

## Questions and Answers - Farmland Preservation Program For Towns in Winnebago County that have their Own Zoning

### 1. What is the effective date of the new Chapter 91 Farmland Preservation?

Governor Doyle signed the revised Chapter 91 into law on June 30, 2009.

### 2. What did it do?

The purpose of the new law is to expand, modernize and create an effective farmland preservation program that will preserve more agricultural land. In order to accomplish this, new terminology and regulations, as described in this document, can be implemented when communities revise and self-certify their zoning ordinances.

### 3. What will it mean for Counties?

Between 2011 and 2015, all counties will have to update their Farmland Preservation Plans. Winnebago County must complete their plan by the end of 2011. Counties will need to update their plan every 10 years.

### 4. What input will a county need from the towns in the county when it re-writes its Farmland Preservation Plan?

County representatives will hold discussions with individual towns regarding the areas that are designated as agricultural on their land use plan maps. Based on soils maps and other information, town and county representatives will need to determine what land should be identified for preservation. The Zoning Map will then implement the Town's Land Use Plan and the County's Farmland Preservation Plan.

### 5. What is the relationship between Town and County Comprehensive Plans and a County Farmland Preservation Plan?

A County Farmland Preservation Plan must be consistent with the Town and County Comprehensive Plans and particularly future Land Use Plans. In order for land to be preserved for farming, it must be shown on a Future Land Use Plan as agricultural, undeveloped natural resource, or open space. Land that is planned for nonagricultural development within 15 years should not be preserved.

The exact language in Chapter 91.10(2) is:

*"If the county has a comprehensive plan, the county shall include the farmland preservation plan in its comprehensive plan and shall ensure that the farmland preservation plan is consistent with the comprehensive plan. The county may incorporate information contained in other parts of the comprehensive plan"*

## 6. What is the relationship between a County Farmland Preservation Plan and a Town Zoning Ordinance?

In order for a farmer to receive a tax credit, his property must be located on the County Farmland Preservation Plan and be zoned as a "farmland preservation zoning district" (now called Exclusive Ag) in a zoning ordinance that has been certified by the State. Chapter 91.38 lists the criteria that must be met for an ordinance to qualify for certification.

One of the criteria on the certification checklist is that farmland a preservation zoning district as shown on a town zoning map must be substantially consistent with what is shown as preserved farmland on the County Farmland Preservation Plan. What this means is that the farmland preservation zoning district can only be mapped where the farmland preservation plan shows the land as farmland to be preserved.

## 7. Why is it advantageous for a town to amend their ordinance as soon as possible rather than wait until the deadline for the county farmland preservation plan to be recertified?

In the old Chapter 91, if a farmer wanted to sell some land that was zoned for farmland preservation for nonfarm residential development, the lot to be sold must either be at least 35 acres or it must be rezoned to another zoning district. The revised Chapter 91 regulations allow the creation of nonfarm residential development without having to sell a 35 acre parcel or rezone to another zoning district.

With a conditional use permit, a farmer can create nonfarm residential lots provided that there are 20 acres of farmland for every acre of nonfarm residential. The maximum number of lots that can be created from a "base farm tract" of 105 acres (minimum) would be four one-acre lots plus a fifth lot (one-acre homestead). The 20 acres of farmland for one acre of nonfarm residential is a minimum requirement. Local officials can increase that ratio to, for example, 30 or 40 acres for every acre of nonfarm residential.

Farmers considering creating nonfarm residential parcels by conditional use **should not**:

- Convert prime farmland from agricultural use or convert land previously used as cropland, other than a woodlot, from agricultural use **if** on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or nonfarm residence.
- Create a lot that significantly impairs or limits the current or future agricultural use of other protected farmland.

## 8. How has the tax credits changed?

The amount of tax credit will now be based on a flat-fee amount for all acres that a farmer wants to claim for tax credits. The following credits will apply:

- a. \$5.00 per acre if located in an Agricultural Enterprise Area (see Question 11).
- b. \$7.50 per acre if located in a farmland preservation zoning district in a certified zoning ordinance.
- c. \$10.00 an acre if located in an AEA and a farmland preservation zoning district.

## 9. What other elements are found in the new law?

If a petitioner does not meet the conditional use permit requirements, or the petitioner wants to rezone land out of farmland preservation (exclusive Ag) zoning, a conversion fee must be collected by the Town that is at least 3 times the prime farmland value (plus any additional amount the Town would like to charge for administrative costs).

The Town must collect the fees and send a single check and a report to the state on March 1 of the following year.

## 10. What changes need to be made to a zoning ordinance and map to allow it to be certified based on the revised Chapter 91?

- a. Many definitions of new terms must be added to the definition section
- b. The term "Exclusive Agriculture" as a district must be changed to "Farmland Preservation"
- c. Revised terms and new wording must be added to the farmland preservation zoning district(s)
- d. New wording must be added to the special exception or conditional use section
- e. New wording may be required in the nonconforming section
- f. A base farm tract map must be created that shows the boundary of all farmland preservation zoned land owned by each individual farmer.
- g. The zoning map must be changed to use new terminology

## 11. What is an Agricultural Enterprise Area (AEA)?

An AEA gives farmers who live in a town that does not have county or town zoning the ability to apply for tax credits. If they live in a town that does have county or town zoning, however, and the zoning ordinance has been certified, they can apply for a combined AEA/ tax credit (see Question 8).

The process to apply for an AEA includes both the farmers (of which there must be five or more) and the town and county in which the AEA is proposed to be located. The intent of the program is to encourage the long-term preservation of large, contiguous areas of farmland that have been identified for preservation in the county farmland preservation plan.

More information can be obtained from the following two websites:

<http://datcp.state.wi.us/workinglands/pdf/AEAJuly2009.pdf>

<http://datcp.state.wi.us/workinglands/pdf/AEACompanionDocOct2009.pdf>

## 12. What is the "Purchase of Agricultural Conservation Easement" (PACE) Program?

The Working Lands Initiative bill created this new state program to purchase "agricultural conservation easements" from willing landowners (similar to the previous "Purchase of Development rights" (PDR)). The easement restricts nonagricultural development of the covered land, but the farmer retains ownership. Participating farmers can continue to farm the land. The farmer may sell the land, but the easement remains on the property. An easement continues indefinitely, but a court may vacate an easement that no longer serves its intended purpose.

## 13. How will the PACE Program work?

DATCP will work with cooperating entities (local governments or nonprofit conservation organizations) to purchase agricultural conservation easements. The land to which the easement applies must be located in farmland preservation areas as shown in a certified county Farmland Preservation Plan. DATCP may pay up to 50% of the fair market value of the easement (not 50% of the total land value, since the farmer still owns and operates the land). DATCP may also reimburse allowed transaction costs. The cooperating entity must arrange for the rest of the easement purchase cost, but may get funding from other sources. Farmers may also donate part of the easement value to get favorable federal tax treatment. The State of Wisconsin will be a joint holder of the easement with the cooperating entity.

For more on this, see the following website: <http://www.datcp.state.wi.us/workinglands/index.jsp>

If your town would like more information or needs assistance with amending your zoning ordinance to incorporate the new Chapter 91 regulations, creating a base farm tract map, and obtaining state certification, contact Warren Utecht or Jonathan Bartz at 920-731-0381 or email at [warrenu@martenson-Eisele.com](mailto:warrenu@martenson-Eisele.com) or [jonb@martenson-eisele.com](mailto:jonb@martenson-eisele.com)

