

# IV. TOOLS FOR PRESERVATION

Just as the town's open space system is made up of a variety of related pieces, so an effective strategy for preserving it requires a range of related preservation tools.

Most of the town's environmental and historical resources have survived to this date. However, some have been lost, and some have been saved only by large amounts of funds and effort. Hopefully, this section contains ideas which will help the town develop an overall preservation strategy, while improving its ability to anticipate and minimize problems.

In this section, the following sets of preservation tools are discussed:

**A. Responsible Private Ownership**—This is often the most desirable way to preserve open space resources. There are many sources that landowners can go to for information, technical assistance and cost-sharing programs.

**B. Public Education and Organization**—Open space preservation requires public involvement and support. The type of activity that can be undertaken in this area is limited only by lack of imagination.

**C. Regulations and Public Service Controls**—Local ordinances and planning decisions should reflect the goals and policies of the town land use plan. For this to happen, specific review procedures and development concepts are needed so all the people involved know what is expected of them.

**D. Public Acquisition of Property Rights**—Situations may arise in the future in which the acquisition of property rights is either the best or only solution to a preservation problem. When this occurs, the landowner and the town should be aware of the range of options available.

**E. Erosion and Sedimentation Control**—Erosion and sedimentation are a major cause of wetland and water quality problems. With proper management, these problems can be reduced substantially.

## A. RESPONSIBLE PRIVATE OWNERSHIP

Responsible private ownership should be considered the first line of defense in a local open space preservation strategy. The best way for a person to gain a solid understanding of and respect for the environment is to maintain a close, continuous relationship with a part of it. If enough people have this opportunity, public environmental protection efforts will enjoy strong local support. By placing too much of the responsibility for protecting the town's woodlands, wetlands, and waterways in the hands of agencies and bureaus, the link between people and the land can be weakened.

This is not to say that the town should abandon its public responsibility to protect the environment, however. There will always be people who will use land irresponsibly, and the town should in these cases, be ready to step in and balance private rights with public responsibilities. However, when people learn to use their land wisely on an individual level, the use of public funds and regulations can be minimized.

Land owners interested in protecting their open space resources have many sources of information, technical assistance, and cost-sharing funds available to them. This section discusses some of those sources and includes a listing of further sources which may be contacted.

## WOODLOT PROTECTION

Landowners in the town who own a continuous tract of from ten to 40 acres of woodland can be eligible for tax benefits under the Woodland Tax Law. Under this program, administered by the DNR Madison Area Forester, the state will exempt the owner's woodland from the general property tax. The owner pays 40 ¢ per acre per year to the town in lieu of the property tax.

Participants in the woodland tax program retain rights of public access to their property. Up to 20 percent of a woodlot can include unproductive areas, such as wetlands and rock outcroppings. If a landowner has less than the minimum acreage needed to qualify for the program, he or she can undertake a tree planting program to meet the minimum.

Another source of assistance to woodlot owners is the Forestry Incentives Program, also administered by the DNR forester. Under current program guidelines, it is possible to receive 75 percent of the cost of tree planting and 90 percent of the cost of other timber stand improvements.

The DNR forester or a private consulting forester can provide a wide range of advice on management for timber production, wildlife improvement, and soil and water conservation. They will mark trees for harvest, estimate potential yield, contact reputable loggers, help with a tree planting program, and help solve disease and insect problems. When preparing management plans, be sure to leave enough dead standing trees, hollow trees, and fallen trees to serve wildlife needs.

Before selling standing timber, landowners are strongly advised to check out the reputation of the logger. Poor harvesting techniques

can severely reduce the future productivity of a woodlot. Also, livestock should not be allowed to graze in woodlots. Grazing injures tree roots by soil compaction, prevents the growth of new trees, and invites the growth of nuisance shrubs, such as honeysuckle and buckthorn. These already are a problem in many of the town's woodlots.

## WETLAND PROTECTION

In April, 1979, thirty-seven legislators introduced a bill in the assembly to preserve Wisconsin's wetlands. The Bill would preserve wetlands by providing for restrictive orders limiting filling, draining, excavation and construction in wetlands. Wetlands subject to restrictive orders or voluntary conservation easements would be exempt from property taxes. Landowners would make a payment of 20 cents per acre to the local unit of government.

Because most of the town's wetlands are under multiple ownership, cooperative management agreements would best protect the quality of the wetlands. Under such an agreement, landowners could decide on a common set of management principles. Landowners could also enter into first right of refusal agreements in which adjacent landowners would have the first opportunity to purchase a piece of wetland if it came up for sale. The Head Foundation has developed such a program at the Leopold Reserve in Sauk and Columbia Counties. This program could serve as a model.

## PROTECTION OF OTHER WILDLIFE HABITAT AREAS

Under proposed 1979 program guidelines, the Dane County Agricultural Stabilization and Conservation Service will pay 75 percent of the cost of permanent wildlife habitat development, including the establishment of trees, shrubs, and grasslands. The Dane County Soil and Water Conservation District will pay 75 percent of the cost of establishing streambank fences and stream crossings for livestock.

Another possible source of help and information is the Dane County Conservation League. For many years, the League has been helping landowners protect their resources. Formed in 1933, it has been responsible for many stream, wetland, and wildlife habitat improvement projects. Its latest achievement has been active assistance in the formation of the Sugar River Watershed Association.

## PROTECTION OF HISTORICAL AND ARCHAEOLOGICAL RESOURCES

Owners of historical and archaeological resources can take advantage of the services offered by the State Historical Society's Historic Preservation Division. The Division provides information on how to conduct research into the history of a building or site, helps prepare forms for the inclusion of sites on the National Register of Historic Places, and provides matching grants for surveying, purchasing, and rehabilitating historical and archaeological resources. Owners and would-be owners of properties listed on the National Register may apply for matching grants. Applicants can be individuals, non-profit groups, or units of government.

## SOURCES OF INFORMATION

There are many sources of information and assistance available to landowners interested in learning about and protecting their open space resources. These include:

Paul E. Pingrey  
Madison Area Forester, DNR  
266-3429

Jon R. Bergquist  
Madison Area Wildlife Manager, DNR  
266-0208

Clifford L. Brynildson  
Madison Area Fisheries Manager, DNR  
266-7785

Rosemary V. Fleming  
County Naturalist  
(Arboretum tours and other information)  
263-7888

Wayne R. Pauly  
Dane County Botanist  
Dane County Highway Office  
266-5922

William Green  
Staff Archeologist  
Historic Preservation Division  
State Historical Society of Wisconsin  
262-3383

Susan Rodewald Thomas  
Program Coordinator  
Environmental Resources Unit  
University of Wisconsin-Extension  
(Outdoor learning courses)  
262-0142

Virginia Kline  
Madison Area Vocational School and  
UW Arboretum Ecologist  
(Teaches evening course: "Reading the Landscape")  
233-4840 (Evenings)

Dane County Agricultural  
Stabilization and Conservation  
Service Office  
251-2158

Dane County Soil & Water  
Conservation District Office  
266-4270

Cal DeWitt  
Nature Conservancy Steward  
222-1139

Kathy Ela  
The Head Foundation  
244-3511

Harold Starkweather  
Dane County Conservation League  
244-9528

The following UW-Madison sources may be able to provide students to help inventory land parcels and develop wildlife and plant preservation plans:

Department of Landscape  
Architecture  
263-7300

Department of Botany  
262-1057

Department of Wildlife  
Ecology  
262-2671

Department of Zoology  
262-1051  
Environmental Awareness Center  
263-2808

## B. PUBLIC EDUCATION AND ORGANIZATION

In the long run, the town's open space resources will be preserved by town residents who are aware and proud of what they have. Local schools, youth groups, local media, and others can all play a part in teaching the community about local resource values, needs, and opportunities. An excellent example of such an effort is the *Town of Dunn Bicentennial Tour* prepared by the Town Bicentennial Committee. The following represents several suggestions among the many opportunities available for public education and organization:

### SCHOOL AND YOUTH GROUP ACTIVITIES

Local schools and youth groups, such as the local 4-H Clubs, could use areas of the town to study history and environmental principles or conduct conservation improvement projects. For example, Wesley Licht, who directs nature/history camping programs through the McFarland schools, utilizes various public and private areas in the Town of Dunn for study and observation. Local woodlands, wetlands, or prairies and Indian and pioneer historical sites are excellent resources for their activities. In the Town of Fitchburg, the Nine Springs Offspring 4-H Club built a three-dimensional model of the Nine Springs E-Way corridor.

Traditionally, Arbor and Bird Day has been a day in which children in rural schools plant trees on their school grounds. It is also a time to celebrate spring and the outdoor environment. In recent years, however, little attention has been paid to the celebration of Arbor and Bird Day, a tradition well worth reviving. Arbor and Bird Day is set by state statute as the last Friday in April.

### ROADS

The average town resident is aware of the town's environment as he or she views it from a car while traveling along the town's roads. Roads, then, should be considered an educational tool and treated as such. New roads can be named after significant natural features found in the town. Roads with high quality scenery, such as Lalor Road or parts of Dyerson Road, can be designated as natural roads by the town. Future road improvements on these roads might include the addition of meanders to reduce traffic speed and improve views, and the addition of roadside observation points with information plaques.

### SHARING RESOURCES

Individuals in the town own pieces of land which contain important local resources, such as Indian mounds, springs, wetland areas, and scenic vistas. Perhaps once a year these owners could hold an open house for town residents to share in the appreciation of these areas. Each year a different set of areas could be chosen and developed into an annual tour, similar to Madison's "Parade of Homes" but with a different emphasis.

### LOCAL MEDIA

The local media, especially the weekly newspapers serving the town, are an excellent vehicle for informing town residents about local environmental and historical resources and issues. In the past they have performed this function very well, especially the *Community Life* in McFarland, the *Observer* in Oregon, and the *Carrier Hub* in Stoughton.

### LOCAL ORGANIZATION

A town conservation club or a similar organization might be used to involve townspeople in the preservation of environmental and historical resources. Such an organization could study local issues, conduct field projects, and sponsor fund-raising drives for land acquisition or rehabilitation.

## C. REGULATIONS AND PUBLIC SERVICE CONTROLS

This section includes a discussion of the ways in which the town's environmental and open space goals in the Town Land Use Plan can be implemented through land use regulations and the extension of public services. It is divided into three parts:

- 1. Recommended Changes in Planning Review Process**—This part includes a set of specific procedures through which the results of the study and the goals of the Town Land Use Plan can be implemented through the town subdivision ordinance and the county zoning ordinance.
- 2. Zoning and Subdivision Regulations: Further Considerations**—This part provides additional discussion of zoning and subdivision regulations, including a discussion of additional ways in which they can be used to preserve the town open space system.
- 3. Public Service Controls**—This part briefly discusses the impact that public service extensions can have on open space resources.

### 1. RECOMMENDED CHANGES IN PLANNING REVIEW PROCESS

The following recommendations specify changes in the subdivision and zoning change review process which will tie the development decision-making process closer to adopted community goals and objectives. All of these recommendations can be implemented within the general framework of the existing subdividing ordinance, entitled *An Ordinance Regulating the Division and Subdivision of Land in the Town of Dunn* and the *Dane County Zoning Ordinance*.

Following specific standards set forth in zoning and subdivision codes does not always ensure consistency with the goals and policies of the town land use plan. Proper site planning is very important for land parcels on which development may be appropriate but which contain or are adjacent to sensitive open space resources. The effect of a land use change upon a site's open space resources often depends as much on the design of the change as on the existence of the change itself. Sensitive site planning can minimize or remove potential environmental impacts.

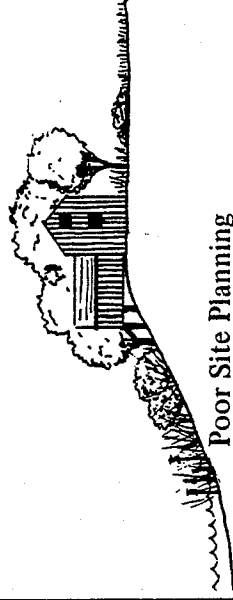
Proper site planning can be facilitated during the planning review stage through a process of negotiation. The procedures recommended below are designed to facilitate this negotiation process. A negotiation process can help preserve the integrity of the town plan by influencing project design in a way that balances landowner needs with town goals and policies.

By introducing the philosophy of negotiation into the town planning review process, planning decisions can better deal with situations in which development on a site could be consistent with the environmental and open space goals of the town plan.



#### Good Site Planning

- natural view preserved
- erodible slope protected
- woodlands preserved
- wildlife habitat protected



#### Poor Site Planning

- natural view destroyed
- erodible slopes disturbed
- woodland ecosystem disrupted
- wildlife driven away

Good Site Planning can reduce the effects of development on nearby resources

The specific density and design needs of a sensitive open space area can be developed into special conditions agreed upon by the Plan Commission and the applicant. The Plan Commission can require that these conditions be shown on certified surveys, subdivision plats, or recorded as deed restrictions.

A workable planning review and negotiation process requires that (1) Plan Commission members learn proper procedures and follow them consistently; (2) decisions and conditions are based on demonstrable goals, policies and studies; and (3) the process occurs before the developer has made significant project investments.

If the town decides to apply special conditions as part of the planning review process, professional staff or consultants will be needed to ensure that the conditions are consistent with relevant statutes and procedures and are appropriate to the functional needs of the open space system.

The strategy behind the following recommendations is to introduce a planning review as early in the development process as possible. This allows time for community considerations to influence project design. To be useful, such considerations should be defined during the pre-application stage and before design begins.

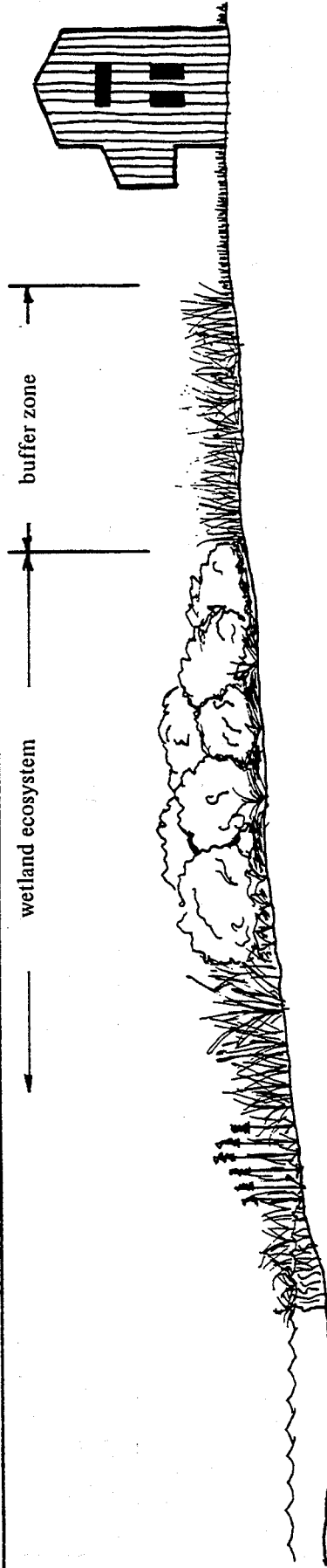
Before filing an application with the town for preliminary plat, comprehensive development plan, or certified survey map approval, or before filing a zoning change application with Dane County, the applicant should have a pre-application conference with the Town Plan Commission. The pre-application conference gives the applicant an opportunity to discuss the development decision-making process in the Town of Dunn. It also affords the town an opportunity to conduct a preliminary planning review of the site and general development concepts to determine land suitability and environmental constraints.

The findings of the preliminary planning review should be based upon information provided by the applicant on a preliminary planning review checklist and, if required by the Plan Commission, an expanded community impact assessment. The preliminary planning review checklist form and the guidelines for the expanded community impact assessment should be provided to the applicant by the Plan Commission.

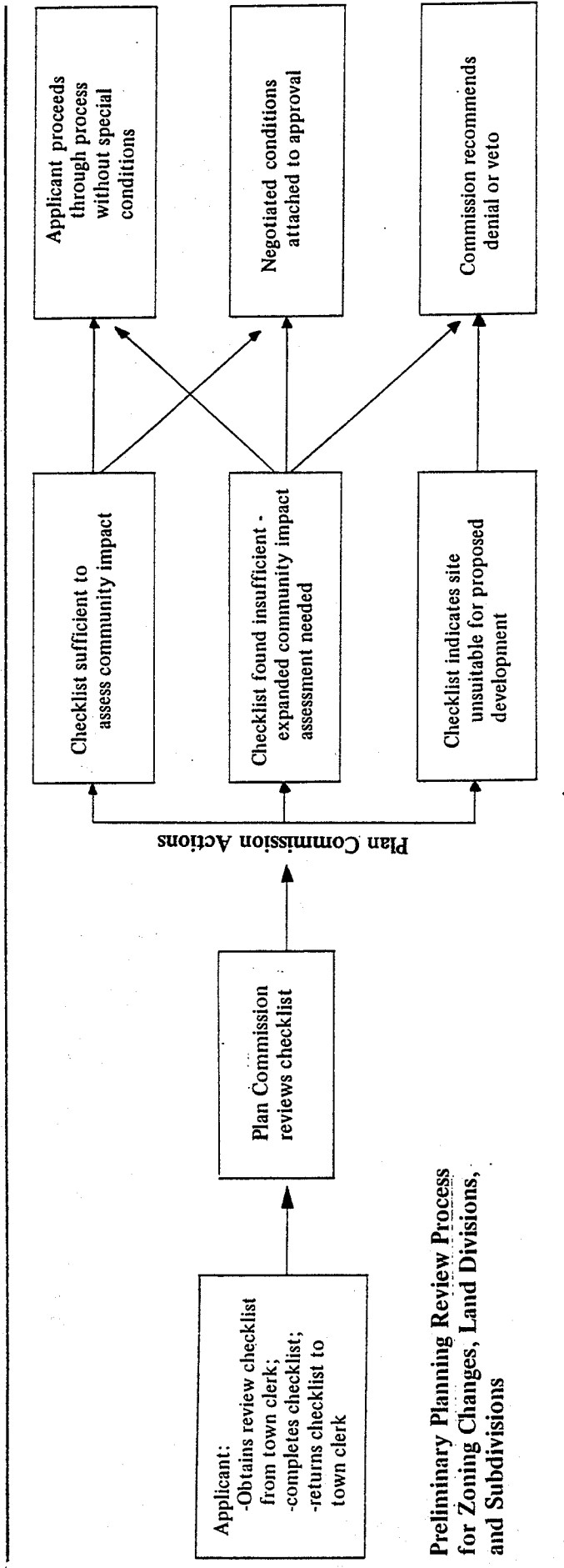
The preliminary planning review checklist is a simple form which can be completed by the applicant without benefit of consultants or professional expertise. The applicant should be required to be familiar with the Town of Dunn Land Use Plan and the Town of Dunn Open Space Preservation Handbook and should be able to relate the proposed action to the maps and data in these documents. The purpose of the preliminary planning review checklist is to alert the applicant and the Town Plan Commission to possible significant community impacts which may result from the proposed action. Based upon the preliminary planning review checklist, the Plan Commission should (a) waive further pre-application planning review and refer the applicant to the next steps of the application process, (b) waive further pre-application planning review providing certain conditions are met, (c) inform the applicant and the Town Board that approval of the application will not be recommended on the basis of negative community impacts, or (d) require an expanded community impact assessment.

If an expanded community impact assessment is required, the Plan Commission should inform the applicant in writing of the specific aspects of the application which require further research, data, and input. The expanded community impact assessment may require site investigations and input from experts. All costs of such investigations would be paid by the applicant. Following the return to the Plan Commission of the information required in the expanded community impact assessment, the Plan Commission should make its final pre-application planning review recommendations to the appropriate departments and boards.

It should be noted that community goals and objectives as expressed in the Town of Dunn Land Use Plan are defined by statute as a basis for making development decisions. Section 236.13 Wisconsin Statutes provides that compliance with a "local master plan" is a condition for plat approval.



When a new development is proposed in the vicinity of a marsh or stream, experts should be consulted to determine adequate buffer zones



**Preliminary Planning Review Process for Zoning Changes, Land Divisions, and Subdivisions**

The following represents recommended changes in the town subdivision ordinance and a proposed resolution related to the zoning review process:

**Implementation of Plat and Certified Survey Review**

The Town of Dunn should amend its subdivision ordinance as follows:  
Section 1.02—change “Greenway” to “Open Space”



Section 1.05—change to read:

*(1) Pre-Application Procedure*

*Prior to filing an application for approval of a preliminary plat, comprehensive development plan or a certified survey map, the subdivider shall consult the Plan Commission for general advice and assistance and for a preliminary planning review of the site and the proposed subdivision or land division.*

*(A) Purpose. The purpose of the preliminary planning review is to provide a basis for an orderly, systematic review of the effects of a new subdivision or land division upon the town in accordance with the principles and procedures of Section 236.45(1), Wisconsin Statutes and to assist the subdivider as early as possible in the planning process to plan the proposed subdivision or land division consistent with the Town of Dunn Land Use Plan.*

*(B) Preliminary Planning Review Checklist. Prior to the pre-application conference the subdivider shall receive a preliminary planning review checklist form from the Town Clerk. The preliminary planning review checklist shall be completed by the subdivider and returned to the Town Clerk. Within thirty (30) days, the Plan Commission shall review with the applicant or agent the preliminary planning review checklist.*

*(C) Plan Commission Recommendations. Upon reviewing the preliminary planning review checklist, the Plan Commission shall do one of the following:*

*(1) Waive further pre-application planning review and advise the subdivider to proceed with the application for preliminary plat, comprehensive development plan, or land division application as specified elsewhere in this ordinance.*

*(2) Waive further pre-application planning review providing the subdivider meets conditions specified in writing in a letter to the applicant and the Town Board.*

*(3) Advise the applicant and the Town Board that the Plan Commission will not recommend approval of the proposed subdivision on the basis of the planning review. The notice of a negative recommendation shall be presented in writing to the applicant and the Town Board and shall specify the reasons for the negative recommendation.*

OR

*(4) Determine the need for an expanded community impact assessment. If an expanded community impact assessment is required, the Plan Commission shall state in writing the specific questions which require further research, data, and input from the applicant or other affected persons. The list of questions can include items which this ordinance already enables the Plan Commission to obtain or it may include additional information which is relevant to making a decision on the application. The letter requiring an expanded community impact assessment shall set a reasonable date for the return of the requested data and information and it may specify the format in which the data is to be presented. All costs incurred by the applicant in responding to questions from the Plan Commission shall be borne exclusively by the applicant.*

*Within thirty (30) days after submission to the Plan Commission of the final expanded community impact assessment, the Plan Commission shall make its findings as indicated in Section 105(c)(1)-(3) above. Any alterations of the natural environment that the Town Plan Commission determines were purposely made to subvert the intentions of this review process will result in an automatic negative recommendation from the Plan Commission.*

*(D) Plan Commission Recommendations are Advisory. The findings of the Plan Commission at the pre-application conference do not constitute approval of the proposed subdivision and do not preclude additional review as provided elsewhere in this ordinance.*

**Implementation of Zoning Change Review Process**

The Town Board should adopt by resolution a zoning change review process which will permit the town to conduct a planning review of all proposed zoning changes and to exercise its veto powers, as specified in Section 59.97(5)(e)3, where a proposed zoning change would not be consistent with the Town of Dunn Land Use Plan. A copy of the resolution should be filed with the County Clerk, County Board, and County Zoning Administrator. The County Zoning Administrator should be requested to inform all applicants for zoning changes in the Town of Dunn of the zoning change review process. The County Zoning Administrator cannot refuse zoning applications, if the applicant refuses to comply with the adopted resolution. The incentive for compliance is the town veto power.

The resolution adopted by the Town Board should include the following wording:

(1) This resolution requires applicants for zoning change in the Town of Dunn to submit a preliminary planning review checklist to the Town Plan Commission prior to filing a petition for a zoning change with the County Zoning Administrator. The purpose of this requirement is to assure proper planning review and consistency with the Town of Dunn Land Use Plan.

(2) Prior to filing a petition with the County Zoning Administrator, an applicant should receive a preliminary planning review checklist form from the Town Clerk.

(3) The preliminary planning review checklist shall be completed by the applicant, using the Town of Dunn Open Space Preservation Handbook and Land Use Plan, and presented to the Plan Commission meeting.

(4) At the next regularly scheduled Plan Commission meeting, upon reviewing the preliminary planning review checklist, the Plan Commission shall do one of the following:

a. Waive further planning review and submit a letter to the Town Board and the applicant that no significant community impacts are apparent at this time. Such a finding does not preclude a Town Board veto if new information should be revealed or if the Town Board does not accept the Plan Commission recommendation.

b. Waive further planning review providing the applicant meets conditions specified by the Plan Commission. Written notice to the applicant and Town Board stating the conditions shall also contain the notice that the Town Board could still veto the requested zoning change as a result of other evidence presented at the public hearing. Following the public hearing conducted by Dane County, if the Town Board decides to accept the Plan Commission recommendation, the applicant has seven (7) days to file a signed written statement with the Town Clerk accepting the conditions recommended by the Plan Commission.

This statement shall specify that if conditions are not being met that town building permits and/or driveway permits will be withheld. Also, if development has not begun within one year from date of approval the town will petition the county to revert the zoning (time extensions may be granted by the Plan Commission). When deemed appropriate, deed restrictions or covenants may be required as a condition.

If the applicant does not choose to file such a statement the Town Board shall file a veto resolution with the County Clerk within ten (10) days of the public hearing as specified by Section 59.97(5)(e)3. Wisconsin Statutes.

c. Submit a letter to the applicant and the Town Board stating that the proposed zoning change would result in an unacceptable community impact and recommending that the Town Board veto the proposed zoning change.

OR

d. Determine the need for an expanded community impact assessment. If an expanded community impact assessment is required, the Plan Commission shall state in writing the specific questions which require further research, data, and input from the applicant or other affected persons. The letter requiring an expanded community impact assessment shall set a reasonable date for the return of the requested data and information and specify the format in which the data is presented. All costs incurred by the applicant in responding to questions from the Plan Commission shall be borne exclusively by the applicant. Within thirty (30) days after submission of the final expanded community impact assessment, the Plan Commission shall make its findings as indicated in a through c above. Any alterations of the natural environment that the Town Plan Commission determines were purposely made to subvert the intentions of this review process will result in an automatic negative recommendation from the Plan Commission.

(5) If an applicant fails to comply with provisions of this resolution, the Town Board may veto the proposed zoning change as provided in Section 59.97(5)(e)3. Wisconsin Statutes.

#### Preliminary Planning Review Checklist

The preliminary planning review checklist shown on the following page has been prepared for use in identifying potential impacts of land use changes on the Town of Dunn Open Space System. It is strongly recommended that this checklist be expanded to include a review of public services, impact on agriculture, and design.

TOWN OF DUNN

PRELIMINARY PLANNING REVIEW CHECK LIST\*

Type of Project \_\_\_\_\_

Applicant's Name & Address \_\_\_\_\_

Type of Approval Requested \_\_\_\_\_

Date Received \_\_\_\_\_

Open space study area(s) within which site is located (See Section V, TOWN OF DUNN OPEN SPACE PRESERVATION HANDBOOK)

RETURN COMPLETED FORM TO TOWN CLERK

1. Does the project site contain or is it adjacent to wildlife habitat, including feeding, nesting, resting, breeding, burrow, wintering, or migratory habitat and movement corridors? \_\_\_\_\_
2. Does the project site contain woodland, prairie, or wetland plant communities? \_\_\_\_\_
3. Will any trees over 6" in diameter at breast height be removed by the proposed action? \_\_\_\_\_
4. Does the project site contain or is it adjacent to areas of significant scientific research value? \_\_\_\_\_
5. Will the proposed project affect roadside views of hedgerows, woods, lakes, streams, and wetlands? \_\_\_\_\_
6. Does the project site contain long distance views (over one mile) from the site? \_\_\_\_\_

YES \_\_\_\_\_

NO \_\_\_\_\_

\*Although not within the scope of this report, the preliminary planning review checklist should be expanded to include a review of public services, impacts on agriculture, and design.

YES \_\_\_\_\_

NO \_\_\_\_\_

7. Will the proposed project affect views from within wetland areas and stream corridors which currently contain few signs of human activity? \_\_\_\_\_
8. Will the proposed project introduce concentrations of night lights, noise, or activities which might affect adjacent wildlife habitat or aesthetic resources? \_\_\_\_\_
9. Does the project site contain or is it adjacent to water resource areas, including springs, perennial streams, rivers, lakes, or wetlands? \_\_\_\_\_
10. Does the project site involve an area of soil instability or erosion potential - soils of greater than 12 percent slope or organic soils, peats, or mucks at or near the surface? \_\_\_\_\_
11. Does the project site contain intermittent drainage channels which empty into wetlands, streams, or other bodies of water? \_\_\_\_\_
12. Will the proposed project increase storm water runoff onto adjacent property? \_\_\_\_\_
13. Will the proposed project involve changes in existing contours? \_\_\_\_\_
14. Does the project site contain or is it adjacent to areas designated as part of the 100-year flood plain? \_\_\_\_\_
15. Will the proposed project involve concentrations of potential ground water pollution sources, such as on-site wastewater disposal systems or sanitary landfill activity? \_\_\_\_\_
16. Will the proposed project affect the flow of ground water discharge to springs, streams, rivers, lakes, or wetlands? \_\_\_\_\_
17. Will the proposed project affect the area's use for fishing, hunting, trapping, or wild food gathering? \_\_\_\_\_
18. Will the proposed project be planned to include opportunities for active recreation activities and preserve natural corridors for walking, hiking, or skiing? \_\_\_\_\_
19. Is the proposed site within 500 feet of a publicly-owned recreation or conservation area? \_\_\_\_\_
20. Does the project site contain features of significant educational value? \_\_\_\_\_
21. Does the project site contain or is it adjacent to parcels containing features of historic, archaeological, or cultural interest? \_\_\_\_\_
22. Is the proposed project separated from existing development concentrations or utilities by significant landscape features such as ridgelines, streams, rivers, wetlands, woodlands, or archaeological sites? \_\_\_\_\_

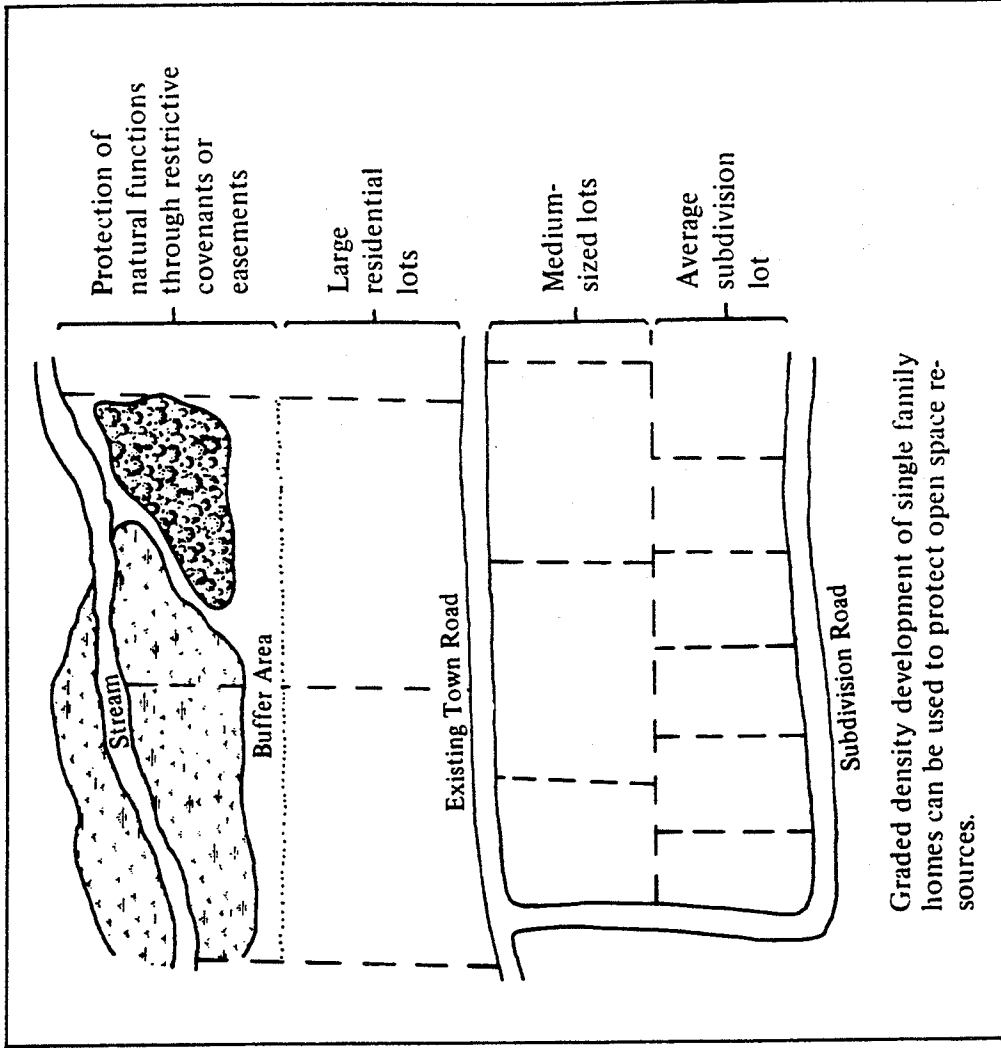
## 2. ZONING AND SUBDIVISION REGULATIONS—FURTHER CONSIDERATIONS

The town should resort to requirements for special conditions attached to zoning and subdivision approvals only when existing ordinances are not adequate to deal with the problem at hand. Zoning and subdivision ordinances have the advantage of providing uniform standards, and they generally do not require the use of devices such as deed restrictions.

Conservancy districts are used in zoning ordinances to promote environmental conservation goals. Dane County currently has one conservancy district, the CO-1 district, which does not permit any residential development of any kind. Currently, no land is zoned CO-1 in the town, and this district has been rarely used in other areas of the county. Although the use of the CO-1 district may not be practical for use in woodland and steep slope protection or other areas where some limited development might occur, it has the potential of protecting wetland and flood plain areas.

Large lot, single-purpose residential districts could be used to promote the use of "graded density" lot sizes along wetlands, streams and other open space resources. Under this concept, first introduced in the *Wetlands of Dane County, Wisconsin* study, lot sizes would be tailored to the functional needs of open space resources. Large lot sizes would be used near sensitive open space resources, and lot size would become smaller further away from the open space resource area.

In all probability, three large lot residential districts will be added to the Dane County Zoning Ordinance, an RH-2 district with a mini-



imum 2 acre lot size, an RH-5 district with a minimum 5 acre lot size, and an RH-10 district with a minimum 10 acre lot size. These three districts should greatly increase the practicality of the use of the graded density concept.

Sufficient resources were not available to the study team to prepare a detailed set of recommended changes to the town subdivision ordinance. Further study of the ordinance should be directed at the following sections:

**1.07(2) Easements**

**1.07(6)(A) Public Sites and Open Spaces**  
**1.08(6) Erosion Control**

Section 1.07(2) should be reviewed to see if inclusion of open space easement requirements are appropriate.

Section 1.07(6)(A) states that "The subdivider may be required to reserve such public use areas for a period not to exceed 2 years, after which time, if agreement has not been reached for the acquisition of the area by the town, the reservation shall be released." To give the town more flexibility, this period should be increased to 5 years, as is the case with the Madison and Middleton subdivision ordinances.

Section 1.08(6) requires the use of erosion control methods. Without requirements for more specific principles, standards, and inspection and enforcement procedures, it is doubtful whether this section of the ordinance will result in adequate temporary or permanent erosion control. See Section IV-5, titled "Sedimentation and Erosion Control," for further discussion of this topic.

The county zoning ordinance and the town subdivision ordinance do not affect most single family home construction on existing parcels of land. Situations exist where home construction could cause significant harm to open space resources. Perhaps the town should explore methods, such as the building permit process, whereby these negative effects can be avoided.

### 3. PUBLIC SERVICE CONTROLS

The extension of public services, primarily roads and sewer lines, can have significant impact on open space resources. When important resource areas lie between existing services and new concentrations of development, they can be harmed when services are extended. In the long run, as developed areas grow together, development pressure will increase in the open space resource area. The town, therefore, should try to anticipate the effects of public service extensions on these areas. The same considerations should be included when new service districts are developed. The boundaries of the sanitary district located to the southeast of Lake Waubesa is an example of district boundaries chosen without any consideration of topography or open space resources.

### INFORMATION SOURCES

The planning review procedures contained in this section were developed by John Stockham and Brian Vandewalle, of the planning firm Stockham and Vandewalle, 402 West Lakeside Street, Madison.

Laverne J. Enger, Dane County Zoning Administrator, City-County Building, 210 Monona Avenue, Madison.

Richard A. Lehmann, Department of Governmental Affairs, UW-Extension, University of Wisconsin, Madison.

Richard K. Nordeng, Attorney

## D. PUBLIC ACQUISITION OF PROPERTY RIGHTS

A town open space preservation strategy which focuses on responsible private ownership, regulations, and public service controls in most cases should protect the functions of the open space system. However, situations may arise in the future in which the public acquisition of property rights is the best or only way to preserve valuable open space functions. If the town is committed to the preservation of those functions, it should be prepared to become involved in the acquisition of property rights.

This does not necessarily mean that the town has to be the ultimate holder of those rights, that the land owner has to give up all rights to a piece of property, or that the town will have to devote major levels of funding to an open space acquisition program. There is considerable flexibility available in the way in which the town can use the acquisition of property rights as part of its strategy to preserve its open space system.

Although the town has not become involved in the acquisition of property rights in the past, other agencies and groups have acquired areas in the town for open space and environmental preservation purposes. These agencies and groups include the Department of Natural Resources (DNR), The Nature Conservancy, and The Dane County Park Commission. The town should maintain communications with all of these groups and work with them to ensure that future acquisition efforts best meet the needs of the town's open space system.

### SOURCES OF FUNDS

There are several potential sources of funding for the acquisition of open space resources. Matching funds for property rights acquisition

is available on a 50-50 matching basis from the federal Land and Water Conservation Program (LAWCON) or the State Outdoor Recreation Acquisition Program (ORAP). Both of these programs are administered by DNR. Lands proposed for acquisition should serve some present or future recreation function, but this need not involve heavy use, active recreation activities. The town's share of the matching funds can include labor, in-kind services, or gifts of land or money. Before a unit of government can receive ORAP/LAWCON funds, it has to prepare a comprehensive recreation and open space plan. Much of this current study could form the basis for such a plan.

School Districts are also eligible for ORAP/LAWCON funding. The town holds many opportunities for the McFarland, Oregon, or Stoughton School Districts to establish outdoor education laboratories.

The acquisition and improvement of historic sites can be aided by a similar matching grant program administered by the Historical Preservation Division of the Wisconsin State Historical Society. As with ORAP/LAWCON programs, the town's share of the cost can consist of labor, in-kind services, or gifts of land or money. To be eligible for funding, a site must be listed on the National Register of Historic Places. To be listed on the National Register, sites can be either settlement era or archaeological sites and be of either local, state, or national significance. The Historic Preservation Division provides assistance in completing the forms needed for approval.

### WHY ACQUIRE PROPERTY RIGHTS?

In most cases, the town should have the legal right and responsibility to protect the open space system without having to resort to the acquisition of property rights. However, in cases which involve a significant and immediate threat to a valuable part of the system, the town may not want to take any risk that the functions of this resource may be lost. Acquisition of property rights may be the only solution. Lands under some form of public ownership are less likely to be disrupted by sewer, power, and gas line construction, highway relocations, and other large-scale land use changes.

The town might become involved in property rights acquisition in cases involving development adjacent to parts of the system. If the development site includes areas which perform open space functions, easements or restrictive covenants may be needed to ensure the preservation of those functions after the site is developed.

The needs and wishes of private landowners provide a third possible role for the town in the acquisition of property rights. If a landowner wishes to ensure that his or her land perpetually remains in its natural state, he or she can donate the land or partial rights to the land to the town, a public agency, or a non-profit group. If the landowner were to give the land to the town, the town might be able to use the value of the gift to match available state and federal acquisition funds which could be used to acquire further property rights. After matching funding is secured and the acquisition is completed, the town would have the option of turning the property over to a group such as the Nature Conservancy.

cy, the Head Foundation, the Audubon Society, or the Dane County Conservation League.

Preserving open space functions through property rights acquisition is a long-term commitment to the future. Some feel that it may restrict land use flexibility and future options. This feeling must be balanced by a consideration of the probable flexibility and options that will remain if property rights are not acquired and land use changes are allowed to occur.

### WHAT RIGHTS CAN BE ACQUIRED?

The Wisconsin Statutes give the town board powers to acquire property rights for any valid public purpose.

Under Sec. 60.18(12) of the Statutes, town boards may exercise village powers contained in Chapter 61. In this Chapter, Sec. 61.34(3m) gives the town board the authority to "... acquire by gift, purchase or condemnation any or all property rights in land or waters, including rights of access and use, negative and positive easements, restrictive covenants, covenants running with the land, scenic easements and any rights for use as property of any nature whatsoever, however denominated, which may be lawfully required for the benefit of the public or for any public purpose . . .".

There are generally two types of property rights that the town can acquire, a "fee" interest, or a "less than fee" interest. A fee interest involves all of the property rights and interests that are attached to a piece of property. A less than fee interest involves only part of the rights attached to the property, such as the right of access, the right to build houses, or the right to preserve scenery. Examples of available types of less than fee inter-

ests are mentioned in the statutory reference above and include rights of access and use, negative and positive easements, restrictive covenants, covenants running with the land, and scenic easements.

Land in the town that has already been acquired for open space preservation purposes has involved the acquisition of the full fee interests to the land. This study recommends that the use of less than fee measures receive increased attention in the future. The acquisition of less than fee interests can provide a number of advantages over full fee interests and could play a very useful part in a town open space preservation strategy.

A report titled *Non-regulatory Techniques for Urban Growth Management in Wisconsin*, published in April, 1978, by the Division of State Planning and Energy, describes some of the advantages of easement acquisition. In it, these five advantages to government are listed:

"The advantages to the government of easement acquisition as opposed to total fee title acquisition are several:

1. The property remains on the tax rolls of the locality. Rather than losing the entire value of the property as a taxable unit, the government keeps a productive source of revenue as well as gaining whatever benefit the easement provides.

2. The cost of an easement is often significantly lower than the cost of the entire fee.

3. When the government purchases the entire fee interest, it incurs continuing maintenance costs, but with an easement, the landowner, not the easement owner, is usually responsible for property maintenance.

4. Acquisition of an easement interest provides the government with greater flexibility. Instead of purchasing all the rights in land, the government can purchase only those rights it needs and can tailor the grant to specific areas.

5. Easements may be purchased for either a term of years or in perpetuity. When purchased in perpetuity the government obtains the longest term possible for control—something which is not necessarily accomplished by control under the police power."

The report goes on to discuss potential property tax advantages to the landowner. It states that in the City of Madison, the value for which easements have been purchased has been subtracted from the value of the land to determine the property's present value for tax assessment purposes. How this would work in specific instances in the Town of Dunn should be further analyzed.

In sum, the use of easements and other less than fee interests in property can be closely tailored to the needs of the community, the land, and the landowner. With them, the town often can preserve open space functions, while landowners can retain rights of public access and right to live on and use the land in any way that does not harm the open space functions that the land provides.

Less than fee rights can be acquired for a perpetual or limited term. Limited term rights, in the form of a lease or easement, can be obtained if a landowner is placed in an unusual hardship situation. This limited term arrangement can continue until a more permanent solution is developed or a hardship is removed. Also, a first right of refusal agreement can be signed with an owner of valuable open space

land so, if and when the land is to be sold, the town or other group has the first opportunity to obtain it. A related device is the life estate condition, whereby the property is donated or sold when the donor or direct heirs die.

#### HOW CAN PROPERTY RIGHTS BE ACQUIRED?

There are four primary ways in which full or partial property rights can be acquired: voluntary sales, gifts, negotiated or required dedication, and condemnation. The following discussion briefly describes each approach:

**Voluntary Sales**—Voluntary sales of land occur when the sale and sales price suit the needs and desires of both the buyer and the seller.

**Gifts**—Landowners may wish to donate land or partial rights to land to the town, a public agency, or non-profit group. This is usually done because the landowner wishes to permanently protect the natural qualities of the land. Cherished values can be lost when land is passed into estates if heirs value the land only for its economic potential. Donating land or placing voluntary restrictions on one's land may be the only way to ensure that these values are carried into the future. Besides the preservation of the land, a gift of full or partial property rights has several benefits:

1. As mentioned earlier, property tax burdens can be reduced, as well as eventual inheritance and estate taxes.
2. Grantors can claim a charitable deduction on income tax returns on the value of the rights given up to a public agency or qualifying group.
3. Through easements and other devices, only partial rights, such as the right to develop part of one's land, may be given up.

#### WHO CAN ACQUIRE PROPERTY RIGHTS?

There are several public agencies, groups and units of government who may acquire open space resources in the town, including, but not limited to:

- Dane County Parks Commission
- DNR Bureau of Wildlife Management
- DNR Bureau of Fish Management
- DNR Scientific Areas Council
- Town of Dunn
- A neighboring unit of government or school district
- A local service or conservation group.

Who would acquire the resources in any particular instance would depend on the circumstances of the situation and the priorities of the agency or group.

The Department of Natural Resources and the Nature Conservancy each own land in the South Waubesa Wetlands area. Approximately 50 percent of the wetland is currently preserved through their ownership. The Scientific Areas Council of the DNR is looking toward acquiring additional property in the wetlands. The Bureau of Fish Management is looking toward acquiring wetland areas adjacent to Lakes Waubesa and Kegonsa in order to protect fish spawning and feeding areas.

**Required or Negotiated Dedication**—Developers are required by the town subdivision ordinance to dedicate land for parks and open spaces. When no appropriate land exists on the site, the developer may be required to pay an amount of money equal to the value of the land that would have otherwise been dedicated.

Developers may wish to negotiate the dedication of full or partial rights to land over and above the amount required by the subdivision ordinance, as the most appropriate way to fulfill the overall goals and policies of the town land use plan. Such a situation could involve a combined dedication/sale arrangement.

The town subdivision ordinance stipulates that the town can reserve lands shown on subdivision plats for park purposes. These lands can be reserved for up to 2 years. This time period should be lengthened to give the town more time to identify funds and funding sources.

**Condemnation**—The town could use the powers of condemnation to acquire open space lands in some instances. Condemnation should be viewed as a last resort, because it can be a complicated and expensive procedure, as well as the source of hard feelings.