

# **REZONING APPENDIX**

Thomas M Willan and Julia A Willan,

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## **SHORT APPENDIX**

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Thomas M Willan

4407 Vilas Hope Rd  
Cottage Grove WI 53527

(608) 438-3103  
tom@ironmanbuildings.com

SHORT APPENDIX TABLE OF CONTENTS

	PAGE #
ROGER LANE EMAIL RESPONSE ANSWERS OCTOBER 28, 2021	1-5
ZONING MAP PRIOR TO 2/5/2019	6
ZONING MAP AFTER TO 2/5/2019	7
2007 AIREAL PHOTO OF BARN AND HOUSE	8
2019 PHOTO OF BARN AND HOUSE	9
JUNE 28, 2018 EMAIL TO ROGER LANE, PAM ANDROS, TOWN BOARD	10
FEBRUARY 14, 2019 EMAIL TO ROGER LANE, PAM ANDROS, CG TOWN BOARD	11
JUNE 28, 2018 EMAIL RESPONSE FROM CG TOWN BOARD	12
JULY 13, 2018 KNAPTON EMAIL TO ROGER LANE, PAM ANDROS,	13
JULY 14, 2018 KNAPTON EMAIL TO ROGER LANE, PAM ANDROS,	14
JULY 19, 2018 KNAPTON REZONE EMAILS WITH TOWN OF COTTAGE GROVE	15-19
2017 AG-1EX AND AG-2 ZONING ORDINANCE,	20-24
2019 RR-2 AND FP-B ZONING ORDINANCE,	25-29
2019 WISCONSIN CHAPTER 91 FARM PRESERVATION ACT	30-39
JUNE 1, 2017 VIDEO DEPOSITION TESTIMONY ROGER LANE	40-45
AFFIDAVIDT OF THOMAS WILLAN	46-47
2012 BUILDING PERMIT APPLICATION	48-51

**From:** [Tom Willan](#)  
**To:** [Lane, Roger](#)  
**Cc:** [Violante, Todd](#); [Parisi, Joseph](#); [Gault, David](#); [Johnson, Sarah](#); [Tom Willan](#); [Julia Willan](#)  
**Subject:** RE: Clarification of permitted rights in rr-2 zoning district  
**Date:** Thursday, October 28, 2021 3:11:35 PM

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Dear Mr. Lane,

I have a few follow up questions I will address. My follow up clarifications to your answers below are in [blue font](#) under each question, you have to understand that our position is our permitted by right accessory use is defined under DCO 10.04 (9) (c) Agricultural accessory buildings. **On land in the A-1, A-1 Exclusive, A-2, A-3, and A-4 Agriculture Districts**, and on land in the Rural Homes District involved in an agricultural or agricultural accessory use, agricultural accessory buildings are permitted but are limited to barns, sheds, silos and other structures that are clearly related to a permitted agricultural or agricultural accessory use. The minimum side and rear yard setback for such structures is 10 feet, unless a greater distance is required by the applicable district regulations of this ordinance. The new ordinance does not permit it by right? Let us know?

Thanks, Tom

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**From:** Lane, Roger <[lane.roger@countyofdane.com](mailto:lane.roger@countyofdane.com)>  
**Sent:** Thursday, October 28, 2021 1:45 PM  
**To:** Tom Willan <[tom@ironmanbuildings.com](mailto:tom@ironmanbuildings.com)>  
**Cc:** Violante, Todd <[Violante@countyofdane.com](mailto:Violante@countyofdane.com)>; Parisi, Joseph <[Parisi@countyofdane.com](mailto:Parisi@countyofdane.com)>; Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>; Johnson, Sarah <[Johnson.sarah@countyofdane.com](mailto:Johnson.sarah@countyofdane.com)>  
**Subject:** RE: Clarification of permitted rights in rr-2 zoning district

Dear Mr. Willan,

As instructed, please see the answers to your questions below in [red font](#).

Respectfully,

Roger Lane  
Dane County Zoning Administrator

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**From:** Tom Willan <[tom@ironmanbuildings.com](mailto:tom@ironmanbuildings.com)>  
**Sent:** Friday, October 22, 2021 12:49 PM  
**To:** Lane, Roger <[lane.roger@countyofdane.com](mailto:lane.roger@countyofdane.com)>  
**Cc:** Violante, Todd <[Violante@countyofdane.com](mailto:Violante@countyofdane.com)>; Parisi, Joseph <[Parisi@countyofdane.com](mailto:Parisi@countyofdane.com)>; Gault, David <[Gault@countyofdane.com](mailto:Gault@countyofdane.com)>  
**Subject:** Clarification of permitted rights in rr-2 zoning district

Roger,

Nice chatting with you this morning. I know you are busy processing our property restoration application, however I have some specific questions regarding the zoning of our property before and after the comprehensive ordinance revisions that need clearing up by you. Please answer to the best of your ability the following questions that need clarification.

1. Prior to the comprehensive revisions, did our property located at 4407 vilas hope rd, have permitted by right agricultural uses?

The previous inspections conducted on the property along with aerial photos show that there were no agricultural activities present on the property. The activities observed were a residential land use (single-family dwelling) and intermittent commercial activity.

In 2012 our property was zoned AG-1EX which allowed for permitted agricultural and agricultural accessory use, correct?

In 2012 while we were zoned AG-1 Exclusive we purchased a building permit to start renovating our barn to be used conducive to the permitted zoning district AG-1-EX. You said we had to fix our zoning because we were substandard for that district because we didn't have 35 acres. You tried to change our zoning to RR-1 at that time but it was determined by the Town Of Cottage Grove, that it had to be changed to AG-2 because we were operating an agricultural accessory business called Ironman Buildings out of our agricultural barn to meet the zoning district to run our business under.

Please explain where our business has ceased to operate from the property and who was notified of these zoning changes based upon some ariel map observations? I have business records showing there was nothing intermittent about 10 million dollars in generated business revenue from the use of our property for agricultural accessory business. You also testified that you had specific knowledge of our company Ironman Buildings being an agricultural accessory business? Remember?

Where in the DCO or Dane county operating manual does it tell a citizen Dane County zoning has the arbitrary power to look at aerial photos and determine whose agricultural activities are intermittent compared to what? and Who gets to decipher aerial data that determines agricultural use, and who decides what the use is without contacting the owners, without any notification or formal hearing to a property owner? This is the first I'm hearing about this aerial map rule?

Does this Dane County County aerial map rule trump the State of Wisconsin vested zoning building permit rule? Please explain?

Prior to the ordinance revisions adopted by the board in January 2019 did our barn located at 4407 vilas hope rd have a permitted by right, to be used for agricultural accessory purposes?

The zoning classification of the property was RH-1 Rural Homes Zoning District prior to January 2019. Agricultural Accessory Land Uses were not listed as a permitted use or a conditional use under this district. The Agricultural Accessory Land Use was listed under the A-1 Exclusive Agriculture Zoning District and the A-B Agri-Business Zoning District.

Please explain how our property got rezoned prior to January 2019 into a zoning classification in the RH-1 zoning district without our knowledge or consent?

Under the previous zoning district agricultural use is defined as (2b) Agricultural Accessory Use. Means any of the following land uses on a farm: (a) A building, structure, or improvement that is an integral part of, or incidental to, an agricultural use. (b) An activity or business operation that is an integral part of, or incidental to, an agriculture use.

(2c) Agriculture-Related Use. A facility, whether or not located on a farm, that has at least one of the following as a primary, and not merely incidental, purpose:

(a) Providing agricultural supplies, agricultural equipment, agricultural inputs or agricultural services directly to farms, including farms in the farmland preservation zoning district.

(2d) Agricultural accessory building. Means a building or buildings used in the operation of a farm.

10.04 RESTRICTIONS UPON LANDS, BUILDINGS AND STRUCTURES. Except as otherwise herein provided:

8. Existing accessory buildings. All accessory buildings lawfully existing as of August 1, 2011 shall be considered a permitted use. Notwithstanding the provisions of secs. 10.21 and 10.23 regarding nonconforming uses, such buildings may be added to, altered, restored, repaired, replaced or reconstructed, provided the locational requirements of the district in which the building is located are complied with.

10.04 (9). Permits required. No accessory building may be erected or placed without first obtaining a zoning permit as specified in section 10.25(2), except as provided below.

(c) Agricultural accessory buildings. On land in the A-1, A-1 Exclusive, A-2, A-3, and A-4 Agriculture Districts, and on land in the Rural Homes District involved in an agricultural or agricultural accessory use, agricultural accessory buildings are permitted but are limited to barns, sheds, silos and other structures that are clearly related to a permitted agricultural or agricultural accessory use. The minimum side and rear yard setback for such structures is 10 feet, unless a greater distance is required by the applicable district regulations of this ordinance.

Now taking this specific provisions of the former chapter 10 DCO into consideration, our barn by DCO definition is an agricultural accessory building, correct?

It says we did not need a special permit to use our agricultural building for our permitted agricultural use and permitted agricultural accessory use. Our agricultural is permitted by right by reading the whole ordinance in concert with the entire ordinance.

Why doesn't our agricultural building have the same rights by ordinance as every other agricultural property, when the ordinance is clear that we did not need to run our agricultural accessory business from the barn>

2. under the current RR-2 zoning district that our property 4407 vilas hope rd is currently in, can the property be used for agricultural accessory purposes as a permitted right or conditional use?

**No. The Agricultural Accessory Land Use is not listed as a permitted use or a conditional use under the RR-2 Rural Residential Zoning District.**

So there is no conditional use permit or variance that allows agricultural use in this specific zoning district? Correct?

3. Doesn't the Dane county zoning ordinance state that anything not listed in a specific zoning district as a permitted use by right or conditional use by applying for a conditional use is considered non-permitted use?

See Zoning Ordinance Section below:

10.200 Zoning Districts

**(a)** Sections 10.210 through 10.292 describe the zoning districts within the jurisdiction of this Chapter.

**(b)** In each zoning district, land uses are divided into permitted and conditional uses.

**1.** Unless specifically exempted, no development intended to accommodate a permitted use listed in the applicable zoning district may take place until the Zoning Administrator, or designee, has issued a zoning permit under s. 10.101(1).

**2.** No land use listed as a conditional use in the applicable zoning district may take place until the town board and zoning committee approve a conditional use permit under s.10.101(7), or the board of adjustment overturns a denial of a conditional use permit under s. 10.101(7)(c)4.

**3.** Land uses not listed as either permitted uses or conditional uses are considered to be prohibited in that zoning district.

So, under RR-2 since agricultural is not listed as permitted by right and is not exempted specifically by any other ordinance it would be illegal to operate Ironman Buildings from our agricultural barn? Correct?

4. If the RR-2 zoning district doesn't have a permitted agricultural use by right or a permitted conditional use, how can we use our property at 4407 vilas hope rd for agricultural accessory purposes under that current zoning classification?

**As noted in the answer to question 3 above, the RR-2 Rural Residential Zoning District does not list an Agricultural Accessory Land Use as a permitted use or a conditional use. The district does list Small-scale Farming as a land use that is permitted by right.**

Can you legally run an agricultural accessory business like Ironman Buildings in an agricultural accessory building under the current RR-2?

I will probably have a few follow-up questions after you answer the questions above, but I cannot find any verification of those specific answers to those specific questions anywhere on your website? If you could first acknowledge receipt of these questions, then answer the

questions like you did back in 2013 where you answered in a different colored font, it would be greatly appreciated! I'm just trying to understand what can and cannot be done in the specific zoning districts under the dane county zoning ordinance. Your website says to contact you so we would want our questions and answers to be in writing so there is no misunderstanding on either of our parts. You're always appreciated for your commitment to public service and I look forward to your clarification of our questions and the processing of our zoning restoration application you verified you received so we can all move on!

Thanks Tom Willan

Sent from my U.S.Cellular© Smartphone  
Get [Outlook for Android](#)

# Existing Zoning

Prior to 2/5/2019

## Town of Cottage Grove

Dane  
County  
WI

As of

Date: 01/17/2018

- Municipal Boundary
- Section Boundary
- Ownership Boundary
- Lake or Pond
- City
- Village
- Effective Zoning**
- Zoning District**
- A-1 or A-1EX Agricultural
- A-2, A-2(1), A-2(2), A-2(4), A-2(8), A-3 Agricultural
- A-4
- A-B Agricultural Business
- B-1 Local Business
- C-1 Light Commercial
- C-2 Heavy Commercial
- CO-1 Conservancy
- ETZ
- EXP-1 Expo
- LC-1 Limited Commercial
- M-1 Industrial
- NONWTLND
- PUD Planned Unit Development
- R-1, R-1A, R-2, R-3
- R-3A, R-4
- RE-1 Recreational
- RH-1, RH-2, RH-3, RH-4

**6** Section Number  
Volk Rd Road Name  
Town of Municipality Name



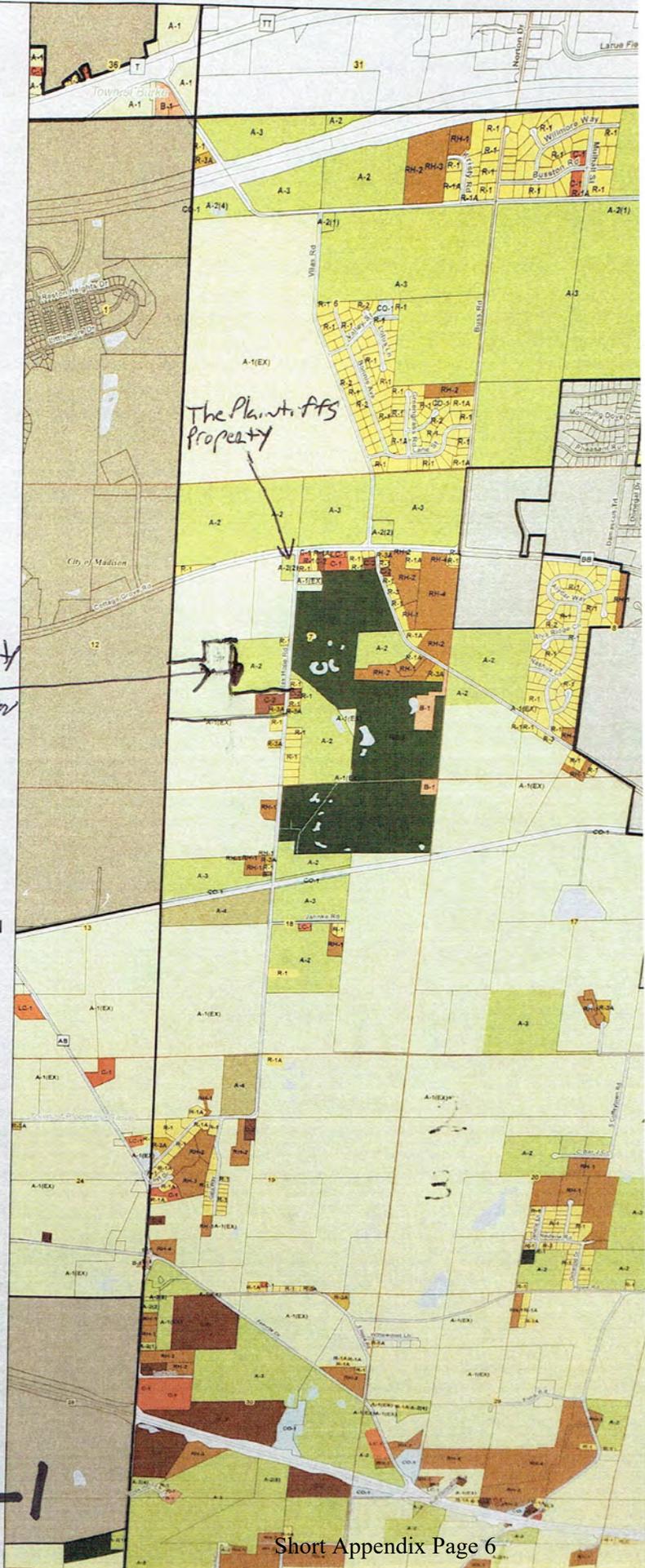
Miles  
0 0.25 0.5 1

DANE COUNTY PLANNING DEVELOPMENT

*Similar Property owned by Carol & Ed Kruppton*

*The Plaintiff's Property*

**SI-1**







SI-3



5-5

## Tom Willan

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**From:** Tom Willan  
**Sent:** Thursday, June 28, 2018 2:00 PM  
**To:** 'Roger Lane'; khampton@towncg.net; Andros@countyofdane.com; townboard@towncg.net  
**Cc:** Julia Willan; Tom Willan  
**Subject:** New zoning

Roger and Kris

We received a card in the mail last week suggesting our lot located at 4407 Vilas Hope Rd in the Town of cottage Grove be rezoned from AG-2 to RR-2? We respectfully decline that classification and would request that our parcel be moved into FP-B Farmland preservation business zoning district. This classification clearly fits into the State of Wisconsin farm preservation plan, the new Dane County ordinance, the towns comprehensive farm preservation plan, and our earlier discussions with the Town Board, Roger Lane and the zoning committee, regarding our current and future land use of our property. I was out of town and missed the meeting last night at the town hall. We look forward to working with Dane County and the Town to make this an easy process so we are open to other reasonable suggestions. Please respond in writing to let us know what we have to do to make this happen?

Thanks, Tom Willan

SI-5

## Tom Willan

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**From:** Tom Willan  
**Sent:** Thursday, February 14, 2019 9:09 AM  
**To:** 'Roger Lane'; khampton@towncg.net; Andros@countyofdane.com; townboard@towncg.net  
**Cc:** Julia Willan; Tom Willan; Gault, David  
**Subject:** RE: New zoning

I was discussing with Kris Hampton, the adoption by the town of Cottage Grove of Dane County zoning new comprehensive zoning revision. That being said, what are we currently zoned, who authorized you to change our zoning without written permission by us the home owners? Please let me know the answer to my questions? Thanks, Tom

**From:** Tom Willan  
**Sent:** Thursday, June 28, 2018 2:00 PM  
**To:** 'Roger Lane' <lane.roger@countyofdane.com>; 'khampton@towncg.net' <khampton@towncg.net>; 'Andros@countyofdane.com' <Andros@countyofdane.com>; townboard@towncg.net  
**Cc:** Julia Willan <julia@ironmanbuildings.com>; Tom Willan <tom@ironmanbuildings.com>  
**Subject:** New zoning

Roger and Kris

We received a card in the mail last week suggesting our lot located at 4407 Vilas Hope Rd in the Town of cottage Grove be rezoned from AG-2 to RR-2? We respectfully decline that classification and would request that our parcel be moved into FP-B Farmland preservation business zoning district. This classification clearly fits into the State of Wisconsin farm preservation plan, the new Dane County ordinance, the towns comprehensive farm preservation plan, and our earlier discussions with the Town Board, Roger Lane and the zoning committee, regarding our current and future land use of our property. I was out of town and missed the meeting last night at the town hall. We look forward to working with Dane County and the Town to make this an easy process so we are open to other reasonable suggestions. Please respond in writing to let us know what we have to do to make this happen?

Thanks, Tom Willan

SI-6

## Tom Willan

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**From:** Mike DuPlayee <mduplayee@towncg.net>  
**Sent:** Thursday, June 28, 2018 11:49 PM  
**To:** Tom Willan  
**Cc:** Roger Lane; khampton@towncg.net; Andros@countyofdane.com; townboard@towncg.net; Julia Willan  
**Subject:** Re: New zoning

Mr Willan ...

This was merely a function of the Dane County Board to try and 'solve' some past problems concerning Act 10. On your card ... there is a contact number to Pam Andros (she is unfortunately on vacation until after the 4th!), she would be more than willing to consider your request to change your current zoning. There are NO changes to what you can do/can't do on your property unless it is a violation of current town ordinances. Just an FYI seeing as you missed the meeting!

Mike DuPlayee, Supervisor #4 Town of Cottage Grove

On Thu, Jun 28, 2018 at 1:59 PM, Tom Willan <[tom@ironmanbuildings.com](mailto:tom@ironmanbuildings.com)> wrote:

Roger and Kris

We received a card in the mail last week suggesting our lot located at [4407 Vilas Hope Rd](#) in the Town of cottage Grove be rezoned from AG-2 to RR-2? We respectfully decline that classification and would request that our parcel be moved into FP-B Farmland preservation business zoning district. This classification clearly fits into the State of Wisconsin farm preservation plan, the new Dane County ordinance, the towns comprehensive farm preservation plan, and our earlier discussions with the Town Board, Roger Lane and the zoning committee, regarding our current and future land use of our property. I was out of town and missed the meeting last night at the town hall. We look forward to working with Dane County and the Town to make this an easy process so we are open to other reasonable suggestions. Please respond in writing to let us know what we have to do to make this happen?

Thanks, Tom Willan

SI-7

Dear Friends,

Many of you know but just so nothing is hidden I want to share with you the following. On June 7, 2017 I, Edward Knapton, was diagnosed with massive stage four prostate cancer with a Gleason score of 9. The cancer had spread to my pelvic region, covered my spine and was on some of my ribs. I am a veteran having served 4+ years during the Vietnam era and probably got prostate cancer because I was exposed to asbestos on the ship; as I was an E-6 Engineman and was covered in it at times. Other than my time at college and time in the service we have lived near Madison our whole lives. After buying my brothers out we still own 35+ acres of the original farm homestead of 1848. We had to sell off the rest to keep the farm business going in Cottage Grove.

Carol and I have operated our farming business for 41 years and want to leave the world something to help make it better. We have spent a year in trying to sell the business but that fell through. We now realize that it will take too long to sell and I will perhaps die before it is sold and the business will end.

We are in the process of creating an Employee owned company – an ESOP. As I am writing this we have 40 people on the payroll in the two garden centers, about 100,000 sq feet of greenhouse space. Payroll not including owners is over \$500,000 per year.

The zoning needs to be brought up to date at our Cottage Grove site at 4311 Vilas Hope Road. I learned when I went up to Dane County Zoning to talk about the new zoning changes coming, that we were non-conforming. I don't need this stress in my life wondering when I or the future ESOP will get a stop order from Dane County Zoning and the business fails – so it needs to be fixed. I can't live with the stress. Pamela Andros and I discussed a larger zoning district. We would like the larger zoning district to include our growing greenhouses since we sell and have sold for decades our plants, soil, pottery, chemicals, fertilizer, cut flowers, and basically all the things a garden center sells. Not including landscaping we still only after over 28 years sell about 90% plants but the ability to provide garden solutions with the pottery, fertilizer, chemicals, cut flowers, landscape supplies and other things a normal garden center sells allows us to stay in business. Farming and Garden Center Retailing has changed quite bit in 30 years.

Please help us continue this local farm business. We do a lot to support the local community and non profits in Dane County. Carol and I would like our company to continue even after I am no longer here.

God Bless  
Edward and Carol Knapton

*Edward & Carol Knapton*

7/13/2018 7:57 AM

**SI-8**

July 14, 2018

Dear Pamela,

Thank you and Roger so much for your help. Please forgive me for crying. I am under a lot of stress and the drugs I am taking affect me mentally.

I want to make sure everything is done correctly so there will not be a problem in the future. Though there has been none in almost 3 decades.

Like a lot of garden centers in the US we have a lot of events and have had these for many years. Also like a lot of garden centers we have a landscape division, a wholesale division, and a floral division. We have many talks and many workshops for customers where they make something and take it home. This allows us to compete with businesses like Home Depot and Menards. In addition in the past in our huge parking lot in the summer we had a flea market. Two or three times per summer. In September we also adjust the tables and have an event called Art in the Garden. We invite local artisans to come and set up booths in our greenhouse and while they shop the artisans they also buy flowers. Also we have had boys and girls clubs come and sell food as a way to raise money during our busy time during one or two of our events in May and April as a way to get customers to shop longer. We also are thinking of adding a small Farmers Market as we have none in Cottage Grove.

In the past we had pick your own strawberries and pumpkins and we need to make sure we can do this along with normal farming activities.

We plant flowering containers at the Airport and hotels in the Madison, Rockford, and Milwaukee area. State of Wisconsin, Madison, MATC, HO Chunk, Dane County, and various landscapers also buy from us.

Even with all of the above it is not easy. Farming/Garden Center business is very seasonal. We basically have three seasons. Spring when 80% of our sales occur in 6 weeks. Fall when we sell mums, asters, pansies and other fall related items like pumpkins, gourds, and Indian corn. The Christmas season when we sell wreaths, roping, Christmas Trees, poinsettias and other Christmas plants along with a few Christmas gift items. If you have any questions, please call me at 608-698-5627.

God Bless,  
Edward & Carol Knapton

*Edward + Carol Knapton*

7/14/2018 10:07 AM

**SI-9**

**Applicant:** Edward and Carol Knapton  
4311 Vilas Hope Road  
Cottage Grove, WI 53527  
Phone: 698-5627  
[Knapton@charter.net](mailto:Knapton@charter.net)

**Proposal:** Mr. and Mrs. Knapton, owner of America's Best Flowers, would like to change the zoning of their property to bring the existing business operation into compliance with current zoning regulations. The request is to change the zoning of the entire property to A-B Agriculture-Business to facilitate the production of plants and flowers on the property and for the wholesale/retail sales of the plants and flowers. A conditional use permit is requested for the operation of a landscaping business, retail sales of other products, and allowing for a residence for an owner of the farming operation.

**Site:** **4305/4311 Vilas Hope Road**  
The property consists of two parcels containing approximately 34 acres  
The site is detailed on the map below:

**Legal Description:** Part of the North ½ of the Southwest ¼ of Section 11, T07N, R07E, Town of Cottage Grove, more fully described as follows: Commencing at the West ¼ corner section; thence N85DEG30'31"E 585.11 FT to the Point of Beginning; Thence N85DEG30'31"E 452.33 FT; thence S0DEG47'51"E 947.87 FT; thence N85DEG32'8"E 692.53 FT; thence S0DEG47'51"E 373.79 FT to the south line of said ½ of the ¼ section; thence S85DEG32'8"W 1721.04 FT to the west section line; thence N1DEG10'58"W 983.42 FT; thence N85DEG42'50"E 584.99 FT; thence; N1DEG10'58"W 339.31 FT to the Point of Beginning. Also Lot 1 of Certified Survey Map #2479.

**Existing Zoning:** The property contains multiple zoning districts. There are 30.7 acres within A-1Ex Exclusive Agriculture Zoning District and there are 3.3 acres within the C-2 Commercial Zoning District. There is a conditional use permit, CUP #1031, to allow for a residence for a watchman/ caretaker.

**Existing Uses:** America's Best flowers has been in business for 41 years. The primary farm operation is growing of flowers within 85,000 square feet of greenhouse space. The operation includes a landscaping division, a wholesale division, and floral division. Activities include growing of agricultural product (plants and flowers), wholesale business of agricultural products, a retail garden center business, a landscaping business operation. The property also contains a residence for the property owner (owner of the farming business).

**Adjacent land uses:** The adjacent land uses located on Vilas Hope Road include an excavating/landscaping business, single-family residences, and a horse boarding facility. Adjacent properties to the north, south, and west are agricultural fields.

**Town Comprehensive Plan:** The Town Plan designates the area within the Agricultural Preservation planning area. The Town Plan allows for the expansion of existing businesses at the Town Board's discretion. The zoning district classification of A-B Agri-Business is designated as an appropriate zoning district within the Agricultural Preservation Planning Area.

SI-10



Kim Banigan <clerk@towncg.net>

**RE: Knapton/Americas Best**

1 message

**Lane, Roger** <lane.roger@countyofdane.com>  
To: Kim Banigan <clerk@towncg.net>

Tue, Jul 17, 2018 at 4:24 PM

Working on it tomorrow morning.

Roger

**From:** Kim Banigan [mailto:clerk@towncg.net]  
**Sent:** Tuesday, July 17, 2018 11:24 AM  
**To:** Lane, Roger  
**Subject:** Knapton/Americas Best

Hi Roger,

I guess we are going to try to get the knapton rezone/cup on our plan commission agenda for next Wednesday, assuming you can get me the revised county application by this Thursday. Is that doable?

Kim Banigan  
Clerk, Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

Phone: 608-839-5021

Fax: 608-839-4432  
www.tn.cottagegrove.wi.gov  
Office Hours: 8:00 a.m. to 12:30 p.m., M-F

SI-11



Kim Banigan <clerk@towncg.net>

**Rezone and CUP application for Americas Best Flowers**

1 message

Lane, Roger <lane.roger@countyofdane.com>  
To: "Kim Banigan (clerk@towncg.net)" <clerk@towncg.net>  
Cc: "knapton@charter.net" <knapton@charter.net>

Thu, Jul 19, 2018 at 8:06 AM

Dear Kim,

Attached is the application for Americas Best Flowers rezone and CUP. If you have any questions or concerns, please let me know.

Respectfully,

Roger Lane  
Dane County Zoning Administrator

 Rezone 11337 CUP 2436.pdf  
2937K

SI-17



Kim Banigan <clerk@towncg.net>

**RE: Rezone and CUP application for Americas Best Flowers**

1 message

Lane, Roger <lane.roger@countyofdane.com>  
To: Kim Banigan <clerk@towncg.net>

Tue, Aug 14, 2018 at 9:56 AM

No. Basically he is doing indoor farming. I don't think we need to see his financials. The residence will mostly be used by a person working or owning the horticulture business.

Roger Lane

Dane County Zoning Administrator

**From:** Kim Banigan [mailto:clerk@towncg.net]  
**Sent:** Tuesday, August 14, 2018 9:43 AM  
**To:** Lane, Roger  
**Subject:** Re: Rezone and CUP application for Americas Best Flowers

One more thing on this (I won't be at the plan commission meeting so want to be sure I have answers to any questions they might have).

Do you foresee any issues with the America's Best business meeting the definition of 10.01(2c)?

Kim Banigan  
Clerk, Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

Phone: 608-839-5021

Fax: 608-839-4432  
www.tn.cottagegrove.wi.gov  
Office Hours: 8:00 a.m. to 12:30 p.m., M-F

On Fri, Jul 27, 2018 at 11:29 AM, Lane, Roger <lane.roger@countyofdane.com> wrote:

Dear Kim,

You are correct. Great question from the Plan Commission.

The A-B Agriculture Business Zoning District is confusing with regards to the list uses: agricultural uses, agricultural-accessory uses, and agricultural-related uses. The zoning district was created by Department of Ag, Trade, and

SI-13

8/14/2018

Town of Cottage Grove Staff & Board Member Access Mail - RE: Rezone and CUP application for Americas Best Flowers

Consumer Protection (DATCP). The exact language of the A-B district had to be added verbatim if you wanted the zoning ordinance to be certified for the Ag Preservation Program.

The code section 10.121(3)(a)3 only relates to a business that is not an integral part, or incidental to the agricultural use. For example, if American Best started to sell used cars. Clearly that wouldn't be related to the agricultural use. The used car sales business would under this specific code section and have the limitation of 4 employees.

As for the primary agricultural use or the agricultural-related uses, there are no limits on employees. The farm residence is the only agricultural accessory use.

Respectfully,

Roger Lane

Dane County Zoning Administrator

**From:** Kim Banigan [mailto:clerk@towncg.net]  
**Sent:** Thursday, July 26, 2018 11:07 AM  
**To:** Lane, Roger  
**Subject:** Re: Rezone and CUP application for Americas Best Flowers

Hi Roger,

Our Plan Commission tabled this last night because they thought there was a problem with the CUP because the 10.121(3)(a)3. says no more than 4 full-time employees annually, and they have way more employees than that. I am thinking (a) was only meant to cover the farm residence, and the garden center actually comes under 10.121(b)2. which does not say anything about employees, but they wanted clarification from you. Am I correct?

Kim Banigan  
Clerk, Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

Phone: 608-839-5021

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Office Hours: 8:00 a.m. to 12:30 p.m., M-F

On Thu, Jul 19, 2018 at 8:06 AM, Lane, Roger <lane.roger@countyofdane.com> wrote:

Dear Kim,

ST-14

(9) General provisions applicable to the A-B(a) Transitional Agriculture Business District shall be the same as for the A-B Agriculture Business District.

(10) *Off-street parking.* Off-street parking shall be provided as required in section 10.18.

[History: 10.122 cr., OA 18, 2013-14, pub. 12/17/13.]

**10.123 A-1 EXCLUSIVE AGRICULTURE [A-1(EX)] DISTRICT.** (intro.) This district is in effect in those towns which make the election under sub. (1)(c) below.<sup>2</sup>

(1) *Purpose and applicability.*

(a) State of purpose. The A-1 Exclusive Agriculture District is designed to:

1. Provide for a wide range of agriculture and agricultural accessory uses, at various scales. The A-1(EX) district accommodates as permitted uses all activities typically associated with the primary production and harvesting of crops, livestock, animal products or plant materials. Such uses may involve noise, dust, odors, heavy equipment, use of chemicals and long hours of operation.

2. Allow for incidental processing, packaging, storage, transportation, distribution or other activities intended to add value to agricultural products produced on the premises or to ready such products for market. Such uses are conditional as they may have the potential to pose conflicts with agricultural use due to: volumes or speed of vehicular traffic; residential density; proximity to incompatible uses; environmental impacts; or consumption of agriculturally productive lands.

3. Allow for other incidental activities, compatible with agricultural use, to supplement farm family income and support the agricultural community.

4. Preserve productive agricultural land for food and fiber production.

5. Preserve productive farms by preventing land use conflicts between incompatible uses.

6. Maintain a viable agricultural base to support agricultural processing and service industries.

7. Reduce costs for providing services to scattered non-farm uses.

<sup>2</sup>As of January 1, 1997, the following towns have made this election: Albion, Berry, Black Earth, Blooming Grove, Blue Mounds, Christiana, Cottage Grove, Cross Plains, Dane, Deerfield, Dunkirk, Dunn, Madison, Mazomanie, Medina, Montrose, Oregon, Perry, Pleasant Springs, Primrose, Roxbury, Rutland, Springfield, Sun Prairie, Vermont, Verona, Vienna, Westport, Windsor and York.

8. Pace and shape urban growth.

9. Meet the criteria for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

(b) *Lands to be included within the A-1 Exclusive Agriculture District.* This district is generally intended to apply to lands in productive farm operations including: lands historically exhibiting good crop yields or capable of such yields; lands which have been demonstrated to be productive for dairying, livestock raising and grazing; other lands which are integral parts of such farm operations; land used for the production of specialty crops such as mint, sod, fruits and vegetables; and lands which are capable of productive use through economically feasible improvements such as irrigation, and undeveloped natural resource and open space areas.

(c) *Applicability.* This section shall apply only to those towns, or portions of said towns, which have filed a resolution with the county clerk indicating the election of the town to come under provisions of this district. Towns which have filed resolutions indicating acceptance of the exclusive agriculture district prior to the date of this amendment shall continue to be under the provision of this section.

(2) *Permitted uses.*

(a) Agricultural Uses, except those uses listed as conditional uses below. Keeping of livestock is prohibited on parcels smaller than 5 acres.

(b) Agricultural Accessory Uses, except those uses listed as conditional uses in s. 10.123(3), and subject to the limitations and standards below.

1. Any residence lawfully existing as of February, 20, 2010 shall be considered a permitted use. Notwithstanding the provisions of secs. 10.21 and 10.23 regarding nonconforming uses, such structure may be added to, altered, restored, repaired, replaced or reconstructed, without limitation, provided all of the following criteria are met:

a. the use remains residential,

b. the structure complies with all building height, setback, side yard and rear yard standards of this ordinance; and

c. for replacement residences, the structure must be located within 100 feet of the original residence, unless site-specific limitations or town residential siting standards in town plans adopted by the county board require a greater distance. Proposals for a replacement residence that would exceed the 100 foot limitation must be

approved by the relevant town board and county zoning committee.

2. Rental of existing farm or secondary farm residences existing as of December 12, 2012, but no longer utilized in the operation of the farm.

3. Agricultural entertainment activities, not to exceed 45 days per calendar year in the aggregate, including incidental preparation and sale of beverages and food. For any such activities planned or anticipated to have attendance of more than 200 persons at any one time during a day, an event plan addressing parking, proposed days of operation, ingress and egress, sanitation and other public safety issues shall be filed annually with the zoning administrator, town clerk, servicing fire department, emergency medical service provider, Dane County Sheriff's Department and any local law enforcement agency for such agricultural entertainment activities, at least 30 days prior to the start of any agricultural entertainment activities in each calendar year.

4. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on five days in a calendar year or less.

5. Small scale energy systems or electric generating stations, provided energy produced is used primarily on the farm.

(f) Undeveloped natural resource and open space areas.

(g) A transportation, utility, communication, or other use that is:

1. required under state or federal law to be located in a specific place, or;

2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.

(3) *Conditional uses in the A-1 Exclusive Agriculture District.* The following uses require a Conditional Use Permit in this district:

(a) Agricultural Accessory Uses: In addition to other requirements of this ordinance, the following uses must meet the definition of an agricultural accessory use under s. 10.01(2b).

1. Farm Residence, subject to sub. (4).

2. Limited Family Businesses, that are entirely within an existing building, subject to s. 10.192.

3. Limited Rural Businesses that are operated by an owner or operator of the farm.

4. A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm,

that requires no buildings, structures, or improvements other than those described in s. 10.01(2b)(a) and (c) that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

5. Sale of agricultural and dairy products not produced on the premises and incidental sale of non-alcoholic beverages and snacks.

6. The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those residing on the premises, such storage to be in existing accessory farm buildings. The storage of a dealer's inventory or the construction of any new buildings for storage is prohibited.

7. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on more than five days in a calendar year.

8. Agricultural entertainment activities exceeding 45 days per year, in aggregate.

9. Horse boarding stables, riding stables, hay and sleigh rides, and horse training facilities, including the sale of bridles, saddles, grooming supplies and related items at a horse boarding or riding stable facility. Such uses must meet the definition and criteria for an Agricultural Accessory Use under s. 10.01(2b)(d), or a Limited Family Business under s. 10.01(30fa) and 10.192, or a Limited Rural Business under s. 10.01(30g).

(b) Governmental, institutional, religious, or nonprofit community uses.

(c) Transportation, communications, pipeline, electric transmission, utility, or drainage uses, not listed as a permitted use above.

(d) Non-metallic mineral extraction operations that comply with s. 91.46(6), Wis. Stats., section 10.191 and chapter 74. The application shall conform to the requirements of s. 10.191(2).

(e) Asphalt plants or ready-mix concrete plants, that comply with s. 91.46(5), Wis. Stats., for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.

(f) Small scale electric generating stations, meeting the requirements of s. 91.46(4), Wis. Stats., and not listed as a permitted use in s. 10.123(2).

(4) *Conditional use permits for residences in the A-1 Exclusive Agriculture zoning district.*

(a) Application. The following information must be submitted with a Conditional Use Permit

application for a Farm Residence in the A-1EX district:

1. Written description of the farm operation. The description should include the following details:

- a. Location of the farm.
- b. Size of the farm operation in acres.
- c. Crops grown and/or livestock raised.
- d. Number of employees, if any, in addition to farm family members.
- e. Summary of farm income derived from the farm operation.

2. Completed IRS form "Schedule F – Profit or Loss from Farming," or subsequent IRS form for reporting farm profit or loss, for the past 3 tax years.

3. Farm conservation plan obtained from the Land Conservation Division of the Dane County Land & Water Resources Department. All active farms in Dane County have a farm conservation plan detailing the types/location of crops grown, and any on-farm conservation measures (e.g., grass drainage swales, buffer strips, etc.)

4. Map/site plan with aerial photograph showing the farm ownership boundaries. The map should clearly identify the location of the proposed new Farm Residence and driveway access.

(b) Permit conditions.

1. The Zoning Committee shall include a "sunset" provision on any CUP for a residential use issued after December 17, 2009 in the A-1EX district stating that the CUP shall expire upon sale of the property to an unrelated 3rd party. Upon sale of the property to an unrelated 3rd party, a new Conditional Use Permit or rezoning application must be filed.

2. Any Conditional Use Permit found to be in violation of this section may be revoked by the Zoning Committee, and a zoning change to an appropriate residential district shall be required to bring the property and residential use into compliance with the provisions of this ordinance.

3. The Zoning Committee shall require the recording of a notice document with the Register of Deeds on the subject property notifying current and future owners of the provisions of paragraph 1. and 2. of this section.

(5) *Standards for conditional uses in the A-1 Exclusive Agriculture zoning district.* In addition to the requirements of s. 10.255(2)(h), the zoning committee must find that the following standards are met before approving any conditional use permit in the A-1(exclusive agriculture) zoning district.

(a) The use and its location in the A-1 Exclusive Agriculture zoning district are consistent with the purposes of the district.

(b) The use and its location in the A-1 Exclusive Agriculture zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.

(c) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.

(d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

(6)(a) Residential dwellings shall not exceed 2 ½ stories or 35 feet in height.

(b) Accessory buildings shall not exceed 35 feet in height.

(c) For agricultural accessory buildings there is no limitation on height.

(7) *Area, frontage, and population density regulations.*

(a) The minimum lot size is 35 acres.

(8) *Setback requirements.* No building, including barns and other farm buildings of any description whatsoever, shall be erected, moved or structurally altered so as to be nearer the highway than is prescribed by section 10.17.

(9) *Side yard requirements.*

(a) Side yards for residential dwellings and residential accessory buildings shall be the same as for the R-1 Residence District.

(b) Accessory buildings, cages or hives for housing of animals or insects shall be located at least 100 feet from an R-1, R-1A, R-2, R-3, R-3A, or R-4 Residence District, except with respect to existing structures when the residence district has been created for an existing farm residence or by separating a farm residence from a farm property and the separated parcel has been rezoned to a residence district after or at the time of the division.

(10) *Rear yard requirements.*

(a) Rear yards for residential dwellings and residential accessory buildings shall be the same as for the R-1 Residence District.

(b) Accessory buildings, cages, kennels, hives and runs for housing of animals or insects shall be located at least 100 feet from an R-1, R-1A, R-2, R-3, R-3A, or R-4 Residence District, except with respect to existing structures when

the residence district has been created for an existing farm residence or by separating a farm residence from a farm property and the separated parcel has been rezoned to a residence district after or at the time of the division.

(11) *General provisions applicable to the A-1 Exclusive Agriculture District.* In addition to the conditions provided for in sections 10.16(1) through (6a) the following additional conditions shall apply:

(a) Any lot or parcel shown in a preliminary subdivision plat or a certified survey map which was received for review by the agency prior to the effective date of A-1 Exclusive Agriculture zoning, was approved and recorded, shall have the same status as pre-existing lots as defined in section 10.16(3)(a).

(b) Residential and residential accessory buildings on parcels of less than 2 acres in the A-1 Exclusive Agriculture District shall comply with the standards of section 10.05(3).

(c) Any residential building or its accessory building that is located on a substandard parcel as defined herein and which is destroyed by fire, explosion, act of God or act of public enemy may be rebuilt provided the locational requirements of the R-1 Residence District are complied with.

(d) The provisions of section 10.16(1)(b)1. pertaining to real estate offices do not apply to lands in this district.

(12) *Rezoning of land in the A-1 Exclusive Agriculture District.* No land in the Exclusive Agriculture District shall be rezoned except in accordance with s. 91.48, Wis. Stats.

[History: 10.123 am., OA 9, 1993-94, pub. 04/20/94; (3)(L) cr., OA 8, 1994-95, pub. 09/02/94; (Intro.), (7)(b), (8)(b) and (9)(b) and (c) am. and (2)(bm) cr., OA 16, 1996-97, pub. 01/16/97; (3)(g) am., OA 16, 1997-98, pub. 03/03/98; (1)(a) and (b) and (2)(bm) am., and (9)(f) and (10) cr., OA 3, 2000-01, pub. 10/19/00; (2)(b) and (h), (3) and (5) am., Sub. 1 to OA 31, 2001-02, pub. 09/04/02, eff. 09/05/02; reference to "Agriculture District (Exclusive)" changed to "Exclusive Agriculture District", Sub. 1 to OA 31, 2001-02, pub. 09/04/02, eff. 09/05/02; (2)(j), (k) and (L) and (3)(m) cr., Sub. 1 to OA 18, 2004-05, pub. 04/11/05; (2)(b) and (e), (3)(b) am., (3)(bm) and (br), (11) cr., (2)(bm) and (c) rescinded, Sub. 1 to OA 21, 2009-10, pub. 02/19/10; (2)(f) am. and (3)(n) cr., Sub. 1 to OA 37, 2010-11, pub. 06/23/11; (3)(L) and (4)(b) am., OA 4, 2011-12, pub. 08/01/11; (1)-(11) am., (12) cr., OA 12, 2012-13, pub. 12/18/12; (2)(b) am. and renum., (3)(e) and (f) am., 2015 OA-16, pub. 12/04/15.]

**10.126 A-2 AGRICULTURE DISTRICT.** (1) *Statement of purpose.* The purpose of the A-2 Agriculture District is to provide for low density land uses compatible with agricultural and other rural uses and to accommodate agricultural uses on parcels of less than 35 acres.

- (2) *Permitted uses.* (a) Agricultural uses.
- (b) Single family detached residences.
- (c) Utility services.
- (d) Home occupations as defined in s. 10.01(25).

(e) Accessory buildings.  
1. Accessory buildings include private garages and buildings clearly incidental to a permitted use of the premises. Such buildings shall not be used for residential purposes. The building shall not be used for the storage of goods or merchandise considered to be a dealer's inventory or for storage of machinery or equipment used off of the premises for other than agricultural purposes.

2. Accessory buildings may be built on parcels of land in the A-2 Agriculture District without the necessity of there being a residence on the property.

(3) *Conditional uses permitted in the A-2 Agriculture District.*

(a) Mineral extraction operations, asphalt plants, ready mix concrete plants.

1. Applications for mineral extraction operations require a description of the operation, a site plan and a reclamation plan, as provided for under section 10.191.

(b) Communication towers.

(c) Dumping grounds, sanitary landfill sites, demolition material disposal sites and incinerator sites shall also comply with section 60.72 of the Wis. Stats. and shall meet the minimum standards as adopted by the State Department of Natural Resources.

(d) Cemeteries.

(e) Airports, landing strips or landing fields together with accessory structures.

(f) Religious uses.

(g) Salvage recycling centers.

(h) Solid waste recycling centers.

(i) Dependency living arrangements.

(j) Governmental uses.

(k) Native wildlife rehabilitation facilities.

(L) Parking or storage of not more than two trucks, semi-tractors or semi-trailers which have a gross vehicle weight of over 12,000 lbs.

(m) Limited family businesses subject to s. 10.192.

(n) Schools.

(o) Kennels, horse boarding stables, riding stables, hay and sleigh rides, horse shows and similar events.

(p) Unlimited livestock on 3 to 16 acres.

(q) Sale of agricultural and dairy products not produced on the premises and incidental sale of pop and candy.

(r) The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those resident on the premises, this storage to be in existing agricultural accessory buildings. The storage of a dealer's inventory or the construction of any new buildings for storage shall be considered a commercial use and subject to the provisions of this chapter.

(s) Retail sales of bridles, saddles, grooming supplies and related items at a horse boarding or riding stable facility. Said use shall be limited to a maximum of 150 sq. ft. of floor space.

(t) Retail sales of pet food, pet supplies and related items at a kennel facility. Said use shall be limited to a maximum of 100 square feet of floor space.

(u) Training of dogs at a dog kennel or training of horses at a horse boarding facility.

(v) Storage of explosive materials in strict conformance with Wisconsin Administrative Code provisions regarding explosive materials.

(x) Sanitary plumbing fixtures in accessory buildings involved in an agricultural or agricultural accessory use on parcels over 5 acres in size.

(4) *Building height limits.*

(a) Residential dwellings shall not exceed 2½ stories or 35 feet in height.

(b) Accessory buildings shall not exceed 35 feet in height.

(c) For agricultural accessory buildings there is no limitation on height.

(5) *Area, frontage and population density regulations.*

- (a) A-2 (1) = Minimum 1 acre.  
 A-2 (2) = Minimum 2 acres.  
 A-2 (4) = Minimum 4 acres.  
 A-2 (8) = Minimum 8 acres.  
 A-2 = Minimum 16 acres.

(b) *Keeping of livestock:*

1. On parcels of less than 2 acres the keeping of livestock is not permitted.

2. On parcels sized between 2 acres through 16 acres the keeping of livestock shall be limited to 1 animal unit per each full acre.

3. On parcels of more than 16 acres, there is no limit to the number of livestock that may be kept.

(c) Salvage recycling centers: Minimum area is three acres.

(d) For residential uses the lot width and area shall be the same as for the R-1 Residence District.

(e) For other permitted uses, there shall be no minimum width or area except for those uses for

which special setback and side yard requirements have been established.

(6) *Setback requirements.* No building, including barns and other farm buildings of any description whatsoever, shall be erected, moved or structurally altered so as to be nearer the highway than is prescribed by section 10.17.

(7) *Side yard requirements.* (a) Side yards for residential dwellings and residential accessory buildings shall be the same as for the R-1 Residence District.

(b) Accessory buildings, cages, kennels, hives and runs for housing of animals or insects shall be located at least 100 feet from an R-1, R-1A, R-2, R-3, R-3A or R-4 Residence District, except with respect to existing structures when the residence district has been created for an existing farm residence or by separating a farm residence from a farm property and the separated parcel has been rezoned to a residence district after or at the time of the division.

(8) *Rear yard requirements.* (a) Rear yards for residential dwellings and residential accessory buildings shall be the same as for the R-1 Residence District.

(b) Accessory buildings, cages, kennels, hives and runs for housing of animals or insects shall be located at least 100 feet from an R-1, R-1A, R-2, R-3, R-3A or R-4 Residence District, except with respect to existing structures when the residence district has been created for an existing farm residence or by separating a farm residence from a farm property and the separated parcel has been rezoned to a residence district after or at the time of the division.

(9) *Off-street parking.* Off-street parking space shall be provided in accordance with the provision of section 10.18.

[History: (3)(k) cr., OA 29, 1988-89, pub. 03/29/89.; (3)(i) am., OA 20, 1989-90, pub. 02/27/90; (2)(b) and (c), (3)(b), (f) and (i) am. and (2)(j) renum. as (3)(m), OA 17, 1992-93, pub. 10/09/92; (8)(b) am., Sub 1. to OA 31, 1992-93, pub. 04/14/93; (3)(b), (c) and (i) and (4) am., subs. (3)(m) through (q) cr., Sub. 3 to OA 36, 1987-88, pub. 08/02/88; (3)(g) am., Sub. 2 to OA 11, 1991-92, pub. 12/18/91; (2)(f) renum. as (3)(r), OA 17, 1992-93, pub. 10/09/92; (5)(b) am., Sub. 3 to OA 36, 1987-88, pub. 08/02/88; (5)(c) am., Sub. 2 to OA 11, 1991-92, pub. 12/18/91; (7)(b) am., Sub. 1 to OA 31, 1992-93, pub. 04/14/93; am., Sub. 3 to OA 36, 1987-88, pub. 08/02/88; 10.126 (entire) am., OA 9, 1993-94, pub. 04/20/94; (3)(s) cr., OA 8, 1994-95, pub. 09/02/94; (3)(t) cr., OA 9, 1994-95, pub. 09/02/94; (3)(u) cr., OA 10, 1994-95, pub. 09/02/94; (3)(a)1., (7)(b) and (8)(b) am., OA 16, 1996-97, pub. 01/16/97; (3)(b) am., OA 57, 1996-97, pub. 09/02/97; (3)(n) am., OA 16, 1997-98, pub. 03/03/98; (3)(v) cr., OA 22, 1999-2000, pub. 06/27/00; (5)(b) am., OA 3, 2000-01, pub. 10/19/00; (3)(r), (4)(b) am. and (3)(x) cr., OA 4, 2011-12, pub. 08/01/11.]

2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.

(3) Conditional uses.

(a) Attached accessory dwelling units.

(b) Limited family business.

(c) Day care centers.

(d) Community living arrangements for nine (9) or more persons.

(e) Governmental, institutional, religious, or nonprofit community uses.

(f) Transient or Tourist Lodging.

(g) Transportation, communications, pipeline, electric transmission, utility, or drainage uses, not listed as a permitted use above.

(4) Lot size requirements.

(a) Minimum lot size. All lots created in the RR-1 zoning district must be at least 1 acre in area, excluding public rights-of-way.

(b) Maximum lot size. All lots created in the RR-1 zoning district must be smaller than 2 acres in area, excluding public rights-of-way.

(c) Minimum lot width. All lots created in the RR-1 zoning district must have a minimum lot width of 100 feet.

(5) Setbacks and required yards.

(a) Front yard. Any permitted structure must comply with road setbacks as described in s. 10.102(9).

(b) Side yard.

1. Permitted residences must be at least a total of 25 feet from both side lot lines, and not less than 10 feet from any one side lot line.

2. Accessory buildings housing livestock must be at least:

a. 50 feet from the side lot line of any parcel in any of the Residential, Rural Residential or Hamlet zoning districts, or

b. 10 feet from any other side lot line.

3. Accessory buildings not housing livestock must be at least 10 feet from any side lot line.

(c) Rear yard.

1. Permitted residences must be at least 50 feet from the rear lot line.

2. Uncovered decks and porches attached to a permitted residence must be at least 38 feet from the rear lot line.

3. Accessory buildings housing livestock, must be at least:

a. 50 feet from the rear lot line of any parcel in any of the Residential, Rural Residential or Hamlet zoning districts, or

b. 10 feet from any other rear lot line.

4. Accessory buildings not housing livestock must be at least 10 feet from the rear lot line.

(6) Building height.

(a) Residential buildings.

1. Principal residential buildings shall not exceed a height of two and a half stories or 35 feet.

2. Residential accessory buildings shall not exceed a height of 16 feet.

(b) Agricultural buildings. There is no limitation on height for agricultural buildings.

(7) Lot coverage. The total area of all buildings and structures must not exceed 30% of the total lot area, or 35% for corner lots, excluding public rights-of-way.

[History: 10.241 cr., 2018 OA-20, pub. 01/29/19.]

#### 10.242 RR-2 (RURAL RESIDENTIAL, 2 TO 4 ACRES) ZONING DISTRICT.

(1) Purpose. The RR-2 Rural Residential 2 district is designed to:

(a) Provide for single-family residential principal uses and a variety of accessory or ancillary uses, including small-scale farming, appropriate to a rural setting, on compact parcels. The RR-2 district accommodates uses which are compatible with both residential and farming practices, are typically found in a rural location and do not require urban services.

(b) Such uses typically generate traffic, noise or other impacts similar to those produced by a single-family residence.

(2) Permitted uses.

(a) Undeveloped natural resource and open space areas.

(b) Small-scale farming.

(c) Single family residential.

(d) Residential accessory buildings.

(e) Home occupations.

(f) Foster homes for less than five children.

(g) Community living arrangements for fewer than 9 persons.

(h) Incidental room rental.

(i) Utility services associated with, and accessory to, a permitted or conditional use.

(j) A transportation, utility, communication, or other use that is:

1. required under state or federal law to be located in a specific place, or;

2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.

(3) Conditional uses.

(a) Attached accessory dwelling units.

(b) Animal use exceeding one animal unit per acre.

(c) Limited family business.

- (d) Day Care Centers.
- (e) Community living arrangements for nine (9) or more persons.
- (f) Governmental, institutional, religious, or nonprofit community uses.
- (g) Transient or Tourist Lodging.
- (h) Transportation, communications, pipeline, electric transmission, utility, or drainage uses, not listed as a permitted use above.
- (4) Lot size requirements.
  - (a) Minimum lot size. All lots created in the RR-2 zoning district must be at least 2 acres in area, excluding public rights-of-way.
  - (b) Maximum lot size. All lots created in the RR-2 zoning district must be smaller than 4 acres in area, excluding public rights-of-way.
  - (c) Minimum lot width. All lots created in the RR-2 zoning district must have a minimum lot width of 100 feet.
- (5) Setbacks and required yards.
  - (a) Front yard. Any permitted structure must comply with road setbacks as described in s. 10.102(9).
  - (b) Side yard.
    - 1. Permitted residences must be at least a total of 25 feet from both side lot lines, and not less than 10 feet from any one side lot line.
    - 2. Accessory buildings housing livestock must be at least:
      - a. 50 feet from the side lot line of any parcel in any of the Residential, Rural Residential or Hamlet zoning districts, or
      - b. 10 feet from any other side lot line.
    - 3. Accessory buildings not housing livestock must be at least 10 feet from any side lot line.
  - (c) Rear yard.
    - 1. Permitted residences must be at least 50 feet from the rear lot line.
    - 2. Uncovered decks and porches attached to a permitted residence must be at least 38 feet from the rear lot line.
    - 3. Accessory buildings housing livestock, must be at least:
      - a. 50 feet from the rear lot line of any parcel in any of the Residential, Rural Residential or Hamlet zoning districts, or
      - b. 10 feet from any other rear lot line.
    - 4. Accessory buildings not housing livestock must be at least 10 feet from the rear lot line.
- (6) Building height.
  - (a) Residential buildings.
    - 1. Principal residential buildings shall not exceed a height of two and a half stories or 35 feet.
    - 2. Residential accessory buildings shall not exceed a height of 35 feet.

- (b) Agricultural buildings. There is no limitation on height for agricultural buildings.
- (7) Lot coverage. The total area of all buildings and structures must not exceed 10% of the total lot area, excluding public rights-of-way. [History: 10.242 cr., 2018 OA-20, pub. 01/29/19.]

#### 10.243 RR-4 (RURAL RESIDENTIAL, 4 TO 8 ACRES) ZONING DISTRICT.

- (1) Purpose. The RR-4 Rural Residential 4 district is designed to:
  - (a) Provide for single-family residential principal uses and a variety of accessory or ancillary uses, including small-scale farming, appropriate to a rural setting, on moderately-sized parcels. The RR-4 district accommodates uses which are compatible with both residential and farming practices, are typically found in a rural location and do not require urban services.
  - (b) Such uses typically generate traffic, noise or other impacts similar to those produced by a single-family residence.
- (2) Permitted uses.
  - (a) Undeveloped natural resource and open space areas.
  - (b) Small-scale farming.
  - (c) Single family residential.
  - (d) Residential accessory buildings.
  - (e) Home occupations.
  - (f) Foster homes for less than five children.
  - (g) Community living arrangements for fewer than 9 persons.
  - (h) Incidental room rental.
  - (i) Utility services associated with, and accessory to, a permitted or conditional use.
  - (j) A transportation, utility, communication, or other use that is:
    - 1. required under state or federal law to be located in a specific place, or;
    - 2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.
- (3) Conditional uses.
  - (a) Attached accessory dwelling units.
  - (b) Animal use exceeding one animal unit per acre.
  - (c) Limited family business.
  - (d) Day Care Centers.
  - (e) Community living arrangements for nine (9) or more persons.
  - (f) Governmental, institutional, religious, or nonprofit community uses.
  - (g) Transient or Tourist Lodging.

- (b) Transportation, communications, pipeline, electric transmission, utility, or drainage uses, not listed as a permitted use above.
- (c) Non-metallic mineral extraction operations that comply with s. 91.46(6), Wis. Stats., s. 10.103(15) and Chapter 74.
- (d) Asphalt plants or ready-mix concrete plants, that comply with s. 91.46(5), Wis. Stats., for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.
- (e) Electric generating facilities, provided 100% of the production output of the facility is derived from renewable energy resources.
- (4) Lot size requirements.
- (a) Minimum lot size. All lots created in the FP-35 zoning district must be at least thirty-five (35) acres in area, excluding public rights-of-way.
- (b) Maximum lot size. None.
- (c) Minimum lot width. None.
- (5) Setbacks.
- (a) Front yard. Any permitted structure must comply with road setbacks as described in s. 10.102(9).
- (b) Side yards. Any permitted structures must be set back from side property lines as follows:
1. Principal residential buildings must be at least 10 feet from any side lot line and a total of at least 25 feet from both side lot lines.
  2. Structures housing livestock must be at least:
    - a. 100 feet from the side lot line of any parcel in any of the Residential or Hamlet zoning districts
    - b. 50 feet from the side lot line of any parcel in any of the Rural Residential zoning districts, or
    - c. At least 10 feet from any other side lot line.
  3. Accessory buildings not housing livestock must be at least 10 feet from any side lot line.
- (c) Rear yard. Any permitted structures must be set back from rear property lines as follows:
1. Principal residential buildings must be at least 50 feet from the rear lot line.
  2. Uncovered decks or porches attached to a principal residence must be at least 38 feet from the rear lot line.
  3. Structures housing livestock must be at least:
    - a. 100 feet from the rear lot line of any parcel in any of the Residential or Hamlet zoning districts,
    - b. 50 feet from the rear lot line of any parcel in any of the Rural Residential zoning districts, or
    - c. 10 feet from any other rear lot line.
4. Accessory buildings not housing livestock must be at least 10 feet from any rear lot line.
- (6) Building height.
- (a) Residential buildings.
1. Principal residential buildings shall not exceed a height of two and a half stories or 35 feet.
  2. Residential accessory buildings shall not exceed a height of 35 feet.
- (b) Agricultural buildings. There is no limitation on height for agricultural buildings.
- (7) Lot coverage. There is no limitation on lot coverage in the FP-35 district.
- (8) Other restrictions on buildings.
- (a) Principal residential buildings. Except for secondary farm residences authorized by conditional use permit, no more than one principal building is permitted per lot.
- (b) Accessory buildings.
1. There is no limitation on the number of accessory buildings in the FP-35 district.
  2. Accessory buildings may be constructed on property without a principal residence only if it is clearly related to a legitimate agricultural or agricultural accessory use.
  3. Sanitary fixtures are permitted in agricultural accessory buildings, however accessory buildings may not be used as living space.
- [History: 10.222 cr., 2018 OA-20, pub. 01/29/19.]
- 10.223 FP-B (FARMLAND PRESERVATION - BUSINESS) ZONING DISTRICT.**
- (1) Purpose. The FP-B Farmland Preservation - Business District is designed to:
- (a) Provide for a wide range of agriculture, agricultural accessory and agriculture-related uses, at various scales with the minimum lot area necessary to accommodate the use. The FP-B district accommodates uses which are commercial or industrial in nature; are associated with agricultural production; require a rural location due to extensive land area needs or proximity of agricultural resources; and do not require urban services.
1. In appearance and operation permitted uses in the FP-B district are often indistinguishable from a farm.
  2. Conditional uses are more clearly commercial or industrial in nature, and may involve facilities or processes that require a remote location distant from incompatible uses, proximity to agricultural products or suppliers and/or access to utility services or major transportation infrastructure.

3. Examples of activities in the FP-B district may include, but are not limited to, agricultural support services, value-added, or related businesses such as implement dealers; veterinary clinics; farm machinery repair shops; agricultural supply sales, marketing, storage, and distribution centers; plant and tree nurseries; and facilities for the processing of natural agricultural products or by-products, including fruits, vegetables, silage, or animal proteins. Such activities are characterized by:

- a. Wholesale or retail sales, and outdoor storage/display of agriculture-related equipment, inputs, and products;
- b. Parking areas, outdoor lighting, and signage appropriate to the scale of use;
- c. Small, medium, or large utilitarian structures/facilities/workshops, appropriate to the scale of use;
- d. Low to moderate traffic volumes;
- e. Noises, odors, dust, or other potential nuisances associated with agriculture-related production or processing;
- f. Meet the requirements for certification as a Farmland Preservation Zoning District under s. 91.38, Wis. Stats.

(2) Permitted uses.

(a) Agricultural uses.

(b) Agricultural accessory uses, except those uses listed as conditional uses and subject to the limitations and standards below.

1. Any residence lawfully existing as of February 20, 2010, provided all of the following criteria are met:

- a. the use remains residential,
- b. the structure complies with all building height, setback, side yard and rear yard standards of this ordinance; and
- c. for replacement residences, the structure must be located within 100 feet of the original residence, unless site-specific limitations or town residential siting standards in town plans adopted by the county board require a greater distance. Proposals for a replacement residence that would exceed the 100 foot limitation must be approved by the relevant town board and county zoning committee.

2. Agricultural entertainment activities or special events under 10 days per calendar year in the aggregate, including incidental preparation and sale of beverages and food.

3. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities

occurring on no more than ten days in a calendar year.

4. The seasonal storage of recreational equipment and motor vehicles owned by private individuals other than those residing on the premises, such storage to be in accessory farm buildings existing as of January 1, 2010. The storage of a dealer's inventory or the construction of any new buildings for storage is prohibited

5. Residential accessory buildings, home occupations, foster care for less than 5 children community living arrangements for less than 9 people or incidental room rental associated with a farm residence approved by conditional use permit.

6. Sales of agricultural products produced on the farm.

7. Large animal boarding.

(c) Agriculture-related uses, except uses listed as conditional uses below, consistent with the purpose statement for the FP-B district.

(d) Undeveloped natural resources and open space areas

(e) Utility services associated with a farm or a permitted agricultural accessory use.

(f) A transportation, utility, communication, or other use that is:

1. required under state or federal law to be located in a specific place, or;

2. is authorized to be located in a specific place under a state or federal law that specifically preempts the requirement of a conditional use permit.

(3) Conditional uses.

(a) Agricultural accessory uses: In addition to other requirements of this ordinance, the following uses must meet the definition of an agricultural accessory use under s. 10.004(12).

1. Agricultural entertainment activities or special events occurring 10 days or more per calendar year, in aggregate.

2. Airports, landing strips or heliports for private aircraft owned by the owner or operator of the farm or agriculture-related use on the premises.

3. Attached accessory dwelling units associated with a farm residence.

4. Farm related exhibitions, sales or events such as auctions, dairy breakfasts, exhibitions of farm machinery and technology, agricultural association meetings and similar activities, occurring on more than ten days in a calendar year.

5. Farm residence, subject to s. 10.103(11).

6. Limited farm business, subject to 10.103(13).
7. Sale of agricultural and dairy products not produced on the premises and incidental sale of non-alcoholic beverages and snacks.
8. Secondary farm residence, subject to s. 10.103(11).
- (b) Agriculture-related uses: In addition to the other requirements of this ordinance, the following uses must meet the definition of an agriculture-related use under s. 10.004(14).
1. Bio-diesel and ethanol manufacturing.
  2. Biopower facilities for distribution, retail, or wholesale sales.
  3. Colony house.
  4. Commercial animal boarding for farm animals, and not including boarding for domestic pets.
  5. Composting facility.
  6. Dead stock hauling services.
  7. Manure processing facilities.
  8. Stock yards, livestock auction facilities.
- (c) Transportation, communications, pipeline, electric transmission, utility, or drainage uses, not listed as a permitted use above.
- (d) Non-metallic mineral extraction operations that comply with s. 91.46(6), Wis. Stats., s. 10.103(15) and Chapter 74. The application shall conform to the requirements of s. 10.103(15).
- (e) Asphalt plants or ready-mix concrete plants, that comply with s. 91.46(5), Wis. Stats., for production of material to be used in construction or maintenance of public roads, to be limited in time to project duration.
- (f) Electric generating facilities, provided 100% of the production output of the facility is derived from renewable energy resources.
- (4) Lot size requirements.
- (a) Minimum lot size. All lots created in the FP-B zoning district must be at least 20,000 square feet in area, excluding public rights-of-way.
- (b) Maximum lot size. None.
- (c) Minimum lot width. All lots created in the FP-B zoning district must have a minimum lot width of 100 feet.
- (5) Setbacks.
- (a) Front yard. Any permitted structure must comply with road setbacks as described in s. 10.102(9).
- (b) Side yards. Any permitted structures must be set back from side property lines as follows:
1. Principal residential buildings must be at least 10 feet from any side lot line and a total of at least 25 feet from both side lot lines.
  2. Structures housing livestock must be at least:
    - a. 100 feet from the side lot line of any parcel in any of the Residential or Hamlet zoning districts,
    - b. 50 feet from the side lot line of any parcel in any of the Rural Residential zoning districts, or
    - c. At least 10 feet from any other side lot line.
  3. Accessory buildings not housing livestock must be at least 10 feet from any side lot line.
- (c) Rear yard. Any permitted structures must be set back from rear property lines as follows:
1. Principal residential buildings must be at least 50 feet from the rear lot line.
  2. Uncovered decks or porches attached to a principal residence must be at least 38 feet from the rear lot line.
  3. Structures housing livestock must be at least:
    - a. 100 feet from the rear lot line of any parcel in any of the Residential or Hamlet zoning districts,
    - b. 50 feet from the rear lot line of any parcel in any of the Rural Residential zoning districts, or
    - c. 10 feet from any other rear lot line.
  4. Accessory buildings not housing livestock must be at least 10 feet from any rear lot line.
- (6) Building height.
- (a) Residential buildings.
1. Principal residential buildings shall not exceed a height of two and a half stories or 35 feet.
  2. Residential accessory buildings shall not exceed a height of 35 feet.
- (b) Agricultural buildings. There is no limitation on height for agricultural buildings.
- (7) Lot coverage. There is no limitation on lot coverage in the FP-B district.
- (8) Other restrictions on buildings.
- (a) Accessory buildings.
1. There is no limitation on the number of accessory buildings in the FP-35 district.
  2. Accessory buildings may be constructed on property without a principal residence only if it is clearly related to a legitimate agricultural or agricultural accessory use.
  3. Sanitary fixtures are permitted in agricultural accessory buildings, however accessory buildings may not be used as living space.
- [History: 10.223 cr., 2018 OA-20, pub. 01/29/19.]

CHAPTER 91

FARMLAND PRESERVATION

SUBCHAPTER I			
DEFINITIONS AND GENERAL PROVISIONS			
91.01	Definitions.	91.42	Land use in farmland preservation zoning districts; general.
91.02	Rule making.	91.44	Permitted uses.
91.03	Intergovernmental cooperation.	91.46	Conditional uses.
91.04	Department to report.	91.48	Rezoning of land out of a farmland preservation zoning district.
		91.50	Exemption from special assessments.
SUBCHAPTER II		SUBCHAPTER IV	
FARMLAND PRESERVATION PLANNING		FARMLAND PRESERVATION AGREEMENTS	
91.10	County plan required; planning grants.	91.60	Farmland preservation agreements; general.
91.12	Certified plan.	91.62	Farmland preservation agreements; requirements.
91.14	Expiration of plan certification.	91.64	Applying for a farmland preservation agreement.
91.16	Certification of plan by the department.	91.66	Terminating a farmland preservation agreement.
91.18	Requirements for certification of plan.	91.68	Violations of farmland preservation agreements.
91.20	Applying for certification of plan.	91.70	Farmland preservation agreements; exemption from special assessments.
SUBCHAPTER III		SUBCHAPTER V	
FARMLAND PRESERVATION ZONING		SOIL AND WATER CONSERVATION	
91.30	Authority to adopt.	91.80	Soil and water conservation by persons claiming tax credits.
91.32	Certified ordinance.	91.82	Compliance monitoring.
91.34	Expiration of zoning certification.	SUBCHAPTER VI	
91.36	Certification of zoning ordinance by the department.	AGRICULTURAL ENTERPRISE AREAS	
91.38	Requirements for certification of ordinance.	91.84	Agricultural enterprise areas; general.
91.40	Applying for certification of ordinance.	91.86	Agricultural enterprise area; petition.

SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

**91.01 Definitions.** In this chapter:

(1) "Accessory use" means any of the following land uses on a farm:

(a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.

(b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.

(c) A farm residence.

(d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

(e) Any other use that the department, by rule, identifies as an accessory use.

(1m) "Agricultural enterprise area" means an area designated in accordance with s. 91.84.

(2) "Agricultural use" means any of the following:

(a) Any of the following activities conducted for the purpose of producing an income or livelihood:

1. Crop or forage production.
2. Keeping livestock.
3. Beekeeping.
4. Nursery, sod, or Christmas tree production.
- 4m. Floriculture.
5. Aquaculture.
6. Fur farming.
7. Forest management.

8. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

(b) Any other use that the department, by rule, identifies as an agricultural use.

(3) "Agriculture-related use" means any of the following:

(a) An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.

(b) Any other use that the department, by rule, identifies as an agriculture-related use.

(5) "Base farm tract" means one of the following:

(a) All land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation zoning district and that is part of a single farm on the date that the department under s. 91.36 (1) first certifies the farmland preservation zoning ordinance covering the land or on an earlier date specified in the farmland preservation zoning ordinance, regardless of any subsequent changes in the size of the farm.

(b) Any other tract that the department by rule defines as a base farm tract.

(6) "Certified farmland preservation plan" means a farmland preservation plan that is certified as determined under s. 91.12.

(7) "Certified farmland preservation zoning ordinance" means a zoning ordinance that is certified as determined under s. 91.32.

(8) "Chief elected official" means the mayor of a city or, if the city is organized under subch. I of ch. 64, the president of the council of that city, the village president of a village, the town board chairperson of a town, or the county executive of a county, or, if the county does not have a county executive, the chairperson of the county board of supervisors.

(9) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(10) "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a political subdivision.

(11) "County land conservation committee" means a committee created under s. 92.06 (1).

(12) "Department" means the department of agriculture, trade and consumer protection.

(13) "Farm" means all land under common ownership that is primarily devoted to agricultural use.

(14) "Farm acreage" means size of a farm in acres.

(15) “Farmland preservation agreement” means any of the following agreements between an owner of land and the department under which the owner agrees to restrict the use of land in return for tax credits:

(a) A farmland preservation agreement or transition area agreement entered into under s. 91.13, 2007 stats., or s. 91.14, 2007 stats.

(b) An agreement entered into under s. 91.60 (1).

(16) “Farmland preservation area” means an area that is planned primarily for agricultural use or agriculture–related use, or both, and that is one of the following:

(a) Identified as an agricultural preservation area or transition area in a farmland preservation plan described in s. 91.12 (1).

(b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described in s. 91.12 (2).

(17) “Farmland preservation plan” means a plan for the preservation of farmland in a county, including an agricultural preservation plan under subch. IV of ch. 91, 2007 stats.

(18) “Farmland preservation zoning district” means any of the following:

(a) An area zoned for exclusive agricultural use under an ordinance described in s. 91.32 (1).

(b) A farmland preservation zoning district designated under s. 91.38 (1) (c) in an ordinance described in s. 91.32 (2).

(19) “Farm residence” means any of the following structures that is located on a farm:

(a) A single–family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:

1. An owner or operator of the farm.
2. A parent or child of an owner or operator of the farm.
3. An individual who earns more than 50 percent of his or her gross income from the farm.

(b) A migrant labor camp that is certified under s. 103.92.

(20) “Gross farm revenues” has the meaning given in s. 71.613 (1) (g).

(20m) “Livestock” means bovine animals, equine animals, goats, poultry, sheep, swine, farm–raised deer, farm–raised game birds, camelids, ratites, and farm–raised fish.

(21) “Nonfarm residence” means a single–family or multi–family residence other than a farm residence.

(22) “Nonfarm residential acreage” means the total number of acres of all parcels on which nonfarm residences are located.

(22m) “Overlay district” means a zoning district that is superimposed on one or more other zoning districts and imposes additional restrictions on the underlying districts.

(23) “Owner” means a person who has an ownership interest in land.

(23m) “Permitted use” means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.

(24) “Political subdivision” means a city, village, town, or county.

(25) “Prime farmland” means any of the following:

(a) An area with a class I or class II land capability classification as identified by the natural resources conservation service of the federal department of agriculture.

(b) Land, other than land described in par. (a), that is identified as prime farmland in a certified farmland preservation plan.

(26) “Prior nonconforming use” means a land use that does not conform with a farmland preservation zoning ordinance, but that existed lawfully before the farmland preservation zoning ordinance was enacted.

(27) “Protected farmland” means land that is located in a farmland preservation zoning district, is covered by a farmland

preservation agreement, or is otherwise legally protected from nonagricultural development.

(28) “Taxable year” has the meaning given in s. 71.01 (12).

History: 2009 a. 28.

Wisconsin’s Working Lands: Securing Our Future. Matson. Wis. Law. Dec. 2009.

**91.02 Rule making.** (1) The department shall promulgate rules that set forth technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d).

(2) The department may promulgate rules for the administration of this chapter, including rules that do any of the following:

(a) Identify accessory uses under s. 91.01 (1) (e).

(b) Identify agricultural uses under s. 91.01 (2) (b).

(c) Identify agriculture–related uses under s. 91.01 (3) (b).

(d) Identify base farm tracts under s. 91.01 (5) (b).

(e) Specify requirements for certification under s. 91.18 (1) (b).

(f) Require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4).

(g) Specify types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3.

(h) Specify exceptions to the requirement that land in a farmland preservation zoning district be included in a farmland preservation area under s. 91.38 (1) (g).

(i) Specify requirements for certification of a farmland preservation zoning ordinance under s. 91.38 (1) (i).

(j) Require information in an application for certification of a farmland preservation zoning ordinance or amendment under s. 91.40 (5).

(k) Authorize additional uses in a farmland preservation zoning district under s. 91.42 (4).

(L) Authorize additional uses as permitted uses in a farmland preservation zoning district under s. 91.44 (1) (g).

(m) Authorize additional uses as conditional uses in a farmland preservation zoning district under s. 91.46 (1) (j).

(p) Require information in an application for a farmland preservation agreement under s. 91.64 (2) (h).

(r) Prescribe procedures for compliance monitoring under s. 91.82 (3).

History: 2009 a. 28; 2011 a. 253.

**91.03 Intergovernmental cooperation.** State agencies shall cooperate with the department in the administration of this chapter and in other matters related to the preservation of farmland in this state. State agencies shall, to the extent feasible, cooperate in sharing and standardizing relevant information, identifying and mapping significant agricultural resources, and planning and evaluating the impact of state actions on agriculture.

History: 2009 a. 28.

**91.04 Department to report.** At least once every 2 years, beginning not later than December 31, 2011, the department shall submit a farmland preservation report to the board of agriculture, trade and consumer protection and provide copies of the report to the department of revenue and the department of administration. The department shall prepare the report in cooperation with the department of revenue and shall include all of the following in the report:

(1) A review and analysis of farmland availability, uses, and use trends in this state, including information related to farmland conversion statewide and by county.

(2) A review and analysis of relevant information related to the farmland preservation program under this chapter and associated tax credit claims under subch. IX of ch. 71, including information related to all of the following:

(a) Participation in the program by political subdivisions and landowners.

(b) Tax credit claims by landowners, including the number of claimants, the amount of credits claimed, acreage covered by tax

credit claims, the amount of credits claimed under zoning ordinances and under farmland preservation agreements, and relevant projections and trends.

(c) The number, identity, and location of counties with certified farmland preservation plans.

(d) Trends and developments related to certification of farmland preservation plans.

(e) The number, identity, and location of political subdivisions with certified farmland preservation zoning ordinances.

(f) Trends and developments related to certification of farmland preservation zoning ordinances.

(g) The number, nature, and location of agricultural enterprise areas.

(h) The number and location of farms covered by farmland preservation agreements, including new farmland preservation agreements, and the number and location of farms for which farmland preservation agreements have expired.

(i) Conservation compliance by landowners under s. 91.80 and compliance activities by county land conservation committees under s. 91.82.

(j) Rezoning of land out of farmland preservation zoning districts under s. 91.48.

(k) Program costs, cost trends, and cost projections.

(L) Key issues related to program performance and key recommendations, if any, for enhancing the program.

**History:** 2009 a. 28; 2011 a. 32.

## SUBCHAPTER II

### FARMLAND PRESERVATION PLANNING

**91.10 County plan required; planning grants.** (1) By January 1, 2016, a county shall adopt a farmland preservation plan that does all of the following:

(a) States the county's policy related to farmland preservation and agricultural development, including the development of enterprises related to agriculture.

(b) Identifies, describes, and documents other development trends, plans, or needs, that may affect farmland preservation and agricultural development in the county, including trends, plans, or needs related to population and economic growth, housing, transportation, utilities, communications, business development, community facilities and services, energy, waste management, municipal expansion, and environmental preservation.

(c) Identifies, describes, and documents all of the following:

1. Agricultural uses of land in the county at the time that the farmland preservation plan is adopted, including key agricultural specialties, if any.

2. Key agricultural resources, including available land, soil, and water resources.

3. Key infrastructure for agriculture, including key processing, storage, transportation, and supply facilities.

4. Significant trends in the county related to agricultural land use, agricultural production, enterprises related to agriculture, and the conversion of agricultural lands to other uses.

5. Anticipated changes in the nature, scope, location, and focus of agricultural production, processing, supply, and distribution.

6. Goals for agricultural development in the county, including goals related to the development of enterprises related to agriculture.

7. Actions that the county will take to preserve farmland and to promote agricultural development.

7m. Policies, goals, strategies, and proposed actions to increase housing density in areas that are not identified under par. (d).

8. Key land use issues related to preserving farmland and to promoting agricultural development and plans for addressing those issues.

(d) Clearly identifies areas that the county plans to preserve for agricultural use and agriculture-related uses, which may include undeveloped natural resource and open space areas but may not include any area that is planned for nonagricultural development within 15 years after the date on which the plan is adopted.

(dm) Describes the rationale used to determine which areas to identify under par. (d).

(e) Includes maps that clearly delineate all areas identified under par. (d), so that a reader can easily determine whether a parcel is within an identified area.

(f) Clearly correlates the maps under par. (e) with text that describes the types of land uses planned for each area on a map.

(g) Identifies programs and other actions that the county and local governmental units within the county may use to preserve the areas identified under par. (d).

(2) 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 into the farmland preservation plan by reference.

(3) To adopt a farmland preservation plan under sub. (1), a county shall follow the procedures under s. 66.1001 (4) for the adoption of a comprehensive plan.

(4) The department may provide information and assistance to a county in developing a farmland preservation plan under sub. (1).

(5) A county shall notify the department before the county holds a public hearing on a proposed farmland preservation plan under sub. (1) or on any amendment to a farmland preservation plan. The county shall include a copy of the proposed farmland preservation plan or amendment in the notice. The department may review and comment on the plan or amendment.

(6) (a) From the appropriation under s. 20.115 (7) (dm) or (tm), the department may award a planning grant to a county to provide reimbursement for up to 50 percent of the county's cost of preparing a farmland preservation plan required under sub. (1). In determining priorities for awarding grants under this subsection, the department shall consider the expiration dates for plan certification under s. 91.14.

(b) The department shall enter into a contract with a county to which it awards a planning grant under par. (a) before the department distributes any grant funds to the county. In the contract, the department shall identify the costs that are eligible for reimbursement through the grant.

(c) The department may distribute grant funds under this subsection only after the county shows that it has incurred costs that are eligible for reimbursement under par. (b). The department may not distribute more than 50 percent of the amount of a grant under this subsection for a farmland preservation plan before the county submits the farmland preservation plan for certification under s. 91.16.

**History:** 2009 a. 28.

**91.12 Certified plan.** The following farmland preservation plans are certified, for the purposes of this chapter and s. 71.613:

(1) An agricultural preservation plan that was certified under s. 91.06, 2007 stats., if the certification has not expired.

(2) A farmland preservation plan that was certified under s. 91.16 if the certification has not expired or been withdrawn.

**History:** 2009 a. 28.

**91.14 Expiration of plan certification.** (1) Except as provided under sub. (4), the certification of a farmland preservation plan that was certified under s. 91.06, 2007 stats., expires on the

**91.14 FARMLAND PRESERVATION**

Updated 17–18 Wis. Stats. 4

date provided in the certification or, if the certification does not provide an expiration date, on the following date:

(a) December 31, 2011, for a county with an increase in population density of more than 9 persons per square mile.

(b) December 31, 2012, for a county with an increase in population density of more than 3.75 but not more than 9 persons per square mile.

(c) December 31, 2013, for a county with an increase in population density of more than 1.75 but not more than 3.75 persons per square mile.

(d) December 31, 2014, for a county with an increase in population density of more than 0.8 but not more than 1.75 persons per square mile.

(e) December 31, 2015, for a county with an increase in population density of not more than 0.8 person per square mile.

(2) The certification of a farmland preservation plan that the department certifies under s. 91.16 expires on the date specified under s. 91.16 (2).

(3) For the purposes of sub. (1), a county's increase in population density is the number by which the county's population per square mile based on the department of administration's 2007 population estimate under s. 16.96 exceeds the county's population per square mile based on the 2000 federal census.

(4) The secretary of agriculture, trade and consumer protection may delay the date for the expiration of a county's farmland preservation plan for up to 2 years beyond the date under sub. (1) upon a written request from the county demonstrating to the secretary's satisfaction that a delay would allow the county to concurrently develop a farmland preservation plan and a comprehensive plan or an update to a comprehensive plan.

History: 2009 a. 28.

**91.16 Certification of plan by the department.** (1) GENERAL. The department may certify a farmland preservation plan or an amendment to a farmland preservation plan as provided in this section.

(2) CERTIFICATION PERIOD. (a) The department may certify a farmland preservation plan for a period that does not exceed 10 years. The department shall specify the expiration date of the certification of the farmland preservation plan in the certification.

(b) The certification of an amendment to a certified farmland preservation plan expires on the date that the certification of the farmland preservation plan expires, except that the department may treat a comprehensive revision of a certified farmland preservation plan as a new farmland preservation plan and shall specify an expiration date for the certification of the revised farmland preservation plan as provided in par. (a).

(3) SCOPE OF DEPARTMENT REVIEW. (a) The department may certify a county's farmland preservation plan or an amendment to the farmland preservation plan based on the county's certification under s. 91.20 (3), without conducting any additional review or audit.

(b) The department may do any of the following before it certifies a county's farmland preservation plan or amendment:

1. Review the farmland preservation plan or amendment for compliance with s. 91.18.

2. Review and independently verify the application for certification, including the statement under s. 91.20 (3).

(4) DENIAL OF CERTIFICATION. The department shall deny a county's application for certification of a farmland preservation plan or amendment if the department finds any of the following:

(a) That the farmland preservation plan or amendment does not comply with the requirements in s. 91.18.

(b) That the application for certification does not comply with s. 91.20.

(5) WRITTEN DECISION; DEADLINE. The department shall grant or deny an application for certification under this section no more

than 90 days after the day on which the county submits a complete application, unless the county agrees to an extension. The department shall issue its decision in the form required by s. 227.47 (1).

(6) CONDITIONAL CERTIFICATION. The department may grant an application for certification under this section subject to conditions specified by the department in its decision under sub. (5). The department may certify a farmland preservation plan or amendment contingent upon the county board adopting the farmland preservation plan or amendment as certified.

(7) EFFECTIVE DATE OF CERTIFICATION. A certification under this section takes effect on the day on which the department issues its decision, except that if the department specifies conditions under sub. (6), the certification takes effect on the day on which the department determines that the county has met the conditions.

(8) EFFECTIVENESS OF PLAN AMENDMENTS. For purposes of this chapter and s. 71.613, a certified farmland preservation plan does not include an amendment adopted after July 1, 2009, unless the department certifies the amendment.

(9) WITHDRAWAL OF CERTIFICATION. The department may withdraw a certification that it granted under sub. (3) (a) if the department finds that the farmland preservation plan materially violates the requirements under s. 91.18.

History: 2009 a. 28.

**91.18 Requirements for certification of plan.** (1) A farmland preservation plan qualifies for certification under s. 91.16 if it complies with all of the following:

(a) The requirements in s. 91.10 (1) and (2).

(b) Any other requirements that the department specifies by rule.

(2) An amendment to a farmland preservation plan qualifies for certification under s. 91.16 if it complies with all of the requirements in sub. (1) that are relevant to the amendment and it does not cause the farmland preservation plan to violate any of the requirements in sub. (1).

History: 2009 a. 28.

**91.20 Applying for certification of plan.** A county seeking certification of a farmland preservation plan or amendment to a farmland preservation plan shall submit all of the following to the department in writing, along with any other relevant information that the county chooses to provide:

(1) The proposed farmland preservation plan or amendment.

(2) All of the following background information:

(a) A concise summary of the farmland preservation plan or amendment, including key changes from any previously certified farmland preservation plan.

(b) A concise summary of the process by which the farmland preservation plan or amendment was developed, including public hearings, notice to and involvement of other governmental units within the county, approval by the county, and identification of any key unresolved issues between the county and other governmental units within the county related to the farmland preservation plan or amendment.

(c) The relationship of the farmland preservation plan or amendment to any county comprehensive plan.

(3) A statement, signed by the county corporation counsel and the county planning director or chief elected official, certifying that the farmland preservation plan or amendment complies with all of the requirements in s. 91.18.

(4) Other relevant information that the department requires by rule.

History: 2009 a. 28.

## SUBCHAPTER III

## FARMLAND PRESERVATION ZONING

**91.30 Authority to adopt.** A political subdivision may adopt and administer a farmland preservation zoning ordinance in accordance with s. 59.69, 60.61, 60.62, or 62.23.

**History:** 2009 a. 28.

**91.32 Certified ordinance.** The following zoning ordinances are certified, for the purposes of this chapter and s. 71.613:

(1) An exclusive agricultural use zoning ordinance that was certified under s. 91.06, 2007 stats., if the certification has not expired or been withdrawn.

(2) A farmland preservation zoning ordinance that was certified under s. 91.36 if the certification has not expired or been withdrawn.

**History:** 2009 a. 28.

**91.34 Expiration of zoning certification.** (1) Except as provided under sub. (4), the certification of a farmland preservation zoning ordinance that was certified under s. 91.06, 2007 stats., expires on the date provided in the certification or, if the certification does not provide an expiration date, on the following date:

(a) December 31, 2012, for a county with an increase in population density of more than 9 persons per square mile or a city, village, or town in such a county.

(b) December 31, 2013, for a county with an increase in population density of more than 3.75 but not more than 9 persons per square mile or a city, village, or town in such a county.

(c) December 31, 2014, for a county with an increase in population density of more than 1.75 but not more than 3.75 persons per square mile or a city, village, or town in such a county.

(d) December 31, 2015, for a county with an increase in population density of more than 0.8 but not more than 1.75 persons per square mile or a city, village, or town in such a county.

(e) December 31, 2016, for a county with an increase in population density of not more than 0.8 person per square mile or a city, village, or town in such a county.

(2) The certification of a farmland preservation zoning ordinance that the department certifies under s. 91.36 expires on the date specified under s. 91.36 (2).

(3) For the purposes of sub. (1), a county's increase in population density is the number by which the county's population per square mile based on the department of administration's 2007 population estimate under s. 16.96 exceeds the county's population per square mile based on the 2000 federal census.

(4) The secretary of agriculture, trade and consumer protection may delay the date for the expiration of a political subdivision's farmland preservation zoning ordinance for up to 2 years beyond the date under sub. (1) upon a written request from the political subdivision demonstrating to the secretary's satisfaction that a delay would allow the political subdivision to concurrently develop a farmland preservation zoning ordinance and a comprehensive plan or an update to a comprehensive plan.

**History:** 2009 a. 28.

**91.36 Certification of zoning ordinance by the department.** (1) **GENERAL.** The department may certify a farmland preservation zoning ordinance or an amendment to a farmland preservation zoning ordinance as provided in this section.

(2) **CERTIFICATION PERIOD.** (a) The department may certify a farmland preservation zoning ordinance for a period that does not exceed 10 years. The department shall specify the expiration date of the certification of the farmland preservation zoning ordinance in the certification.

(b) The certification of an amendment to a certified farmland preservation zoning ordinance expires on the date that the certification of the farmland preservation zoning ordinance expires, except that the department may treat a comprehensive revision of a certified farmland preservation zoning ordinance as a new farmland preservation zoning ordinance and specify an expiration date

for the certification of the revised farmland preservation zoning ordinance as provided in par. (a).

(3) **SCOPE OF DEPARTMENT REVIEW.** (a) The department may certify a farmland preservation zoning ordinance or amendment to a farmland preservation zoning ordinance based on statements submitted under s. 91.40 (3) and (4), without conducting any additional review or audit.

(b) The department may do any of the following before it certifies a farmland preservation zoning ordinance or amendment:

1. Review the farmland preservation zoning ordinance or amendment for compliance with the requirements under s. 91.38.

2. Review and independently verify the application for certification, including the statements under s. 91.40 (3) and (4).

(4) **DENIAL OF CERTIFICATION.** The department shall deny an application for certification of a farmland preservation zoning ordinance or amendment if the department finds any of the following:

(a) That the farmland preservation zoning ordinance or amendment does not comply with the requirements in s. 91.38.

(b) That the application for certification does not comply with s. 91.40.

(5) **WRITTEN DECISION: DEADLINE.** The department shall grant or deny an application for certification under this section no more than 90 days after the day on which the political subdivision submits a complete application, unless the political subdivision agrees to an extension. The department shall issue its decision in the form required by s. 227.47 (1).

(6) **CONDITIONAL CERTIFICATION.** The department may grant an application for certification under this section subject to conditions specified by the department in its decision under sub. (5). The department may certify a farmland preservation zoning ordinance or amendment contingent upon the political subdivision adopting the farmland preservation zoning ordinance or amendment as certified.

(7) **EFFECTIVE DATE OF CERTIFICATION.** A certification under this section takes effect on the day on which the department issues the certification, except that if the department specifies conditions under sub. (6), the certification takes effect on the day on which the department determines that the political subdivision has met the conditions.

(8) **AMENDMENTS TO ORDINANCES: CERTIFICATION.** (a) Except as provided in par. (b), an amendment to a certified farmland preservation zoning ordinance is automatically considered to be certified as part of the certified farmland preservation zoning ordinance.

(b) An amendment to a certified farmland preservation zoning ordinance that is one of the following and that is adopted after July 1, 2009, is not automatically considered to be certified:

1. An amendment that is a comprehensive revision of a certified farmland preservation zoning ordinance.

2. An amendment that extends coverage of a certified farmland preservation zoning ordinance to a town that was not previously covered.

3. An amendment of a type specified by the department by rule that may materially affect compliance of the certified farmland preservation zoning ordinance with the requirements under s. 91.38.

(c) The department may withdraw certification of a farmland preservation zoning ordinance if, as a result of an amendment adopted after July 1, 2009, the amended farmland preservation zoning ordinance fails to comply with the requirements under s. 91.38. This paragraph applies regardless of whether the farmland preservation zoning ordinance was originally certified under s. 91.06, 2007 stats., or under this section.

(d) A political subdivision shall notify the department in writing whenever the political subdivision adopts an amendment that is described in par. (b) 1. to 3. to a certified farmland preservation zoning ordinance. The political subdivision shall include a copy

**91.36 FARMLAND PRESERVATION**

Updated 17–18 Wis. Stats. 6

of the amendment in the notice. This paragraph does not apply to an amendment that rezones land out of a farmland preservation zoning district.

**History:** 2009 a. 28.

**91.38 Requirements for certification of ordinance.**

(1) A farmland preservation zoning ordinance does not qualify for certification under s. 91.36 unless all of the following apply:

(a) The farmland preservation zoning ordinance includes jurisdictional, organizational, and enforcement provisions that are necessary for proper administration.

(c) The farmland preservation zoning ordinance clearly designates farmland preservation zoning districts in which land uses are limited in compliance with s. 91.42.

(d) The farmland preservation zoning ordinance includes maps that clearly delineate each farmland preservation zoning district, so that a reader can easily determine whether a parcel is within a farmland preservation zoning district; that are correlated to the text under par. (e); and that comply with technical specifications that the department establishes by rule.

(e) The text of the farmland preservation zoning ordinance clearly describes the types of land uses authorized in each farmland preservation zoning district.

(f) The farmland preservation zoning ordinance is substantially consistent with a certified farmland preservation plan.

(g) Except as provided by the department by rule, land is not included in a farmland preservation zoning district unless the land is included in a farmland preservation area identified in the county certified farmland preservation plan.

(h) If an overlay district, such as an environmental corridor, is superimposed on a farmland preservation zoning district, all of the following apply:

1. The farmland preservation zoning ordinance clearly identifies the overlay district as such.

2. The overlay district is shown on the maps under par. (d) in a way that allows a reader to easily identify the underlying farmland preservation zoning district and its boundaries.

3. The overlay district does not remove land use restrictions from the underlying farmland preservation zoning district.

(i) The farmland preservation zoning ordinance complies with any other requirements that the department specifies by rule.

(2) An amendment to a farmland preservation zoning ordinance qualifies for certification under s. 91.36 if it complies with all of the requirements in sub. (1) that are relevant to the amendment and it does not cause the farmland preservation zoning ordinance to violate any of the requirements in sub. (1).

(3) The limits on land uses in farmland preservation districts under s. 91.42 are minimum standards for certification of a farmland preservation zoning ordinance under s. 91.36.

**History:** 2009 a. 28.

**91.40 Applying for certification of ordinance.** A political subdivision seeking certification of a farmland preservation zoning ordinance or amendment to a farmland preservation zoning ordinance shall submit all of the following to the department in writing, along with any other relevant information that the political subdivision chooses to provide:

(1) The complete farmland preservation zoning ordinance or amendment proposed for certification.

(2) All of the following background information:

(a) A concise summary of the farmland preservation zoning ordinance or amendment, including key changes from any previously certified farmland preservation zoning ordinance.

(b) A concise summary of the process by which the farmland preservation zoning ordinance or amendment was developed, including public hearings, notice to and involvement of other governmental units, approval by the political subdivision, and identification of any key unresolved issues with other governmental

units related to the farmland preservation zoning ordinance or amendment.

(c) A description of the relationship of the farmland preservation zoning ordinance or amendment to the county certified farmland preservation plan, including any material inconsistencies between the farmland preservation zoning ordinance or amendment and the county certified farmland preservation plan.

(3) A statement, signed by the county planning director or the chief elected official, certifying that the farmland preservation zoning ordinance or amendment complies with s. 91.38 (1) (f) and (g).

(4) A statement, signed by the applicant's attorney or chief elected official, certifying that the farmland preservation zoning ordinance or amendment complies with all applicable requirements in s. 91.38.

(5) Other relevant information that the department requires by rule.

**History:** 2009 a. 28; 2011 a. 258.

**91.42 Land use in farmland preservation zoning districts; general.** A farmland preservation zoning ordinance does not qualify for certification under s. 91.36, if the farmland preservation zoning ordinance allows a land use in a farmland preservation zoning district other than the following land uses:

(1) Uses identified as permitted uses in s. 91.44.

(2) Uses identified as conditional uses in s. 91.46.

(3) Prior nonconforming uses, subject to s. 59.69 (10), 60.61 (5), or 62.23 (7) (h).

(4) Other uses allowed by the department by rule.

**History:** 2009 a. 28.

**91.44 Permitted uses.** (1) Except as provided in s. 84.01 (34), a farmland preservation zoning ordinance does not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a permitted use in a farmland preservation zoning district a land use other than the following land uses:

(a) Agricultural uses.

(b) Accessory uses.

(c) Agriculture-related uses.

(d) Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a conditional use under s. 91.46 (1) (e).

(e) Undeveloped natural resource and open space areas.

(f) A transportation, utility, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a conditional use permit for that use.

(g) Other uses identified by the department by rule.

(2) The department may promulgate rules imposing additional limits on the permitted uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

**History:** 2009 a. 28.

**91.46 Conditional uses.** (1) **GENERAL.** Except as provided in s. 84.01 (34), a farmland preservation zoning ordinance does not comply with s. 91.42 if the farmland preservation zoning ordinance allows as a conditional use in a farmland preservation zoning district a land use other than the following land uses:

(a) Agricultural uses.

(b) Accessory uses.

(c) Agriculture-related uses.

(d) Nonfarm residences that qualify under sub. (2) or that meet more restrictive standards in the farmland preservation zoning ordinance.

(e) Nonfarm residential clusters that qualify under sub. (3) or that meet more restrictive standards in the farmland preservation zoning ordinance.

## 7 Updated 17–18 Wis. Stats.

## FARMLAND PRESERVATION

91.48

(f) Transportation, communications, pipeline, electric transmission, utility, or drainage uses that qualify under sub. (4).

(g) Governmental, institutional, religious, or nonprofit community uses, other than uses covered by par. (f), that qualify under sub. (5).

(h) Nonmetallic mineral extraction that qualifies under sub. (6).

(i) Oil and gas exploration or production that is licensed by the department of natural resources under subch. II of ch. 295.

(j) Other uses allowed by the department by rule.

**(1m) ADDITIONAL LIMITATIONS.** The department may promulgate rules imposing additional limits on the conditional uses that may be allowed in a farmland preservation zoning district in order for a farmland preservation zoning ordinance to comply with s. 91.42.

**(2) NONFARM RESIDENCES.** A proposed new nonfarm residence or a proposal to convert a farm residence to a nonfarm residence through a change in occupancy qualifies for the purposes of sub. (1) (d) if the political subdivision determines that all of the following apply:

(a) The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1 to 20 after the residence is constructed or converted to a nonfarm residence.

(b) There will not be more than 4 dwelling units in nonfarm residences, nor, for a new nonfarm residence, more than 5 dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.

(c) The location and size of the proposed nonfarm residential parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel, will not do any of the following:

1. 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.

2. Significantly impair or limit the current or future agricultural use of other protected farmland.

**(3) NONFARM RESIDENTIAL CLUSTER.** A political subdivision may issue one conditional use permit that covers more than one nonfarm residence in a qualifying nonfarm residential cluster. A nonfarm residential cluster qualifies for the purposes of sub. (1) (e) if all of the following apply:

(a) The parcels on which the nonfarm residences would be located are contiguous.

(b) The political subdivision imposes legal restrictions on the construction of the nonfarm residences so that if all of the nonfarm residences were constructed, each would satisfy the requirements under sub. (2).

**(4) TRANSPORTATION, COMMUNICATIONS, PIPELINE, ELECTRIC TRANSMISSION, UTILITY, OR DRAINAGE USE.** A transportation, communications, pipeline, electric transmission, utility, or drainage use qualifies for the purposes of sub. (1) (f) if the political subdivision determines that all of the following apply:

(a) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.

(b) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.

(c) The use is reasonably designed to minimize conversion of land, at and around the site of the use, from agricultural use or open space use.

(d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

**(5) GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USE.** A governmental, institutional, religious, or nonprofit community use qualifies for the purposes of sub. (1) (g) if the political subdivision determines that all of the following apply:

(a) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.

(b) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.

(c) The use is reasonably designed to minimize the conversion of land, at and around the site of the use, from agricultural use or open space use.

(d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

**(6) NONMETALLIC MINERAL EXTRACTION.** Nonmetallic mineral extraction qualifies for the purposes of sub. (1) (h) if the political subdivision determines that all of the following apply:

(a) The operation complies with subch. I of ch. 295 and rules promulgated under that subchapter, with applicable provisions of the local ordinance under s. 295.13 or 295.14, and with any applicable requirements of the department of transportation concerning the restoration of nonmetallic mining sites.

(b) The operation and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.

(c) The operation and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations outside the farmland preservation zoning district, or are specifically approved under state or federal law.

(d) The operation is reasonably designed to minimize the conversion of land around the extraction site from agricultural use or open space use.

(e) The operation does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(f) The farmland preservation zoning ordinance requires the owner to restore the land to agricultural use, consistent with any required locally approved reclamation plan, when extraction is completed.

**History:** 2009 a. 28.

**91.48 Rezoning of land out of a farmland preservation zoning district.** (1) A political subdivision with a certified farmland preservation zoning ordinance may rezone land out of a farmland preservation zoning district without having the rezoning certified under s. 91.36, if the political subdivision finds all of the following, after public hearing:

(a) The land is better suited for a use not allowed in the farmland preservation zoning district.

(b) The rezoning is consistent with any applicable comprehensive plan.

(c) The rezoning is substantially consistent with the county certified farmland preservation plan.

(d) The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

(2) A political subdivision shall by March 1 of each year provide to the department a report of the number of acres that the political subdivision has rezoned out of a farmland preservation

**91.48 FARMLAND PRESERVATION**

Updated 17–18 Wis. Stats. 8

zoning district under sub. (1) during the previous year and a map that clearly shows the location of those acres.

(3) A political subdivision that is not a county shall by March 1 of each year submit a copy of the information that it reports to the department under sub. (2) to the county in which the political subdivision is located.

(4) If a political subdivision fails to comply with sub. (2), the department may withdraw the certification granted under s. 91.06, 2007 stats., or under s. 91.36 for the political subdivision's farmland preservation zoning ordinance.

**History:** 2009 a. 28; 2011 a. 32; 2011 a. 257 s. 56.

**91.50 Exemption from special assessments.**

(1) Except as provided in sub. (3), no political subdivision, special purpose district, or other local governmental entity may levy a special assessment for sanitary sewers or water against land in agricultural use, if the land is located in a farmland preservation zoning district.

(2) A political subdivision, special purpose district, or other local governmental entity may deny the use of improvements for which the special assessment is levied to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

**History:** 2009 a. 28.

## SUBCHAPTER IV

## FARMLAND PRESERVATION AGREEMENTS

**91.60 Farmland preservation agreements; general.**

(1) **AGREEMENTS AUTHORIZED.** The department may enter into a farmland preservation agreement that complies with s. 91.62 with the owner of land that is eligible under sub. (2).

(2) **ELIGIBLE LAND.** Land is eligible if all of the following apply:

(a) The land is operated as part of a farm that produced at least \$6,000 in gross farm revenues during the taxable year preceding the year in which the owner applies for a farmland preservation agreement or a total of at least \$18,000 in gross farm revenues during the last 3 taxable years preceding the year in which the owner applies for a farmland preservation agreement.

(b) The land is located in a farmland preservation area identified in a certified farmland preservation plan.

(c) The land is in an agricultural enterprise area designated under s. 91.84.

(3) **PRIOR AGREEMENTS.** (a) Except as provided in par. (c) or s. 91.66, a farmland preservation agreement entered into before July 1, 2009, remains in effect for the term specified in the agreement and under the terms that were agreed upon when the agreement was last created, extended, or renewed.

(b) The department may not extend or renew a farmland preservation agreement entered into before July 1, 2009.

(c) The department and an owner of land who entered into a farmland preservation agreement before July 1, 2009, may agree to modify the farmland preservation agreement in order to allow the owner to claim the tax credit under s. 71.613 rather than the tax credit for which the owner would otherwise be eligible.

**History:** 2009 a. 28.

**91.62 Farmland preservation agreements; requirements.**

(1) **CONTENTS.** The department may not enter into a farmland preservation agreement unless the agreement does all of the following:

(a) Specifies a term of at least 15 years.

(b) Includes a correct legal description of the tract of land covered by the farmland preservation agreement.

(c) Includes provisions that restrict the tract of land to the following uses:

1. Agricultural uses and accessory uses.

2. Undeveloped natural resource and open space uses.

(2) **FORM.** The department shall specify a form for farmland preservation agreements that complies with s. 59.43 (2m).

(3) **EFFECTIVENESS.** A farmland preservation agreement takes effect when it is signed by all owners of the land covered by the farmland preservation agreement and by the department.

(4) **RECORDING.** The department shall provide a copy of a signed farmland preservation agreement to a person designated by the signing owners and shall promptly present the signed agreement to the register of deeds for the county in which the land is located for recording.

(5) **CHANGE OF OWNERSHIP.** A farmland preservation agreement is binding on a person who purchases land during the term of a farmland preservation agreement that covers the land.

**History:** 2009 a. 28.

**91.64 Applying for a farmland preservation agreement.**

(1) **SUBMITTING AN APPLICATION.** An owner who wishes to enter into a farmland preservation agreement shall submit an application signed by the owner and each person required to be identified under sub. (2) (f), on a form provided by the department, to the county clerk of the county in which the land is located.

(2) **CONTENTS OF APPLICATION.** A person submitting an application under sub. (1) shall include all of the following in the application:

(a) The name and address of each person who has an ownership interest in the land proposed for coverage by the agreement.

(b) The location of the land proposed for coverage, indicated by street address, global positioning system coordinates, or township, range, and section.

(c) The legal description of the land proposed for coverage.

(d) A map or aerial photograph of the land proposed for coverage, showing parcel boundaries, residences and other structures, and significant natural features.

(e) Information showing that the land proposed for coverage is eligible under s. 91.60 (2).

(f) A description of every existing mortgage, easement, and lien, other than liens on growing crops, on land proposed for coverage, including the name and address of the person holding the lien, mortgage, or easement.

(h) Any other information required by the department by rule.

(i) Any fee under sub. (2m).

(2m) **COUNTY PROCESSING FEE.** A county may charge a reasonable fee for processing an application for a farmland preservation agreement.

(3) **COUNTY REVIEW.** (a) A county shall review an application under sub. (2) to determine whether the land proposed for coverage meets the requirements under s. 91.60 (2) (b) and (c). The county shall provide its findings to the applicant in writing within 60 days after the day on which the county clerk receives a complete application.

(b) If the county finds under par. (a) that the land proposed for coverage meets the requirements under s. 91.60 (2) (b) and (c), the county shall promptly send all of the following to the department, along with any other comments that the county chooses to provide:

1. The original application, including all of the information provided with the application.

2. A copy of the county's findings.

(4) **DEPARTMENT ACTION ON APPLICATION.** (a) The department may prepare a farmland preservation agreement that complies with s. 91.62 and enter into the farmland preservation agreement under s. 91.60 (1) based on a complete application and on county findings under sub. (3) (b).

9 Updated 17–18 Wis. Stats.

FARMLAND PRESERVATION 91.84

(b) The department may decline to enter into a farmland preservation agreement for any of the following reasons:

1. The application is incomplete.
2. The land is not eligible land under s. 91.60 (2).

History: 2009 a. 28; 2013 a. 20.

**91.66 Terminating a farmland preservation agreement.** (1) The department may terminate a farmland preservation agreement or release land from a farmland preservation agreement at any time if all of the following apply:

(a) All of the owners of land covered by the farmland preservation agreement consent to the termination or release, in writing.

(b) The department finds that the termination or release will not impair or limit agricultural use of other protected farmland.

(c) The owners of the land pay to the department, for each acre or portion thereof released from the farmland preservation agreement, a conversion fee equal to 3 times the per acre value, for the year in which the farmland preservation agreement is terminated or the land is released, of the highest value category of tillable cropland in the city, village, or town in which the land is located, as specified by the department of revenue under s. 73.03 (2a).

(1m) All conversion fees received under sub. (1) (c) shall be deposited in the working lands fund.

(2) The department shall provide a copy of its decision to terminate a farmland preservation agreement or release land from a farmland preservation agreement to a person designated by the owners of the land and shall present a copy of the decision to the register of deeds for the county in which the land is located for recording.

History: 2009 a. 28.

**91.68 Violations of farmland preservation agreements.** (1) The department may bring an action in circuit court to do any of the following:

- (a) Enforce a farmland preservation agreement.
- (b) Restrain, by temporary or permanent injunction, a change in land use that violates a farmland preservation agreement.
- (c) Seek a civil forfeiture for a change in land use that violates a farmland preservation agreement.

(2) A forfeiture under sub. (1) (c) may not exceed twice the fair market value of the land covered by the agreement at the time of the violation.

History: 2009 a. 28.

**91.70 Farmland preservation agreements; exemption from special assessments.** (1) Except as provided in sub. (3), no political subdivision, special purpose district, or other local governmental entity may levy a special assessment for sanitary sewers or water against land in agricultural use, if the land is covered by a farmland preservation agreement.

(2) A political subdivision, special purpose district or other local governmental entity may deny the use of improvements for which the special assessment is levied to land that is exempt from the assessment under sub. (1).

(3) The exemption under sub. (1) does not apply to an assessment that an owner voluntarily pays, after the assessing authority provides notice of the exemption under sub. (1).

History: 2009 a. 28.

SUBCHAPTER V

SOIL AND WATER CONSERVATION

**91.80 Soil and water conservation by persons claiming tax credits.** An owner claiming farmland preservation tax credits under s. 71.613 shall comply with applicable land and water conservation standards promulgated by the department

under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c).

History: 2009 a. 28.

**91.82 Compliance monitoring.** (1) COUNTY RESPONSIBILITY. (a) A county land conservation committee shall monitor compliance with s. 91.80.

(b) For the purpose of par. (a), a county land conservation committee shall inspect each farm for which the owner claims farmland preservation tax credits under subch. IX of ch. 71 at least once every 4 years.

(c) For the purpose of par. (a), a county land conservation committee may do any of the following:

1. Inspect land that is covered by a farmland preservation agreement or farmland preservation zoning and that is in agricultural use.

2. Require an owner to certify, not more than annually, that the owner complies with s. 91.80.

(d) At least once every 4 years, the department shall review each county land conservation committee's compliance with par. (b).

(2) NOTICE OF NONCOMPLIANCE. (a) A county land conservation committee shall issue a written notice of noncompliance to an owner if the committee finds that the owner has done any of the following:

1. Failed to comply with s. 91.80.

2. Failed to permit a reasonable inspection under sub. (1) (c) 1.

3. Failed to certify compliance as required under sub. (1) (c) 2.

(b) A county land conservation committee shall provide to the department of revenue a copy of each notice of noncompliance issued under par. (a).

(c) If a county land conservation committee determines that an owner has corrected the failure described in a notice of noncompliance under par. (a), it shall withdraw the notice of noncompliance and notify the owner and the department of revenue of the withdrawal.

(3) PROCEDURE. The department may promulgate rules prescribing procedures for the administration of this section by land conservation committees.

History: 2009 a. 28.

SUBCHAPTER VI

AGRICULTURAL ENTERPRISE AREAS

**91.84 Agricultural enterprise areas; general.** (1) DESIGNATION. (a) 1. The department may by order designate agricultural enterprise areas targeted for agricultural preservation and development.

2. The department may by order modify or terminate the designation of an agricultural enterprise area.

(b) The department may designate agricultural enterprise areas with a combined area of not more than 2,000,000 acres of land.

(e) The department may not designate an area as an agricultural enterprise area unless all of the following apply:

1. The department receives a petition requesting the designation and the petition complies with s. 91.86.

3. The parcels in the area are contiguous. Parcels that are only separated by a lake, stream, or transportation or utility right-of-way are contiguous for the purposes of this subdivision.

4. The area is located entirely in a farmland preservation area identified in a certified farmland preservation plan.

5. The land in the area is primarily in agricultural use.

(f) In designating agricultural areas under this subsection, the department shall give preference to areas that include at least 1,000 acres of land.

**91.84 FARMLAND PRESERVATION**

Updated 17–18 Wis. Stats. 10

**(1m) PUBLICATION OF ORDER.** The department shall publish a notice of an order designating, modifying, or terminating an agricultural enterprise area, including a general description of the towns affected by the order, in the official state newspaper.

**(2m) EFFECTIVENESS OF PRIOR DESIGNATIONS.** A rule designating an agricultural enterprise area under s. 91.84 (2), 2009 stats., remains in effect until December 31, 2012.

**(3) EFFECT OF DESIGNATION.** The designation of an area under sub. (1) allows owners of eligible land within the area to enter into farmland preservation agreements with the department. If the department modifies or terminates the designation of an area under sub. (1) and that modification or termination results in land covered by a farmland preservation agreement no longer being located in a designated area, the farmland preservation agreement remains in effect for the remainder of its term, but the department may not extend or renew the farmland preservation agreement.

**(4) MAP.** In an order designating an agricultural enterprise area, the department shall include a map that clearly shows the boundaries of the proposed agricultural enterprise area so that a reader can easily determine whether a parcel of land is located within the agricultural enterprise area. The department shall make the map available on its Internet site.

**(5) EFFECTIVE DATE OF ORDERS.** The designation of an agricultural enterprise area takes effect on January 1 of the calendar year following the year in which the order designating the area is published, unless the order specifies a later effective date. An order modifying or terminating the designation of an agricultural enterprise area takes effect upon publication under sub. (1m).

**History:** 2009 a. 28; 2011 a. 253; 2013 a. 352.

**91.86 Agricultural enterprise area; petition. (1) DEFINITION.** In this section, “eligible farm” means a farm that produced at least \$6,000 in gross farm revenues during the taxable year preceding the year in which a petition is filed requesting the department to designate an area in which the farm is located as an agricultural enterprise area or a total of at least \$18,000 in gross farm revenues during the 3 taxable years preceding the year in which a petition is filed.

**(2) PETITIONERS.** (a) The department may consider a petition requesting that it designate an area as an agricultural enterprise area if all of the following jointly file the petition:

1. Each political subdivision in which any part of the proposed agricultural enterprise area is located.

2. Owners of at least 5 eligible farms located in the area.

(b) Each petitioner under par. (a) who is an individual shall sign the petition. For a petitioner that is not an individual, an authorized officer or representative shall sign the petition.

**(3) CONTENTS OF PETITION.** (a) The department may not approve a petition requesting that it designate an area as an agricultural enterprise area unless the petition contains all of the following:

1. The correct legal name and principal address of each petitioner.

2. A summary of the petition that includes the purpose and rationale for the petition.

3. A map that clearly shows the boundaries of the proposed agricultural enterprise area so that a reader can easily determine whether a parcel of land is located within the proposed area.

4. Information showing that the proposed agricultural enterprise area meets the requirements under s. 91.84 (1) (e).

5. A clear description of current land uses in the proposed agricultural enterprise area, including current agricultural uses, agriculture-related uses, transportation, utility, energy, and communication uses, and undeveloped natural resource and open space uses.

6. A clear description of the agricultural land use and development goals for the proposed agricultural enterprise area, including proposed agricultural uses, agriculture-related uses, and relevant transportation, utility, energy, and communication uses.

7. A plan for achieving the goals under subd. 6., including any planned investments, grants, development incentives, cooperative agreements, land or easement purchases, land donations, and promotion and public outreach activities.

8. A description of any current or proposed land use controls in the proposed agricultural enterprise area, including farmland preservation agreements.

(b) Petitioners under sub. (2) may include in the petition the names and addresses of other persons who propose to cooperate in achieving the goals under par. (a) 6.

**History:** 2009 a. 28, 276.

Videotaped Deposition of ROGER LANE - June 01, 2017

1 Mr. Gault's approval.

2 ROGER LANE,

3 called as a witness, being first duly  
4 sworn, testified on oath, as follows:

5 EXAMINATION

6 BY MR. WILLAN:

7 Q What is your position, sir, Mr. Lane?

8 A I am the Dane County zoning administrator.

9 Q How long have you been the Dane County zoning  
10 administrator?

11 A A little over ten years.

12 Q Ten years. That's an appointed position or an  
13 elected position?

14 A It is an appointed position.

15 Q And your direct boss is?

16 A Todd Violante, director of planning and  
17 development.

18 Q And you are appointed, though, by the --  
19 Mr. Parisi, the executive; is that correct?

20 A Yes. Through final approval.

21 Q Okay. Do you have a degree in zoning? Or do you  
22 have a college degree?

23 A I don't believe there is a zoning degree, per se.

24 Q But do you have a college degree?

25 A No.

Videotaped Deposition of ROGER LANE - June 01, 2017

1 A That's the corporation counsel's job.

2 Q But the corporation counsel was not involved.  
3 Cervello was representing Dane County at the time  
4 because this was a liability case, and it was  
5 determined that -- we stipulated that there was  
6 going to be a rezone on the property; is that  
7 correct?

8 A Yes. Rezoning took place in 2013.

9 Q Originally, though, you -- remember some  
10 correspondence with me back in 2013 regarding  
11 asking a bunch of questions in an e-mail regarding  
12 what took place with the zoning, and you told me  
13 that I had to pay to get it rezoned? Is that  
14 correct?

15 A That's correct.

16 Q And that based upon our lawsuit with Dane County,  
17 it was agreed upon that you would rezone my  
18 property -- our property at 4407 Vilas Hope; is  
19 that correct?

20 A That's correct.

21 Q And that when you went to go to rezone this thing  
22 in 2013, you were -- you recommended going back to  
23 RH-1; correct?

24 A There were several discussions. The initial  
25 discussion was rural homes; that's what the

Videotaped Deposition of ROGER LANE - June 01, 2017

1 petition was called for. It was changed to A-2  
2 because our discussions -- which you potentially  
3 having a business on the property and could be run  
4 as a limited family business. So midway through  
5 the way, it was zoned to A-2, paren, I believe, 2  
6 in order for someday you possibly having a business  
7 on the property.

8 Q But that goes back to originally in 1998, it was  
9 supposed to be zoned RH-1; correct?

10 A It was supposed to be, but it -- it never  
11 transpired because the conditions of approval were  
12 not -- were never met.

13 Q Absolutely. But my point is, in 2013, you tried to  
14 go back to the original petition where it was RH-1,  
15 and based upon conversations between you and I, and  
16 a site visit, you determined that RH-1 wouldn't  
17 work; is that correct?

18 A well, the petition was originally filed as rural  
19 homes, RH; to rezone the property. And then after  
20 our discussions and a visit to the property and you  
21 stating your future intentions of the property, I  
22 suggested that the rezoning of that property should  
23 be A-2.

24 Q Who filled out that paperwork?

25 A Who filled out that paperwork?

Videotaped Deposition of ROGER LANE - June 01, 2017

1 Q Paperwork.

2 A I believe you submitted an application.

3 Q But there was other paperwork that went along with  
4 it; correct?

5 A You know, that was 2013. So if the information --  
6 if you have the information that was submitted,  
7 I -- you know, the application was taken in and  
8 accepted and went through the process. So I'm sure  
9 the minimum information there was presented.

10 Q We will get back to that.

11 A Okay.

12 Q What I'm saying, Mr. Lane, is that I was not really  
13 involved in the rezoning. You had been -- as an  
14 agreement to our lawsuit, you had agreed to rezone  
15 our property.

16 A Yes. And I believe you filled out an application.

17 Q Just with my name and signature. That is correct,  
18 I did do that. But as far as the zoning goes, you  
19 are an expert in zoning; is that correct?

20 A I wouldn't say I'm an expert.

21 Q You are not an expert in zoning and you are the  
22 zoning administrator of the County of Dane?

23 A I administer the zoning --

24 Q Okay.

25 A -- to the best of my ability.

Videotaped Deposition of ROGER LANE - June 01, 2017

1 Q And then you come up and told us, Hey, you know,  
2 based upon our conversation, ag. 2 looks more  
3 appropriate for your use; is that correct?

4 A That's correct.

5 Q Okay. Now, my next question is, is there such a  
6 thing as split zoning in Dane County, where a  
7 property has got its own zoning district that could  
8 be partially commercial, partially ag., partially  
9 residential, partially commercial?

10 A There are some very large parcels that have areas  
11 designated for a specific use, primarily if you  
12 have -- such as a large farm, okay, or someone has  
13 a hundred or 200 acres of land that is just wooded  
14 and they are just using a very specific area for a  
15 single-family residence, that area would be  
16 reclassified for residential zoning district.

17 Q So are you familiar with America's Best down by --  
18 located on Vilas Hope Road -- Flowers shop? And --  
19 America's Best Flowers shop is located down on  
20 Vilas Hope Road, down from us. I am sure you have  
21 probably seen it many times if you have driven back  
22 and forth to our property.

23 You are not aware of that piece of  
24 property?

25 A I am aware of that business name, but --

Videotaped Deposition of ROGER LANE - June 01, 2017

1 Q what I'm asking you is -- we are not going to deal  
2 with the erosion control. Those people are coming  
3 in here in a little while, and they will explain  
4 their portions of the deal.

5 what I'm talking about, Mr. Lane, is  
6 property use. Our property is zone ag. 2; is that  
7 correct?

8 A Yes, that's correct.

9 Q Okay. So in order -- in order for me to do things  
10 on my property, I have to fall within ag. 2 rules  
11 and regulations; correct?

12 A There are -- there's a zoning classification of  
13 A-2. There are land uses that are permitted by  
14 right, land uses that are conditional use land  
15 uses, and there are requirements, such as setbacks  
16 and number of animals you can have on the property.

17 Q Absolutely. So my point, back to Mr. Eckloff's  
18 property, right, if Mr. Eckloff had strictly a  
19 residential lot, and he was using a portion of his  
20 property to allow cars to go into America's Best  
21 property, which is a commercial property, would  
22 that be in violation of the zoning ordinance?

23 A I would really have to take a look at it, sir.

24 Q Well, I guess what I'm trying to --

25 MR. GAULT: I'm going to object to

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

THOMAS M. WILLAN and  
JULIA A. WILLAN,  
Plaintiffs, CASE NO. 19-CV-345

v.

COUNTY OF DANE, DCZ,  
JOE PARISI, TODD VIOLANTE,  
ROGER LANE, PAM ANDROS,  
and SARAH JOHNSON,  
Defendants.

---

**AFFIDAVIT OF THOMAS M WILLAN ON 59e MOTION**

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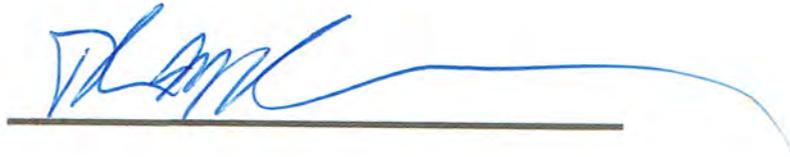
STATE OF WISCONSIN :  
: SS  
COUNTY OF DANE :

I, THOMAS M WILLAN, being first duly sworn on oath, deposes and states as follows:

1. I am an adult resident of the State of Wisconsin, and I make this Affidavit based on my own personal knowledge and competence.
2. I am a plaintiff in the above titled action.
3. I have lawfully purchased building permits from the Town of Cottage Grove starting on May 29, 2012 for the restoration of the Willan's existing dairy barn so it could be used in the agricultural accessory business consistent with Ag-1EX the legal zoning district the property was in.
4. That Julia and I purchased 4407 Vilas Hope rd with an investment backed expectation to run Ironman Buildings from the Barn and property under the Ag-1EX zoning district the property was located in when they purchased it on October 31, 2011.
5. That I have expended over \$75,000.00 in expenses in the restoration of the barn and property to be used for agricultural accessory purposes.
6. That I had purchased a legal lawful building permit from the Town of Cottage Grove for the Barn to be equipped with separate electric service in 2014 and remodel the milk house into a business office.
7. That defendant Roger Lane told me in 2013 when we discussed the property use on his site visit that he was only fixing the substandard part of the zoning classification and that the exact permitted property rights would stay the same as Ag-1EX when he rezoned the property as Ag-2 to correct the substandard lot size.

8. That the only zoning issue with the property in 2012 was it was substandard for the district, but under Dane County zoning ordinance all vested permitted property rights stayed intact with the substandard lot
9. I have never received from any of the defendants any notification regarding a date and time to the Post card notification prior to the ordinance being adopted.
10. I never received any notification from any of the defendants regarding the June 28, 2018 email until after the ordinance was adopted on January 17, 2019
11. I was never informed by the Defendants that they took the vested permitted Agricultural property rights away discussed in the June 28, 2018 email until after the ordinance was adopted on January 17, 2019.

Pursuant to 28 U.S.C. Sec. 1746  
I certify under penalty of perjury  
that the foregoing is true and correct  
to the best of my knowledge.  
Executed on the 24th day of July 2020.



<b>TOWN OF COTTAGE GROVE</b> <b>BUILDING PERMIT APPLICATION</b> 4058 County Road N Cottage Grove, WI 53527 Office: (608) 839-5021					CHECK # : <u>1567</u> RECEIPT # : <u>1658</u> AMT PAID : <u>\$110.00</u>	
					Building Inspector: (608) 837-3371	
Building	HVAC	Electric	Plumbing	Erosion	Other	
Owner's Name: <i>Thomas M. Wilbur</i>		Date (mm/dd/yyyy): <i>05/29/2012</i>		TOTAL COST: <b>\$104</b> OFFICE USE ALL PERMITS - ADD \$10.00 ADMIN FEE		
Mailing Address: <i>4407 Villas Hope Rd</i> <i>Cottage Grove WI</i>				Phone #: (include area code)		
Contractor's Name:				License/Dwelling Contr. Qualifier/Contractor Registration #		
Mailing Address:				Phone #: (include area code)		
<b>PROJECT LOCATION</b> <i>4407 Villas Hope Rd</i>				Estimated Cost: <i>\$1000.00</i>		
Address: Parcel No: 018/0711				Project Description: <i>tear off roof of lean and install new TRUSSES &amp; re-roof</i>		
<b>ELECTRICAL</b>				<b>COST:</b> Office use		
Contractor's Name:				License # / Contractor Registration #		
Mailing Address:				Phone #: (include area code)		
<b>PLUMBING</b>				<b>COST:</b> Office Use		
Contractor's Name:				License # / Contractor Registration #		
Mailing Address:				Phone #: (include area code)		
<b>HEATING, VENTILATING &amp; AIR CONDITIONING</b>				<b>COST:</b> Office Use		
Contractor's Name:				License # / Contractor Registration #		
Mailing Address:				Phone #: (include area code)		

Make checks payable to **TOWN OF COTTAGE GROVE**, sign the 'Cautionary Statement to Owners' and mail to **Viken Inspection Agency, 5116 Pierceville Road, Cottage Grove, WI 53527.**

**PLEASE verify that you are submitting your application to the correct township!!**

*\$110.00*

Plaintiffs Exhibit A Page 2

Owner's Name: <i>Thomas Wilkan</i>	Date (mm/dd/yyyy): <i>05/29/2012</i>
---------------------------------------	---

<b>EROSION CONTROL</b>	
Who Is Responsible for Clean Up: <i>Thomas Wilkan</i>	Phone #: (include area code) <i>608-438-3103</i>
Mailing Address:	
<b>DRIVEWAY, SIDEWALK, CURB OR GUTTER RESTORATION</b>	
Who Is Responsible (if needed):	Phone #: (include area code)
Mailing Address:	

TOTAL SQUARE FOOTAGE OF PROJECT: \_\_\_\_\_ FT

FEES: MAKE CHECK PAYABLE TO: TOWN OF COTTAGE GROVE

STATE SEAL:	\$ _____
ADMINISTRATIVE:	\$ <u>10.00</u>
PLAN REVIEW:	\$ _____
BUILDING:	\$ <u>35+65</u>
PLUMBING:	\$ _____
ELECTRICAL:	\$ _____
HVAC:	\$ _____
EROSION:	\$ _____
DRIVEWAY:	\$ _____
<b>TOTAL FEES:</b>	\$ <del>50</del> <u>110.00</u>

**REQUIREMENTS - TWO COPIES OF EACH OF THE FOLLOWING:**

1. Plot Plan showing boundaries and erosion control.
2. Foundation Survey drafted by a Licensed Surveyor showing all boundaries, setbacks and easements.
3. Wisconsin Uniform Building Permit application.
4. Sign 'Cautionary Statement to Owners Obtaining Building Permits'.

Signature: *[Signature]*  
(OWNER or CONTRACTOR)

Date: *5/29/12*

Work shall not proceed until the inspector has approved the various stages of construction or two business days have elapsed since the day of inspection request. This permit will expire 24 months after the date of issuance if the building's exterior has not been completed. **Keep this card posted until final inspection has been made.** (WI Stats. 101.63)

# WISCONSIN UNIFORM BUILDING PERMIT # M1658

Affix uniform permit seal here (when applicable)  
Seal No.:

Constr  HVAC  Elect  Plumb  Erosion

Project:

Issued	OWNER (AGENT) <b>THOMAS WILLAN</b>	PHONE
To	BUILDING SITE ADDRESS <b>4407 VILAS HOPE ROAD</b>	
	CITY VILLAGE, TOWN <b>COTTAGE GROVE</b>	

Issued	PERSON ISSUING <b>Tom VIKEN</b>	CERT NO. <b>7657</b>
by	DATE ISSUED <b>6-4-12</b>	TELEPHONE <b>837-3371</b>

Comments:

**RE-ROOF + NEW TRUSSES FOR LEAK**

NOTICE OF NONCOMPLIANCE: This issuing jurisdiction shall notify the applicant in writing of any violations to be corrected. All cited violations, except erosion control ones, shall be corrected within 30 days of notification, unless extension time is granted.

SITE INFO	
SUBDIVISION _____	BLOCK NO. _____
ZONING DISTRICT _____	1/4, SEC _____, T _____, N, R _____ E or W
PARCEL NO. _____	FRONT _____ ft REAR _____ ft
SETBACKS:	LEFT _____ ft RIGHT _____ ft

PHASE	INSPECTIONS		EROSION
	ROUGH	FINAL	
FOOTING			
FOUNDATION			
BSMT DRAIN TILES			
CONSTRUCTION			
PLUMBING			
HEAT/VENT/AC			
ELECTRICAL			
INSULATION			
OCCUPANCY			

CONTRACTORS		PHONE
NAME	CREDENTIAL #	
G.C.		
HVAC		
ELECT		
PLBG		

Town of Cottage Grove  
STATE OF WISCONSIN

**BUILDING INSPECTOR  
GENERAL RECEIPT**

N: 1658

Cottage Grove, Wis ..... 6-4- ..... 20 12

RECEIVED OF *Thomas Willam* .....

DOLLARS, \$ *110<sup>00</sup>*

For *4407 Vilas Hope Road* ..... CK# *1567*

*- Reroof + new trusses* .....

*Tom Viker / LN*

Building Inspector

IF PAYMENT IS MADE BY CHECK, THIS RECEIPT IS NOT VALID UNTIL CHECK HAS CLEARED ALL BANKS