
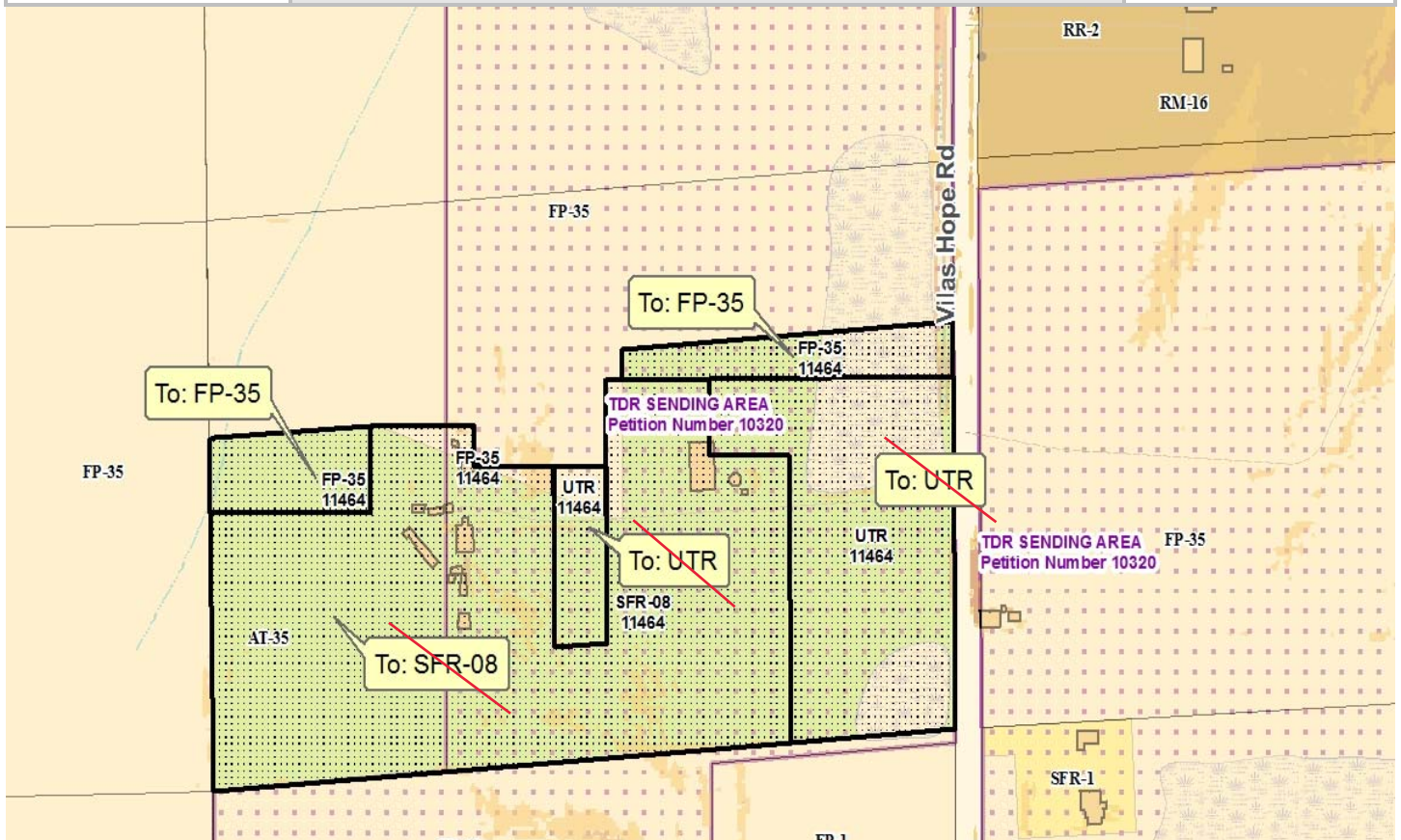


<p><b>Staff Report</b></p>  <p><b>Zoning and Land Regulation Committee</b></p> <p>Questions? Contact: Pam Andros at 261-9780.</p>	<p><u>Public Hearing:</u> <b>August 27, 2019</b></p>	<p><b>Petition 11464</b></p>
	<p><u>Zoning Amendment Requested:</u>  <b>AT-35 (Agriculture Transition) District TO UTR (Utility, Transportation and ROW) District , AT-35 (Agriculture Transition) District TO SFR-08 (Single Family Residential, small lots) District, AT-35 (Agriculture Transition) District TO FP-35 (General Farmland Preservation) District, FP-35 (General Farmland Preservation) District TO UTR (Utility, Transportation and ROW) District, and FP-35 (General Farmland Preservation) District TO SFR-08 (Single-Family Residential, small lots) District</b></p>	<p><u>Town/Section:</u>  <b>COTTAGE GROVE, Section 18</b></p>
	<p><u>Size:</u> <b>10.45,22.5,3.8,0.27,0.69 Acres</b>    <u>Survey Required:</u> <b>No</b></p>	<p><u>Applicant</u>  <b>WINDSOR QUARRY LLC</b></p>
	<p><u>Reason for the request:</u>  <b>CREATION OF SUBDIVISION, 18 RESIDENTIAL LOTS AND 3 STORMWATER OUTLOTS</b></p>	<p><u>Address:</u>  <b>WEST OF VILAS HOPE RD</b></p>



**DESCRIPTION:** The applicant wishes to make numerous zoning changes to accommodate an unsewered residential subdivision containing 18 residential lots and three (3) stormwater outlots. The development proposal will utilize the town’s transfer of development rights (TDR) program.

**OBSERVATIONS:** The subject property is north of an existing small residential development, and the majority of the remaining surrounding land is in agricultural use. The western boundary of the rezone area is the boundary between the town of Cottage Grove and the Town of Blooming Grove. The property is within the City of Madison Extraterritorial Jurisdiction (ETJ), and outside of the urban service area (USA).

**TOWN PLAN:** This proposal is not consistent with the town or county comprehensive plan.

As described on page 17 of the *Town of Cottage Grove Comprehensive Plan*, the TDR policy is intended to:

- *Maintain the Town's rural agricultural character;*
- *Preserve large viable areas of farmland with a minimum of non-farm divisions;*
- *Allow farmers to collect a reasonable non-farm value on their land without dividing lots;*
- *Transfer RDUs towards areas of existing development and services; and*
- *Help ensure the long-term viability and land base of the Town.*

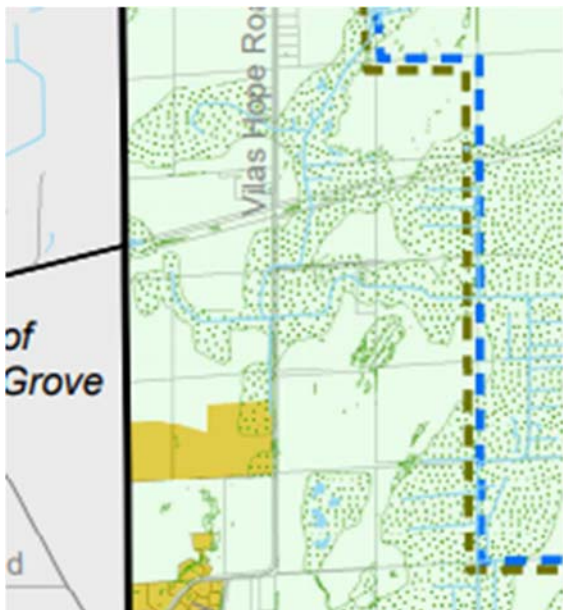
The town of Cottage Grove uses a density policy, including the town "Residential Development Unit (RDU) System." The system is described as follows:

*A Residential Density Unit (RDU) is defined as the ability of a property owner in the Town to develop or maintain one housing unit on the same property, subject to the density and other policies in this Plan. Properties are allocated RDUs based on their area. The Town enables RDUs to be:*

- *Developed on the same parcel where they originated, in which case one RDU may be used to construct a single family residence, two RDUs may be used for one duplex, etc., based on Plan polices and zoning district rules;*
- *Transferred from that parcel to another parcel where consistent with the Town's Transfer of Development Rights (TDR) program, described in Figure 3, in which case the number of permitted housing units per RDU may be multiplied per the designated TDR transfer ratio; or*
- *Some combination of on-site use or transfer, if there are a sufficient number of RDUs remaining on the parcel.*

As part of the town's TDR program, there is a transfer ratio of 8, meaning one residential development unit (RDU) transferred from a sending area can create 8 RDUs in a receiving area. The density study report shows that there are 3 RDUs associated with this property. These can be used to create 3 of the 18 lots. The remaining 15 will require transfer of RDUs from a sending area of the town. This is a combination of on-site use and transfer of RDUs. At a 1:8 ratio that means the applicant needs to purchase 2 RDUs from other properties located in a sending area (TDR-S) *Agricultural Preservation Land Use Area*.

The town approved this petition with conditions. The *Town Board Action Report* includes a condition requiring that deed restrictions be placed on parcels that serve as sending areas for this development proposal. The condition language



refers to "portions of" the parcels. This is the equivalent of the applicant sending development rights to himself, with the intent of benefiting from the ratio incentive. This is not how a TDR program works. Transfer of development rights occur between parcels not within them.

The fact that, (as part of the last amendment to the town future land use plan map), a portion of the subject property was put into the *Neighborhood Development Area*, does not change how the town's TDR policy works. The concept posed in this petition is that development rights can somehow be physically assigned to one portion of a parcel and then sent to another portion.

**RESOURCE PROTECTION:** There are DNR mapped wetlands in the areas identified as going to FP-35 and UTR, along Vilas Hope Road. Those areas are identified as outlots on the preliminary plat (OL #1 and OL #3).

**STAFF:** In order for development rights to be transferred to this property, the entire development area must also be rezoned to the TDR-R (transfer of development rights receiving) overlay district.

The applicant has to provide evidence that they have land from which to transfer 2 RDUs to create the 15 of the 18 lots proposed. This evidence should be in the form of a secured option to purchase or another legally recognized tool. This is in keeping with the town TDR policy (p. 17 of the town's Comprehensive Plan).

In addition, as required in *Section 10.305(4) Applicability Near Incorporated Municipalities* of the Zoning Ordinance, when the land is within the extraterritorial plat review jurisdiction (ETJ) of an incorporated municipality, the County Board cannot rezone the property to TDR-R unless it is consistent with the town and city comprehensive plans. When there are inconsistencies, as there are in this case between the town and the City of Madison, the town and city need to resolve those inconsistencies before the County Board can act. The dispute resolution process is provided in the respective comprehensive plans as set by state statute s. 66.1001(2)(g), Wis. Stats.

Staff recommends postponement until:

- Rezoning to the TDR-R overlay district is added to the petition;
- Evidence in the form of a secured option to purchase or another legally recognized tool should be provided for 2 RDUs to be transferred for the creation of 15 of the 18 total lots proposed; and
- In order to meet the requirements of *10.305(5)(b)*, evidence is provided that the City of Madison and Town of Cottage Grove have resolved inconsistencies between their comprehensive plans.

**AUGUST 27, 2019 ZLR PUBLIC HEARING:** The ZLR Committee postponed action on the petition at the 8/27/19 public hearing.

**STAFF UPDATE:** As noted in the initial staff report, the proposal as presented was inconsistent with the town comprehensive plan TDR program. The applicant was initially proposing to transfer RDUs "within" the property in an attempt to make use of the 1:8 density bonus for transferred RDUs. Staff met with the applicant to discuss the concerns. An initial discussion in September led to a proposal whereby the owner would divide the property into two separate parcels with the idea that this would resolve the concern about intra-ownership transfer of RDUs. However, upon further review and consideration, it became clear that such a transfer would still represent a violation of the town's density policy which allocates RDUs/development rights to farm properties as they existed as of 5/15/1982. Unfortunately, the applicant had already proceeded with submittal of subsequent petition 11500 in an effort to carry out the two-step process identified during the initial September meeting. Petition 11500 similarly proposes SFR-08 and UTR zoning to facilitate the planned 18 lot residential subdivision.

Staff recommends that petition 11464 be amended to remove the requested SFR-08 and UTR zoning. The petition then will effectively result in cleaning up a few small areas of FP-35 and AT-35 zoning in order to make the zoning designations consistent with the town planning area designations. Petition 11500 can then be used as the vehicle to request the SFR-08, UTR, and TDR-R zoning. See staff report for petition 11500 for recommendations.

Staff recommends approval of petition 11464 with the following amendments:

1. Remove requested zoning map amendments to the SFR-08 and UTR zoning categories.

**TOWN:** The town of Cottage Grove Plan Commission recommended approval of petition #11464 with the amendment noted above.

**Questions?** Contact Majid Allan 608-267-2536 [Allan@countyofdane.com](mailto:Allan@countyofdane.com)