

NOVEMBER 13, 2003  
PUBLIC HEARING  
CHANGES TO THE LAND DIVISION ORDINANCE

**PRESENT:** Chairman Steve Rubert, Supervisors Philip Waterworth, Jeff Miller, Steve Jacob, William Gretzinger, Clerk/Treasurer Donna Waterworth, Dagmar and Jim Owen, Jack Akers and Eugene Niehoff.

Supervisor Philip Waterworth gave an overview of the proposed changes to the land division ordinance.

IN SUMMARY:

Section 2-5.2 (C) (5) was repealed

Section 2-5.3 (A) (5) was repealed and recreated to redefining the measuring of the 1000 foot rule.

*Section 2-5.2(C) (6) was renumber as Section 2-5.2(C) (5).*

*Section 2-5.2 (C) (3) was repealed and recreated.*

Public hearing was closed.

A motion was made by J. Miller, seconded by Gretzinger to adjourn the public hearing.

**These minutes were amended at the December 11, 2003 Town Board Meeting.  
Corrections are in *italics*.**

## **Chapter 2 - Land Division**

**Town of Fountain Prairie  
Columbia County, Wisconsin**

Adopted September 21 2000

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**Town of Fountain Prairie  
Columbia County, Wisconsin  
Land Division Ordinance**

**Article 1 - Introduction**

**2-1.1 Authority**

These regulations are adopted under the authority granted by Secs. 60.22(3), 61.34(1) and 236.45 of the Wisconsin Statutes.

**2-1.2 Title**

This Ordinance shall be known, referred to, or cited as the "Land Division Ordinance, Town of Fountain Prairie".

**2-1.3 Purpose and Intent**

The purpose and intent of this Ordinance is to regulate and control the division of land within the limits of the Town of Fountain Prairie, Columbia County, Wisconsin in order to:

- A. Promote the public health, safety and general welfare of the community.
- B. Supplement county and state land division controls to implement the Land Use Plan.
- C. Strengthen local control of land use decisions and maintain the ability and right to control town destiny.
- D. Promote planned and orderly layout and appropriate use of land.
- E. Obtain the wise use, conservation, and protection of the Town's soil, water, wetland, woodland, farmland, and wildlife resources.
- F. Conserve the value of prime agricultural soils.
- G. Provide for the conservation of the Town's agriculturally important lands by minimizing conflicting land uses.
- H. Promote the rural and agricultural character, scenic vistas, and natural beauty of the Town.
- I. Evaluate the further division of larger tracts into smaller parcels of land based on the agricultural economy and natural resources of the Town.
- J. Facilitate the adequate provision of transportation, water, sewerage, health, education, recreation, and other public requirements.
- K. Ensure that the design of the street system will not have a negative long-term effect on neighborhood quality, traffic flow and safety.
- L. Ensure adequate legal descriptions and proper survey monumentation of subdivided land.
- M. Realize goals, objectives, policies and development standards set forth in plans, codes and ordinances adopted by the Town.
- N. Secure safety from fire, flooding, and other dangers.

- O. Ensure that future development is consistent with the Town of Fountain Prairie Land Use Plan and other plans adopted by the Town.
- P. Avoid the inefficient and uneconomical extension of governmental services.

#### **2-1.4 Policy**

The uncontrolled development and division of land in the Town of Fountain Prairie affects the public health, safety and general welfare. Uncontrolled division of land results in negative effects, including but not limited to: pollution of ground and surface waters; destruction of natural beauty, scenic vistas and wildlife habitat; impairment of the local tax base; increased costs and inefficiencies in governmental services; loss of agriculturally important lands; threatens a vibrant farm economy, and conflicting land uses. Therefore, it is in the best interest of the public to provide for the wise and proper division of land in the Town of Fountain Prairie, to assure that land to be divided shall be of such character that it can be used safely without danger to public health, safety and general welfare and in a manner consistent with adopted Town plans.

#### **2-1.5 Abrogation and Greater Restrictions**

This Ordinance shall not repeal, abrogate, annul, impair or interfere with existing easements, covenants, agreements, rules, regulations, or permits previously adopted or issued pursuant to laws. However, where this Ordinance imposes greater restrictions, this Ordinance shall govern.

#### **2-1.6 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 Wisconsin Statutes.

#### **2-1.7 Severability**

If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

#### **2-1.8 Repeal**

All other ordinances or parts of ordinances of the Town inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed.

#### **2-1.9 Effective Date**

This Ordinance shall take effect upon passage and adoption by the Town Board and posting as provided by law.

## Article 2- General Provisions

### 2-2.1 Jurisdiction/Applicability

- A. The jurisdiction of this Ordinance shall include all land and water within the Town of Fountain Prairie, Wisconsin.
- B. This Ordinance shall apply to all land divisions and to all other developments not involving a land division in the Town where the installation of public improvements and/or dedication of any public lands is required, including those areas where lots of record existed prior to the adoption of this Ordinance.
- C. This Ordinance shall also apply to the development of all residential land uses including multiple family and mobile home park areas in the Town where the installation of private improvements and/or dedication of any public lands is required including those areas where lots of record existed prior to the adoption of this Ordinance.
- D. This Ordinance is expressly applicable to condominium developments within the Town's jurisdiction. For purposes of this Ordinance, a condominium unit and any associated limited common elements shall be deemed equivalent to a lot or parcel created by the act of land division.

### 2-2.2 Exemptions

The provisions of this Ordinance shall not apply to:

- A. Creation of realignment of a public right-of-way by a public agency.
- B. Divisions of land into lots, parcels or tracts each of which is eighty (80) acres in size or greater.
- C. Creation or realignment of an easement.
- D. Adjustment of the boundary line or the transfer of land between owners of adjoining property, provided additional lots are not created and if the lots resulting are not reduced below forty (40) acres or the equivalent.
- E. Purchase, transfer, or development of space within an apartment building or an industrial or commercial building.
- F. Carrying out an order of any court or dividing land as a result of an operation of law.
- G. Creation of a lien, mortgage, deed of trust, or any other security instrument.
- H. Creation of a security or unit of interest in any investment trust regulated under the laws of Wisconsin or any other interest in an investment entity.
- I. Conveying an interest in oil, gas, minerals, or building materials, that is severed from the surface ownership of real property.
- J. Leases not to exceed ten years.

### 2-2.3 Compliance

Any division of land subject to the requirements of this Ordinance shall not be entitled to recording and/or improvements to the land unless such division is in full compliance with all of the requirements of this Ordinance and the provisions of Chapter 236, Wisconsin Statutes. All approved certified survey maps and final plats shall be filed for recording with the Register of Deeds of Columbia County prior to transferring ownership of any parcels created by a land division.

### 2-2.4 Disclaimer

- A. **Multiple Jurisdictions.** All persons reviewing the provisions of this Ordinance should be aware that the Town is only one of a number of governmental bodies that may have jurisdiction over proposed land divisions or development. The Town cannot make any representations on behalf of any other government body. No land division may be made unless all required approvals have been given.
- B. **Binding Acts.** No statement or actions by any official, employee, agent or committee of the Town should be construed or taken as a binding act of the Town except a resolution, motion, or Ordinance that has been adopted by the Town Board at a lawfully conducted Town Board meeting, or by the Town electorate at a duly constituted Annual or Special Town Meeting. This includes, but is not limited to, interpretation of this Ordinance.
- C. **Compliance Assurance.** The Town expressly states that it 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 land division has been approved by the Town Board.

### 2-2.5 Land Suitability

- A. No land shall be divided if the Town Board determines that it will materially interfere with existing agricultural uses or will conflict with other goals, objectives and policies as set forth in the Land Use Plan.
- B. No land shall be subdivided which is held unsuitable for its proposed use by the Town Plan Commission for reason of flooding, inadequate drainage, adverse soil or rock formation, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities, impairment of wildlife habitat and scenic vistas, improper utilization of prime farm soils, undue costs and inefficiencies in the provision of governmental services, conflicting with the goal of preserving important agricultural lands for their highest and best use, ie. farming, or any other feature likely to be harmful to the health, safety or welfare of future residents of the proposed subdivision or of the Town. The Plan



Commission may require the subdivider to furnish maps, data and other information as may be necessary to determine land suitability.

- C. The Town Plan Commission in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is not suitable for the proposed use and afford the subdivider an opportunity to present evidence regarding such unsuitability. Thereafter, the Commission may affirm, modify, or withdraw its determination of unsuitability. The Town Board may affirm, modify, or override the Commission's recommendation. The Town Board shall recite findings for any decision to modify or override the Commission's recommendation.

#### **2-2.6 Development Agreements**

In connection with any land division approval, the Town Board shall be authorized to enter into a Development Agreement with the applicant. Development Agreements may include provisions clarifying duties to construct specific improvements, the phasing of construction, the timing, location and financing of infrastructure, reimbursement for oversized infrastructure, vesting of property rights for periods of not more than 10 years, assurances that adequate public facilities (including roads, water, sewer, fire protection and emergency medical services) will be available as they are needed to serve the development, and mitigation of anticipated impacts of the development on the general public or the environment.

#### **2-2.7 Cooperative Exercise**

Any city, village, town, county, or regional planning commission or committee may, pursuant to Wis. Stat. Section 66.30, agree with any other city, village, town, county or regional planning commission or committee for the cooperative exercise of the authority to approve or review plats.

#### **2-2.8 Design Standards and Improvements**

All land divisions shall be designed and any required or proposed improvements shall comply with the provisions of any applicable Town ordinance, Chapter 236 of the Wisconsin Statutes, the Columbia County Land Division and Subdivision Ordinance, and any other applicable local, county, state or federal laws or regulations, as now exists or hereafter amended, which are hereby adopted and incorporated as part of this Ordinance by reference. In addition to complying with the state and county standards, all land divisions shall comply with the special requirements applicable to lands designated as Agricultural Management Area and Rural Residential Management Area by the Land Use Plan which are contained under Article 5 and 6 herein.

#### **2-2.9 Variances**

- A. **Variances Authorized.** When the Town Board finds that exceptional or undue hardship will result from strict compliance with this Ordinance, it may allow

variance from the terms hereof to the extent deemed necessary and proper to grant relief.

**B. Criteria for Approval.** Before a variance shall be granted, it shall be shown that:

1. The necessity for modification is because of special circumstances applicable to the property, including size, shape, drainage, topography, location and surroundings;
2. The variance is the minimum deviation from the terms of this Ordinance necessary to mitigate the hardship;
3. Granting of the variance is not detrimental to the public health, safety, welfare, use or interest, or injurious to property or improvements in the vicinity; and
4. The granting of the variance will not materially compromise the goals, objectives and policies of the Land Use Plan, or be inconsistent with applicable land use codes or inconsistent with the spirit and intent of this Ordinance.

**C. Application.** Application for any variance shall be made in writing by the Subdivider at the time the land division is filed for consideration, stating specifically the circumstances upon which the Subdivider is relying, the variance requested and how the request meets the criteria set forth above. The request shall be supplemented with maps, plans and other additional data that may aid the Town Board in the analysis of the request.

**D. Review and Approval.** The Town Plan Commission shall make a recommendation and findings on a variance request to the Town Board, and the Town Board shall make a final decision as part of the land division application. The Town Board shall provide written findings to support their decision. In granting variances, the Commission and Town Board may require conditions to secure the objectives of this Ordinance.

#### **2-2.10 Other Permits**

No driveway or other Town permit shall be issued on a parcel created by a land division which does not comply with the provisions of this Ordinance.

#### **2-2.11 Amendments**

The Town Board may upon recommendation of the Town Planning Commission amend, supplement or repeal any of these regulations after public notice and hearing and as may be required by Chapter 236 of the Wisconsin Statutes.

#### **2-2.12 Violations**

It shall be unlawful to build upon, divide, convey, record or monument any land in violation of this Ordinance or the Wisconsin Statutes; and no person, firm or corporation shall be issued a building permit, authorizing the building on, or improvement of, any

major subdivision, minor land division or replat within the jurisdiction of this Ordinance not of record as of the effective date of this Ordinance until the provisions and requirements of this Ordinance have been fully met. The Town may institute appropriate action or proceedings to enjoin violations of this Ordinance or the applicable Wisconsin Statutes.

### **2-2.13 Penalties**

- A. Any person, firm or corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not less than One Hundred dollars (\$100) nor more than One Thousand Dollars (\$1,000) and the costs of prosecution for each violation and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until payment thereof, but not exceeding six (6) months. Each day a violation exists or continues shall constitute a separate offense.
- B. Recordation improperly made shall be subject to the provisions of Wisconsin Statutes, Section 236.30.
- C. Conveyance of lots in unrecorded plats shall be subject to the provisions of Wisconsin Statutes, Section 236.31.
- D. Monuments disturbed or not placed shall be subject to the provisions of Wisconsin Statutes, Section 236.32.
- E. Assessor's plat may be ordered by the Town at the expense of the Subdivider when a subdivision is created by successive divisions as provided in Wisconsin Statutes, Section 236.31(2).

### **2-2.14 Appeals**

Any person aggrieved by an objection to a plat or failure to approve a plat may appeal therefrom as provided in Wisconsin Statutes, Sections 236.13(5) and 62.23(7).

## Article 3 - Definitions

### 2-3.1 Word Usage

For the purposes of this Ordinance, the following definitions shall be used. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not directory.

### 2-3.2 Definitions

A. For the purposes of this Ordinance certain words or phrases are defined as follows:

1. ***Agricultural Management Area (AMA).*** Town land and water areas designated within the Land Use Plan as Preferred Agricultural Land Use Management Area.
2. ***Board.*** The Town of Fountain Prairie Board of Supervisors.
3. ***Certified Survey Map (CSM).*** A map of a minor land division, prepared in accordance with Section 236.34, Wisconsin Statutes, and in full compliance with the applicable provisions of this Ordinance.
4. ***Commission.*** The Town of Fountain Prairie Plan Commission.
5. ***Density.*** Number of dwelling units per acre allowed under the Land Use Plan, this Ordinance, and/or the Columbia County Zoning Ordinance and used to calculate the maximum number of residential lots permitted as part of a land division.
6. ***Development Area.*** The area of a land division within which new lots intended for future development and related accessory uses (e.g., structures, roads, driveways, lawns, wells, sewage disposal, swimming pools, etc.) shall be contained. Designation of the "development area" is pursuant to the standards under Article 5 and 6 of this Ordinance.
7. ***Final Plat.*** The map or plat which is prepared for recordation by the County Register of Deeds.
8. ***Forty Acres or Equivalent.*** Either 40 acres, a quarter-quarter section containing not less than 35 acres, or a government lot containing not less than 35 acres.

9. **Land Division or Division of Land.** The act or process of dividing land into two or more lots or building sites. See also definition for Major Land Division and Minor Land Division.
10. **Land Protection Criteria.** Factors specifically identified by the Town as criteria to assist in protecting specific land and water resources. The land and water areas designated as protection areas to avoid development are generally mapped under the Land Use Plan. These areas include: wetlands, floodplains, 100-foot buffer around navigable streams, woodlands greater than 20 acres, lands within 1,000 feet of active and potential farms, land beyond 500 feet of public roadways, and Class I and II Prime Agricultural Soils. See also map and designation criteria for land protection criteria within the Land Use Plan.
11. **Land Use Plan.** The adopted *Town of Fountain Prairie Year 2020 Land Use Plan*, including any subsequent amendments.
12. **Limits of Disturbance (LOD) Lines.** The area specifically designated on a lot created through a land division within which future development activity (e.g., structures, roads, driveways, lawns, wells, sewage disposal, swimming pools, private gardens, etc.) shall be contained. Designation of the "limits of disturbance lines" is pursuant to the standards under Article 5 and 6 of this Ordinance.
13. **Lot.** Designated parcel, tract, or area of land established by plat, land division or as otherwise permitted by law to be conveyed, used, developed, or built upon as a unit.
14. **Lot Area.** The area contained within the exterior boundaries of a lot excluding streets, easements, areas dedicated to the public, and land under navigable bodies of water.
15. **Major Land Division.** The creation of five or more lots or buildings sites which are eighty (80) acres or less in size by successive divisions from the same mother tract (see definition), within a period of five (5) years.
16. **Minor Land Division.** The creation of less than five lots or buildings sites which are eighty (80) acres or less by successive divisions from the same mother tract (see definition), within a period of five (5) years.
17. **Mother Tract.** A contiguous parcel of land that is, or at any time since the original adoption date of this Ordinance was, in the same ownership. Contiguous parcels in the same ownership are considered to be one (1) parcel for purposes of this definition, even though the separate parcels may have separate tax identification numbers or were acquired at different

times or from different persons. The presence of a road, drive, easement, river, stream, channel, ditch, etc. through a parcel does not destroy contiguity, or create multiple parcels, for purposes of this provision.

18. ***Navigable Waters.*** All natural inland lakes and all streams, ponds, sloughs, flowages, and other waters which are navigable under the laws of this state. Under Section 144.26, Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, Shoreland Ordinances required under Section 59.971, Wisconsin Statutes, and Chapter NR 115, Wisconsin Administrative Code, do not apply to lands adjacent to farm ditches if:
  - a. Such lands are not adjacent to a natural navigable stream or river.
  - b. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  - c. Such lands are maintained in nonstructural agricultural use.<sup>1</sup>
19. ***Open Space.*** A tract of land used for agricultural, natural habitat, conservancy, trails and pathways and/or recreational purposes.
20. ***Open Space Preservation Area.*** The portion of a land division designated for permanent agricultural, conservation, or open space uses. Designation of the “open space preservation area” is pursuant to the standards under Article 5 and 6 of this Ordinance.
21. ***Ordinary High Water Mark.*** The average annual high-water level of a pond, stream, river, lake, flowage, or wetland referred to an established datum plane or where such elevation is not available, the elevation of the line up to which the presence and action of surface water is so frequent as to leave a distinct mark by erosion, change in, or destruction of, vegetation or other easily recognized topographic, geological or vegetative characteristic.
22. ***Parcel.*** See “lot” definition.

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<sup>1</sup>Wisconsin’s Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Company, Inc., v. Wisconsin Department of Natural Resources, 70 Wis. 2d. 936 (1975)]. A stream that is navigable by skiff or canoe during normal spring highwater is navigable in fact under the laws of this state, though it may be dry during other seasons.

23. **Potential Transition Areas.** Town land and water areas generally identified by the Land Use Plan which do not conflict with the Town's selected land protection criteria based on best available information then at hand. *See also map and description of potential transition areas within the Land Use Plan.*
24. **Plat.** The map and related documents, which are intended to be recorded with and referenced, of a major land division, showing the division of land into lots, blocks, outlets, streets, or other required information.
25. **Preliminary Plat.** The map and related documents, which show the salient features of a proposed major land division submitted to the Town for purposes of preliminary consideration.
26. **Replat.** The process of changing, or a map or plat which changes, the boundaries of a recorded plat or part thereof.
27. **Rural Residential Management Area (RRMA).** Town land and water areas designated within the Land Use Plan as Preferred Rural Residential Land Use Management Area.
28. **Shorelands.** Those lands lying within one thousand (1000) feet from the high-water elevation of navigable lakes, ponds, and flowages or three hundred (300) feet from the high-water elevation of navigable streams or to the landward side of the floodplain, whichever is greater.
29. **Subdivider.** Any person, firm or corporation, or any agent thereof, dividing or proposing to divide land resulting in a major subdivision, minor land division or replat.
30. **Wetlands.** Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions, including lands which are partially or wholly covered by marshland flora and generally covered with shallow standing water or lands which are wet and spongy due to high-water table.

## Article 4 - Land Division Review and Action

### 2-4.1 Preliminary Consultation

Prior to filing an application for land division approval, the Subdivider shall schedule and attend a pre-consultation meeting with the Town Plan Commission. Information on meeting dates, agenda deadlines and filing requirements may be obtained from the Town Clerk. This consultation is intended to inform the subdivider of the purpose and objectives of this Ordinance, the Land Use Plan, and other duly adopted plan implementation devices of the Town and to otherwise assist the subdivider in planning their development. In so doing, both the subdivider and the Commission may reach mutual conclusions regarding the general program and objectives of the proposed development and its possible effects on the neighborhood and community. The subdivider will gain a better understanding of the subsequent required procedures.

In order to facilitate the consultation, the subdivider is asked to submit a concept plan drawn to a reasonable scale depicting the proposed general lot layout, exterior boundaries, roadways, known easements, approximate location of existing or proposed improvements, approximate location of existing land use and cover types, and any other information to fully and clearly represent the proposed land division. The concept plan shall be submitted at least ten (10) days prior to the scheduled meeting to give the Commission time to prepare for the meeting.

### 2-4.2 Minor Land Division

- A. **General.** Land divisions which create less than five (5) lots or building sites of eighty (80) acres or less by successive divisions from the same mother tract (see definition), within a period of five (5) years, shall follow the procedures contained in this Section.
- B. **Minor Land Division Application and Submittal.**
1. **Letter of Intent.** The Subdivider shall submit a letter of intent to the Town Clerk on a form provided that shall specify:
    - a. The name and address of the owner of the property and the subdivider.
    - b. The name and address of the surveyor who will be doing the work.
    - c. The names and addresses of all adjacent land owners.
    - d. The location and size of the property.
    - e. The present use of the land.
    - f. The intended future use of the land.
    - g. Existing zoning on and adjacent to the proposed land division.
    - h. The estimated time table of development.



2. **Sketch Map.** Accompanying the letter of intent, the subdivider shall submit a sketch map at a scale of 1"=200' or other appropriate scale. More than one attached sheet may be used but no sheet should be larger than 8 ½ x 14". Each submission shall include all contiguously owned land except the sketch map need not show more than twenty (20) times the area of the intended certified survey. The sketch map shall show the following information:

- a. North arrow, date, scale and reference to a section corner.
- b. Approximate dimensions and areas of the parcels and easements.
- c. Location and type of existing and proposed buildings structures.
- d. Location of drainage ditches, water wells, sewerage systems and other features pertinent to the division.
- e. Location of existing and proposed roads and driveways and distances to the nearest adjoining driveways on both sides of the proposed site.
- f. Location of general land cover types such as woodlands, wetlands, agricultural, etc.
- g. Location of any steep slopes (i.e., 12% or steeper).
- h. Setback or building lines required by any approving agency.
- i. The uses of the land adjacent to the property and existing roads, easements of record, public access to navigable waters, dedicated areas and utilities.
- j. Approximate location of proposed limit of disturbance (LOD) lines, development area, and/or open space preservation area.

3. **Additional Information.**

- a. The Town Plan Commission may require a proposed land division layout of all or part of contiguously-owned land even though division is not planned at the time.
- b. The Town Plan Commission may require two foot contour maps prepared by a registered surveyor or engineer in floodplain areas.
- c. Where lots are being proposed for residential or business development which are forty (40) acres or less in size and not served by public sanitary sewer, the applicant shall prepare and submit individual lot soil and site evaluations pursuant to Chapter COMM 85, Wisconsin Administrative Code. Where lots larger than forty (40) acres are being proposed for residential or business use, the applicant may be required to submit individual lot soil and site evaluations where limiting conditions are suspected.

**C. Processing of Preliminary Application.**

1. The Town Clerk shall review the minor land division application for completeness, including payment of applicable fees pursuant to Section 4.4, within five (5) working days of receipt. The Town Clerk shall notify the subdivider by first class mail and shall prepare an affidavit of mailing for any application determined to be incomplete.
2. The Town Clerk shall, within two (2) normal work days after filing, transmit the copies of the letter of intent and sketch map to the:
  - a. Town Plan Commission.
  - b. Village Board of Fall River, if the proposed land division is located within either the Established Residential or Rural Residential Management Areas designated by the Land Use Plan.
  - c. Columbia County Zoning Department if the land division will create any lots less than 35 acres in size.
3. The Town Clerk shall send the subdivider and applicable parties listed under Section 4.2 (C) (2) above, a notice and agenda of the scheduled date of the Commission meeting to consider the application no later than ten (10) days prior to the date of the meeting by first class mail and shall prepare an affidavit of mailing.
4. The subdivider or designee will attend the meeting and present the letter of intent and certified survey map to the Plan Commission for consideration. Failure of the subdivider or designee to attend the meeting may be used as grounds to recommend denial of the minor land division application.

**D. Preliminary Approval, Conditional Approval, Rejection.**

1. The letter of intent, sketch map and other relevant information shall be reviewed by the Town Plan Commission for conformance with this Ordinance, the Land Use Plan, and all other applicable Town laws, ordinances, rules, regulations and plans. The Plan Commission may also review applicable County, State and federal laws, ordinances, rules, regulations, and plans which may affect the minor land division.
2. Unless the timeline is extended by agreement with the applicant, the Town Planning Commission shall, within forty-five (45) days from the date the Town deems the minor land division application complete, including receipt of all additional information requested under 4.2 (B)(3) above, recommend preliminary approval, conditional approval or rejection of the map, and shall transmit the letter of intent, sketch map and additional information, along with its recommendations to the Town Board.

3. The Town Board, within ninety (90) days of the date the Town deems the minor land division application complete, shall grant preliminary approval, conditional approval or rejection of the minor land division application pending submission of the certified survey map (CSM), unless the time is extended by agreement with the subdivider. One (1) copy of the minor land division application shall thereupon be returned to the subdivider with the date and action endorsed thereon; and if approved conditionally or rejected, the conditions or reasons for rejection shall be stated in the minutes of the meeting and a letter setting forth the conditions of approval or the reasons for rejection shall be sent to the subdivider. One (1) copy of the minor land division application shall be filed in the Town records.

4. If the CSM, together with all required information, as required in Section 4.2 (E) below, is submitted within six (6) months of the last required preliminary approval and it substantially conforms to the letter of intent and sketch map as preliminarily approved, including any conditions of approval, and to adopted local plans and ordinances, and all requirements for division are met, then the CSM is entitled to final approval under Section 4.2 (F) below. If the CSM is not submitted within six (6) months of the last approval or the CSM is substantially different, the CSM may be rejected and the preliminary approval process must be repeated.

**E. Certified Survey Map.** The subdivider may seek final approval of the minor land division by certified survey map (CSM) following preliminary approval or conditional approval of the letter of intent and sketch map by the Town Board. The CSM shall show correctly, in addition to the information required by Section 236.34 of the Wisconsin Statutes the following information:

1. Date of CSM and graphic scale.
2. Name and Address of the owner, subdivider and surveyor.
3. Location of existing buildings and driveways, watercourses, drainage ditches and other features pertinent to proper division.
4. Names, locations and widths of adjoining streets, highways, parks, cemeteries, subdivisions, surface water and wetlands.
5. Location of existing wells, septic tanks, drainfield and designated replacement area.
6. Acreage included in each parcel excluding right-of-way.
7. Setbacks or building lines required by any approving or reviewing agency.
8. All lands being dedicated or reserved for future public acquisition.
9. The location of "Limits of Disturbance" (LOD) lines, development area and/or open space preservation area (if applicable).
10. Drainage and utility easements.
11. Where the CSM is located within a quarter section the corners of which have been relocated, monumented and coordinated, the CSM shall be tied

directly to one of the section or quarter corners so relocated, monumented and coordinated. The exact grid bearing and distance of such tie shall be determined by field measurements, and the material of the monument marking the relocated section or quarter corner to which the CSM is tied shall be indicated on the CSM. All distances and bearings shall be referenced to the Wisconsin Coordinate System, South Zone.

12. The surveyor shall certify on the face of the CSM that he/she has fully complied with all the provisions of this Ordinance.
13. The CSM shall bear a statement indicating whether any portion of the property is designated as a land protection area pursuant to the Land Use Plan and that limitations on actions in or affecting such areas may exist.
14. All minor land divisions within the Agricultural Management Area or within 1,000 feet of such area as designated in the Land Use Plan shall contain a notice on the CSM that contains the following language:

*You are hereby notified that this land division is located within, or within 1000 feet of, property designated by the Town of Fountain Prairie Land Use Plan as an Agricultural Management Area. You may be subject to inconveniences or discomforts arising from agricultural-related operations, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, INSECTS, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. The Town Board has determined that the use of real property for agricultural operations, particularly in these designated areas, is a high priority and favored use to the Town. Those inconveniences or discomforts arising from agricultural operations, if such operations are consistent with normal farming practices for the region and comply with local, state and federal laws, shall not be considered a nuisance. Where there are conflicts between residential and agricultural-related uses, agricultural uses will be favored.*

15. Water elevations of adjoining lakes and streams at the date of survey, ordinary high water elevation, and designated floodplains, wetlands, and navigable waters where located within or adjoining the limits of disturbance lines or allowed development area established for the land division.
16. The Town Plan Commission may require contours at vertical intervals of not more than two (2) feet where the slope of the ground surface is less than ten (10%) percent, and of not more than five (5) feet where the slope of the ground surface is ten (10%) percent or more to assist in review of the proposed land division and related improvements.

17. Where the Town Board finds that it requires additional information to review the CSM relative to a particular problem presented by a proposed development, it shall have the authority to request in writing, such information from the subdivider as it feels is required.

**F. Review and Action on Certified Survey Map.**

1. The Town Board shall review the CSM for conformance with the approval or conditional approval of the letter of intent and sketch map, this Ordinance, the Land Use Plan, and all other applicable Town laws, ordinances, rules, regulations and plans. The Board may also review applicable County, State and Federal laws, ordinances, rules, regulations, and plans which may affect the minor land division.
2. The Town Board shall approve, approve conditionally and thereby require resubmission of a corrected CSM, or reject such certified survey map within sixty (60) days of the date the Town deems the CSM submission complete, including receipt of all additional information requested under Section 4.2 (E), unless the time is extended by agreement with the applicant. If the CSM is rejected, the reason shall be stated in the minutes of the meeting and a written statement forwarded to the applicant. If the CSM is approved or conditionally approved, the Town Board shall cause the Town Clerk to so certify on the face of the original map and return the CSM to the subdivider.

- G. Recordation.** The subdivider shall file a copy of the approved CSM together with the approving resolution with the County Register of Deeds within thirty (30) days of approval by the Town Board.

**2-4.3 Major Land Division**

- A. General.** Land divisions which create five (5) or more parcels or building sites which are eighty (80) acres or less in size by successive divisions from the same mother tract (see definition), within a period of five (5) years, shall follow the procedures contained in this Section.

**B. Major Land Division Application and Submittal.**

1. **Letter of Intent.** The subdivider shall submit a letter of intent to the Town Clerk on a form provided. The minimum contents of the letter of intent are found under Section 4.2 (B) of this Ordinance.
2. **Preliminary Plat.** Accompanying the letter of intent, the subdivider shall submit ten (10) copies of a preliminary plat prepared by a registered land surveyor at a scale of not more than one hundred (100) feet to the inch and

shall comply with the requirements of Chapter 236 of the Wisconsin Statutes. The preliminary plat shall show correctly on its face, in addition to the information required by Chapter 236 of the Wisconsin Statutes, the contents under Section 4.2 (E) of this Ordinance and any additional information required pursuant to Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances.

3. ***Referral to Other Agencies.*** If the major land division results in a state or county subdivision as defined either in s. 236.02(12), Wis. Stats, or Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances, respectively, the subdivider shall also submit the original drawing of the preliminary plat to the appropriate state plat review agency and Columbia County, in accordance with s. 236.12(6), Wis. Stats. Such plats shall comply fully with the requirements of Chapter 236, Wis. Stats, and Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances, as well as the requirements of this Ordinance. The Subdivider shall submit verification of submission to required state and county agencies no later than the scheduled meeting before the Plan Commission to consider the Preliminary Plat.
4. ***List of Adjacent Property Owners.*** In order to facilitate public comment, the Subdivider shall provide a list of names and mailing addresses of all property owners within one thousand (1,000) feet of the subject site to the Town Clerk.
5. ***Additional Information.*** The subdivider may be required to submit other information similar to that required pursuant to Section 4.2 (B) (3) above.

**C. Processing of Preliminary Plat Application.**

1. The Town Clerk shall review the major land division application for completeness, including payment of applicable fees pursuant to Section 4.4, within five (5) working days of receipt. The Town Clerk shall notify the subdivider by first class mail and shall prepare an affidavit of mailing for any application determined to be incomplete.
2. The Town Clerk shall, within two (2) normal work days after filing, transmit the copies of the letter of intent and preliminary plat to the:
  - a. Town Plan Commission.
  - b. Village of Fall River, Village Board, if the proposed land division is located within either the Established Residential or Rural Residential Management Areas designated by the Land Use Plan.
  - c. Columbia County Zoning Department if the land division will create five or more lots less than 15 acres in size.

3. The Town Clerk shall send the subdivider, applicable parties listed under Section 4.3 (C) (2) above, and property owners within 1,000 feet of the subject site, a notice and agenda of the scheduled date of the Commission meeting no later than ten (10) days prior to the date of the meeting by first class mail and shall prepare an affidavit of mailing.
4. The subdivider or designee will attend the meeting and present the letter of intent and preliminary plat to the Plan Commission for consideration. Failure of the subdivider or designee to attend the meeting may be used as grounds to recommend denial of the major land division application.

**D. Preliminary Plat Approval, Conditional Approval, Rejection.**

1. The letter of intent, Preliminary Plat and other relevant information shall be reviewed by the Plan Commission for conformance with this Ordinance, the Land Use Plan, and all other Town laws, ordinances, rules, regulations, and plans which may affect the plat. The Plan Commission may also review applicable County, State and Federal laws, ordinances, rules, regulations, and plans which may affect the plat.
2. The Town Plan Commission shall, within forty-five (45) days from the date the Town deems the preliminary plat submitted complete, including receipt of all additional information requested under Section 4.3 (B,C) above, recommend approval, conditional approval or rejection of the Plat, and shall transmit the Plat along with its recommendations to the Town Board, unless the time is extended by agreement with the Subdivider.
3. The Board, within ninety (90) days of the date the Town deems the Preliminary Plat submitted complete shall approve, approve conditionally, or reject such Plat unless the time is extended by agreement with the subdivider. One (1) copy of the Plat shall thereupon be returned to the subdivider with the date and action endorsed thereon; and if approved conditionally or rejected, the conditions or reasons for rejection shall be stated in the minutes of the meeting, and a letter setting forth the conditions of approval or the reasons for rejection shall accompany the Plat. One (1) copy of the Plat and letter shall be filed in the Town records. Failure of the Board to act within ninety (90) days or extension thereof, shall constitute approval.
4. If the Final Plat is submitted within twenty-four (24) months of the last required preliminary plat approval and, it conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances, then the Final Plat is entitled to approval under Section 4.3 (E) below. Construction may not commence until approval has been granted by all appropriate agencies.

**E. Review and Action on Final Plat.**

1. **Submittal.** The subdivider shall submit the following:

- a. Ten (10) copies of the Final Plat with the Town Clerk at least fifteen (15) days prior to the meeting of the Board at which action is desired.
- b. If the major land division results in a state or county subdivision as defined either in s. 236.02(12), Wis. Stats, or Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances, respectively, the subdivider shall also submit the original drawing of the final plat to the appropriate state plat review agency and Columbia County, in accordance with s. 236.12(6), Wis. Stats. Such plats shall comply fully with the requirements of Chapter 236, Wis. Stats, and Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances, as well as the requirements of this Ordinance. The Subdivider shall submit verification of submission to required state and county agencies no later than the scheduled meeting before the Board to consider the Final Plat.

2. **Requirements.** The final plat shall be prepared by a registered land surveyor and shall comply with the requirements of Chapter 236 of the Wisconsin Statutes. The Plat shall show correctly on its face, in addition to the information required by Chapter 236 of the Wisconsin Statutes, the required contents under Section 4.2 (E) of this Ordinance and any additional information required pursuant to Title 16–Chapter 2, Land Division and Subdivision, Columbia Code of Ordinances.

3. **Final Plat Review and Approval.**

- a. The Final Plat may, with Board permission, constitute only that portion of the approved Preliminary Plat which the subdivider proposes to record at the time.
- b. The Final Plat may be rejected if it is not submitted within twenty-four (24) months of the date of Preliminary Plat approval. Approval can not be granted until all formal objections of the objecting agencies are satisfied.
- c. The Town Board shall examine the final plat as to its conformance with the approved preliminary plat, any condition of approval of the preliminary plat, this Ordinance, the Land Use Plan, and all other Town laws, ordinances, rules, regulations and plans which



may affect the plat. The Board may also review applicable County, State and federal laws, ordinances, rules, regulations, and plans which may affect the plat.

- d. The Town Board shall, within sixty (60) days of the date the Town deems the Final Plat submittal complete, approve, conditionally approve, or reject the Final Plat unless the time is extended by agreement with the subdivider. If the Plat is rejected, the reasons shall be stated in the minutes of the meeting and a written statement of the reasons forwarded to the subdivider. If the Plat is approved, the Board shall not inscribe its approval on the face of the original Final Plat until the Town Clerk certifies on the face of the Plat that the copies were forwarded by the subdivider (if applicable) to objecting agencies as required pursuant to Section 4.3 (B) (3) herein, the date thereof, and that no objections were filed within twenty (20) days or, if filed, have been met.
- e. If the Board fails to act within sixty (60) days of a completed submittal of the Final Plat, and the time having not been extended by agreement with the subdivider and no unsatisfied objections having been filed, then the plat shall be deemed approved.

**F. Recordation.** After the Final Plat has been approved by the Town Board and required improvements have either been installed and inspected and approved by the Town, or a contract and sureties insuring their timely installation has been approved by the Town and filed, the Town Clerk shall cause the certificate inscribed upon the Plat attesting to such approval to be duly executed and the Plat returned to the subdivider for recording with the County Register of Deeds. The Register of Deeds cannot record the Plat unless it is offered within thirty (30) days from the date of last approval and within twenty-four (24) months of the first approval.

**G. Replats.**

1. Any replat of a recorded plat or part thereof shall be done in accordance with s. 236.36. Wis Stats. The subdivider or person wishing to replat, shall then proceed as specified in Section 4.3 of this Ordinance.
2. The Town Clerk shall schedule a public hearing before the Town Plan Commission when a Preliminary Plat of a replat of land is filed, and shall mail notices of the proposed replat and public hearing to the owners of all properties within the limits of the exterior boundaries of the proposed replat and to the owners of all properties within two hundred (200) feet of the exterior boundaries of the proposed replat.

#### 2-4.4 Fees

- A. **Application Review Fee.** All minor and major land division applications shall be accompanied by an application review fee established by the Board as set forth in the Town of Fountain Prairie Fee Schedule.
- B. **Additional Costs.** The subdivider shall be responsible for reimbursing the Town for engineering, inspection, legal and administrative costs incurred by the Town in reviewing minor and major land divisions.

## Article 5 - Land Division in the Agricultural Management Area Special Options and Requirements

### 2-5.0 Introduction

- A. **Preferred Land Use Management Areas.** The Town's Land Use Plan contains several long-term goals for the Town including, among others, the following: preserving farmland and farming operations long-term; maintaining the overall rural character of the Town; protecting sensitive natural resources; directing future growth to appropriate areas; and promoting cost efficiency in the provision of governmental services to Town residents. In order to help accomplish these goals, the Land Use Plan divides the Town into three preferred Land Use Management Areas: Agricultural Management Area ("AMA"), Rural Residential Management Area ("RRMA") and Established Residential Management Area ("ERMA"). The ERMA is essentially already fully platted and no further substantial land division activity is anticipated in this area. In order to be approved, any future land divisions in the RRMA or the AMA must comply with the provisions of this Ordinance and must be consistent with the Land Use Plan and any other applicable plans, ordinances or regulations.
- B. **General - Agricultural Management Area.** The Agricultural Management Area is intended to preserve farmland, allow for farming expansion, and discourage activities that adversely impact or conflict with farming operations. This management area also seeks to retain those features that define the rural character of the town such as contiguous cropped farmland, woodland and natural open spaces (e.g., meadows, wetlands). To further these goals, the AMA is also intended to serve as the area from which development rights would be voluntarily sold or transferred to developers within the RRMA choosing to develop under the optional bonus land division approach. This program would enable farmers to capture a reasonable development value from their lands while continuing to farm them, and enable property owners in the RRMA to benefit from the increased development density options available in the RRMA while at the same time contributing to the Town's overall preservation goals.
- C. **Exceptions.** Although the purpose of the AMA is to preserve lands in this area for their highest and best use (ie. farming, woodlands or conservancy) it is recognized that in certain circumstances the Town Board may approve a minor or major land division within the Agricultural Management Area consistent with the intent of the Land Use Plan and the provisions of this Article and Ordinance.

### 2-5.1 Conventional Farm Division

- A. **Intent.** Conserve Town agricultural land and natural features while minimizing impacts to long-term agricultural production when land is divided in compliance with the 35-acre minimum farm area under the Columbia County Agricultural

Zoning District and for qualifying for state-provided farmland preservation tax credits.

- B. Minimum Lot Area.** All lots shall be a minimum of forty (40) acres or equivalent in size. No further division of the 40 acre parcel will be permitted and this shall be noted on the CSM or Plat.
- C. Maximum Number of Lots.** The maximum number of allowed lots shall be one (1) lot per 40 acres or equivalent. The limitation of one lot per 40 acres contiguously owned shall run with the mother tract (see definition) and shall be cumulative. In addition, for the purposes of reviewing lots intended for future residential development, the maximum allowed density is one-single family dwelling per forty (40) acres or equivalent. Existing residences shall count toward the maximum residential density and number of lots permitted.
- D. Lot Location and Design.**
1. All lots shall be located and designed to minimize fragmentation and conversion of agricultural land and natural features and to maintain agricultural efficiency and productivity both on the parcel to be divided and on surrounding lands.
  2. Creation of irregular lots which preclude or significantly impact continued farming operations shall not be allowed.
  3. All lots shall be a minimum width of a least one hundred-fifty (150) feet. Excessive depth in relation to width shall be avoided. A proportion of two to one (2:1) is normally considered desirable.
  4. Every lot shall front or abut on a public street or road for a distance of at least one hundred-fifty (150) feet.
- E. Limits of Disturbance (LOD) Lines.**
1. ***Establishment of LOD.*** Lot location and design shall consider the location of potential future development sites of individual lots created by the land division through the establishment of limits of disturbance (LOD) lines. The LOD shall indicate the specific areas of the land division within which improvement related to the land division may be constructed and within which future development activity shall be contained.
  2. ***Maximum Area of LOD.*** The LOD shall be a maximum of two (2) acres in size.

3. **LOD Dimensions.** The LOD shall be of sufficient dimension to accommodate any future residential and related land uses, (e.g., garages, outbuildings, decks, swimming pools, lawns, private gardens, etc.), roads, driveways, and parking areas. The Town Plan Commission or Board may request a layout of the potential development site to determine whether the LOD is of sufficient dimension.
  4. **Location of LOD.** The subdivider shall propose and the Town Board shall establish the location of the LOD. The LOD area shall be clearly delineated and noted on the CSM or plat. The criteria for establishing the LOD is set forth in Section 5.3, Location of Development Area.
  5. **Allowed Uses Outside of LOD.** Areas outside of the designated LOD shall remain in agricultural, woodland, conservancy or open space (e.g., wetlands, grasslands) uses. Disturbance or construction activity may occur outside the LOD with approval of the Town Board for the following limited purposes:
    - a. Mitigation of development activities.
    - b. Restoration of previously disturbed or degraded areas.
    - c. Utility installations and emergency public safety activities when such activities and installations cannot reasonably be contained within the LOD.
    - d. The enhancement of the habitat values and/or other natural resource values of an identified natural area.
  6. **Alternative LOD Areas.** The Town reserves the right to view alternative LOD areas and layouts, including consideration of potential LODs on other portions of the mother tract under the same ownership. The cumulative impact of all LODs on agricultural production and the land protection criteria shall be considered.
- F. **Disclaimer.** The Town does not consider lands designated as Agricultural Management Area by the Land Use Plan to be "vacant" or awaiting eventual conversion to some other use. Any Town approval of a conventional farm division shall therefore not be construed as Town support of residential or non-farm development of such lots. In addition, it does not guarantee approval of residential or non-farm development by Columbia County which is limited within the agricultural zoning district. Town support and approval for future residential building sites within the Agricultural Management Area may be secured through the Alternative Farm Division option under Section 5.2 herein.

## 2-5.2 Alternative Farm Division

A. **Intent.** The Town Land Use Plan recognizes that land in the AMA is primarily intended for agricultural and/or conservation use and state and county farmland preservation policies were not intended to mandate or encourage that farmland and other natural resources be split into lots 35 acres, or nearly so, in size when land is divided. The intent of the "alternative farm division" option is to allow for creation of smaller lots in order to retain most Town lands in large, contiguous tracts generally more conducive to long-term agricultural production, maintenance of rural land uses (e.g., hunting) and retention of agricultural and rural character/quality of life. The alternative farm division option is also intended to encourage and allow for consolidation of prior divisions of farmland and open spaces into tracts 80 acre, or nearly so, in size or larger.

B. **Eligibility.** To qualify for the Alternative Farm Division option, the proposed land division must contain a minimum of 80 acres or equivalent of one-half of a quarter section. The Alternative Farm Division shall consist of the following two areas which shall be clearly delineated on the CSM or plat:

1. Development Area
2. Agricultural/Open Space Preservation Area

C. **Development Area.**

1. **Design.** The development area shall be designed to contain all future residential and related land uses, roads, driveways, and parking areas. Utilities serving new development shall be placed underground.

2. **Minimum Lot Area.** All lots located within the development area shall be a minimum of one (1) acre in size.

3. **Maximum Lot Area.** All lots located within the development area shall be a maximum of two (2) acres in order to minimize conversion of farmland to non-agricultural use, unless a lot consolidation is approved by the Town Board pursuant to Section 5.2 (C) (5) below.

4. **Maximum Number of Lots.** The following criteria shall apply for calculating the total maximum number of lots allowed within the development area:

- a. The maximum number of allowed lots within the development area shall be one (1) lot per 40 acres or equivalent. The limitation of one lot per 40 acres contiguously owned shall run with the mother tract (see definition) and shall be cumulative. In addition, for the purposes of reviewing lots intended for future residential

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development, the maximum allowed density is one-single family dwelling per forty (40) acres or equivalent. Existing residences shall count toward the maximum residential density and number of lots permitted.

- b. Separation of farm dwellings and related structures and any split for additional farm residences for parents or children will count toward the one lot per 40 acres or equivalent owned standard.
- c. Secondary farm residences on the mother tract which are allowed under the Columbia County Zoning Ordinance will not constitute a split.

Renumbered as  
2-5.2(c)(5) →

Repealed  
11/13/2003

- 5. **Lot Consolidation.** At the discretion of the Town Board, the Town may allow larger lots where development rights are transferred pursuant to appropriate agricultural conservation easements or deed restrictions running to the Town and in accordance with Town standards for such transfers. In such instances, up to two (2) acres may be added for each potential development right transferred to the larger lot (e.g. substitute one 6 acre lot for three 2 acre lots).
- 6. **Lot Location.** The subdivider shall propose and the Town Board shall establish the location of lots located within the development area. The criteria for establishing lot locations is set forth in Section 5.3, Location of Development Area.

**D. Agricultural/Open Space Preservation Area.**

- 1. **Deed Restrictions.** A minimum of forty (40) acres or equivalent shall be designated on the CSM or plat as "Agricultural/Open Space Preservation Area" and shall be permanently deed restricted for agricultural, conservancy or open space use for every lot created in the development area and/or development right transferred into the development area pursuant to Section 5.2 (C) above. The deed restriction shall be enforceable by the Town, and another party if required by the Town, and no withdrawal or amendment of the deed restriction shall occur without the Town's written consent.
- 2. **Further Splits for Agricultural/Open Space Uses.** The purpose of the Agricultural/Open Space Preservation Area, in conjunction with the Alternative Farm Design approach, is to cluster any residential uses in the designated development area and permanently preserve the remaining lands (40 acres preserved per residential lot) for agricultural and/or open space use. Additional splits may occur within the Agricultural/Open Space Preservation Area provided however that such splits shall continue

to be subject to the permanent deed restrictions applicable in the Agricultural/Open Space Preservation Area as described above, including among other things, that the land may only be used for agricultural/open space purposes compatible with the deed restrictions. Any such split must comply with the Town's land division ordinance and any other town, county or state requirements, if applicable.

- E. Columbia County Approval.** Lots created of less than 35 acres which are in an Agricultural District under the Columbia County Zoning Code will also require land division approval from Columbia County and may require a rezone in order to allow land divisions for non-agricultural related use. Preliminary approval of the minor or major land division proposal by the Town Board may be used as a statement of Town support for any necessary County approval. County approval shall be done in conjunction with or before final approval of the Town Board of any minor or major subdivision.

### 2-5.3 Location of Development Area.

- A. Land Protection Criteria.** The limits of disturbance (LOD) lines or development area required pursuant to Sections 5.1(E) and 5.2 (C), respectively, shall be designed to least disturb or encroach upon the following land protection criteria designated by the Land Use Plan:

1. Wetlands;
2. Floodplains;
3. Shoreland Buffers (100 feet);
4. Woodlots greater than 20 acres;
5. Land within 1,000 feet of active and potential farms;
6. Lands beyond 500 feet of public roadways; and/or
7. Class I and II prime agricultural soils.

Recreated  
11/13/2003 →

Compliance may be achieved by using "potential transition areas" as designated in the Land Use Plan, as development areas to the maximum extent possible.

- B. Additional Criteria.** In addition to the land protection criteria, the development area shall also be located based on the following considerations:

1. Maximize conservation of existing agricultural fields, pastures, and meadows.
2. Maximize the usable area remaining for agricultural use.
3. Where feasible, the development area should be located along the edges of tillable fields, either along an existing fence line or on non-tillable land where the disruption of farming practices will be minimized.



4. Locate in or near areas where existing development or ownership patterns already preclude or significantly impact agricultural production and/or efficient farming operations.
5. Maintain agricultural lands and natural open spaces as large tracts with connections to similar areas on surrounding properties.
6. Retain or create vegetation buffers between development areas and agricultural fields or farms in order to provide a natural buffer between residential and surrounding agricultural uses, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by natural landscape features.
7. Maximize distance between development area and existing active and potential farms.
8. Leave scenic views and vistas unblocked or uninterrupted, particularly as seen from public roads. For example, avoid siting development areas on prominent hilltops or ridges, by taking advantage of lower topographic features, and locate development areas closer to woodlands or other existing development rather than in open areas.
9. Maintain or create an upland buffer of natural native species vegetation of at least one hundred (100) feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes and ponds.

**C. Exceptions.** The Town recognizes that the strict application of the land protection criteria may not always result in new development being sited in locations that best achieve the spirit and intent of the Land Use Plan. The subdivider may propose and the Town Board may approve exceptions to the land protection criteria where the subdivider clearly demonstrates to the satisfaction of the Town Board that there are no suitable building sites within a potential transition area, and/or where locating outside of a potential transition area may, in fact, better achieve the intent of the Land Use Plan. Any exception shall include the particular facts upon which the waiver was granted as part of the public record of the meeting and shall include consideration of the goals, objectives, and policies of the Land Use Plan, including the planning objectives related to the individual land protection criteria.

## Article 6 - Land Division in the Rural Residential Management Area Special Options and Requirements

### 2-6.0 General – Rural Residential Management Area

- A. Standard Land Division.** The land within the Rural Residential Management Areas (RRMA) has been previously designated as Exclusive Agriculture (or Shoreland/Floodplain/Wetland) and requires a standard density of a 35-acre minimum farm area under existing County zoning, platting and plan requirements and a 40-acre minimum farm area under standard Town requirements. Any Town approval of a Standard Land Division in the RRMA shall not be construed as Town support of residential or non-farm development of such land, nor does it guarantee approval by Columbia County. The Town prefers use of the “bonus” land division approach as described below, for the creation of residential sites in the RRMA.
- B. Bonus Land Division.** As noted in Section 5.0(A) above, the Rural Residential Management Area (RRMA) is one of three preferred land use areas delineated under the Town’s Land Use Plan. The Town’s Land Use Plan intends to allow landowners in the RRMA a special opportunity under certain conditions, to develop at higher densities than would be permitted under existing regulations. As further described below, landowners in the RRMA may choose to develop under the standard one (1) lot per forty (40) acres land division option or under the “bonus” land division option. The Bonus Land Division in the RRMA is intended to further the Town’s goals of directing non-agricultural development into appropriate areas, preserving farm land and farming operations in the Town, maintaining woodlands, natural open spaces, and other land characteristics that enhance the rural character of the Town, and promoting cost efficiency in the provision of governmental services. It is also intended that the RRMA serve as a potential receiving area for a voluntary purchase and/or transfer of development rights program in the Town. In order to be approved, any future land divisions in the RRMA must comply with the provisions of this Ordinance and must be consistent with the Land Use Plan, and any other applicable plans, ordinances or regulations.

### 2-6.1 Standard Land Division

- A. Minimum Lot Area.** Lots shall be a minimum of forty (40) acres or equivalent in size and no further division shall be permitted.
- B. Other Requirements.** All the provisions and requirements of Section 5.1 (B, C and D) above, shall apply to Standard Land Divisions in the RRMA.

## 2-6.2 Bonus Land Division

The Bonus Land Division is an optional approach landowners in the RRMA can choose in order to gain the benefits of higher density rural residential development in appropriate areas, consistent with the Town's Land Use Plan and as described in Section 6.0 (B) above. A Bonus Land Division must utilize either a Conventional Design Layout or a Conservation Design Layout as described below and must satisfy the Farm/Rural Preservation Program participation requirements of Section 6.5 below, as well as comply with all other applicable provisions of this Ordinance.

## 2-6.3 Conventional Design Layout

- A. **Minimum Lot Area.** All lots shall be a minimum of 20,000 square feet in size.
- B. **Maximum Number of Lots.** The maximum number of allowed lots shall be one (1) lot per 2.5 acres. The limitation of one lot per 2.5 acres contiguously owned shall run with the mother tract (see definition) and shall be cumulative. In addition, for the purposes of reviewing lots intended for future residential development, the maximum allowed density is one-single family dwelling per 2.5 acres. Existing residences shall count toward the maximum residential density and number of lots permitted.
- C. **Design.** Lots shall be designed to minimize future individual lot development within areas designated as land protection criteria by the Land Use Plan. Potential transition areas designated by the Land Use Plan shall be used as the first preference for creation of lots. Utilities serving new development shall be placed underground.
- D. **Environmentally Sensitive Areas.** Each lot designated for development shall contain at least one (1) acre located outside of:
  - 1. Wetland and floodplain areas; and/or
  - 2. Upland areas within 100 feet of wetlands and the ordinary high water mark of navigable waters, including creeks, streams, lakes and ponds.

## 2-6.4 Conservation Design Layout

- A. **Intent.** The Conservation Design Layout approach gives subdividers additional density bonuses as a further incentive to design land divisions in a way that best preserves interconnected open space networks for wildlife habitat, recreation, rural character and aesthetics, water quality protection, groundwater recharge, and/or farmland conservation.

**B. Eligibility.** The parcel to be divided must contain a minimum of forty (40) acres or equivalent. The Conservation Design Division shall consist of a:

1. Development Area
2. Open Space Preservation Area

**C. Development Area.**

1. ***Maximum Size of Development Area.*** The development area shall be limited to no more than forty (40) percent of the land division and shall contain all future residential and related land uses (e.g., garages, outbuildings, decks, swimming pools, lawns, etc...), roads, driveways, and parking areas.
2. ***Minimum Lot Size.*** All lots within the development area shall be a minimum of 20,000 square feet in size.
3. ***Maximum Number of Lots.*** The maximum number of lots allowed within the development area of a Conservation Design Layout shall be calculated based on a ***fifty (50) percent*** bonus over the maximum allowed number of lots for a Conventional Design Layout under Section 6.3 (B) above. Existing residences shall count toward the maximum residential density and number of lots permitted.
4. ***Location of Development Area.*** The development area shall be designed to minimize disturbance or encroachment upon areas designated as land protection criteria by the Land Use Plan. Potential transition areas designated by the Land Use Plan shall be used as the first preference for creation of new lots.
5. ***Utilities.*** Utilities serving new development shall be placed underground.
6. ***Environmentally Sensitive Areas.*** Each lot designated for development shall contain at least one (1) acre located outside of:
  - a. Wetland and floodplain areas; and/or
  - b. Upland areas within 100 feet of wetlands and the ordinary high water mark of navigable waters, including creeks, streams, lakes and ponds.

**D. Open Space Preservation Area.**

1. ***Minimum Percentage of Open Space.*** A minimum of sixty (60) percent of the land division shall be designated as permanent open space, not to be further subdivided, and shall be protected through a perpetual conservation

easement held by the Town plus, either a homeowner's association established by the subdivider, or by a recognized land trust or conservancy.

2. ***Location of Open Space.*** The open space shall be designated to maximize the protection of areas designated as land protection criteria by the Land Use Plan. Primary protection consideration shall be given to maximizing protection of:
  - a. Wetlands, including prior converted and farmed wetlands;
  - b. Floodplain areas of wetlands, lakes, rivers, streams and creeks;
  - c. Upland areas within a 100-foot of wetlands and surface water features;
  - d. Woodlands; and
  - e. Steep slopes (i.e., 12% of greater slopes).
3. ***Design of Open Space.*** The open space shall be designed as a large, single contiguous and interconnected block with logical, straightforward boundaries. Long, thin strips of conservation land should be avoided unless the conservation feature is linear (streams, treelines) or unless such configuration is necessary to connect with other features, or to create open space corridors or trails that will link to other parcels.

#### **2-6.5 Farm/Rural Preservation Program Participation Required for Bonus Land Division Approval**

As a condition of utilizing the Bonus Land Division option and obtaining the increased rural residential density benefits it provides, and in order to help offset the effects such increased rural residential development will have on the Town's rural character, the subdivider shall participate in the Town's Farm/Rural Preservation Program as set forth below.

- A. **Intent.** The intent of the Town's Farm/Rural Preservation Program is to further the Town's Land Use Plan's primary goals of protecting farming operations, preserving agricultural and other sensitive lands, and maintaining the rural character of the Town long-term.
- B. **Participation Options.** A subdivider may satisfy the Farm/Rural Preservation Program participation requirements by doing any of the following:
  1. By purchasing and/or transferring development rights from lands in the AMA to the subdivider's land division in the RRMA. Any such purchase and/or transfer of development rights must be in accordance with standards established by the Town and must include, among other things, a permanent agricultural/conservation easement which runs to the Town and

an easement co-holder designated by the Town, and in a form approved by the Town.

2. By making a financial contribution to the Town's Farm/Rural Preservation program in lieu of purchasing or transferring development rights in the AMA, as provided in Section 6.5 (C) (2) below.
3. By doing a combination of purchase/transfer of development rights and financial contribution as described in Section 6.5 C (1,2) below, as approved by the Town.

**C. Level of Participation Required.** As a condition of Town approval of a Bonus Land Division, the subdivider must participate in the Town's Farm/Rural Preservation Program at the following levels, at a minimum:

1. Using a basis of one (1) development right per 40 developable acres, one (1) development right must be purchased and/or transferred from the AMA for each lot included in the Bonus Land Division above and beyond that which would be allowable under the Standard Land Division approach.
2. A financial contribution of five thousand (\$5,000) dollars must be paid to the Town's Farm/Rural Preservation Program at the time of plat or CSM approval for each lot included in the Bonus Land Division above and beyond that which would be allowable under the Standard Land Division approach (See Footnote below for illustration).<sup>2</sup>

#### **2-6.6 Columbia County Approval**

Lots created less than 35 acres which are in an Agricultural District under the Columbia County Zoning Code will also require land division approval from Columbia County and may require a rezone in order to allow land divisions for non-agricultural related use. Preliminary approval of the minor or major land division proposal by the Town Board is recommended prior to seeking any necessary County approval. County approval shall be done in conjunction with or before final approval of the Town Board of any minor or major subdivision.

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<sup>2</sup> By way of illustration, a 40 acre parcel in the RRMA, subdivided as a Standard y Land Division would allow creation of one lot and no development rights need be purchased or transferred. The same 40 acre parcel subdivided under the Bonus Land Division option and using the Conventional Design Layout could potentially create up to sixteen (16) lots and would require the purchase and/or transfer of fifteen (15) development rights from the AMA, or a financial contribution to the Farm/Rural Preservation Program based upon fifteen (15) bonus lots, or a combination thereof as approved by the Town.