

**A Survey of the Subdivision Regulations
of Wisconsin Counties**

by

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I. Counties and subdivision review--an overview

This working paper begins to explore the status of the county's role in reviewing proposed subdivisions in Wisconsin. Wisconsin's laws governing the platting of land, found in Chapter 236 of the Wisconsin Statutes, provide counties with a unique opportunity for influencing the development of land. The county's role in the review of plats¹ presents a dynamic that is much different from the county's role in zoning. This dynamic reflects the planning and functional differences between zoning and subdivision regulation. It also reflects the institutional and legal framework for the county's role in plat review established in Chapter 236 of the Wisconsin Statutes.

From a planning framework, of the many land use control devices available, subdivision ordinances are critical tools for influencing development. While zoning regulations control the use of property, subdivision regulations address the quality of development. Subdivision regulations provide the procedures and standards that one must follow when dividing a large parcel of land into smaller pieces in preparation for development. When compared with zoning, a well-administered subdivision ordinance is more useful in achieving planning goals than zoning ordinances and its influence is far more lasting. Once land is divided into lots and streets are laid out, development patterns are set. Subdivision ordinances often give a community its only opportunity to influence that development pattern.

From an institutional framework, counties can serve at least three general purposes in the plat review process. First, as instrumentalities of the state, the county register of deeds offices keep a record of the lots which are created as the result of the division of an existing parcel. The register of deeds office ensures that at least the basic mechanics of the state's platting law have been followed.

¹A "plat" is a map of a subdivision. Wis. Stat. § 236.02(8).

As specified in section 236.03(1) of the Wisconsin Statutes, "No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by [Chapter 236]." Recording of plats allows for the subsequent sale and development of land.

Second, the statutes authorize counties to *approve* plats proposed for the unincorporated areas (towns) of the county. In order for counties to exercise its approval authority, they must have a county planning agency² that employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation. The statutes also provide specific guidance as to the legal basis for exercising this approval authority.³

Third, besides the approval authority, the statutes give counties the authority to *object* to proposed subdivisions located in incorporated areas (cities and villages). If the county objects, the plat cannot be approved by the city or village until the objection has been satisfied. The basis for the counties' objection must be a "conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments." Wis. Stat. § 236.12(2)(b). In

²A "county planning agency" is defined as "a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03(2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use." Wis. Stat. § 236.02(3).

³Pursuant to Wis Stat. § 236.13(1), approval of a plat can only be conditioned upon compliance with:

- "(a) The provisions of [Chapter 236];
- (b) Any municipal, town or county ordinance;
- (c) Any local master plan . . . or official map adopted under s. 62.23;
- (d) [Department of Commerce rules] relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer . . .;
- (e) [Department of Transportation rules] relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways."

order to exercise this objecting authority, the county must have a county planning agency which employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.⁴ In addition, the county must adopt a policy requiring submission of plats from incorporated areas.

The county's objecting authority is more limited than the county's approval authority. The county's approval authority ensures compliance with the statutory requirements and local ordinances which often include design and improvement standards for new subdivisions. The county's objecting authority, however, ensures that the public's investments in county roads, parks and other public facilities are not negatively impacted and that plans for future public developments are not impaired because of development. This authority offers counties an organizational framework for addressing issues of county-wide concern such as county roads, parks, and storm water management.

The county does not need to have a county-wide subdivision ordinance to exercise either its approval or objecting authorities. However, without an ordinance, the county will usually lack any standards for lot and street layout to guide the county's review of a proposed plat. One basis for exercising county approval authority is compliance with *any* county ordinance (zoning, subdivision, sanitary, etc.). Pursuant to section 236.45(2) of the Wisconsin Statutes, counties (and cities, villages, and towns) can enact subdivision ordinances that are more restrictive than the minimum statutory requirements that apply without local subdivision regulations. The purpose of local subdivision regulation is to:

promote the public health, safety and general welfare of the community... lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety

⁴In counties that do not have a planning agency, the county park commission or the county park manager has objecting authority if the proposed subdivision abuts a county park or parkway. Wis. Stat. § 236.12(2)(b).

from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playground and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations...shall be made with reasonable consideration...of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land... . Wis. Stat. § 236.45(1).

A county-wide subdivision ordinance strengthens a county's legal basis for reviewing proposed subdivisions by giving the county explicit standards for the division of land.

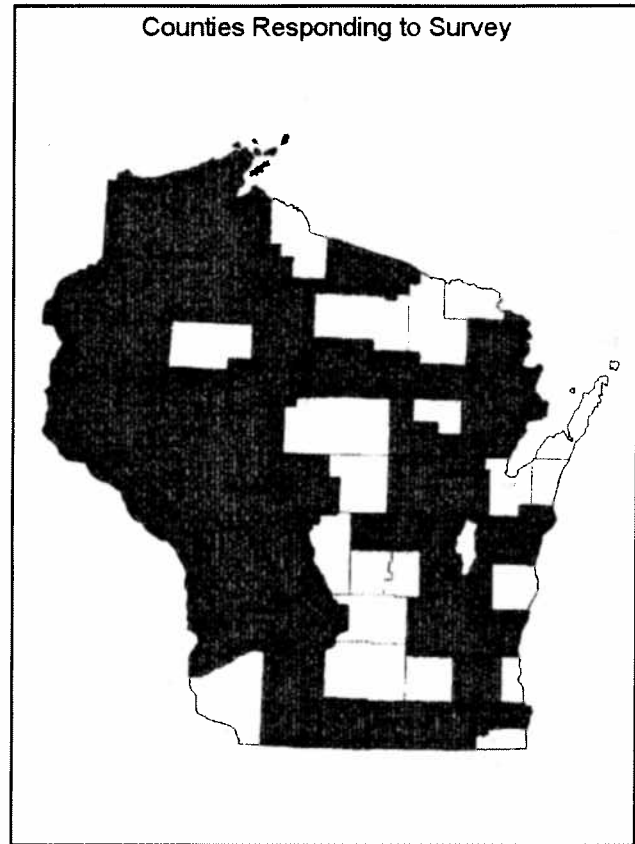
This working paper presents a summary of subdivision regulation by counties in Wisconsin. The paper is based on a brief survey of the counties conducted by the University of Wisconsin-Extension for Waukesha County. The survey explored several issues regarding how counties regulate subdivisions within this statutory framework.

II. The survey of county subdivision regulations

In December 1996, the Waukesha County Board adopted *A Development Plan for Waukesha County*, prepared by the Southeastern Wisconsin Regional Planning Commission. During the final stages of the planning process for the Development Plan, the Waukesha County Board expressed a strong desire to have the County adopt a subdivision ordinance to help implement the Development Plan. Waukesha County has never had a county-wide subdivision ordinance. The staff of the Waukesha County Department of Parks and Land Use worked with University of Wisconsin Extension's community and natural resource agent for the County and the Department of Urban & Regional Planning, University of Wisconsin-Madison/Extension to develop a brief survey of county subdivision practices in the state. The questions asked in the survey were specific to issues that Waukesha County wanted addressed. Nonetheless the results of the survey should be of interest to

a statewide audience.

During the fall of 1996, the survey was sent from the Waukesha County University of Wisconsin-Extension office to the counties in Wisconsin. The Waukesha County University of Wisconsin-Extension office received responses to the survey during late fall and early winter 1996. Of the seventy-two counties in Wisconsin, fifty-one counties responded to the survey. The counties responding to the survey include the following: Ashland, Barron, Bayfield, Buffalo, Burnett, Calumet, Chippewa, Clark, Crawford, Dodge, Douglas, Dunn, Eau

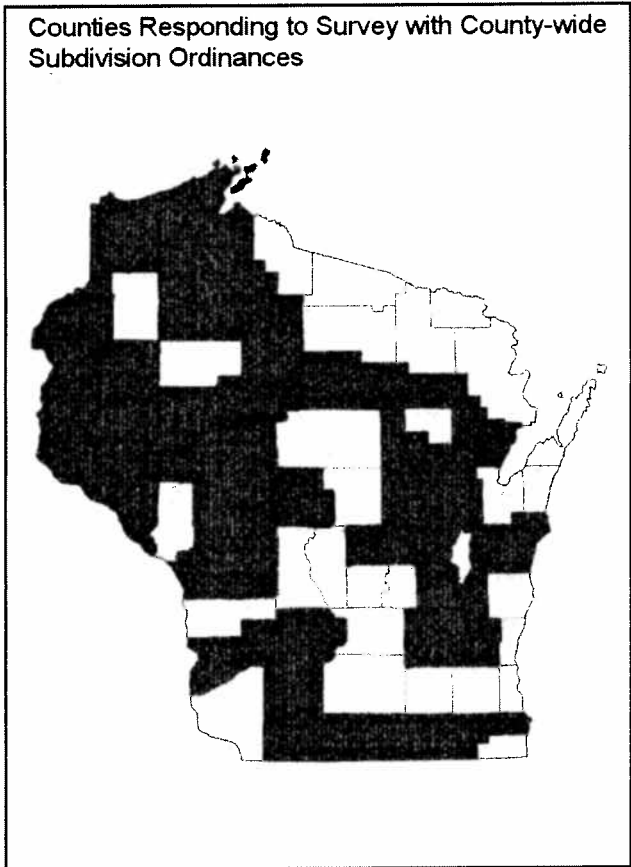


Claire, Fond du Lac, Green, Iowa, Jackson, Juneau, LaCrosse, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Price, Racine, Richland, Rock, St. Croix, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood.

Milwaukee and Menominee Counties were not included in the survey given the uniqueness of those two counties. Milwaukee County, the state's most urbanized county has no unincorporated areas. The City of Milwaukee is also exempt from some requirements of the state's subdivision law. See, e.g., sec. 236.12(1), Stats. Menominee County is almost entirely comprised of the Menominee Indian Reservation which is exempt under federal law from the state's land division laws. While the

survey does not include responses from every county in Wisconsin, the results do provide a representative sampling of subdivision regulation by Wisconsin Counties.

Of the fifty-one counties that responded to the survey, forty-four counties have county-wide subdivision regulations. Two counties have subdivision ordinances that apply only in the shoreland areas consistent with the requirements of the state's shoreland zoning program. Counties with county-wide subdivision ordinances are: Ashland, Barron, Bayfield, Buffalo, Burnett, Calumet, Clark, Crawford, Chippewa, Dodge, Douglas, Dunn, Eau Claire, Fond du Lac, Green, Iowa, Jackson, LaCrosse, Lafayette, Langlade, Lincoln,



Manitowoc, Monroe, Oconto, Outagamie, Pepin, Pierce, Polk, Price, Racine, Richland, Rock, St. Croix, Sauk, Sawyer, Shawano, Taylor, Vilas, Walworth, Washington, Waupaca, Waushara, Winnebago, and Wood. Marinette and Waukesha Counties responded that they have ordinances that apply only to the shoreland areas of the county. The following sections summarize the survey responses within the context of subdivision law in Wisconsin.

III. Intergovernmental relationships

The regulation of the division of land in Wisconsin involves a complex set of overlapping governmental authorities. For example, a proposed subdivision located within the extraterritorial plat

approval jurisdiction of a city or village (within three miles of the boundaries of a second or third class city or within one and one-half miles of a fourth class city or village) could be subject to review by the state, the county, the town, and the city or village. (The extraterritorial plat approval jurisdiction of the city or village is dependant upon the city or village having adopted a subdivision ordinance or official map.) Where more than one governing body or agency has the authority to approve or to object to the proposed subdivision and the requirements of those bodies or agencies conflict, the subdivision must comply with the most restrictive requirements. Wis. Stat. § 236.13(4). It is important to stress that the relationships of the various units of government involved with the regulation of land divisions are different from the intergovernmental relationships that normally exist under the various zoning enabling laws in the state. These intergovernmental relationships are represented graphically on the following table and are explored more fully below.

REVIEW AUTHORITIES FOR STATE DEFINED SUBDIVISIONS

LOCATION OF SUBDIVISION	APPROVING AUTHORITY	OBJECTING AUTHORITY
City of Milwaukee	Common Council	None
Inside a city or village	City Council or Village Board	<ul style="list-style-type: none"> (1) Plat Review Section, Wisconsin Department of Commerce for conformity with statutory surveying and layout requirements, final plat format and certificates. (2) Wisconsin Department of Transportation if the subdivision abuts a state trunk highway or connecting street for access issues. (3) Wisconsin Department of Commerce if the subdivision is not served by public sewer. (4) Wisconsin Department of Natural Resources and the Wisconsin Department of Commerce may require additional conditions for plats near navigable waterways. (5) County planning agency, if there is one with a full time staff, for conflict with park, parkway, major highways, airports drainage channels, schools, or other planned public developments.
Inside a town and within the extra-territorial plat approval jurisdiction of a city or village	<ul style="list-style-type: none"> (1) Town Board (2) County Planning Agency, if it has full time employee for planning/zoning (3) City Council/Village Board with extraterritorial plat approval jurisdiction on the basis of a subdivision ordinance or an official map 	
Inside a town and outside the extra-territorial plat approval jurisdiction of a city or village	<ul style="list-style-type: none"> (1) Town Board (2) County Planning Agency, if there is one 	

A. The state and local government

Under Wisconsin's law for the platting of lands, all land divisions which meet the state definition of "subdivision"⁵ are subject to review by several state agencies. These subdivisions are generally known as "state subdivisions." At the time Wisconsin's current law for the platting of lands was passed by the legislature in 1955, the provision for state level plat review was relatively unique. The state does not have such review authority over general local zoning. State agency review of state subdivisions is not dependant upon a local subdivision ordinance. Local ordinances, however, can include a more restrictive definition of "subdivision" than the statutory definition. Wis. Stat. §236.45. Section IV below summarizes options for county ordinance definitions of "subdivision."

Land divisions that do not meet the statutory definition of a subdivision can occur under the statutory process for certified survey maps. Certified survey maps cannot exceed four parcels of land. The statutory requirements for certified survey maps are found at section 236.34 of the Wisconsin Statutes. Certified survey maps do not involve state level review. Local ordinances can have more restrictive requirements for certified survey maps. Section V below examines county regulation of certified survey maps.

State agency review ensures that subdivisions statewide meet at least the minimum standards set forth in state statute and in certain state agency rules. The state agencies that review plats are the Department of Commerce, the Department of Transportation, and the Department of Natural Resources. All subdivision plats must be submitted to the Department of Commerce to review the

⁵State law defines a "subdivision" as: "a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where: (a) The act of division creates 5 or more parcels or building sites of 1½ acres each or less in area; or (b) Five or more parcels or building sites of 1½ acres each or less in area are created by successive divisions within a period of five years." Wis. Stat. § 236.02(12).

plats for compliance with the statutory surveying and layout requirements and other statutory requirements. The Department of Commerce must also review subdivisions not served, or planned to be served, by a public sewer for compliance with the Department's rules relating to lot size and lot elevation necessary for proper sanitary conditions.

If the subdivision abuts or adjoins a state trunk highway, the Department of Transportation must review it on the basis of the Department's rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

If the subdivision includes lands within 500 feet of the ordinary high-water mark of any navigable stream, lake or other body of navigable water, the Department of Natural Resources and the Department of Commerce may review the subdivision to assure adequate drainage areas for private sewage disposal systems and building setback restrictions, or provisions by the owner for public sewage disposal facilities.

These state agencies have the authority to **object** to plats consistent with their review authority. If a state agency objects to a plat, a subdivision cannot be approved or deemed approved by the local government having approval authority until the objections have been satisfied. Wis. Stat. § 236.12(3).

The county ordinances received in response to the survey reflect this state/local government relationship in a variety of ways. Some ordinances provide very little guidance to the ordinance users that certain subdivisions are subject to state level review. However, many county subdivision ordinances include the statutory definition of a "state subdivision" and refer the user to the state's review process. For example, Barron County's ordinance states:

"Subdivisions that meet the definition of [a state defined subdivision] are governed by the applicable provisions of Ch. 236, Wis. Stats. Land Division."

Ordinances that refer to the state's role in reviewing subdivisions are especially helpful when a county has a more restrictive definition of a subdivision for purposes of the application of the county subdivision ordinance as explored in section IV below.

B. Counties and towns (unincorporated areas)

County subdivision authority as it relates to towns, is much different from county zoning authority under Chapters 59 and 60 of the Wisconsin Statutes. County/town zoning entails a cooperative exercise of the zoning power by both the county and the town. For example, under the county/town zoning relationship, if counties adopt a county-wide zoning ordinance, the towns within the county have the option to adopt county zoning as it relates to that town. Towns can elect not to be subject to county zoning. Towns under county zoning have "veto" power over zoning changes. Towns under county zoning that seek to adopt their own town zoning ordinances need to have the county approve the zoning ordinance.

County authority to regulate subdivisions under Chapter 236, however, does not involve the same town/county approval process. As discussed above, county planning agencies which meet certain statutory criteria have the authority to **approve** subdivisions in the unincorporated areas of the county. Counties may adopt subdivision ordinances that specify the standards upon which to base the county's review of proposed subdivisions in the unincorporated areas. Towns are not required to adopt the county subdivision ordinance in order for it to be effective within the town. Towns do not have "veto" power similar to the veto power under county/town zoning. Towns, however, must also **approve** proposed subdivisions located within the town. Towns that have adopted village powers can also adopt their own subdivision ordinances and do not need county approval of those

ordinances. If there is a conflict between a county subdivision ordinance and a town subdivision ordinance the proposed subdivision must comply with the most restrictive requirements. Wis. Stat. § 236.13(4). Thus under Wisconsin's land division laws, counties can establish a county-wide standard for the review of proposed subdivisions and individual towns are free to adopt subdivision ordinances with standards that are more restrictive than the county-wide standards.

The subdivision ordinance for Waushara County addresses this complex county/town relationship as follows:

"Town land division and subdivision ordinances may be adopted and enforced despite inclusion of the town under the county land division and subdivision ordinance. In the event of inconsistency between town and county land division and subdivision ordinances, the most restrictive rule applies."

The survey revealed that the vast majority of towns in Wisconsin rely on the county's subdivision ordinance. Very few towns have their own subdivision ordinances. In a few counties, however, particularly those counties located in the Milwaukee metropolitan area, most, if not all, of the towns have their own subdivision ordinance. Of the seven counties that do not have county-wide subdivision regulations, only two counties reported that all the towns within the county have their own subdivision ordinance. In the areas of the state without county subdivision ordinances and without town subdivision ordinances, only the minimum standards found in state statutes apply.

C. Counties and cities/villages (incorporated areas)

County authority over subdivisions in cities and villages is also different from the relationship of county zoning authority to the zoning authority of cities and villages. County zoning authority does not extend into incorporated areas. However, counties with a county planning agency that employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation have the authority to object to subdivision plats

located in incorporated areas. The Wisconsin Court of Appeals took note of this distinction in *Reynolds v. Waukesha County Park & Plan. Comm.*, 109 Wis.2d 56, 324 N.W.2d 897 (Ct. App. 1982), where the court noted that Wisconsin' platting law creates "an exception to the general rule that incorporated areas within a county are not subject to control by county government."

A county's objection to a proposed subdivision is limited. A county's objection in a city or village must be based on a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. According to the *Reynolds v. Waukesha County Park & Plan. Comm.* case, a "planned public development" must be included in a plan that a county has adopted by ordinance. (It is because of the *Reynolds* case that Waukesha County adopted its recently completed development plan by ordinance.) Under state statute, if a county objects to a plat in a city or village, the city or village cannot approve the subdivision until the objections have been satisfied. Wis. Stat. § 236.12(3).

The county's objecting authority is not dependant upon the county having a subdivision ordinance. All that is required by the statutes is that a county adopt a policy statement that requires submission of subdivision plats. A county subdivision ordinance, however, can provide a county with standards for evaluating whether the county has any objections to a proposed plat within a city or village. However, none of the ordinances submitted with the survey responses provide guidance for interpreting the county's objecting authority. For example, it may be beneficial in an ordinance to explore what is meant by a "conflict with" a park parkway, expressway, etc., or how a county will determine that a proposed subdivision will conflict with a school.

In reviewing the county ordinances submitted with some survey responses, very few address the county's authority in incorporated areas. St. Croix County's subdivision ordinance, for example,

states:

"The County planning agency also has the authority to require submittal of copies of a preliminary or final plat within a village or city to determine if it has any objection to the plat on the basis of conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments, pursuant to sec. 236.12, Wisconsin Statutes."

Waushara County's subdivision ordinance states:

"Plats of subdivisions located in all other incorporated municipalities shall be submitted to the [county] . . . for the purpose of determining whether the Agency has any objection to the plat. The basis for any objection to said plats shall be conflict with park, parkway, expressway, major highways, airports, drainage channels, schools or other planned public developments."

These ordinance provisions help clarify the county's relationship with cities and villages.

While not all counties have subdivision ordinances, the survey responses also revealed that not all cities and villages have subdivision regulations. Twenty-six of the counties responding to the survey indicated the number of cities and villages within the county that had adopted a local subdivision ordinance. Of those twenty-six counties, four counties do not have a county-wide subdivision ordinance. Within those four counties, three counties said that all the cities and villages within the county had a local subdivision ordinance. One county indicated that none of the cities/villages within the county had subdivision ordinances. Of the twenty-two counties with county-wide subdivision ordinances, eight counties indicated that all the cities and villages within the county also had subdivision ordinances. The remaining fourteen counties indicated that there were some cities and/or villages within the county that did not have a local subdivision ordinance.

D. Cooperative agreements

In addition to the above intergovernmental relationships, state law allows local governments to enter into agreements for the cooperative administration of a subdivision review program. Several survey responses acknowledged either the existence of cooperative arrangements or the possibility

of future cooperative arrangements. LaCrosse County, for example, indicated that it contracts with the Mississippi River Regional Planning Commission for administration of its subdivision ordinance.

Waushara County's subdivision ordinance states:

The provisions of this ordinance shall apply in all incorporated areas which have under section 66.30 of the Wisconsin Statutes entered into agreement with Waushara County for the cooperative exercise of the authority to approve plats of subdivisions.

Based on these examples from LaCrosse and Waushara Counties, intergovernmental cooperation can take the form of a county contracting with a regional planning commission for administration of its subdivision program or the county contracting with local governments to help those local governments administer their local subdivision programs.

IV. Different definitions of "subdivision"

The term "land division" can include any action to take one parcel of land and divide it into two or more parcels. Depending on how the term "subdivision" is defined under a local ordinance, it may include all land divisions. State law defines a "subdivision" for purposes of the state's review authority as something less than all land divisions. A "subdivision," under state statute, is:

a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where: (a) The act of division creates 5 or more parcels or building sites of 1½ acres each or less in area; or (b) Five or more parcels or building sites of 1½ acres each or less in area are created by successive divisions within a period of five years. Sec. 236.02(12), Wis. Stats.

Under the state statutes, land divisions that do not meet the state definition of "subdivision," are not subject to the state agency review provisions and standards. A land division of four one acre lots, for example, would not be subject to state review.

Pursuant to section 236.45(2) of the Wisconsin Statutes, local governments, including counties, may adopt ordinances regarding the division of land that are *more restrictive* than the

minimal requirements of state law. The ordinances may include provisions regulating divisions of land into parcels larger than one and one-half acres, or divisions of land into less than five parcels, and may prohibit the division of land in areas where such prohibition will carry out the purposes for local subdivision review. Those purposes are:

promote the public health, safety and general welfare of the community... lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playground and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations...shall be made with reasonable consideration...of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land... . Wis. Stat. § 236.45(1).

Given the above example, while the subdivision of four one acre lots would not meet the state definition of "subdivision," it could meet a county ordinance's definition of "subdivision" and be subject to the review process outlined in the county's ordinance. The issue for counties in defining "subdivision" is to decide to what extent the county wants to be more restrictive than the state defined concept of "subdivision."

The survey attempted to discern how counties have varied from the statutory definition of subdivision and adopted definitions of "subdivision" which are more restrictive than the state statutory definition. Eleven of the forty-six survey respondents with some type of county subdivision ordinance follow the state definition of subdivision. The majority of the counties responding to the survey have adopted a more restrictive definition of "subdivision." These definitions are summarized in Appendix A. The following is an attempt to categorize the county definitions of "subdivision."

A. Definitions that specify larger lot sizes

Some ordinances provide for review of subdivisions where the parcel size or building sites are greater than one and one-half acres. This would enable a county to review the proposed subdivision of land into, for example, two and one-half acres, five acres or 10 acre lots. Examples from county ordinances include the following.

Bayfield: "The division of a parcel of land for the purpose of transfer or development which results in the creation of 5 or more parcels of less than five (5) acres in area within a period of 5 years."

Douglas: Any division of a lot, parcel, or tract of land by the owner or his agent for the purpose of sale or building development, where; 1) The act of division creates 5 or more parcels or building sites of less than ten acres each; or 2.) Five or more parcels or building sites of less than ten acres each in area are created by successive divisions within a five year period.

Jackson: "The division of a parcel of land into 5 or more building sites or lots, each of which is less than a rectangular half of a governmental protracted quarter-quarter section where an act of division creates 5 or more parcels or building sites of less than a rectangular half of a government protracted quarter-quarter section from a lot of record within a 5 year period."

Outagamie: "The division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of transfer of ownership or building development, where the act of division creates 5 or more parcels or building sites of 5 acres each or less in area of where the act of division creates 5 or more parcels of building sites of 5 acres or less in area by successive division within a 5 year period.

Racine: "... the division of a lot, outlot, parcel or tract of land by the owner thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates five (5) or more parcels or building sites of three (3) acres or less in area by successive division within a period of (5) years."

Washington: the division of a lot, parcel or tract of land by the owner, any successor in interest or any agent of either were: (1) The act of division creates five (5) or more parcels or building sites of five (5) acres or less in area; or (2) Five (5) or more parcels or building sites of five (5) acres each or less in area are created by successive division within five (5) years.

Waushara: "A division of a parcel of land where the act of division creates: (a) Five or more lots, parcels or building sites of 5 acres each or less in area; or (b) Five or more lots, parcels or building sites of 5 acres each or less in area by successive divisions within a period of 10 years. All area calculations are to be exclusive of any dedications, public right-of-way easements for ingress-egress, or reservations. For the purposes of enforcement, no parcel of land existing at the time of the adoption of this amendment (regardless of ownership) may be further divided into five or more lots, parcels or building sites, as described above without meeting the requirements of this and other applicable sections of this ordinance."

Sometimes the ordinances do not specify a lot size. Under these ordinances, a division of any size would fall under the review of the ordinance. Examples of this are:

Dodge: "The division of a lot, outlot, parcel, or tract of land by the owner thereof, or his agent for the purpose of transfer of ownership or building development where the act of division creates five or more parcels or building sites; or where the act of division creates five or more parcels or building sites by successive division within a period of five years, whether done by the original owner or a successive owner."

Lot size does not have to be based on acreage alone. Burnett County's ordinance, for example, includes a definition of "subdivision" which is based on both an acreage standard and applies to parcels of 300 feet or less in width.

B. Fewer number of lots created and larger lot size

A second option is to have a definition of subdivision which provides for the review of subdivisions with larger lot sizes than specified in state statute and which create fewer than five lots.

Examples of these ordinances include:

Barron: "The creation of one or more parcels of land where at least one of the parcels being created is 11 acres or smaller in area, unless the division is exempt as provided . . . in this chapter. A land division occurs whenever such a parcel is created by means of deed, contract of sale or transfer, plat, survey map or similar instrument where the purpose of the division is to facilitate transfer of ownership or to facilitate building development arranged within the new lot, parcel or segment boundaries."

Clark: "the division of a lot, parcel or tract by the owner thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates three or more parcels or building sites of five acres each or less in area of where the act of division creates three or more parcels or building sites of five acres each or less in area by successive divisions within a five-year period."

Lafayette: "...any division of a parcel of land by the owner or his agent for the purpose of sale or building development, where: (a) The act of division creates three or more parcels of five acres or less each. (b) Three or more parcels of five acres or less each are created by successive divisions within a five year period."

Price: "Any division of land by the owner or his agent for the purpose of sale of building development where the act of division creates one or more parcels or building sites less than 10 acres in size. Two adjoining parcels of common ownership are considered a contiguous parcel except where a public road or a navigable body of water divides said adjoining parcels, for the purpose of this

ordinance."

St. Croix: "A division of a lot, parcel or tract of land by the owner or the owner's agent for the purpose of transfer of ownership or building development where the act of division creates or results in one or more parcels or building sites of 35 acres or less in area."

"Major subdivision"--A subdivision creating not more than four lots within a 5-year period from a parcel of land existing on November 15, 1974.

Sauk: The division of a lot, parcel, tract or one-quarter (1/4) of one-quarter (1/4) section of the owner hereof or his agent, for the purpose of transfer of ownership or building development, where the act of division creates four (4) or more lots, or where the act of division creates four (4) or more lots by successive division within a five-year period; or proposed, potential or actual streets are created.

(a) Class I Subdivision. A subdivision which consists of fewer than ten (10) lots and includes all contiguous land under one (1) ownership.

(b) Class II Subdivision. A subdivision which consists of fewer than twenty-five (25) lots.

(c) Class III Subdivision. A Subdivision which consists of twenty-five (25) or more lots.

Shawano: "The division of a lot, parcel or tract of land by the owner thereof, or his agent, for the purpose of transfer of ownership or building development, where, the act of division creates 3 or more parcels or building sites of 5 acres each or less in area, or where the act of division creates 3 or more parcels."

C. Other options

Another option would be for the county ordinance to specify fewer parcels or building sites, but use the one and one-half acre lot size standard. Such a definition might read in part, "the act of division creates two or more parcels or building sites of one and one-half acres each or less in area."

None of the ordinances provided in response to the survey used such a definition. Some ordinances did, however, specify only a lot number and did not include any reference to lot size. For example:

Calumet: "Major Subdivision - The subdivision of any lot, area or tract of land into three or more new lots created by successive divisions from the same original tract of land within a period of five (5) years, for the purpose, whether immediate or future, or conveyance, transfer, improvement, or sale, with the appurtenant streets and easements, dedicated to public use."

"Minor subdivision status shall apply to those divisions creating less than three (3) lots from the same original tract or parcel within a period of five (5) years, where each lot contains 15.0 acres or less in net lot area. If acreage retained by subdivider is under 15.0 acres, two lots are allowed in addition to resulting lot."

D. The state/county relationship

The overlapping of state review and county review can be confusing when the county's definition of "subdivision" differs from the state's definition of subdivision. Some ordinances attempt to address the relationship of the state requirements and county requirements as follows:

Dunn: County plat: "a map of a division of land prepared in the same manner as required in creating a major subdivision, except that all reviews are completed at the County level in accordance with the terms of this ordinance and where: (a) The act of division creates five or more parcels or building sites, each less than twenty acres in area, of which no more than four (4) lots are one and one-half acres or less in area; or (b) Five or more lots, each less than twenty acres in area, of which no more than four lots are one and one-half acres or less in area, are created by successive divisions within a period of five years."

Major subdivision: "a division of land requiring a review by state agencies and county where: (a) The act of division creates five or more parcels or building sites, one and one-half acres each or less in area; or (b) Five or more parcels or building sites of one and one-half acres each or less in area are created by successive divisions within a period of five years."

Jackson: "All subdivisions which are not a State Defined Subdivision shall be exempt from submission to State agencies except as required by State law or in special circumstances where the Committee may require that submittal for reason they have reduced to writing in the minutes of an official meeting."

Polk: "Subdivision. A division of a lot, parcel or tract of land by the owner or the owner's agent for the purpose of transfer of ownership or building development where the act of division creates or results in one or more parcels or building sites of five (5) acres or less in area."

"Major subdivision. A subdivision crating five (5) or more lots any of which are five (5) acres or less in size within a 5-year period from a parcel of land existing on the effective date of this ordinance. Subdivisions which have five (5) or more lots of 1 1/2 acres or less shall be considered state subdivisions."

"Minor subdivision. A subdivision creating two (2) to four (4) lots any of which are five (5) acres or less in size within a 5-year period from a parcel of land existing on the effective date of this ordinance."

"State subdivision....[definition from Chapter 236]."

Winnebago: "Major Land Divisions - The creation of five or more parcels or building sites of five acres or smaller in size by successive divisions within a period of five years. Within the classification of Major Land Division, there shall be subclassifications of:

Subdivision, County - Subdivisions satisfying this classification, are subject to County review, and do not require state review. The subdivision of a lot, parcel or tract of land by the owner

thereof or the owner's agent for the purpose of sale or of building development, where: (a) The act of division creates five or more parcel or building sites, each or which is larger than one and one-half acres and which is five acres or smaller in size: or (b) Five or more parcels or building sites each of which is larger than one and one-half acres and which is five acres or smaller in size and created by successive divisions within a period of five years.

Subdivision, State-[restates definition from Sec. 236.02(12), Wis. Stats.]"

The term "county plat" used in the above except from Dunn County's ordinance usually refers to county ordinances which have established more restrictive surveying, monumenting, mapping and recording requirements than the requirements of Chapter 236. The authority to establish different requirements is provided for in section 236.45 of the Wisconsin Statutes.

V. Certified Survey Maps

Under state law, divisions of land that do not meet the state definition of "subdivision" may fall within the statutory provisions for land divisions known as "certified survey maps." Certified survey maps cannot exceed four parcels. Certified survey maps can be recorded in the office of the register of deeds of the county. There is no lot size associated with the use of certified survey maps. County ordinance definitions vary for land divisions that do not fall within the county definition of "subdivision." The county ordinance may refer to these divisions as "certified survey maps" or the county may refer to the divisions as "minor subdivisions." The more restrictively the county defines "subdivision," the fewer types of land divisions will fall within the county definition of "certified survey map" or "minor subdivision."

Under the state land division laws, certified survey maps are subject to a less stringent review process. Section 236.24(2) of the Wisconsin Statutes, however, allows local subdivision ordinances to specify additional standards for the review of certified survey maps. Of the counties with subdivision ordinances, 78% indicated that they applied standards for the review of certified survey

maps. Evaluating the standards, however, is difficult. For those survey respondents who did not include copies of their subdivision ordinances, it is not apparent how the standards that appear in the county ordinance are more stringent than the minimal standards contained in state statutes.

A more inclusive definition of "subdivision" and/or developing standards for the review of certified survey maps can provide counties with an important tool for reviewing land divisions that may not be subject to state review given the limited definition of a "subdivision" under state statutes. Such review is important considering the cumulative impacts of smaller land divisions. Since a subdivision needs to comply with the most restrictive requirements, county ordinance standards for a more extensive review of subdivisions which under state statute would be classified as certified survey maps allow counties to be more assertive in the use of their authority.

VI. Condominium Subdivisions

Chapter 236 governing land divisions does not apply to condominium developments because land is not being divided. Under the law of condominiums, land is held in common while the dwelling units are owned individually. Condominiums are therefore outside the state definition of "subdivision." While many people think of condominiums as apartment buildings or other multi-family type structures, a condominium is a form of ownership, not a type of housing. Increasingly in Wisconsin, single family detached residential developments are being proposed and built as condominiums. Condominiums are governed by Chapter 703 of the Wisconsin Statutes, the "Condominium Ownership Act."⁶

⁶Typically under the condominium form of ownership, each dwelling unit is owned by its occupant. The land on which the dwelling unit is built as well as the land separating the dwelling units may be owned in common by all of the development owners. A description of the common elements of a condominium is contained in a document know as the condominium declaration. The physical layout of single family detached residential developments built under a condominium form of ownership often looks the same as a residential

While Chapter 236 does not apply to condominium subdivisions, Chapter 703 of the Wisconsin Statutes state that local zoning and subdivision regulations can apply to condominium developments. To apply a local subdivision ordinance to a condominium development, however, the local ordinance must state that it applies to condominiums. Local communities can then apply the same subdivision requirements for conventional developments to condominium developments. Local subdivision regulations, however, cannot discriminate against condominium developments. Wisconsin law explicitly provides that subdivision and other land use regulations may not prohibit the condominium form of ownership or impose any requirements upon a condominium that it would not impose upon a physically identical development under a different form of ownership. The intent is to provide local communities with a tool to insure that condominium developments comply with the same requirements as conventional subdivisions for such things as street widths, storm drainage issues, and open space requirements, etc. Of the counties responding to the survey, only 35% indicated that the county subdivision ordinance applied to condominium subdivisions. Most counties (65%) have not included language in their subdivision ordinances that would make the provisions of those ordinances applicable to condominium subdivisions. For more information on condominiums, see Appendix B.

VII. Notable features of some county subdivision ordinances

Several of the subdivision ordinances submitted in response to the survey included some provisions which made them stand out from the rest. Eight ordinances provide for flexible development concepts like cluster development, planned unit developments, or planned residential

subdivision built under traditional ownership methods where the occupant owns both the lot and the dwelling unit and there are no common elements.

unit development. Concepts such as planned unit developments typically provide for a mixture of building or housing type and uses often resulting in a clustering of structures and the provision of open space. These concepts can involve extensive site plan review in which local officials have considerable involvement in determining the nature of the development. The ordinance examples provided with the survey responses are not very detailed. In the ordinances, the flexible development concepts are not mandatory but are included as an option to more traditional development concepts. A copy of the cluster and planned unit development section from the Price County Subdivision Control Ordinance is included as Appendix C. More counties should consider including express provisions for cluster and planned unit development concepts in their ordinance to open the door to a greater variety of development options.

Another interesting feature is found in Calumet County's subdivision ordinance. Calumet County has a growth management policy in its subdivision ordinance. That policy is included as Appendix D. Calumet County uses the growth management policy to limit the amount of non-agricultural growth occurring in the unincorporated areas of the county by restricting the number and location of new buildable lots created by all forms of land subdivision. According to a notation on the survey, that provision has been effective in limiting rural subdivisions.

Finally, Waushara County's ordinance requires an economic and environmental impact statement for subdivisions of over 100 lots platted within a five year period. These notable features begin to demonstrate the important role that subdivision ordinances can play in promoting orderly and economical development within a county.

VII. Fees for subdivision review

Counties are allowed to charge an administrative fee for the processing of preliminary and

final plats. The fee structure varies widely from county to county. Some counties charge a fee for preliminary plats only. Some charge a fee for final plats only. Some charge for both preliminary and final plats. Some charge a flat fee for each preliminary and/or final plats. Some charge a per lot fee for preliminary and/or final plats. Some counties charge a combination of flat fee and per lot fee for preliminary and/or final plats. Some counties charge no fee for preliminary or final plats. Some counties charge different flat fees based on the size of the proposed subdivision. For preliminary plats, flat fees range from \$ 0.00 to \$ 250.00, and per lot fees range from \$ 0.00 to \$ 25.00. For final plats, fees range from \$ 0.00 to \$ 175.00, and per lot fees range from \$ 0.00 to \$ 15.00. Fees for the review of certified survey maps range from \$ 0.00 to \$ 75.00. Fees for the review of condominium subdivisions range from \$ 0.00 to \$150.00.

Besides an administrative fee for the processing of subdivision plats, a few counties indicated that they charge a fee in lieu of dedication for parkland. However, this was not a question that was asked on the survey and remains open to further research.

IX. Conclusion

The examples from around the state reported in this working paper present a range of options available to counties for reviewing subdivisions. Even without a county subdivision ordinance, there is a statutory process that governs land divisions in Wisconsin. Counties have the option of adopting ordinances which are more restrictive than the statutory process. Counties should be encouraged to explore adopting subdivision ordinances if they do not have an ordinance. Counties that have subdivision ordinances should ensure that the ordinances are periodically updated to reflect legal changes and development trends. For example, simple technicalities, such as including a provision in a local ordinance stating that the ordinance applies to condominium plats, will be critical to a

county's effort at some future date to review a proposed condominium development. Unfortunately, the full potential for using subdivision ordinances to help manage growth within a community is often either not well understood or ignored.

Beyond the formalities of having a subdivision ordinance in place, it is also important for counties to insure that those ordinances are properly administered. A well drafted ordinance can ease administration of the subdivision review process. Given the potentially complex and confusing nature of subdivision review, county subdivision ordinances need to outline the state's role in reviewing subdivisions and the various review authorities that the county may exercise. The ordinance should also clarify the county's relationship to the incorporated and unincorporated areas of the county. If the subdivision review process can be clarified, local subdivision review will become a more effective tool. Some of the examples included in this working paper can aid counties in drafting subdivision ordinances to help clarify the subdivision process. Those counties which creatively use their subdivision ordinances will have an important tool for shaping development within the county.

APPENDIX A

COUNTY DEFINITIONS OF "SUBDIVISION"

Listed below are the survey responses regarding how the county defines "subdivision." Responses in quotation marks (" ") are direct quotes from ordinances that were enclosed with the survey responses. Otherwise the responses were taken verbatim from the survey form.

- Ashland: Division of land for the purpose or sale or building where the act creates five or more lots in a five year period.
- Barron: See LAND DIVISION. Subdivisions that meet the definition of Sec. 236.02(8), Wis. Stats., are governed by the applicable provisions of Ch. 236, Wis. Stats. Land Division: "The creation or one or more parcels of land where at least one of the parcels being created is 11 acres or smaller in area, unless the division is exempt as provided . . . in this chapter. A land division occurs whenever such a parcel is created by means of deed, contract of sale or transfer, plat, survey map or similar instrument where the purpose of the division is to facilitate transfer of ownership or to facilitate building development arranged within the new lot, parcel or segment boundaries."
- Bayfield: "The division of a parcel of land for the purpose of transfer or development which results in the creation of 5 or more parcels of less than five (5) acres in area within a period of 5 years."
- Buffalo: The division of a lot, parcel, or tract by the owners thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates five or more parcels or building sites of one and one-half acres each or less in area or where the act of division creates five or more parcels or building sites of 1 1/2 acres each or less by successive division within a 5 year period.
- Burnett: The division of land for the purpose of transfer or development which results in the generation of parcels less than 5 acres or any parcels 300' or less in width
- Calumet: "Major Subdivision - The subdivision of any lot, area or tract of land into three or more new lots created by successive divisions from the same original tract of land within a period of five (5) years, for the purpose, whether immediate or future, or conveyance, transfer, improvement, or sale, with the appurtenant streets and easements, dedicated to public use."

"Minor subdivision status shall apply to those divisions creating less than three (3) lots from the same original tract or parcel within a period of five (5) years, where each lot contains 15.0 acres or less in net lot area. If acreage retained by subdivider is under 15.0 acres, two lots are allowed in addition to resulting lot."
- Clark: "the division of a lot, parcel or tract by the owner thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates three or more parcels or building sites of five acres each or less in area of where the act of division creates three or more parcels or building sites of five acres each or less in area by successive divisions within a five-year period."

- Crawford: Major = chapter 236. Minor = act of division of 1 or more lots, 15 acres or less.
- Dodge: "The division of a lot, outlot, parcel, or tract of land by the owner thereof, or his agent for the purpose of transfer of ownership or building development where the act of division creates five or more parcels or building sites; or where the act of division creates five or more parcels or building sites by successive division within a period of five years, whether done by the original owner or a successive owner."
- Douglas: Any division of a lot, parcel, or tract of land by the owner or his agent for the purpose of sale or building development, where; 1) The act of division creates 5 or more parcels or building sites of less than ten acres each; or 2.) Five or more parcels or building sites of less than ten acres each in area are created by successive divisions within a five year period.
- Dunn: Highway right of way plat:

County plat: "a map of a division of land prepared in the same manner as required in creating a major subdivision, except that all reviews are completed at the County level in accordance with the terms of this ordinance and where: (a) The act of division creates five or more parcels or building sites, each less than twenty acres in area, of which no more than four (4) lots are one and one-half acres or less in area; or (b) Five or more lots, each less than twenty acres in area, of which no more than four lots are one and one-half acres or less in area, are created by successive divisions within a period of five years."

Major subdivision: "a division of land requiring a review by state agencies and county where: (a) The act of division creates five or more parcels or building sites, one and one-half acres each or less in area; or (b) Five or more parcels or building sites of one and one-half acres each or less in area are created by successive divisions within a period of five years."
- Eau Claire: Any division of land into 5 or more parcels of 1.5 acres or less. Any division less than 20 acres must be surveyed
- Fond du Lac: "Major Subdivision: A subdivision that creates 5 or more parcels, lots, or building sites of 1.5 acres each or less in area, or five or more parcels, lots, or building sites of 1.5 acres each or less in area created by successive divisions within a period of 5 years.
- Green: Act of division creates 3 or more parcels each under 5 acres not including right of way.
- Iowa: The division of a lot, parcel or tract by the owner thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates 3 or more parcels or building sites of 5 acres each or less in area by successive division within a 5 year period.
- Jackson: "The division of a parcel of land into 5 or more building sites or lots, each of which is less than a rectangular half of a governmental protracted quarter-quarter section of where an act of division creates 5 or more parcels or building sites of less than a rectangular half of a government protracted quarter-quarter section from a lot of record within a 5 year period. All subdivisions which are not a State Defined Subdivision shall be exempt from submission to

State agencies except as required by State law or in special circumstances where the Committee may require that submittal for reason they have reduced to writing in the minutes of an official meeting

LaCrosse: Same as chap. 236.

Lafayette: "...any division of a parcel of land by the owner or his agent for the purpose of sale or building development, where: (a) The act of division creates three or more parcels of five acres or less each. (b) Three or more parcels of five acres or less each are created by successive divisions within a five year period."

Langlade: Anytime more than 4 lots of less than 10 acres are created in less than a 5 year period.

Lincoln: Creation of 3 or more parcels or building sites of 5 acres or less in area within 5 years.

Marinette: A division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development where: The act of division creates 5 or more parcels of 1 1/2 acres each or less or 5 or more parcels by successive divisions within a period of 5 years. [Part of shoreland zoning code]

Manitowoc: 5 lots 1 1/2 acres or less within a 5 year period of time requires a plat. 5 acres or less requires a certified survey.

Monroe: Every division of land within the county except those subdivisions which are served by public sewerage systems.

Oconto: See Statutes Chap. 236.

Outagamie: "The division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of transfer of ownership or building development, where the act of division creates 5 or more parcels or building sites of 5 acres each or less in area of where the act of division creates 5 or more parcels of building sites of 5 acres or less in area by successive division within a 5 year period.

Pepin: Division of five or more lots of 1 1/2 acres or less in a five year period.

Pierce: 5 lots under 1.5 acres in 5 years. (never used in unincorporated area.)

Polk: "Subdivision. A division of a lot, parcel or tract of land by the owner or the owner's agent for the purpose of transfer of ownership or building development where the act of division creates or results in one or more parcels or building sites of five (5) acres or less in area."

"Major subdivision. A subdivision crating five (5) or more lots any of which are five (5) acres or less in size within a 5-year period from a parcel of land existing on the effective date of this ordinance. Subdivisions which have five (5) or more lots of 1 1/2 acres or less shall be considered state subdivisions."

"Minor subdivision. A subdivision creating two (2) to four (4) lots any of which are five (5) acres or less in size within a 5-year period from a parcel of land existing on the effective date of this ordinance."

"State subdivision...."

Price: "Any division of land by the owner or his agent for the purpose of sale of building development where the act of division creates one or more parcels or building sites less than 10 acres in size. Two adjoining parcels of common ownership are considered a contiguous parcel except where a public road or a navigable body of water divides said adjoining parcels, for the purpose of this ordinance."

Racine: "... the division of a lot, outlot, parcel or tract of land by the owner thereof, or his agent, for the purpose of transfer of ownership or building development where the act of division creates five (5) or more parcels or building sites of three (3) acres or less in area by successive division within a period of (5) years."

Rock: Division of real property by the owner thereof for the purpose of sale or building development which creates: 1) one or more lots, parcels or ownership units of less than 15 acres, 2) the need for public dedication of land.

Sauk: The division of a lot, parcel, tract or one-quarter (1/4) of one-quarter (1/4) section of the owner hereof or his agent, for the purpose of transfer of ownership or building development, where the act of division creates four (4) or more lots, or where the act of division creates four (4) or more lots by successive division within a five-year period; or proposed, potential or actual streets are created.

(a) Class I Subdivision. A subdivision which consists of fewer than ten (10) lots and includes all contiguous land under one (1) ownership.

(b) Class II Subdivision. A subdivision which consists of fewer than twenty-five (25) lots.

(c) Class III Subdivision. A Subdivision which consists of twenty-five (25) or more lots.

St. Croix: "A division of a lot, parcel or tract of land by the owner or the owner's agent for the purpose of transfer of ownership or building development where the act of division creates or results in one or more parcels or building sites of 35 acres or less in area."

"Major subdivision"--A subdivision creating not more than four lots within a 5-year period from a parcel of land existing on November 15, 1974.

Sawyer: 5 parcels, 1 1/2 acres or less or 5 parcels 1 1/2 acres of less in five years.

Shawano: "The division of a lot, parcel or tract of land by the owner thereof, or his agent, for the purpose of transfer of ownership or building development, where, the act of division creates 3 or more parcels or building sites of 5 acres each or less in area, or where the act of division creates 3 or more parcels

Taylor: Any split creating a parcel less than 10 acres.

Vilas: The division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of transfer of ownership or for building development.

Walworth: Creating 5 or more parcels of 15 acres each or less in area; 5 or more parcels as above within a 1 year period.

Washington: the division of a lot, parcel or tract of land by the owner, any successor in interest or any agent of either were: (1) The act of division creates five (5) or more parcels or building sites of five (5) acres or less in area; or (2) Five (5) or more parcels or building sites of five (5) acres each or less in area are created by successive division within five (5) years.

Waukesha: 3 or more lots of 5 acres each or less in 5 years.

Waupaca: Minor subdivision--creating 2 parcels five acres or less. Subdivision - 3 or more parcels, 5 acres each or less or 3 or more parcels within a 5 year period.

Waushara: Land division: "A division of a parcel of land where the act of division creates: (a) Five or more lots, parcels or building sites greater than (5) but less than (15) acres in area; or (b) Five or more lots, parcels or building sites greater than (5) but less than (15) acres in area by successive divisions within a period of (10) years. (c) Less than five lots, parcels or building sites of five (5) acres each or less in area; or (d) Less than five (5) lots parcels or building sites of 5 acres or less in area by successive divisions within a period of 10 years. All area calculations are to be exclusive of any dedications, public right-of-way easements for ingress-egress or reservations."

Subdivision: "A division of a parcel of land where the act of division creates: (a) Five or more lots, parcels or building sites of 5 acres each or less in area; or (b) Five or more lots, parcels or building sites of 5 acres each or less in area by successive divisions within a period of 10 years. All area calculations are to be exclusive of any dedications, public right-of-way easements for ingress-egress, or reservations. For the purposes of enforcement, no parcel of land existing at the time of the adoption of this amendment (regardless of ownership) may be further divided into five or more lots, parcels or building sites, as described above without meeting the requirements of this and other applicable sections of this ordinance."

Winnebago: "Major Land Divisions - The creation of five or more parcels or building sites of five acres or smaller in size by successive divisions within a period of five years. Within the classification of Major Land Division, there shall be subclassifications of:

Subdivision, County - Subdivisions satisfying this classification, are subject to County review, and do not require state review). The subdivision of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where: (a) The act of division creates five or more parcel or building sites, each or which is larger than one and one-half acres and which is five acres or smaller in size: or (b) Five or more parcels or building sites each of which is larger than one and one-half acres and which is five acres or smaller in size and created by successive divisions within a period of five years.

APPENDIX B

CONDOMINIUMS AND SUBDIVISIONS

Increasingly in Wisconsin, single family detached residential developments are being proposed and built as condominiums. While many people think of condominiums as apartment buildings or other multi-family type structures, a condominium is really a form of ownership.

Typically under the condominium form of ownership, each dwelling unit is owned by its occupant. The land on which the dwelling unit is built as well as the land separating the dwelling units may be owned in common by all of the development owners. A description of the common elements of a condominium is contained in a document known as the condominium declaration. The physical layout of single family detached residential developments built under a condominium form of ownership often looks the same as a residential subdivision built under traditional ownership methods where the occupant owns both the lot and the dwelling unit and there are no common elements.

The condominium form of ownership is very versatile and can be used to mix certain uses, such as residential uses and commercial uses. It also lends itself well to the preservation of open space and cluster development. The condominium form of ownership is also appealing to those who may want less costly housing or who do not want the responsibilities of maintenance associated with more conventional home ownership. Because of these attributes, condominiums are very attractive for recreational housing opportunities.

Management of a condominium is controlled by a condominium association much like a traditional subdivision can be managed by a homeowners or neighborhood association. Common responsibilities typically shared by the condominium association may include maintenance of the common spaces, landscaping, lawn/yard care, and snow removal. These responsibilities are often detailed in the bylaws of the condominium association.

While a person may have difficulty distinguishing the physical appearance of a single family detached residential developments built under a condominium form of ownership and a conventional subdivision, the law in Wisconsin does make some important distinctions. Subdivisions are governed by Chapter 236 of the Wisconsin Statutes and the detailed requirements for the division of lands contained in that chapter. Chapter 236 **does not** apply to condominium developments because land is not being subdivided.

The fact that condominiums do not need to comply with Chapter 236 should not make them automatically suspect as an vehicle to "circumvent" or "evade" the law. Condominiums are governed by Chapter 703 of the Wisconsin Statutes. That Chapter was passed in 1978 and is known as the "Condominium Ownership Act" and includes very strict requirements for the creation of condominiums.

In addition, local zoning and subdivision regulations can apply to condominium developments. Local communities can apply the same zoning and subdivision requirements for conventional developments to condominium developments. Local zoning and subdivision regulations, however, cannot discriminate against condominium developments. Wisconsin law explicitly provides that zoning, subdivision, and other land use regulations **may not prohibit the condominium form of ownership or impose any requirements upon a condominium which it would not impose upon a physically identical development under a different form of ownership.**

In order to apply a local subdivision ordinance to a condominium development, however, the condominium law includes an important technicality. The law specifies that **no subdivision ordinance may apply to any condominium unless the ordinance states that it applies to condominiums.** A simple statement in the local subdivision ordinance should suffice. Included below is an example.

Model subdivision ordinance language:

CONDOMINIUM PLATS

"A condominium plat prepared pursuant to Section 703.11 of the Wisconsin Statutes, and other applicable statutes, shall be reviewed by the [county, city, village, town] in the same manner as a subdivision plat as set forth in this ordinance and comply with the applicable design standards and required improvements of this ordinance."

Again, the intent in applying local subdivision ordinances to a condominium development is not to prohibit or otherwise place additional burdens on a condominium development which a conventional development would not need to meet. Rather, the intent is to provide local communities with a tool to insure that condominium developments comply with the same requirements as conventional subdivisions for such things as street widths, storm drainage issues, and open space requirements.

APPENDIX C

CLUSTER AND PLANNED UNIT DEVELOPMENT From Price County Subdivision Control Ordinance

Proposed cluster and planned unit development shall include a minimum of five acres of land, and shall be developed as a unit for residential uses only. The permitted number of lots in such developments shall be determined by dividing the total area of the development, excluding street, by the minimum permitted lot size as required. The minimum distance between principal structures shall be 20 feet. Land not used for lot and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or by dedication to the county or town or municipality. Lands dedicated to the public must be accepted by action of the governing bodies of the accepting units of government. If land is to be conveyed to owners of lots in the development, a homeowners association or similar legally constituted body shall be created to maintain the open space land.

APPENDIX D

CALUMET COUNTY GROWTH MANAGEMENT POLICY

Section 112

The purposes of this article are to effectively manage the rate of nonagricultural growth, to promote more efficient growth patterns and to minimize the public costs of non-agricultural growth in unincorporated areas, by restricting the number and location of new buildable lots created by all forms of land subdivision.

Section 113

For the above stated purpose, the following shall be considered the GROWTH MANAGEMENT POLICY of Calumet County, and be fully enforceable under this ordinance:

- a) No "Major Subdivision" of ten (10) or more lots in size, shall be permitted beyond the corporate limits of any incorporated city or village.
- b) "Major Subdivisions" of less than ten (10) lots in size may be permitted beyond municipal corporate limits, but not beyond the boundaries of any "Growth Service Area" shown on the GROWTH MANAGEMENT POLICY map. Only "Minor Subdivisions" shall be allowed beyond any "Growth Service Area" boundary.
- c) Under no circumstances shall any "Major Subdivision" be permitted unless all the lots of such subdivision will either be served by State - approved sanitary sewerage system, or contain sufficient area of soils which are fully suitable for placement of on-site sewage disposal systems.
- d) Any subdivision plat located beyond a Growth Service Area boundary as shown on the Growth Management Policy map, approved and recorded prior to the effective date of these regulations, may be further subdivided (one time only) subject to the following conditions:
 - 1) That at least 75% of the lots comprising the pre-existing plat have been developed with permanent, residential primary structures, or
 - 2) That such further land subdivision shall contain no more than nine (9) additional (new) lots.
- e) Major subdivisions of ten (10) or more lots may be permitted beyond the corporate limits, but within Growth Service Areas, subject to the following conditions:
 - 1) That such proposed new subdivision is contiguous to at least one other pre-existing subdivision of ten (10) or more lots in size; or
 - 2) That State approved sanitary sewerage facilities are first provided for all lots of the proposed new subdivision.

Section 114

The GROWTH MANAGEMENT POLICY map defines those areas where more extensive land subdivision (three (3) lots or more) will be allowed. These areas are termed "Growth Service Areas" and are meant to be in close proximity to the identified growth patterns of existing communities.

The "Growth Service Areas" contained upon the GROWTH MANAGEMENT POLICY map are based upon the urban service areas identified for Calumet County in the document "New Directions for Growth and Development", prepared by the East Central Wisconsin Regional Planning Commission.