



# PLANNING NOTES

## Overview

Most towns that have adopted A-1 (exclusive agriculture) zoning set some sort of limit on the number of nonfarm homes or development that can be created in agricultural areas. These policies are commonly called “density policies,” since they limit the total residential or nonfarm development density permitted in particular areas of the town. Density policies vary from town to town, and may be changed by amendments to the [Dane County Farmland Preservation Plan](#) approved by the town and county boards. All such policies calculate potential building sites or nonfarm development density based on acreage owned at a certain point in time, as opposed to the acreage currently owned.

## Criteria and Guidelines for Density Policies

When developing or revising town density policies, town boards and planning commissions should work to make sure the language is as clear and unambiguous as possible, to avoid future disputes or conflicting interpretations. Dane County planning staff is available assist towns by reviewing current or proposed town plan density policies and making recommendations based on town objectives. There are numerous key questions and/or issues that a density policy should address, including, but not limited to the following:

### Determining Eligible/Permitted Density

As noted above, most towns’ density policies establish a maximum amount of potential nonfarm development in agricultural preservation areas. It is important for policies to clearly state how the eligible density is determined and to identify what types of development count toward the density limitation.

#### *Identifying the baseline date*

What is the exact baseline date for determining original farm ownership and eligible density? For most towns, this is the date of adoption of A-1EX (Exclusive Agriculture) zoning, or the date the town first adopted a land use plan and/or density policy.

#### *Identifying original farms*

How are original farm parcels/units identified? Most towns identify farm units as contiguous lands under common ownership, with roads and other public rights-of-way not interrupting contiguity (i.e., land owned on two sides of a road, or

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meeting at a single point, is considered part of a single farm unit). Town plans should include definitions of the terms "contiguous", "parcel", and "ownership" to avoid confusion.

### ***Eligible lands***

If a property includes land that is under water, or in mapped wetlands, floodplains, or environmental corridors, is such land to be included in the density calculation?

### ***Data sources***

What source of information is used to determine original farm acreage? Historical Plat Books? County GIS records? Current or historical tax records? There are often discrepancies between "gross" acreage values reported in plat books and tax records, and "net" acreage values derived from county GIS records and survey instruments. Gross acreage generally includes land in road and other public rights-of-way, while net acreage does not. For county zoning and land division purposes, all acreage values are net of rights-of-way. Town plans should identify whether gross or net acreage is used, as well as the source(s) the town intends to use to obtain the information.

### ***Rounding***

If a density calculation results in a remaining fraction over .5, does the Town "round up" or "round down" to the nearest split? Towns vary on this issue with about half rounding up and the other half rounding down. Some towns only permit rounding up under certain circumstances, for instance, if the resulting fraction is greater than .8, or if a landowner agrees to abide by additional development criteria (e.g., conservation subdivision design).

## **Density Policy Application, Tracking and Record Keeping**

After establishing a method of determining eligible density, the next steps are to identify the type(s) of development that count against the density limitation, a method of allocating remaining density units or splits among multiple owners of an original farm unit, and a record keeping system to track changes in density over time.

### ***Density policy applicability***

What types of development count against the density policy? All towns with density policies count residential rezones and land divisions created after the baseline date as "splits" against the density limitation. Some towns are beginning to count commercial rezones and/or land divisions, as well as "farm homes" built under the "substantial farm income" provision of the county zoning ordinance. Towns vary with regard to the treatment of residences existing prior to the baseline date – some count existing residences, others count them only if and when they are sold to a subsequent owner or rezoned and divided onto a separate parcel, and others exempt them entirely from the density limitation.

### ***Additional questions and refinements***

1. Does a farm residence ever count as a split? If built after the date of Town plan adoption? If split off by rezone and CSM after the date of Town plan adoption?
2. Would a duplex count as one or two splits?
3. If the town counts other nonfarm development (e.g., cell towers, commercial rezones/development), are any distinctions made between zoning lots (not separate parcels) and new parcels created by Certified Survey Map?
4. Does land sold to a public agency (e.g., DNR, Dane County Parks, WI DOT, etc.), count as a split? Should the split determination depend upon the acreage sold, or the terms of the sale or easement?

### ***Land sales after the baseline date***

If land sales of more than 35 acres occur after the baseline date of town plan adoption without clear documentation regarding any transfer of splits or density units, how does the town determine the appropriate

distribution of splits among multiple current owners of the original farm? This has become an increasingly important issue over the past several years, and many towns have adopted policies that outline a process for determining the appropriate allocation of any remaining density units. Below are some examples of how towns are addressing this issue.

1. Proportional allocation of remaining density units/splits.

Some towns use a proportional allocation of remaining density units based on current acreage owned. For example, an original farm unit of 105 acres eligible for 3 splits, ( $105/35 = 3$ ), is now owned by Landowner A (70 acres), and Landowner B (35 acres). Under a proportional allocation, Landowner A gets 2 splits ( $70/35 = 2$ ), and Landowner B, 1 split ( $35/35 = 1$ ).

2. Case-by-case analysis and determination.

Other towns review individual situations as they arise, and may attempt to determine the intent of past land transactions by requesting documentation and testimony from affected landowners.

3. Splits "run with the land".

Some towns have policies stating that splits "run with the land", such that sale of a parcel over 35 acres automatically involves the transfer of a density unit with it, unless written documentation specifies otherwise. This term has proven to be problematic when it is not clearly defined, and when it has been applied in cases where the eligible density has already been exhausted.

Historically, many town plans utilized this term to denote that changes in ownership do not result in a new density computation or allocation of additional density units. Generally speaking, most towns allocate eligible density based on the total amount of acreage owned at a certain point in time, and require that permitted nonfarm development be done on smaller parcels of less agriculturally productive land. This suggests that density units are "severable", meaning that they may be detached as one of many rights within a bundle property rights.

4. Density units stay with the original farm owner, or largest parcel.

A few towns have policies stating that any remaining density unit(s) stay with the original farm owner, or be allocated to the current owner of the largest parcel from the original farm.

5. Method of determining eligible density may vary.

At least one town specifies a different methodology for determining eligible density if changes in farm ownership and/or parcel configuration occur after the effective date specified in the town plan. Under this scenario, it is possible that density units may be exhausted without actually being utilized for development because of changes in ownership or parcel size and configuration.

***Tracking density over time***

What, if any, mechanism does the Town utilize to track the density policy, particularly when splits are exhausted for an original farm unit? Deed restrictions preventing further residential development, or "notice documents" notifying landowners that additional development would conflict with current town policies? What about situations where the original farm unit is now owned by numerous individuals or parties?

***Non-conforming A-1EX parcels less than 35 acres***

How does the Town treat non-conforming A-1EX parcels (less than 35 acres)? Are such parcels permitted a home site? Can such parcels be divided under any circumstances? Are they treated any differently if they are vacant, were created in violation of the subdivision ordinance (i.e., no CSM), or if they cannot satisfy other town plan siting requirements or Dane County ordinance standards (e.g., length of driveway, access to a public road, etc.)?

**Annexation of land**

If part of an original farm is annexed into a City or Village, are splits still available to the remaining property located in the Town? Or, are splits retired once the property is annexed?

**Role of development siting standards/criteria**

What siting standards and criteria apply to residences built in the Agricultural Preservation Areas (e.g., soil quality, environmental, design, or rural character considerations)? Would a split or transferable density unit be denied if those criteria could not be satisfied? Are density standards intended to be maximums that may not be appropriate if town plan or county ordinance standards and criteria cannot be satisfied?

**Transfers of splits**

Can splits be transferred between different original farms? Can they be transferred between different original farms if the same individual or family owns them? If so, under what circumstances would transfers be permitted (e.g., to promote preservation of prime agricultural land, scenic or sensitive environmental features)?

**Exceeding density caps**

If density limitations have been exceeded by past actions of the town and/or county, would additional splits/density units be granted under any circumstances? If so, under what circumstances would the town grant additional splits/density units?

**Planning Notes**

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