



**Walworth County
Land Conservation Committee Meeting
Monday, September 19, 2011 at 1:30 p.m.**

**Walworth County Government Center
County Board Room 114
Elkhorn, WI 53121**

*Dan Kilkenny – Chair, Jerry Grant - Vice Chair
Randy Hawkins - Supervisor*

Sue Bellman – USDA/FSA Representative, Dorothy C. Burwell – Citizen Member

(Posted in Compliance with Sec. 19.84 Wis. Stats.)

Land Use and Resource
Management Department

It is possible that a quorum of the County Board or a committee of the County Board could be in attendance.

AGENDA

1. Call to order
2. Roll call
3. Approval of the Agenda
4. Approval of Minutes from August 15, 2011 LCC Meeting
5. Public Comment
6. Farmland Preservation Plan Compliance Issues – Michael Cotter, Staff (enclosure, pages 1-10)
7. Correspondence from Town of Bloomfield's Legal Representatives Regarding Farmland Preservation Certification – Michael Cotter, Staff (enclosure, pages 11-12)
8. Next meeting date: Monday, October 17, 2011, 1:30 p.m.
9. Adjournment

**Submitted by: Michael P. Cotter, Director, Land Use and Resource Management
Department, Louise Olson, Deputy Director, Land Conservation Committee Designee**

Posted: September 9, 2011

Draft

Walworth County Land Conservation Committee
MINUTES

Monday, August 15, 2011 at 2:00 p.m.

Walworth County Board Room 114
Elkhorn, WI 53121

The meeting was called to order by LCC Chair Kilkenny at 2.00 p.m.

Roll call - Committee members present included: Supervisors Kilkenny, Grant, Citizen Member Burwell, and USDA/FSA Representative Sue Bellman Supervisor Hawkins was absent, excused. A quorum was declared.

County staff present – David Bretl, County Administrator; Michael Cotter, Director of Land Use & Resource Management (LURM); Louise Olson, Deputy Director, LURM; and Joeann Douglas, Recording Secretary.

Also in attendance –. Nancy Russell, Walworth County Board Chair

Approval of the Agenda – **Supervisor Grant and Citizen Member Burwell moved and seconded approval of the agenda. Motion carried 4-0.**

Approval of the Minutes – **Supervisor Grant and USDA FSA Representative Bellman moved and seconded approval of the July 18, 2011 LCC meeting minutes with a minor spelling correction as amended. Motion carried 4-0.**

Public Comment – none

County Tree Program and Other 2012 Budget Items – Louise Olson explained why the tree program was not in the 2012 budget which included the economic downturn, lagging sales, cuts to staff. Some surrounding counties still have the program and people wanting trees/shrubs can still purchase them at the other counties. Chair Kilkenny suggested possibly bringing the program back at a later date or every other year.

September, 2011 Southeast Area Land & Water Conservation Association Summer Tour – Louise Olson said the Tour date is Monday, September 12, 2011, 8 a.m. – 4 p.m., with registration due Friday, September 2, 2011. Dorothy Burwell said she would be attending.

Next Meeting Date – Monday, September 19, at 1:30 p.m.

Adjournment – **On motion and second by Supervisor Grant and Citizen Member Burwell, Chair Kilkenny adjourned the meeting at 2:26 p.m. Motion carried 4-0.**

Submitted by Joeann Douglas, Recording Secretary. Minutes are not considered final until approved by the committee at the next regularly scheduled meeting.



Land Use and Resource
Management Department

DATE: August 15, 2011

TO: Keith Foye, Chief
Land Management Section
DATCP
2811 Agriculture Drive
PO Box 8911
Madison, WI 53708-8911

FROM: Louise Olson, LURM – Deputy Director
County Conservationist *Louise A. Olson*

SUBJECT: Friday, August 12, 2011 Meeting
Regarding Non Completeness of Walworth County Farmland Preservation Plan

This memo is to summarize a meeting in the Walworth County Land Use and Resource Management Department on Friday, August 12, 2011 regarding “Non-completeness” of the Walworth County Farmland Preservation Plan. In attendance were DATCP, SEWRPC, Walworth County LURM and Walworth County IT/GIS. (Full roster previously distributed)

At this meeting, the main discussion item was related to the farmland preservation area vs. farmland preservation zoning (A-1). Three maps were presented and reviewed: Zoning Map, Farmland Preservation (A-1) zoned map (previously submitted) and a new Farmland Preservation Area Map. DATCP indicated that the new Farmland Preservation Area Map would comply for Farmland Preservation Plan.

The following issues were discussed at this meeting:

- Walworth County has a long established history of Exclusive Ag Zoning (A-1) and preservation.
- Walworth County zones following resources, therefore parcels can contain multiple zoning designations.
- Walworth County does not have overlay districts.
- Farmland Preservation Areas should follow parcel boundaries per DATCP.
- Farmland Preservation Areas can include other zoning designations such as C-1, C-4, and M-3.
- Including the entire parcel in Farmland Preservation Area with other zoning designations (C-2, A-4, etc.) will cause conflict with Towns and property owners due to acreage limitations, etc.
- Walworth County adopted the 2035 Land Use Plan after numerous meetings with Towns, County Officials and Public input.

- The Farmland Preservation Plan is consistent with the County’s recently adopted 2035 Multi -Jurisdictional Comprehensive Land Use Plan...Section 91.10(2) of Wis.Stats. states that “the farmland preservation plan is consistent with the comprehensive plan”.
- Walworth County’s Information Technology Department in conjunction with Southeastern Wisconsin Regional Planning Commission will comply with technical discrepancies as indicated in the August 2, 2011, Keith Foye memo.
- DATCP will review the concerns expressed by Walworth County with regards to identifying the entire parcel in the Farmland Preservation Area and respond back to Walworth County.

Walworth County has a successful history of preserving their Prime Agricultural Farmland (A-1) and looks forward to hearing from DATCP on a positive resolution so that Walworth County can present this resolution to the Walworth County Land Conservation Committee.

100 West Walworth Street
P. O. Box 1001
Elkhorn, WI 53121
Conservation Division
262-741-4972 tel
262-741-4973 fax



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: August 16, 2011

TO: Louise Olson, Deputy Director
LURM Dept.
100 W. Walworth Street
PO Box 1001
Elkhorn, WI 53121

FROM: Keith Foye, Chief *Keith Foye*
Land Management Section
608-224-4603

SUBJECT: Items to address in Walworth County Farmland Preservation Plan

On August 2, 2011, we sent a letter to Walworth County indicating that the Farmland Preservation Plan was incomplete. We met with the County on August 12 to discuss mapping errors in the plan. During that meeting we stated that we would follow up with a letter indicating where the plan needed to be updated to meet ch. 91 requirements. These issues are listed below.

1. The County's Farmland Preservation Plan and Comprehensive Plan address the County's policy and goals related to farmland preservation, however the statutes also require the plan to state the County's policy and goals related to agricultural development, including the development of enterprises related to agriculture. *See s. 91.10(1)(a), Wis. Stats.*
2. The statutes also require the plan to identify, describe and document anticipated changes in the nature, scope, location, and focus of agricultural production, processing, supply, and distribution. The certification application for the County Plan cites to pages 4-1, 2, 5, & 11 of the Farmland Preservation Plan. These pages describe the current conditions of agriculture, the benefits of farmland, and the current agricultural trends in the county. There is no discussion here of anticipated changes as required by statute. *See s. 91.10(1)(c)5, Wis. Stats.*
3. For the requirement to discuss actions that the County will take to promote agricultural development, the certification application cites pages 5-3 to 5-5 in the FP plan. These cited pages, however, show a map of the Planned Farmland Preservation Areas, discuss criteria for rezoning land, and identify zoning, conservation compliance, and a pdr program as implementation policies for the FP plan. While 5-5 may address actions for preserving farmland, there does not appear to be any reference to actions that the County will take to promote agricultural development. *See s. 91.10(1)(c)7, Wis. Stats.*

Agriculture generates \$59 billion for Wisconsin

4. Pages 5-1 to 5-3 of the plan discuss the rationale for designating certain lands as part of the Farmland Preservation Area. The rationale suggests that the criteria used for planning lands for Farmland Preservation was based on the soil classification of the land. However comparing the soils map (Map 3-9) to the FP map, there seem to be areas with the right classification of soils that are not included in the FP area. If there are additional reasons for excluding certain areas from the FP planned area, these reasons should be included in the plan. For example, if areas that already contained development were excluded from the planned area, the rationale could state that the planned area criteria started with the soil classification and then excluded those parcels that already contained nonfarm residences.

5. Chapter 91 requires that if land is included in a farmland preservation plan area, that land cannot be planned for development within 15 years after the date on which the plan is adopted. In comparing the maps included in the farmland preservation plan with the land use plan maps in the multi-jurisdictional comprehensive plan, we found a number of areas of concern that will need to be addressed before the plan may be certified. Because the review was done on maps with a scale much smaller than the scale required, only large areas of concern are noted below. Our review was not as comprehensive as it will be on maps submitted at the appropriate scale. As a result, our subsequent review may reveal additional areas of concern. The purpose of this paragraph here, however, is to alert the County to the types of issues that may arise so that hopefully the County may correct potential problems before submitting the next round of maps for certification.

These areas are as follows:

- a. Town of Delavan – Land in Sections 23 and 26 are classified as “Residential Development in the Land Use Plan and Farmland Preservation in the FP Plan.
- b. Town of East Troy – Land in Sections 2, 11, 28, and 32 are identified as Rural Density Residential in the Land Use Plan and Farmland Preservation in the FP Plan.
- c. Town of Geneva – Land in Sections 19 and 30 are identified as Development Reserve in the Land Use Plan and Farmland Preservation in the FP Plan.
- d. Town of Sugar Creek – Land in Sections 8, 9, and 29 are identified as Urban Reserve in the Land Use Plan and Farmland Preservation in the FP Plan. Other land also in Section 29 is identified as Suburban Density Residential in the Land Use Plan and Farmland Preservation in the FP Plan.
- e. Town of Troy – Land in Sections 4, 12, and 18 is identified as Suburban Density Residential in the Land Use Plan and Farmland Preservation in the FP Plan. Land in Sections 24 and 25 are identified as Urban Reserve in the Land Use Plan and Farmland Preservation in the FP Plan.
- f. Town of Walworth – Land in Sections 2, 27, and 28 is identified as Urban Reserve in the Land Use Plan and Farmland Preservation in the FP Plan. Land in Section 9 is identified as Urban Density Residential in the Land Use Plan and Farmland Preservation in the FP Plan.
- g. Town of Whitewater – Land in Section 2 is identified as Urban Density Residential in the Land Use Plan and Farmland Preservation in the FP Plan.

Any discrepancies between the comprehensive plan maps and the farmland preservation plan maps can be resolved by changing the comprehensive plan maps, removing the areas of concern from the farmland preservation plan maps, or stating in the legend of both maps that that farmland preservation plan map supersedes the corresponding comprehensive plan map and any inconsistency between the two shall be resolved in favor of the farmland preservation plan map.

Should you have any questions about the issues identified above, please call me or Alison Volk at 608-224-4634.



Land Use and Resource
Management Department

DATED: August 30, 2011

TO: Keith Foye, Chief
Land Management Section
DATCP

FROM: Walworth County LURM Staff

SUBJECT: Walworth County Farmland Preservation Plan Concerns

Walworth County has prepared and submitted to DATCP, the draft copy of the updated Farmland Preservation Plan with maps that clearly delineate Walworth County's Farmland Preservation Areas.

- The farmland preservation area is consistent with the policy approved by the Land Conservation Committee and the recently adopted Comprehensive Land Use Plan.
- The Walworth County Farmland Preservation Areas are depicted on a series of 16 – Township maps at a scale of 1"=2000'.
- Each map clearly shows parcel boundaries. One can easily determine whether a parcel includes a farmland preservation area.

The intent of this letter is to express the unanswered concerns of the County from our meeting of August 12, 2011 and to address the itemized issues of your August 16, 2011 letter.

At the August 12, 2011 meeting, DATCP indicated that they would review the concerns of Walworth County with regards to identifying whole parcels in the Farmland Preservation Area and respond back to Walworth County. The County is still waiting for a response on this issue.

1. The County is not aware of the whole parcel interpretation ever being presented by DATCP staff at the informational meetings during adoption of the Statute. Furthermore, this interpretation is inconsistent with the wording in the Statute which states counties "may" (giving an option to) include natural resources and open space in the preservation area (91.10(d.)). Under the new interpretation, if the natural areas and open space on a parcel are not included as preserved for agricultural use or agricultural-related use, then the whole farm parcel would be required to be removed from the farmland preservation area.
2. The current interpretation of the statute made by DATCP would force the county to implement the non-farm residential to farm acreage 20 to 1 density ratio and the base farm tract implementation scheme which were originally presented to Counties as an

option. Based on DATCP's assurance that the base farm tract was not mandatory in light of the County retaining a 35 acre minimum A-1 parcel size; the County has already made a decision not to follow the Base Farm Tract scheme.

3. The value of a farm is not only based on the farmland but also the potential for use of the non-agricultural portions of a farm. It would be improper to take away farmers' ability to use the non-agriculturally zoned areas of farms at the density allowed under the zoning ordinance.
4. The County has not included "whole parcels" in the Farmland Preservation Area because the zoning districts in the County were established by resource base and physical character of the land and not by parcel boundaries. Using parcel boundaries to establish the farmland preservation area would now cause all zone districts both farmland preservation districts and non-farmland preservation districts on a parcel to be subject to the farmland preservation statute.
5. Such regulation would eliminate a farm owner's ability to use non-farmland preservation district lands at the density provided for in the County Zoning Ordinance by imposing a 20:1 farm to non-farm acreage requirement and base farm track scheme which was presented as non-mandatory by DATCP.
6. An option given by DATCP to the County was to remove parcels containing A-1 land from the Farmland Preservation Area map in cases where a parcel also contains non-agricultural zoned land. The County would then be required to rezone the prime farmland to a non-farmland district because it is no longer in the Farmland Preservation Area prior to obtaining Farmland Preservation certification.
7. The County staff has noted that the Chapter 91.62 provides greater flexibility in denoting the area to be protected under Farmland Preservation Agreements by using legal descriptions and tracts of land rather than "whole parcels" when addressing the areas to be subject to a Farmland Preservation Agreement. Our staff questions why whole parcels must be used when implementing Farmland Preservation by a Plan with Agricultural Zone Districts?

On August 16, 2011 DATCP sent a letter to Walworth County detailing areas of the plan that needed to be updated. Walworth County can address the issues as follows:

1. Walworth County will revise the plan to state the County's policy and goals related to agricultural development, including development of enterprises related to agriculture.

2. Walworth County will revise the plan to identify, describe and document anticipated changes in the nature, scope, location, and focus of agricultural production, processing, supply, and distribution.
3. Walworth County will revise the plan to address actions the County will take to promote agricultural development.
4. Walworth County will revise the plan to state why lands based on soil classifications were excluded from the planned area. Class I, II, and III was not the only standard to identify prime farmland. Other standards considered were:
 - a. Existing zoning,
 - b. Areas that were already developed,
 - c. Areas that may be platted for development,
 - d. Areas planned for immediate development,
 - e. Areas that are small in area and may be isolated from larger tracts of farmland,
 - f. Lands held by governmental, institutional or park uses,
 - g. Areas affected by intergovernmental cooperation during the 2035 Land Use Plan development in order to resolve and meld differences between Town, Village and City plan concerns.
5. Walworth County is attempting to resolve the discrepancy between the Farmland Preservation Plan and the Land Use Plan maps. However, with the new “whole parcel” interpretation of the Farmland Preservation Statute County staff has the following concerns:
 - a. Should the County continue to pursue Farmland Preservation Plan certification, the Town and County Land Use Plans, including text amendments to the required elements of the Plan, would have to be amended and a comprehensive revision to the County wide Zoning Ordinance would be required.
 - b. Towns under County wide zoning, citizens and elected officials involved in Smart Growth planning workshops, public hearings and adoption of the current Land Use Plan may be disgruntled by changes to years of efforts made to adopt the Comprehensive Land Use Plan under the requirement of the Smart Growth law.
 - c. The required changes would constitute a comprehensive revision to the Zoning Ordinance and Towns could again opt to pull out of County wide zoning and potentially Farmland Preservation.

- d. Attempts to incorporate the Farmland Preservation Plan if adopted with the new “whole parcels” interpretation would cause a tug of war between the statutory requirements for comp plan flexibility, providing for the nine planning elements and incorporating Town, City and Village plans with Farmland Preservation Plan requirements.
- e. DATCP’s interpretation of consistency between Farmland Preservation Areas and zoning being identical to designated land use categories does not match definition of consistency under comprehensive planning. Chapter 91 requires the Farmland Preservation Plan to be included in the Comprehensive Plan and being the Farmland Preservation Plan will become part of the Comprehensive Plan, the only definition of consistency should be that of the Comprehensive Planning Law which does not require the plans to be identical but to accomplish the stated goals as a guide. The Planning Law for comprehensive plans is not a regulation but a guide as clarified in Act 237. “Consistent with” means furthers or does not contradict the objectives, goals, and policies contained in the Comprehensive Plan (Lake City Corp. v. City of Mequon). Being the vast majority of agricultural lands identified in the comp plan are within the prime agricultural land use category State law would consider the A-1 zone district to be consistent with the land use categories as designated. DATCP should accept the differences between the proposed Farmland Preservation Plan and the County Comprehensive Plan as meeting comprehensive plan goals and not as inconsistencies under the Farmland Preservation Guidelines.
- f. DATCP has no jurisdiction on lands outside of Farmland Preservation Area. Yet, the County continues to receive certification review concerns affecting lands well outside the boundary of the proposed Farmland Preservation Area map. The County has provided a description of the area proposed to be the Farmland Preservation Area and clearly described the rationale used in determination of the area. It is hoped that the response given in #4 will resolve the concerns as expressed.
- g. It is staff’s opinion that merely stating in the legend of both the Land Use and Farmland Preservation Plan maps that the Farmland Preservation Plan map supersedes the corresponding Comprehensive Plan map and any consistency between the two shall be resolved in favor of the Farmland Preservation Plan map may not be legal. Such measures would render the Comprehensive Plan and efforts to be meaningless. Section 91.10(2) requires the Farmland Preservation Plan to be part of Comprehensive Plan and not the other way around.

Walworth County has a successful history of preserving their Prime Agricultural Farmland (A-1) but our inability to comply with unwritten rules may force Walworth County to request an extension to the certification date. The Walworth County Land Use and Resource Management Department requests a response from DATCP to the concerns expressed so we may be informed of the current status of the County's certification request prior to presenting these concerns to the responsible County Committees.

RECEIVED
WALWORTH COUNTY CLERK
WASSEL, HARVEY & SCHUK, LLP
1634 ANN STREET P.O. BOX 524
DELAVER, WISCONSIN 53115-0524

2011 JUL 29 PM 4:50

STEVEN R. WASSEL
STEVEN C. HARVEY
BRIANA A. SCHUK

TELEPHONE: (262) 728-0700
FAX: (262) 728-0300

NATHAN M. JUROWSKI

WWW.WASSELHARVEYSCHUK.COM

July 29, 2011

Re: Town of Bloomfield, Farmland Preservation

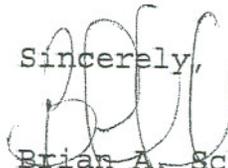
Dear Sir/Madam:

Enclosed herewith please find eight (8) copies of the Farmland Preservation Ordinance Certification Application, memo, Town of Bloomfield Zoning code ordinance and color map. Please refer to zoning for review, recommendation and signature in the above matter.

I understand that you do not need "[t]he spatial location data used to create each map."

Should you need something further, please do not hesitate to contact my office.

Sincerely,


Brian A. Schuk

hsh
enclosure

To: Walworth County Clerk
Via hand-delivery



Bloomfield Zoning Ordinance

Michael P Cotter, lolson4, Neal

Debora L Grube to: Fraunenfelder, Fay Amerson, Matthew
Weidensee

08/09/2011 08:37 AM

After my initial review of the Town of Bloomfield Zoning Ordinance (with regards to Farmland Preservation), I find the following:

1. Section 27-32. A-1 Farmland Preservation District has a lot area of 20 acres. County Plan is 35 acres
2. The Farmland Preservation definitions from Wisconsin Stats. 91 have been incorporated into the A-1 district and not into the definition section. (Base Farm Tract, Farm, Farm Acreage, Farm Residence, Nonfarm Residence, Nonfarm residential acreage, etc).
3. Prime Farmland is defined as Class I and II soils. County Plan is Class I, II and III soils
4. Gravel Pits are listed as a Conditional Use in the A-1 District. The County Plan recommends creating an A-1m district for A-1 Mineral Extraction.
5. Section 27-161: Procedures for Amending the Ordinance Text or Map. There is no mention of County Board approval requirements.
6. Section 27-171: "Zoning Administrator... (n) Grant minor variations from the dimensional setback, height, and area requirements of this ordinance, up to a maximum variation of 10% for setbacks and height limitations, and up to a maximum variation of 10% or 1,000 square feet for area requirements (whichever is less), so long as the spirit and intent of the performance standards are preserved."

I will let you know if I find more concerns with Bloomfields ordinance. Hopefully, we can talk to Keith Foye on Friday regarding some of these issues.

Debora Grube, Zoning
Walworth County Land Use and Resource Management
100 W. Walworth St. (Room 222)
P.O. Box 1001
Elkhorn, WI 53121
Main Ph: 262-741-4972
Direct Line: 262-741-7907
FAX: 262-741-4974