

## New Conversion Fee Will Affect Rezoning

*A White Paper from Martenson & Eisele, Inc.  
December 14, 2009*

The State of Wisconsin biennial budget that was signed into law on June 30, 2009 by Governor Doyle contained significant changes to Chapter 91 of the Wisconsin State Statutes. Chapter 91 is the Farmland Preservation Program. One of the changes that seems to be generating the most discussion is a new conversion fee related to the rezoning of land in a farmland preservation zoning district to another zoning district.

**Beginning on January 1, 2010, a landowner that rezones a property that was in a farmland preservation zoning district (commonly called Exclusive Agricultural) to a nonfarmland zoning district will have to pay a conversion fee, which will be used to fund the Purchase of Agricultural Conservation Easements or PACE program.**

Chapter 91.48(1)(b) states that the conversion fee will be equal to the greater of (1) or (2) below.

- (1) Three times the per acre value, for the year in which the land is rezoned, of the highest category of tillable cropland in the city, village, or town in which the rezoned land is located, as specified by the department of revenue under s. 73.03(2a).

*For example, the per acre value for Grade 1 agricultural land in 2010 in Outagamie County ranges from \$202 to \$221, resulting in a conversion fee between \$606 and \$663 per acre.*

- (2) An amount specified in the certified farmland preservation zoning ordinance.

*This provision of Chapter 91 allows the unit of government that is administering the farmland preservation zoning district to set a conversion fee higher than what would be calculated in (1). The difference between (1) and (2) can be used by the unit of government to pay for costs related to farmland preservation planning, zoning, or compliance monitoring. For example, Calumet County has already determined that it will impose a fee of fifteen (15) percent of the conversion fee calculated in (1).*

Chapter 91 also includes another section, however, that will lessen the need to rezone land from a farmland preservation zoning district to another zoning district. Ch. 91.46(2) and (3) provide for the creation of nonfarm residential lots and/or the conversion of a farm residence to a nonfarm residence. Here's an example of how that might work.

*Farmer Jones owns a 160 acre farm in Outagamie County that is zoned Exclusive Agricultural, which is the County's farmland preservation zoning district. He lives in the only house that is located on the farm. Based on a ratio of one (1) nonfarm residential acreage to 20 acres of farm acreage, Farmer Jones could convert up to eight (8) acres of farm acreage to nonfarm residential acreage without rezoning the acreage or paying the conversion fee. He can create up to four (4) new dwelling units on the eight (8) acres of nonfarm residential. He can create a fifth nonfarm dwelling unit if he decides to move and sell his house to someone not involved with the farm. The four new dwelling units could be four separate single family units, two duplex units, or a multi-family building with four units, depending on what the farmland preservation zoning district would allow. **Without this new provision in Ch. 91, Farmer Jones would have had to pay a conversion fee of over \$5,000.***

While this is good news for landowners who want to sell a small portion of their land that is in a farmland preservation zoning district for someone to build a nonfarm residence, it will require local units of government to amend their zoning ordinances to allow for the creation of nonfarm residences provided for in Ch. 91.46(2) and (3).

When do they need to do this? The Wisconsin Department of Agriculture, Trade, and Consumer Protection has published a document that identifies when counties and, in some cases, towns need to update their Farmland Preservation Plan and Zoning Ordinance. That document is available at:

[www.datcp.state.wi.us/workinglands/pdf/ExpirationTable-Oct09.pdf](http://www.datcp.state.wi.us/workinglands/pdf/ExpirationTable-Oct09.pdf)

While a farmland preservation section of a zoning ordinance must be updated after the update of the farmland preservation plan is completed, a local unit of government has the ability to update its zoning ordinance prior to the farmland preservation plan being updated.

If you think that landowners should have the ability to convert farmland that is in a farmland preservation zoning district to a nonfarm residence use without paying the conversion fee, please review the questions below and determine which one (or more) applies to you.

***Do you own land that is currently zoned for farmland preservation?***

Contact the unit of government that administers the zoning ordinance that regulates your land and ask them if they are considering amending their zoning ordinance to include the new provisions of Chapter 91 of the Wisconsin State Statutes.

***Are you a member of a town board or plan commission that has its own zoning ordinance that includes a farmland preservation zoning district?***

Consider amending your zoning ordinance to include the new Chapter 91 provisions.

***Are you a member of a town board or plan commission that is under county zoning and the county zoning ordinance has a farmland preservation zoning district?***

Contact the county zoning office and find out when the county intends to amend its zoning ordinance to include the new provisions from Chapter 91.

***Are you a member of a village board or plan commission or city council or plan commission and you have a farmland preservation zoning district in your zoning ordinance?***

Consider amending your ordinance to include the new Chapter 91 provisions.

***Are you a member of a county board or county planning and zoning committee?***

Consider amending your zoning ordinance to include the new provisions from Chapter 91.

For more information on, or assistance with, amending your zoning ordinance to allow for the conversion of farm acreage that is in a farmland preservation zoning district to nonfarm residential acreage without paying the conversion fee, contact Warren Utecht or Jonathan Bartz at Martenson & Eisele at 920-731-0381 or by email at [warrenu@martenson-eisele.com](mailto:warrenu@martenson-eisele.com) or [jonb@martenson-eisele.com](mailto:jonb@martenson-eisele.com).

For more information on Wisconsin's Working Land Initiative that includes the Farmland Preservation Program, Agricultural Enterprise Areas, and the Purchase of Agricultural Conservation Easements Program, go to this web site:

[www.datcp.state.wi.us/workinglands/index.jsp](http://www.datcp.state.wi.us/workinglands/index.jsp)

This White Paper is available for download at:

[www.martenson-eisele.com/martenson/links.asp](http://www.martenson-eisele.com/martenson/links.asp)