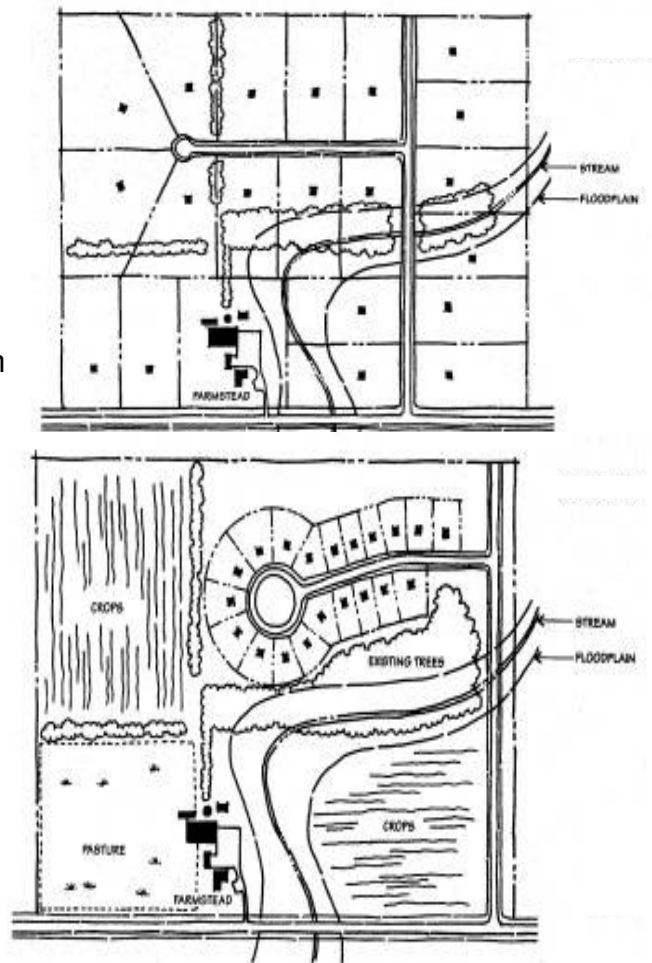


ARTICLE V CONSERVATION DESIGN SUBDIVISION

XX.34 General. This article is designed to preserve rural character, natural resource areas, farmland, and other large areas of open land, while permitting residential development. The Conservation Design Subdivision standards, in addition to the land division standards outlined in Article II, apply to all divisions of a parent parcel when requested by a Subdivider where the division creates more than four (4) new parcels. Further, this article is intended to:

- (1) Guide the future growth and development of the Town in conjunction with the Town of Black Creek Comprehensive Plan.
- (2) To guide the detailed analysis of parcels so as to locate and coordinate appropriate areas for development and conservation.
- (3) To preserve the rural character through the permanent preservation of meaningful open space and sensitive natural resources.
- (4) To preserve scenic views by minimizing views of new development from existing roads.
- (5) To preserve prime agricultural land by concentrating housing on lands with low agricultural potential.
- (6) To provide commonly-owned open space areas for passive and /or active recreational use by residents of the development and, where specified, the larger community.
- (7) To provide for a diversity of parcel sizes, housing choices and to accommodate a variety of age and income groups.
- (8) To provide for buffering between residential development and non-residential uses.
- (9) To protect and restore environmentally sensitive areas and biological diversity, minimize disturbance to existing vegetation, and maintain environmental corridors.
- (10) To preserve significant archeological sites, historic buildings, and their settings.
- (11) To meet the demand within the Town for housing in rural settings.



**TOP IMAGE: Conventional Design
BOTTOM IMAGE: Conservation Design**

XX.35 Secondary Conservation Areas. Secondary conservation areas are defined as those natural, agricultural, cultural, and or historical resources within the Town that are not otherwise protected by federal, state, or county laws, regulations, or ordinances. Secondary conservation areas are resources that should be preserved when possible and/or economically feasible. The final determination of secondary conservation areas within a given development will be made by the Town Board. Secondary conservation areas in the Town of Black Creek include, but are not limited to:

- (1) Stream corridors within one-hundred (100) feet of the ordinary high-water mark
- (2) Environmental corridors
- (3) Critical wildlife habitat
- (4) Mature woodlands, wherein twenty-five (25) percent or more of the trees have a diameter-at-breast-height (DBH) of twenty (20) inches or more
- (5) Unique natural features, which may include hills, knolls, depressions, rock outcroppings, and others
- (6) Prime agricultural lands
- (7) Structurally sound barns, silos, fence lines, and other structures that exemplify, or are symbolic, of the Town's agricultural character
- (9) Historic structures
- (10) Scenic views
- (11) Large trees, identified as trees with DBH of sixty (60) inches or greater, unless otherwise deemed a safety hazard

XX.36 Open Space Standards. A Conservation Design Subdivision shall meet the following open space standards:

- (1) Minimum open space. Minimum open space shall include forty (40) percent of the gross tract area and include all primary and secondary conservation areas.
- (2) Location. The required open space should be situated to take advantage of the site's natural, historic, and cultural features, to create buffer areas between residential and agricultural uses, and to preserve scenic views. Environmentally sensitive areas must be included within the preserved open space. The open space should if at all possible be located so as to connect with existing or potential open space.
- (3) The size and shape of the areas established as open space shall be sufficient and suitable for agricultural, natural resource protection, recreation, or other intended use and should remain as large and contiguous as the property will allow.

(4) Not more than 30% of the required open space shall consist of active recreation area.

(5) Trails. Each conservation subdivision shall include an internal trail system providing access to homeowners with a section of the trail system identified for potential future public use as part of an integrated trail network. The section identified for potential public use may vary by development and circumstance.

(6) The Plan Commission may require easements or walkways to access open space that does not abut public right-of-way.

(7) Ownership and Maintenance of Common Open Space. To ensure adequate planning for ownership, operation, and maintenance of common open space, recreation facilities, storm water management facilities, common parking areas and driveways, private streets and other common community facilities, the following methods may be used, either alone or in combination, in ownership of common open space. Common facilities shall not be transferred to another entity except for transfer to another method of ownership permitted under this subsection, and then only when there is no change in the common open space.

(a) Homeowners Association. Common facilities shall be held in common ownership as undivided proportionate interests by the members of a homeowners association, subject to the provisions set forth herein. The applicant shall provide to the Town a description of the association, including its bylaws, and all documents governing maintenance requirements and use restrictions for common facilities. The association shall be established by the owner or applicant and shall be operating, with financial subsidy by the applicant, if necessary, prior to the sale of any dwelling units in the development. Membership in the association shall be mandatory for all purchasers of dwelling units therein and their successors and assigns. The association shall be responsible for maintenance and insurance of common facilities. The members of the organization shall share equitably the costs of maintaining, insuring, and operating common facilities. The organization shall have adequate means of maintaining common open space. The applicant for any conservation design subdivision proposed to contain common open space shall arrange with the Town Assessor a method of assessment of the common facilities that will allocate to each tax parcel in the development a share of the total assessment for such common facilities. Written notice of any proposed transfer of common facilities by the homeowners association or the assumption of maintenance of common facilities which will allocate to each tax parcel in the development a share of the total assessment for such common facilities must be given to all members of the organization and to the Town at least 30 days prior to such event.

(b) Condominium Developments and Agreements. Common open space shall be controlled through the use of a condominium agreement. Such agreements shall be approved by the Town and shall comply with the

requirements of Chapter 703 of the Wisconsin Statutes. All common open space and other common facilities shall be held as “common elements” by the unit owners in the form of undivided percentage interests in accordance with the condominium documents. A condominium association shall be formed to govern the affairs of the condominium and membership shall be mandatory.

(c) Dedication of Conservation Easements to a Public Agency. The Town, or other public agency acceptable to the Town may, but shall not be required to, accept easements for public use of any portion of the common open space, title of which is to remain in private ownership, provided that:

- There is no cost of easement acquisition, other than costs incidental to the transfer of ownership, such as title insurance.
- A satisfactory maintenance agreement shall be reached between the owner and the Town.
- Lands under a Town easement may or may not be accessible to residents of the Town.

(d) Dedication to a Nonprofit Conservation Organization. With the approval of the Town Board, an owner may dedicate any portion of the common facilities to a nonprofit conservation organization, provided that:

- The organization is acceptable to the Town.
- The conveyance contains appropriate provisions for proper reverting or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its responsibilities.
- A maintenance agreement acceptable to the Town is established between the owner and the organization.

(e) Ownership retained by the original landowner. Ownership of common open space and facilities may be retained by the original landowner provided that:

- The Town and residents of the development shall hold conservation easements on the land protecting it from further development.
- Resident access to the land is limited only by agreement of the residents of the development, as indicated by documents signed at the time of purchase of individual dwelling units.

(f) Other methods acceptable to the Town Board for Maintenance and Operation of Common Facilities. A plan and narrative for the use, maintenance, and insurance of all common facilities, including provisions for funding, shall be provided to and approved by the Town Board prior to preliminary plat approval. Such plans shall:

- Define Ownership.

- Establish necessary regular and periodic operation and maintenance responsibilities.
- Estimate staffing needs, insurance requirements, and other associated costs and define the means for funding the same on an on-going basis.
- Include a Land Stewardship Plan specifically focusing on the long term management of open space lands. A draft land stewardship plan shall be submitted with a preliminary plat, and a final plan shall be submitted with the final plat.

(g) Leasing of Common Open Space Lands. Common open space lands may be leased to another person or other entity for use, operation, and maintenance, provided that:

- The residents of the development shall at all times have access to such leased lands, except in the case of lease for agricultural purposes, in which case the residents, with their agreement, may be restricted from accessing the lands.
- The common open space lands to be leased shall be maintained for the purposes set forth in this section.
- The operation of such leased open space lands may be for the benefit of the residents of the development only, or may be open to the public, if so determined by the residents.
- The lease, and any transfer or assignment thereof, shall be subject to the approval of the Town Board.
- Lease agreements shall be recorded in the office of the County Register of Deeds within 30 days of their execution, and a copy of the recorded lease shall be filed with the Town.

(h) Conservation. Common Open Space shall be restricted in perpetuity from further subdivision and/or land development by deed restriction, conservation easement, or other agreement in a form acceptable to the Town Board and duly recorded in the office of the County Register of Deeds. The legal instruments detailing the ownership of the open space shall be submitted with the preliminary plat and shall be recorded with the Register of Deeds upon final plat approval.

(i) In the event that the association established to own and maintain common areas and facilities, or any successor organization thereto, fails to properly maintain all or any portion of the aforesaid common areas or facilities, the Town may serve written notice upon such association setting forth the manner in which the association has failed to maintain the aforesaid common areas and facilities. Such notice shall set forth the nature of corrections required and the time specified, the association, or any successor organization, shall be considered in violation of this ordinance, in which case the Town shall have the right to enter the premises and take the

needed corrective actions. The costs of corrective actions by the Town shall be assessed against the properties that have the right of enjoyment of the common areas and facilities.

(j) Sewerage and Water Supply Facilities. Sewerage facilities for Conservation Design Subdivision development may consist of any system meeting the requirements of the Town of Black Creek, Outagamie County, the Wisconsin Department of Commerce, and the Wisconsin Department of Natural Resources.

(k) Water Supply Facilities. Water facilities for Conservation Design Subdivisions may consist of any system meeting the requirements of the Town of Black Creek, Outagamie County, the Wisconsin Department of Commerce, and the Wisconsin Department of Natural Resources. Water supply facilities for conservation subdivision with ten (10) or more lots shall require community wells and a community water system.

XX.37 Development Yield Standards. Conservation Design Subdivisions shall utilize the following steps in determining the maximum permitted parcel density. This calculation information must be submitted with any application to the Town.

(1) Calculate the Gross Tract Area (GTA). This shall be the total acreage of the property. **GTA: _____ acres**

(2) Calculate Primary Conservation Areas (PCA). This acreage shall be determined using the following criteria. The data supplied within this calculation shall be substantiated with sufficient plans and data.

(a) All lands located within existing street Right-of-Ways: _____ acres

(b) All lands located within existing Utility and Railway Right-of-Ways: _____ acres

(c) All lands located within floodplain: _____ acres

(d) All lands within environmentally sensitive areas _____ acres

(e) All lands located within wetlands: _____ acres

(f) All of the land area having slopes 12% or greater: _____ acres

PCA (sum of a through f) _____ acres

(3) Calculation of Adjusted Tract Area (ATA). The ATA shall equal the GTA minus the PCA. **ATA: _____ acres**

(4) Calculation of Secondary Conservation Areas (SCA). The SCA shall include, but is not necessarily limited to:

(a) Stream corridors within one hundred (100) feet of the ordinary high-water mark: _____ acres

- (b) Environmental corridors: _____ acres
- (c) Critical wildlife habitat: _____ acres
- (d) Mature woodlands, wherein twenty-five percent (25%) or more of the trees have a DBH of twenty (20) inches or more: _____ acres
- (e) Unique natural features, which may include hills, knolls, depressions, rock outcroppings, and others: _____ acres
- (f) Prime agricultural lands: _____ acres
- (g) Barns, silos, fence lines, and other structures that exemplify, or are symbolic of, the town's agricultural character: _____ acres
- (h) Historic structures: _____ acres
- (i) Scenic views
- (j) Large trees, identified as trees with DBH of forty-eight (48) inches or greater, unless otherwise deemed a safety hazard

SCA: _____ acres

- (5) Calculation of Net Development Area (NDA). The NDA shall be a minimum of forty percent (40%) of the GTA, and shall include the ATA minus SCA.

NDA: _____ acres

- (6) Calculation of Permitted Dwelling Units (PDU). The maximum number of permitted dwelling units shall equal the NDA multiplied by two (2) with a minimum lot size of 1/2-acre.

PDU: _____

XX.38 Conservation Design Concept Plat. Prior to the filing of an application for the approval of a preliminary plat, the Subdivider shall consult with the Town Plan Commission, in order to obtain their review, advice and assistance in the preparation of a preliminary plat. Such consultation shall be termed the "concept plat" stage of the land division procedure and includes the following steps and information:

(1) The Subdivider shall prepare a conceptual development plan at a scale of one inch equals 100 feet of all the contiguous lands in which the subdivider has legal or equitable interest and present three copies and the fee required to the Town Clerk.

(2) Such sketch plan shall include enough information to set forth the proposed development potential of the parcel to the satisfaction of the town plan commission, and include at least the following:

- (A) Topographic mapping at not less than two-foot contour interval;

- (B) Soil characteristics or interpretations secured from detailed soil maps prepared by the USDA, Soil Conservation Service (SCS) and/or monitoring borings data;
- (C) The limits of woodland cover and wetlands on the entire parcel;
- (D) Location of lakes, ponds, streams, standing water and designated floodplains on the parcel;
- (E) Areas of steep or severe slope conditions, high water table conditions, potential drainage and erosion problems;
- (F) Existing and proposed access from the parcel to adjacent streets, roads, or properties;
- (G) Proposed street location and width;
- (H) Proposed parcels including size to the nearest one-tenth acre;
- (I) Existing land use of property within 1 mile of the property proposed to be divided;
- (J) Any other pertinent information useful to the Subdivider and plan commission in their determination of developability of the parcel; and
- (K) Environmental corridors which shall be delineated on the sketch plan.

(3) The Plan Commission shall either reject the concept plan giving reasons for such rejections or approve the concept plan and make recommendations. Such review and approval of the concept plan shall constitute approval of the concept plan only and shall not be deemed an approval of the layout and design of the proposed subdivision plat.

(4) Through the concept plat procedure it is expected that the Subdivider and Plan Commission will reach mutual conclusions regarding the general design and objectives of the proposed development and its possible effects on the Town and County. The Subdivider will also gain a better understanding of the subsequent required procedures so the entire process may be expedited.

XX.39 Preliminary Conservation Design Subdivision Plat Submittal.

Before submitting a final plat for approval, the Subdivider shall prepare and submit a preliminary plat that conforms to the requirements of §236 Wisconsin State Statutes and all applicable sections of this ordinance. The Plat shall be prepared by a registered land surveyor. The Subdivider or their designated agent, shall file the application and fifteen (15) copies of the preliminary Plat on paper no smaller than 22" x 30" and one (1) copy of the preliminary plat on either 8.5" x 11", 8.5" x 14" or 11" x 17" paper with the Town Clerk.

XX.40 Requirements for Preliminary Conservation Design Plat. In addition to the requirements of §236 Wisconsin Statutes the preliminary Plat submitted shall include the following:

- (1) A map of sufficient scale showing the boundaries of the property being considered for division.
- (2) General parcel layout as proposed.
- (3) The proposed subdivision name. This name shall not duplicate the name of any Plat previously recorded in Outagamie County. A subtitle of "County Plat" shall be required for all County Plats.
- (4) Owners name, along with Volume and Page of the instrument that shows title to the Platted area. The Volume and Page of the affected property may be shown on the map, in the Surveyor's Certificate, on the Preliminary Plat, or in the Owner's Certificate.
- (5) Volume and Page or platted status (i.e. State or County Plat by name and parcel number, CSM by volume, page and parcel number) of adjoining lands.
- (6) Radius of all curves.
- (7) Proposed and existing road(s) showing road name and right angle width. Proposed and existing roads shall be dedicated as required in Article VIII.
- (8) Public areas to be dedicated, if any, and subsequently identified as "dedicated to the public."
- (9) Floodplain, wetland and shoreland boundaries. Source of the data shall be identified.
- (10) Locations of existing buildings, watercourses, drainage ditches, fences and any other pertinent features.
- (11) Locations and names of adjoining parks, cemeteries, subdivisions, ponds, streams, lakes and flowages.
- (12) Any proposed lake or stream access or any proposed lake or stream improvement or relocation.
- (13) The name and address of the surveyor and Subdivider placed on the face of the Plat.
- (14) Report on Soil Borings and Percolation Tests. Locations of borings may be required to be shown on the face of the map.
- (15) A general description of all property owned and controlled by the Subdivider contiguous to the proposed land division.

- (16) An area development plan for future use may be required if proposed development in some way affects adjoining lands.
- (17) Road name application must be submitted to the Plan Commission for approval for any road names (i.e. new, extension, private etc...).
- (18) Dimensions of all parcels, together with proposed parcel and block numbers.

XX.41 Preliminary Conservation Design Subdivision Plat Review & Approval.

- (1) Upon receipt of an application for a Conservation Design Subdivision Plat, the Town Clerk shall transmit one (1) copy of the map to each of the following.
 - (A) Outagamie County
 - (B) Any affected public or private utility
 - (C) Local school district
 - (D) Outagamie County Land Conservation Department
 - (E) Department of Natural Resources (WDNR)
 - (F) Where applicable, Outagamie County Highway Department
 - (G) Wisconsin Department of Transportation (WDOT) (where applicable)
 - (H) Every member of the Town Plan Commission and Town Board
- (2) Recommendations from receiving parties, with the exception of the Plan Commission, must be received by the Town Clerk within thirty (30) days from the date the copy is transmitted. If a recommendation is not received within thirty (30) days it shall be deemed an approval.
- (3) Recommendations from the Town Plan Commission must be received within sixty (60) days from the date of transmittal. If a recommendation is not received within sixty (60) days it shall be deemed an approval.
- (4) Once the Town Plan Commission recommendation is received, the preliminary review for approval shall be scheduled for a regularly scheduled Town Board Meeting.
- (5) The Board, within ninety (90) days of the date of filing of a preliminary Conservation Plat with the Town Clerk shall approve, approve conditionally, or reject, unless the time is extended by mutual agreement with the Subdivider. One (1) copy of the plat shall there upon be returned to the Subdivider with the date and the action recorded thereon; and if approved conditionally or rejected, a letter setting forth the conditions of approval or the reasons for rejection shall accompany the plat. One (1) copy each of the plat and letter shall be kept on record by the Town.

XX.42 Relationship between Preliminary and Final Plat. Approval of a preliminary conservation plat shall be deemed an expression of approval or conditional approval of the layout submitted and a guide to the preparation of the

final plat which will be subject to further consideration by the Plan Commission at the time of its submission.

If the final Plat conforms substantially to the preliminary Plat as approved, including any conditions of the approval, and to local plans and ordinances authorized by law, it is entitled to approval. If the final Plat is not submitted within one (1) year of the last approval of the preliminary plat, any approving authority may refuse to approve the final Plat. The Town reserves the right to add further restrictive covenants as provided in §236.293 Wisconsin Statutes.

Any substantial change between the preliminary and final plat, as determined by the Plan Commission shall cause the conservation plat to be re-submitted including all fees and review. In addition every re-submittal required to clarify matters regarding said maps shall constitute a new time frame for review purposes.

XX.43 Final Plat Requirements. Upon approval of the preliminary Plat the Subdivider shall submit a final Plat based upon a survey by a Wisconsin Registered Land Surveyor for review. In addition to the requirements of the preliminary Plat and §236 Wisconsin Statutes the final Plat submitted shall include the following:

- (1) A clear and concise legal description that exactly matches the bearings and distances shown on the map. The error of closure for the legal may not exceed 1 in 3,000.
- (2) Area of each parcel shown in square feet (nearest square foot) and acres (nearest 100th acre).
- (3) All curve data.
- (4) Building setback lines shall be shown or noted on the face of the map.
- (5) Lands reserved for the common use of the property owners within the subdivision. The ownership of these common lands shall be shown and described. These lands shall be established as outlots.
- (6) Proposed deed and Plat restrictions.
- (7) It shall be required that on sheet one of the Plat that a pre designed recording block be available for the Register of Deeds to be placed on the Plat for recording information.
- (8) Show arc distances on the face of the map.
- (9) Certificates of approval in substantially the same form as required by §236.21(2)(a) and §236.21(3) Wisconsin Statutes, and as per this ordinance as follows:

- (A) Owner(s) Certificate with Notary Seal
- (B) Mortgagee's Certificate
- (C) Town Certificate
- (D) Other certificates as required by §236.21 Wisconsin Statutes
- (E) Certification that the Plat is a true and correct representation of the features surveyed and mapped and that the Surveyor has fully complied with all local ordinances.
- (F) Special restrictions required by the reviewing authorities.

XX.44 Final Plat Review & Approval. The Town Board, within sixty (60) days of the date of filing of a final conservation plat with Town Clerk, shall approve, approve conditionally or reject such a plat unless the time is extended by mutual agreement with the Subdivider. If approved, the certifications on the plat shall be completed. If approved conditionally, the certificates shall not be completed until the conditions are met. If rejected, a letter setting for the reasons for rejection shall accompany the plat. Failure of the Town to act within the time as extended by agreement with the Subdivider shall constitute an approval. The sixty (60) day period shall commence with the filing of the final plat with the Town Clerk, and not the preliminary approval.

XX.45 Recording. Upon approval of all corrections addressed in the preliminary and final plat reviews the Subdivider shall submit a final Plat for recording with the Outagamie County Register of Deeds in accordance with Sec. 236.25, Wisconsin Statutes.