

1 **AMENDATORY ORINANCE NO. 8: Approve Amendments to Town of UTICA**
2 **Zoning Ordinance**

3 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

4
5 **WHEREAS**, § 60.62(3)(a), Wis Stats, requires that town zoning amendments be approved by
6 counties prior to implementation; and

7 **WHEREAS**, on October 13, 2014, the Town of Utica adopted numerous
8 amendments to its zoning code and submitted those amendments to Winnebago County for approval;
9 and

10 **WHEREAS**, the Winnebago County Planning and Zoning Committee has reviewed said
11 amendments, has found no conflicts with county zoning jurisdiction or regulatory authority with them,
12 and is hereby submitting those amendments of the Town of UTICA Zoning Code to the
13 Winnebago County Board of Supervisors for final approval; and

14 **WHEREAS**, said amendments to the Town of UTICA Zoning Code are hereby
15 incorporated by reference to the Town of UTICA website with said amendments to be found at:
16 <http://townofutica.org/agendas-notices/2014-Oct-09/15103>.

17 **NOW, THEREFORE, BE IT RESOLVED** by the Winnebago County Board of Supervisors that
18 it hereby approves those amendments to the Town of UTICA Zoning Code, Chapter 91. Zoning
19 Regulations, which may be found by reference at the Town of [http://townofutica.org/agendas-](http://townofutica.org/agendas-notices/2014-Oct-09/15103)
20 [notices/2014-Oct-09/15103](http://townofutica.org/agendas-notices/2014-Oct-09/15103) website, listed above.

21 Respectfully submitted by
22 WINNEBAGO COUNTY PLANNING AND
23 ZONING COMMITTEE

24
25 Committee Vote: 5-0

26 Vote Required for Passage: **Majority of Those Present**

27
28 Approved by the Winnebago County Executive this _____ day of _____, 2014.

29
30
31 _____
32 Mark L Harris

33 Winnebago County Executive
34



Winnebago County

Zoning Department

The Wave of the Future

MEMO FOR P & Z PLANNING AGENDA OF DECEMBER 1, 2014

TO: Planning & Zoning Committee

FM: Zoning Administrator

RE: Review of Town of Utica Zoning Ordinance Amendments

1. Review of Zoning Ordinance Amendments- Town of Utica

The zoning office received a copy of the Town of Utica's adopted zoning ordinance amendments accompanied with a copy of a signed resolution adopting the ordinance amendments. The amendments are required for DATCAP's review of the town's ordinance with regard to the A-1 (Agribusiness) zoning district for compliance with chapter 91. The adopted zoning ordinance amendments for the Town of Utica must be approved by the County Board. There does not appear to be any conflicts with county zoning jurisdiction or regulatory authority.

RECOMMENDATION: Forward adopted zoning ordinance amendments to County Board for action.

Approved 5-0

Ordinance

Town of Utica, Winnebago County, State of Wisconsin

No. 2014-103

AMENDING THE TOWN ZONING CODE

WHEREAS, the Town Board of the Town of Utica desire to amend the Town zoning code to ensure that its Farmland Preservation Zoning complies with changes in the state statutes; and

WHEREAS, the Town provided notice of the zoning changes as required by law and held a public hearing for public comment; and

WHEREAS, the Town Plan Commission approved the amendments by passing a resolution by majority vote.

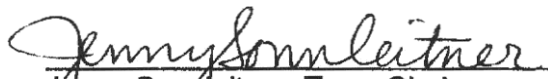
NOW, THEREFORE BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF UTICA, WINNEBAGO COUNTY, WISCONSIN, THAT:

The Town Board does hereby amend the Town Zoning Code by repealing the old Farmland Preservation Zoning and recreating the Farmland Preservation District regulations as attached hereto as Exhibit A.

Dated this 30th day of November, 2014.


Leonard Schmick, Chairman

ATTEST:


Jenny Sonnleitner, Town Clerk

AYES 3, NAVES 0
PASSED THIS 13th DAY OF October, 2014
PUBLISHED THIS 30th DAY OF November, 2014

ORDINANCE NO. _____

ORDINANCE REPEALING AND RECREATING SECTION 10. A-1 AGRICULTURAL DISTRICT (FARM PRESERVATION) OF THE TOWN ZONING CODE

WHEREAS, the Town Board of the Town of Utica previously adopted a zoning code pursuant to its authority under the Wisconsin Statutes; and

WHEREAS, the Town Board of the Town of Utica is interested in repealing and recreating the farmland preservation district in order to comply with state statutes in order to preserve farmland and to allow farmers in the district to take advantage of the tax benefits that accrue to land zoned as farmland preservation land; and

WHEREAS, the Town Plan Commission held a public hearing on _____, 2012 and that the hearing was properly noticed and the notice of hearing included the required statutory information; and

WHEREAS, the Town Plan Commission recommended the approval of the farmland preservation district regulations by passing a resolution; and

WHEREAS, the Town Board of the Town of Utica is desirous to adopt the revised farmland preservation district.

NOW, THEREFORE BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF UTICA, WINNEBAGO COUNTY, WISCONSIN, THAT:

I. Pursuant to the authority granted by the Wisconsin Statutes, the Town Board does hereby repeal and recreate Section 10. A-1 Agricultural District. (Farm Preservation) as follows:

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 trace" means all land, whether one parcel or two 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. *Explanatory note: Land is deemed to be under common ownership, "for purposes of this ordinance, if it is all owned by the same individual, married couple, joint tenants, tenants in common, corporation, LLC, partnership, estate or trust. If land parcels are owned by separate legal entities, but those legal entities are all wholly owned by exactly the same person or persons, those land parcels are deemed to be under "common ownership" for purposes of this ordinance.*
- (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 *grossfarm 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 "*basefarm* tract:"
- (a) *Farms*.
 - (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:
 - I. 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 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 lot, 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 hunting blinds or small sheds, 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 section 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) goats, equines, farm-raised deer, farm-raised game birds, camelids, ratites, farm-raised fish or mink 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 agricultural storage facilities.
- (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 Section 19 of the Zoning Ordinance.
 - (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 following standards will be met when the approved *nonfarm residence* comes into existence:

(a) If the *nonfarm residence* will be located in a *basefarm* tract:

1. The ratio of *nonfarm residential acreage* to *farm acreage* in the *basefarm 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 *basefarm* tract.

3. The lot created for the nonfarm residence shall be a minimum size of five (5) acres.

(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 two 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 used to keep cattle, swine, poultry, sheep, goats, equines, farm-raised deer, farm-raised game birds, camelids, ratites, farm-raised fish or mink 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 agricultural storage facilities.

(5) Agriculture-related uses. The 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:

- I. 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.

(9) Migrant Labor Camp. The town may issue a conditional use permit for a migrant labor camp that is certified under s. 103.92, Wis. Stats. if 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.

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 finds all of the following in writing, after public hearing, as part of the official record of the rezoning:

- (a) The rezoned land is better suited for a use not allowed in the farmland preservation zoning district.
- (b) The rezoning is consistent with any comprehensive plan, adopted by the town, which is in effect at the time of the rezoning.
- (c) The rezoning is substantially consistent with the county farmland preservation plan, certified under ch. 91, Wis. Stats., which is in effect at the time of the rezoning.
- (d) The rezoning will not substantially impair or limit current or future agricultural use of other protected farmland.

(2) 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 more consistent with the county farmland preservation plan map, certified under ch. 91, Wis. Stats., which is in effect at the time of the rezoning.

(3) By March 1 of each year, the town shall report to the Department of Agriculture, Trade and Consumer Protection the number of acres that the town has rezoned out of a farmland preservation zoning district during the prior year and shall provide a map that clearly shows the location of those acres.

II. The town clerk shall provide notice as required by law and shall send the ordinance to the county for approval.

III. Upon receipt of approval by the county the town clerk shall take action to have the new ordinance incorporated into the Town Zoning Codebook.

Dated this ____ day of _____, 2012.

Leonard Schn1ick, Chairman

ATTEST:

Jenny Sonnleitner, Town Clerk

AYES _____ NAYES _____

PASSED THIS DAY OF _____, 2012
PUBLISHED THIS DAY OF _____, 2012