



Planning Implementation Tools Land Division Ordinances



Center for Land Use Education

www.uwsp.edu/cnr/landcenter/

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TOOL DESCRIPTION

Land division and subdivision regulations provide standards and a set of procedures for dividing and recording individual parcels of land in a community. The state of Wisconsin provides minimum standards related to sanitation, street access and platting that all subdivisions must meet. Local communities (counties, towns, cities and villages) may also adopt local land division or subdivision regulations that are more restrictive than the state. These ordinances often focus on the physical layout or design of a development and may require developers to provide public improvements such as roads, utilities, landscaping or signage. Together with zoning, which focuses on allowable uses of land in a community, land division regulations help to shape the layout, design, density and quality of new developments.

COMMON USES

Provision of Public Facilities

Land division regulations provide a good mechanism to ensure that new developments are adequately served by public facilities. As a condition of approval, developers may be required to install roads, sidewalks, utilities, or other on-site public improvements necessary to serve the development. Developers may also be required to provide financial guarantees to ensure that improvements meet local engineering and design standards and are completed in a timely fashion.

Maintenance of Land Records

Land division regulations provide local governments with an accurate and consistent method of surveying, monumenting and recording legal descriptions of properties. Accurate land records help to prevent disputes regarding the sale, transfer or division of land. When combined in a Geographic Information System, land records are useful for visualizing land use trends over time, understanding the impacts of land fragmentation on wildlife and natural resources, and performing other planning analyses.

Purposes of Land Division Regulations:

- ◆ Ensure accurate legal descriptions of properties
- ◆ Avoid disputes regarding the sale, transfer or subdivision of land
- ◆ Prevent substandard development
- ◆ Ensure new development is adequately served by public facilities (roads, utilities, etc.)
- ◆ Address health and safety issues such as stormwater runoff and emergency access
- ◆ Promote neighborhood designs that meet the needs of residents (walkable, affordable, etc.)
- ◆ Promote development consistent with a comprehensive plan
- ◆ Protect community interests

Figure 1: Land division regulations specify how a parcel of land may be divided and recorded prior to sale or development.



IMPLEMENTATION

State Defined

"Subdivision" – a division of a lot, parcel or tract of land that creates 5 or more parcels or building sites of 1½ acre or less, or successive divisions of land within a five year period that result in 5 or more parcels of 1½ acre or less (Wis. Stat. § 236.02(12)).

Figure 2: Design Standards



Street and lot arrangement



Road and drainage gradients



Stormwater management

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AUTHORITY

Chapter 236 of Wisconsin Statutes outlines the authority and procedures for communities to adopt land division regulations. The use of land division regulations to protect public health, safety and general well-being have been upheld by the U.S. Supreme Court and constitution as a valid use of the public regulatory or ‘police’ power. Laws on the platting of land in Wisconsin date back to the 1840s. The current framework for land division regulations was developed in the 1950s.

The following levels of government are authorized to regulate land divisions in Wisconsin:

- *The State of Wisconsin* regulates divisions of land that result in five or more parcels of one and a half acre or less within a five year period (Wis. Stat. Ch. 236). State agencies may object to a state-defined subdivision based on minimum criteria outlined in state statutes related to sanitation, street access and platting. These standards apply whether or not local communities have adopted their own land division regulations.
- *Counties, towns, cities and villages* that have established a planning agency (often referred to as the plan commission or committee) may adopt local land division regulations that are more restrictive than state standards (Wis. Stat. § 236.45).

The regulation of land divisions often involves overlapping government authorities. If a proposed land division falls within a town where both the town and the county have land division codes, the applicant will need approvals from each. If the division is located adjacent to a city or village that has extraterritorial plat review authority, the applicant will also need their approval. Where overlapping codes do not agree, the most restrictive standard from each ordinance applies.

CREATION

Most land division ordinances contain the following components:

- I. Title, Authority and Purpose.* This section identifies the state enabling legislation which empowers the community to adopt land division regulations and describes the ordinance purpose.
- II. General Provisions.* This section includes definitions of terms and describes the area affected by the ordinance.
- III. Land Division Procedures.* This section describes procedures and requirements for dividing land. Depending on the number and size of lots created, communities may distinguish between major and minor subdivisions, state-defined subdivisions, or land divisions. Either a plat approval process or certified survey map are required for approval.

IMPLEMENTATION

- IV. *Design and Development Standards.* Minimum design standards related to street arrangement, block sizes, lot proportions, lighting, road and drainage gradients, stormwater management, integration of natural features, and similar physical criteria are described in this section.
- V. *Public Improvements.* As a condition of approval, a local government may require a developer to dedicate land, fees in lieu of dedication, easements, or public improvements necessary to serve the new development. Roads, sidewalks, monuments, street signs, public utilities, water lines, sewers, storm drains, landscaping, and other on-site improvements may be required. Financial guarantees, such as a letter of credit or performance bond may also be requested to ensure that improvements are completed in a specified time period.
- VI. *Administration and Enforcement.* This section identifies application and review fees and the process for appealing fees. Financial guarantees, previously described, may also be listed in this section.

ADOPTION

The process for adopting a local land division ordinance is similar for counties, towns, cities and villages, and includes the following general steps:

1. Upon request of the governing body, the plan commission prepares a draft land division ordinance, usually with the assistance of legal counsel, an advisory body, planning and zoning staff, or a private consulting firm. Recommendations should be guided by a comprehensive plan.
2. The plan commission recommends the draft land division ordinance for adoption to the governing body.
3. Following publication of a class 2 notice, a hearing is held on the draft ordinance. Opportunities for public participation prior to the hearing are recommended to ensure that the ordinance is understood and accepted by the public. The plan commission may modify the draft ordinance in response to public comments or forward it to the governing body with a recommendation to adopt. If the governing body is not satisfied with the draft, it may send it back to the plan commission for additional work.
4. The governing body adopts the land division ordinance.

ADMINISTRATION

Communities use various terms to regulate and describe divisions of land. Depending on the number and size of lots created within a given period of time, they may be referred to as major or minor land divisions, state-defined subdivisions, or simply, land divisions. Different review and approval processes are generally associated with each.

Figure 3: Public Improvements and Dedications



Roads and sidewalks



Lighting and signage



Parks and playgrounds

IMPLEMENTATION

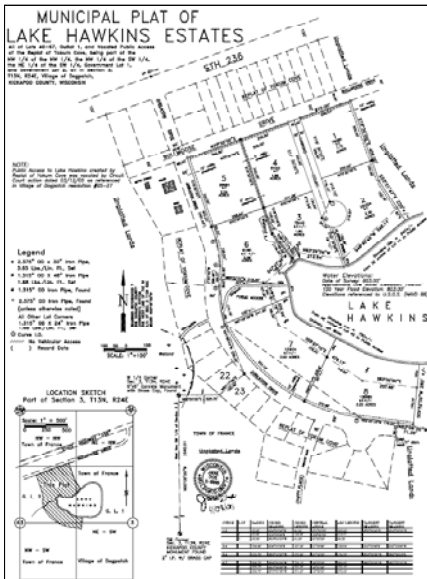
Plat Review and Approval

State-defined subdivisions and most major land divisions, as defined locally, are required to undergo a plat review process:

1. *Concept or sketch plan (optional)*. Early in the process, the landowner or developer may be asked to submit a conceptual sketch of the proposed project. This enables the plan commission or staff to review the proposal, make suggestions, or point out issues related to compliance with local, state or federal laws and the local comprehensive plan.¹
2. *Preliminary plat approval (optional)*. Following conceptual review, the applicant may be required (or may opt) to submit detailed plans and maps showing the layout of streets and lots, utility connections, natural features, topography and other pertinent information. The governing body or plan commission has 90 days to review these materials and make a decision to approve or deny the preliminary plat, stating their reasons for denial or conditions on approval.
3. *Final plat approval*. Prior to final plat approval, applicants are required to submit detailed engineering and design drawings to the local unit of government that will be accepting ownership of proposed public facilities on the plat. State agencies have 20 days to object to a proposal. If the final plat complies with local plans and ordinances, satisfies the objections of state agencies, and conforms substantially to an approved preliminary plat (and conditions placed on it), it is entitled to approval. The governing body or plan commission has 60 days to approve or deny the application.
4. *Survey and recording*. Before the final plat may be approved, the land must be surveyed by a registered land surveyor and monuments installed. The plat, including the surveyor's certificate of compliance are filed with the county register of deeds.

Major Land Division –
Defined by most communities as any division of land resulting in five or more parcels of a particular size; generally approved through a plat review process.

Figure 4: Subdivision Plat



Objecting Authorities

State and county agencies are authorized to review plats meeting the state definition of a subdivision and may object on the following basis:

- *Department of Administration* – compliance with surveying, layout and other statutory requirements.
- *Department of Transportation* – public interest and safety of subdivisions abutting a state trunk or connecting highway.
- *Department of Commerce* (enforced by the *County Sanitary Department*) – proper soils for on-site sanitary treatment if not served by public sewer
- *Department of Natural Resources* – public sanitary sewers, wetlands protection and earth grading within 500 feet of the ordinary high water mark of navigable waters.

¹ The comprehensive planning law (Wis. Stat. § 66.1001) requires subdivision and land division ordinances to be “consistent” with an adopted comprehensive plan beginning on January 1, 2010.

Report Card: Land Division Ordinances

Cost	Money or staff resources required to implement tool.
B	Writing a land division ordinance requires significant upfront costs and is usually accomplished with the assistance of a private consultant or land use attorney. Model ordinances are available but must be tailored to the community to be effective. Once in place, a well-written land division ordinance is relatively simple and inexpensive to administer. Staff must work with developers from the time of initial concept through completion of plat approval and site improvements.
Public Acceptance	The public's positive or negative perception of the tool.
B	Land division regulations are fairly well-accepted by developers and the general public. Clear application materials and a streamlined review process are appreciated by developers. Well-designed subdivisions are appreciated by existing and potential residents because they provide good places to live and help to maintain property values.
Political Acceptance	Politician's willingness to implement tool.
B	Land division regulations are fairly well-accepted by politicians. Together with zoning, a well-administered land division ordinance helps to shape the density, function and physical layout of a community. It may also be used to achieve other community planning goals.
Equity	Fairness to stakeholders regarding who incurs costs and consequences.
B	Minimum standards related to subdivision design, layout and public improvements encourage quality developments and serve to reduce taxpayer and local government expenses related to long-term maintenance. Despite added costs to the developer, residents may be willing to pay more to live in a well-designed subdivision. Restrictions on private property are offset by cumulative health and safety benefits to the local community.
Administration	Level of complexity to manage, maintain, enforce, and monitor the tool.
B	To be effective, land division regulations need to be coordinated with zoning, official maps, capital improvement plans, and other local plans, policies or ordinances. A detailed plat review process and financial guarantees generally ensure that new land divisions meet construction, engineering and improvement requirements.
Scale	The geographic scale at which tool is best implemented.
County or Municipal	This tool is suited for use in counties, towns, cities and villages.

GRADING EXPLANATION

A - Excellent

B - Above Average

C - Average

D - Below Average

F - Failing

Grades are subjective ratings and should be considered in light of local circumstances.

WISCONSIN EXAMPLES

Land division regulations may incorporate a variety of community design concepts, such as those profiled below. In most cases, additional tools, such as zoning, site planning, and comprehensive planning are also necessary to achieve these types of development.

Traditional Neighborhood Design

Traditional neighborhood design (TND), also referred to as new urbanism or neotraditional development, creates compact pedestrian-oriented neighborhoods containing a mix of land uses and public open space. Conventional land division and zoning codes, which require large lots, deep setbacks, wide streets and separation of uses, may need to be modified to allow TNDs. Planned unit developments are another tool to implement TNDs. The Schenk-Atwood neighborhood in Madison and Smith's Crossing in Sun Prairie are examples of traditional neighborhoods.

Model Traditional Neighborhood Development Ordinance

www.wisc.edu/urpl/people/ohm/projects/tndord.pdf (Ohm, 2001)

Conservation Subdivision Design

Conservation subdivision design, also known as cluster or open space design, aims to conserve high-quality natural features by clustering development on limited areas of a site. Reduced lot sizes are offset by natural features maintained in common open space. Modifications to existing zoning, subdivision, or unified development codes may be required to allow conservation subdivisions. A land trust or homeowners association may also be needed to oversee management of the common open space. Oldfield Settlement in the Town of Caledonia and Sugarcreek Preserve in Elkhorn are examples of conservation subdivisions.

Model Conservation Subdivision and Zoning Ordinances

www.wisc.edu/urpl/people/ohm/projects/consub.pdf (Ohm, 2000)

www.sewrpc.org/modelordinances/default.shtm (SEWRPC, 2002)

Low Impact Development

Low impact development (LID) utilizes an ecosystem approach to minimize hydrologic impacts of new development. LID utilizes a variety of techniques such as bioretention, reduction of impervious surfaces, and maintenance of natural features to maintain and enhance pre-development hydrologic systems. LID principles may be incorporated into existing stormwater management ordinances, land division regulations or site design guidelines. The Nine Springs neighborhood in Fitchburg and the St. Francis Addition in Cross Plains utilize low impact development principles.

Low Impact Development Resources

www.toolbase.org/PDF/DesignGuides/Municipal_LID.pdf

www.huduser.org/Publications/PDF/practLowImpctDevel.pdf

Figure 6: Smith's Crossing in Sun Prairie, WI utilizes traditional neighborhood design principles to incorporate a mix of residential, commercial, civic, and open space.

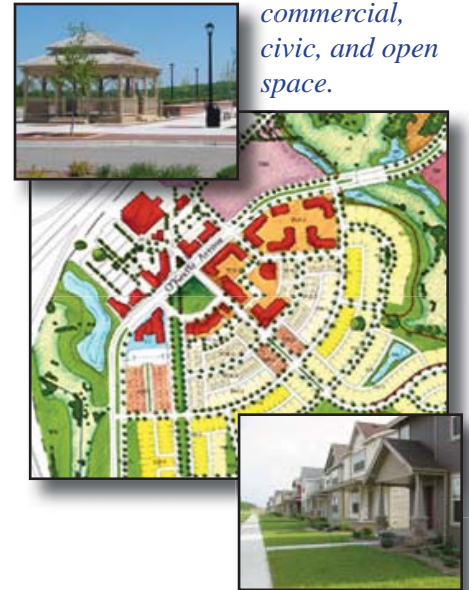


Figure 7: Sugarcreek Preserve, a conservation subdivision in Elkhorn, WI features 52 home sites among 170 acres of permanently preserved open space.

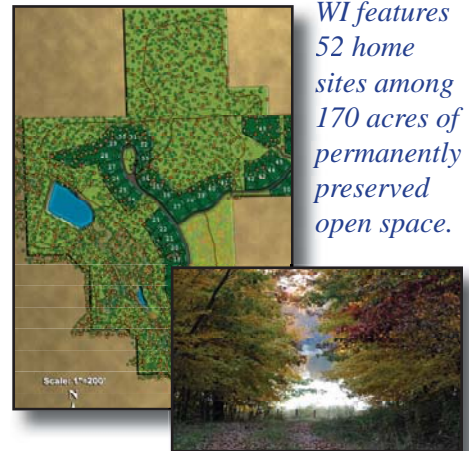


Figure 8: Low impact development in Cross Plains, WI features multiple bioretention and infiltration areas.



Figure 9: Diamond Oaks, a conventional subdivision in Dodgeville, WI features 96 lots on 80 acres and contains 15 acres of preserved wetland.



WISCONSIN EXAMPLES

Conventional Subdivision

The design and physical layout of subdivisions continues to evolve and change. Grid street patterns of early 20th century have given way to curvilinear street patterns, cul-de-sacs, and more dispersed forms of development. “Conventional subdivisions,” in contrast to those featured on the previous page, tend to divide an entire parcel into developable lots and feature relatively large homes on large lots with deep setbacks. They are often sited on previously undeveloped sites and other areas with few physical development constraints.

Modern subdivision design is guided in part by local regulations but is also heavily influenced by market demand. In addition to the complex set of regulations imposed by state and local governments, local subdivisions may also be subject to covenants, deed restrictions, and design guidelines imposed by developers and enforced by local homeowners associations.

Model Land Division Ordinances

www.wisconsinplanners.org/law/ (Knetzger, 1992)

www.wisctowns.com/subdivision_ordinance.html (WTA, 1998)

www.sewrpc.org/modelordinances/default.shtm (SEWRPC, 2001)

FOR MORE INFORMATION

Freilich, Robert H. and Michael M. Shultz. (1995). *Model Subdivision Regulations*. 2nd ed. Chicago: APA Planners Press.

Listokin, David and Carole Walker. (1989). *The Subdivision and Site Plan Handbook*. New Brunswick, NJ: Center for Urban Policy Research.

Ohm, Brian. (1999). *Guide to Community Planning in Wisconsin*. University of Wisconsin-Madison/Extension. www.lic.wisc.edu/shapingdane/resources/planning/library/book/other/title.htm

Wisconsin Department of Administration, Plat Review Unit. (2005). *Wisconsin Platting Manual*. Go to www.doa.state.wi.us and enter keyword “subdivision”.

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Figure 1 photo by Center for Land Use Education staff. Figure 2 and 3 images © Regents of the University of Minnesota. Used with permission of the Metropolitan Design Center. Figure 4 and 5 maps provided by the Wisconsin Department of Administration. Figure 6 photos of Smith’s Crossing from: www.vandewalle.com/selected/smiths.html. Figure 7 photos of Sugarcreek Preserve from: www.sugarcreekpreserve.com/index.html. Figure 8 photos of Cross Plains from Roger Bannerman: dnr.wi.gov/org/water/wm/nps/stormwater/post-constr/SiteEvaluation.pdf. Figure 9 photos of Diamond Oaks from: www.wibuilder.com/election-2004/city-lights.html.