

Appendix B

Wisconsin Department of Agriculture, Trade and Consumer Protection Farmland Preservation Program (ch. 91, Stats.)

“Farm Consolidations” Under the New Farmland Preservation Law

At one time, the “old” farmland preservation (FP) law prohibited residential parcels smaller than 35 acres in a certified FP zoning district. But the law exempted a small residential parcel (up to 5 acres) created as part of a “farm consolidation.” Such parcels were typically created when a farmer sold a farm to another farmer (to create a larger, consolidated farm), but split off and kept a small non-farm residential parcel containing the existing farmhouse.

The “new” law does not impose any minimum lot size requirement, so there is no longer any need for the “farm consolidation” exemption as such. Under the new law:

- A zoning authority may, by conditional use permit, authorize a non-farm residence in an FP zoning district (*regardless* of whether the residential parcel was created as part of a “farm consolidation”). Conditional use permit standards apply, but there is no need to rezone the residential parcel.
- A *pre-existing* residence may be allowed as a “prior non-conforming use.” No conditional use permit or rezoning is required for a “prior nonconforming use.” A landowner may continue, but not materially expand, the “prior nonconforming use.”

Example #1:

Farmer A and Farmer B own farms in an existing FP zoning district. Farmer A sells his farm to Farmer B as part of a farm consolidation, but splits off and keeps a non-farm residential parcel containing the existing farmhouse. The political subdivision subsequently revises the FP zoning ordinance, and has it certified under the “new” law.

- The non-farm residential parcel may be treated as a “prior nonconforming use.” No conditional use permit or rezoning is required.
- The non-farm residential parcel is not part of any “base farm tract” (because it is not part of a farm when the revised FP ordinance is certified under the “new” law). It is not subject to, or included in, any “base farm tract” density calculations.

Example #2:

Farmer A and Farmer B own contiguous farms in an existing FP zoning district. Farmer A sells his entire farm (including the existing farm residence) to Farmer B as part of a farm consolidation. The consolidated farm thus includes 2 residences (Farmer B lives in one residence and rents out the other). Following the farm consolidation, the political subdivision revises the FP ordinance and has it certified under the “new” law.

- Both residences are included within a “base farm tract” that is determined on the ordinance certification date. The “base farm tract” is coextensive with the boundaries of the *consolidated farm* as it exists on that date. That “base farm tract” remains constant over time, regardless of any subsequent farm consolidations or “splits.”
- Both residences may be treated as “farm residences,” as long as they are occupied by the farm owner, the parent or child of the farm owner, or a person who earns more than 50% of the person’s gross income from the farm. No conditional use permit or rezoning is required.
- *Regardless of occupancy*, the rented residence may be treated as a “prior non-conforming use” as long as it remains part of the farm (is owned by the same person who owns the farm). No conditional use permit or rezoning is required.
- If Farmer B sells off a non-farm residential parcel containing either residence, the residence no longer qualifies as a “farm residence.” It may also lose its status as a “prior nonconforming use” because, *depending on the size of the newly-formed non-farm residential parcel*, the “split” may substantially reduce the amount of farm acreage in the “base farm tract” (which could be construed as a prohibited expansion of the “prior nonconforming use”). The political subdivision may do either of the following:
 - Continue to treat the residence as a “prior nonconforming use” if the parcel “split” is consistent with conditional use permit standards for non-farm residences -- especially the allowed ratio of “non-farm residential acreage” to “farm acreage” within the “base farm tract” (the “split” parcel is considered “non-farm residential acreage”). No rezoning is required.
 - Issue a conditional use permit for the “split” if the “split” is consistent with conditional use permit standards for non-farm residences -- including the allowed ratio of “non-farm residential acreage” to “farm acreage” within the “base farm tract” (the “split” parcel is considered non-farm residential acreage”). No rezoning is required.

Example #3:

Farmer A and Farmer B own farms (Farm A and Farm B) within an FP zoning district. The political subdivision revises its FP zoning ordinance, and has it certified under the “new” law. *After the revised ordinance is certified*, Farmer A sells his farm to Farmer B as part of a farm consolidation. However, Farmer A splits off and keeps a non-farm residential parcel that includes his existing farm residence. The “split” changes the status of the residence from a “farm residence” to a “non-farm residence.”

- The new non-farm residential parcel is part of a “base farm tract” that was determined on the ordinance certification date. The “base farm tract” is coextensive with the boundaries of *Farm A* as it existed on that date (*before* the farm consolidation). The “base farm tract” remains constant over time, regardless of any subsequent farm consolidations and splits.
- Despite the parcel “split” and resulting change in status from “farm residence” to “non-farm residence,” the political subdivision may treat the residence as a “prior nonconforming use” if the “split” is consistent with conditional use permit standards for non-farm residences (especially the allowed ratio of “non-farm residential acreage” to “farm acreage” within the “base farm tract”). No rezoning is required.
- Alternatively, the political subdivision may issue a conditional use permit for the “split” if the “split” meets conditional use permit standards for non-farm residences (including the allowed ratio of “non-farm residential acreage” to “farm acreage” within the “base farm tract”). No rezoning is required.

The Rezoning Alternative

If a non-farm residence does not qualify for a conditional use permit, or as a “prior nonconforming use,” the landowner may ask the political subdivision to rezone the residential parcel out of the certified FP district. The political subdivision must make certain findings, and the requester must pay a rezoning “conversion fee” (see s. 91.48, Stats.).