



## **There Is No Easy Equal Answer**

### *15 considerations when partitioning a farm for the next generation.*

Splitting the family farm, whether voluntarily as a part of estate planning or forced because there was no plan, sounds simple enough: all you need to do is some simple long division and hire a surveyor. Right?

There's much more involved than just knowing the number of acres and the number of heirs.

The following 15 factors should also be considered. That's right—at least 15 factors. This is not a simple process. They aren't listed in any particular order of importance.

**1) The first place to start is to determine how many ways the farm needs to be split.** There might be six heirs, but the twins are interested in owning their shares together. That means the land only needs to be split five ways. Or three siblings want to sell and three siblings want to hold onto the land. The three who don't want to sell can afford to buy out the other three. That means the calculations are to divide by three ways. Or one of the original six heirs may have already passed and left their share to their five adult kids. That may mean the farm has to be split 10 ways. Fewer splits, i.e. bigger parcels, are better and simpler.

**2) It's important to have the partitions of the farm still look like a normal farm.** You know how you can tell some starlets in the movies have had plastic surgery even if you've never seen them before? That is also true for farms. The market appeal of a farm is hurt when a surveyor is instructed to perform plastic surgery on a farm. Maybe it's an OCD thing but buyers just don't want weird shaped farms.

**3) Don't split a farm in a way that results in the sum of the value of the parts being less than the value of whole.** It may work if every one of the co-owners knows their share is worth less and they are okay with it. If some of the co-owners object, then maybe a judge should decide the farm needs to be sold and then split the cash. Odd splits cause severance damage.

**4) For some co-owners, it's not about the money.** It may be about feelings, memories and sentiment. There may be a co-owner who will take less than their monetary share if they can get the house or the fishing pond or the pet cemetery at the top of the hill. They should be asked if that is the case. One sibling may

want the house while another sibling may want the outbuildings. Both things can be true. Yes, it might be awkward, but it might also keep the siblings talking to each other.

**5) Some farmland owners are incredibly proud that their family land has earned a Century Farm or Heritage Farm designation.** A niece or nephew may not be as impressed. They didn't grow up on the farm. These designations require that at least 40 acres has been in the family for 100 years or 150 years, respectively. Maybe 40 acres can be set aside for the sibling who wants to continue the legacy. An exaggerated example of this phenomenon is the time when a sister agreed to let her sister sell both of their halves of the farm provided the buyer agreed to the placement of a stone marker in the corner of the farm with the seller's family name etched on the stone and the dates the land had been in the family.

**6) The profile of farm country in the 21st century has changed.** Now, there might be a wind turbine on the horizon in the northwest corner or a cell tower anchored to the top of silo. The current lease terms for these improvements are quite attractive. It's not going to sit very well with the out-of-state sister when she finds out her baby brother got just as many acres as she did AND he gets \$16,000/turbine/year because he spoke up and claimed the northwest parcel.

**7) The outdoorsman in the family may be willing take less than their monetary share if they end up with the wood lot next to the creek** that runs across a corner of the farm and/or the quarry pond that is now stocked with crappies and blue gills the size of a frying pan.

**8) At the opposite end of the spectrum, somebody in the family may say they don't want any cropland with a CSR2 less than 80.** A lot of very successful farm operators have the same approach to buying land. After all, you get what you pay for. But, make sure the member of the family who speaks for the best land is aware that means they are entitled to fewer acres.

**9) Be sure to investigate whether there is any harvestable timber.** I was on a forestry field day when we were all shown a black walnut tree that had a 30" diameter and climbed to 30' before the first branch

extended from the trunk. Shortly after the field day, that single tree was sold for \$10,000. It was subsequently flown to Japan where it was going to be turned on a lathe for veneer. Maybe, the brother-in-law who had his wife choose the woods had more on his mind than sitting in a tree stand.

**10) Along the same line of thinking, not all 80 CSR2 farms are created equal.** Some high CSR2 farms have the high rating because they have soil types that don't need a lot of artificial drainage. Some farms are highly rated because they have the soil types that produce a great crop AFTER they are tilled. Two members of a family may both be able to raise 250 bu./acre corn, but one is going to have to spend \$1,000/acre on drainage tile. Benchmark recently appraised a farm that still had several rocks per acre that were the size of bushel baskets or bigger, but the CSR2 average was over 80. This is an example of a farm that can't be appraised by an automated valuation model. This rocky farm isn't worth nearly as much as an identical farm where the rocks have already been picked.

**11) The productivity of land should be considered.** Is part of the land in the Manure Management Plan of a nearby hog confinement site? If so, the fertility of that land may be higher than the fertility of the rest of the family's holdings or, at least, the fertility is more available. There is a practice whereby excess fertility can be written off. That would translate into a tax advantage to whichever member of the family inherited that part of the land. Had a sibling who stayed on the farm just applied lime? It is common practice for operators to be reimbursed when they lose control of the land within the first 3-4 years after the lime application.

**12) It would be wise to look into the future when considering how to partition a farm.** Does some of the land have frontage on an active highway? If so, has some commercial or industrial development been creeping toward the family's land? How are the other co-owners going to feel if the black sheep of the family gets approached by a datacenter developer who is paying \$50,000/acre. These scenarios should be considered when the farm is divided.

**13) Be sure to consider access.** A farm that doesn't have road frontage won't sell as well as an identical

farm with a wide field approach right on a gravel road or highway. The lower appeal seems to go beyond the inconvenience of hauling loads of corn from a long distance. Maybe it's that plastic surgery thing again. If there is no way to give a parcel public road frontage, give the "inside" parcel fee simple access, not a simple easement for access. It is relatively inexpensive to develop a new field approach, but get permission from the County's Secondary Roads Department.

**14) I have recently encountered a tendency for some heirs to be more interested than their counterparts in exploring strip tillage, cover crops and other regenerative cultural practices.** Not all land is as well suited for sustainable practices as other land. It might help to mediate a split if that variable is considered when considering which acres go to which descendant.

**15) If an heir is out-of-state, it's unlikely they want to manage a building site remotely.** The same would be true for the family apple orchard or the fields that are certified organic. The out-of-stater wants to make three decisions each year: Who should be the tenant? How much should be the cash rent/acre? Should both halves of the real estate taxes be paid in September or one half in the fall and the other half in the spring?

## SUMMARY

The basic premise in a partition recommendation is "to do no harm." Structure the split in a way to avoid—or at least minimize—a situation where the value of the parts would be worth less than the value of the whole. The costs, such as a new survey and new title abstracts should be minimized. Finally, building sites and small non-cropped areas usually can't be split. They may have to be sold and the sales proceeds split if none of the co-owners claim those parts of the land.

It is a lot for a family to wade through on their own. That's where Benchmark comes in. With 35+ years of experience, I've seen all of these variables and more. And I can approach the situation objectively to provide recommendations designed for the best overall outcome for all involved. Call me to learn how.

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