

# ORDINANCE

## Town of Wolf River, Winnebago County, State of Wisconsin

### No. 36

#### Title

### FARMLAND PRESERVATION ORDINANCE:

**Whereas**, the State of Wisconsin has recently modified its 'Farmland Preservation" program and

**Whereas**, The Town of Wolf River under their Zoning Code did reserve the right to create an A-1 Exclusive Agri-Business District/Classification.

**Now Therefore**, The Town Board on the recommendation of the Planning and Zoning Committee and after holding a public hearing on the proposed creation of a Farmland Preservation Ordinance does hereby ordain as follows:

#### SECTIONS 1.0 TITLE AND PURPOSE

1. Chapter C, Zoning District Regulations, Section 1.05 Agricultural District (1)(A) is amended to read A-1 Agri-Business District – The purpose of the A-1 Agri-Business District is to qualify lands in the district or under this classification for eligibility under the Wisconsin State Farmland Preservation program and to conserve productive farming areas, assure a proper economic and physical environment for continued agricultural use of land, maintain an open rural character; assure compatible types and densities of development on lands that are useable for agricultural pursuits; minimize other land uses incompatible with farming, and prevent the uncontrolled spread of residential development.
2. Pursuant to the authority granted by the Wisconsin Statutes, the Town Board does hereby create/repeal /amend Section 1.05 A-1 Agri-Business District, (Farm Preservation) as follows:

#### A-1 Agri-Business Regulations

**A. DEFINITIONS.** In this farmland preservation ordinance:

(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. This may include, for example:
  1. A facility used to store or process raw agricultural commodities, all of which are produced on the farm.
  2. A facility used to keep livestock on the farm.
  3. A facility used to store or process inputs primarily for agricultural uses on the farm.
  4. A facility used to keep or service vehicles or equipment primarily employed in agricultural uses on the farm.
  5. A wind turbine or solar energy facility that collects wind or solar energy on the

farm, and uses or transforms it to provide energy primarily for use on the farm.

6. A manure digester, bio-fuel facility, or other facility that produces energy primarily from materials grown or produced on the farm, primarily for use on the farm.
7. A waste storage or processing facility used to store or process animal waste produced solely from livestock kept on the farm..

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

(c) A farm residence, including normal residential appurtenances.

(d) A business, activity, or enterprise, whether or not associated with an agricultural use, which meets all of the following requirements:

1. It is conducted on a farm by an owner or operator of that farm.
2. It requires no buildings, structures, or improvements other than those described in par. (a) or (c).
3. It employs no more than 4 full-time employees annually
4. It does not impair or limit the current or future agricultural use of the farm or other protected farmland.

(2) "Agricultural use" means any of the following activities conducted for the purpose of producing an income or livelihood:

- (a) Crop or forage production.
- (b) Keeping livestock.
- (c) Beekeeping.
- (d) Nursery, sod, or Christmas tree production.
- (e) Floriculture.
- (f) Aquaculture.
- (g) Fur farming.
- (h) Forest management.
- (i) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

(3) "Agriculture-related use" means 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.
- (b) Storing, processing or handling raw agricultural commodities obtained directly from farms, Including farms in the farmland preservation zoning district.
- (c) Slaughtering livestock, including livestock from farms in the farmland preservation zoning district.
- (d) Marketing livestock to or from farms, including farms in the farmland preservation zoning district.
- (e) Processing agricultural by-products or wastes received directly from farms, including farms in the farmland preservation zoning district.

(4) "Base farm tract" means all land, whether one parcel or 2 or more contiguous parcels,

which is in a farmland preservation zoning district and is part of a single farm on May 14, 2012, regardless of any subsequent changes in the size of the farm..

- (5) "Common ownership" means ownership by the same person or persons, or by persons that are all wholly owned by the same person or persons. "Common ownership" includes joint tenancy and tenancy in common. Solely for purposes of this definition, a parcel owned by one member of a married couple is deemed to be owned by the married couple.
- (6) "Contiguous" means adjacent to or sharing a common boundary. "Contiguous" land includes land that is separated only by a river, stream, section line, public road, private road, railroad, pipeline, transmission line, or transportation or transmission right-of-way. Parcels are not "contiguous" if they meet only at a single point.
- (7) "Farm" means all land under common ownership that is primarily devoted to agricultural use. For purposes of this definition, land is deemed to be primarily devoted to agricultural use if any of the following apply:
  - (a) The land produces at least \$6,000 in annual gross farm revenues to its owner or renter, regardless of whether a majority of the land area is in agricultural use.
  - (b) A majority of the land area is in agricultural use.
- (8) "Farm acreage" means, for purposes of section D (2) (a), the combined total acreage of all of the following in the "base farm tract":
  - (a) Farm.
  - (b) Open space parcels of more than 10 acres..
- (9) "Farm residence" means any of the following structures located on a farm:
  - (a) A single-family or duplex residence that is the only residential structure on the farm.
  - (b) A single-family or duplex residence that 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
- (10) "Gross farm revenue" means gross receipts from agricultural uses, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year. "Gross farm revenue" includes receipts accruing to a renter, but does not include rent paid to the land owner.
- (11) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites and farm-raised fish.
- (12) "Nonfarm residence" means any residence other than a farm residence.
- (13) "Nonfarm residential acreage" means, for purposes of section D (2) (a), the combined total acreage of all parcels on which nonfarm residences are located, all parcels on which the Town of Wolf River has approved nonfarm residences, all parcels of 10 acres or less that do not qualify as farms, and the parcel to which the conditional use permit application pertains. If a residence is located or proposed to be located on an undivided farm, but does not qualify as a farm residence, the size of the residential parcel is deemed to be 10 acres.
- (14) "Open space parcel" means a parcel on which no buildings, other than temporary hunting blinds or small sheds not affixed to a permanent foundation, have been constructed or approved for construction.

(15) "Person" means an individual, corporation, partnership, limited liability company (LLC), trust, estate or other legal entity.

(16) "Prime farmland" means all 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 United States Department of Agriculture.

(b) Land, other than land described in par. (a), which is identified as prime farmland in the county's certified farmland preservation plan.

(17) "Prior nonconforming use" means a land use that does not comply with this farmland preservation zoning ordinance, but which lawfully existed prior to the application of this ordinance.

(18) "Protected farmland" means land that is any of the following:

(a) Located in a farmland preservation zoning district certified under ch. 91, Wis. Stats.

(b) Covered by a farmland preservation agreement under ch. 91, Wis. Stats.

(c) Covered by an agricultural conservation easement under s. 93.73, Wis. Stats.

(d) Otherwise legally protected from nonagricultural development.

**B. LAND USE IN FARMLAND PRESERVATION ZONING DISTRICT; GENERAL.**

Only the following land uses are allowed in a farmland preservation zoning district:

(1) Uses allowed under section C without a conditional use permit.

(2) Uses allowed under section D with a conditional use permit.

(3) Prior nonconforming uses, subject to *60.61(5) Wis. Stats.*

**C. PERMITTED USES.** The following land uses are allowed without a conditional use permit in a farmland preservation zoning district:

(1) Agricultural uses and accessory uses on farms, except that a conditional use permit is required under section D (4) for the following agricultural uses and accessory uses on farms:

(a) A new or expanded facility used to keep cattle, swine, poultry, sheep or goats, if that facility will have more than 500 animal units]

(b) A new or expanded facility for on-farm riding stables and boarding facilities, farmstead food processing facilities, farmstead retail outlets, manure storage systems, large on farm fuel or agrichemical storage facilities. Farmstead retail outlets will be required to meet s.91.01 (d) when they sell non-ag products.

- (2) Nonfarm residences constructed in a rural residential cluster according to a conditional use permit issued under section D (3) for that cluster.
- (3) Undeveloped natural resource and open space areas.
- (4) Transportation, utility, communication, or other uses that are required under state or federal law to be located in a specific place, or that are 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.

**D. CONDITIONAL USES.**

**(1) General.**

- (a) The Town may issue a conditional use permit for a proposed land use identified in this section if the proposed land use meets applicable conditions under this section. The Town shall follow the procedures described in Chapter E, section 1.24(3)..
- (b) Before issuing a conditional use permit under par. (a), the Town shall determine in writing that the proposed use meets applicable conditions under this section. The Town may issue the permit subject to any additional conditions which the Town deems necessary to carry out the purposes of this ordinance.

**(2) Nonfarm residences.** The Town may issue a conditional use permit for a proposed nonfarm residence if all of the conditions of the Town's ordinance for granting of a permit for a nonfarm residence are met. (Sec 1.24 (3) In every case to be eligible:

- (a) If the nonfarm residence will be located in a base farm tract:
  - 1.. The ratio of nonfarm residential acreage to farm acreage in the base farm tract will not exceed 1:20
  - 2. There will be no more than 4 dwelling units in nonfarm residences, nor more than 5 dwelling units in residences of any kind, in the base farm tract..
- (b) Neither the nonfarm residence, nor the parcel on which the nonfarm residence is located, will do any of the following:
  - 1. Convert prime farmland, or cropland other than a woodlot, from agricultural use if there is a reasonable alternative available to the permit applicant.
  - 2. Significantly impair or limit the current or future agricultural use of any other protected farmland.

**(3) Nonfarm residential clusters.** The Town may issue a single conditional use permit authorizing 2 or more proposed nonfarm residences if all of the following apply:

- (a) The conditional use permit includes all of the following information:
  - 1. The total number of nonfarm residences authorized by the permit.
  - 2.. A legal or survey description of each parcel on which a nonfarm residence is authorized.
  - 3.. The number of nonfarm residences authorized on each parcel under subd. 2., if more than one.
  - 4. The number of dwelling units authorized in each authorized nonfarm residence, if more than one..

- (b) Each of the parcels described under par. (a) 2. shares a boundary with at least one other parcel described under par. (a)2.
- (c) Each of the proposed nonfarm residences will meet all of the standards under sub. (2) when all of the proposed nonfarm residences have come into existence.
- (d) The conditional use permit prohibits all of the following:
  1. Any further division of any parcel described in par. (a)2.
  2. Any nonfarm residence or dwelling unit on a parcel identified in par. (a)2., other than a nonfarm residence or dwelling unit identified in the permit.

**(4) Agricultural and accessory uses on farms.** The town may issue a conditional use permit for any of the following agricultural uses or accessory uses for which a permit is required under section –C (1): - -

- (a) A new or expanded facility that will be used to keep cattle, swine, poultry, sheep or goats, and that will have more than 500 animal units, if the proposed facility meets the standards prescribed in ch. ATCP 51, Wis. Adm. Code.
- (b) A new or expanded facility for on-farm riding stables and boarding facilities, farmstead food processing facilities, farmstead retail outlets, manure storage systems, large on farm fuel or agrichemical storage facilities. Farmstead retail outlets will be required to meet s.91.01 (d) when they sell non-ag products.

**(5) Agriculture-related uses.** Town may issue a conditional use permit for an agriculture-related use if all of the following apply:

- (a) The use supports agricultural uses in the farmland preservation zoning district in direct and significant ways, and is more suited to a farmland preservation zoning district than to an industrial or commercial zoning district.
- (b) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
- (c) 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.
- (d) The use is reasonably designed to minimize conversion of land, at and around the use site, from agricultural use or open space use.
- (e) The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
- (f) Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

**(6) Compatible infrastructure.**

- (a) The Town may issue a conditional use permit for any of the following uses if that use meets applicable conditions under par. (b):
  1. Transportation uses, including roads, rail facilities, and agricultural aeronautic facilities.

2. Communication uses, including transmission lines, cell towers, antennae and broadcast towers.
  3. Oil, gas and other pipelines.
  4. Electrical transmission lines.
  5. Wind turbines.
  6. Solar power generation facilities.
  7. Drainage facilities.
- (b) The Town may issue a conditional use permit for a proposed use under par. (a) if all of the following apply:

1. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
2. 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.
3. 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.
4. The use does not substantially impair or limit the current or future agricultural use of other protected farmland.
5. Construction damage to land remaining in agricultural use is minimized and repaired to the extent feasible.

(7) **Government and nonprofit community** uses. The Town may issue a conditional use permit for a government use, or for an institutional, religious or community use, if the Town 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 other protected farmland.
- (e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

(8) **Nonmetallic mineral extraction.** The Town may issue a conditional use permit for a nonmetallic mineral extraction operation if all of the following apply:

- (a) The operation complies with all of the following:

1. Subchapter I of ch. 295, Wis. Stats., and rules promulgated under that subchapter.
  2. Applicable provisions of county and local ordinances adopted under ss. 295.13 and 295.14, Wis. Stats.
  3. Any applicable requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mineral extraction 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 other protected farmland.
  - (f) The conditional use permit requires the landowner to restore the affected land after the nonmetallic mineral extraction operation is completed. The permit shall require the landowner to restore the land to a condition suitable for agricultural use, according to a written restoration plan included with the permit.

**E. REZONING LAND OUT OF A FARMLAND PRESERVATION ZONING DISTRICT.**

- (1) Except as provided in sub. (2), the town may not rezone land out of a farmland preservation zoning district unless the town does all of the following prior to the rezoning:
  - (a) Finds all of the following in writing, after public hearing, as part of the official record of the rezoning:
    1. The rezoned land is better suited for a use not allowed in the farmland preservation zoning district.
    2. The rezoning is consistent with any comprehensive plan, adopted by the town, which is in effect at the time of the rezoning.
    3. The rezoning is substantially consistent with the Winnebago County farmland preservation plan, certified under ch. 91, Wis. Stats., which is in effect at the time of the rezoning.
    4. The rezoning will not substantially impair or limit current or future agricultural use of other protected farmland.
- (2) The Town of Wolf River, Winnebago County retains the right to review and or modify this Ordinance..
- (3) **Subsection (1) does not apply to any of the following:**
  - (a) A rezoning that is affirmatively certified by the Wisconsin Department of

Agriculture, Trade and Consumer Protection under ch. 91, Wis. Stats.

- (b) A rezoning that makes the farmland preservation zoning ordinance map more consistent with the Winnebago County farmland preservation plan map, certified under ch. 91, Wis. Stats., which is in effect at the time of the rezoning.
- (c) By March 1 of each year, the Town of Wolf River shall submit to DATCP a report of the number of acres rezoned out of A-1 Agri-Business District during the previous year and a map that clearly shows the location of those areas. A copy of this report shall also be provided to the Winnebago County Zoning Department.

## **F. ENFORCEMENT, VIOLATIONS, PENALTIES, FEES**

### **(1) Enforcement**

It shall be the duty of the Zoning Administrator to enforce this ordinance

### **(2) Violations**

It shall be unlawful to construct or use any structure, land, or water in violation of any of the provisions of this Ordinance. In case of any violation, the Town Board, the Zoning Administrator, the Town Planning & Zoning Committee, or any property owner who would be specifically damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this Ordinance. An injunction may be sought from a court of competent jurisdiction by any of such parties to enforce this Ordinance.. Every structure, fill, or development placed or maintained in the floodplains in violation of this Ordinance is a public nuisance; and the creation therefore may be enjoined and maintenance thereof may be abated by an action instituted by the Town or any citizen who lives in or within five hundred (500) feet of the flood land.

### **(3) Penalties**

Any person, firm, or corporation who fails to comply with the provisions of this Ordinance or any order of the Zoning Administrator, Planning & Zoning Committee, Board of Appeals, or Town Board issued in accordance with this Ordinance, or resists enforcement shall, upon conviction therefore, be subject to a penalty which shall be as follows:

#### **(a) FIRST OFFENSE.**

Any person who shall violate any provision of this Ordinance shall upon conviction thereof, forfeit not less than five (5) nor more than five-hundred (500) dollars, together with the cost of prosecution, and in default of payment of such forfeiture and costs of prosecution, shall be imprisoned in the County jail until such forfeiture and costs are paid, but not to exceed ninety (90) days.

#### **(b) SECOND OFFENSE.**

Any person found guilty of violation any provision of the Ordinance who has previously been convicted of a violation of the same Ordinance within on a year shall, upon conviction therefore, forfeit not less than ten (10) nor more than five-hundred (500) dollars for each such offense, together with the costs of prosecution, and in default of

payment of such forfeiture and cost shall be imprisoned in the County jail until such forfeiture and costs are paid, but not exceeding six (6) months.

(c) CONTINUED VIOLATION.

Each violation and each day a violation continues shall constitute a separate offense. Nothing in this Ordinance shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Ordinance.

(d) EXECUTION AGAINST DEFENDANT'S PROPERTY.

Whenever a person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any provision in this Ordinance, the Court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue and execution against the property of the defendant for such forfeiture and costs.

(e) NOLO CONTREDRE PLEA AND STIPULATED FORFEITURE.

A person to whom a citation, summons or order of any person authorized by the Town Board to issue a citation to enforce the provisions of this Ordinance, may appear before the issuing officer not less than seventy-two (72) hours prior to the time established for appearance in the court and enter a plea of nolo contendere to such charges and, forfeit the sum of one-hundred (100) dollars plus the penalty assessment, court costs, jail assessment, municipal fee, and automation fees set by Chapters 165.87, 814.63, 53.46(1), and 814.635 of the Wisconsin Statutes.

**(4) Fees.**

Fees for permits and inspections shall be imposed as they are, from time to time, established by the Town Board as it may in its discretion deem appropriate.

**SECTIONS 2.0 REPEAL OF EXISTING ORDINANCES**

All existing Town Ordinances, parts of ordinances and amendments thereto in conflict with any of the provisions of this ordinance are hereby repealed

**SECTION 3.0 SEVERABILITY**

If any section, clause, provision or portion of this ordinance is adjudged thereto in conflict with any of the provisions of the ordinance are hereby repealed. If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a Court of competent jurisdiction, the remaining shall not be affected thereby

**SECTION 4.0 EFFECTIVE DATE**

This ordinance shall be effective as of 12:01 am on the day after the last to occur of the following enactment by the Town Of Wolf River Town Board, Winnebago County, WI and notification in the Town's newspaper. 53.46(1), and 814.635 of the Wisconsin Statutes.

Adopted this 23<sup>rd</sup> day of November 2015.

Randal Rutten, Chairman

ATTEST: Susan Gilbert, Clerk