

Town of Black Earth Land Use Plan

Adopted: June 1981
Amended: 2016, 2023

GOAL

Create a pattern of sustainable development that preserves forests and agriculture as important land uses and **supports** agricultural practices and agricultural-based activities.

OBJECTIVES

- Protect the Town’s rural character and natural resources.
- Minimize the amount of agricultural land and open space consumed by developments.
- Minimize farm/non-farm conflicts.
- Promote the preservation of sensitive environmental resources in all new developments.
- Ensure the new adjacent land uses are compatible.
- Respect and maintain property owner’s rights.

POLICIES

1. Educate residents concerning the use and development of land within the Town to build awareness regarding agricultural issues such as line-fence maintenance, manure handling, **after-hours** machinery operations, etc.
2. Proposed land uses will be compatible with adjacent land uses with regard to such factors as noise, odor, traffic, and appearance.
3. Industrial land uses are ~~not compatible~~ **incompatible** with the Town’s rural character, **high-quality** natural resources, and existing infrastructure; ~~and they~~ should be directed towards more urban areas with a better capability to infrastructure to serve these uses.
4. The cost of land development will be the burden of the land developer.
5. All new development shall comply with ~~Article~~ **Policy 10** (Conservation Design, ~~Town and Development Siting Standards and criteria~~) and all other policies and requirements of the Town’s ordinances and comprehensive plan.
6. Preserve lands identified as environmental corridors, including wetlands, floodplains, hydric soils, and lands with steep slopes. (See ~~Article~~ **Policy 10, Conservation Design and Development Siting Standards**)
7. Support conservation or cluster housing development rather than standard subdivision development.

8. New development will not intentionally negatively impact existing adjacent land use values.
9. The Town will not support the creation of new lots with **the** keeping of animals units unless they are at least five (5) acres in area. When properties are being rezoned for non-farm residential use, the Town Board may require a deed restriction be placed on the property prohibiting certain animals and limiting the number of animals allowed on such property.

10. Conservation Design and Development Siting Standards:

The Town recognizes that, **whenever possible**, ridgetops, wetlands, floodplains, steep and/or wooded slopes, wildlife, and agricultural lands are resources that need to be preserved and that conservation and protection of these resources ~~is~~ **are** essential in defining the distinctive character and scenic beauty of the Town. Consequently, the Town's guiding principle for new development is that building ~~shall~~ **should** be limited to those areas that are **not capable of supporting agricultural practices within the Town; and do not have a negative impact on preserving the rural character of the Town.**

More specifically, the siting of new structures shall abide by the following policies:

- a. Buildings should be located on non-tillable land and/or take a minimum of tillable land, land ~~that~~ **which** is not economically viable for farming, or where there has not been a history of productive farming activities. To the extent possible, avoid siting buildings on land of agricultural significance. (See Definitions, Appendix D).
- b. The building site must be adequate with regard to such factors as soil and drainage.
- c. If avoidance of building on agriculturally significant lands is not possible, the building ~~shall~~ **should** be located along the edge or on a corner of the parcel ~~so as to~~ maintain the opportunity for future agricultural use and to maintain the rural character of the Town.
- d. Structures should be sited ~~so as to~~ minimize the impact on the natural features and topography of the site. The proposed development/structure shall not disturb or destroy ~~any~~ important natural features such as significant woodland areas, wetlands, steep slopes, etc. Large stands of mature trees and steep topography ~~shall~~ **should** be maintained. The natural appearance of ridges and scenic viewsheds ~~shall~~ **should** be maintained to the extent possible.
- e. The maximum allowable slope for building sites is 15 percent.
- f. To the extent practical, buildings ~~s~~ should be screened from view from public roadways by trees and topography and generally blend into the site on which they are located.

- g. Home sites should be clustered together on the most buildable area of a site to reduce the impact on agricultural land and natural resources. This method of development should be used as an alternative to conventional lot-by-lot development. The Town may investigate incorporating cluster provisions into a Land Division Ordinance to encourage future growth that protects the **Town's** rural character. ~~of the Town.~~

11. **Transfer of Development Rights:**

Objective: In order to promote the preservation of prime farmland, the Town may allow a landowner to transfer dwelling units among parcels under The Town of Black Earth Transfer of Development Rights (TDR) Program to allow the dwelling units to be utilized on other parcels where they would have less impact on agriculture or the environment.

Policies:

- a. All approvals by the Town under this policy are discretionary. The Town may decline to allow an individual transfer, may terminate the program at any time, and may selectively grant or deny transfers. The Town's actions in granting or denying requests for transfers are not precedential.
- b. Transfers are only allowed between properties inside the Town of Black Earth.
- c. Sales are private agreements between landowners.
- d. All landowners interested in transferring dwelling units shall provide a Density Study Report from the Dane County Department of Planning and Development showing that the proposed "source" property for the transfer has development potential (dwelling units remaining) under the Town of Black Earth density policies. The owners need to prove there is one (1) dwelling unit to move; multiple density studies may be considered unnecessary cost for the landowner.
- e. Dwelling units associated with a parcel may be transferred to another parcel or parcels if approved by the Town under the criteria stated herein.
- f. No increase. This policy shall not be interpreted to increase the total dwelling units available to an owner by combining the acreage of the parcels.
- g. The purpose of transferring dwelling units is to direct residential development onto land which is more suited for development. The sites designed for a transfer of dwelling units shall comply with ~~Article~~ **Policy** 10 (Conservation Design and Development Siting Standards) and all other policies and requirements of the Town's ordinances and comprehensive plan.

- h. The landowner shall present a site plan showing where the lots and home sites of each transferred dwelling unit will be located, including the proposed driveway alignment, runoff control, and erosion control plans.
- i. If all the dwelling units associated with a parcel have been utilized as the result of a transfer, deed notices shall be recorded against the parcel to document that its associated dwelling units have been used.
- j. The Town will utilize the Dane County TDR Ordinance to enforce this Town Program.
 - i. TDR-R & TDR-S zoning overlays
 - ii. Deed notice - This document provides notice of where the development right is being sent, with a reference to the sending property.
 - iii. Conservation Easement - This document describes the farmland or open land that has the development right that is being moved. It basically states there is an easement on the property allowing farming/open land to continue, and the development right has been moved.

12. **Rezoning for Non-Farm Residential Use.** The rezoning of lands in the agricultural preservation district for limited nonfarm residential development may be approved by the Town Board if the following criteria are met:

- a. The area proposed for rezoning is limited to the acreage ~~that is~~ necessary for the residential or hobby use contemplated.
- b. Proposed development or structures shall comply with ~~Article 10 (Conservation Design, Town and Development Siting Standards) and criteria~~ **Article Policy 10** (Conservation Design, Town and Development Siting Standards) and all other policies and requirements of the Town's ordinances and comprehensive plan.
- c. The land is suitable for an approved wastewater disposal system ~~which~~ **that** can be properly operated all seasons of the year.
- d. Land is located so that conflict with surrounding agricultural uses would be unlikely.
- e. The development shall require a driveway of no more than ten (10) percent slope ~~in order~~ to assure access by fire and emergency vehicles. **The** driveway must meet the requirements of the Town's Driveway Ordinance.
- f. Construction must be done under accepted erosion control measures, and an erosion control plan must be filed to meet the requirements of the Dane County Erosion Control regulations.

- g. The land shall not require **the** crossing of productive agricultural land to reach the proposed development.
- h. Utility extensions (electric power lines, telephone lines, cable television, natural gas distribution lines, and sewer lines) shall not cross productive farmland in a manner that will disrupt farming activities.
- i. The minimum residential lot size shall be two (2) acres.
- j. **Determination of Density.** The Town shall work with the County to **determine** ~~provide a determination on~~ the number of dwelling units available. The density or number of allowable dwelling density units ~~have~~ **has** been determined in the following manner:
 - i. **Density:** The overall density of Agricultural Preservation areas shall not exceed one **d**welling unit per 35 acres owned on June 3, 1981 (**the** effective date of A-1 Exclusive Agricultural Zoning).
 - ii. **Land Sales after 1981.** Changes and reconfigurations in ownership do not trigger new allotments of potential future dwelling units. When land is sold or consolidated after June 3, 1981, the Town encourages property owners to make clear in sales contracts how many future dwelling units (if any) are being transferred along with the land. When a parcel is divided, the dwelling unit associated with the parent parcel shall remain with the parent parcel unless an agreement allocating a dwelling unit to the divided parcel, signed by **the** seller and the buyer, is recorded against both parent and the divided parcel. If provided to the Town and County with a Development application ~~along with~~ **and** a Rezone application, the Town will use such sales contract or similar documents when considering the application. In the absence of a clearly understood sales contract or similar document, the Town may attempt to learn from all affected property owners in intent (in writing) and share that information with Dane County Planning and Development **D**epartment. If the intention for the dwelling units is still unclear after these efforts, the Town **B**oard will assume that all potential future potential dwelling units remain with the largest remaining parcel.
 - iii. **Annexation.** In the case of ~~an~~ annexation of parcels or partial parcels by another unit of government, density criteria and calculations (1 per 35) will be applied to only the acreage remaining inside the Town’s jurisdiction.
 - iv. **Land Divisions and Rezones.** All non-**farmland** divisions (commercial or residential) or residential rezones shall count against the 1 dwelling unit per 35 acres density limitation unless considered a pre-1981 farm residence.

- v. **Farm Residences.** All farm residences in existence on June 3, 1981, or approved secondary farm residences, shall NOT be counted as a dwelling unit for ~~the purpose of~~ this density policy, regardless of when such residences were constructed.
- vi. **Rounding.** The owner of a parcel or contiguous parcels totaling more than 35 acres may create that number of lots determined by dividing that total number of contiguous acres by 35; if the resulting quotient is a whole number plus a fraction, the owner may create the lots equal to the whole number plus one additional lot if the remaining fraction equals or exceeds 18/35ths. For any fraction less than 18/35th, only the whole number of lots may be created.
- vii. **Substandard Parcels.** Substandard (also referred to as “non-conforming”) parcels in the Town of Black Earth are parcels less than 35 acres in the FP-35 Farmland Preservation zoning district (A-1 EX at that time) that were in existence before June 3, 1981.

Existing Lot – Allow uses pre-dating adoption of the Comprehensive Plan on **these substandard** parcels ~~of less than 35 acres as of June 3, 1981 (i.e., substandard lots in A-1 Exclusive zoning district)~~ to continue under the provisions of the Dane County Zoning Ordinance.

Vacant Lot – Allow for a total of (1) one dwelling unit on all vacant substandard parcels ~~that are over 4 acres and did not contain an existing residence before June 3, 1981,~~ legal, substandard (sometimes referred to as “non-conforming”) A-1 EX zoned parcels between 2 and 35 acres in size in existence since June 3, 1981, are permitted to rezone to an appropriate district and record a certified survey map to allow no more than 1 (one) dwelling unit, provided that the proposed development can satisfy the Town’s siting criteria.

Existing Lot with Residence – Allow for a total of (1) one additional dwelling unit on all substandard parcels that are over 4 acres, and contained an existing residence before June 3, 1981, ~~Substandard, legally created A-1 EX zoned parcels between 4 and 35 acres in size, with one existing residence as of June 3, 1981, may be rezoned and divided by certified survey map to allow no more than one additional dwelling unit,~~ provided that the proposed development can satisfy the Town’s siting criteria. No parcel divided for the purpose of adding to add a dwelling unit shall be re-divided in the future. ~~for the purpose of developing to develop additional dwelling units.~~ When permitted divisions of an original substandard parcel are exhausted, the Town will recommend to the County Board that a deed notice be recorded as a condition of the rezone.

Illegally created substandard parcels are not permitted to divide. Landowners may be required to obtain a written determination of **the** legal status of their property from the Dane County Land Division Review officer. Illegally created substandard parcels with an existing residence as of June 3, 1981, may be permitted to rezone to an appropriate district to bring the parcel into compliance, provided the parcel complies with all density and siting criteria of the Town of Black Earth Comprehensive Plan.

- k. **Deed Notices.** Whenever a rezoning ~~results in reaching~~ **reaches** the maximum number of dwelling units available under the provisions of the above paragraph, the Town, as part of the rezoning, shall require that a deed notice be recorded against the balance of the parcel to prevent further development.
- l. **Duplexes:** Duplexes constructed after the date of adoption of the Town of Black Earth Comprehensive Plan shall count as two dwelling units toward the density limitation. Conversion of an existing single-family residence to a duplex shall count as one additional dwelling unit toward the density limitation.
- m. **Site Plan Review:** If the proposed development meets the criteria above, a site plan will be required to ensure that all ~~of the~~ development concerns are adequately addressed. The process for **the** review of development proposals and rezoning is outlined in ~~Section B of this chapter.~~ **Policy 10 (Conservation Design and Development Siting Standards).**
- n. **Records:** The Town of Black Earth keeps records of past land divisions and available dwelling units for all parcels. The Town recommends that any party wishing to purchase land for ~~the purpose of~~ a dwelling unit validate any and/or all potential dwelling units with the County.

13. Rezoning for Commercial Development.

- a. Limited family businesses, as defined in the County Zoning Ordinance, will be reviewed and considered as conditional use permits, which do not require rezoning.
- b. Non-agricultural commercial uses must be consistent and compatible with land uses as outlined in this Plan. Rezoning for such uses will be considered if the following criteria are met:
 - i. Be consistent with the Town land use goals, objectives, and policies as outlined in this Plan.
 - ii. Have access to a state or county highway.
 - iii. Provide a buffer between ~~the commercial use~~ and ~~the adjacent noncommercial use~~.
 - iv. Minimize conflicts with nearby residences and farm operations.
 - v. No holding tank installation will be required to serve ~~the~~ commercial use.

- vi. The service offered is ~~one~~ generally needed by **Town** residents. ~~of the Town.~~
- vii. Written impact statements are submitted assessing the impact of the project on farms, farmland, natural resources, scenic qualities, town roads, taxes, and opportunities for employment.