

## **401.2 Land Development Ordinance**

I	Disclaimer About This Ordinance and The Process
II	The Purpose of This Ordinance and Authority to Adopt It
III	Definitions of Terms Used in This Ordinance
IV	What Land Developments are Covered by This Ordinance
V	The Process of Town Review of Proposed Land Developments
VI	Land Developments Required to Meet Town Standards
VII	County Jurisdiction
VIII	The Preliminary Conference
IX	The Preliminary Plat
X	The Final Plat
XI	Land Division by a Certified Survey Map
XII	Construction of Public Improvements
XIII	Design Standards
XIV	Building Permits
XV	The Fees Charged for Land Development Review
XVI	Offenses and Penalties
XVII	Waiver

### **SECTION I – DISCLAIMER ABOUT THIS ORDINANCE AND THE PROCESS**

1. All persons reviewing the provisions of this ordinance should be aware that the Town of Berry is only one of a number of governmental bodies which may have jurisdiction over proposed land divisions or developments. The Town of Berry cannot make any representations or approvals on behalf of any other governmental body. No land division may be made unless all required approvals have been given.
2. No statement or actions by any official, employee or agent of the Town of Berry should be construed or taken as binding act upon the Town. The Town acts only through adoption of a resolution, motion or ordinance by the Berry Town Board at a lawfully conducted Town Board meeting. This includes, but is not limited to, interpretation of this ordinance.
3. The Town of Berry has no responsibility whatsoever for assuring that land and/or buildings sold in the Town are in compliance with any ordinances, regulations or rules. The Town also assumes no responsibility for the suitability of any property whose subdivision has been approved by the Town Board.
4. Applicants for development projects are advised that the Town may decide to obtain expert advice on a proposed development. That advice may include, without limitation, engineering, environmental, planning, legal or water resource or other advice. The Town does not pay for such advice, and will require the applicant to agree to pay for these consultants as a condition of accepting an application.

### **SECTION II – THE PURPOSE OF THIS ORDINANCE AND AUTHORITY TO ADOPT IT**

1. Title. This Chapter shall be known as the Land Division Ordinance of the Town of Berry and will be referred to in this Chapter as “this Chapter” or “this Ordinance.”

2. Authority. The Town of Berry has elected to exercise Village powers. Therefore, these regulations are adopted under the authority granted by Sections 61.35, 62.23 and 236.45 of the Wisconsin State Statutes.
3. Purpose. The purpose of this ordinance is to maintain the high quality of life and beautiful physical environment which exists in the Town of Berry. To secure that end, this Ordinance regulates and controls the division of land within the corporate limits of the Town of Berry in order to promote the public health, safety and general welfare of the community. This Ordinance also is intended to allow the Town to plan for the future delivery of public services and to avoid the need to provide public services in an uneconomic or inappropriate manner.
4. Intent. The intent of this Ordinance is to implement the Comprehensive Plan of the Town, and thereby, to promote the public health, safety, convenience and general welfare of the community. The regulations are designed to lessen congestion in the highways and streets, to foster the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air; to discourage overcrowding of the land; to protect the community's agriculture base; to facilitate adequate provision for transportation, public water and sewerage, schools, parks, playgrounds and other public necessities; and to allow the division of large tracts of land into smaller parcels where such proposed divisions meet the requirements of this Ordinance. The regulations are made with the reasonable consideration of, but not limited to, the present character of the Town and its environs, with the objectives of conserving the value of the land and improvements placed thereon, providing the most appropriate environment for human habitation, protecting farming and open spaces, and providing for the most appropriate use of land in the Town of Berry.
5. Abrogation and Greater Restrictions. This ordinance shall not be construed to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, agreements, rules, regulations or permits previously adopted or issued pursuant to laws. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.
6. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Town and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
7. Severability. In the event that a court should determine that a portion of this ordinance is invalid, the remaining portions of the ordinance shall stand and be valid, and shall be construed as a complete enactment.

### **SECTION III – DEFINITIONS OF TERMS USED IN THIS ORDINANCE**

In this Chapter the following words and phrases shall have the designated meaning unless a different meaning is expressly provided or the context clearly indicates a different meaning:

1. Adequate Public Facilities. Sufficient transportation facilities, on-site wastewater treatment and private water supply to accommodate a proposed land development.
2. Board. The Town Board of the Town of Berry.
3. Certified Survey Map. A map of land division, not a subdivision, prepared in accordance with Section 236.34 of the Wisconsin Statutes and in full compliance with the applicable

provision of this chapter. A certified survey map has the same legal force and effect as a subdivision map.

4. Clerk. The Town of Berry Clerk.
5. Cluster Development. A form of subdivision development in which residences are located in close proximity on small lots which are surrounded or buffered by an area of open space.
6. Comprehensive Development Plan. A map of land division, not a subdivision, prepared in accordance with Section 236.34 of the Wisconsin Statutes and in full compliance with the applicable provision of this chapter. Such a plan shall specify and clearly illustrate the location, relationship, and nature of all primary and secondary uses, public and private easements, public and private roads, pedestrian paths and common open space.
7. Copy. A true and accurate copy of all sheets of the original subdivision plat or certified survey map.
8. Developer. A person proposing or constructing a subdivision or other land division.
9. Divide. To convey, record, survey, parcel, split or in any other manner alter an interest in real property so as to cause a parcel of land to be allotted, allocated, severed, split or rendered into smaller parcels of land.
10. Greenway. An open area of land, the primary purpose of which is to carry stormwater on the ground surface in lieu of an enclosed storm sewer. Greenways may serve multiple purposes in addition to their principal use including but not limited to, vehicular, bicycle, and pedestrian traffic, sanitary sewers, water mains, storm sewers, storm water retention basin, park development and other related uses.
11. Land Division. A division of a parcel of land which is not a subdivision and which results in the creation of a new or remaining parcel or building sites of 39.0 acres each or less in area, regardless of whether the act of division also creates one or more lots, parcels or building sites on 40.0 acres or more.
12. Land(s). Any real estate or interest in real estate.
13. Lot. A land area of 39.0 acres or less.
14. Comprehensive Plan. The Town of Berry's plan for guiding and shaping the growth or development of the Town and neighborhoods therein, adopted under sec. 66.1001, Wis. Stats.
15. Official Map. A map indicating the location, width, extent of the existing and proposed street, highway, parkways, parks and playgrounds in future development adopted or amended by the Town Board pursuant to Section 62.23(6) of the Wisconsin Statutes.
16. Outlot. A parcel of land, other than a lot, building site, or block, so designated on the plat or certified survey map.
17. Parcel. Contiguous lands under the control of a developer or developers not separated by streets, highway or railroad rights-of-way.
18. Plat. A map of a subdivision prepared in conformity to the requirements of Ch. 236, Wis. Stats.
19. Plan Commission. The Town of Berry Plan Commission.
20. Preliminary Plat. A map showing the salient features of a proposed subdivision or land division, as described in this ordinance, submitted to the Town for purposes of preliminary consideration, prior to all final plats and, when required, prior to all land divisions.

21. Public Way. Any public road, street, highway, walkway, drainageway, or part thereof.
22. Replat. Process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or a part thereof. The division of a block, lot or outlot within a recorded subdivision plat without changing the exterior boundaries of said block, lot or outlot is not a replat but a land division.
23. Residential Dwelling Unit. A single family dwelling or the part of a duplex, apartment, residential condominium or other multiple family dwelling occupied by one family or one distinct set of inhabitants.
24. Sewer Service. The public sanitary sewer service provided by a Sanitary District of the Town of Berry.
25. Shoreland. Any land lying within 75 feet of the ordinary high water mark of a navigable waterway.
26. Stormwater. The portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel or a constructed infiltration facility.
27. Street, Road, Highway. A public way for pedestrian and vehicular traffic whether designated as a street, highway, road, land, way, avenue or however otherwise designated.
  - a. Arterial Streets and Highways. Those streets which provide rapid movement of concentrated volumes of traffic over relatively long distances. They provide principally for movement of persons and goods between high activity area.
    - i. Principal Arterials. Those streets serving the major interstate corridors and corridors which connect major cities and regions. These routes provide the highest level of mobility and form a continuous system with constant operating conditions under a high degree of access control.
    - ii. Primary Arterials. Those streets serving long trips between important cities and the major intracommunity corridors within the metropolitan area. These routes provide for a high degree of mobility under a high degree of access control.
    - iii. Standard Arterials. Streets which more commonly provide for intermediate length trips, thus serving through traffic movement in trade areas, or feeding traffic to the primary and principal arterials from lower activity area not served by such routes.
  - b. Collector Streets. Those streets which provide moderate speed movement of persons and goods within large areas. They are basically local streets which usually, because of more directness of routing and higher capacity than other local streets, receive higher volumes of traffic to be distributed from or collected toward nearby arterial streets.
    - i. Connector Streets. Those streets which perform a semi-arterial function as well as serving as distribution and land access streets.
    - ii. Distributor Streets. Those streets which perform the function of gathering and distributing traffic from and to the local streets and adjacent lands.
  - c. Local Streets. Those streets which are designed for low speeds and volumes and are to provide access from low-generation land activities to the collector and arterial systems.

- d. Marginal Access Streets. Those streets which are parallel and adjacent to arterial streets and highway and which provide access to abutting properties and protection from through traffic.
  - e. Alleys. Streets which provide secondary means of access for vehicular services to the back or side of property otherwise abutting a street.
  - f. Cul-de-sac. Streets closed at one end with turnarounds.
  - g. Dead-end Streets. Streets closed at one end without turnarounds.
28. Developer. Any person, firm, corporation, partnership or other entity which divides or proposes to divide land in any manner which results in a land division or subdivision.
  29. Subdivision. A division of a parcel of land where the act of division creates either:
    - a. Five or more lots, parcels or building sites of 1.5 acres each or less in area; or
    - b. Five or more lots, parcels or building sites of 1.5 acres each or less in area by successive divisions within a period of five years.
  30. Structure. Anything which has the capacity to contain, used for the occupation or shelter of man or animal or for the storage, receiving, retaining or confining of personal property, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground. The term does not include the facilities and appurtenances of public utilities other than buildings.
  31. Town. The Town of Berry, Dane County, Wisconsin.
  32. Treasurer. The Town of Berry Treasurer.
  33. Utility Easements. An easement to place, replace, maintain or move utility facilities.
  34. Wetland. Real estate which has been delineated as a wetland by the official wetland boundary maps of Dane County.

#### **SECTION IV – WHAT LAND DEVELOPMENTS ARE COVERED BY THIS ORDINANCE**

1. These regulations shall apply to all land and condominium developments within the Town of Berry.
2. Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with this chapter and obtain all necessary permits for projects occurring within this chapter's jurisdiction. State agencies are required to comply when Wisconsin Statutes Section 13.48(13) applies. The construction, reconstruction, maintenance and repair of State highways and bridges by the Wisconsin Department of Transportation are exempt when Wisconsin Statutes Section 30.12(4)(a) applies.
3. The provisions of this ordinance as they apply to division of tracts of land into less than five (5) parcels shall not apply to:
  - a. Transfers of interests in land by will or pursuant to court order.
  - b. Leases for a term not to exceed ten (10) years, mortgages or easements.
  - c. The sale or exchange of parcels of land between owners of adjoining property if:
    - i. Additional lots are not thereby created; and
    - ii. The lots resulting are not reduced below 40,000 square feet with a minimum 150 foot width at the building line, 66-foot right-of-way for roads, and
    - iii. The lots created have applicable offsets, setback requirements or such other minimum size required by Town Ordinance, applicable Dane County Ordinances

or Chapter 236 of the Wisconsin Statutes or any other applicable laws or ordinances.

## **SECTION V – THE PROCESS OF TOWN REVIEW OF PROPOSED LAND DEVELOPMENTS**

1. Review Development Standards and Plans. Developers are responsible, before preparing a proposal, for reviewing the Town's development standards and plans to assure that their plans meet the requirements contained in those standards.
2. Informal conference. Before formally submitting an application for a proposed land division or subdivision, the applicant is encouraged to bring a concept plan to the Plan Commission for a pre-submission conference as provided for in section XIII.
3. Extraterritorial Review. In the case of lands lying less than one and one-half miles from the Village of Cross Plains, the applicant should consult with the village to determine whether the plat is subject to review by the village. The applicant and not the Town of Berry, is responsible for all extraterritorial review and requirements.
4. Application. The applicant shall submit the proposed land division for review by the Town's land division review process. The date on which the land division application is accepted by the Town shall control as to the timing of the review process by the Town.
5. Stages. Informal review includes a preliminary conference. Formal review of land divisions shall include the preliminary plat and final plat, which are provided for herein. Certified survey maps shall be reviewed in one phase.
6. Cost of review. All costs of review by the Town, including legal and engineering fees, shall be paid by the party proposing the land division.

## **SECTION VI – LAND DEVELOPMENTS REQUIRED TO MEET TOWN STANDARDS**

All land divisions must comply with the standards of this Chapter.

1. No person, firm, corporation, partnership, or legal entity of any kind shall divide any land located within the Town of Berry in a manner which results in a land division or replat as defined herein, and no such land division or replat shall be entitled to record, and no street, highway or road shall be laid out or improvements made to land unless the land division or replat complies with all requirements of this ordinance and with the following standards, all of which are incorporated by reference, including future amendments thereto:
  - a. The provisions of Chapter 236 of the Wisconsin Statutes regarding platting lands.
  - b. The provisions of this ordinance regarding highway access.
  - c. The rules of the Wisconsin Department of Commerce regulating lot size and lot elevation if the land to be subdivided is not served by a public sewer and provisions for such service have not been made.
  - d. The rules of the Wisconsin Department of Transportation, the Dane County Department of Transportation and the Town of Berry Road Ordinance, relating to safety of access and the preservation of the public interest and investment in the highway system if the land owned or controlled by the developer abuts on a state or County trunk highway, respectively, or a connecting street, including, but not limited to, minimum width regulations.

- e. All applicable Town comprehensive and neighborhood plans, as adopted under sections 62.23 and 66.1001 of the Wisconsin Statutes.
  - f. The applicable zoning ordinance.
  - g. The public facilities identified in any approved official map.
  - h. Dane County's storm water management ordinance.
  - i. Dane County's erosion control ordinance.
  - j. The Town's design review ordinance.
  - k. Thermal protection standards, if applicable to the land involved in the proposed land division.
  - l. The sight line protection standards of this ordinance.
  - m. The Town's groundwater recharge ordinance.
  - n. The Town's public improvement standards.
  - o. Any other ordinances and regulations adopted by the Town or other regulatory agency with jurisdiction to regulate the development of land.
2. Land suitability.
- a. No land shall be subdivided or divided if the land is determined by the Town Board, with the advice of the Plan Commission, to be not readily or appropriately developable.
  - b. A determination that land is not suitable for development shall be made on the basis of evidence. Prior to making a determination that land is unsuitable for development, the Town shall provide the specific basis for its proposed determination to the land developer, and afford the developer a hearing at which the developer may present evidence and argument on the issue.
  - c. Land is not developable if:
    - i. The land has unsuitable soils based on the Dane County Soil Survey or soil data which identify the area as unsuitable for development.
    - ii. The land is located in a floodplain.
    - iii. The land proposed for building sites is located less than 75 feet from the ordinary high-water mark of a lake, stream or river, or the delineated edge of a wetland.
    - iv. The land is proposed to be used in a manner contrary to the zoning or comprehensive plan of the Town.
    - v. The land on which improvements are to be constructed as part of the proposed development has a slope of more than 20 percent.
  - d. In determining that land is unsuitable, the Town may rely on adopted official soil maps which identify soils which have limitations for residential or commercial development, or on other reliable soil information.
3. Surface Water Diversion. No land shall be divided or subdivided if the town determines, on the basis of evidence, that the development thereof would, despite the provision of stormwater management required by applicable ordinances, create a substantial probability of material damage or injury to adjoining properties through alteration in the flow of surface water.
4. Design Review. The proposal shall comply with the Town's design standards for land divisions.

5. Storm water Management. The proposal shall comply with the requirements of Subchapter II, Chapter 14, Dane County Code, related to erosion control and storm water management.
6. Thermal Protection. Certain portions of the Town of Berry are located within the watershed of streams which have been determined to be thermally sensitive. In these areas, development may not be approved unless the Developer demonstrates that the development will not cause thermal pollution of streams and surface waters.

#### **SECTION VII – COUNTY JURISDICTION**

1. Dane County has authority to approve or deny such portions of a proposed land division that are shorelands, as defined in sec. 59.692 (1)(b), Wis. Stats., and/or within the 100-year floodplain in the County.
2. Prior to filing an application, it is the responsibility of the developer or divider to review whether any of the land included in the proposed land division is subject to the shoreland or floodplain jurisdiction of the County.
3. If the Town determines that any portion of a proposed land division is subject to the jurisdiction of Dane County but no application for approval has been made to Dane County, the Town shall reject the application and require the developer or divider to re-file the application with the County and the Town.

#### **SECTION VIII – THE PRELIMINARY CONFERENCE**

It is recommended that, prior to the filing of an application for the approval of a certified survey map or a preliminary plat, the developer or divider shall consult with the Town Plan Commission to obtain its advice and assistance. This consultation is neither formal nor mandatory, but is intended to inform the developer of the purpose and objectives of these regulations, any applicable master plans and plan implementation devices and to otherwise assist the developer in planning the development. No such consultations shall in any manner bind the Town Plan Commission or the Town Board to approve a plat, a land division or any other land use control. Further, no developer may rely upon or cite any advice or information provided by the Town Plan Commission or Town Board as evidence of the official actions of the Town.

#### **SECTION IX – THE PRELIMINARY PLAT**

1. Before submitting a final plat for approval, the developer shall prepare and submit to the Town:
  - a. A preliminary plat,
  - b. The completed Town of Berry Site Assessment Checklist and all documentation required that checklist,
  - c. The written application for approval, and
  - d. The required application fees.
2. The preliminary plat may include the entire contiguous area owned or controlled by the developer even though only a portion thereof is proposed for development at the time.
3. Every preliminary plat shall be prepared according to the following requirements:
  - a. General. A preliminary plat shall be required for all subdivisions and shall be based on a survey by a land surveyor registered in this state. The plat map shall be prepared in conformance with the requirements of Ch. 236, Wis. Stats., the Town



Land Division Ordinance, applicable surveying standards and other applicable legal requirements.

- b. The preliminary plat shall show all plat data as required by this Land Division Ordinance.
  - c. The developer shall provide road and street plans and profiles showing existing ground surfaces, proposed and established street grades, including extensions for a reasonable distance beyond the limits of the proposed subdivision when requested. All elevations shall be based upon USGS data, and plans and profiles shall be approved by the Town Board, with the advice of the Highway Superintendent. Streets plans shall conform in all respects to applicable zoning ordinances, the Town Plan, and the road standards of the Wisconsin Department of Transportation.
  - d. The Town requires submission of a draft of all prospective covenants which the developer intends to regulate land use in the proposed subdivision and otherwise protect proposed development. No covenant may be recorded without the prior approval of the Town Board. All covenants which insure to the benefit of the public shall be drafted so as to be enforceable by the Town. Commercial plats shall contain standard drainage, public utility, street maintenance and construction erosion control covenants in a form prescribed by the Town.
  - e. The surveyor preparing the preliminary plat shall certify on the face of the plat that he has fully complied with the provisions of this ordinance.
4. The developer shall file fifteen (15) copies of the plat and the application with the Clerk at least twenty-one (21) days prior to the meeting of the Town Plan Commission at which action is desired. The developer shall also submit fifteen (15) copies of the Site Assessment Check list and all supporting documentation. The Town Plan Commission may waive the requirement that the preliminary plat include the entire area owned by the developer where it is unnecessary to fulfill the purpose of the ordinance and undue hardship would result from strict enforcement of this provision. Where a developer has control of lands which are equal to or in excess of 80 acres in area, or are smaller parcels separated only by existing public roads, in lieu of a preliminary plat on the entire area, the developer may elect to submit a comprehensive development plan.
  5. The Clerk shall forward five (5) copies of the preliminary plat to the Town Plan Commission which shall examine it for conformity with all ordinances, administrative rules and regulations and for compliance with any applicable Town master plan.
    - a. The Town Plan Commission shall recommend approval, conditional approval or rejection of the proposed plat to the Town Board.
    - b. If approval or conditional approval is recommended, the preliminary plat shall be referred to the Board for consideration. The Town Board shall then approve, conditionally approve, or reject the preliminary plat.
    - c. One copy of the plat shall be returned to the developer, the developer's surveyor, or engineer with the date and action endorsed thereon. If the plat is approved conditionally or rejected, the conditions of approval or reasons for rejection shall be endorsed thereon or attached thereto.
    - d. Unless the time is extended by written agreement between the developer and the Board, failure to complete the action therein required within ninety (90) days of filing of the preliminary plat constitutes an approval of the preliminary plat.

6. Approval or conditional approval of a preliminary plat entitles the final plat to approval provided the final plat conforms substantially to the preliminary plat, including any conditions of that approval, and conforms to any applicable Town plans and applicable ordinances. If the final plat is not submitted within six (6) months of the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat regardless of prior action taken on the preliminary plat.

## **SECTION X – THE FINAL PLAT**

1. The developer shall prepare and file six (6) copies of the final plat together with a written application for approval with the Clerk within six months of the approval of the preliminary plat and at least fourteen (14) days prior to the meeting of the Town Board at which action is desired.
2. The Clerk shall forward two (2) copies of the plat to the Town Board. The Town Board shall examine it for conformity with the preliminary plat and any conditions or approval, with the requirements of this ordinance, and with the requirements of any other ordinances, statutes, administrative rules and regulations, or local plans which may be applicable to it. The Plat shall be prepared in conformity with the following standards:
  - a. A final plat prepared by a land surveyor registered in this state shall be required for all subdivisions. It shall comply in all respects with the requirements of this Chapter, Section 236.20 of the Wisconsin Statutes and the Town Land Division Ordinance.
  - b. The final plat shall show, correctly and on its face, in addition to the information required by Section 236.20 of the Wisconsin Statutes and this ordinance, the following:
    - i. Exact length and bearing of the centerline of all streets.
    - ii. Exact street width along the line of any obliquely intersecting street.
    - iii. Size of culvert, if any, for each driveway of each lot in the land division.
    - iv. All land reserved for future public acquisition or reserved for the common use of property owners within the plat.
    - v. Special restrictions required by the Town Board relating to access control along public ways or to the provisions of planting strips.
3. All improvements required by this ordinance shall be made or guaranteed in the manner described in this Chapter. If the final plat meets the requirements of this ordinance, and has been submitted within six (6) months from the approval date of the preliminary plat and the conditions have been met in the case of preliminary plat given conditional approval, the Town shall approve the final plat of the subdivision within sixty (60) days from the date officially submitted to the Town Clerk.
4. The Town Board shall require that restrictive covenants or deed restrictions be filed with the final plat. Any easements noted on the plat for the benefit of private parties, including adjacent landowners, shall be embodied in written easement deeds which shall be recorded.
5. All final plats shall meet all the surveying and monuments requirements of Section 236.15 of the Wisconsin Statutes. All final plats shall provide all the certificates required by Section 236.21 of the Wisconsin Statutes; and, in addition, the surveyor shall certify that he/she has fully complied with all the provisions of this ordinance.

6. The Town Board shall approve, conditionally approve, or shall reject the plat. The Town Board shall indicate the reasons for any rejection of the plat. One copy of the plat shall then be returned to the developer, the surveyor, or engineer with the date and action endorsed thereon, and if approved or rejected, the conditions or requirements of approval or reasons for rejection shall be endorsed thereon or attached thereto. Unless the time is extended by written agreement between the developer and the Board, failure to complete the action required herein within sixty (60) days of filing the final plat shall constitute an approval of the final plat.
7. The final plat may, if permitted by the Town Board, include only that portion of the approved preliminary plat which the developer proposes to record at this time.
8. The final plat shall be approved if it conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to any applicable Town plans and ordinances. If the final plat is not submitted within six (6) months of the last required approval of the preliminary plat, the Plan Commission may reject the final plat regardless of any prior action on the preliminary plat.
9. After the final plat has been approved by the Board and the contract and security filed in accordance with this ordinance, the developer shall submit the final plat to the Clerk. After the developer has executed the developer's agreement to provide all required improvements, has posted the security required by this ordinance, has paid all fees imposed pursuant to the ordinance and any area assessments, and after the developer has met all other requirements, the Clerk shall execute the certificate inscribed upon the face of the plat or certified survey attesting to the approval thereof and return it to the developer for recording. The Clerk shall cause the certificate inscribed upon the plat attesting to such approval to be duly executed. The plat shall be returned to the developer for recording.
10. The developer shall record the final plat, and shall file a certified copy of the final plat with the Clerk within ten (10) days after it has been recorded.

#### **SECTION XI – LAND DIVISION BY A CERTIFIED SURVEY MAP**

1. A certified surveyed map which has been approved by the Town Plan Commission and the Town Board, and meets all of the requirements of Section 236.34 of the Wisconsin Statutes and of this ordinance, may be utilized to create not more than four parcels or building sites, each parcel or building site, provided that no more than four parcels may be created within any five (5) year period. The Board resolution approving the certified survey map shall be reproduced legibly on the face of the certified survey map. All unpaid or outstanding taxes, assessments and special assessments shall be paid prior to the approval unless determined otherwise by the Town Board.
2. An applicant for a land division by certified survey map shall file ten (10) copies of the certified survey map and a written application for approval with the Clerk. An applicant shall submit ten (10) copies of the certified survey checklist. The certified survey map must be prepared in conformance with the requirements of the Town Land Division Ordinance.
3. The Town Board shall within sixty (60) days approve, approve conditionally, or reject the certified survey map based on a determination of conformance with the provisions of this ordinance. One copy of the certified survey map shall be returned to the developer with the date and action endorsed thereon or attached thereto. Unless the time is

extended by written agreement between the developer and the Board, failure to complete the action required herein within sixty (60) days of the filing of the map shall constitute an approval of the certified survey map.

4. After the certified survey map has been approved by the Town Board, the development agreement has been executed and recorded, the security filed in accordance with this ordinance and any fee imposed pursuant to this ordinance has been paid, the developer shall submit the certified survey map to the Clerk. The Clerk shall cause the certificate inscribed upon the map attesting to such approval to be duly executed. The certified survey map shall be returned to the developer for recording.
5. The developer shall record the certified survey map with the Register of Deeds for Dane County after it has been approved, and shall file a certified copy of the recorded map with the Clerk within ten (10) days after the certified survey map is recorded.
6. General. A certified survey map prepared by a surveyor registered in this state shall be required for all land divisions. It shall comply in all respects with the requirements of Section 236.34 of the Wisconsin Statutes and conform to the requirements of the Town Land Division Ordinance.
7. Information Required. A sketch showing the present zoning and any proposed zoning change for the land division and all adjacent lands shall be submitted along with the map. The map itself shall show correctly on its face, in addition to the information required by section 236.34 of the Wisconsin Statutes, the following:
  - a. All existing buildings, watercourses, drainage ditches and other features pertinent to proper division.
  - b. Setbacks or building lines required by Town Ordinance.
  - c. All lands reserved for future acquisition.
  - d. Date of map.
  - e. Size of culvert, if any, for the driveway of each lot.
8. Certificates.
  - a. The surveyor shall certify on the face of the map that the surveyor has fully complied with all the provisions of this ordinance. The Board shall certify its approval on the face of the map.
  - b. The following certificate of approval shall be provided legibly on the face of the map:

This certified survey, including any dedications shown thereon, has been duly approved by the Town Board of the Town of Berry, Dane County, Wisconsin, on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ Clerk
9. Critical Building Locations. Any building or structure and its location on the lot shall be dimensioned to the nearest 0.1 foot where the building or structure is to be located within five (5) feet of the proposed property boundaries or the zoning yard requirements, or such other requirement as is consistent with the subdivision regulations of the Town.
10. Dedications and Improvements Required. Any land division effectuated by a certified survey shall be subject to the provisions of this ordinance concerning the reservation and dedication of land; and, unless a waiver is granted, the provisions of this ordinance concerning required improvements.

## **SECTION XII – CONSTRUCTION OF PUBLIC IMPROVEMENTS**

1. Prior to commencing construction of any required improvement, the developer shall prepare construction plans and specifications and submit them to the Highway Superintendent or designee for review and approval. The Highway Superintendent may require the submission of the plans and accompanying construction specifications before authorizing construction or installation of the improvements. The Plans shall include:
  - a. Street plans and profiles showing existing and proposed grades, elevations and cross sections of required improvements.
  - b. Stormwater and surface water drainage plans.
  - c. Such additional plans or information as may be required by the Highway Superintendent.
  - d. Plans and specification for all utilities and underground facilities.
2. Private Contracts. The developer shall engage one general contractor whose qualifications have been approved by the Board for each major phase of construction (grading, utilities, streets) or one general contractor for a contract which includes more than one phase of construction.
3. Scheduling. All scheduling of the contemplated improvements shall be approved by the Highway Superintendent. Construction may not be commenced on any phase of construction until all approvals and conditional requirements are satisfied and a copy of the private contract has been filed with and approved by the Board. Construction shall not proceed until all State of Wisconsin approvals are granted.
4. Street Grading.
  - a. The developer shall furnish standard drawings which indicate the existing and proposed grades of streets shown on the plat, and after review of design engineering work on the streets by the Highway Superintendent and approval of street grades by the Board, the developer shall grade or cause to be graded the full width of the right-of-way of the streets proposed to be dedicated, including the vision clearance triangle on corner lots. In those cases where existing street right-of-way is made a part of the developer's plat or abuts the plat, the developer shall grade or cause to be graded that portion of the right-of-way between the existing pavement and the property line. The bed for the roadways in the street right-of-way shall be graded to sub-grade elevation. The Highway Superintendent shall inspect the proposed street before grading and approve all grading within right-of-way. The street grading shall extend for a sufficient distance beyond the right-of-way to insure that the established grade will be preserved. The grading of rights-of-way for principal and primary arterials shall only be required where necessary to provide access to the streets or lots in the plat. Lots which abut principal and primary arterials shall be graded to proposed street grade or to a grade approved by the Highway Superintendent prior to the sale of affected properties.
  - b. The developer shall engage a licensed professional engineer to set sub-base grade in accordance with approved centerline grade and cross section; and to set grades necessary to comply with other grading requirements, including vision clearance on corner lots, centerline and lot line grades for greenways, terrace grading for abutting streets and other required grades. The grading program shall consist of the following elements:
    - i. The stripping and removal of all topsoil, debris and vegetation within the street right-of-way.

- ii. Grading of full street right-of-way to a tolerance of 0 to 0.2 feet below proposed centerline grade. Fill sections shall be constructed of approved materials, which do not include topsoil, debris, vegetation, etc.
  - iii. Grading beyond right-of-way to insure that the established grade will be preserved.
  - iv. Grading of vision clearance triangle on corner lots (Maximum embankment of three (3) feet above curb elevation within a triangle formed by two intersection street line or their projections and a line joining points on such street lines located twenty five (25) feet from the street intersection).
  - v. Where the public greenway is included in the plat, the developer is responsible for an acceptable continuous drainageway in the greenway as determined by the Highway Superintendent.
  - vi. All additional plat grading, where applicable, lot abutting greenways, terraces of streets abutting plats public easements for sanitary sewer and sidewalk, and other requirements of ordinances and special conditions of plat approval. There shall be a plan for disposal of any surplus soil or earth.
5. Sizing and Oversizing of Drainageways. The cost of constructing storm sewer and storm water drainage including retention basins which serve the plat or project but which are not necessary to serve the entire drainage basin or subbasin in which it is located shall be borne solely by the developer. Those costs which are attributable solely to increasing the capacity of the required storm sewer and storm water drainage facilities to enable them to serve the entire drainage basin or subbasin shall be paid by the Town and recovered through area charges or special assessments levied against all benefited properties. Any costs to be borne by the developer under this subsection shall be paid before the final plat is inscribed by the Town Clerk or before any building permit is issued. Any area charges levied pursuant to this subsection shall be subject to adjustment based upon the Consumer Price Index. In making such adjustments the year that the area charges for the drainage basin or subbasin were established shall be used as the base year.
6. Utilities.
  - a. If the developer elects to install underground utilities and the standard street improvement in the same year, provision must be made for mechanical compaction of all ditches for underground utilities that fall within the street right-of-way.
  - b. Prior to commencing construction of any required utilities, the developer shall submit the proposed construction schedule, plans, specifications and contract to the Highway Superintendent.
7. Greenways. Greenways included within platted or re-platted area shall receive the following prescribed treatment by the owner of the land division.
  - a. The developer shall be responsible for an acceptable continuous drainageway through the proposed plat as determined by the Highway Superintendent. The developer shall furnish the Highway Superintendent a plan outlining the greenway boundaries and location of existing drainageways, if any. In addition, the developer shall furnish to the Highway Superintendent a set of cross-sections (on 50' stations) of the greenway oriented upon a base line as prescribed by the Highway Superintendent. Where a natural drainageway exists which has acceptable hydraulic capacities including alignment and grade as determined by the Highway Superintendent, construction will not be required and the existing natural growth shall be preserved. When such

natural growth is not preserved by action of the developer or an acting agent, the developer shall be responsible for repairing the disturbed areas by sodding. However, in certain locations, as determined by the Highway Superintendent, where the hydraulic capacities including alignment and grade are not acceptable, then such alignment, grade and slopes shall be improved by the developer to the interim minimum requirements of a ten (10) foot wide ditch bottom with four (4) to one (1) side slopes, all to be seeded.

- b. The developer shall install permanent pipes or culverts at a grade designated by the Highway Superintendent under all streets crossing a greenway or drainageway. Said installation shall be in accordance with the Standard Specifications for Road and Bridge Construction of the Department of Transportation of the State of Wisconsin. All costs of the installation shall be the responsibility of the developer. The permanent pipe or culvert shall not be installed prior to the installation of a street crossing a greenway unless done pursuant to written agreement between the Engineer and the developer. Culverts required across intersections for temporary street drainage, shall be furnished and installed by the developer at the developer's expense. All temporary culverts installed by the developer shall be completely removed when the streets are constructed to standards and the area restored to as near to original condition as possible as determined by the Highway Superintendent.
  - c. The Highway Superintendent shall inspect the property prior to and after the installation of utilities.
  - d. All ditching and culvert installation shall be done in strict accordance with grades approved by the Engineer. The developer's engineer shall be responsible for setting all required grades in the field for construction purposes.
  - e. In order to assure proper drainage, the ground elevation along any lot line common with the boundary of a greenway shall not be less than four (4) feet above the flowline of the greenway, or where designated to an elevation established by the Engineer, prior to the sale of affected properties. The flowline grade shall be established by the Engineer. All lot grading and building elevations shall provide for positive drainage. Grading or filling within the greenway limit is prohibited except as authorized by the Engineer. The Highway Superintendent shall inspect all work before it is certified as complete.
8. Street Construction.
- a. General. After completion of the underground utilities and approval thereof, the streets shall be constructed.
  - b. Standard Street Improvements.
    - i. Standard street improvements may include, in the sole discretion of the Town Board, concrete curb and gutter, and ornamental street lights and shall include bituminous base course and bituminous surface course.
    - ii. The developer shall prepare final plans and specifications for the standard street improvements and submit them, together with all soil sub-grade data obtained by its soils engineer, to the Highway Superintendent.
    - iii. Upon written approval by the Highway Superintendent, the developer may proceed to construct the standard street improvements. Standard street improvements shall be installed to the boundary line of the subdivision unless the street culminates in a cul-de-sac, the topography or other physical conditions

make it impossible to do so, or unless this requirement is waived, in writing, by the Town Plan Commission.

- iv. The street/road shall be constructed to Town Specifications as described in the Town Highway Development Ordinance.
- c. Inspection of Street Improvements. The Highway Superintendent shall inspect all street improvements before the same are accepted by the Town. All improvements shall include a one (1) year warranty by the Developer.
9. Change Orders. When extra work not specified in the contract is required to complete the project, the Town will notify the Developer or the engineering representative. No extra work shall proceed until the Developer or the representative has entered into a written agreement for the additional work.
10. Erosion Control. The developer shall take all steps necessary to prevent the erosion, siltation, sedimentation, washing and blowing of dirt and debris caused by grading, excavations open cuts, side slopes, and other activities by the developer or the contractors. Reasonable methods of control shall include, but not be limited to, seeding and mulching, sodding, berm construction, pond construction, and watering. In such cases where the method of control has failed, the subdivided shall clean up the materials which have been displaced prior to construction of additional improvements. Plans for erosion control shall be submitted to the Highway Superintendent for review and approval before any land surface disturbances are made. The Engineer's decision may be appealed to the Board.
11. Flood Plain/Shoreland. All provisions of Dane County Ordinances relating to flood plain and shoreland zoning are incorporated herein and adopted by reference.
12. Inspection. Prior to commencing any work within the subdivision, the developer shall make arrangements with the Highway Superintendent to provide for adequate inspection. The Highway Superintendent shall inspect and approve all completed work prior to approval of the final plat or any release of the securities deposited pursuant to This ordinance.
13. Driveways. Each lot in a land division shall be served by a driveway which meets the requirements of this Ordinance and the Town of Berry Driveway Ordinance.
14. Road/Street Signs Costs. The developer shall be responsible for the initial cost of the road/street name signs for new roads. The Town will order and install the signs after construction of the subdivision roads. The developer will be billed for the cost and installation. Payment will be required prior to issuing any building permits.
15. Acceptance of Public Improvements.
  - a. After the developer has installed all required improvements, the developer shall notify the Highway Superintendent in writing that the work is complete and ready for final inspection. The Highway Superintendent shall inspect the improvements and forward a letter to the developer indicating the Highway Superintendent's approval or disapproval. When the improvements have been approved by the Highway Superintendent, the Clerk will prepare a final billing for engineering, inspection and legal fees and submit it to the developer for payment. In addition, the developer and all general contractors shall file lien waivers or affidavits, in a form acceptable to the Town and approved by the Town Attorney, evidencing that there are no claims, actions or demands for damages, based upon contract or tort arising



- out of or in any way related to the project and that no monies are owed to any surveyor, mechanic, sub-contractor, materialman or laborer.
- b. Resolution. When the engineering, inspection, and legal fees have been paid and when the necessary lien waivers and affidavits have been filed, a resolution accepting the project will be prepared and presented to the Town Board.
  - c. Security Release. The security furnished pursuant to This ordinance shall remain in full force for a period of one year after the completion of the project and acceptance by the Board unless partially released as hereinafter provided. The security shall be held to guarantee the work performed pursuant to private contracts against defects in workmanship and materials. If any defect appears during the period of the guarantee, the developer or its contractor shall, at its expense, install replacements or perform acceptable repairs. In the event that the developer fails to install the replacement or perform the repairs, the Town may do so and deduct the cost thereof from the security deposit. Unless defects have appeared and have not been repaired, the Town shall release the security to the developer upon expiration of the one year guarantee period.
16. Notice of Adjacent Uses. The developer shall cause a notice to be included in the deed covenants of all subdivisions which places the purchasers of lots on notice that Berry is an agricultural area and that farm practices which are in use in the area may cause odors, dust, noise, interruption of traffic and other effects. The deed covenant shall indicate that under Wisconsin law, there is no right to enjoin agricultural practices as nuisances. The covenants shall also indicate any other potentially offensive uses located within perceptible distance of the proposed subdivision so the purchasers are on notice of the effects of such uses. The Plan Commission may require deed notices to advise lot owners of adjacent commercial or industrial uses or future public improvements which may affect their property values.

### **SECTION XIII – DESIGN STANDARDS**

1. Street Arrangement. In any new subdivision the street layout shall conform to the arrangement, width and location indicated on any official map, master plan or component neighborhood development plan of the Town. In areas for which plans have not been completed, the street layout shall recognize the functional classification of the various types of streets and shall be developed and located in proper relation to existing and proposed streets, to the topography, to such natural features as streams and tree growth, to public convenience and safety, to the proposed use of the land to be served by such streets, and to the most advantageous development of adjoining areas. Each lot of the subdivision or land division shall have access to a public street which is, at a minimum, sufficient to allow ingress and egress of motor vehicles.
  - a. Arterial Streets. Shall be arranged so as to provide ready access to centers of employment, centers of governmental activity, community shopping areas, community recreation, and points beyond the boundaries of the community. They shall also be properly integrated with and related to the existing and proposed system of major streets and highways and shall be, insofar as practicable, continuous and in alignment with existing or planned streets with which they connect.
  - b. Collector Streets. Shall be arranged so as to provide ready collection of traffic from residential areas and conveyance of this traffic to the major street and highway

system and shall be properly related to the mass transportation system, to special traffic generators such as schools, churches, shopping centers and other concentrations of population, and to the major streets into which they feed.

- c. Local Streets. Shall be arranged to conform to the topography, to discourage use by through traffic, to permit the design of efficient storm and sanitary sewerage systems, and to require the minimum street area necessary to provide safe and convenient access to abutting property.
  - d. Proposed Streets. Shall extend to the boundary lines of the tract being subdivided unless prevented by topography or other physical conditions or unless, in the opinion of the Town Board, such extension is not necessary or desirable for the coordination of the layout of the subdivision or for the advantageous development of the adjacent tracts. Temporary turnarounds shall be required where the street ends at the boundary of the subdivision. The road right-of-way shall continue to the adjacent lands and connect to roads constructed on such lands if approved by the Town Board.
  - e. Arterial and Highway Protection. Whenever the proposed subdivision contains or is adjacent to a major highway, adequate protection of residential properties, limitation of access and separation of through and local traffic shall be provided by reversed frontage, with screen plantings contained in a non-access reservation along the rear property line, or by the use of frontage streets.
  - f. Reserve Strips. Controlling access to roads or highways are prohibited except where control of such strips is placed with the Town under conditions approved by the Town Board.
2. Street Names and Numbering.
    - a. Street names and building numbers shall be assigned in accordance with the provisions of Chapter 76 of the Dane County Ordinances.
    - b. The following designations shall be used only in the situations indicated.
      - i. Lane - a street, one block long, not ending in a cul-de-sac.
      - ii. Circle - a cul-de-sac of nine lots or more.
      - iii. Court - a cul-de-sac of eight lots or less.
  3. Limited Access Highways Rights-of-Way. Whenever the proposed subdivision or land division contains or is adjacent to a limited access highway the design shall provide the following treatment:
    - a. In Residential Districts a buffer strip at least thirty (30) feet of depth, in addition to the normal lot depth required, shall be provided adjacent to a limited access arterial highway. As used in this section, the term "buffer strip" means an area of hedges, trees, tall grasses or other foliage which creates a visual screen between two areas. The lot depth required, including such buffer strip, shall not be less than one hundred and fifty (150) feet. The strip shall be a part of the platted lots, but shall have the following restriction lettered on the face of the plat:

This strip reserved for the planting of trees or shrubs by the owner; the building of structures hereon is prohibited, and the rear thirty (30) feet of the strip shall not be counted as any required yard. Maintenance of this strip is a responsibility of the lot owner.
    - b. Commercial and Industrial Districts shall have on each side of the limited access highway and streets approximately parallel to and at a suitable distance from such

highway for the appropriate use of the land between such highway, but not less than one hundred and fifty (150) feet.

- c. Streets Parallel to a Limited Access Highway shall, when intersecting a major street or highway which crosses said highway, be located at a minimum distance of two hundred and fifty (250) feet from said highway. Such distance, where desirable and practicable, shall be determined with due consideration of the minimum distance required for the future separation of grades by means of appropriate approach gradient
  - d. Location of Local Streets in residential areas immediately adjacent to arterial streets and highways shall be avoided.
4. Street Design Standards.
- a. Minimum Right-of-way. The minimum right-of-way for all proposed streets and roads shall be sixty six (66) feet or such other width as is specified by the Town comprehensive plan, official map or neighborhood development study; or if no width is specified therein, the minimum widths shall be sixty six (66) feet.
  - b. Cul-de-Sac Streets. Cul-de-sac street ends are prohibited unless authorized by a variance granted by the Town Board. No variance shall be granted unless the Town Board finds, after hearing, that use of cul-de-sac street ends is necessary to overcome limitations imposed by the physical characteristics of the land, so that development may occur which is consistent with the policies stated in this chapter. If the Town Board grants a variance, the cul-de-sac shall conform to the following standards:
    - i. Streets designed to have one end permanently closed shall not exceed twelve hundred (1,200) feet in length.
    - ii. Except as provided herein, streets which are designed to have one end permanently closed shall terminate in a circular turnaround having a minimum right-of-way diameter of one hundred and fifty (150) feet, and a minimum paved diameter of one hundred (100) feet. The reverse curve on a cul-de-sac shall have a seventy five (75) foot minimum radius when the bulb is centered on the street and one hundred (100) foot minimum radius when the bulb is offset.
    - iii. In areas zoned B-1, B-2, C-1, C-2, Industrial or other Commercial zone, all streets which are designed to have one end permanently closed, shall terminate in a circular turnaround having a minimum right-of-way of one hundred and seventy five (175) feet, and a minimum paved diameter of one hundred and twenty (120) feet.
    - iv. All cul-de-sac streets shall have an area reserved for pushing plowed snow off the end of the bulb of the cul-de-sac. The area reserved shall be calculated based on the length of the street and the snowfall data for the area in question.
    - v. The Town may permit the construction of loop cul-de-sacs where deemed advantageous to the Town.
  - c. Street Grades and Radii of Curvature. Unless necessitated by exceptional topography and subject to the approval of the Highway Superintendent, the street grades and radii of curvature shall conform to the Design Standard in the Town Road Ordinance. In the event of a conflict between the Town and Town standards, the Highway Superintendent shall determine which standard shall be applied, on the basis of which standard is best suited to the estimated traffic load of the proposed road.

5. Blocks.

- a. The widths, lengths and shapes of blocks shall be suited to the planned use of the land; zoning requirements; stormwater management; need for convenient access, control and safety of street traffic; and the limitations and opportunities of topography.
- b. Blocks in residential areas shall not be less than six hundred (600) feet nor more than fifteen hundred (1500) feet in length unless otherwise dictated by exceptional topography or other limiting design factors.
- c. Width. Blocks shall have sufficient width to provide for two tier of lots of appropriate depth except where otherwise required to separate residential development from through traffic. Width of lots or parcels reserved or laid out for commercial or industrial use shall be adequate to provide for off-street service and parking required by the use contemplated and the area zoning restrictions for such use.

6. Lots.

- a. The size, shape, and orientation of lots shall be appropriate for the location of the subdivision and for the type of development and use contemplated. The lots should be designed to provide an aesthetically pleasing building site and a proper architectural setting for the buildings contemplated. Development shall be taken with due regard to property values, adjacent uses and the character of the neighborhood.
- b. No lot may have frontage on streets on two parallel sides nor may a lot be platted so that the building will face the reverse side of the lot. The Town Board may grant a variance from this requirement where necessary, the physical characteristics of the land so require in order to provide separation of residential development from through traffic or to overcome specific disadvantages of topography and orientation. There shall be no "flag lots," also known as "dogleg lots" or "panhandle lots."
- c. Residential lots to be served by private sewage disposal facilities shall comply with the rules of the Wisconsin Department of Commerce and Dane County Sanitary Code.
- d. Lots must front on and have access to a Town highway or approved Town road. Every lot shall front or abut on a public street or road for a distance of at least sixty six (66) feet
- e. Side lot lines shall be substantially at right angles or radial to street lines.
- f. Lots shall follow municipal boundary lines rather than cross them.
- g. Corner lots shall have sufficient width to permit adequate building setbacks from side streets.
- h. Residential lots fronting or backing on arterial highways shall be platted with extra depth to permit generous distances between the buildings and such traffic-ways.
- i. Depth and width of properties reserved or laid out for commercial or industrial use shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- j. Lot Sizes.
  - i. Lots served by private on site wastewater treatment systems shall have a minimum area of 1.5 acres, 1.0 acres in agriculture preservation areas.
  - ii. The Plan Commission may allow smaller lot sizes if :

- a. The Developer submits certified soil tests showing the soils will support a smaller area for a drain field and replacement, or
  - b. If the development is served by a non-conventional system which uses smaller or group drain fields; and
  - c. The development uses clustering of home sites but has the same average density per net developable acres the minimum lot size contained in this section; and
  - d. The balance of the parcel or parcels being subdivided is subject to a permanent conservancy easement which will preserve the land as open space.
- iii. In preparing proposed developments, the developer shall plan the lots sizes with due regard for the adjacent uses and lots. In the case of land divisions which abut other development with larger lot sizes, the lots which abut the existing development shall have a lot size which transitions from the existing development to the smaller lots which predominate in the development. The transitional lots shall be sized at least halfway between the average size of the existing platted lots and the average of the new lots.

7. Easements.

- a. Utility Lines to be Underground in Newly Developed Areas. All new electric distribution lines, all new telephone lines from which lots are individually served, all cable television and all other common carrier services installed within a newly platted area shall be underground unless the Town Board shall specifically find after study that location, topography, soil, water table, solid rock, boulders, stands of trees, hedges or other physical conditions would make under ground installation unreasonable or impracticable. Associated equipment and facilities which are appurtenant to underground electric and communications systems, such as but not limited to, substations, pad-mounted transformers, pad-mounted sectionalizing switches and above-grade pedestal-mounted terminal boxes may be located above ground.
  - b. Easement Conditions. The developer shall include appropriate easements in the plat, shall prepare appropriate easement deeds and record the same with the final plat. Easements shall be for the installation of gas, electric and communication lines. Such easements shall be noted as "Utility Easements" on the final plat or certified survey map. Prior to approval of the final plat or certified survey map, the concurrence of the electric and communications companies serving the area as to the location and width of the utility easements shall be noted on the final plat or certified survey map.
  - c. Drainage Easements. Where a subdivision is traversed by a water course, drainage way, channel or stream, an adequate drainage way or easement shall be provided as required by the Town Board. The location, width, alignment and improvement of such drainage way or easement shall be subject to the approval of the Town Board. Parallel streets or parkways may be required in connection therewith. Wherever possible, the storm water drainage shall be maintained by landscaped open channels or adequate size and grade to hydraulically accommodate maximum potential volumes of flow, these sizes and design details to be subject to review and approval by the Highway Superintendent and Town Board. Drainage easements shall maintain existing water flow patterns onto neighboring lands.
8. Development Agreement. Before any final plat or certified survey map is approved, the developer shall enter into a development agreement with the Town wherein the

developer agrees to install all required improvements within eighteen (18) months of the date that the plat or certified survey map is recorded. The Town Board may allow phased construction of plats.

9. Security Required.

- a. At the time the development agreement is executed, the developer shall file a bond, certificate of deposit, irrevocable letter of credit, or certified check, in such form as is acceptable to the Board and approved by the Town Attorney, with the Town in an amount equal to one hundred ten percent (110 %) of the estimated cost of the required improvements as determined by the Highway Superintendent.
- b. Such deposit shall guarantee that such improvements will be completed according to Town specifications by the developer or its contractors not later than eighteen (18) months from the date that the plat is recorded or, where staging is permitted, that each stage will be completed by the date specified in the installation and completion schedule.
- c. Such security shall be held by the Town and either released or used in the manner specified in this ordinance. The provision of security by the developer shall not release the developer from its obligations under the development agreement nor prejudice the right of the Town to recover the full cost of completion of the improvements if the developer fails to complete the same.
- d. Governmental Units. The State of Wisconsin, Dane County and a City, Village or Town of Dane County may, in lieu of the bond or security provisions of this ordinance, may file a resolution duly adopted by such governmental unit agreeing to comply with the provisions of this section.

10. Construction in Phases. All subdivisions of more than twelve (12) lots shall be constructed in phases.

- a. The phases shall be specified in the conditions of approval of the subdivision. Construction of the second and subsequent phases may not begin until building permits have been issued for sixty percent (60 %) of the lots in the preceding phase.
- b. Improvements constructed during the first and each subsequent, stage, of construction shall not be accepted nor shall any occupancy permits be issued within the completed area of the subdivision or development until the security required for the next stage of construction has been posted with the Town.
- c. The developer shall record deed restrictions reviewed by the Town (or its designated representative) which specify that the lots included in future construction phases shall not be conveyed, transferred or sold unless the Town's approval is obtained.
- d. Erosion control plans and measures submitted and approved shall address the erosion problems posed by the construction of the project in phases.

11. Reservation and Dedication of Land.

- a. Public Ways. Whenever a tract of land to be divided or subdivided abuts, includes or is adjacent to all or any part of a street, an arterial street, drainage way or other public way which has been designated in any applicable master plan or official map, said public way or street shall be incorporated into the plat and dedicated to the public or to the Town by the developer in the locations and dimensions indicated on said plan or map.
- b. Public Sites and Open Spaces. In designing a land division or subdivision, due consideration shall be given by the developer to the reservation of suitable sites of

adequate area for future drainage ways or other public purposes. In the location of such facilities, consideration shall be given to the protection and preservation of scenic and historic sites, stands of fine trees, marshes, lakes and ponds, water courses, watersheds, wetlands, wildlife habitat and ravines.

- c. Storm Water Management. The deed covenants of every land division shall provide that the Town shall have the right to maintain or repair all storm water management features, including all easements, structures and ditches, if the owner or homeowners' association fails to maintain the same after notice has been given by the Town. The Town may recover the cost of such repairs from the responsible property owners.
12. Survey Monuments. Before final approval of any plat or certified survey map within the corporate limits of the Town, the developer shall install survey monuments placed in accordance with the requirements of Section 236.15 of the Wisconsin Statutes and as may be required by the Highway Superintendent. The Town Board may allow deferral of installation of monuments otherwise required under Section 236.15(b),(c) and (d), for a period not to exceed three (3) years on condition that the developer execute a surety bond to insure the placing of such monuments within the time required.
13. Sight Line Protection of Hillsides, Slopes and Views. The conditions of approval may require the identification of building sites on the plat, and may restrict the location of houses and other structures so as to provide appropriate sight line and view protection as follows:
  - a. The lots should be positioned and building sites and heights limited so that the rooflines and tops of structures shall not visibly extend above the line of ridges and hilltops when viewed from outside the land division.
  - b. Houses and structures should be buffered from existing roads using existing and planted trees and vegetation, hills, berms or other natural-appearing features.
  - c. Clustering of houses and structures, if employed in the development, shall be done so as to locate the buildings out of view of adjacent development or roads.
14. Wastewater Disposal.
  - a. On site systems. The lots shall be configured so that each lot has sufficient soil suitable for installation of private on-site wastewater treatment systems and a reserve drain field or disposal field. No land which requires holding tanks may be developed for new construction.
  - b. Sanitary Sewers and Water Mains. Where public sewage treatment, storm water or water services are available, such services shall be planned in the plat and installed in the land division by the Developer. No person shall install a private well or septic system in any lot served by water or sewer services.
  - c. All developments shall have easements allowing installation of public sewer interceptors and laterals and water service in the event such services later become available.
  - d. Where no public water supply system is available, either a well for each parcel or a water supply system shall be installed.
15. Storm Sewer and Storm Water Drainage Facilities. Storm water management facilities shall be constructed according to the requirements of the Dane County Storm Water Management Ordinance.
16. Groundwater Recharge.

- a. Certain areas of the Town contain soils and subsoil formations which recharge groundwater aquifers which are vital to the Town and adjacent communities. These areas shall be designated by the Town in the comprehensive plan.
  - b. In designated groundwater recharge areas, special additional restrictions shall apply:
    - i. Impervious surface shall be limited to ten thousand (10,000) square feet per lot;
    - ii. Storm water management plans shall maximize infiltration;
    - iii. Construction activity compaction of the soil shall be minimized.
17. Fencing. If the development of a land division creates a requirement for a new partition fence under Ch. 90, the developer and lot owners shall be responsible for the cost of such partition regardless of whether the owner of the adjacent land would be liable for a part of the cost under Ch. 90, Wis. Stats. Fences shall be built as right-of-way fences.

#### **SECTION XIV – BUILDING PERMITS**

No building permits shall be issued for erection of a structure on any lot created by a land division or subdivision until all the requirements of this ordinance have been met. No construction of any kind may commence until the final plat has been recorded.

#### **SECTION XV – THE FEES CHARGED FOR LAND DEVELOPMENT REVIEW**

1. General. The developer shall pay the Town all costs incurred by the Town and all fees as hereinafter required and at the times specified.
2. Preliminary Plat and Certified Survey Review Fee. The developer shall pay those fees specified in the Town Fee Ordinance to the Treasurer at the time the application or reapplication for approval of any preliminary plat or certified survey is filed.
3. Engineering, Inspection and Attorney Fees.
  - a. The developer shall pay all engineering, inspection, consulting and legal fees incurred by the Town for services performed by or on behalf of the Town in conjunction with the design, inspection and review of any preliminary plat, certified survey, final plat, comprehensive development plan, or contract, with the drafting of legal documents, and with such inspections as the Highway Superintendent deems necessary to assure that the construction of the required improvements is in compliance with the plans, specifications and ordinances of the Town or any other governmental authority. Consulting, engineering, inspection and legal fees shall be the actual costs to the Town on the basis of submitted invoices. Such fees may be billed monthly, or upon completion of the project as determined by the Board.
  - b. To guarantee payment of the engineering, inspection and attorney's fees, the Town may require the developer to deposit the sum of one thousand dollars (\$1,000.00) plus one hundred dollars (\$100.00) for each lot or parcel within the preliminary plat or certified survey with the Town Clerk at the time that the application for approval is first filed. If such fees are paid timely, the deposit will be refunded at the time that the final plat or certified survey is approved by the Town Board or thirty (30) days after the preliminary plat, certified survey, or final plat is rejected. In the event that the developer fails to pay such fees within fourteen (14) days of the time when the Town submits its bill therefore, the Town may deduct the amount of such fees from the security deposit. The developer shall replenish the deposit. Failure to maintain the required security balance shall constitute grounds for issuance of a "stop work" order by the Town.



- c. The developer shall reimburse the Town for the cost of time of Town officers or employees who are engaged in providing services or assistance to the developer in connection with the proposed or approved plat or land division. The developer shall also reimburse the Town for the cost of per diems, mileage and advertising or notices of any special meetings called solely to accommodate a request from the developer.
  - d. The Clerk shall not sign the plat or certified survey map until such time as all fees and expenses have been paid and all dedications or fees in lieu of dedications have been paid.
4. Park and Open Spaces Fees.
- a. The Developer shall pay the Town a Park and Open Space Fee of one thousand dollars (\$1,000.00) per dwelling unit, which shall be paid before the plat is recorded. The fee imposed shall be used for park land acquisition and park equipment, or maintenance of park equipment.
  - b. The Town shall place any fee collected pursuant to the provisions of this section in a fund which may be used for any park purpose anywhere in the Town, including land acquisition and development of adequate park, playground, recreation and open space to meet the needs created by the land division or subdivision.

#### **SECTION XVI – OFFENSES AND PENALTIES**

1. No person may subdivide land, advertise, vend, sell or convey an interest in property without first obtaining any and all necessary approvals of any land division, plat, or certified survey map required to create a legal lot.
2. No person may construct a public improvement serving a land division without obtaining the required approval thereof.
3. No person may construct a structure unless the structure is located on a lawful lot of record.
4. Any person who violates this ordinance shall forfeit not less than one hundred (100) nor more than two thousand dollars (\$2,000.00) per violation plus the costs of prosecution. The Town may also obtain an injunction to forbid the violator from continuing the violation. The Town Board hereby finds that a violation of this ordinance, by reason of irreversible effects on the land, air and water resources of the Town, constitutes an irreparable injury to the Town.

#### **SECTION XVII – WAIVER**

1. Where, in the judgment of the Town Board, it would be inappropriate to apply the provisions of this ordinance to a land division because extraordinary or undue hardship resulting from the characteristics of the land would result, the Town Board may waive or modify any requirement, other than requirements of state law or the recording of the certified survey map or plat map, and only to the extent a waiver is found to be just and proper.
2. The Town Board shall grant such relief only where it will not be detrimental to the public good, impair the intent and purpose of this ordinance, or impair the desirable general development of the community in accordance with the master plan.
3. Any developer who requests a waiver of a provision of this ordinance shall make a written application for a waiver and file the application with the Town Clerk. The Town

Board shall hold a public hearing on the application not less than ten (10) days after it is filed. The Town Clerk shall mail a notice of the hearing to all adjacent landowners. The waiver application shall state the basis for the application and the specific hardship which is claimed to exist.

4. Any waiver, exception, or variance which is granted pursuant to this section shall be made in writing, shall state the reasons which justified its and shall be filed with the Town Clerk.
5. Neither the grant or denial of a waiver by the Town shall constitute a precedent which in any way restricts the discretion of the Town to grant or deny a similar variance request in the future.

This Ordinance shall be effective one (1) day following proper publication and posting as required by Wisconsin Statutes and after adoption of this Ordinance by the Town Board.

Dated this 23<sup>rd</sup> day of October, 2017

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Brenda Kahl, Clerk/Treasurer

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Joe Kruchten, Supervisor

Anthony Varda, Chair

Michael Statz, Supervisor

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