counties adopting subdivision control ordinances under s. 236.45, minimum lot width and area may be reduced to dimensions authorized under such ordinances if the lots are served by public sewers.

(2) **MINIMUM STREET WIDTH.** All streets shall be of the width specified on the master plan or official map or of a width at least as great as that of the existing streets if there is no master plan or official map, but no full street shall be less than 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966, shall, however, comply with minimum standards for town roads prescribed by s. 86.26. Streets or frontage roads auxiliary to and located on the side of a full street for service to the abutting property may not after January 1, 1966, be less than 49.5 feet wide.

(3) **LAKE AND STREAM SHORE PLATS.** (a) All subdivisions abutting on a navigable lake or stream shall provide public access at least 60 feet wide providing access to the low watermark so that there will be public access, which is connected to existing public roads, at not more than one-half mile intervals as measured along the lake or stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department, and excluding shore areas where public parks or open-space streets or roads on either side of a stream are provided.

(b) No public access established under this chapter may be vacated except by circuit court action as provided in s. 236.43.

(c) Except as provided in par. (d), this subsection does not require any local unit of government to improve land provided for public access.

(d) All of the owners of all of the land adjacent to a public access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may petition the city, village, town or county that owns the public access to construct shoreline erosion control measures. Subject to par. (e), the city, village, town or county shall construct the requested shoreline erosion control measures or request the department of natural resources to determine the need for shoreline erosion control measures. Upon receipt of a request under this paragraph from a city, village, town or county, the department of natural resources shall follow the procedures in s. 30.02 (3) and (4). Subject to par. (e), the city, village, town or county shall construct shoreline erosion control measures as required by the department of natural resources if the department of natural resources determines all of the following:

1. Erosion is evident along the shoreline in the vicinity of the public access.

2. The shoreline erosion control measures proposed by the owners of the property adjacent to the public access are designed according to accepted engineering practices.

3. Sufficient property owners, in addition to the owners of all property adjacent to the public access, have agreed to construct shoreline erosion control measures so that the shoreline erosion control project is likely to be effective in controlling erosion at the location of the public access and its vicinity.

4. The shoreline erosion control project is not likely to be effective in controlling erosion at the location of the public access and its vicinity if the city, village, town or county does not construct shoreline erosion control measures on the land provided for public access.

(e) A city, village, town or county may not be required to construct shoreline erosion control measures under par. (d) on land other than land provided for public access.

(f) Paragraphs (b) to (e) apply to public access that exists on, or that is established after, May 7, 1998.

(4) **LAKE AND STREAM SHORE PLATS.** The lands lying between the meander line, established in accordance with s. 236.20 (2) (g), and the water's edge, and any otherwise unplattable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots or public dedications in any plat abutting a lake or stream. This subsection applies not only to lands proposed to be subdivided but also to all lands under option to the

subdivider or in which the subdivider holds any interest and which are contiguous to the lands proposed to be subdivided and which about a lake or stream.

History: 1971 c. 164; 1979 c. 221; 1979 c. 248 ss. 9, 25 (2); 1997 a. 172.

Each of 2 adjacent platted lots may not be divided for the purpose of sale or building development if such division will result in lots or parcels which do not comply with minimum lot width and area requirements established under (1). Section 236.335 discussed. 63 Atty. Gen. 122.

Sub. (3) does not apply to navigable lakes created by artificially enlarging a previously nonnavigable watercourse. 64 Atty. Gen. 146.

The extent to which local governments may vary the terms of 236.16 (1) and (2) and 236.20 (4) (d) by ordinance, discussed. 64 Atty. Gen. 175.

Sub. (4) aims at preventing subdividers from creating narrow, unplatted buffer zones between platted lands and water's edge, thus avoiding public access requirement. 66 Atty. Gen. 85.

236.18 Wisconsin coordinate system. (1) **REQUIREMENT FOR RECORDING.** (a) No plat that is referenced to a Wisconsin coordinate system under sub. (2) may be recorded unless it is based on a datum that the approving authority under s. 236.10 of the jurisdiction in which the land is located has selected by ordinance.

(b) An approving authority under s. 236.10 may select a Wisconsin coordinate system under sub. (2). If it does so, it shall notify the department, on a form provided by the department, of the selection.

(c) An approving authority may, by ordinance, select a different Wisconsin coordinate system under sub. (2) than the one previously selected under par. (b). If it does so, the approving authority shall notify the department on a form provided by the department.

(2) **ALLOWABLE SYSTEMS.** An approving authority under s. 236.10 may select any one of the following systems:

(a) The Wisconsin coordinate system of 1927, which is based on the North American datum of 1927.

(b) The Wisconsin coordinate system of 1983 (1986), which is based on the North American datum of 1983 (adjustment of 1986).

(c) The Wisconsin coordinate system of 1983 (1991), which is based on the North American datum of 1983 (adjustment of 1991).

(3) **ZONES.** Each of the systems under sub. (2) includes the following zones:

(a) A north zone composed of the following counties: Ashland, Bayfield, Burnett, Douglas, Florence, Forest, Iron, Oneida, Price, Sawyer, Vilas and Washburn.

(b) A central zone composed of the following counties: Barron, Brown, Buffalo, Chippewa, Clark, Door, Dunn, Eau Claire, Jackson, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Outagamie, Pepin, Pierce, Polk, Portage, Rusk, St. Croix, Shawano, Taylor, Trempealeau, Waupaca and Wood.

(c) A south zone composed of the following counties: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waushara and Winnebago.

(4) **APPLICABLE DEFINITIONS AND SURVEY CONNECTIONS.** (a) The following definitions apply to the systems under sub. (2):

1. For the Wisconsin coordinate system of 1927, the definitions provided by the national geodetic survey in U.S. coastal and geodetic survey special publication 235 (1974 edition).

2. For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the definitions provided by the national geodetic survey in the national oceanic and atmospheric administration manual national ocean service, national geodetic survey 5 (1989 edition).

(b) Existing positions of the systems under sub. (2) that are marked on the ground by monuments established in conformity with standards adopted by the national geodetic survey for 3rd-order work and above and the geodetic positions of which have been rigidly adjusted on the North American datum of 1927, the

North American datum of 1983 (adjustment of 1986), the North American datum of 1983 (adjustment of 1991) or any later adjustment of the North American datum of 1983 may be used to establish a survey connection to the systems under sub. (2).

(5) **OVERLAPPING LAND.** If portions of any tract of land that is to be defined by one description in a plat are in different zones under sub. (3), the positions of all of the points on its boundaries may be referred to either of the zones but the zone to which those positions are referred and the system under sub. (2) that is used shall be named in the description and noted on the face of all maps and plats of the land.

(6) **COORDINATES.** (a) The plane coordinates of a point that are to be used to express the position or location of a point shall consist of 2 distances that are expressed in U.S. survey feet or meters and decimals of those feet or meters. The definitions of survey foot and meter in letter circular 1071 July 1976 national institute of standards and technology shall be used for conversion between feet and meters.

(b) For the Wisconsin coordinate system of 1927, the distances under par. (a) are the x-coordinate, which shall give the position in an east-and-west direction, and the y-coordinate, which shall give the position in a north-and-south direction.

(c) For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the distances are the northing, which shall give the position in a north-and-south direction and the easting, which shall give the position in an east-and-west direction.

(d) Coordinates in all of the systems under sub. (2) shall depend upon and conform to the plane rectangular coordinate values for the monumented points of the national geodetic reference system horizontal control network that are published by the national geodetic survey or by that agency's successor if those values have been computed on the basis of a system under sub. (2).

(7) **USE OF TERM RESTRICTED.** No person may use the term "Wisconsin coordinate system" on any map, report of a survey or other document unless the coordinates on the document are based on a system under sub. (2).

(8) **DESIGNATION.** Any person who prepares a plat under this section shall designate on that plat which of the systems under sub. (2) and which of the zones under sub. (3) that person has referenced.

(9) **MULTIPLE DESCRIPTIONS.** If a document describes a tract of land by means of the coordinates of a system under sub. (2) and by means of a reference to a subdivision, line or corner of the U.S. public land surveys, the description by means of coordinates supplements and is subordinate to the other description.

(10) **RIGHT OF LENDERS AND PURCHASERS.** A lender or purchaser may require a borrower or seller to provide the description required under s. 236.20.

History: 1979 c. 248 ss. 10, 25 (1); 1993 a. 16, 490.

FINAL PLAT AND DATA

236.20 Final plat. A final plat of subdivided land shall comply with all of the following requirements:

(1) **GENERAL REQUIREMENTS.** All plats shall be legibly prepared and meet all of the following requirements:

(a) The plat shall have a binding margin 1 1/2 inches wide on the left side, and a one-inch margin on all other sides. A graphic scale of not more than 100 feet to one inch shall be shown on each sheet showing layout features. When more than one sheet is used for any plat, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the plat and showing the relation of that sheet to the other sheets and each sheet shall bear the subdivision and county name.

(b) For processing under s. 236.12 (6) the original shall be on muslin-backed white paper 22 inches wide by 30 inches long prepared with nonfading black image. These sheets may be provided

by the county through the register of deeds on such terms as the county board determines.

(c) For processing under s. 236.12 (2), the original copy of the final plat may be of any size and on any material that is capable of clearly legible reproduction.

(2) **MAP AND ENGINEERING INFORMATION.** The final plat shall show correctly on its face all of the following:

(a) The exterior boundaries of the land surveyed and divided.

(b) All monuments erected, corners and other points established in the field in their proper places. The material of which the monuments, corners or other points are made shall be noted at the representation thereof or by legend, except lot, outlot and meander corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the diameter, length and weight per lineal foot of the monuments.

(c) The length and bearing of the exterior boundaries, the boundary lines of all blocks, public grounds, streets and alleys, and all lot lines, except that when the lines in any tier of lots are parallel it shall be sufficient to mark the bearings of the outer lines on one tier thereof. Easements not parallel to a boundary or lot line shall be shown by centerline distance, bearing and width or by easement boundary bearings and distances. Where easement lines are parallel to boundary or lot lines, the boundary or lot line distances and bearings are controlling. Where the exterior boundary lines show bearings or lengths which vary from those recorded in abutting plats or certified surveys there shall be the following note placed along such lines, "recorded as (show recorded bearing or length or both)".

(d) Blocks, if designated, shall be consecutively numbered, or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions.

(e) All lots and outlots in each block consecutively numbered.

(f) The exact width of all easements, streets and alleys.

(g) All lake or stream shore meander lines established by the surveyor in accordance with s. 236.15 (1) (d), the distances and bearings thereof, and the distance between the point of intersection of such meander lines with lot lines and the ordinary high water mark.

(h) The center line of all streets.

(i) A north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and related to a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located.

(j) The area in square feet of each lot and outlot.

(k) When a street is on a circular curve, the main chords of the right-of-way lines shall be drawn as dotted or dashed lines in their proper places. All curved lines shall show, either on the lines or in an adjoining table, the radius of the circle, the central angle subtended, the chord bearing, the chord length and the arc length for each segment. The tangent bearing shall be shown for each end of the main chord for all circular lines. When a circular curve of 30-foot radius or less is used to round off the intersection between 2 straight lines, it shall be tangent to both straight lines. It is sufficient to show on the plat the radius of the curve and the tangent distances from the points of curvature to the point of intersection of the straight lines.

(L) When strict compliance with a provision of this section will entail undue or unnecessary difficulty or tend to render the plat or certified survey map more difficult to read, and when the information on the plat or certified survey map is sufficient for the exact retracement of the measurements and bearings or other necessary dimensions, the department or, in 1st class cities, the city engineer may waive such strict compliance.

(3) **NAME, LOCATION AND POSITION.** The name of the plat shall be printed thereon in prominent letters, and shall not be a duplicate of the name of any plat previously recorded in the same county or

236.20 PLATTING LAND

99-00 Wis. Stats. 3680

municipality. All of the following information relating to the position and location of the subdivision shall be shown on the plat:

(a) The location of the subdivision by government lot, recorded private claim, quarter-quarter section, section, township, range and county noted immediately under the name given the subdivision.

(b) The location of the subdivision shall be indicated by bearing and distance from a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown.

(c) A small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon or, if approved by the department, a location sketch showing the relationship of the subdivision to existing streets. The drawing or sketch shall be oriented on the sheet in the same direction as the main drawing.

(d) The names of adjoining streets, state highways and subdivisions shown in their proper location underscored by a dotted or dashed line.

(e) Abutting street and state highway lines of adjoining plats shown in their proper location by dotted or dashed lines. The width of these streets and highways shall be given also.

(4) **ROADS AND PUBLIC SPACES.** (a) The name of each road or street in the plat shall be printed on the plat.

(b) All lands dedicated to public use except roads and streets shall be clearly marked "Dedicated to the Public".

(c) All roads or streets shown on the plat which are not dedicated to public use shall be clearly marked "Private Road" or "Private Street" or "Private Way".

(d) Each lot within the plat must have access to a public street unless otherwise provided by local ordinance.

(5) **SITE CONDITIONS AND TOPOGRAPHY.** The final plat shall show all of the following:

(a) All existing buildings.

(b) All watercourses, drainage ditches and other existing features pertinent to proper subdivision.

(c) The water elevations of adjoining lakes or streams at the date of the survey and the approximate high and low water elevations of those lakes or streams. All elevations shall be referred to some permanent established datum plane.

History: 1979 c. 221, 248; 1983 a. 473; 1999 a. 85.

236.21 Certificates to accompany plat. To entitle a final plat to be recorded, the following certificates lettered or printed legibly with a black durable image or typed legibly with black ribbon shall appear on it:

(1) **SURVEYOR'S CERTIFICATE OF COMPLIANCE WITH STATUTE.** The certificate of the surveyor who surveyed, divided and mapped the land giving all of the following information, which shall have the same force and effect as an affidavit:

(a) By whose direction the surveyor made the survey, subdivision and plat of the land described on the plat.

(b) A clear and concise description of the land surveyed, divided and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range and county and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section and not at the center of the section, or at the end of a boundary line of a recorded private claim or federal reservation in which the subdivision is located. If the land is located in a recorded subdivision or recorded addition thereto, the land shall be described by the number or other description of the lot, block or subdivision thereof, that has previously been tied to a corner marked and established by the U.S. public land survey.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it.

(d) A statement that the surveyor has fully complied with the provisions of this chapter in surveying, dividing and mapping the land.

(2) **OWNER'S CERTIFICATE.** (a) A certificate by the owner of the land in substantially the following form: "As owner I hereby certify that I caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on the plat. I also certify that this plat is required by s. 236.10 or 236.12 to be submitted to the following for approval or objection: (list of governing bodies required to approve or allowed to object to the plat)." This certificate shall be signed by the owner, the owner's spouse, and all persons holding an interest in the fee of record or by being in possession and, if the land is mortgaged, by the mortgagee of record. These signatures shall be acknowledged in accordance with s. 706.07.

(b) As a condition to approval of the plat, the municipal, town or county body required by s. 236.12 to approve the plat may require that the owner furnish an abstract of title certified to date of submission for approval or, at the option of the owner, a policy of title insurance or certificate of title from an abstract company for examination in order to ascertain whether all parties in interest have signed the owner's certificate on the plat.

(3) **CERTIFICATE OF TAXES PAID.** A certificate of the clerk or treasurer of the municipality or town in which the subdivision lies and a certificate of the treasurer of the county in which the subdivision lies stating that there are no unpaid taxes or unpaid special assessments on any of the lands included in the plat.

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85.

RECORDING OF PLATS

236.25 Recording a plat. (1) The subdivider shall have the final plat recorded in the office of the register of deeds of the county in which the subdivision is located.

(2) The register of deeds shall not accept a plat for record unless:

(a) It is on muslin-backed white paper 22 inches wide by 30 inches long and bears a department certification of no objection or it is reproduced with photographic silver haloid image on double matt polyester film of not less than 4 mil thickness, 22 inches wide by 30 inches long. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals;

(b) The plat is offered for record within 30 days after the date of the last approval of the plat and within 24 months after the first approval;

(c) The plat shows on its face all the certificates and affidavits required by ss. 236.21 and 236.12 (4);

(d) The plat shows on its face the approval of all bodies required by s. 236.10 to approve or the certificate of the clerk that the plat is deemed approved under s. 236.11 (2).

(3) The recording of a plat which is not entitled to be recorded under sub. (2) shall not of itself affect the title of a purchaser of a lot covered by the plat, the donation or dedication of land made by the plat, or the validity of a description of land by reference to the plat, but it allows the purchaser a right to rescind the sale under s. 236.31.

(4) Every final plat entitled to be recorded under this section shall be bound or filed by the register of deeds into properly indexed volumes. Any facsimile of the original whole record, made and prepared by the register of deeds or under his or her direction shall be deemed to be a true copy of the final plat.

(5) The register of deeds may furnish certified copies or other accurate reproductions of any plat on record in his or her office to surveyors, engineers or other interested parties at cost.

History: 1979 c. 248 ss. 19, 25 (5); 1983 a. 473; 1997 a. 332.

236.26 Notification to approving authorities. When a final plat is recorded, the register of deeds shall notify all authorities required by s. 236.10 to approve or permitted by s. 236.12 to object to the plat by mailing to the clerk of each authority written notice thereof.

History: 1981 c. 314.

236.27 Filing of copy of plat. The subdivider shall file a true copy of the final plat as a public record with the clerk of the municipality or town in which the subdivision is located.

236.28 Description of lots in recorded plat. When a subdivision plat has been recorded in accordance with s. 236.25, the lots in that plat shall be described by the name of the plat and the lot and block in the plat for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4). Any conveyance containing such a description shall be construed to convey to the grantee all portions of vacated streets and alleys abutting such lots and belonging to the grantor unless the grantor by appropriate language indicates an intention to reserve or except them from the conveyance.

History: 1971 c. 41 s. 11; 1983 a. 189 s. 329 (26).

236.29 Dedications. (1) EFFECT OF RECORDING ON DEDICATIONS. When any plat is certified, signed, acknowledged and recorded as prescribed in this chapter, every donation or grant to the public or any person, society or corporation marked or noted as such on said plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, and shall be considered a general warranty against such donors, their heirs and assigns to the said donees for their use for the purposes therein expressed and no other; and the land intended for the streets, alleys, ways, commons or other public uses as designated on said plat shall be held by the town, city or village in which such plat is situated in trust to and for such uses and purposes.

(2) **DEDICATIONS TO PUBLIC ACCEPTED BY APPROVAL.** When a final plat of a subdivision has been approved by the governing body of the municipality or town in which the subdivision is located and all other required approvals are obtained and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications.

(3) **MUNICIPALITY MAY LEASE TO A SUBDIVISION ASSOCIATION LAND ACCEPTED FOR PARK.** The municipality or town in which the accepted subdivision is located may lease to a subdivision association any part of the subdivision intended for park purposes where such part has never been improved nor work done thereon nor funds expended therefor by the governing body, but such lease shall not exceed 10 years and shall only be for park improvement purposes.

A complaint against plat subdividers for damages allegedly sustained by a city in the relocation of an electric utility tower situated in the center of a street dedicated as part of a subdivision plat which did not show the existence, location, or easement of a power company's transmission line located in the area platted as a street set forth a cause of action with respect to costs incurred by the city in moving the tower and acquiring a right-of-way for its relocation in order to eliminate a hazard to traffic before the street could be developed. *Kenosha v. Ghysels*, 46 Wis. 2d 418, 175 N.W.2d 223.

236.292 Certain restrictions void. (1) All restrictions on platted land that interfere with the development of the ice age trail under s. 23.17 are void.

(2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), are void.

History: 1991 a. 39; 1993 a. 414; 1999 a. 150 s. 672.

236.293 Restrictions for public benefit. Any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body or which names a public body or public utility as grantee, promisee or beneficiary, vests in the public body or public utility the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction. The restriction may be released or waived in writing by the public body or public utility having the right of enforcement.

History: 1979 c. 248.

The hidden dangers of placing easements on plats. *Ishikawa*. WBB Apr. 1988.

236.295 Correction instruments. (1) Correction instruments may be recorded in the office of the register of deeds in the county in which the plat or certified survey map is recorded and may include any of the following:

(a) Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names or other details shown on a recorded plat or certified survey map.

(b) Ratifications of a recorded plat or certified survey map signed and acknowledged in accordance with s. 706.07.

(c) Certificates of owners and mortgagees of record at time of recording.

(2) Each affidavit in sub. (1) (a) correcting a plat shall be approved prior to recording by the governing body of the municipality or town in which the subdivision is located. The register of deeds shall note on the plat or certified survey map a reference to the page and volume in which the affidavit or instrument is recorded. The record of the affidavit or instrument, or a certified copy of the record, is prima facie evidence of the facts stated in the affidavit or instrument.

History: 1971 c. 41 s. 11; 1979 c. 248; 1999 a. 85.

Section 236.295 does not apply to assessors' plats. 61 Atty. Gen. 25.

PENALTIES AND REMEDIES

236.30 Forfeiture for improper recording. Any person causing his or her final plat to be recorded without submitting such plat for approval as herein required, or who shall fail to present the same for record within the time prescribed after approval, shall forfeit not less than \$100, nor more than \$1,000 to each municipality, town or county wherein such final plat should have been submitted.

History: 1979 c. 248 s. 25 (5).

236.31 Penalties and remedies for transfer of lots without recorded plat. (1) Any subdivider or the subdivider's agent who offers or contracts to convey, or conveys, any subdivision as defined in s. 236.02 (12) or lot or parcel which lies in a subdivision as defined in s. 236.02 (12) knowing that the final plat thereof has not been recorded may be fined not more than \$500 or imprisoned not more than 6 months or both; except where the preliminary or final plat of the subdivision has been filed for approval with the town or municipality in which the subdivision lies, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.

(2) Any municipality, town, county or state agency with subdivision review authority may institute injunction or other appropriate action or proceeding to enjoin a violation of any provision of this chapter, ordinance or rule adopted pursuant to this chapter. Any such municipality, town or county may impose a forfeiture for violation of any such ordinance, and order an assessor's plat to be made under s. 70.27 at the expense of the subdivider or the subdivider's agent when a subdivision is created under s. 236.02 (12) (b) by successive divisions.

(3) Any conveyance or contract to convey made by the subdivider or the subdivider's agent contrary to this section or involving a plat which was not entitled to be recorded under s. 236.25 (2) shall be voidable at the option of the purchaser or person contract-

ing to purchase, his or her heirs, personal representative or trustee in insolvency or bankruptcy within one year after the execution of the document or contract; but such document or contract shall be binding on the vendor, the subdivider's assignee, heir or devisee.

History: 1979 c. 248 s. 25 (6); 1979 c. 355, 357; 1983 a. 189 s. 329 (23).

Sub. (3) does not allow a purchaser to force a seller to violate sub. (1) and become subject to criminal penalties by doing so. *Gordie Boucher Lincoln-Mercury v. J & H Landfill*, 172 Wis. 2d 333, 493 N.W.2d 375 (Ct. App. 1992).

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8), 1981 stats. [now sub. (12)] Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.32 Penalty for disturbing or not placing monuments. Any of the following may be fined not more than \$250 or imprisoned not more than one year in county jail:

(1) Any owner, surveyor or subdivider who fails to place monuments as prescribed in this chapter when subdividing land.

(2) Any person who knowingly removes or disturbs any such monument without the permission of the governing body of the municipality or county in which the subdivision is located or fails to report such disturbance or removal to it.

(3) Fails to replace properly any monuments which have been removed or disturbed when ordered to do so by the governing body of the municipality or county in which the subdivision is located.

236.33 Division of land into small parcels in cities of the first class prohibited; penalty. It shall be unlawful to divide or subdivide and convey by deed or otherwise any lot in any recorded plat or any parcel or tract of unplatted land in any city of the first class so as to create a lot or parcel of land which does not have street or public highway frontage of at least 4 feet or an easement to a street or public highway of a minimum width of 4 feet but this section shall not apply to conveyances by tax deed or through the exercise of eminent domain or to such reductions in size or area as are caused by the taking of property for public purposes. This section shall not prohibit the dividing or subdividing of any lot or parcel of land in any such city where the divided or subdivided parts thereof which become joined in ownership with any other lot or parcel of land comply with the requirements of this section, if the remaining portion of such lot or parcel so divided or subdivided complies. Any person who shall make such conveyance or procure such a sale or act as agent in procuring such sale or conveyance shall be fined not less than \$100 or more than \$500 or imprisoned not more than 6 months or both.

236.335 Prohibited subdividing; forfeit. No lot or parcel in a recorded plat may be divided, or used if so divided, for purposes of sale or building development if the resulting lots or parcels do not conform to this chapter, to any applicable ordinance of the approving authority or to the rules of the department of workforce development under s. 236.13. Any person making or causing such a division to be made shall forfeit not less than \$100 nor more than \$500 to the approving authority, or to the state if there is a violation of this chapter or the rules of the department of workforce development.

History: 1979 c. 221; 1995 a. 27 s. 9130 (4); 1997 a. 3.

Discussion of circumstances under which lots in a recorded subdivision may be legally divided without replatting. 64 Atty. Gen. 80.

236.34 Recording of certified survey map; use in changing boundaries; use in conveyancing. (1) **PREPARATION.** A certified survey map of not more than 4 parcels of land may be recorded in the office of the register of deeds of the county in which the land is situated. A certified survey map may be used to change the boundaries of lots and outlots within a recorded plat, recorded assessor's plat under s. 70.27 or recorded, certified survey map if the redivision does not result in a subdivision or violate a local subdivision regulation. A certified survey map may not alter the exterior boundary of a recorded plat, a recorded assessor's plat, areas previously dedicated to the public or a restriction placed on the platted land by covenant, by grant of an easement

or by any other manner. A certified survey must meet the following requirements:

(a) The survey shall be performed and the map prepared by a land surveyor registered in this state. The error in the latitude and departure closure of the survey may not exceed the ratio of one in 3,000.

(b) All corners shall be monumented in accordance with s. 236.15 (1) (c) and (d).

(c) The map shall be prepared in accordance with s. 236.20 (2) (a), (b), (c), (e), (f), (g), (i), (j), (k) and (L) and (3) (b) on a scale of not more than 500 feet to the inch. The map shall be prepared with a binding margin 1.5 inches wide and a 0.5 inch margin on all other sides on durable white paper 8 1/2 inches wide by 14 inches long with nonfading black image or reproduced with photographic silver haloid image on double matt polyester film of not less than 4 mil thickness which is 8 1/2 inches wide by 14 inches long. When more than one sheet is used for any map, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the map and showing the relationship of that sheet to the other sheets. "CERTIFIED SURVEY MAP" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range and county noted. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.

(d) The map shall include a certificate of the surveyor who surveyed, divided and mapped the land which has the same force and effect as an affidavit and which gives all of the following information:

1. By whose direction the surveyor made the survey, division and map of the land described on the certified survey map.

2. A clear and concise description of the land surveyed, divided and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range and county; and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section or at the end of a boundary line of a recorded private claim or federal reservation in which the certified map is located; or if the land is located in a recorded subdivision or recorded addition to a recorded subdivision, then by the number or other description of the lot, block or subdivision, which has previously been tied to a corner marked and established by the U.S. public land survey.

3. A statement that the map is a correct representation of all of the exterior boundaries of the land surveyed and the division of that land.

4. A statement that the surveyor has fully complied with the provisions of this section in surveying, dividing and mapping the land.

(e) A certified survey map may be used for dedication of streets and other public areas when owners' certificates and mortgagees' certificates which are in substantially the same form as required by s. 236.21 (2) (a) have been executed and the city council or village or town board involved have approved such dedication. Approval and recording of such certified surveys shall have the force and effect provided by s. 236.29.

(2) **RECORDING.** Certified survey maps prepared in accordance with sub. (1) shall be numbered consecutively by the register of deeds and shall be recorded in a bound volume to be kept in the register of deeds' office, known as the "Certified Survey Maps of ... County".

(3) **USE IN CONVEYANCING.** When a certified survey map has been recorded in accordance with this section, the parcels of land in the map shall be, for all purposes, including assessment, taxation, devise, descent and conveyance, as defined in s. 706.01 (4), described by reference to the number of the survey, lot or outlot

number, the volume and page where recorded, and the name of the county.

History: 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96.

Sub. (2) requires that certified survey maps be numbered consecutively without dependent reference to ownership, developer or surveyor. 61 Atty. Gen. 34.

Certified survey maps are corrected by recording corrected survey maps. 66 Atty. Gen. 90.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8), 1981 stats. [now sub. (12)] Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

SUPPLEMENTAL PROVISIONS

236.35 Sale of lands abutting on private way outside corporate limits of municipality. (1) No person shall sell any parcel of land of one acre or less in size, located outside the corporate limits of a municipality, if it abuts on a road which has not been accepted as a public road unless the seller informs the purchaser in writing of the fact that the road is not a public road and is not required to be maintained by the town or county.

(2) Any person violating this section may be fined not more than \$200 or imprisoned not more than 30 days or both.

VACATING AND ALTERING PLATS

236.36 Replats. Except as provided in s. 70.27 (1), replat of all or any part of a recorded subdivision, if it alters areas dedicated to the public, may not be made or recorded except after proper court action, in the county in which the subdivision is located, has been taken to vacate the original plat or the specific part thereof.

A recorded subdivision may be replatted under 236.36 without undertaking the court proceedings set forth in 236.40, 236.41 and 236.42, where the replat complies with the requirements of ch. 236 applicable to original plats and does not alter areas dedicated to the public. 58 Atty. Gen. 145.

This section permits the replat of a part of a previously recorded subdivision plat, without circuit court action, where the only areas dedicated to the public in that portion of the original subdivision being replatted, were discontinued streets fully and properly vacated under 66.296. 63 Atty. Gen. 210.

236.40 Who may apply for vacation of plat. Any of the following may apply to the circuit court for the county in which a subdivision is located for the vacation or alteration of all or part of the recorded plat of that subdivision:

(1) The owner of the subdivision or of any lot in the subdivision.

(2) The county board if the county has acquired an interest in the subdivision or in any lot in the subdivision by tax deed.

236.41 How notice given. Notice of the application for the vacation or alteration of the plat shall be given at least 3 weeks before the application:

(1) By posting a written notice thereof in at least 2 of the most public places in the county; and

(2) By publication of a copy of the notice as a class 3 notice, under ch. 985; and

(3) By service of the notice in the manner required for service of a summons in the circuit court on the municipality or town in which the subdivision is located, and if it is located in a county having a population of 500,000 or over, on the county; and

(4) By mailing a copy of the notice to the owners of record of all the lots in the subdivision or the part of the subdivision proposed to be vacated or altered at their last-known address.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors plats under s. 70.27. Once properly filed and recorded an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. *Schaetz v. Town of Scott*, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998).

236.42 Hearing and order. (1) After requiring proof that the notices required by s. 236.41 have been given and after hearing all interested parties, the court may in its discretion grant an order vacating or altering the plat or any part thereof except:

(a) The court shall not vacate any alleys immediately in the rear of lots fronting on county trunk highways without the prior approval of the county board or on state trunk highways without the prior approval of the department of transportation.

(b) The court shall not vacate any parts of the plat which have been dedicated to and accepted by the public for public use except as provided in s. 236.43.

(2) The vacation or alteration of a plat shall not affect:

(a) Any restriction under s. 236.293, unless the public body having the right to enforce the restriction has in writing released or waived such restriction.

(b) Any restrictive covenant applying to any of the platted land.

History: 1977 c. 29 s. 1654 (8) (c).

236.43 Vacation or alteration of areas dedicated to the public. Parts of a plat dedicated to and accepted by the public for public use may be vacated or altered as follows:

(1) The court may vacate streets, roads or other public ways on a plat if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) During all that period the areas dedicated for streets, roads or other public ways were not improved as streets, roads or other public ways; and

(c) Those areas are not necessary to reach other platted property; and

(d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.

(2) The court may vacate land platted as a public square upon the application of the municipality or town in which the dedicated land is located if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) The land was never in fact developed or utilized by the municipality or town as a public square.

(3) The court may vacate land, in a city, village or town, platted as a public park or playground upon the application of the local legislative body of such city, village or town where the land has never been developed or used by said city, village or town as a public park or playground.

(4) When the plat is being vacated or altered in any 2nd, 3rd or 4th class city or in any village or town which includes a street, road, alley or public walkway, said street, road, alley or public walkway may be vacated or altered by the circuit court proceeding under ss. 236.41 and 236.42 upon the following conditions:

(a) A resolution is passed by the governing body requesting such vacation or alteration.

(b) The owners of all frontage of the lots and lands abutting on the portion sought to be vacated or altered request in writing that such action be taken.

History: 1993 a. 246; 1997 a. 172.

Cross-reference: See s. 66.296 for other provisions for vacating streets.

Though dedicated as a street, improvement of land as another public way meets the requirements of sub. (1) (b). A walkway cleared and improved to be conducive to pedestrian traffic is a public way improved in accordance with sub. (1) (b). Application of *K.G.R. Partnership*, 187 Wis. 2d 375, 523 N.W.2d 120 (Ct. App. 1994).

A municipality is not an owner under sub. (1) (d). *Closser v. Town of Harding*, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997).

Isolated improvements to provide for a scenic outlook were not improvements as a street, road or public way under sub. (1). *Closser v. Town of Harding*, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997).

236.44 Recording order. The applicant for the vacation or alteration shall record in the office of the register of deeds the order vacating or altering the plat together with the plat showing the part vacated if only part of the plat is vacated or the altered plat if the plat is altered.

236.445 Discontinuance of streets by county board. Any county board may alter or discontinue any street, slip or alley in any recorded plat in any town in such county, not within any city or village, in the same manner and with like effect as provided in s. 66.1003.

History: 1999 a. 150 s. 672.

SUBDIVISION REGULATION AND REGIONAL PLANS

236.45 Local subdivision regulation. (1) DECLARATION OF LEGISLATIVE INTENT. The purpose of this section is to promote the public health, safety and general welfare of the community and the regulations authorized to be made are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations provided for by this section shall be made with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

(2) DELEGATION OF POWER. (a) To accomplish the purposes listed in sub. (1), any municipality, town or county which has established a planning agency may adopt ordinances governing the subdivision or other division of land which are more restrictive than the provisions of this chapter. Such ordinances may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances may make applicable to such divisions any of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town or county may require that a map, plat or sketch of such division be recorded with the register of deeds and kept in a book provided for that purpose. When so recorded, the lots included in the map, plat or sketch may be described by reference to it by lot number and by volume and page of the book provided for that use, for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

1. Transfers of interests in land by will or pursuant to court order;
2. Leases for a term not to exceed 10 years, mortgages or easements;
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 chapter or other applicable laws or ordinances;
4. Such other divisions exempted by such ordinances.

(b) This section and any ordinance adopted pursuant thereto shall be liberally construed in favor of the municipality, town or county and shall not be deemed a limitation or repeal of any requirement or power granted or appearing in this chapter or elsewhere, relating to the subdivision of lands.

(3) AREAS IN WHICH SUBDIVISION ORDINANCES APPLY. An ordinance adopted hereunder by a municipality may regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the municipality as well as land within the corporate limits of the municipality if it has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

(4) PROCEDURE. Before adoption of a subdivision ordinance or any amendments thereto the governing body shall receive the recommendation of its planning agency and shall hold a public hearing thereon. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance adopted shall be published in form suitable for public distribution.

(5) REGULATION OF FEDERAL SURPLUS LAND. With respect to any surplus lands in excess of 500 acres in area, except the Bong air base in Kenosha County, sold in this state by the federal government for private development, the department, in accordance with the procedure specified in ch. 227, may regulate the subdivision or other division of such federal surplus land in any of the ways and with the same powers authorized hereunder for municipalities, towns or counties. Before promulgating such rules, the department shall first receive the recommendations of any committee appointed for that purpose by the governor.

History: 1979 c. 221, 248, 355; 1981 c. 354; 1983 a. 189 s. 329 (26).

This section authorizes towns to regulate minimum lot size. *Town of Sun Prairie v. Storms*, 110 Wis. 2d 58, 327 N.W.2d 642 (1983).

Assessment of school and park land dedication fees as condition for rezoning and issuance of building permit was authorized. *Black v. City of Waukesha*, 125 Wis. 2d 254, 371 N.W.2d 389 (Ct. App. 1985).

Authority under this section relates to the quality of land division and not to the use to which the lots in the subdivision may be put; use may only be controlled through zoning. *Boucher Lincoln-Mercury v. Madison Plan Commission*, 178 Wis. 2d 74, 503 N.W.2d 265 (Ct. App. 1993).

This section does not prevent municipalities from adopting and enforcing more than one ordinance that relates to subdivisions. *Manthe v. Town of Windsor*, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996).

A city may not condition extraterritorial plat approval on annexation. *Hoepker v. City of Madison Plan Commission*, 209 Wis. 2d 633, 563 N.W.2d 145 (1997).

A subdivision plat prepared in compliance with a local ordinance enacted under authority of 236.45, Stats. 1969, is not required by statutes to be submitted for state level review unless such land division results in a "subdivision" as defined in 236.02 (8). 59 Atty. Gen. 262.

Where subdivision regulations, adopted under 236.45, conflict, a plat must comply with the most restrictive requirement. 61 Atty. Gen. 289.

Application of municipal and county subdivision control ordinances within the municipality's extraterritorial plat approval jurisdiction discussed. 66 Atty. Gen. 103.

236.46 County plans. (1) (a) The county planning agency may prepare plans, in such units as it may determine, for the future platting of lands within the county, but without the limits of any municipality, or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. Before completion of these plans, the county planning agency shall fix the time and place it will hear all persons who desire to be heard upon the proposed plans, and shall give notice of that hearing as required below for the passage of the ordinance by the county board. After these hearings the county planning agency shall certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location in towns which may have approved the same, and upon approval of those towns may amend the ordinance. Before the ordinance or any amendments to the ordinance are adopted by the county board, notice shall be given by publication of a class 2 notice, under ch. 985, of a hearing at which all persons interested shall be given an opportunity to be heard at a time and place to be specified in the notice. The ordinance with any amendments as may be made shall govern the platting of all lands within the area to which it applies.

(b) In counties having a population of less than 500,000 any plan adopted under this section does not apply in the extraterritorial plat approval jurisdiction of any municipality unless that municipality by ordinance approves the same. This approval may be rescinded by ordinance.

(2) A plan adopted under this section may be any of the following:

(a) A system of arterial thoroughfares complete for each town.

(b) A system of minor streets for the complete area surrounded by any such main arterial thoroughfares and connecting therewith.

(c) The platting of lots for any area surrounded completely by any such arterial thoroughfares or any such minor streets or both.

(3) Such system of arterial thoroughfares and such system of minor streets within such system of arterial thoroughfares and such platting of lots within any such system of minor streets may be adopted by the same proceeding. For the purpose of this section a parkway may be considered either an arterial thoroughfare or a minor street if it performs the function of an arterial thoroughfare or minor street. A natural obstacle like a lake or river or an artificial obstacle like a railroad or town line may, where necessary, be the boundary of a plan adopted under this section instead of a street or highway or parkway.

History: 1979 c. 248.

GENERAL PROVISIONS

236.50 Date chapter applies; curative provisions as to plats before that date. (1) (a) This chapter shall take effect upon July 1, 1956, but any plat recorded prior to December 31, 1956, may be approved and recorded in accordance with this chapter or ch. 236, 1953 stats. This chapter shall not require that

any subdivision made prior to July 1, 1956, which was platted under the laws in force at that time or which did not constitute a subdivision under the laws in force at that time, be platted and the plat approved and recorded as provided in this chapter.

(b) This chapter shall not require the preparation and recording of a plat of any subdivision which has been staked out and in which sales or contracts of sales have actually been made prior to June 28, 1935, and nothing herein contained shall require the recording of a plat showing property sold or contracted for sale by metes and bounds or by reference to an unrecorded plat prior to June 28, 1935, as a condition precedent to the sale or contract of sale of the whole or part thereof.

(2) No plat which was recorded in the office of any register of deeds prior to July 1, 1956, shall be held invalid by reason of non-compliance with any statute regulating the platting of lands, in force at the time of such recording. Any unaccepted offer of donation or dedication of land attempted to be made in any such plat shall be as effectual as though all statutory requirements had been complied with unless an action to set aside such offer of donation or dedication is commenced prior to July 1, 1958.

CHAPTER 703 CONDOMINIUMS

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703.01 Condominium ownership act. This chapter shall be known as the "Condominium Ownership Act".

History: 1977 c. 407.

State and federal regulation of condominiums. Minahan, 58 MLR 55.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. Wynn, 63 MLR 73 (1979).

Transferring Declarant Rights and Obligations Under the Wisconsin Condominium Ownership Act. Ishikawa. Wis. Law. Feb. 1992.

703.02 Definitions. In this chapter, unless the context requires otherwise:

(1b) "Addendum" means a condominium instrument that modifies a recorded condominium plat.

(1d) "Allocated interests" means the undivided percentage interest in the common elements, the liability for common expenses and the number of votes at meetings of the association appurtenant to each unit.

(1h) "Amendment" means a condominium instrument that modifies a recorded condominium declaration.

(1m) "Association" means all of a condominium's unit owners acting as a group, either through a nonstock, nonprofit corporation or an unincorporated association, in accordance with its bylaws and declaration.

(2) "Common elements" mean all of a condominium except its units.

(3) "Common expenses and common surpluses" mean the expenses and surpluses of an association.

(4) "Condominium" means property subject to a condominium declaration established under this chapter.

(5) "Condominium instruments" mean the declaration, plats and plans of a condominium together with any attached exhibits or schedules.

(6) "Conversion condominium" means a structure which, before the recording of a condominium declaration, was wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of the purchasers.

(6m) "Correction instrument" means an instrument drafted by a licensed land surveyor that complies with the requirements of s. 59.43 (2m) and that, upon recording, corrects an error in a condominium plat. "Correction instrument" does not include an instrument of conveyance.

(7) "Declarant" means any owner who subjects his or her property to a condominium declaration established under this chapter.

(8) "Declaration" means the instrument by which a property becomes subject to this chapter, and that declaration as amended from time to time.

(9) "Expandable condominium" means a condominium to which additional property or units or both may be added in accordance with the provisions of a declaration and this chapter.

(10) "Limited common elements" mean those common elements identified in a declaration or on a condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners.

(11) "Majority" or "majority of unit owners" mean the condominium unit owners with more than 50% of the votes assigned to the units in the condominium declaration.

(12) "Mortgagee" means the holder of any recorded mortgage encumbering one or more units or a land contract vendor.

(13) "Person" means an individual, corporation, partnership, association, trustee or other legal entity.

(14) "Property" means unimproved land, land together with improvements on it or improvements without the underlying land. Property may consist of noncontiguous parcels or improvements.

(14g) "Removal instrument" means an instrument that complies with the requirements of s. 59.43 (2m) and that removes property from the provisions of this chapter upon recording. "Removal instrument" does not include an instrument of conveyance.

(14m) "Small residential condominium" means a condominium with no more than 4 units, all of which are restricted to residential uses.

(15) "Unit" means a part of a condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space or one or more rooms or enclosed spaces located on one or more floors, or parts thereof, in a building. A unit may include 2 or more noncontiguous areas.

(16) "Unit number" means the number identifying a unit in a declaration.

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(17) "Unit owner" means a person, combination of persons, partnership or corporation who holds legal title to a condominium unit or has equitable ownership as a land contract vendee.

History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85.

The definition of "unit" under sub. (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 Wis. 2d 575, 535 N.W.2d 74 (Ct. App. 1995).

703.03 Application of chapter. This chapter applies only to property, a sole owner or all of the owners of which submit the property to the provisions of this chapter by duly executing and recording a declaration as provided in this chapter.

History: 1977 c. 407.

703.04 Status of the units. A unit, together with its undivided interest in the common elements, for all purposes constitutes real property.

History: 1977 c. 407.

703.05 Ownership of units. A unit owner is entitled to the exclusive ownership and possession of his or her unit.

History: 1977 c. 407.

703.06 Alterations prohibited. Except as otherwise provided in this chapter, no unit owner may do any alteration which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

History: 1977 c. 407.

703.07 Establishment of condominium. (1) A condominium may only be created by recording condominium instruments with the register of deeds of the county where the property is located. A condominium declaration and plat shall be presented together to the register of deeds for recording.

(2) A condominium instrument, and all amendments, addenda and certifications of a condominium instrument, shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the declarant and the name of the condominium. Subsequent instruments affecting the title to a unit which is physically located entirely within a single county shall be recorded only in that county, notwithstanding the fact that the common elements are not physically located entirely within that county. Subsequent amendments and addenda shall be indexed under the name of the condominium.

(3) All instruments affecting title to units shall be recorded and taxed as in other real property transactions.

History: 1977 c. 407; 1997 a. 333.

703.08 Notice prior to conversion of residential property to condominium. (1) Residential real property may not be converted to a condominium unless the owner of the residential real property gives 120 days' prior written notice of the conversion to each of the tenants of the building or buildings scheduled for conversion. A tenant has the exclusive option to purchase the unit for a period of 60 days following the date of delivery of the notice.

(2) A tenant may not be required to vacate the property during the period of the notice required under sub. (1) except for:

(a) Violation of a covenant in the lease; or

(b) Nonpayment of rent.

History: 1977 c. 407.

Condominium conversion and tenant rights—Wisconsin statutes section 703.08: What kind of protection does it really provide. *Wynn*, 63 MLR 73 (1979).

703.09 Declaration. (1) A condominium declaration shall contain:

(a) The name and address of the condominium and the name shall include the word "condominium" or be followed by the words "a condominium";

(b) A description of the land on which the condominium is, or is to be, located, together with a statement of the owner's intent to subject the property to the condominium declaration established under this chapter.

(c) A general description of each unit, including its perimeters, location and any other data sufficient to identify it with reasonable certainty.

(d) A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted. Fixtures designed to serve a single unit, located contiguous to the unit's boundaries, are deemed limited common elements appertaining to that unit exclusively and need not be shown or designated as limited common elements in the condominium instruments.

(e) The percentage interests appurtenant to each unit.

(f) The number of votes at meetings of the association of unit owners appurtenant to each unit.

(g) Statement of the purposes for which the building and each of the units are intended and restricted as to use.

(h) The name of the person to receive service of process in the cases provided in this chapter, together with the address of that person and the method by which the association may designate a successor to the person.

(i) Provision as to the percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property.

(j) Any further details in connection with the property which the person executing the declaration deems desirable to set forth consistent with this chapter, except those provisions which are required to be included in the bylaws.

(k) A condominium declaration shall be signed by the owners of the property in the same manner as required in conveyances of real property.

(2) Except as provided in s. 703.26, a condominium declaration may be amended with the written consent of at least two-thirds of the unit owners or a greater percentage if provided in the declaration. An amendment becomes effective when it is recorded in the same manner as the declaration. A unit owner's written consent is not effective unless it is approved by the mortgagee of the unit, if any.

(3) (a) If an amendment to a condominium declaration has the effect of reducing the value of any unit owner's interest in any common element, including any limited common element, and increases the value of the declarant's or any other unit owner's interest in the common element or limited common element, then the declarant or other unit owner shall compensate the unit owner the value of whose interest is reduced in the amount of the reduction in value, either in cash or by other consideration acceptable to the unit owner.

(b) A unit owner may waive the right to obtain compensation under par. (a) in writing.

(c) Paragraph (a) does not apply to an expanding condominium under s. 703.26.

History: 1977 c. 407; 1985 a. 188, 332.

An amendment of a condominium declaration which changed a common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. *Newport Condominium Association v. Concord-Wisconsin*, 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996).

703.095 Modification and correction of recorded condominium instruments, amendments and addenda. A recorded condominium instrument, amendment or addendum may only be modified by recording an amendment, addendum or correction instrument, or by removal from the provisions of this chapter under s. 703.28 (1). The register of deeds may not record a correction instrument if it does not refer to the instrument being corrected and may not record amendments and addenda unless they are numbered consecutively and bear the name of the condominium as it appears in the declaration.

History: 1997 a. 333.

703.10 Bylaws. (1) **BYLAWS TO GOVERN ADMINISTRATION.** The administration of every condominium shall be governed by bylaws. Every unit owner shall comply strictly with the bylaws and with the rules adopted under the bylaws, as the bylaws or rules are amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to the unit. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages or injunctive relief or both maintainable by the association or, in a proper case, by an aggrieved unit owner.

(2) **REQUIRED PARTICULARS.** The bylaws shall express at least the following particulars:

(a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the association; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a nonunit owner, the number of persons constituting the same and that the terms of at least one-third of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying property.

(2m) **LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS.** No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 106.50.

(3) **PERMISSIBLE ADDITIONAL PROVISIONS.** The bylaws also may contain any other provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(4) **PROHIBITING VOTING BY CERTAIN UNIT OWNERS.** The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(5) **AMENDMENT.** The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended.

(6) **TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS.** Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this chapter.

History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82.

703.11 Condominium plat. (1) **TO BE FILED FOR RECORD.** When any condominium instruments are recorded, the declarant shall file for record a condominium plat in a separate plat book maintained for condominium plats.

(2) **REQUIRED PARTICULARS.** A condominium plat may consist of one or more sheets and shall contain at least the following particulars:

(a) The name of the condominium and county in which the property is located on each sheet of the plat. The name of the condominium must be unique in the county in which the condominium is located. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(am) A blank space at least 2.5 inches by 2.5 inches in size on the first sheet for recording use by the register of deeds.

(b) A survey of the property described in the declaration complying with minimum standards for property surveys adopted by the examining board of architects, landscape architects, professional engineers, designers and land surveyors and showing the location of any unit or building located or to be located on the property.

(c) Diagrammatic floor plans of each building located or to be located on the property which show the approximate dimensions, floor area and location of each unit in it. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for filing shall be legibly prepared with a binding margin of 1.5 inches on the left side and a one-inch margin on all other sides on durable white paper 14 inches in length and 22 inches in width with nonfading black image or reproduced with photographic silver haloid image on double matt polyester film of not less than 4 millimeter thickness and 14 inches long by 22 inches wide. The maps and plans shall be drawn to a convenient scale.

(3) **DESIGNATION OF UNITS.** Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.

(4) **SURVEYOR'S CERTIFICATE.** A condominium plat is sufficient for the purposes of this chapter if there is attached to or included in it a certificate of a licensed land surveyor authorized to practice that profession in this state that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat.

History: 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491; 1997 a. 300, 333.

703.115 Local review of condominium instruments.

(1) A county may adopt an ordinance to require the review of condominium instruments before recording by persons employed by the county of recording or by a city, village or town that is located in whole or in part in the county of recording if the ordinance does all of the following:

(a) Requires the review to be completed within 10 working days after submission of the condominium instrument and provides that, if the review is not completed within this period, the condominium instrument is approved for recording.

(b) Provides that a condominium instrument may be rejected only if it fails to comply with the applicable requirements of ss. 703.095, 703.11 (2) (a), (c) and (d) and (3), 703.275 (5) and 703.28 (1m) or if the surveyor's certificate under s. 703.11 (4) is not attached to or included in the condominium plat.

(c) If the person performing the review approves the condominium instrument, requires the person to certify approval in writing, accompanied by his or her signature and title.

(2) An ordinance adopted under this section may authorize the county to charge a fee that reflects the actual cost of performing the review.

History: 1997 a. 333.

703.12 Description of units. A description in any deed or other instrument affecting title to any unit which makes reference

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to the letter or number or other appropriate designation on the condominium plat together with a reference to the condominium instruments shall be a good and sufficient description for all purposes.

History: 1977 c. 407.

Requirements of ch. 236 may not be used to legally describe condominium units. 75 Atty. Gen. 94.

703.13 Percentage interests. (1) **UNDIVIDED PERCENTAGE INTEREST IN COMMON ELEMENTS.** Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this chapter, all common elements shall remain undivided. Except as provided in this chapter, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

(2) **RIGHTS TO COMMON SURPLUSES.** Common surpluses shall be disbursed as provided under s. 703.16 (1).

(3) **LIABILITY FOR COMMON EXPENSES.** Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under s. 703.16 (2).

(4) **CHANGE IN PERCENTAGE INTEREST.** The percentage interests shall have a permanent character and, except as specifically provided by this chapter, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment to the declaration and recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

(5) **ALTERATIONS WITHIN UNITS.** (a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitation specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

(6) **RELOCATION OF BOUNDARIES.** (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment to a declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof. The amendment shall contain words of conveyance between those unit owners, and when recorded shall also be indexed in the name of the grantor and grantee. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board

of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, an amendment to the condominium instruments shall reflect those reallocations.

(e) Plats and plans showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The plats and plans shall be certified as to their accuracy in compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable charges for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate the condominium instruments.

(7) **SEPARATION OF UNITS.** (a) If any condominium instruments expressly permit the separation of a unit into 2 or more units, a separation shall be made in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) The principal officer of the association, upon written application of a person proposing the separation of a unit (separator) and after 30 days' written notice to all other unit owners shall promptly prepare and execute appropriate instruments under this subsection. An amendment to the condominium instruments shall assign a new identifying number to each new unit created by the separation of a unit, shall allocate to those units, on a reasonable basis acceptable to the separator and the executive board all of the undivided interest in the common element and rights to use the limited common elements and the votes in the association formerly appertaining to the separated unit. The amendment shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common surpluses formerly appertaining to the subdivided unit.

(c) Plats and plans showing the boundaries and dimensions separating the new units together with their other boundaries and their new identifying numbers or letters shall be prepared. The plats and plans shall be certified as to their accuracy and compliance with this subsection by a civil engineer, architect or licensed land surveyor authorized to practice his or her profession in the state.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the separator upon payment by him or her of all reasonable cost for their preparation. Those instruments are effective when the separator has executed them and they are recorded. The recording of the instruments is conclusive evidence that the separation did not violate any restrictions or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403.

An amendment of a condominium declaration which changed a common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. *Newport Condominium Association v. Concord-Wisconsin*, 205 Wis. 2d 570, 556 N.W.2d 775 (Ct. App. 1996).

703.14 Use of common elements. (1) The common elements may be used only for the purposes for which they were intended and, except as provided in the condominium instruments or bylaws, the common elements are subject to mutual rights of support, access, use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit to which their use is limited in the condominium instruments and bylaws.

(2) The declaration or bylaws may allow any unit owner of a unit to which the use of any limited common element is restricted to grant by deed, subject to the rights of any existing mortgagee, the use of the limited common element to any other unit owner. Thereafter, the grantor has no further right to use the limited common element.

History: 1977 c. 407.

703.15 Association of unit owners. (1) LEGAL ENTITY. The affairs of every condominium shall be governed by an association which, even if unincorporated, is constituted a legal entity for all purposes.

(2) ORGANIZATION OF ASSOCIATION. (a) *Establishment.* Every declarant shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association. After it is organized, the membership of the association shall at all times consist exclusively of all of the unit owners.

(b) *Power and responsibility prior to establishment.* Until an association is established, a declarant has the power and responsibility to act in all instances where this chapter, any other provision of the law, or the declaration require action by the association or its officers.

(c) *Declarant control.* 1. Except as provided in par. (d), a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association or to exercise the powers and responsibilities otherwise assigned by the declaration or this chapter to the association or its officers. A declaration may not authorize any declarant control of the association for a period exceeding the earlier of any of the following:

a. Ten years in the case of an expandable condominium.

b. Three years in the case of any other condominium.

c. Thirty days after the conveyance of 75% of the common element interest to purchasers.

2. The period of declarant control begins on the date that the first condominium unit is conveyed by a declarant to any person other than the declarant. If there is any other unit owner other than a declarant, a declaration may not be amended to increase the scope or the period of the declarant control.

(d) *Meeting to elect directors.* Prior to the conveyance of 25% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 25% of the directors of the executive board. Prior to the conveyance of 50% of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 33 1/3% of the directors of the executive board.

(e) *Calculation of percentage.* The calculation of the percentage of common element interest conveyed to purchasers under pars. (c) and (d) shall be based on the percentage of undivided interest appertaining to each unit which has been conveyed assuming that all the units to be completed are included in the condominium.

(f) *Elections after expiration of declarant control.* Not later than 45 days after the expiration of any period of declarant control, an association shall hold a meeting and the unit owners shall elect an executive board of at least 3 directors and officers of the association. The directors and officers shall take office upon election.

(3) POWERS OF THE ASSOCIATION. (a) *Powers.* An association has the power to:

1. Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

2. Employ and dismiss employees and agents;

3. Sue on behalf of all unit owners; and

4. Exercise any other power conferred by the condominium instruments or bylaws.

(b) *Conditional powers.* Subject to any restrictions and limitations specified by the declaration, an association may:

1. Make contracts and incur liabilities.

2. Regulate and impose charges for the use of common elements.

3. Cause additional improvements to be made as a part of the common elements.

4. Acquire, hold, encumber and convey any right, title or interest in or to real property.

5. Grant easements through or over the common elements.

6. Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements.

7. Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

(4) ROSTER OF UNIT OWNERS; MEETINGS OF ASSOCIATION. (a) An association shall maintain a current roster of names and addresses of every unit owner to which notice of meetings of the association shall be sent.

(b) Every unit owner shall furnish the association with his or her name and current mailing address. No unit owner may vote at meetings of the association until this information is furnished.

(c) No regular or special meeting of the association may be held except on at least 10 days' written notice delivered or mailed to every unit owner at the address shown on the roster or unless waivers are duly executed by all unit owners.

(d) 1. At meetings of the association every unit owner is entitled to cast the number of votes appurtenant to his or her unit. Unit owners may vote by proxy, but, the proxy is effective only for a maximum period of 180 days following its issuance, unless granted to a mortgagee or lessee. If only one of multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast the votes allocated to that unit.

2. If more than one of the multiple owners is present, the votes allocated to that unit may be cast proportionally among the owners unless the condominium instruments expressly provide otherwise, but unanimous agreement is conclusively presumed if any one of them purports to cast the votes allocated to that unit without protest being made promptly by any of the others to the person presiding over the meeting or until any one of the multiple owners files a statement with the secretary of the association stating that thereafter the vote must be cast proportionally.

(e) Unless otherwise provided in this chapter, and subject to provisions in the bylaws requiring a different majority, decisions of an association shall be made on a majority of votes of the unit owners present and voting.

(5) UNIT OWNER'S INTEREST IN ASSOCIATION'S PROPERTY. No unit owner may have any right, title or interest in any property owned by the association other than as holder of a percentage interest in common elements appurtenant to its unit.

History: 1977 c. 407; 1979 c. 110 s. 60 (12); 1995 a. 225.

703.155 Master associations. (1) DEFINITION. In this section, "master association" means a profit or nonprofit corporation or unincorporated association which exercises the powers under s. 703.15 (3) on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums.

(2) DELEGATION. If a declaration provides that any of the powers described in s. 703.15 (3) are to be exercised by or may be delegated to a master association, all provisions of this chapter applicable to an association apply to the master association, except as modified by this section or the declaration.

(3) POWERS LIMITED. Unless a master association is the only association for a condominium under s. 703.15 (1), it may exercise the powers set forth in s. 703.15 (3) only to the extent expressly permitted in the declarations that are associated with the master association or expressly described in the delegations of power from those condominiums to the master association.

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(4) **LIABILITY LIMITED.** If a declaration provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the exercise of those powers following delegation.

(5) **UNIT OWNERS: RIGHTS AND RESPONSIBILITIES.** The rights and responsibilities of unit owners with respect to the association set forth in s. 703.15 apply, in the conduct of the affairs of a master association, only to those persons under sub. (6) who elect the executive board of a master association, whether or not those persons are unit owners.

(6) **MASTER ASSOCIATION; ELECTION OF EXECUTIVE BOARD.** Notwithstanding s. 703.15 (2) (f) and whether or not a master association is also an association described in s. 703.15 (1), the instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association shall provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of the executive board.

(b) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board.

(c) All unit owners of each condominium subject to the master association may elect specified members of the executive board.

(d) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

History: 1985 a. 188.

703.16 Common expenses and common surpluses.

(1) **DISPOSITION OF COMMON SURPLUSES.** All common surpluses of the association shall be credited to the unit owners' assessments for common expenses in proportion to their percentage interests in the common elements or as otherwise provided in the declaration or shall be used for any other purpose as the association decides.

(2) **FUNDS FOR PAYMENT OF COMMON EXPENSES OBTAINED BY ASSESSMENTS.** Funds for the payment of common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in the common elements or as otherwise provided in the declaration.

(3) **LIABILITY FOR ASSESSMENTS.** A unit owner shall be liable for all assessments, or instalments thereof, coming due while owning a unit. In a voluntary grant, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her share of the common expenses up to the time of the voluntary grant for which a statement of condominium lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(4) **ASSESSMENTS CONSTITUTE LIEN.** All assessments, until paid, together with interest on them and actual costs of collection, constitute a lien on the units on which they are assessed, if a statement of lien is filed within 2 years after the date the assessment becomes due. The lien is effective against a unit at the time the assessment became due regardless of when within the 2-year period it is filed. A statement of condominium lien is filed in the land records of the clerk of circuit court of the county where the unit is located, stating the description of the unit, the name of the record owner, the amount due and the period for which the assessment was due. The clerk of circuit court shall index the statement of condominium lien under the name of the record owner in the judgment and lien docket. The statement of condominium lien shall be signed and verified by an officer or agent of the association as specified in the bylaws and then may be filed. On full payment of the assessment for which the lien is claimed, the unit owner shall be entitled to a satisfaction of the lien that may be filed with the clerk of circuit court.

(5) **STATEMENT.** Any grantee of a unit is entitled to a statement from the association or the executive board, setting forth the amount of unpaid assessments against the grantor and the grantee is not liable for, nor shall the unit conveyed be subject to a lien which is not filed under sub. (4) for, any unpaid assessment against the grantor in excess of the amount set forth in the statement. If an association or a board of directors does not provide such a statement within 10 business days after the grantee's request, they are barred from claiming under any lien which is not filed under sub. (4) prior to the request for the statement against the grantee.

(6) **PRIORITY OF LIEN.** All sums assessed by an association but unpaid for the share of the common expenses chargeable to any unit constitutes a lien on the unit and on the undivided interest in the common elements appurtenant thereto prior to all other liens except:

(a) Liens of general and special taxes.

(b) All sums unpaid on a first mortgage recorded prior to the making of the assessment.

(c) Mechanic's liens filed prior to the making of the assessment.

(d) All sums unpaid on any mortgage loan made under s. 45.80, 1989 stats.

(e) A lien under s. 292.31 (8) (i) or 292.81.

(7) **INTEREST ON UNPAID ASSESSMENT.** Any assessment, or instalment thereof, not paid when due shall bear interest, at the option of the association, from the date when due until paid at a rate not exceeding the highest rate permitted by law as stated in the bylaws.

(8) **ENFORCEMENT OF LIEN.** A lien may be enforced and foreclosed by an association or any other person specified in the bylaws, in the same manner, and subject to the same requirements, as a foreclosure of mortgages on real property in this state. An association may recover costs and actual attorney fees. An association may, unless prohibited by the declaration, bid on the unit at foreclosure sale and acquire, hold, lease, mortgage and convey the unit. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. Suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose the lien unless brought within 3 years following the recording of the statement of condominium lien. No action may be brought to foreclose the lien except after 10 days' prior written notice to the unit owner given by registered mail, return receipt requested, to the address of the unit owner shown on the books of the association.

(9) **FORM OF STATEMENT OF CONDOMINIUM LIEN.** A statement of condominium lien is sufficient for the purposes of this chapter if it contains the following information and is substantially in the following form:

Statement of Condominium Lien

This is to certify that owner(s) of unit No. in Condominium (is) (are) indebted to the association in the amount of \$..... as of, .. (year) for (his) (her) (its) (their) proportionate share of common expenses of the Condominium for the period from (date) to (date), plus interest thereon at the rate of%, costs of collection, and actual attorney fees.

Association

By:

Officer's title (or agent)

Address

Phone number

I hereby affirm under penalties of perjury that the information contained in the foregoing Statement of Condominium Lien is true and correct to the best of my knowledge, information, and belief.

.....

Officer (or agent)

History: 1977 c. 407; 1991 a. 39; 1993 a. 453; 1995 a. 224, 227; 1997 a. 27, 250; 1999 a. 185.

Condominium land contract recorded before making of assessment lien has priority as first mortgage under (6)(b). *Towne Realty, Inc. v. Edwards*, 156 Wis. 2d 344, 456 N.W.2d 651 (Ct. App. 1990).

The definition of "unit" under sub. (15) encompasses a property on which there is no constructed unit. *Aluminium Industries v. Camelot Trails*, 194 Wis. 2d 575, 535 N.W.2d 74 (Ct. App. 1995).

In a foreclosure action under sub. (8) based on a failure to pay condominium fees, s. 846.10 (1) could not be applied sensibly to require a statement of instalments to become due because monthly assessments were in varying amounts. The 12-month redemption period under s. 846.10 (2) is applicable to such foreclosures. *Geneva National Community Association, Inc. v. Friedman*, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999).

703.17 Insurance. (1) An association shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit.

(2) Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the court has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

History: 1977 c. 407; 1985 a. 332.

703.18 Repair or reconstruction. (1) A declaration shall provide for the repair or reconstruction of the common elements in the event of damage to all or part of the common elements of the condominium.

(2) (a) Unless otherwise provided in the declaration, in the event of damage to or destruction of common elements of a condominium, the association shall promptly undertake to repair or reconstruct it to a condition compatible with the remainder of the condominium. All cost of the repair or reconstruction in excess of available insurance proceeds shall be a common expense.

(b) However, if a condominium is damaged to an extent more than the available insurance proceeds, the condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the votes. In the case of partition, the net proceeds of sale together with any net proceeds of insurance shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interests in the common elements, and shall be distributed in accordance with the priority of interests in each unit.

History: 1977 c. 407.

703.19 Eminent domain. (1) DEFINITION. In this section, "taking under the power of eminent domain" includes any sale in settlement of any pending or threatened condemnation proceeding.

(2) ALLOCATION OF AWARD; PROVISIONS IN DECLARATION OR BYLAWS. A declaration or bylaws may provide for an allocation of any award for a taking under the power of eminent domain of all or part of the condominium. A declaration or bylaws also may provide for:

(a) Reapportionment or other change of the percentage interests appurtenant to each unit remaining after any taking; and

(b) Rebuilding, relocation or restoration of any improvements so taken in whole or in part.

(3) ALLOCATION OF AWARD; IN ABSENCE OF PROVISIONS IN DECLARATION OR BYLAWS. Unless otherwise provided for in a declaration or bylaws, any damages for a taking of all or part of a condominium shall be awarded as follows:

(a) Every unit owner is entitled to the entire award for the taking of all or part of their respective unit and for consequential damages to their unit.

(b) Any award for the taking of limited common elements shall be allocated to the unit owners of the units to which the use of those limited common elements is restricted in proportion to their respective percentage interests in the common elements.

(c) In the event no reconstruction is undertaken, any award for the taking of common elements shall be allocated to all unit owners in proportion to their respective percentage interests in the common elements.

(4) RECONSTRUCTION FOLLOWING TAKING. Following the taking of all or a part of the common elements, an association shall promptly undertake to restore the improvements of the common elements to an architectural whole compatible with the existing structure. Any costs of such restoration in excess of the condemnation award shall be a common expense. However, if the taking under the power of eminent domain is to the extent where the remaining condominium portion has been diminished to the extent that reconstruction or restoration is not practical, a condominium shall be subject to an action for partition upon obtaining the written consent of the unit owners having 75% or more of the vote. In the case of partition, the net proceeds of sale, together with any net proceeds of the award for taking, shall be considered as one fund and shall be divided among all unit owners in proportion to their percentage interest in the common elements and shall be distributed in accordance with the priority of interests in each unit.

(5) ADJUSTMENT OF PERCENTAGE INTERESTS FOLLOWING TAKING; EFFECT OF TAKING ON VOTES APPURTENANT TO UNIT. Following the taking of all or a part of any unit, the percentage interests appurtenant to the unit shall be adjusted in proportion as provided in the condominium instruments or bylaws. The association promptly shall prepare and record an amendment to the declaration reflecting the new percentage interests appurtenant to the unit. Subject to sub. (7), following the taking of part of a unit, the votes appurtenant to that unit shall be appurtenant to the remainder of that unit, and following the taking of all of a unit, the right to vote appurtenant to the unit shall terminate.

(6) PRIORITY IN DISTRIBUTION OF DAMAGES FOR EACH UNIT. All damages for each unit shall be distributed in accordance with the priority of interests at law or in equity in each respective unit.

(7) TAKING NOT TO INCLUDE PERCENTAGE INTERESTS OR VOTES. A taking of all or part of a unit may not include any of the percentage interests or votes appurtenant to the unit.

(8) PRESERVATION OF THE RIGHT OF APPEAL. The owner of each unit taken shall have the individual right of appeal of the necessity of taking and of the condemnation award made for the taking. An association shall have the right of appeal of the necessity of taking of the common elements and the right of appeal of the condemnation award made for the taking of the common elements. An appeal by an association shall be binding upon the individual unit owners for the necessity of taking or the condemnation award made for the taking of the common elements. The unit owners having an interest in the ownership of limited common elements may individually or as a group appeal the necessity of taking or the condemnation award made for the taking of the limited common elements.

History: 1977 c. 407.

703.20 Books of receipts and expenditures. (1) RECORD KEEPING; AVAILABILITY FOR EXAMINATION. An association shall keep detailed, accurate records using standard bookkeeping procedures of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments

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shall be available for examination by the unit owners at convenient hours.

(2) **DISCLOSURE INFORMATION.** Within 10 days after a request by a seller other than the declarant, an association shall furnish the information necessary for the seller to comply with s. 703.33. The seller shall pay the association the actual costs of furnishing the information.

History: 1977 c. 407; 1985 a. 188.

703.21 Separate taxation. (1) Every unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law including, but not limited to, special levies based on the value of property and special assessments. Neither the building, the property nor any of the common elements shall be deemed to be a parcel separate from the unit.

(2) The rights, duties and obligations of unit owners under this chapter shall inure to and be binding upon grantees under tax deeds and persons acquiring title by foreclosure of tax liens and their successors in interest.

History: 1977 c. 407; 1979 c. 110.

703.22 Mechanics' and materialmen's liens. (1) Subsequent to recording a declaration under this chapter and while the property remains subject to this chapter, any and all liens will exist only against individual units and the percentage of undivided interest in the common elements appurtenant to such unit, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) Any mechanics' lien or materialmen's lien arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

(3) Any mechanics' or materialmen's lien arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lienor or on the filing of a written undertaking in the manner specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

History: 1977 c. 407; 1979 c. 32 s. 92 (9).

Because the statute is silent as to the amount each unit should pay when a blanket lien is filed, application of the equitable principal that the lien should be applied proportionately against each unit was appropriate. *Torke/Wirth/Pujara v. Lakeshore Towers*, 192 Wis. 2d 481, 531 N.W.2d 419 (Ct. App. 1995).

703.23 Resident agent; exemption of unit owners from liability. (1) **APPOINTMENT OF RESIDENT AGENT; CHANGE IN NAME OR ADDRESS.** When any property is submitted to a condominium declaration, the declarant shall appoint a resident agent for the condominium who shall be a citizen and actual resident of the state or corporation duly registered or qualified to do business in the state. The declarant shall file the name and address of the resident agent with the department of financial institutions. The name or address of the resident agent may be changed by the association or other proper authority of the condominium in the same manner and to the same extent that names and addresses of registered agents may be changed by corporations. If the association is incorporated, the registered agent for the association shall be the registered agent for the condominium.

(2) **INDEX OF NAMES AND ADDRESS OF RESIDENT AGENTS.** The department of financial institutions shall keep an index of the names and addresses of resident agents and shall make the information available to the public on request.

(3) **SUITS BROUGHT BY SERVICE ON RESIDENT AGENT.** Suit may be brought by service on the resident agent in actions against an

association, or which arise through any cause relating to the common elements.

(4) **EXEMPTION OF UNIT OWNERS FROM LIABILITY FOR CERTAIN CLAIMS.** Except in proportion to his or her percentage interest in the common elements, no unit owner personally is liable for damages as a result of injuries arising in connection with the common elements solely by virtue of his or her ownership of a percentage interest in the common elements, or for liabilities incurred by the association.

History: 1977 c. 407; 1995 a. 27.

703.24 Remedies for violation by unit owner. If any unit owner fails to comply with this chapter, the declaration or bylaws, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the association or by any other unit owner.

History: 1977 c. 407.

703.25 Tort and contract liability. (1) An action for tort alleging a wrong done by any agent or employee of a declarant or of an association, or in connection with the condition of any portion of a condominium which a declarant or an association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of its ownership of an undivided interest in the common elements or by reason of its membership in the association or its status as an officer.

(2) An action arising from a contract made by or on behalf of an association shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved under the declaration. No unit owner shall be precluded from bringing such an action by reason of its membership in the association or its status as an officer.

(3) A judgment for money against an association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established under the declaration in an amount not exceeding the market value of the unit, but not against any other property of any unit owner.

History: 1977 c. 407.

Sections 703.25 (3) and 840.10 (1) permit the filing of a *lis pendens* in an action for a money judgment against a condominium association as a judgment will be a lien against each condominium unit although their owners are not defendants in the action. *Interlaken Service Corporation v. Interlaken Condominium Association*, 222 Wis. 2d 299, 588 N.W.2d 262 (Ct. App. 1998).

703.255 Noncompletion of units. (1) A declarant who does not complete any unit described in the declaration within 5 years after recording the declaration under s. 703.07 shall do one of the following:

(a) Amend the declaration to remove the description of the uncompleted units and, notwithstanding the unit owner consent requirements of ss. 703.09 (2) and 703.13 (4), revise the percentage interests appurtenant to each unit and the number of votes appurtenant to each unit to adjust for the units removed.

(b) Secure a written agreement from at least 75% of the unit owners, not including the declarant, which permits the declarant to complete the uncompleted units within 5 years after the date of the written agreement and shall either complete the units within that time period or amend the declaration as provided in par. (a).

(2) Subsection (1) does not apply to expanding condominiums under s. 703.26.

(3) Subsection (1) does not eliminate any liability of a declarant under s. 703.24 or 703.25.

History: 1985 a. 188.

703.26 Expanding condominiums. (1) **DECLARANT MAY RESERVE RIGHT TO EXPAND.** A declarant may reserve the right to expand a condominium by subjecting additional property to the condominium declaration in such a manner that as each additional property is subjected to the condominium declaration, the percentage of undivided interests in the common elements of the preceding and new property shall be reallocated between the unit

owners on the basis of the aggregate undivided interest in the common elements appertaining to the property.

(2) **CONDITIONS TO WHICH RESERVATION SUBJECT.** A reservation of the right to expand a condominium is subject to the conditions provided in this subsection.

(a) A declaration establishing a condominium shall describe each parcel of property which may be added to the condominium.

(b) A declaration establishing a condominium shall show the maximum number of units which may be added, and the percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes appurtenant to each unit following the addition of property to the condominium, if added. The percentage interests in the common elements, the liabilities for common expenses and the rights to common surpluses, and the number of votes that each unit owner will have may be shown by reference to a formula or other appropriate method of determining them following each expansion of the condominium.

(c) A condominium plat for an original condominium shall include, in general terms, the outlines of the land, buildings, and common elements of new property that may be added to the condominium.

(d) In a declaration establishing a condominium, a right to expand the condominium may be reserved in the declaration for a period not exceeding 10 years from the date of recording of the declaration.

(3) **RECORDATION OF AMENDMENTS TO DECLARATION AND PLAT.**

(a) If the conditions of sub. (2) are complied with, property may be added to a condominium if the declarant records an amendment to the declaration, showing the new percentage interests of the unit owners, and the votes which each unit owner may cast in the condominium as expanded, and records an addendum to the condominium plat that includes the detail and information concerning the new property as required in the original condominium plat.

(b) On recording of an amendment of a declaration and an addendum to a plat, each unit owner, by operation of law, has the percentage interests in the common elements, liabilities in the common expenses, rights to common surpluses, and shall have the number of votes, set forth in the amendment to the declaration. Following any expansion, the interest of any mortgagee shall attach, by operation of law, to the new percentage interests in the common elements appurtenant to the unit on which it is a lien.

History: 1977 c. 407; 1997 a. 333.

Substantial compliance with formal requirements permitted by s. 703.30 (2) is limited to the condominium status of the property and title of unit owners. It does not apply to a project's status as an expanding condominium under this section. *Rock Lake Estates Unit Owners Ass'n v. Lake Mills*, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995).

703.27 Zoning and building regulations. (1) A zoning or other land use ordinance or regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium which it would not impose upon a physically identical development under a different form of ownership. No provision of a state or local building code may be applied differently to a building in a condominium than it would be applied to a building of similar structure or occupancy under a different form of ownership unless the different application is expressly permitted in that provision. No subdivision ordinance may apply to any condominium unless the ordinance is, by its express terms, applicable to condominiums.

(2) No county, city or other jurisdiction may enact any law, ordinance or regulation which would impose a burden or restriction on a condominium that is not imposed on all other property of similar character not subjected to a condominium declaration.

History: 1977 c. 407.

703.275 Merger or consolidation of condominiums.

(1) **AGREEMENT; LEGAL EFFECT.** Any 2 or more condominiums, by agreement of the unit owners as provided in this section, may be

merged or consolidated into a single condominium. Unless the agreement otherwise provides, the condominium resulting from a merger or consolidation is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of the preexisting associations. The resultant condominium must bear the name of one of the preexisting condominiums.

(2) **REALLOCATION OF INTERESTS.** The merger or consolidation agreement shall provide for the reallocation of the allocated interests among the units of the resultant condominium. The agreement may not change the ratio that exists before the merger or consolidation between the allocated interests of any unit and the allocated interests of any other unit in the same preexisting condominium. The agreement shall state one of the following:

(a) The reallocations or the formulas upon which they are based.

(b) The percentage of the total of allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums.

(3) **AGREEMENT; OTHER PROVISIONS.** The merger or consolidation agreement may contain any provisions consistent with this chapter in addition to those specified in sub. (2).

(4) **VOTES.** The merger or consolidation agreement is effective if the agreement is approved by the unit owners of units to which at least 75% of the votes in each preexisting association are allocated. If the declaration of a preexisting association specifies that a percentage greater than 75% of the votes in that association is required to approve a merger or consolidation agreement, the greater percentage applies to the vote of that association. A declaration of a preexisting association may specify a smaller percentage and the smaller percentage applies to the vote of that association only if all of the units in the preexisting condominium are restricted exclusively to nonresidential uses.

(5) **RECORDING.** Both a restatement of the declaration of the resultant condominium that includes the merger agreement and an addendum to the condominium plat of the resultant condominium shall be recorded as provided in s. 703.07. The register of deeds shall reference the document number, volume and page of the plat of the resultant condominium on the plat of the preexisting condominium and shall note that the preexisting condominium has been merged.

History: 1985 a. 188; 1997 a. 333.

703.28 Removal from provisions of this chapter.

(1) All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(1m) (a) If the merger of 2 or more condominiums under s. 703.275 would result in the creation of a new plat for the resultant condominium, the property of the preexisting condominiums shall first be removed from the provisions of this chapter by recording a removal instrument.

(b) Before a certified survey map, condominium plat, subdivision plat or other plat may be recorded and filed for the same property, the condominium shall first be removed from the provisions of this chapter by recording a removal instrument.

(2) Upon removal of any property from this chapter, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements.

History: 1977 c. 407; 1997 a. 333; 1999 a. 96.

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703.29 Removal no bar to subsequent resubmission. The removal provided for in s. 703.28 shall in no way bar the subsequent resubmission of the property to this chapter.

History: 1977 c. 407.

703.30 Rules of construction. (1) CERTAIN RULES OF LAW NOT APPLICABLE. Neither the rule of law known as the rule against perpetuities nor the rule of law known as the rule restricting unreasonable restraints on alienation may be applied to defeat or invalidate any provision of this chapter or of any condominium instruments, bylaws or other instrument made pursuant to this chapter.

(2) SUBSTANTIAL CONFORMITY OF CONDOMINIUM INSTRUMENTS AND BYLAWS SUFFICIENT. The provisions of any condominium instruments and bylaws filed under this chapter shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this chapter, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

(3) PROVISIONS OF CONDOMINIUM INSTRUMENTS AND BYLAWS SEVERABLE. All provisions of condominium instruments and bylaws are severable and the invalidity of one provision does not affect the validity of any other provision.

(4) CONFLICTS IN PROVISIONS. If there is any conflict between any provisions of a declaration and provisions of a condominium plat or any provisions of the bylaws, the provisions of the declaration shall control. If there is any conflict between any provisions of any condominium instruments and any provisions of any bylaws, the provisions of the condominium instruments shall control. If there is any conflict between any provisions of any condominium instruments or any provisions of any bylaws and any provisions of this chapter, the provisions of this chapter shall control.

(5) INSTRUMENTS CONSTRUED TOGETHER. Condominium instruments shall be construed together and are determined to incorporate one another to the extent that any requirement of this chapter applying to one instrument is satisfied if the deficiency can be corrected by reference to any of the others.

History: 1977 c. 407.

The application of this section is limited to the condominium status of the property and title of unit owners. It does not apply to a project's status as an expanding condominium under s. 703.26. Rock Lake Estates Unit Owners Ass'n v. Lake Mills, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995).

703.31 Personal application. (1) All unit owners, tenants of the owners, employees of owners and tenants or any other persons that in any manner use property or any part thereof subject to this chapter shall be subject to this chapter and to the declaration and bylaws of the association adopted under this chapter.

(2) All agreements, decisions and determinations lawfully made by an association in accordance with the voting percentages established in this chapter, declaration or bylaws, shall be deemed to be binding on all unit owners.

History: 1977 c. 407.

703.32 Easements and encroachments. (1) PRESUMPTION AS TO EXISTING PHYSICAL BOUNDARIES. Any existing physical boundaries of any unit or common elements constructed or reconstructed in substantial conformity with the condominium plat shall be conclusively presumed to be its boundaries, regardless of the shifting, settlement or lateral movement of any building and regardless of minor variations between the physical boundaries as described in the declaration or shown on the condominium plat and the existing physical boundaries of any such unit or common element. This presumption applies only to encroachments within the condominium.

(2) ENCROACHMENT AS RESULT OF AUTHORIZED CONSTRUCTION, RECONSTRUCTION OR REPAIR. If any portion of any common element encroaches on any unit or if any portion of a unit encroaches on any common element, as a result of the duly authorized

construction, reconstruction or repair of a building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

(3) EASEMENTS INCLUDED IN GRANT OF UNIT. A grant or other disposition of a condominium unit shall include and grant and be subject to any easement arising under the provisions of this section without specific or particular reference to the easement.

(4) ASSOCIATION'S RIGHT OF ENTRY TO MAKE REPAIRS. An association shall have an irrevocable right and an easement to enter units to make repairs to common elements when the repairs reasonably appear necessary for public safety or to prevent damage to other portions of the condominium. Except in cases involving manifest danger to public safety or property, an association shall make a reasonable effort to give notice to the owner of any unit to be entered for the purpose of such repairs. No entry by an association for the purposes specified in this subsection may be considered a trespass.

History: 1977 c. 407.

703.33 Disclosure requirements. (1) MATERIAL TO BE FURNISHED BY SELLER TO PURCHASER BEFORE CLOSING. Not later than 15 days prior to the closing of the sale of a unit to a member of the public, the seller shall furnish to the purchaser the following:

(a) A copy of the proposed or existing declaration, bylaws and any rules or regulations, together with an index of the contents.

(b) A copy of the proposed or existing articles of incorporation of the association, if it is or is to be incorporated.

(c) A copy of any proposed or existing management contract, employment contract or other contract affecting the use, maintenance or access of all or part of the condominium to which it is anticipated the unit owners or the association will be a party following closing.

(d) A copy of the projected annual operating budget for the condominium including reasonable details concerning the estimated monthly payments by the purchaser for assessments, and monthly charges for the use, rental or lease of any facilities not part of the condominium.

(e) A copy of any lease to which it is anticipated the unit owners or the association will be a party following closing.

(f) A description of any contemplated expansion of the condominium with a general description of each stage of expansion and the maximum number of units that can be added to the condominium.

(g) A copy of the floor plan of the unit together with the information that is necessary to show the location of the common elements and other facilities to be used by the unit owners and indicating which facilities will be part of the condominium and which facilities will be owned by others.

(2) DISCLOSURE FORM. The materials required in sub. (1) shall be delivered to a prospective purchaser with cover sheet, index and tables of contents as prescribed in this section. A cover sheet and index shall precede all other materials required in sub. (1). A table of contents shall precede the section to which it applies.

(a) *Cover sheet.* A cover sheet shall be of the same approximate size and shape as the majority of the disclosure materials required in sub. (1) and shall bear the title "Disclosure Materials" and shall contain the name and location of the condominium, the name and business address of the declarant, and the name and business address of the declarant's agent or, if the seller is not the declarant, the name and address of the seller. Following this information, but separate from it, there shall appear on the front of the cover sheet 3 statements in boldface type, or capital letters no smaller than the largest type on the page, in the following wording:

1. THESE ARE THE LEGAL DOCUMENTS COVERING YOUR RIGHTS AND RESPONSIBILITIES AS A CONDOMINIUM OWNER. IF YOU DO NOT UNDERSTAND

ANY PROVISIONS CONTAINED IN THEM, YOU SHOULD OBTAIN PROFESSIONAL ADVICE.

2. THESE DISCLOSURE MATERIALS GIVEN TO YOU AS REQUIRED BY LAW MAY BE RELIED UPON AS CORRECT AND BINDING. ORAL STATEMENTS MAY NOT BE LEGALLY BINDING.

3. YOU MAY AT ANY TIME WITHIN 5 BUSINESS DAYS FOLLOWING RECEIPT OF THESE DOCUMENTS, OR FOLLOWING NOTICE OF ANY MATERIAL CHANGES IN THESE DOCUMENTS, CANCEL IN WRITING THE CONTRACT OF SALE AND RECEIVE A FULL REFUND OF ANY DEPOSITS MADE.

(b) *Index.* Following the material required in par. (a), there shall appear an index of the disclosure materials. An index may begin on the cover sheet, if space permits, and be continued on the first and subsequent pages immediately following the cover sheet or may begin on the first page immediately following the cover sheet and continue on subsequent pages. An index shall be in substantially the following form:

The disclosure materials the seller is required by law to provide to each prospective condominium purchaser contains the following documents and exhibits:

1. *Declaration.* The declaration establishes and describes the condominium, the units and the common areas. The declaration begins on page

2. *Bylaws.* The bylaws contain rules which govern the condominium and effect the rights and responsibilities of unit owners. The bylaws begin on page

3. *Articles of incorporation.* The operation of a condominium is governed by the association, of which each unit owner is a member. Powers, duties, and operation of an association are specified in its articles of incorporation. The articles of incorporation begin on page

4. *Management or employment contracts.* Certain services are provided to the condominium through contracts with individuals or private firms. These contracts begin on page

5. *Annual operating budget.* The association incurs expenses for the operation of the condominium which are assessed to the unit owners. The operating budget is an estimate of those charges which are in addition to mortgage and utility payments. The budget begins on page

6. *Leases.* Units in this condominium are sold subject to one or more leases of property or facilities which are not a part of the condominium. These leases begin on page

7. *Expansion plans.* The declarant has reserved the right to expand the condominium in the future. A description of the plans for expansion and its effect on unit owners begins on page

8. *Floor plan and map.* The seller has provided a floor plan of the unit being offered for sale and a map of the condominium which shows the location of the unit you are considering and all facilities and common areas which are part of the condominium. The floor plan and map begin on page

(c) *Tables of contents and page numbers.* In addition to an index required by par. (b), there shall be provided tables of contents for the declaration, bylaws and articles of incorporation which shall identify each section of these documents and provide a page number for each section. Each section of disclosure material required in sub. (1) shall, on the first page of that material, identify contents of that section but, with an exception of the declaration, bylaws and articles of incorporation, shall not be required to have a table of contents. Each page of disclosure materials shall contain a page number sufficient to identify it within the body of disclosure materials. Page numbers for the declaration, bylaws and articles of incorporation required in par. (b) shall be the first page of the table of contents for that section. All other page numbers required in the index shall refer to the first page of that section on which the title appears.

(cm) *Statements; building code violations.* Except with respect to a conversion condominium with 4 or fewer units, in addition to the other information required by this section, the declarant of a conversion condominium shall provide to each purchaser all of the following:

1. A statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of those structural components and mechanical and electrical installations that are material to the use and enjoyment of the building.

2. A statement by the declarant of the expected useful life of each item reported on in subd. 1. or a statement that no representations are made in that regard.

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(d) *Additions or exclusions.* All materials required by this section shall be delivered to a prospective purchaser with disclosure materials required under sub. (1) except that articles of incorporation, leases and expansion plans of the index need not be included if they clearly do not apply.

(3) **CHANGE IN MATERIAL FOLLOWING DELIVERY TO PURCHASER.** Any material furnished under sub. (1) may not be changed or amended following delivery to a purchaser, if the change or amendment would affect materially the rights of the purchaser, without first obtaining approval of the purchaser. A copy of amendments shall be delivered promptly to the purchaser.

(4) **PURCHASER'S RIGHT TO RESCIND CONTRACT OF SALE.** Any purchaser may at any time within 5 business days following receipt of all information required under sub. (1) and within 5 business days following receipt of all information required under sub. (3), rescind in writing a contract of sale without stating any reason and without any liability on his or her part, and the purchaser is entitled to the return of any deposits made in account of the contract.

(5) **UNTRUE STATEMENT OR OMISSION OF MATERIAL FACT.** Any seller who in disclosing information required under subs. (1) and (2) makes any untrue statement of material fact or omits to state a material fact necessary in order to make statements made not misleading shall be liable to any person purchasing a unit from him or her. However, no action may be maintained to enforce any liability created under this section unless brought within one year after facts constituting a cause of action are or should have been discovered.

(6) **WAIVER OF PURCHASER'S RIGHT.** Rights of purchasers under this section may not be waived in the contract of sale and any attempt to waive is void. However, if the purchaser proceeds to closing, the purchaser's right under this section to rescind is terminated.

(7) **SALE OF UNIT FOR NONRESIDENTIAL PURPOSES.** Requirements of this section do not apply to a sale of any unit which is primarily intended to be occupied and used for nonresidential purposes.

(8) **LOCATION OF CONDOMINIUM IMMATERIAL.** Requirements of this section shall apply to a sale of any unit offered for sale in this state without regard to the location of a condominium.

History: 1977 c. 407; 1985 a. 188.

Tips for Representing Condominium Sellers. Hagopian. Wis. Law. May 1993.

703.34 Blanket mortgages and other blanket liens affecting a unit at time of first conveyance. As a condition to the first transfer of title to each unit:

(1) Every mortgage and other lien affecting such unit, including the undivided interest in the common areas and facilities appurtenant to such unit, shall be paid and satisfied of record;

(2) A unit being transferred and an undivided interest in the common areas and facilities appurtenant thereto shall be released by partial release duly recorded; or

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(3) A mortgage or other lien shall provide for or be amended to provide for a release of the unit and the undivided interest in the common areas and facilities appurtenant thereto from the lien of a mortgage or other lien upon the payment of a sum certain.

History: 1977 c. 407.

703.35 Termination of contracts and leases. If entered into before the officers elected by the unit owners under s. 703.10 take office, any management contract, employment contract, lease of recreational or parking areas or facilities, any contract or lease to which a declarant or any person affiliated with the declarant is a party and any contract or lease which is not bona fide or which was not commercially reasonable to unit owners when entered into under the circumstances then prevailing, may be terminated by the association or its executive board at any time without penalty upon not less than 90 days' notice to the other party thereto. This section does not apply to any lease the termination of which would terminate the condominium.

History: 1977 c. 407.

703.36 Provisions requiring employment of declarant or vendor to effect sale. Any provision of a declaration or other instrument made pursuant to this chapter which requires the owner of a unit to engage or employ the declarant or any subsidiary or affiliate of the declarant for the purpose of effecting a sale or lease of any unit is void. Any provision of any contract for a sale of any unit which requires a purchaser to engage or employ the vendor or any subsidiary or affiliate of the vendor for the purpose of effecting a sale or lease of any unit is void. This section applies to declarations, instruments and contracts made prior to and after August 1, 1978.

History: 1977 c. 407.

703.365 Small residential condominiums. (1) APPLICABILITY. (a) The declaration for a small residential condominium may provide that any or all of subs. (2) to (8) or any parts of those subsections apply to the small residential condominium.

(b) If a declaration under par. (a) provides that any or all of subs. (2) to (8) or any parts of those subsections apply, then, except as provided in those subsections or parts of those subsections, this chapter applies to the small residential condominium in the same manner and to the same extent as to other condominiums.

(2) **DECLARATION.** (a) The declaration for a small residential condominium need not contain those provisions otherwise required under s. 703.09 (1) (e) to (g) and (i).

(b) The undivided percentage interest in a small residential condominium shall be allocated equally among the units.

(c) Each unit in a small residential condominium shall have one vote at meetings of the association.

(d) Commercial activity is permitted in a small residential condominium only to the extent that commercial activity is permitted in residences in a zoning ordinance adopted under s. 59.69, 60.61, 61.35 or 62.23.

(e) All actions taken under this chapter which require a vote of units or unit owners must be approved by an affirmative vote or written consent of at least 75% of the unit votes of a small residential condominium, or a greater percentage if required by the declaration or this chapter.

(3) **BYLAWS.** (a) Notwithstanding s. 703.10 (2) (a), all aspects of the management, operation and duties of the association of a small residential condominium shall be delegated to the board of directors, which may retain a manager for the small residential condominium, and the bylaws shall so specify.

(b) Under s. 703.10 (2) (c), notice of meetings shall be given in a manner best calculated to assure that actual notice is received by the owners of all units of a small residential condominium, and the bylaws shall so specify.

(c) Section 703.10 (2) (d) does not apply to a small residential condominium. The board of directors shall be composed of one

representative from each unit, chosen by and from among the unit owners of that unit.

(d) All actions taken by the board of directors of a small residential condominium under this chapter must be approved by an affirmative vote or written consent of at least 75% of the board.

(e) Section 703.10 (4) does not apply to a small residential condominium.

(4) **CONDOMINIUM PLAT.** (a) The survey under s. 703.11 (2) (b) shall be an as-built survey of the property described in the declaration, building and other improvements on the land which are part of the small residential condominium.

(b) The floor plans under s. 703.11 (2) (c) need only show the location and designation of each unit in the building and the limited common elements appurtenant to each unit of a small residential condominium. These plans may be supplemented by an agreement among all unit owners and mortgagees regarding the allocation of use and enjoyment of common elements which, in both its original and any amended form, shall be recorded.

(5) **ASSOCIATION.** (a) Under s. 703.15 (2), an association shall exist immediately upon establishment of a small residential condominium and the declarant shall have rights in the association only as an owner of a unit or units.

(b) Directors of a small residential condominium shall be chosen in accordance with sub. (3) (c). The board of directors shall meet at least quarterly.

(c) Unless included in the bylaws, s. 703.15 (4) (b) to (d) does not apply to a small residential condominium.

(6) **EXPENSES; MAINTENANCE; OPERATION.** (a) Paragraphs (b) to (e) apply to a small residential condominium if any of the following criteria is met:

1. A proposed expenditure or action for the repair, maintenance or upkeep of the property, or for the operation of the property, is not approved by the board of directors and any unit owner believes the expenditure or action is necessary for the safety and proper use of the property or of the owner's unit.

2. An expenditure or action is approved by the board of directors and any unit owner believes the expenditure or action is contrary to the safety and proper use of the property or the owner's unit.

(b) The unit owner or owners challenging a decision of the board of directors described under par. (a) 1. or 2. shall give written notice of the objection to all unit owners and mortgagees within 45 days after the decision but before any action is taken or expenditure is made. Upon receipt of this notice, the board of directors shall reconsider its decision and either affirm, reverse or modify the decision.

(c) The unit owner or owners may challenge the decision after reconsideration by the board of directors under par. (b) only in an arbitration proceeding under ch. 788. Acceptance of a conveyance of a small residential condominium which is subject to pars. (b) to (e) is deemed to constitute an agreement by the unit owner to submit challenges to decisions of the board of directors to arbitration.

(d) The board of directors, upon submission of the matter to arbitration as provided in par. (c), shall name a proposed arbitrator. The unit owner or owners may accept the proposed arbitrator or propose a different arbitrator. If there is no agreement on a single arbitrator, the 2 arbitrators shall select a 3rd person and the 3 shall serve as an arbitration panel chaired by the 3rd person. The expense of the arbitration shall be shared equally by the association and the unit owner or owners challenging the decision of the board of directors.

(e) The arbitration award by the arbitration panel under par. (d) shall permit or prohibit the decision and the decision shall not be implemented, if it is an affirmative action, until the award is final unless there is a bona fide emergency requiring it.

(7) **EXPANDING CONDOMINIUMS.** Section 703.26 does not apply to a small residential condominium.

(8) DISCLOSURE REQUIREMENTS. The disclosure required for a small residential condominium under s. 703.33 shall be limited to the disclosure required under s. 703.33 (1) (a) to (e), if applicable, and a copy of the condominium plat.

History: 1985 a. 188, 332; 1995 a. 201.

703.37 Interpretation. For purposes of interpretation of this chapter, a condominium is not a subdivision as defined in ch. 236.

History: 1977 c. 407.

703.38 Applicability to existing condominiums.

(1) Except as otherwise provided in this section, this chapter is applicable to all condominiums, whether established before or after August 1, 1978. However, with respect to condominiums existing on August 1, 1978, the declaration, bylaws or condominium plat need not be amended to comply with the requirements of this chapter.

(2) Section 703.10 (5) is not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(3) Section 703.15 (4) (c) and (d) 2. are not applicable to a condominium existing on August 1, 1978 if the existing declaration or bylaws provide otherwise.

(4) Section 703.18 is applicable only to those condominiums which are damaged or destroyed on or after August 1, 1978.

(5) Section 703.19 is applicable only to those eminent domain proceedings filed on or after August 1, 1978.

(6) Unless a declarant elects to conform to the requirements of s. 703.26, s. 703.26 is not applicable to those condominiums created prior to August 1, 1978 under circumstances where the declarant reserved the right to expand the condominium.

(7) Section 703.33 is applicable only to contracts executed after August 1, 1978.

(8) Section 703.35 is applicable only to leases or management and similar contracts executed after August 1, 1978.

(9) Unless the declaration is amended as provided under s. 703.09 (2), 1983 stats., to provide otherwise, a condominium created prior to April 22, 1986, is subject to s. 703.09 (2), 1983 stats., rather than s. 703.09 (2).

(10) Section 703.365 applies to condominiums created on or after April 22, 1986, and to condominiums created before April 22, 1986, that elect to be subject to s. 703.365.

(11) Section 703.255 applies to condominiums created after December 31, 1986.

History: 1977 c. 407; 1985 a. 188.

66.0617 MUNICIPAL LAW**66.0617 Impact fees. (1) DEFINITIONS.** In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the political subdivision can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a political subdivision or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a political subdivision.

(e) "Political subdivision" means a city, village, town or county.

(f) "Public facilities" means highways, as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing and distributing water, parks, playgrounds and other recreational facilities, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries except that, with regard to counties, "public facilities" does not include highways, as defined in s. 340.01 (22), other transportation facilities or traffic control devices. "Public facilities" does not include facilities owned by a school district.

(g) "Service area" means a geographic area delineated by a political subdivision within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the political subdivision.

(2) GENERAL. (a) Subject to par. (am), a political subdivision may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(am) No county may impose an impact fee under this section to recover costs related to transportation projects.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a political subdivision to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a political subdivision shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the political subdivision on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a political subdivision may impose and collect impact fees only under this section.

(3) PUBLIC HEARING; NOTICE. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a political subdivision shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) PUBLIC FACILITIES NEEDS ASSESSMENT. (a) Before enacting an ordinance that imposes impact fees or amending an ordinance

that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a political subdivision shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the effect of recovering these capital costs through impact fees on the availability of affordable housing within the political subdivision.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the political subdivision at least 20 days before the hearing under sub. (3).

(5) DIFFERENTIAL FEES, IMPACT FEE ZONES. (a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the political subdivision and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the political subdivision. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) STANDARDS FOR IMPACT FEES. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the political subdivision.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the political subdivision with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer to the political subdivision, either in full or in instalment payments that are approved by the political subdivision, before a building permit may be issued or other required approval may be given by the political subdivision.

(7) LOW-COST HOUSING. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an

exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the political subdivision.

(8) **REQUIREMENTS FOR IMPACT FEE REVENUES.** Revenues from impact fees shall be placed in a segregated, interest-bearing account and shall be accounted for separately from the other funds of the political subdivision. Impact fee revenues and interest earned on impact fee revenues may be expended only for capital costs for which the impact fees were imposed.

(9) **REFUND OF IMPACT FEES.** An ordinance enacted under this section shall specify that impact fees that are imposed and collected by a political subdivision but are not used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed shall be refunded to the current owner of the property with respect to which the impact fees were imposed. The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection. In determining the length of the time periods under the ordinance, a political subdivision shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(10) **APPEAL.** A political subdivision that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the political subdivision.

History: 1993 a. 305; 1997 a. 27; 1999 a. 150 s. 524; Stats. 1999 s. 66.0617.

Rough Proportionality and Wisconsin's New Impact Fee. Ishikawa. Wis. Law. March 1995.

SUBCHAPTER X

PLANNING, HOUSING AND TRANSPORTATION

66.1001 Comprehensive planning. (1) **DEFINITIONS.** In this section:

(a) "Comprehensive plan" means:

1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).

2. For a city or a village, or for a town that exercises village powers under s. 60.22 (3), a master plan that is adopted or amended under s. 62.23 (2) or (3).

3. For a regional planning commission, a master plan that is adopted or amended under s. 66.0309 (8), (9) or (10).

(b) "Local governmental unit" means a city, village, town, county or regional planning commission that may adopt, prepare or amend a comprehensive plan.

(2) **CONTENTS OF A COMPREHENSIVE PLAN.** A comprehensive plan shall contain all of the following elements:

(a) *Issues and opportunities element.* Background information on the local governmental unit and a statement of overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period. Background information shall include population, household and employment forecasts that the local governmental unit uses in developing its comprehensive plan, and demographic trends, age distribution, educational levels, income levels and employment characteristics that exist within the local governmental unit.

(b) *Housing element.* A compilation of objectives, policies, goals, maps and programs of the local governmental unit to pro-

vide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit's housing stock. The element shall also identify specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock.

(c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

(d) *Utilities and community facilities element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants and transmission lines, cemeteries, health care facilities, child care facilities and other public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and community facilities that serve the local governmental unit, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) *Agricultural, natural and cultural resources element.* A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources, parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

(f) *Economic development element.* A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses. The element shall also identify county, regional and state eco-

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conomic development programs that apply to the local governmental unit.

(g) *Intergovernmental cooperation element.* A compilation of objectives, policies, goals, maps and programs for joint planning and decision making with other jurisdictions, including school districts and adjacent local governmental units, for siting and building public facilities and sharing public services. The element shall analyze the relationship of the local governmental unit to school districts and adjacent local governmental units, and to the region, the state and other governmental units. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall identify existing or potential conflicts between the local governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) *Land-use element.* A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agricultural, residential, commercial, industrial and other public and private uses. The element shall analyze trends in the supply, demand and price of land, opportunities for redevelopment and existing and potential land-use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that shows current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be provided in the future, consistent with the timetable described in par. (d), and the general location of future land uses by net density or other classifications.

(i) *Implementation element.* A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, sign regulations, erosion and storm water control ordinances, historic preservation ordinances, site plan regulations, design review ordinances, building codes, mechanical codes, housing codes, sanitary codes or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

(3) ACTIONS, PROCEDURES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS. Beginning on January 1, 2010, any program or action of a local governmental unit that affects land use shall be consistent with that local governmental unit's comprehensive plan, including all of the following:

- (a) Municipal incorporation procedures under s. 66.0201, 66.0203 or 66.0215.
- (b) Annexation procedures under s. 66.0217, 66.0219 or 66.0223.
- (c) Cooperative boundary agreements entered into under s. 66.0307.
- (d) Consolidation of territory under s. 66.0229.
- (e) Detachment of territory under s. 66.0227.
- (f) Municipal boundary agreements fixed by judgment under s. 66.0225.

(g) Official mapping established or amended under s. 62.23 (6).

(h) Local subdivision regulation under s. 236.45 or 236.46.

(i) Extraterritorial plat review within a city's or village's extraterritorial plat approval jurisdiction, as is defined in s. 236.02 (5).

(j) County zoning ordinances enacted or amended under s. 59.69.

(k) City or village zoning ordinances enacted or amended under s. 62.23 (7).

(L) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.

(m) An improvement of a transportation facility that is undertaken under s. 84.185.

(n) Agricultural preservation plans that are prepared or revised under subch. IV of ch. 91.

(o) Impact fee ordinances that are enacted or amended under s. 66.0617.

(p) Land acquisition for recreational lands and parks under s. 23.09 (20).

(q) Zoning of shorelands or wetlands in shorelands under s. 59.692, 61.351 or 62.231.

(r) Construction site erosion control and storm water management zoning under s. 59.693, 61.354 or 62.234.

(s) Any other ordinance, plan or regulation of a local governmental unit that relates to land use.

(4) PROCEDURES FOR ADOPTING COMPREHENSIVE PLANS. A local governmental unit shall comply with all of the following before its comprehensive plan may take effect:

(a) The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments.

(b) The plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive plan may recommend the adoption or amendment of a comprehensive plan only by adopting a resolution by a majority vote of the entire commission. The vote shall be recorded in the official minutes of the plan commission or other body. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan. One copy of an adopted comprehensive plan, or of an amendment to such a plan, shall be sent to all of the following:

1. Every governmental body that is located in whole or in part within the boundaries of the local governmental unit.

2. The clerk of every local governmental unit that is adjacent to the local governmental unit that is the subject of the plan that is adopted or amended as described in par. (b) (intro.).

NOTE: Subd. 2. is shown as affected by two acts of the 1999 legislature and as merged by the revisor under s. 13.93 (2) (c).

3. The Wisconsin land council.

4. After September 1, 2003, the department of administration.

5. The regional planning commission in which the local governmental unit is located.

6. The public library that serves the area in which the local governmental unit is located.

(c) No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the local governmental unit enacts an ordinance that adopts the plan or amendment. The local governmental unit may not enact an ordinance

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under this paragraph unless the comprehensive plan contains all of the elements specified in sub. (2). An ordinance may be enacted under this paragraph only by a majority vote of the members-elect, as defined in s. 59.001 (2m), of the governing body. An ordinance that is enacted under this paragraph, and the plan to which it relates, shall be filed with at least all of the entities specified under par. (b).

(d) No local governmental unit may enact an ordinance under par. (c) unless the local governmental unit holds at least one public hearing at which the proposed ordinance is discussed. That hearing must be preceded by a class 1 notice under ch. 985 that is published at least 30 days before the hearing is held. The local governmental unit may also provide notice of the hearing by any other means it considers appropriate. The class 1 notice shall contain at least the following information:

1. The date, time and place of the hearing.
2. A summary, which may include a map, of the proposed comprehensive plan or amendment to such a plan.
3. The name of an individual employed by the local governmental unit who may provide additional information regarding the proposed ordinance.
4. Information relating to where and when the proposed comprehensive plan or amendment to such a plan may be inspected before the hearing, and how a copy of the plan or amendment may be obtained.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; s. 13.93 (2) (c).

Chapter Trans 233

DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY
OR CONNECTING HIGHWAY

Trans 233.01	Purpose.	Trans 233.06	Frequency of connections with a state trunk highway or connecting highway.
Trans 233.012	Applicability.	Trans 233.07	Temporary connections.
Trans 233.015	Definitions.	Trans 233.08	Setback requirements and restrictions.
Trans 233.017	Other abutments.	Trans 233.105	Noise, vision corners and drainage.
Trans 233.02	Basic principles.	Trans 233.11	Special exceptions.
Trans 233.03	Procedures for review.	Trans 233.12	Performance bond.
Trans 233.04	Required information.	Trans 233.13	Fees.
Trans 233.05	Direct access to state trunk highway or connecting highway.		

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

Trans 233.01 Purpose. Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. The ability of state trunk highways and connecting highways to serve as an efficient part of an integrated intermodal transportation system meeting interstate, statewide, regional and local needs is jeopardized by failure to consider and accommodate long-range transportation plans and needs during land division processes. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways, to preserve the public interest and investment in those highways, to help maintain speed limits, and to provide for the development and implementation of an intermodal transportation system to serve the mobility needs of people and freight and foster economic growth and development, while minimizing transportation-related fuel consumption, air pollution, and adverse effects on the environment and on land owners and users. Preserving the public investment in an integrated transportation system also assures that no person, on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any transportation program or activity. The authority to impose minimum standards for subdivisions is s. 236.13(1)(e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07(2), Stats. The authority to impose minimum standards for land divisions to consider and accommodate long-range transportation plans and needs is ss. 15.014 (1) (g), 85.16 (1), 85.025, 85.05, 84.01 (15), 84.015, 84.03(1), 84.01(2), 85.02, 88.87(3), 20.305 (9) (qx), 1.11 (1), 1.12 (2), 1.13(3), as created by 1999 Wis. Act 9; 114.31 (1), 84.01 (17), 66.1001 (2) (c), as affected by 1999 Wis. Acts 150 and 167; and 86.31 (6), as affected by 1999 Wis. Act 9.

Note: The Department is authorized and required by ss. 84.01(15), 84.015, 84.03(1) and 20.395(9)(qx), to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain highways and related projects, as required by federal law, Title 23, USC and all acts of Congress amendatory or supplementary thereto, and the federal regulations issued under the federal code; and to expend funds in accordance with the requirements of acts of Congress making such funds available. Among these federal laws that the Department is authorized and required to follow are 23 USC 109 establishing highway design standards; 23 USC 134, requiring development and compliance with long-range (minimum of 20 years) metropolitan area transportation plans; and 23 USC 135, requiring development and compliance with long-range (minimum of 20 years) statewide transportation plans. Similarly, the Department is authorized and required by the state statutes cited and other federal law to assure that it does not unintentionally exclude or deny persons equal benefits or participation in transportation programs or activities on the basis of race, color, national origin and other factors, and to give appropriate consideration to the effects of transportation facilities on the environment and communities. A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road

and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways and 520 center-line miles of connecting highways. Of at least 116 municipalities in which there are connecting highways, 112 are cities and 4 or more are villages.

A "connecting highway" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

A "business route" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" appears at the top of the highway numbering marker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. With very rare exceptions, business routes are not state trunk highways or connecting highways. The authorizing statute is s. 84.02(6), Stats. This rule does not apply to business routes.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am., Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.012 Applicability. (1) In accordance with ss. 86.07(2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.

(2) Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist. Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and February 1, 2001 are subject to ch. Trans 233 as it existed February 1, 1999.

(3) Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be

kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; *renum.* Trans. 233.012 to be (1), cr. (2) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.015 Definitions. Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided. In this chapter:

(1) "Certified survey map" or "CSM" means a map that complies with the requirements of s. 236.34, Stats.

(1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the department's facilities development manual.

Note: Guidelines established in the Department's Facilities Development Manual are not considered "rules," as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats.

(1r) "District office" means an office of the division of transportation districts of the department.

(2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.

(2m) "In-ground swimming pool" includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. "In-ground swimming pool" does not include any above-ground swimming pools without decks.

(3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

(5m) "Major intersection" means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. 84.295, Stats., or a designated interstate highway under s. 84.29, Stats.

(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.

(6m) "Reviewing municipality" means a city or village to which the department has delegated authority to review and object to land divisions under s. Trans 233.03 (7).

(6r) "Secretary" means the secretary of the department of transportation.

(7) "Structure" includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.

(7m) "Technical land division" means a land division involving a structure or improvement that has been situated on the real

property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.

(8) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.

(8m) "User" means a person entitled to use a majority of the property to the exclusion of others.

(9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01(1m), Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.017 Other abutments. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.

(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

(3) Separated from a state trunk highway or connecting highway by only a service road.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.

(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.

(5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in s. Trans 233.105(3).

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds noise standards in s. Trans 405.04, Table I.

(7) A land division shall provide vision corners at intersections and driveways per department standards.

Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (e), Stats. Rules governing construction of driveways and other connections with highways are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.03 Procedures for review. The following procedures apply to review by the department, district office or reviewing municipality of proposed certified survey maps, condominium plats and other land divisions:

(1) **CONCEPTUAL REVIEW.** (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate location of streets, and include other information required in this chapter.

(b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).

(c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.

(2) **PRELIMINARY AND FINAL PLAT REVIEW.** The department shall conduct preliminary and final subdivision plat review under s. 236.12, Stats., when the land divider or approving authority submits, through the department of administration's plat review office, a formal request for departmental review of the plat for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee.

(3) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.45 AND S. 703.11, STATS.** The department shall review preliminary and final land division maps under ss. 236.45 and 703.11, Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office. Review of preliminary and final land division maps occurring under ss. 236.45 and 703.11, Stats., by the department shall occur when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(4) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.34 AND BY OTHER MEANS NOT PRESCRIBED BY STATUTES.** The department shall conduct preliminary and final review of land division maps under s. 236.34, Stats., or under any other means not prescribed by statutes, when the land divider submits a formal request for departmental review for certification of non-objection to the land division as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Addi-

tional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information shall be submitted to the district office or to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(5) **TIME LIMIT FOR REVIEW.** (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:

1. Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.

2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

Note: The 20-day time limit for action on a review without any special exception or variance is also established by statute for subdivision plat reviews in sec. 236.12(3) and (6), Stats.

(b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.

(c) If a special exception is requested under s. Trans 233.11, the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. Trans 233.11(6).

(d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.

(e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. Trans 233.11(6), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.

(6) **DISTRICT AUTHORITY TO REVIEW LAND DIVISION MAPS.** Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniformity of such reviews among district offices and shall provide uniform guidance in figure 3 of procedure 7-50-5 of the department's facilities development manual dated December 1, 2000.

Note: Guidelines established under this subsection are not considered "rules", as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats. However, this rule references uniform guidance by date so that future revisions to that uniform guidance will become effective only if ch. Trans 233 is amended.

(7) **MUNICIPAL AUTHORITY TO REVIEW LAND DIVISION MAPS.** The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement

under this section, except by written amendment to the delegation agreement approved by the department.

(8) **APPEALS.** (a) *Department review.* Except as provided in this paragraph and par. (b), a land divider, governmental officer or entity, or member of the general public may appeal a final decision of a district office or reviewing municipality regarding a land division map, special exception, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a land division map, with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).

(b) *Judicial review.* 1. Chapter 236 land divisions. Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to chapter 236, Stats., shall follow appeal procedures specified in that chapter.

Note: Land divisions subject to plat approval under sec. 236.10, Stats., shall follow the procedures specified in sec. 236.13(5), Stats.

2. All other land divisions. Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to chapter 236, Stats., shall follow the procedures specified in chapter 227, Stats., for judicial review of agency decisions.

Note: Final administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to judicial review as provided in ch. 227, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), (2), (3) and (4), r. and recr. (5), cr. (6) to (8), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information in subs. (1) to (8) about the following:

(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.

(2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.

(3) The location, and identification of each highway and private road or driveway, leading to or from the land division.

(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.

(5) The locations of all easements for accessing real property within the land division.

(6) The location of the highway nearest each side of the land division.

(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway

that abuts the land division, if the connection is any of the following:

(a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.

(b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.

(8) All information required to be shown on a land division map shall be shown in its proper location

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.05 Direct access to state trunk highway or connecting highway. (1) No land divider may divide land

in such a manner that a private road or driveway connects with a state trunk highway or connecting highway or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has received a special exception for that purpose approved by the department, district office or reviewing municipality under s. Trans 233.11. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21(2)(a), Stats., and shall be executed in the manner specified for a conveyance:

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.)

or

Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

Note: The denial of a special exception for access or connection purposes is not the functional equivalent of the denial of a permit under s. 86.07(2), Stats. Appeal of disapproval of a plat (and thus disapproval of a special exception) is available only by certiorari under s. 236.13(5), Stats. There is no right to a contested case hearing under ss. 227.42 or 227.51(1) for the denial of a special exception.

(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

(3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway, or with a service road lying partially within the right-of-way of a state trunk highway or connecting highway, without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map or, for a subdivision plat, prior to the department's certification of no objection.

Note: The authority maintaining the highway is the one that issues, denies or places conditions on any permit issued under s. 86.07(2), Stats. Cities and villages are responsible for the maintenance of connecting highways under s. 86.32(1), Stats. Cities and villages must condition any permit issued with respect to a connecting highway upon compliance with all requirements imposed pursuant to this chapter.

(4) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.

Note: Rules governing construction of driveways and other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the Department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway.

(1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.07 Temporary connections. (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.08 Setback requirements and restrictions. (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16 (1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).

(2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.

(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:

1. The distance allowed under the ordinance.

2. 42 feet from the nearer right-of-way line.

3. 100 feet from the centerline.

(c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in pars. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11 (3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:

1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).

2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.

3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1½ miles of a fourth class city or a village.

4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.

5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05(1), within the following 20 years.

Note: The National Highway System (NHS) includes the Interstate System, Wisconsin's Corridors 2020 routes, and other important routes. Highways on the NHS base system were designated by the Secretary of USDOT and approved by Congress in the National Highway System Designation Act of 1995. NHS Intermodal Connector routes were added in 1998 with the enactment of the Transportation Equity Act for the 21st Century. Modifications to the NHS must be approved by the Secretary of USDOT. Guidance criteria and procedures for the functional classification of highways are provided in (1) the Federal Highway Administration (FHWA) publication 'Highway Functional Classification—Concepts, Criteria and Procedures' revised in March 1989, and (2) former ch. Trans 76. The federal publication is available on request from the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW., Washington, DC 20590. Former ch. Trans 76 is available from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning. The results of the functional classification are mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved serve as the official record for Federal-aid highways and one basis for designation of the National Highway System. In general, the highway functional classifications are rural or urban: Principal Arterials, Minor Arterials, Major Collectors, Minor Collectors, and Local Roads. The definition of "level of service" used for this paragraph is the same as in ss. Trans 210.03(4) and 210.05(1) for purposes of the MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS. In general, the "level of service" refers to the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst. Department engineers will use the procedures outlined in the general design consideration guidelines in Chapter 11, Section 5 of the Wisconsin Department of Transportation's Facilities Development Manual to determine the level of highway service. Under the rule as effective February 1, 1999, s. Trans 233.08(1) provides 4 ways to erect something in a setback area (1) for utilities, follow the procedures set forth in the rule, (2) obtain a variance (now "special exception"), (3) for utilities, get local approval for utilities on or adjacent to connecting highways, or for utilities within the right of way of state trunk highways, get department approval (a mere "technical" exception), and (4) erect something that doesn't fall within the definition of "structure" or within the definition of "improvement." The provision below now adds a fifth "exception," (5) be 15 feet or more outside the right of way line of a defined and mapped set of highways.

(d) In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

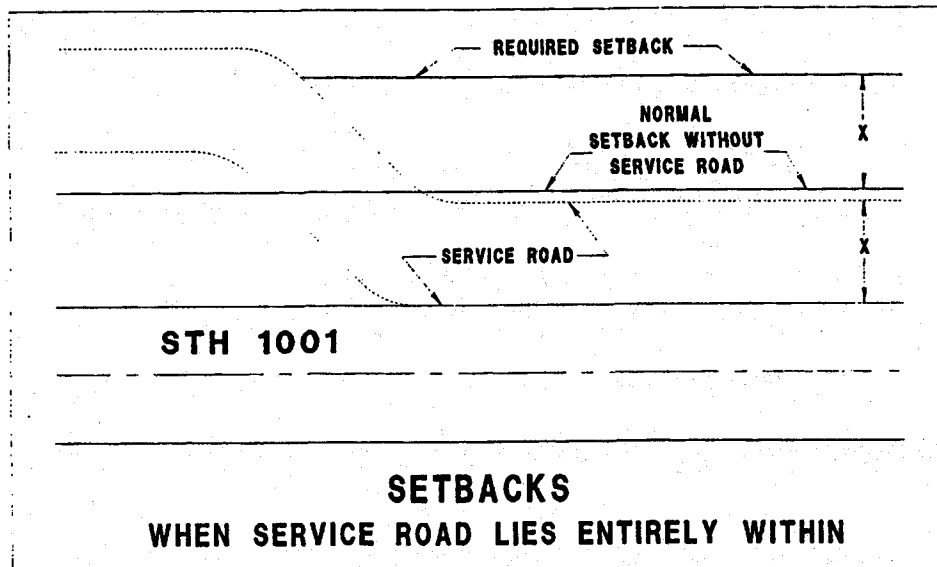
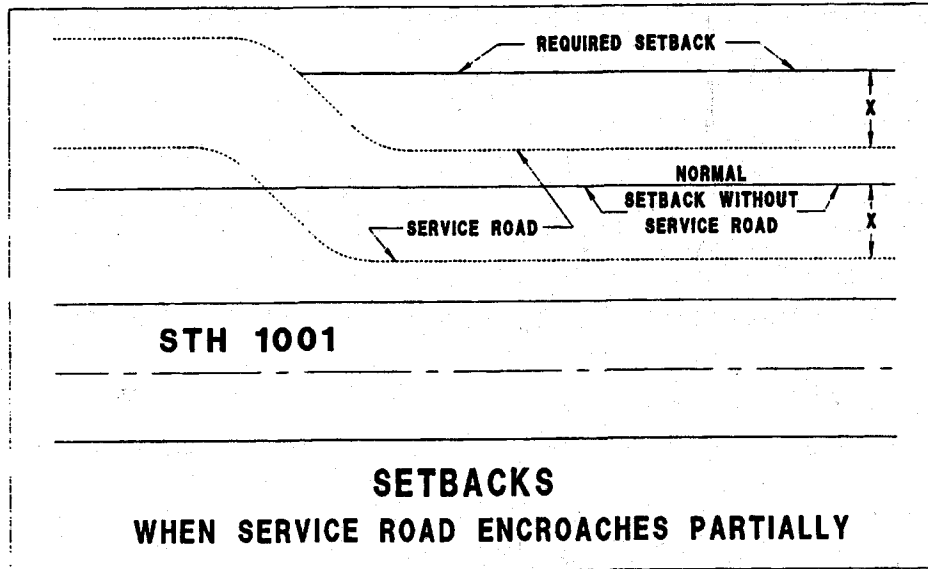
(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:

(a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).

(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this para-

graph shall be measured from the nearer right-of-way line of the service road.

Note: For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic.



(3m) (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.

(b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:

1. Erected or installed before the land division map is recorded.

2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.

3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

Note: For purposes of this section, "major utility erection or installation work" includes, but is not limited to, work involving transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude. "Routine minor utility erection or installation work" refers to single residential distribution facilities and similar inexpensive work of less magnitude. The concept behind the flexible, "normal time of 30 days" standard for utility submission of notice and plans to the department is to encourage and require at least 60 days notice from utilities for larger, complex or expensive installations, but not for routine, minor utility work that has traditionally involved only a few days notice for coordination and issuance of utility permits by the department for which a minimum of 5 days notice is mandatory. However, the normal time for submission and review is 30 days. This notice and plan requirement does not apply to maintenance work on existing utilities.

4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.

(c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in sub. (b)1. to 4.

Note: A "connecting highway" is not a state trunk highway. It is a marked route of the state trunk highway system over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities have jurisdiction over connecting highways and are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways and geographic end points are available in the department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

(d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility

erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work. The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.

Note: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

(3n) Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08(2)(c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11(3). This subsection does not apply to major intersections or within the desirable stopping sight distance, as determined under procedure 11-10-5 of the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

Note: Technical figures 2, 3, 3m, 4, 4m, 5, 6 and 6m within Procedure 11-10-5 have various dates other than June 10, 1998 or are undated.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.

(5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line:

"No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, drive-ways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution - Highway Setback Restrictions Prohibit Improvements. See sheet _____."

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (2) (c), (d) and (3n), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.105 Noise, vision corners and drainage.

(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the department is not responsible for

any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting highways, in the absence of any increase by the department to the highway's through-lane capacity."

Note: Some land divisions will result in facilities located in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that the department is not responsible for further noise abatement for traffic and traffic increases on the existing highway, in the absence of any increase by the department to the highway's through-lane capacity.

(2) **VISION CORNERS.** The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

"No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."

Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01(13)(e), Stats.

(3) **DRAINAGE.** The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this subsection relieves owners or users of land from their obligations under s. 88.87 (3) (b), Stats.

Note: In sec. 88.87 (1), Stats., the Legislature has recognized that development of private land adjacent to highways frequently changes the direction and volume of flow of surface waters. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways in order to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters caused by a highway and to impose correlative duties upon owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87(3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87(3)(b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must commence the action within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the Department's Facilities Development Manual.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.11 Special exceptions. (1) DEPARTMENT CONSENT. No municipality or county may issue a variance or spe-

cial exception from this chapter without the prior written consent of the department.

(3) (a) **Special exceptions for setbacks allowed.** The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: The phrase "practical difficulty or unnecessary hardship" has been eliminated from the rule that was effective February 1, 1999, to avoid the adverse legal consequences that could result from the existing use of the word "variance." The Wisconsin Supreme Court has interpreted "variance" and this phrase to make it extremely difficult to grant "variances" and in so doing has eased the way for third party legal challenges to many "variances" reasonably granted. See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The Supreme Court defined "unnecessary hardship" in this context as an owner having "no reasonable use of the property without a variance." Id. at 413. The "special exception" provision in this rule is not intended to be so restrictive and has not been administered in so restrictive a fashion. In the first year following revisions of ch. Trans 233, effective February 1, 1999, the Department granted the vast majority of "variances" requested, using a site and neighborhood-sensitive context based on specific analysis.

(b) **Specific analysis for special exceptions for setbacks.** Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:

1. The structure or improvement proposed and its location.
2. The vicinity of the proposed land division and its existing development pattern.
3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C," as determined under s. Trans 210.05(1), within the following 20 years.
5. The objectives of the community, developer and owner.
6. The effect of the proposed structure or improvement on other property or improvements in the area.
7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.
9. Transportation safety.
10. Preservation of the public interest and investment in the highway.
11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.

(c) **Adjust setback.** If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department-required removal of any structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires for a transportation improvement. The department may

not decrease the 15 foot setback distance established under s. Trans 233.08(3n), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.

(d) *Allow in setback - removal does not affect viability.* The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department-required removal of the structure or improvement and waives any right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

(e) *Blanket or area special exceptions for setbacks.* Based on its experience granting special exceptions on similar land divisions, similar structures or improvements, or the same area and development pattern, the department may grant blanket or area special exceptions from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.

(f) *Horizon of setback analysis.* For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

Note: Federal law requires a minimum 20-year forecast period for transportation planning for all areas of the State. 23 USC 134 (g) (2)(A) and 135 (e) (1).

(4) **SPECIAL EXCEPTIONS FOR PROVISIONS OF THIS CHAPTER OTHER THAN SETBACKS.** Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The depart-

ment may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: This subsection uses the phrase "practical difficulty or unnecessary hardship" to indicate a higher standard for special exceptions from provisions of this chapter other than setbacks. However, the phrase "special exception" has been used rather than the word "variance." The Supreme Court defined "unnecessary hardship" in a variance context as an owner having "no reasonable use of the property without a variance." See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 413, 577 N.W.2d 813 (1998). The department intends the "special exception" provision in this rule to be administered in a somewhat less restrictive fashion than "no reasonable use of the property" without a "variance."

(5) **MUNICIPAL SPECIAL EXCEPTIONS.** A delegation agreement under s. Trans 233.03 (8) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.

(6) **TIME LIMIT FOR REVIEW.** Not more than 60 calendar days after receiving a completed request for a special exception under s. Trans 233.11, the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60-day time limit may be extended only by written consent of the land divider.

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider and the Department, district office or municipality to explore alternative locations or plans to avoid and minimize conflicts and to facilitate mutually acceptable resolutions to conflicts.

(7) **RECORDING REQUIRED.** A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. (2) to be (3) (a) and am., cr. (3) (b) to (f) and (4) to (7), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.13 Fees. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

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Pages 159-194 of this report consisted of a Model Land Division Control Ordinance. For a more current version, see the [“Model Ordinances”](#) page at the SEWRPC website.

Appendix C

MODEL SUBDIVISION DEVELOPMENT AGREEMENT

In the following model subdivision development agreement, where the word “*City*” appears in italics, the word “Village,” “Town,” or “County” may be substituted; and where the term “*Common Council*” appears in italics, the terms “Village Board,” “Town Board,” or “County Board” may be substituted. Other terms appearing in italics that should be revised as appropriate by the local or county unit of government concerned include the names of utility companies serving the community and the dollar amount of liability and property damage insurance to be required of the subdivider by the community.

CITY OF _____
WISCONSIN

SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(Name of Subdivision)

(Month)(Year)

**SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)**

ARTICLES OF AGREEMENT made and entered into this ____ day of _____, 20 __, by and between _____, Inc., a _____ Corporation, hereinafter called the "Subdivider" as party of the first part, and the *City* of _____, a municipal corporation of _____ County, Wisconsin, party of the second part, hereinafter called the "*City*".

WITNESSETH:

WHEREAS, the Subdivider desires to improve and develop certain lands located in the *City* as described on attached Exhibit "A" (the "Subdivision"), and for that purpose cause the installation of certain public improvements, hereinafter described in this Agreement and the exhibits hereto (the "Improvements"), and

WHEREAS, Sections 236.13(2)(a), 236.13(2)(b), and 236.13(2)(c), of the *Wisconsin Statutes*, and Chapter _____ of the *City* of _____ Municipal Code, provide that as a condition of approval of the Subdivision, the governing body of a municipality may require that the Subdivider make and install, or have made and installed, any public improvements reasonably necessary; that designated facilities be provided as a condition of approving the proposed Subdivision; that necessary alterations to existing public utilities be made; and that the Subdivider provide a Letter of Credit approved by the *City* Attorney guaranteeing that the Subdivider will make and install, or have made and installed, those improvements within a reasonable time; and

WHEREAS, the *City* believes that the orderly planned development of the Subdivision will best promote the health, safety, and general welfare of the community, and hence is willing to approve the Subdivision, provided the Subdivider proceeds with the installation of the Improvements in the Subdivision, on the terms and conditions set forth in this Agreement and the exhibits attached hereto.

NOW, THEREFORE, in consideration of the granting of approval by the *Common Council* of a plat of the Subdivision and the development thereof by the Subdivider, and in consideration of the mutual covenants herein contained, the parties agree:

1. The legal description of the Subdivision is set forth on attached Exhibit "A";
2. The improvements aforementioned shall be as described in attached Exhibit "B," except as noted in attached Exhibit "E";
3. The Subdivider shall prepare plans and specifications for the aforesaid Improvements, under direction of the *City* Engineer, and to be approved by the *City* Engineer. After receiving the *City's* approval thereof, the Subdivider shall take bids, award contracts (the "Improvements Contracts") for, and install all of the Improvements in accordance with good engineering and public works practices, the applicable statutes of the State of Wisconsin, and to the satisfaction and approval of the *City* Engineer. The Improvements shall be based on the construction specifications set forth in attached Exhibit "F";
4. The full cost of the Improvements shall include all labor, equipment, material, engineering, surveying, inspection, contingencies, warranties, and overhead costs necessary or incidental to completing the Improvements (collectively the "Improvements Costs"). Payment for the Improvements Costs will be made by the Subdivider periodically as the Improvements are completed as provided in the Improvements Contracts. The total estimated cost of the Improvements is \$ _____, as itemized in attached Exhibit "D";
5. To assure compliance with all of Subdivider's obligations under this Agreement, the Subdivider shall file with the *City* a Letter of Credit (the "Letter of Credit") in the initial amount of \$ _____,

representing the estimated cost for the Improvements as shown in attached Exhibit "D". Upon the written approval of the *City* Engineer, the amount of the Letter of Credit may be reduced periodically as the Improvements are paid for and approved by the *City* so that following each such reduction, the Letter of Credit equals the total amount remaining for costs pertaining to Improvements for which Subdivider has not paid or which remain unapproved by the *City*. The Letter of Credit shall be issued by a bank or other financial institution (the "Surety Issuer") acceptable to the *City* (the "Beneficiary") in a form satisfactory to the *City* Attorney. Failure to file the Letter of Credit within 10 days after written demand by the *City* to the Subdivider shall make and render this Agreement null and void, at the election of the *City*. Upon acceptance by the *City* of and payment by the Subdivider for all the completed Improvements, the Letter of Credit shall be surrendered by the *City* to the Subdivider, and thereafter the Subdivider shall have no further obligation to provide the Letter of Credit to the *City* under this Paragraph 5, except as set forth under Paragraph 13 below;

6. In the event the Subdivider fails to pay the required amount for the Improvements or services enumerated herein within 30 days after being billed for each stage for any improvement costs at the time and in the manner provided in this Agreement, the Surety Issuer shall make the said payments to the Contractor within 5 days after receiving a written demand from the *City* to make such payment. Demand shall be sent by registered letter with a return receipt requested, addressed to the Surety Issuer at the address indicated on the Letter of Credit, with a copy to the Subdivider, described in Paragraph 5 above. It is understood between the parties to this Agreement, that billings for the improvement costs shall take place as the various segments and sections of the Improvements are completed and certified by the *City* Engineer.

In addition, the *City* Engineer may demand that the Letter of Credit be extended from time to time to provide that the Letter of Credit be in force until such time that all Improvements have been installed and accepted through the one year guarantee period. Demand for said extension shall be sent by registered letter with a return receipt, with a copy to the Subdivider. If said Letter of Credit is not extended for a minimum of a one year period prior to the expiration date of the Letter of Credit, the Surety Issuer shall make payment of the remaining balance of the Letter of Credit to the *City* to be placed in an escrow deposit.

Any funds remaining in such escrow deposit after all of the Subdivider's obligations hereunder have been fully paid for, satisfied, and completed shall be returned to the Subdivider upon the *City's* receipt of the written consent of the Surety Issuer;

7. The following special provisions shall apply:
- (a) Those special provisions as itemized on attached Exhibit "C" and attached Exhibit "E" are hereby incorporated by reference in this Agreement and made a part hereof as if fully set forth herein;
 - (b) The laterals mentioned in Exhibit "B" are to be installed before street surfacing mentioned in Exhibit "B" is commenced;
 - (c) The _____ *Gas Company* is to install all necessary mains before the street surfacing mentioned in Exhibit "B" is commenced. Also, any other underground work by any other utilities is also to be completed before said street surfacing is commenced;
 - (d) Easements will be dedicated for the use of the _____ *Electric Power Company*, the _____ *Telephone Company*, and _____ *Cable Television Company* to provide utility services to the Subdivision. All utilities shall be underground;
 - (e) Fee title to all of the Improvements and binding easements upon lands on which they are located, shall be dedicated and given by the Subdivider to the *City*, in form and content as required by the *City*, without recourse, and free and clear of all liens or encumbrances, with final inspection and approval of the Improvements and accompanying title and easement documents by the *City* constituting acceptance of such dedication. The Improvements shall thereafter be under the jurisdiction of the *City*, and the *City* shall maintain, at the *City's* expense, all of the Improvements

after completion and acceptance thereof by the *City*. Necessary permits shall be obtained for all work described in this Agreement.

8. The Subdivider agrees that it shall be fully responsible for all the Improvements in the Subdivision and appurtenances thereto during the period the Improvements are being constructed and continuing until the Improvements are accepted by the *City* (the "Construction Period"). Damages that may occur to the Improvements during the Construction Period shall be replaced or repaired by the Subdivider. The Subdivider's obligations under this Paragraph 8 as to any Improvement terminate upon acceptance of that Improvement by the *City*;
9. The Subdivider shall take all reasonable precautions to protect persons and property of others on or adjacent to the Subdivision from injury or damage during the Construction Period. This duty to protect shall include the duty to provide, place, and maintain at and about the Subdivision, signs, lights, and barricades during the Construction Period;
10. If the persons or property of others sustain loss, damage, or injury resulting directly or indirectly from the work of the Subdivider or its subcontractors or materialmen in their performance of this Agreement or from its failure to comply with any of the provisions of this Agreement or of law, the Subdivider shall indemnify and hold the *City* harmless from any and all claims and judgments for damages, and from costs and expenses to which the *City* may be subjected or which it may suffer or incur by reason thereof, provided; however, that the *City* shall provide to the Subdivider promptly, in writing, notice of the alleged loss, damage, or injury;
11. Except as otherwise provided in Paragraph 12 below, the Subdivider shall indemnify and save harmless the *City*, its officers, agents, and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:
 - (a) The negligent or willfully wrongful performance of this Agreement by the Subdivider or any subcontractor retained by the Subdivider;
 - (b) The negligent or willfully wrongful construction of the Improvements by the Subdivider or by any of said subcontractors;
 - (c) The negligent or willfully wrongful operation of the Improvements by the Subdivider during the Construction Period;
 - (d) The violation by the Subdivider or by any of said subcontractors of any law, rule, regulation, order, or ordinance;
 - (e) The infringement by the Subdivider or by any of said subcontractors of any patent, trademark, trade name, or copyright.
12. Anything in this Agreement to the contrary notwithstanding, the Subdivider shall not be obligated to indemnify the *City* or the *City*'s officers, agents, or employees (collectively the "Indemnified Parties") from any liability, claim, loss, damage, interest, action, suit, judgment, cost, expenses, or attorney's fees which arise from or as a result of the negligence or willful misconduct of any of the Indemnified Parties;
13. The Subdivider hereby guarantees that the Improvements will be free of defects in material and/or workmanship for a period of one year from the date of acceptance of the Improvements by the *City*. To secure the Subdivider's obligations under said guaranty upon acceptance of the Improvements by the *City*, the Subdivider will provide to the *City* a Letter of Credit equal to 10 percent of the subtotal in Exhibit "D" of the total Improvements Costs, which Letter of Credit shall expire one year after the improvements have been accepted by the *City* or continue the existing base Letter of Credit maintaining a minimum of 10

percent of the subtotal in Exhibit “D” of the total Improvements Costs for one year after the improvements have been accepted by the *City*;

14. (a) The Subdivider shall not commence work on the Improvements until it has obtained all insurance coverages required under this Paragraph 14 and has filed certificates thereof with the *City*:

(1) COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE - Coverage shall protect the Subdivider and all subcontractors retained by the Subdivider during the Construction Period and all persons and property from claims for damages for personal injury, including accidental death as well as claims for property damages, which may arise from performing this Agreement, whether such performance be by the Subdivider or by any subcontractor retained by the Subdivider or by anyone directly or indirectly employed by either the Subdivider or any such subcontractor. The *City* shall be named as an additional insured on all such insurance coverage under this Paragraph 14(a)(1) and Paragraph 14 (a)(2). The amounts of such insurance coverage shall be as follows:

Bodily Injury	\$1,000,000 Per Person \$1,000,000 Per Occurrence \$1,000,000 Aggregate
Property Damage	\$500,000 Per Occurrence \$500,000 Aggregate

(2) COMPREHENSIVE AUTOMOBILE LIABILITY AND PROPERTY DAMAGE - Insurance coverage for the operation of owned, hired, and non-owned motor vehicles shall be in the following amounts:

Bodily Injury	\$1,000,000 Per Person \$1,000,000 Per Occurrence
Property Damage	\$500,000 Per Occurrence

(b) The Subdivider shall file a certificate of insurance containing a 30 day notice of cancellation to the *City* prior to any cancellation or change of said insurance coverage. Coverage amounts shall not be reduced by claims not arising from this Agreement.

15. The Subdivider shall not be released or discharged of its obligations under this Agreement until the *City* has completed its final inspection of all the improvements and the *City* has issued its written approval of all of the improvements, which approval shall not be unreasonably withheld or delayed, and Subdivider has paid all of the Improvement Costs, at which time the Subdivider shall have no further obligations under this Agreement except for the one year guaranty under Paragraph 13.

16. The Subdivider and the *City* hereby agree that the cost and value of the Improvements will become an integral part of the value of the Subdivision and that no future lot assessments or other types of special assessments of any kind will be made against the Subdivision by the Subdivider or by the *City* for the benefit of the Subdivider, to recoup or obtain the reimbursement of any Improvement Costs for the Subdivider.

17. Execution and performance of this Agreement shall be accepted by the *City* as adequate provision for the Improvements required within the meaning of Sections 236.13(2)(a), 236.13(2)(b), and 236.13(2)(c) of the Wisconsin Statutes.

- 18. Penalties for Subdivider's failure to perform any or all parts of this Agreement shall be in accordance with Section _____ of the *City* of _____ Municipal Code, as amended from time to time, in addition to any other remedies provided by law or in equity so that the *City* may obtain Subdivider's compliance with the terms of this Agreement as necessary.
- 19. This Agreement shall be binding upon the parties hereto and their respective successors and assigns, excepting that the parties hereto do not otherwise intend the terms or provisions of this Agreement to be enforceable by or provide any benefit to any person or entity other than the party of the first part and the party of the second part. Subdivider shall not convey or assign any of its rights or obligations under this contract whatsoever without the written consent of the *City*, which shall not be unreasonably withheld upon a showing that any successor or assignee is ready, willing, and able to fully perform the terms hereof and the Subdivider remains liable hereunder.

IN WITNESS WHEREOF, the Subdivider has caused this Agreement to be signed this ___ day of _____, 20__.

By: _____
Name of Subdivider

STATE OF WISCONSIN)
_____ COUNTY)

Personally came before me this day of _____, 20__, the above-named _____, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity indicated.

Notary Public, _____ County, WI
My commission expires: _____

Accepted pursuant to Resolution adopted by the *Common Council* of the *City* of _____ this ___ day of _____, 20__.

COMMON COUNCIL
CITY OF _____

BY: _____
Mayor

ATTEST: _____
City Clerk

Approved As To Form:

City Attorney

**INDEX OF EXHIBITS
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)**

Exhibit A	Legal Description of Subdivision
Exhibit B	General Description of Required Subdivision Improvements
Exhibit C	General Subdivision Requirements
Exhibit D	Estimated Improvement Costs
Exhibit E	Additional Subdivision Requirements
Exhibit F	Construction Specifications

EXHIBIT "A"
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)

LEGAL DESCRIPTION OF SUBDIVISION

(Insert Legal Description Here)

**EXHIBIT “B”
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)**

**GENERAL DESCRIPTION OF
REQUIRED SUBDIVISION IMPROVEMENTS**

Description of improvements required to be installed to develop (Name of Subdivision) Subdivision (the Development).

- S Denotes contract for improvements to be awarded, financed, and paid for by the Subdivider in lieu of special assessments.
- C Denotes contract for improvements to be awarded by the *City*, but financed and paid for by the Subdivider in accordance with this Agreement.
- (P) Denotes that the *City* is to pay for a portion or all of the improvement, in accordance with this Agreement, as computed by the *City* Engineer.
- N.A. Denotes improvement is not required to be installed in the Subdivision.

General Description of Improvements¹

- | | | |
|----|---|-------|
| 1. | Grading of all lots and blocks within the Subdivision in conformance with the approved grading plan. | S |
| 2. | Grading of all streets within the Subdivision in accordance with the established street grades and the <i>City</i> approved street cross-sections and specifications. | S |
| 3. | Installation of concrete or asphalt permanent pavement with mountable face concrete curb and gutter in accordance with present <i>City</i> specifications and to line and grade approved by the <i>City</i> Engineer. | S |
| 4. | Sanitary sewer main and appurtenances in the streets and/or easement in the Subdivision, to such size and extent as determined by the <i>City</i> sanitary sewerage system plan and by the <i>City</i> Engineer, as necessary to provide adequate service for the final Subdivision and sewer service areas tributary to sewers in the Subdivision. | S (P) |
| 5. | Laterals and appurtenances from sanitary sewer main to street lot line; one for each lot as determined by the <i>City</i> . | S |
| 6. | Water main and fittings in the streets and/or easement in the Subdivision, to such size and extent as determined by the <i>City</i> water supply system plan and by the <i>City</i> Engineer as necessary to provide adequate service for the final Subdivision and related service area. | S (P) |
| 7. | Laterals and appurtenances from water main to the street lot line; one for each lot, as determined by the <i>City</i> Engineer, together with stop cocks as specified by the <i>City</i> Engineer. | S |
| 8. | Hydrants and appurtenances provided and spaced to adequately service the area required by the <i>City</i> Engineer. | S |

- | | | |
|-----|--|-------|
| 9. | Concrete sidewalks in the Subdivision to line and grade approved by the <i>City</i> Engineer. | S |
| 10. | Concrete-, asphalt-, or gravel-surfaced pedestrian walks in dedicated pedestrian ways and easements in the Subdivision as approved by the <i>City</i> Engineer. | S |
| 11. | Street trees and other landscaping materials as required by the approved landscaping plan. | S |
| 12. | Engineering, planning, and administration services as necessary and approved by the <i>City</i> Engineer. | S |
| 13. | Stormwater management facilities as approved by the <i>City</i> Engineer to adequately manage surface water runoff from the Subdivision and tributary drainage basin area in accordance with the <i>City</i> stormwater management plan. | S (P) |
| 14. | Street lighting and appurtenances along the street right-of-way as determined by the <i>City</i> Engineer. | C |
| 15. | Street signs identifying Subdivision streets in such locations and such size and design as determined by the <i>City</i> Engineer. | C |
| 16. | Title evidence on all conveyances. | S |

¹*The notations given in the last column of the general description of improvements are intended only as examples; the actual notations should be determined in negotiations between the Developer and the City.*

**EXHIBIT “C”
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)**

GENERAL SUBDIVISION REQUIREMENTS

I. GENERAL

- A. The Subdivider shall prepare a plat of land, plans for improvements, as-built drawings of the improvements and all other items in accordance with all applicable state laws and *City* ordinances and regulations.
- B. All improvements shall be installed in accordance with all *City* specifications and ordinances.
- C. The entire Subdivision, as proposed, shall be recorded.

II. LOT SIZE AND UNIT SIZE

- A. Lots
 - 1. All lots shall be as shown on the final approved plat.
- B. Units
 - 1. The minimum area of any living unit built in the project shall be as specified in the *City* of _____ Zoning Ordinance in effect at the time the permit is issued unless otherwise specified in the Agreement.

III. WATER SYSTEM

- A. Availability
 - 1. Each and every lot in the Subdivision shall be served by a water main.
 - 2. The Subdivider shall provide for the extension of the water supply system to abutting properties by laying water pipe in a public right-of-way or easement to the exterior boundaries of the Subdivision as directed by the *City* Engineer.
 - 3. Laterals shall be laid to each and every lot. The size shall be approved by the *City* Engineer.
 - 4. Fire hydrants shall be available to the *City*'s Fire and Public Works Departments, and both organizations shall have free and unlimited use of the water.
- B. Construction
 - 1. All construction shall be in accordance with the specifications of the *City*.
 - 2. Inspection of the work shall be at the Subdivider's expense.
 - 3. Mains and appurtenances, including all pipe, hydrants, gate valves, laterals, and curb stop boxes shall be installed.

IV. SANITARY SEWER SYSTEM

A. Components

1. Sanitary sewerage service through and within the Subdivision shall be provided. It shall consist of, without limitation because of enumeration, sanitary sewer, manholes, appurtenances, laterals, and other appurtenances.

B. Availability

1. Each and every building in the Subdivision shall be served by a sanitary sewer.
2. Laterals shall be laid to the lot line of each and every lot.
3. a) The Subdivider shall provide for the extension of the sanitary sewer system to abutting properties by laying sewer pipe to the exterior boundaries of the Subdivision as directed by the *City* Engineer, and in accordance with approved system plans.

b) In the event that adjacent property owners request sewer service prior to the time the sewer extensions are installed to the exterior boundaries of the Subdivision as described in Section IV. B. 3(a) above, the *City* is hereby granted the right to install said extensions within the Subdivision at the expense of the Subdivider. All costs for installing sewer systems outside the boundaries of the Subdivision shall be paid by the adjacent property owners upon any special assessment proceedings had by the *City* or waiver thereof by the adjacent property owners pursuant to Subsection 66.0701 of the *Wisconsin Statutes* and Subsection _____ of the Municipal Code.

V. STORMWATER MANAGEMENT FACILITIES

A. Components

1. Stormwater management facilities through and within the Subdivision shall be provided by means of storm sewers, culverts, drainageways, and storage facilities installed as required by an approved system plan. It shall consist of, without limitation because of enumeration, sewers, culverts, pipes, manholes, catch basins, inlets, leads, open swales, storage facilities, and absorption ponds as determined by the *City* Engineer. The *City*, at the determination of the *City* Engineer, may have the proposed stormwater management system reviewed and evaluated for adequacy by a consultant engineer at the Subdivider's cost.

B. Endwalls

1. Endwalls shall be approved by the *City* Engineer.
2. Endwalls shall be installed on each and every culvert and at all open ends of storm sewers.

C. Outfalls and Retaining Walls

1. Outfalls and retaining walls shall be built where required by the *City* Engineer.
2. The aesthetic design of said structures shall be approved by the *City* Plan Commission.

3. The structural design of said structures shall be prepared by a professional engineer registered in the State of Wisconsin.

D. Responsibility of Discharged Stormwater

1. The Subdivider shall be responsible for the stormwater drainage until it crosses the exterior boundaries of the Subdivision or until it reaches a point designated by the *City* outside and adjacent to the property from which the water crosses over, under, or through artificial or natural barriers. The water shall be brought to said point by an open drainageway or other means as directed by the *City* Engineer.
2. However, if development of the Subdivision will, in the opinion of the *City* Engineer, cause significant stormwater management problems downstream from the Subdivision which will require corrective actions, the Subdivider shall comply with such terms as the *City* Engineer may require to prevent or to resolve these problems. Said terms shall be made part of those documents under the section titled "Special Provisions."

VI. STREETS

A. Location

1. Streets shall be constructed in such a manner that the centerline of the roadway shall coincide with the centerline of the right-of-way.
2. Roadways shall be constructed in each and every street right-of-way platted and shall be built to the exterior boundaries of the Subdivision whenever possible except as noted in Exhibit "E."

B. Names

1. The names of all streets shall be approved by the *City* Engineer.

C. Construction

1. All streets shall be built in accordance with the specifications on file in the *City* Engineer's office.
2. Before the final lift of asphalt required for the finished improvement of roadways can be installed within a Subdivision, the Subdivider shall make arrangements to repair damaged or failed concrete curb and gutter, concrete walk, asphalt base course, or sub-grade. Also, damaged or failed utility appurtenances must be repaired, rebuilt, or replaced by the Subdivider's contractor prior to the installation of the final lift of asphalt pavement. All costs associated with this work will be the responsibility of the Subdivider.
3. The construction shall be inspected and approved by the *City* Engineer and all fees due to such inspection shall be paid by Subdivider.

D. Snow Removal and Ice Control

1. The responsibility for snow removal and ice control on all streets within the Subdivision shall lie with the Subdivider until the plat is recorded, and the streets have been accepted for use by the *City*.

VII. EASEMENTS

A. Stormwater Management

1. All stormwater management drainage easements dedicated to the public shall be improved as follows:
 - a) Storm sewer or lined invert open channel, unless otherwise approved by the *City* Engineer.
 - b) Side slopes no steeper than one on four.
 - c) Landscaped in accordance with the approved Landscaping Plan.
2. Pedestrian Ways
 - a) If no surfacing material or walkway width is specified on an approved landscaping plan, pedestrian walks shall be paved with crushed aggregate as required by the *City* Engineer and shall be five feet in width.
 - b) The edge of the walk shall be at least one foot from either side of the easement or right-of-way.

VIII. PERMITS ISSUED

A. Building Permits

No building permits shall be issued until:

1. The sanitary and storm sewer and water mains have been installed, tested, and approved by the *City* Engineer;
2. All drainage channels have been rough-graded and approved by the *City* Engineer;
3. Streets and lots have been rough-graded and approved by the *City* Engineer, and curb and gutter installed and the base course of asphalt roadway pavement installed;
4. The plat has been recorded;
5. All Subdivision monuments have been set.

B. Occupancy Permits

No temporary occupancy permits shall be issued until:

1. Streets have been paved except for the final lift of asphalt;
2. The gas, telephone, electrical, and cable services have been installed and are in operation;
3. The water system is installed, tested, and approved by the *City* Engineer.

IX. DEED RESTRICTIONS

- A. A Letter of Credit approved by the *City* Attorney in the full amount of all non-assessable improvements not yet installed and approved as of the date of this Agreement shall be submitted to the *City* before any permits are issued.
- B. The time of completion of improvements.
 - 1. The Subdivider shall take all action necessary so as to have all the improvements specified in this Agreement installed and approved by the *City* before two years from the date of this Agreement.
 - 2. Should the Subdivider fail to take said action by said date, it is agreed that the *City*, at its option and at the expense of the Subdivider, may cause the installation of or the correction of any deficiencies in said improvements.

X. CHARGES FOR SERVICES BY THE *CITY* OF _____

- A. Fee for Review of Plans and Specifications. At the time of submitting the plans and specifications for the construction of the Subdivision Improvements, the Subdivider shall pay a fee equal to the cost of any legal or fiscal work undertaken by the *City* in connection with the Subdivision.
- B. For the services of testing labs, consulting engineers, and other personnel, the Subdivider agrees to pay the *City* the actual charge plus 5 percent for administration and overhead.

EXHIBIT "D"
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)

ESTIMATED IMPROVEMENT COSTS

All improvement costs, including but not limited to preparation of plans, installation of facilities and inspection shall be borne by the Subdivider in accordance with Paragraph (4) of this Agreement.

Said costs for the project are estimated to be as follows:

DESCRIPTION	COSTS
Grading (including erosion control)	
Sanitary System	
Water System	
Paving (including sidewalk)	
Storm Sewer	
Street Trees	
Street Lights	
Street Signs	
Underground Electric, Gas, Telephone, and Cable	
Retention Basin	
SUBTOTAL	
Engineering/Consulting Services	
Municipal Services (7% of Subtotal)	
Contingency Fund (10% of Subtotal)	
TOTAL	

Total: _____/100 Dollars.

APPROVED BY: _____
 (Signature)

_____, City Engineer
 (Type Name of Person Signing)

DATE: _____

**EXHIBIT “E”
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)**

ADDITIONAL SUBDIVISION REQUIREMENTS

1. The Subdivider agrees that it shall pay to the *City* of _____ the street light installation and underground wiring costs as determined by the _____ *Electric Power Company* for ____ 100-watt ornamental sodium vapor light(s).
2. The Subdivider shall make every effort to protect and retain all existing desirable trees, shrubbery, ground cover, and grasses not actually located within public roadways, driveways, building foundation areas, private driveways, paths, and trails.
3. The Subdivider shall cause all grading, excavations, open cuts, side slopes, and other land surface disturbances to be so mulched, seeded, sodded, or otherwise protected that erosion, siltation, sedimentation, and washing are minimized in accordance with the plans and specifications approved by the *City Engineer*.
4. The Subdivider shall supply street trees to specifications approved by the *City Plan Commission* in the approved Landscaping Plan and under the following conditions:
 - a. The Subdivider shall be responsible for replacing any trees that do not live for a minimum of three years from the date of initial installation. The *City* shall inspect all trees installed under this section each spring and fall and the Subdivider shall replace any trees as required by the *City* during such season and up to twice per year during the term of the Subdivider’s obligation hereunder. Subdivider shall notify the *City Engineer* in writing of the completion date of tree installation. Watering of trees at times of insufficient rainfall shall be the responsibility of the Subdivider.
 - b. Street trees and other landscaping materials required to be installed hereunder shall be installed for a lot prior to the issuance of an occupancy permit for such lot. All installation must be inspected and approved by the *City Engineer*.
 - c. The Subdivider’s obligations under this section shall be secured by a Letter of Credit for the cost of the street trees as shown in Exhibit “D” and such security shall remain in effect during the term of the Subdivider’s obligations hereunder, including an additional six month period thereafter for each spring or fall planting season during which the subdivider fails to replace any tree as required by the *City*, if any.
5. The requirements for the installation of concrete driveway approaches shall be omitted from this Agreement because the Subdivider and the *City* will require that the owners of all lots concerned install concrete driveway approaches prior to the issuance of a building permit for development of the lot.
6. The Subdivider shall be responsible for removing and disposing of any and all debris that has blown from buildings under construction within the Subdivision. The Subdivider shall remove and dispose all debris within 48 hours after receiving a notice to do so from the *City Engineer*.
7. The Subdivider shall be responsible for removing and disposing of all soil tracked onto roadways until such time as the final lift of asphalt has been installed. The Subdivider shall clean the roadways within 48 hours after receiving a notice to do so from the *City Engineer*.
8. Prior to commencing site grading, the Subdivider shall submit for approval by the *City Engineer* an erosion and sedimentation control plan. Said plan shall provide sufficient control of the site to prevent siltation downstream from the site. The Subdivider shall maintain the erosion and sedimentation control until such time that vegetation sufficient to control erosion has been established.

EXHIBIT "F"
TO
SUBDIVISION DEVELOPMENT AGREEMENT
FOR
(NAME OF SUBDIVISION)

CONSTRUCTION SPECIFICATIONS

The following specifications shall be used for the construction of the various improvements.

ITEM	SPECIFICATION
Storm and Sanitary Sewer	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition <i>CITY OF</i> _____
Water Mains	STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN, most current edition <i>CITY OF</i> _____
Concrete Curb and Gutter	<i>CITY OF</i> _____
Streets: Construction	<i>CITY OF</i> _____
Materials	
Asphalt	<i>CITY OF</i> _____
Aggregate	<i>CITY OF</i> _____
Concrete	<i>CITY OF</i> _____
Cross Section	<i>CITY OF</i> _____

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Appendix D

SAMPLE DECLARATION OF RESTRICTIONS CREATING A HOMEOWNERS ASSOCIATION

The following Declaration of Restrictions is intended to be used to create an unincorporated homeowners association for a subdivision in which the owner of each lot in the subdivision becomes a member of the association upon purchase of a lot and is subject to an annual assessment equal to a pro-rata share of the costs incurred by the Association in the performance of its duties and obligations. Each lot owner has an undivided, fractional interest in any common areas within the subdivision.

The Declaration is representative of the typical form of documents used to create such associations and is based on a document that has been used for several years by the Siepmann Development Company, a land development firm based in Waukesha County.

The salient provisions of the document may be summarized as follows:

- Section A describes building restrictions and requires developer approval of building materials, grading, and other basic site features.
- Section B provides for the creation of a Homeowners Association and describes the responsibilities and authority of the Association, provides by-laws for its operation, describes the common areas and ownership of the common areas concerned, and authorizes the *City* to assume the duties of the Association if it fails to carry out its responsibilities adequately.
- Section C authorizes future development stages of the subdivision to be included in the Declaration.
- Section D provides for amendments, waivers, or annulment of the Declaration.
- Section E establishes the right of the developer to grant easements to the *City* or a utility company for the purpose of providing drainage or utility services in the subdivision.
- Section F states that the Declaration shall be effective for 30 years, at which time it will be automatically renewed unless the owners of 90 percent of the lots choose to terminate it.

DECLARATION OF RESTRICTIONS

FOR

(Name of Subdivision)

KNOW ALL PERSONS BY THESE PRESENTS; that (name of developer) is a (type of company) duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at (address), Wisconsin (herein referred to as “Developer”, which term shall also include the duly authorized agent of Developer). Developer is the owner of (name of subdivision), being a subdivision of part of the (land description by section, township, and range), of _____ County, Wisconsin, (herein referred to as “(name of subdivision)”) and intending to establish a general plan for the use, occupancy, and enjoyment of (name of subdivision), does hereby declare for the mutual benefit of present and future owners of lands in (name of subdivision) and any future stages of development added as provided in Section C, below (herein referred to individually as “Owner” and collectively as “Owners”), that (name of subdivision) shall be subject to the following restrictions:

A. Building Restrictions

1. All lots in (name of subdivision) are restricted to the construction of a one story, story and one-half, or two story single family residence building with a minimum square footage of living space (without regard for basement level areas) of _____ square feet, and with an attached garage which will accommodate at least two cars.
2. The garage must be attached to the residence directly or by breezeway, or built into the basement of the residence and must be constructed with the residence. The maximum size of the garage shall conform to (City) (hereinafter referred to as “City”) ordinances.
3. The exterior walls of the residence and attached garage must be constructed of brick, stone, stucco, wood siding, or other natural materials. Siding materials such as aluminum, vinyl, steel, pressed board, masonite or plywood will not be permitted. All roof areas having an appropriate pitch shall be covered with wood shakes or textured shingles of a minimum _____ lb. weight. Textured shingles must be in a “weatherwood” color. Developer shall have the right to approve other roofing materials if they are of comparable quality or better suited to the approved building design.
4. All two story and story and one-half residence roofs shall have a minimum pitch of eight feet in height for each 12 feet in length (8:12), except for rear dormers on a story and one-half residence. All one story residence roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10:12). A lower minimum roof pitch may be allowed in special circumstances if approved in writing by Developer.
5. The residence and attached garage and a sodded or seeded lawn and a paved driveway must be completed within one year of the start of construction.
6. Only one residence may be erected on a lot.

7. There shall be no outside storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by the Developer or the (name of subdivision) Homeowners Association, created pursuant to Section B.
8. All building plans and the exterior design of each building to be constructed, and all yard grades and stakeout surveys must be approved by Developer in writing prior to application for a building permit. In addition, basic site features such as fences, decks, in-ground swimming pools, additions and other temporary or permanent structures or elements contributing significantly to the total environmental effect of (name of subdivision) are subject to the prior written approval of Developer. Developer's approval shall be based upon the building and use restrictions contained in this Section A and the Guidelines for Plan Approval for (name of subdivision) which Owner shall obtain from Developer prior to submitting plans to Developer for approval. Developer may withhold exterior design approval if the design is too similar in appearance to others in close proximity. Following such time that a principal residence has been constructed upon each lot in (name of subdivision), Developer may but shall not be obligated to, delegate to the (name of subdivision) Homeowners Association Committee the approval authority contained in this Paragraph. To be effective, notice of such delegation shall be recorded in the office of the Register of Deeds for _____ County, Wisconsin.
9. At the time of construction of a residence the Owner shall install at a location designated by Developer, one outdoor electric postlamp with an unswitched photo-electric control. The design of the postlamp shall be subject to the approval of the Developer. The postlamp shall be maintained by the Owner in a proper operating manner. If the postlamp is not so maintained, maintenance shall be performed by the (name of subdivision) Homeowners Association, and the cost of such maintenance shall be an assessment against the Owner, payable within 10 days after the date of the assessment.
10. The design and location of each mailbox/newspaper box shall be subject of approval of the Developer.
11. There shall be no satellite dish antennas having a diameter in excess of 24 inches, no outbuildings and no above-ground swimming pools. No antenna or satellite dish shall be visible from any roadway or neighboring lot. All swimming pool related pump, heater and filter equipment must be concealed in an enclosure to minimize noise and visibility.
12. Each Owner, at the time of home construction, shall be responsible for grading their lot so as to direct drainage toward the street or other established drainageway and to prevent an increase in drainage onto neighboring property. In addition, at the time of construction, erosion control measures shall be installed and maintained according to the standards and specifications set forth in the Wisconsin Construction Site Best Management Practices Handbook and/or local ordinances.
13. The Developer, and no other, shall have the right and authority to modify the Building and Use Restrictions or to permit variances from application thereof, if in its opinion, the

modification or variance is consistent and compatible with the overall scheme of development of (name of subdivision), provided that no such modification shall be in violation of local ordinances, or have the effect of revoking an approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of the Developer, and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted a) as preventing the Developer from requiring at anytime, and from time to time, strict compliance with the Building and Use Restrictions, or b) as entitling any person to a modification or variance not approved and granted in writing by the Developer.

14. Any Owner violating the restrictions contained herein shall be personally liable for and shall reimburse Developer and the Association for all costs and expenses, including attorney's fees, incurred by Developer or the Association in enforcing the restrictions contained in this Section A. The foregoing shall be in addition to any other rights or remedies which may be available to Developer and the Association.

B. Homeowners Association

1. An unincorporated association (herein referred to as the "Association") of the Owners of land in (name of subdivision) and all future stages of development as provided in Section C below (herein referred to individually as "Owner" and collectively as "Owners"), is hereby created for purposes of managing and controlling subdivision Common Areas (as defined below) and performing other duties as set forth herein for the common benefit of the Owners. The Association shall be known as "(name of subdivision) Homeowners Association."
2. The term "Common Area" shall include the following areas, plus any additional areas which may be added in accordance with Section C.
 - a. (Outlots) of (name of subdivision), including conservation and other open space areas.
 - b. The area of easements granted to the Association by Developer for purposes of installing entryway monuments, fencing, and landscaping.
 - c. The grass area and any fencing and landscaping contained within the public right-of-way of (names of streets).
 - d. All landscaped courts and boulevards contained within the dedicated streets in (name of subdivision). Any portion of the Common Area within a public street right-of-way may only be improved with the consent of the City and other appropriate public authorities. Consent to any such improvement shall not be considered or construed as an assumption of liability or responsibility for maintenance, nor shall such consent relieve the Association and/or the Owners of duties to maintain such improvements.
3. Each lot shall have an appurtenant undivided fractional interest in the common area outlots (including added future stages), the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration (including added future

- stages). All deeds and any other conveyances of any lot in (name of subdivision) shall be deemed to include such undivided interest in the common area outlots, whether or not so specifically stated in any such deed or other conveyance.
4. The Association shall be governed by a three member Committee, hereinafter referred to as the "Committee," which shall be solely responsible for the activities of the Association. The initial members of the Committee shall be (specify the names of three persons).
 5. To qualify as a member of the Committee, a person must be either an Owner or a duly designated officer or representative of an Owner.
 6. So long as fifty percent (50%) or more of the lots in (name of subdivision) are owned by Developer, all three members of the Committee shall be appointed by Developer. So long as twenty percent (20%) or more but less than fifty percent (50%) of the lots in (name of subdivision) is owned by Developer, two members of the Committee shall be appointed by Developer and one member shall be elected as provided herein. So long as five percent (5%) or more but less than twenty percent (20%) of the lots in (name of subdivision) is owned by Developer, one member of the Committee shall be appointed by Developer and two members shall be elected as provided herein. If less than five percent (5%) of the lots in (name of subdivision) are owned by Developer, all of the members of the Committee shall be elected as provided herein. The provisions of this paragraph shall also apply in the event of any future stages of development in accordance with Section C below, but the lots contained therein shall not be considered in determining the above percentages.
 7. Each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee. Owners shall have one vote for each lot owned.
 8. The term of office of the initial members of the Committee shall commence upon the execution hereof and shall continue until (date). Thereafter, the term of office of members of the Committee shall be for two calendar years. If any member of the Committee shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by a special election, or appointment by Developer, if applicable, pursuant to the terms of Paragraph B.6, above.
 9. All meetings of the Committee shall be open to Owners. The annual meeting shall be held upon not less than three days prior written notice to all of the Owners. Meetings of the Committee for the purpose of carrying out its duties and powers as set forth herein may be held from time to time without notice. Two members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote.
 10. The Committee shall have the following duties:
 - a. To provide for the maintenance of improvements in Common Area;
 - b. To establish dates and procedures for the election of members of the Committee.

11. The Committee shall have the following powers:

- a. To take such action as may be necessary to cause the Common Area to be maintained, repaired, landscaped (where appropriate) and kept in good, clean, and attractive condition;
- b. To take such action as may be necessary to enforce the provisions of Paragraphs A.7 and A.9, above;
- c. To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder; and
- d. To levy and collect assessments in accordance with the provisions of Paragraph B.12, below.

12. The Committee shall levy and collect assessments in accordance with the following:

- a. The Owner of each lot shall be subject to a general annual charge or assessment equal to his or her pro-rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations. The pro-rata share of an Owner of a lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration (including added future stages) at the time of the assessment. Said costs shall include, but not be limited to: taxes, insurance, repair, replacement, and additions to the improvements made to the Common Area; equipment, materials, labor, management, and supervision thereof; and all costs for the Association reasonably incurred in conducting its affairs and enforcing the provisions of this Section B. _____ County shall not be liable for any fees or special assessments in the event that it should become the owner of any lots in the subdivision by reason of tax delinquency;
- b. Assessments shall be approved at the duly convened annual meeting of the Committee;
- c. Written notice of an assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of such Owner;
- d. Assessments shall become due and payable 30 days after the mailing or personal delivery of the notice, as the case may be;
- e. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the lot against which the assessment was made;

- f. The Committee may record a document with the Register of Deeds in _____ County, Wisconsin, giving notice of a lien for any such unpaid assessment and upon payment or satisfaction of the amount due, record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner;
 - g. Upon application by any Owner, any member of the Committee may, without calling a meeting of the Committee, provide to such Owner a statement in recordable form certifying: 1) that the signer is a duly elected or appointed member of the Committee, and 2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Committee and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding assessments or other amounts due to the Association;
 - h. Any lien for assessment may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property.
13. Members of the Committee shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the members or agents or employees of the Committee. The Association shall indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.
14. Failure of the Association or the Committee to enforce any provisions contained in this Section B, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.
15. If the Committee shall fail to discharge its duties under this Section B within 60 days of written demand by the City, the City may discharge the duties of the Committee. The costs of the City incurred in connection therewith shall be charged to the Owners of the properties affected by such actions of the City by adding to each Owner's real estate tax statement a charge equal to such Owner's pro-rata share (the same as such Owner's share of annual assessments as provided in subparagraph B.12(a) above of such costs).

C. Future Stages of Development of (Name Of Subdivision)

The Developer, its successors and assigns shall have the right to bring within this Declaration future stages of the development of (name of subdivision), provided such future stages are or become adjacent to the real estate which is or becomes subject to this Declaration or any supplemental declaration. The future stages authorized under this Section shall be added by recording a Supplemental Declaration of Restrictions with respect to the future stages which shall extend the provisions of this Declaration to such future stages and indicate any provisions which differ from the provisions of this Declaration or any prior Supplemental Declaration. Except with respect to increasing the number of Owners and adding to the Common Area, such Supplemental

Declarations shall not revoke, modify, or add to the Covenants established by this Declaration or any prior Supplemental Declaration.

D. Amendment Provisions

Any of the provisions of this Declaration may be annulled, waived, changed, modified, or amended at any time by written document setting forth such annulment, waiver, change, modification, or amendment, executed by the Owners of lands having at least sixty percent (60%) of the votes in the Association; provided, however, that any such action must also be approved in writing by a) the *City*, b) _____ County and c) the Developer so long as it shall be an Owner. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for _____ County, Wisconsin.

E. Reservation by Developer of Right to Grant Easements

Developer hereby reserves the right to grant and convey easements to the City and/or to any public or private utility company, upon, over, through or across those portions of any Lot in (name of subdivision) within 10 feet of any lot line for purposes of allowing the City or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s) or through any portions of (name of subdivision) or for purposes of facilitating drainage of storm or surface water within or through (name of subdivision). Such easements may be granted by Developer, in its own name and without the consent or approval of any lot Owner, until such time as Developer has conveyed legal title to all Lots platted or to be platted in (name of subdivision) to persons other than a Successor-Developer. The Developer shall have prepared a correction instrument pursuant to the provisions of Section 236.295 of the Wisconsin Statutes for all easements created after the recording of the plat; the Developer shall notify the lot owner or owners concerned of the instrument; and the Developer shall record the instrument in the Office of the County Register of Deeds.

F. Duration Of Restrictions

These restrictions and any amendments thereto shall be in force for a term of 30 years from the date this Declaration is recorded, and upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed by the owners of at least ninety percent (90%) of all lots subject to this Declaration, and their mortgagees, and is recorded in the office of the Register of Deeds of _____ County. These Restrictions shall be deemed to run with the land and shall bind the owners and their heirs, successors, and assigns and be enforceable by any Owner, and to the extent permitted by paragraph B.15, above, the *City* of _____, _____ County, Wisconsin.

IN WITNESS WHEREOF, the undersigned, being the authorized (owner, partner, etc.) of (name of development company), has executed this Declaration of Restrictions this ____ day of ____, 20__.

(NAME OF DEVELOPMENT COMPANY)

(Name)
Authorized Signatory

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this ____ day of _____, 20__, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

(signature) _____
Notary Public, _____ County
State of Wisconsin
My Commission expires _____

This Instrument Was Drafted By:

CONSENT OF MORTGAGEE

_____ Bank, as mortgagee of any present or future mortgage on the lands subject to the foregoing Declaration of Restrictions, hereby consents to and agrees that its mortgages shall be subject to the foregoing Declaration of Restrictions.

(NAME OF BANK)

By: _____

By: _____

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this ____ day of _____, 20__, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

(signature) _____
Notary Public, _____ County
State of Wisconsin
My Commission expires _____

Appendix E

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