



ORDINANCE # 124.2

Land Division Ordinance

This ordinance supersedes the former Subdivision Ordinance and shall take effect after its passage and posting as provided by law.

Adopted April 20, 2023 by the Town Board of the Town of Tainter, Dunn County, Wisconsin. Page II contains a complete adoption history.

____ Signature on file _____
Randy Valaske, Chairman

____ Signature on file _____
Justin Albricht, Supervisor

____ Signature on file _____
Marty Guarneri, Supervisor

____ Signature on file _____
Jeremy Kozumplik, Supervisor

____ Signature on file _____
Jerry Mrdutt, Supervisor

____ Signature on file _____
Doris Meyer, Clerk
Witness

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- 10-09-03 Adopted “Subdivision Ord. Section 5”
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**Town of Tainter
Dunn County, Wisconsin
Land Division Ordinance**

Section 1 - Introduction

1.1 Authority

These regulations are adopted under the authority granted by Secs. 60.22(3), 61.34(1), 236.45, and Chapter 703 of the Wisconsin Statutes.

1.2 Title

This Ordinance shall be known, referred to, or cited as the "Town of Tainter Land Division Ordinance" and it supersedes the former "Town of Tainter Subdivision Ordinance." Any references made outside of this document to the Town of Tainter Subdivision Ordinance shall be interpreted as meaning the Town of Tainter Land Division Ordinance.

1.3 Purpose and Intent

This Ordinance regulates land division and establishes requirements for land recording documents for lands that fall within the boundaries of the Town of Tainter, Dunn County, Wisconsin in order to:

- A. Promote the public health, safety and general welfare of the community.
- B. Provide a planned, orderly layout and appropriate use of land consistent with the Town Comprehensive Plan.
- C. Supplement County and State controls and ordinances.
- D. Strengthen local control of land use decisions and maintain the ability and right to control Town destiny.
- 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. Promote a street system that will not have a negative long-term effect on neighborhood quality, traffic flow and safety.
- L. Realize goals, objectives, policies and development standards set forth in plans, codes and ordinances adopted by the Town.

- M. To ensure a system for review of proposed condominium instruments that is identical to the review procedures for land divisions. Such review of condominiums is deemed appropriate because they function in the same manner and have the same neighborhood and environmental impacts as land divisions.
- N. Establish Town of Tainter standards for Plats and Certified Survey Maps.

1.4 Policy

The uncontrolled development and division of land in the Town of Tainter 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 Tainter, to assure that land to be divided or improved 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.

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.

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.

1.7 Severability

If a court of competent jurisdiction adjudges any section, provision or portion of this Ordinance unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby. To the extent that this Ordinance contains time limits, deadlines, notice requirements, or other provisions that are more restrictive than time limits, deadlines, notice requirements, or other provisions that provide protections for a subdivider contained in Chapter 236 of the Wisconsin Statutes, the time limits, deadlines, notice requirements or other provisions that provide protections for a subdivider contained in Chapter 236 shall apply.

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.

1.9 Effective Date

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

Section 2 - General Provisions

2.1 Jurisdiction/Applicability

- A. The jurisdiction of this Ordinance shall include all land and water within the boundaries of the Town of Tainter, Dunn County, Wisconsin.
- B. This Ordinance shall apply to all land divisions and to all other developments not involving a 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 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 Exemptions

In addition to exemptions under Wisconsin Statutes 236.45, the provisions of this Ordinance shall not apply to:

- A. Creation or realignment of a public right-of-way by a public agency.
- B. Divisions of land into lots, parcels, or tracts each of which is forty (40) acres in size or greater.
- C. Creation or realignment of an easement.
- D. Purchase, transfer, or development of space within an apartment building or an industrial or commercial building.
- E. Creation of a lien, mortgage, deed of trust, or any other security instrument.
- F. 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.
- G. Conveying an interest in oil, gas, minerals, or building materials, that is severed from the surface ownership of real property.

2.3 Compliance

Any parcel of land subject to the requirements of this Ordinance shall not be entitled to recording and/or improvements to the land unless such parcel is in full compliance with this Ordinance, Dunn County Ordinances, and the provisions of Chapter 236, Wisconsin Statutes.

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 project. 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.

2.5 Classifications of Land Divisions.

Land divisions are classified under this ordinance as either:

A. Minor Subdivision

- 1. Creation of a lot smaller than 20 acres from a contiguous tract shall require a certified survey map. A maximum of 4 lots smaller than twenty (20) acres may be created from each quarter-quarter or government lot within a contiguous tract within a 5-year period. Additional lots must be created by county plat or state plat.
- 2. Any lot created that is located in multiple quarter-quarters or government lots shall be counted against the quarter-quarter or government lot in which the greater area of the created lot lies.
- 3. Certified survey maps shall be prepared and submitted for review, approval, dedication, and recording as required by this ordinance, County regulations, and Ch. 236, Wis. Stats., as applicable.

B. Major Subdivision

1. County Plat

- a. County plats, while resembling state plats, are not subject to state administration review, but are subject to the surveying requirements of chapter 236, Wis. Stats., and shall be prepared and submitted for review, approval, dedication, and recording as required by this ordinance and County regulations.
- b. Creation of 5 or more lots of less than 1½ acres by a division or successive divisions within a period of 5 years within the contiguous tract meets the definition of state subdivision and is subject to state administrative review and the requirements for state plats under County regulations.

2. State Plat

Land divisions meeting the definition of state subdivisions are subject to mandatory state review under Ch. 236, Wis. Stat., as well as county review under County regulations.

2.6 Project Suitability

- A. Unless otherwise herein exempted, all parcels that fall within the jurisdiction of the Town of Tainter Land Division Ordinance shall provide a minimum twenty percent [20%] green space calculated using the lot area.

- B. Proposed projects that create a cul-de-sac or dead-end road is discouraged due to limited emergency access routes and higher maintenance costs and will only be approved if no other alternative exists.
- C. No proposed project shall be approved 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 Town Comprehensive Plan.
- D. No proposed project will be approved which is deemed 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, i.e. farming, or any other feature likely to be harmful to the health, safety or welfare of present and future residents of the proposed land division or of the Town. The Town Plan Commission may require the person submitting the proposed plan to furnish maps, data and other information as may be necessary to determine land suitability.
- E. 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 proposed project is not a suitable use and afford the person submitting the proposed plan 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.

2.7 Development Agreements

When considering any proposed project that falls within the scope of this ordinance, the Town Board shall be authorized to require a Development Agreement from the developer. The Development Agreement will be drafted by the developer and should include:

- A. Provisions clarifying duties to construct specific improvements
- B. The phasing of construction
- C. Timing, location and financing of infrastructure
- D. Reimbursement for Town directed oversized infrastructure to accommodate future growth beyond development area
- E. Any vesting of property rights for periods of not more than 10 years
- F. 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
- G. Means to mitigate anticipated impacts of the development on the general public or the environment
- H. Performance bonds (or other means of financial assurance approved by the Board) to protect the Town's interests
- I. Provisions for the developer to pay any professional costs (CSM/Plat review costs, supervision and inspection costs, attorney costs, etc.) incurred by the Town, both prior to and

during development, to complete the development in accordance with Town, County, State, and Federal requirements.

- J. A means for the Town Board to document that the developer met condition(s) set forth in the development agreement.

In reviewing a Development Agreement proposal, the Town Board may require changes to meet Town requirements. The Development Agreement must meet all conditions set forth by the Town Board before the Board will approve and sign the agreement.

2.8 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.

2.9 Design Standards and Improvements

All land divisions and proposed projects shall comply with provisions of Town ordinances and plans, Wisconsin Statutes, Dunn County Regulations, and any other applicable Federal laws or regulations, as now exists or hereafter amended, which are hereby adopted and incorporated as part of this Ordinance by reference. The Town Board may direct the developer to install public improvements, at the developer's expense, when the Board determines such improvements are necessary to comply with Town, County, State, or Federal laws or regulations. Such directed public improvements may lie outside the immediate development Plat area if the Board determines that granting the development will cause such public improvements to become necessary.

2.10 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. Where in the judgment of the Town Plan Commission, it would be inappropriate to apply literally the provisions of this ordinance because exceptional or undue hardship would result, the Commission may waive or modify any requirements to the extent deemed just and proper. Such relief shall be granted without detriment to the public good and without impairing the intent and purpose of this ordinance or the desirable general development of the Town. A majority vote of an established quorum of the Town Plan Commission and a majority vote of an

established quorum of the Town Board shall be required to grant any waiver or modification of this ordinance, and the reason shall be entered in the minutes of the meeting thereof. In granting variances and modifications, the Commission and the Board may require conditions to secure the objectives of this ordinance.

- C. **Variance Requests.** Variance requests shall be made in writing by the Subdivider and submitted to the Town 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 process. 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.

2.11 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.

2.12 Amendments

The Town Board may upon recommendation of the Town Plan 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.

2.13 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 subdivision 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.

2.14 Penalties

- A. The Town of Tainter Citation Ordinance lists violation costs, fees, assessments, and surcharges necessary to enforce this ordinance. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, forfeit the amount listed in the Town of Tainter Citation Ordinance. Each time a violation occurs constitutes a separate occurrence, or each day that a condition exists in violation of this ordinance constitutes an occurrence. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.
- 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. The Town at the expense of the Subdivider may order assessor's plat when a subdivision is created by successive divisions as provided in Wisconsin Statutes, Section 236.31(2).

2.15 Appeals

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

Section 3 - Definitions

3.1 Word Usage

For the purposes of this Ordinance, 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.

3.2 Definitions

Definitions for certain words or phrases used in this ordinance can found in the Wisconsin Statutes, Section 236.02 and the Dunn County Regulations. For the purposes of this ordinance, the following definitions either revise, supplement, or are in addition to definitions contained in the above referenced documents. Definitions with a preceding * are identical to those defined in the Dunn County Land Division, Condominium, and Surveying Regulations.

A.

1. ***Agricultural Management Area (AMA)***. Town land and water areas designated within the Town Comprehensive Plan as preferred Agricultural Management Area.
2. ***Agricultural Structure***. A structure whose sole purpose is dedicated to agricultural production, such as a barn, machine shed, grain bin, etc. A farm house, garage, or other structures such as a garden storage shed are not considered agricultural structures.
3. ****Applicant***. The owner of land proposed to be subdivided or the owner's representative who shall have express written authority to act on behalf of the owner.
4. ***Board***. The Town of Tainter Board of Supervisors.
5. ****Certified Survey Map (CSM)***. A map of a division of land into four (4) lots or less prepared in accordance with Ch. 236, Wis. Stats., and the terms of this chapter may be referred to as a CSM.
6. ***Commission***. The Town of Tainter Plan Commission.
7. ***Concept Map***. Map showing a proposed land division and/or improvement that is prepared by the subdivider and submitted to the Town Plan Commission prior the Subdivider's pre-application consultation with the Commission.
8. ****Contiguous***. Parcels of land sharing a common boundary. Parcels that meet at only a single point are not considered contiguous.
9. ****County***. Dunn County, including any agency, department or committee thereof.
10. ***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.
11. ****Final Plat***. A subdivision prepared in compliance with the provisions of Chapter 236, Wis. Stats., and the terms of this chapter.

12. ***Floodplain.** Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the flood fringe, and may include other designated floodplain areas for regulatory purposes. Floodplains are regulated by Chapter 15, Dunn County Code of Ordinances.
13. **Green Space.** Open space maintained in a natural, undisturbed, or revegetated condition. Mowed lawns do not qualify as green space.
14. **Limits of Disturbance (LOD) Lines.** The area specifically designated on a lot created through a land division within which future development activity (e.g., logging, excavation, structures, roads, driveways, lawns, wells, sewage disposal, swimming pools, private gardens, etc.) shall be contained.
15. ***Lot.** A parcel of land legally created by Plat or Certified Survey Map.
16. **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.
17. **Major Subdivision.** The creation of five or more lots or buildings sites which are less than forty (40) acres in size by successive divisions from the same [mother tract](#) within a period of five (5) years.
18. **Manufactured Home.** A structure, containing within it plumbing, heating, air conditioning, and electrical system, that is transportable in one or more sections of certain sizes and is built on a permanent chassis, and when connected to the required utilities, is designed to be used as a dwelling with or without a permanent foundation. Such housing must comply with the standards established under the National Manufactured Housing Construction and Safety Standards Act. *See* 42 USC 5401 to 5425 and ch. 409, *Wis. Stats.*
19. ***Minor Subdivision.** Certified survey map.
20. **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.
21. ***Navigable Waters.** Waters deemed navigable under the navigable-in-fact principle of Chapter 30, *Wis. Stats.*
22. **Open Space.** A portion of a development site that is permanently set aside for public or private uses and will not be developed. Open space may be used as community open space or preserved as green space.
23. **Open Space Preservation Area.** The portion of a land division designated for permanent agricultural, conservation, or open space uses.
24. ***Ordinary High Water Mark.** The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark, such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the

shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

25. ***Parcel.** A piece of land held in one ownership.
26. ***Plat.** The preliminary or final map of a County or State Plat or Assessor's Plat.
27. ***Preliminary Plat.** A map showing the features of a proposed subdivision submitted for purposes of preliminary consideration.
28. ***Replat.** The process of changing, or the map or plat which changes, the boundaries of a recorded plat, certified survey map or a part thereof.
29. **Sketch Map.** A map submitted with a Land Division Application for a minor subdivision that sufficiently details the proposed division so as to allow the Town Plan Commission to review the land division for potential compliance issues with applicable state, county, and town statutes, regulations, and ordinances.
30. ***Subdivider.** Any person, corporation or authorized agent who undertakes the subdivision of land as defined in this section.
31. ***Subdivision.** A land division which is affected under this ordinance by a certified survey map or plat.
32. **Town Comprehensive Plan.** The most recent adopted Town of Tainter Comprehensive Plan, including any subsequent amendments.
33. ***Variance.** A departure from the terms of this ordinance as applied to a specific building, structure, or parcel of land, which the Town may permit, pursuant to this chapter.
34. ***Wetlands.** Those areas identified on the DNR Surface Water Data Viewer as mapped wetlands or mapped by a DNR certified wetland delineator.
35. **Woodland.** Generally, a land area of twenty (20) acres or more characterized by dense and extensive tree cover. More particularly, a plant community predominately of healthy trees and other woody vegetation, well stocked and growing more or less closely together.

Section 4 – Approval of Certified Survey Map or Plat

4.1 Land Division Application

Prior to filing a Land Division Application, the applicant should schedule and attend a pre-application consultation with the Town Plan Commission. The pre-application consultation is intended to inform the applicant of the purposes and objectives of Town Ordinances, the Town Comprehensive Plan, and other duly adopted plan implementation devices to assist and potentially save the applicant money if the proposed project does not conform to requirements. In so doing, both the applicant and the Town may reach mutual conclusions regarding the objectives of the proposed project and its possible effects on the neighborhood and community. The consultation will also provide the applicant with a better understanding of required procedures and help determine what additional information may be required from the applicant pursuant Town, County, and State requirements.

The applicant has the option to forego the pre-application consultations and simply submit the application with a preliminary/final CSM or preliminary Plat. The Town may consider approving the CSM or preliminary Plat provided the purpose and objectives of Town Ordinances, the Town Comprehensive Plan, and other duly adopted plan implementation devices of the Town are met. If the CSM or preliminary Plat is not in compliance, the CSM or Plat may be rejected or conditionally approved. Applicants should carefully consider the possibility of increased costs due to changes to the CSM or Plat, resurveying, etc. when choosing to submit an application without attending a pre-application consultation.

The Land Division Application is available on the Town web site or from the Town Clerk. Information on meeting dates, agenda deadlines, and filing requirements may also be obtained from the Town Clerk.

4.2 Pre-application Consultation

- A. **Initial Consultation.** Prior to the first meeting with the Plan Commission, the applicant is asked to submit a letter of intent and thirteen (13) paper copies of a concept map to the Town Clerk at least fourteen (14) days prior to the scheduled meeting to give the Plan Commission time to review the proposed project.
 1. The letter of intent should include items such as:
 - 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 landowners.
 - 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 project.
 - h. The estimated timetable of development.
 2. The concept map should show the proposed project drawn to a reasonable scale in order to facilitate the pre-application consultation. If the concept map effects only a portion of

contiguously owned land, a map showing all contiguously owned land with the boundaries of the proposed project clearly annotated shall accompany the concept map. The concept map should fully and clearly represent the proposed project and as a minimum contain the following:

- a. Proposed general lot layout.
- b. Exterior boundaries.
- c. Existing and planned roadways.
- d. Any current and proposed easements.
- e. Approximate location of existing or proposed structures, including types of construction.
- f. Approximate location of existing land use, watershed areas, and ground cover.
- g. Location of any proposed land improvements (excavation, ditching, fencing, common septic systems, etc.).

B. Follow-on Consultations. Should the applicant choose, follow-on consultations may be scheduled to work out the proposed project in greater detail.

1. For proposed projects that will result in a CSM, thirteen (13) paper copies of a Sketch Map showing the information listed below should be submitted. A preliminary CSM may be submitted in lieu of a Sketch Map but must be accompanied by a Land Division Application and fee. Submissions must be received by the Town Clerk at least fourteen (14) days prior to the Plan Commission meeting.
 - 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 project.
 - 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.
 - k. Approximate location of the 20 percent green space as required under Sections 2.6A and Section 4.3A of this ordinance.
2. For proposed projects that will result in a Plat, the applicant or designee shall submit thirteen (13) paper copies of the Preliminary Plat prepared by a registered land surveyor at a scale of not more than one hundred (100) feet to the inch along with the Land Division Application, fees, and any other required documents to the

Town Clerk no later than 14 days prior to a scheduled Plan Commission meeting. In addition to the information required by Chapter 236 of the Wisconsin Statutes, the preliminary plat shall show correctly on its face the information listed above in Section 4.2B1 paragraphs a through k1.a along with any additional information required pursuant to the Dunn County Ordinances.

C. Town Plan Commission Consultation Actions.

1. For a consultation that considers either a Preliminary CSM or Preliminary Plat, the Town Plan Commission shall review submitted documents for conformance with Town Ordinances and the Town Comprehensive Plan. The Plan Commission may also review applicable County, State and Federal laws, ordinances, rules, regulations, and plans which may affect the Preliminary CSM or Preliminary Plat.
2. The Town Plan Commission shall recommend preliminary approval, conditional approval, or rejection of the Preliminary CSM or Preliminary Plat and shall notify the Town Board of their recommendation.

D. Town Board Consultation Actions.

1. For a consultation that considers either a Preliminary CSM or Preliminary Plat, the Town Board shall review submitted documents and the Plan Commission's recommendation.
2. The Town Board shall recommend preliminary approval, conditional approval, or rejection of the Preliminary CSM or Preliminary Plat. If the Preliminary CSM or Preliminary Plat is rejected or conditionally approved, the reason shall be stated in the minutes of the meeting and a copy of the meeting minutes sent to the individual submitting the Preliminary CSM or Preliminary Plat.

4.3 Town Required Annotations on Final CSM or Final Plat

In addition to County and State requirements, the following Town requirements will be displayed on all Certified Survey Maps (CSMs) and Plats (including Condominium Plats).

- A. **Green Space.** CSMs and Plats shall clearly show the location of the 20 percent green space as required under Section 2.6A of this ordinance unless the applicant can provide documentation showing that compensating green space for this CSM or Plat was already set aside in another CSM or Plat. A CSM or Plat containing more than one lot can proportion the green space as the applicant desires among the lots, however the depicted green space will still have to be at least 20 percent of the combined lot areas.
- B. **Statements.** All CSMs or Plats containing land that lies within the Town of Tainter shall include the following statements:

You are hereby notified that all land parcels shown on this [CSM or Plat] [that lie within the Town of Tainter] are subject to construction, green space, and other restrictions found in the Town of Tainter Land Division Ordinance.

You are hereby notified that this subdivision is located within or near property designated by the Town of Tainter Comprehensive 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.*

4.4 Additional Requirements

Where the Plan Commission or Town Board has a concern with the proposed project that requires additional information, they shall have the authority to request such information from the subdivider as they feel is required. Examples of such information include:

- A. A proposed subdivision layout of all or part of contiguously owned land even though division is not planned at the time.
- B. Where land is being proposed for residential or business development that will not be served by an existing sanitary sewer certified capable of serving the entire proposed project, the applicant may be required to prepare and submit random soil and site evaluations at a rate of one per 3 acres.
- C. In an effort to preserve the Town of Tainter's rural quality the subdivider may be required to create a natural buffer separating the proposed project from any State, County and Town Roads bordering the proposed project. This buffer may be counted toward the 20% green space requirement.
- D. The Town may require a Development Agreement per paragraph 2.7.

4.5 Processing a Land Division Application for a Certified Survey Map

A. Applicant Requirements.

- 1. The applicant or designee shall submit the Land Division Application along with required documents and fees to the Town Clerk no later than 14 days prior to a scheduled Plan Commission meeting. The Town needs these 14 days to meet processing notifications. Applications received less than 14 days prior to a scheduled Plan Commission meeting will be placed on the following month's agenda.
- 2. The applicant or designee shall attend all Town Plan Commission meetings where the proposed project is on the agenda. In addition, the applicant or designee shall attend the Town Board meeting where the final CSM is on the agenda, although the applicant or designee is encouraged to attend all Town Board meetings

considering the proposed project. The applicant or designee should present a short review of the proposed project and answer any questions. Failure of the applicant or designee to attend required meetings may be used as grounds to recommend denial of the application.

3. Any corrected CSMs must be submitted within six (6) months of the last preliminary CSM approval and must substantially conform to the preliminary approval, including satisfying any conditions of approval. If a corrected CSM is not submitted within six (6) months of the last preliminary approval or the CSM is substantially different, the CSM may be rejected requiring the entire approval process be repeated.

B. Town Clerk Review and Actions.

1. The Town Clerk shall receive the Land Division Application, required documents, and fees. The Town Clerk shall notify the applicant by first class mail or email of any items deemed missing by the Town.
2. The Town Clerk shall, within two (2) normal working days after filing, transmit copies of the application and other provided documents to the Town Plan Commission Chairman.
3. The Town Clerk shall send the subdivider, adjacent property owners of the subject site, and other applicable parties, a notice and agenda of the scheduled date of both the Town Plan Commission Meeting and the Town Board Meeting no later than ten (10) days prior to the date of the meetings by first class mail.
4. If a CSM is approved conditionally or rejected, the conditions of approval or the reasons for rejection shall be stated in the minutes of the meeting and a copy of the minutes provided to the applicant.

C. Town Plan Commission Review and Actions.

1. Upon receipt, the Town Plan Commission will review the application and provided documents for completeness and notify the Town Clerk of any missing items. The Plan Commission will also create and coordinate an application processing timeline with the Town Clerk to ensure the Town meets approval time limits established by Wisconsin Statutes, Section 236.34.
2. The Town Plan Commission shall review submitted documents for conformance with Town Ordinances, the Town Comprehensive Plan, and all other applicable Town laws, 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 proposed project.
3. When reviewing a CSM, the Plan Commission shall ensure the CSM conforms to any previously approved or conditionally approved CSM(s).
4. The Town Plan Commission shall within their established processing timeline, recommend preliminary approval, conditional approval or rejection of the proposed project and shall transmit their recommendation to the Town Board.

D. Town Board Actions.

1. The Town Board is the approval authority for CSMs.

2. In accordance with Wisconsin Statutes Section 236.34, “Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.”
 3. When a corrected CSM is submitted within six (6) months of the last preliminary CSM approval and it substantially conforms the preliminary approval, including satisfying any conditions of approval, the CSM is entitled to approval. If the CSM is not submitted within six (6) months of the last preliminary approval or the CSM is substantially different, the CSM may be rejected requiring the entire approval process be repeated.
- E. **Recordation.** After the CSM has been approved by the Town Board and required improvements have either been installed, 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 CSM attesting to such approval to be duly executed and the CSM returned to the subdivider for recording with the County Register of Deeds.

4.6 Processing a Land Division Application for a Plat Approval

A. **Applicant Requirements.**

1. The Town requires a preliminary plat review. If the applicant has not previously submitted a preliminary Plat that meets State, County, and Town preliminary Plat requirements, then any final Plat submitted with the Town’s Land Division Application is considered a preliminary Plat. The applicant or designee shall submit thirteen (13) paper copies of the Plat along with the Land Division Application, other required documents, and fees to the Town Clerk no later than fourteen (14) days prior to a scheduled Plan Commission meeting. The Town needs these fourteen days to meet processing notifications. Applications received less than fourteen days prior to a scheduled Plan Commission meeting will be placed on the following month’s agenda.
2. The applicant or designee shall attend both the Town Plan Commission meeting and Town Board meeting where the proposed project is on the agenda. The applicant or designee should present a short review of the proposed project and answer any questions. Failure of the applicant or designee to attend the meeting may be used as grounds to recommend denial of the application.
3. Per Wisconsin Statutes Section 236.11, “The subdivider or subdivider's agent shall submit to the body or bodies having authority to approve plats an electronic copy of the final plat or a copy of the final plat that is capable of legible reproduction.”

B. **Town Clerk Review and Actions.**

1. The Town Clerk shall receive the Land Division Application, required documents, and fees. The Town Clerk shall notify the applicant by first class mail or email of any items deemed missing by the Town.
2. The Town Clerk shall, within two (2) normal working days after filing, transmit the copies of the application and other provided documents to the Town Plan Commission Chairman.
3. The Town will attempt to make the same neighbor notifications the County makes. The Town Clerk shall send notifications containing the scheduled date and time of both the Town Plan Commission Meeting and the Town Board Meeting along with a Plan Commission agenda no later than ten (10) days prior to the date of the Plan Commission Meeting by first class mail to the subdivider and Town determined applicable neighbors.
4. If a plat is approved conditionally or rejected, the conditions of approval or the reasons for rejection shall be stated in the minutes of the meeting and a copy of the minutes provided to the applicant.

C. Town Plan Commission Review and Actions

1. Upon receipt, the Town Plan Commission will review the application and provided documents for completeness and notify the Town Clerk of any missing items. The Plan Commission will also create and coordinate an application processing timeline with the Town Clerk to ensure the Town meets approval time limits and required notifications established by Wisconsin Statutes, Section 236.34.
2. The Town Plan Commission shall review submitted documents for conformance with Town Ordinances, the Town Comprehensive Plan, and all other applicable Town laws, rules, regulations and plans. The Plan Commission may also review applicable County, State and federal laws, ordinances, rules, regulations, and plans which may affect proposed project.
3. When reviewing a plat, the Plan Commission shall ensure the plat conforms to any previously approved or conditionally approved preliminary plats.
4. The Town Plan Commission shall within their established processing timeline, recommend preliminary approval, conditional approval or rejection of the proposed project and shall transmit their recommendation to the Town Board.

D. Town Board Actions.

1. The Town Board is the approval authority for Plats.
2. In accordance with Wisconsin Statutes Section 236.11, "Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or extension thereof, constitutes an approval of the preliminary plat."
3. In accordance with Wisconsin Statutes Section 236.11, "If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 36 months after the last

required approval of the preliminary plat, any approving authority may refuse to approve the final plat or may extend the time for submission of the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat that the subdivider proposes to record at that time.”

4. In accordance with Wisconsin Statutes Section 236.11, “The approving authority or authorities shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider or subdivider's agent. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons shall be supplied to the subdivider or subdivider's agent. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority that has failed to act.”

E. Professional Engineer, Planner, or Another Person

In accordance with Wisconsin Statutes Section 236.11, “A professional engineer, a planner, or another person charged with the responsibility to review plats shall provide the approving authority with his or her conclusions as to whether the final plat conforms substantially to the preliminary plat and with his or her recommendation on approval of the final plat. The conclusions and recommendation shall be made a part of the record of the proceeding at which the final plat is being considered and are not required to be submitted in writing.”

4.7 Fees

- A. Application Review Fee. All Land Division Applications shall be accompanied by an application review fee established by the Board as set forth in the Town of Tainter 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 Land Division Applications.

Section 5 - Minimum Land Division Standards

5.1 Introduction and Intent

The intent of these conditions and restrictions are to preserve special attributes, to create and preserve an aesthetically pleasing residential neighborhood and enhance and protect the special living environment of the Town of Tainter.

5.2 Standards

- A. The minimum [lot area](#) in the Town of Tainter for single family housing is one (1) acre. This minimum lot area may be reduced to no less than one-half (1/2) acre by applying conservation subdivisions standards as described in Section 6.3A, Conservation Development Bonuses.
- B. The minimum [lot area](#) in the Town of Tainter for two family housing (a duplex) is two (2) acres. This minimum lot area may be reduced to no less than one (1) acre by applying conservation subdivisions standards as described in Section 6.3A, Conservation Development Bonuses.
- C. The minimum [lot area](#) in the Town of Tainter for multiple family housing is one (1) acre for each family unit (for example, a six unit apartment building would require 6 acres). This minimum lot area may be reduced to no less than one-half (1/2) acre for each family unit by applying conservation subdivisions standards as described in Section 6.3A, Conservation Development Bonuses.
- D. The minimum living space shall be 1,000 square feet (basement and garage excluded) in each single family home, 800 square feet (basement and garage excluded) in each half of a duplex, and 800 feet (basement and garage excluded) for each unit in multiple family housing.
- E. The minimum width for single family, two family, or multiple family structure shall be 24 feet.
- F. The roof pitch for all family structures shall meet minimum industry standards. No flat roofs will be allowed.
- G. Only newly constructed homes shall be permitted.
- H. The minimum acceptable exterior finish for homes shall be vinyl. All home accessory structures, including garages, are to conform to the colors and siding type selected for the home. [Agricultural structures](#) are not considered home accessory structures.
- I. No structure of a temporary character, trailer, basement, tent, shack, garage or other buildings shall be on any Lot as a residence either temporarily or permanently. However, this restriction shall not be interpreted nor applied as preventing the placement or erection of a manufactured home, manufactured or assembled after June 15, 1976, as a place of residence.

- J. No unlicensed motor vehicle which, in order to be operated on public highways, is required to be licensed, shall be kept, parked or stored on any Lot subject hereto except within a building or structure.
- K. Easements for the installation and maintenance of utilities and drainage are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which shall change the direction of flow or drainage channels on the easements which may obstruct or retard the flow of water through drainage channels in the easements.
- L. Solid waste, as defined at 289.01 (33), Wis. Stats., and recyclable materials, as defined with reference to the definition of “recycling” at 287.13 (1) (h), Wis. Stats., shall not be kept on property subject to these covenants except in sanitary containers.
- M. No flat roof storage sheds shall be permitted.
- N. There shall be a minimum of ten (10) six-foot (6’) trees, natural or planted, per lot.
- O. All private sewage systems as defined at 145.01 (12), Wis. Stats., must conform and comply with local and state law.
- P. Within twenty-four (24) months after the completion of each home which has been constructed on a Lot subject to this declaration of conditions and deed restrictions a garage shall be erected on the same Lot as the home.
- Q. Each Lot upon which construction has taken place shall, during the following growing season, if not before, be fully landscaped or planted so as to prevent soil erosion and other environmental problems.
- R. Recommend all dwellings provide or have immediate access to storm shelter.

5.3 Violations and Rights of Parties

If any party violates or attempts to violate any of the conditions or restrictions herein provided, it shall be lawful for any party or parties in interest in the above described lands to institute and prosecute proceedings at law or in equity against the parties violating, either to prevent said violation or recur damages, including but not limited to obtaining a restraining order and/or temporary injunction to immediately stop construction until the provisions herein are complied with.

Section 6 - Conservation Subdivision

6.1 Purpose and Analysis

The purpose of the conservation subdivision is to preserve resources and to maintain, as much as possible, the rural look and feel of the Town. By applying conservation development bonuses, the minimum lot size in a subdivision can be reduced. This reduced lot size may allow more lots to be created in a given parcel of land while at the same time increase the size of open space and green space. The Town has also found that placing the open space or green space into a homeowners association where all lot owners share ownership makes the lots more desirable. In an effort to promote conservation subdivisions, the Town requires subdividers to perform a normal development yield versus conservation development yield analysis for all major subdivisions.

The normal development yield is the maximum number of lots that could be created based on Sections 1-5 of this ordinance for the property being subdivided. To find the normal development yield, the subdivider shall prepare and submit a sketch map showing a potential layout of the maximum number of lots possible. This potential layout must conform to county zoning provisions such as lot widths, setbacks, etc. Land that cannot be developed (e.g. floodplains, wetlands, steep slopes, drainage ways, other laws and/or ordinances) shall be excluded when determining the normal development yield but may be counted towards the 20% green-space requirement.

The conservation development yield is the maximum number of lots that could be created by applying conservation development standards found under this Section. To find the conservation development yield, the subdivider shall prepare and submit a sketch map showing a potential layout of the maximum number of lots possible after applying at least 3 conservation development bonuses. This potential layout must conform to county zoning provisions such as lot widths, setbacks, etc. Land that cannot be developed (e.g. floodplains, wetlands, steep slopes, drainage ways, other laws and/or ordinances) may be considered as open space or green space (as appropriate) when determining the conservation development yield.

The subdivider will present the results of the normal development yield versus conservation development yield analysis to the Town Plan Commission.

6.2 Land Suitability

Land identified as being environmentally sensitive shall not be developed. These lands shall be identified as out lots or given another designation that indicates the land is not available for development. Areas determined to be environmentally sensitive shall not be included in the Normal Development Yield but may be included as open space when determining the Conservation Development Yield. Areas identified as being environmentally sensitive include, but are not limited to:

- A. All areas mapped as floodplain by the Federal Emergency Management Agency (FEMA), Wisconsin Department of Natural Resources, or any other public or private entity.
- B. All wetlands as defined in NR 103.02(5) of the Wisconsin Administrative Code, including a seventy-five (75)-foot buffer.
- C. All areas within seventy-five (75) feet of the ordinary high water mark of navigable streams and lakes, as identified by Wisconsin Department of Natural Resources Water Management Specialists.
- D. All areas having slopes greater than twenty (20) percent.
- E. Burial sites and Indian mounds.
- F. Drainageways that contain running water during spring runoff or during storm events including a twenty-five (25) foot buffer from the edge of the drainage way.
- G. Any specific areas determined by the Town Plan Commission to be environmentally sensitive.

6.3 Conservation Development Bonuses

The minimum lot area for non conservation development allowed under Section 5.2 may be reduced by applying conservation development bonuses identified below. These conservation development bonuses may only be applied to lots being served by a municipal sewer or a private shared sewage treatment facility, such as a recirculating sand filter system or other Town approved treatment system that meets or exceeds the treatment capability of a recirculating sand filter system. The Town of Tainter shall consider rezone requests for subdivisions that comply with conservation development standards, provided the rezone requests support the Town Comprehensive Plan.

- A. **Lot Size Reduction.** Applying the conservation development bonuses below may allow the creation of more lots than permitted under the normal development yield. Each conservation development bonus lot size reduction is stated as a percentage of reduction and all qualifying reduction percentages will be summed to come up with a final reduction percentage. This final percentage will then be used to determine the conservation development minimum lot size. However, in no case will the minimum lot size be less than the minimum size allowed under Section 5.2 for conservation subdivisions standards.
 1. Lots served by a municipal sewer or a private shared sewage treatment facility serving the subdivision, such as a recirculating sand filter system or other Town approved treatment system that meets or exceeds the treatment capability of a recirculating sand filter system – 30% reduction (must meet this requirement before applying any further reductions below).
 2. Shared water facilities – 10% reduction.
 3. Constructing a trail (i.e. walking path, bicycle path, etc.) through open space – 5% reduction for gravel, 10 % reduction for paved.
 4. Constructing a park (i.e. playground, and/or picnic area) – 10% reduction.
 5. Laying out the subdivision so that 70% of the lots border the open space – 10% reduction.

6. Laying out the subdivision so there is a natural buffer (woods, trees, garden, etc) between the development and any highways, county roads, or town roads so as to preserve the rural look of the community – 20 % reduction.
7. For each 5% of green space above the 20% green space requirement – 10% reduction.
8. For every 5% of land set aside as open space (this may include open space areas identified in other conservation bonuses) - 5% reduction.
9. Providing for access by the general public to open space – 20 % reduction.
10. Constructing a central meetinghouse of suitable size for the development – 10 % reduction.
11. Reusing historical buildings and structures, including those sites inventoried by the State Historical Society of Wisconsin. The U.S. Secretary of the Interior’s Standards for Rehabilitation of Historic Properties shall apply - 20 % reduction.

6.4 Performance Standards

- A. **General Considerations.** Conservation subdivisions shall identify a conservation theme or themes and shall be identified on the Land Division Application. Conservation themes may include, but are not limited to, forest stewardship, water quality preservation, farmland preservation, natural habitat restoration, viewshed preservation, or archaeological and historic properties preservation. The Town Plan Commission shall have the ability to specify which areas may be preserved.
- B. **Residential Lot Requirements.**
 1. Existing farmsteads to be preserved shall have a driveway as part of the preservation of scenic and historic rural character.
 2. Lots shall be configured to minimize the amount of road length required for the subdivision.
 3. Development envelopes shall be configured to minimize loss of woodlands.
 4. If agricultural uses are being maintained, lots shall be configured in a manner that maximizes the useable area remaining for such agricultural uses with a thirty (30) foot buffer between agricultural uses and residential structures.
 5. Lots within a subdivision shall be situated so that the maximum number of lots abut the common open space. A local street may separate lots from open space.
 6. Lots shall be oriented so that the maximum number of lots are oriented towards one or more of the following:
 - a. A central green or square.
 - b. A physical amenity such as a meadow, a stand of trees, or some other natural or restored feature.
 7. A thirty-five (35) foot native vegetation buffer shall be maintained around open water areas, unless a specific beach or grassed area is identified.
 8. Stormwater management “Best Management Practices” (BMPs)
 - a. Minimize the use of curb and gutter and maximize the use of open swales.
 - b. Roof downspouts shall drain to porous surfaces.

- c. Post development peak discharges during the one hundred (100)-year storm event shall be no greater than the pre-developed peak discharges during the two (2)-year storm event.
- d. The development shall capture eighty (80) percent of the sediment/pollutants from the two (2) year storm event.
- e. Landscape plantings shall be used to increase infiltration and decrease runoff.
- f. Natural open drainage systems shall be preserved.

6.5 Residential Cluster Siting Standards

- A. All residential lots and dwellings shall be grouped into clusters.
- B. Residential clusters shall be located to minimize negative impacts on the natural, scenic and cultural resources of the site and conflicts between incompatible uses
- C. Residential clusters shall avoid encroaching on rare plant communities, high quality sites, or endangered species identified by the Wisconsin Department of Natural Resources.
- D. Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels and local and regional recreational trails.
- E. Residential clusters shall be sited to achieve the following goals, to the extent practicable.
 - 1. Minimize impacts to prime farmland soils and large tracts of land in agricultural use, and avoid interference with normal agricultural practices.
 - 2. Minimize disturbance to woodlands, wetlands, grasslands, and mature trees.
 - 3. Prevent downstream impacts due to runoff through adequate on site stormwater management practices.
 - 4. Protect scenic views of open land from adjacent roads.
 - 5. Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.
- F. Landscaping around the cluster may be necessary to reduce or minimize off site views of residences.

6.6 Open Space Design

- A. **Common Open Space.** The minimum open space required shall be owned and maintained under one of the alternatives listed in Section 6.8, as approved by the Town Board. The uses within the open space shall be accessible to the residents of the development. The uses may also be available to the general public providing the proper approvals are received. The required open space shall be undivided and restricted in perpetuity from future development.
- B. Open space shall be designated as part of the development. The minimum required open space is twenty (20) percent of the gross acreage.
- C. Open Space Conservation Ranking (in order of significance). The areas to be preserved shall be identified on a case-by-case basis in an effort to conserve and provide the best opportunities to restore and enhance the natural features of each particular site.
 - 1. First priority will be given to intact natural communities, habitat and areas for rare and endangered species, environmental corridors and natural and restored prairies,

- significant historic and archaeological properties, prime or productive farmland and slopes greater than twelve (12) percent.
2. Second priority will be given to areas providing some plant and wildlife habitat and open space.
 3. Third priority will be given to areas providing little to no habitat but providing viewshed, recreation, or open space.
- D. The following areas or structures may be located within the open space area and shall be counted toward the overall open space percentage required.
1. Parking areas for access to the open space developed at a scale limited to the potential users of the open space.
 2. Privately held buildings or structures provided they are accessory to the use of the open space.
 3. Shared septic systems and shared potable water systems.
- E. Road right of ways shall not be counted towards the required minimum open space.
1. No more than fifty (50) percent of the required open space may consist of water bodies, ponds, floodplane, or wetlands.
 2. The portion of open space designated to provide plant and/or animal habitat shall be kept as intact as possible. Trails shall be designed to avoid fragmenting these areas.
 3. The areas of the open space designed for recreational uses such as trails, play fields, or community gardens shall be designed in a manner that avoids damaging historic or archaeological sites.
 4. A pathway system shall be included to connect existing or potential open space lands on adjoining parcels and shall connect these areas to neighborhood streets and to planned or developed trails.

6.7 Sewage and Water Facilities

- A. **Water Facilities.** Water for subdivisions shall be provided by individual on-site wells or by one or more community wells meeting the permit requirements of the State of Wisconsin and Dunn County. The use of shared or community wells are encouraged. Plans for shared or community wells shall include a wellhead protection plan with a separation distance for the zone of influence and sources of pollution. Such plans shall be submitted as part of the final construction plans.
- B. **Sewage Facilities.** All subdivisions shall be provided with adequate sewage treatment facilities meeting the standards of Dunn County and the permit requirements of the Wisconsin Department of Commerce and the Department of Natural Resources. Where sewage treatment is not provided by a publicly owned wastewater treatment works, a common sewage treatment and disposal unit located on the common open space is encouraged. Any common treatment facility must meet the requirements of Section 6.3.1. Such plans shall be submitted as part of the final construction plans.
- C. **Financial Guarantee.** A financial guarantee ensuring the construction and completion of the common facilities (e.g. roads, facilities covered in Section 6.3, etc.) shall be submitted to the Town of Tainter.

6.8 Ownership and Maintenance of Open Space and Common Facilities

The designated open space and common facilities shall be owned and managed by one or more of the following combinations:

- A. **Homeowner's Association.** If the common open space is proposed to be owned by a homeowners association, the instrument shall indicate that membership in the association is mandatory for all purchasers of homes in the development and their successors. It shall also indicate the homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners association. Such instrument shall be submitted for approval to the Town Plan Commission as part of the information required for the preliminary map or plat. The homeowners; association bylaws or the declaration of covenants, conditions and restrictions shall contain the following information:
 1. The legal description of the common land;
 2. A description of common facilities;
 3. The restrictions placed upon the use and enjoyment of the lands or facilities;
 4. Persons or entities entitled to enforce the restrictions;
 5. A mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses. A mechanism to assess real-estate taxes and insurance premiums;
 6. A mechanism for resolving dispute among the owners or association members;
 7. The conditions and timing of the transfer of ownership and control of land or facilities to the association;
 8. Any other covenants, restrictions and conditions the developer deems appropriate.
- B. **Condominium Associations.** If the common open space and facilities are to be held under the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, the condominium instruments shall identify the restrictions placed upon the use and enjoyment of the common open space. All common open space shall be held as a "common element" as defined in Section 703.01(2) of the Wisconsin Statutes. Such instrument shall be submitted for approval to the Town Plan Commission as part of the information required for the preliminary map or plat.
- C. **Public Dedication of Open Space and Streets.** The Town Board may accept the dedication of fee title or dedication of a conservation easement to the common open space. Such instrument shall be submitted for approval to the Town Plan Commission as part of the information required for the preliminary map or plat. The Town Board may accept the common open space provided:
 1. The common open space is accessible to the residents of the Town of Tainter.
 2. The Town of Tainter agrees to and has access to maintain the common open space.
 3. Streets or other public ways which have been designated on a duly adopted official map or element of the Town of Tainter comprehensive plan shall be dedicated or reserved by the subdivider to the Town of Tainter. The street or public way shall be

made a part of the map in the locations and dimensions indicated in the comprehensive plan (when adopted) and as set forth in this ordinance.