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CLEARINGHOUSE RULE 94-195

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated November 1991.]

1. Statutory Authority

a. In s. ATCP 51.10 (10) (c), the notice of public hearing on county agricultural preservation plans should be published as a class 2 notice under ch. 985, Stats. Sections 91.51 and 91.59 (2), Stats., require that agricultural preservation planning be undertaken in accordance with s. 59.97, Stats., relating to county zoning. Section 59.97 (5), Stats., requires that a public hearing on a proposed county zoning ordinance be preceded by publication in the county of a class 2 notice under ch. 985, Stats.

b. Section 91.13 (4), Stats., requires a local governing body to act upon an application for a farmland preservation agreement within 120 days after the application is received unless the time is extended by mutual agreement of the applicant and the local governing body. Section ATCP 51.66 (3) provides that a local government entity must act upon an application not more than 120 days after the application is received, but does not provide that the deadline may be extended by mutual agreement of the parties. The department may want to modify s. ATCP 51.66 (3) to state that the 120-day deadline may be extended by mutual agreement of the parties.

2. Form, Style and Placement in Administrative Code

a. In s. ATCP 51.01 (2) (a), in order to treat every time contingency, the phrase “on or” should be inserted after the word “county.” [See, for example, s. ATCP 51.02 (2) (b) 1. The time-related provisions of the rule should be reviewed for this problem.]

b. In the Note following s. ATCP 51.01 (7), it is suggested that the term “this rule” be replaced with the term “this chapter.” [See s. 1.07 (1), Manual.] Similarly, in the Note

following s. ATCP 51.01 (12), the term “in this subsection” should be substituted for the phrase “as defined here.”

c. The order of s. ATCP 51.01 (13) and (14) should be reversed in order to preserve the alphabetical order of the definitions contained in this section.

d. In s. ATCP 51.01 (26), it is suggested that “ss.” be substituted for “s.”. Also, the material following the phrase “county board” is unnecessary and may be deleted.

e. In s. ATCP 51.03 (2) (b), the second occurrence of the notation “ATCP” is unnecessary and should be deleted.

f. The Note to s. ATCP 51.10 (5) (d) should be incorporated into par. (d). The Note is substantive and could be included in par. (d) in the following manner: “In this paragraph, ‘recorded private claims’ means...United States.”

g. In s. ATCP 51.16 (4), the phrase “, at the county’s discretion,” is unnecessary and should be deleted.

h. In s. ATCP 51.22 (2) (intro.), the notation “... [revisor inserts date]” should be inserted after the phrase “effective date of this chapter.”

i. In the Note to s. ATCP 51.48 (2) (a), the statutory citation should read “ss. 91.73 (2) and 91.75 (1), Stats.”

j. In s. ATCP 51.52 (2) (b) and (c), it is suggested that the word “not” be substituted for the term “decline to” in order to more clearly state that the Land and Water Conservation Board may certify only exclusive agricultural zoning ordinances that comply with subch. III of ch. ATCP 51.

k. In the Notes to s. ATCP 51.54 (6) and (7), it appears that the phrase “fewer than 5” should be replaced by the phrase “5 or fewer,” given the content of s. ATCP 51.54 (1) (a) (intro.). The latter provision concerns a local effort to rezone more than 5 acres of land.

l. In s. ATCP 51.58 (2) (intro.), it appears that the notation “... [revisor inserts date]” should be inserted after the word “chapter.”

m. The Note to s. ATCP 51.70 (3), and similar notes in the rule, should be incorporated into the text of the rule.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The rule makes frequent reference to forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In the Note to s. ATCP 51.54 (1) (a), it appears that a reference to “sub. (8)” should be added to the reference to s. ATCP 51.52 (6). Also, in the Note to sub. (4), it appears that the reference to sub. (6) should be replaced by reference to “sub. (8).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ATCP 51.01 (17), it is suggested that the term “as defined in” be substituted for the word “under” because s. 91.75 (8) (a), Stats., defines “farm family business.”

b. In s. ATCP 51.01 (29), the definition of “owner” should be clarified. The term is defined to include, in the case of a land contract, the “seller in agreement with the buyer.” Is this term intended to mean the land contract vendor and vendee agreeing to the terms of the land contract or, alternatively, that the land contract vendor and vendee must agree to participate in the farmland preservation tax credit program. Some clarification of this ambiguity would be helpful. Also, the list in sub. (29) (c) should be compared with the list in sub. (31) for any inadvertent inconsistencies.

c. The Note following s. ATCP 51.01 (35) is confusing because it could be interpreted as incorporating the substantive provisions of s. 59.97 (10), Stats., into the definition of “prior nonconforming use.” If the department feels that the Note is useful, it should explain more clearly why s. 59.97 (10), Stats., is being referenced.

d. The second sentence of s. ATCP 51.02 (1) could be made more concise by stating that persons may claim farmland preservation tax credits only with respect to “eligible farmland,” as defined in s. ATCP 51.01 (12). If this is done, the Note following s. ATCP 51.02 (1) could be eliminated.

e. In s. ATCP 51.02 (2), it is stated that no person may claim a farmland preservation tax credit unless the farmland is subject to a farmland preservation agreement or located in an exclusive agricultural use district under a zoning ordinance “except as specifically provided under subch. IX of ch. 71, Stats.”. However, it does not appear that subch. IX provides any exceptions to these requirements. If there are no exceptions, it is suggested that the quoted language above be eliminated. If there are exceptions, it is suggested that they be specifically cited. This comment is also applicable to s. ATCP 51.02 (3).

f. In the Note following s. ATCP 51.10 (9) (e), the word “landowner” appears to be inserted due to a typographical error.

g. In s. ATCP 51.10 (10) (c), it appears that the word “was” on page 50, line 6, should be replaced by the word “were.”

h. Section ATCP 51.12 (4) refers to a 90-day review period. However, the Note to s. ATCP 51.14 (1) (b) states that if a contested case hearing is held, the certification process may be delayed. Section ATCP 51.12 (4) should be clarified.

i. Section ATCP 51.42 (5) and the Note following that subsection conflict. The subsection states that no special exception, conditional use or variance may authorize a land use in an exclusive agricultural use district that is not consistent with agricultural use. However, the Note states that when a local zoning authority takes such an action authorizing a nonagricultural use, the affected land is subject to a lien. Consequently, without qualification, it is inaccurate in sub. (5) to state that an authority may not authorize a land use that is inconsistent with agricultural use.

j. In s. ATCP 51.66 (intro.), should a reference be made to department disapproval under s. 91.13 (7), Stats.? Also, should this subsection discuss the procedure to follow when a local government entity fails to act under s. 91.13 (5), Stats.?

k. In s. ATCP 51.70 (2) (i), it is stated that farmland preservation or transition area agreements shall include “other provisions” required under s. 91.13 (8), Stats. However, it appears that all of the provisions of s. 91.13 (8), Stats., may be required by pars. (d) to (h) of s. ATCP 51.70 (2). If there are no other provisions of s. 91.13 (8), Stats., that are not included in s. ATCP 51.70, it is suggested that par. (i) be eliminated. If there are such provisions, it is suggested that they be specifically enumerated.

l. Section ATCP 51.74 (1) states that a person who acquires any interest in land covered by a farmland preservation or transition area agreement acquires that interest subject to that agreement “except as otherwise provided by law.” Is it possible to provide more detail about what laws may restrict the conditions of farmland agreements being imposed with respect to new owners of the property?

m. In s. ATCP 51.86 (8) (c), it is suggested that a citation to s. 91.19 (2) (c) 1, Stats., be substituted for the reference to s. 91.19 (2) (c), Stats. Subdivision 2 of par. (c) does not require that findings be made but, rather, lists factors which must be considered by local government entities in determining whether to approve applications for releases from farmland preservation agreements. In addition, s. ATCP 51.86 (8) (c) should also be revised to require local governments to consider the factors enumerated in s. 91.19 (2) (c) 2, Stats., in determining whether to approve releases from the farmland preservation program. Also, in sub. (8) (a), should a provision be included regarding the failure of a local government entity to act within the prescribed time? [See s. 91.19 (4), Stats.]

n. In s. ATCP 51.86 (15) (a), should references be made to the time limits contained in s. 91.19 (3) and (5), Stats.?

o. Section ATCP 51.90 provides that farmland preservation agreements and transition area agreements survive and are not affected by county tax lien foreclosures, mortgage foreclosures, foreclosures of land contracts or proceedings in bankruptcy. However, with respect to county tax lien foreclosures, s. 75.14 (4), Stats., provides that only recorded restrictions survive when counties take deeds to land for delinquent property taxes. Section ATCP 51.90 should be more specific as to the circumstances under which farmland preservation agreements and transition area agreements are affected by subsequent legal proceedings affecting the land covered by the agreements.