1-1-1900

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Suggestions for Preparing a \textit{zoning ordinance} to Regulate and Protect Confinement Feeding Operations

Cooperative Extension Service, Purdue University, West Lafayette, Indiana
Suggestions for Preparing a zoning ordinance to Regulate and Protect Confinement Feeding Operations

A number of counties in Indiana are beginning to adopt zoning ordinances to regulate confined livestock and poultry feeding facilities. And as more and more urbanites move into rural areas, the pressure to exert some measure of control over farm feedlot operations is likely to increase.

On the one hand, city-reared country dwellers are not accustomed to the noise, odors and dust that are a part of farming. They feel entitled to the “peace and serenity” they expected when they bought their country acre and built a house on it. They want farming operations regulated to the extent that they do not interfere with what they feel to be “normal rural living conditions.”

On the other hand, farmers believe they should be allowed to operate in a routine manner. They were there first and, therefore, should not be forced to change their methods of operation. They feel people who move to the country should be willing to accept and live with the farming practices that are a normal part of today’s rural scene.

Obviously, the two do not agree. And here is where zoning ordinances can help. A properly-written confined feeding zoning ordinance can benefit both farmer and non-farm country dweller. It can prevent some problems from occurring and reduce others to levels acceptable to both parties. It can help to alleviate potential conflicts between farmers as well.
This publication is designed to help county officials, plan commissions and others responsible for, or interested in, the preparation and administration of zoning ordinances dealing with confinement feeding operations. The first part suggests how to approach the problem of writing such an ordinance and the resource materials available to help do this. Next is a discussion of the specific items that should be considered in the ordinance, what state or federal laws are already “on the books” with regard to each item, and/or examples of how other counties have handled them in their ordinances. The final section concerns methods of enforcement.

Hopefully, this publication will assist in developing a confined feeding zoning ordinance that will (1) be effective and workable, (2) cause no unnecessary burden on the operations being regulated, and (3) accomplish the purpose for which the ordinance was written.

**PREPARING THE ORDINANCE—HOW TO START**

**The Advisory Committee—Key to Success**

Responsibility for preparing a zoning ordinance regulating confined feeding will probably fall to that planning agency with county-wide jurisdiction, such as the county, area or metropolitan plan commission. Normally, the plan commission will appoint an advisory committee to formulate a proposed ordinance.

The key to drafting a fair and workable ordinance is proper membership balance on the advisory committee. Each different type of livestock enterprise (beef, dairy, hogs, poultry, etc.) to be regulated should be represented on the committee. If the county is strong in one particular enterprise, then that enterprise probably should have more than one representative. Several rural non-farm people should be on the committee also. Experience shows that, when all “sides” of a zoning issue are represented proportionately, the committee likely will produce an ordinance which will be favorably accepted by most of the people in the county. A total of 10 to 15 members is a workable committee size.

A specialist or consultant familiar with both agriculture and zoning procedures should be appointed to assist the committee. This individual is needed to advise on items which can or cannot be included in the ordinance. He or she is needed also to properly word the ordinance.

**Resource Materials**

To function effectively, the advisory committee should have access to information on planning and zoning, particularly confined feeding operations. The following materials should prove valuable:

1. From the Indiana Stream Pollution Control Board, 1330 West Michigan Street, Indianapolis, Indiana 46206—
   *Public Law 175, Act of 1971, IC 1971-13-1-5.7 (The Confined Feeding Control Law).*


3. From the Indiana Cooperative Extension Service, Publications Mailing Room, AGAD Building, Purdue University, West Lafayette, Indiana 47907—
   *A Summary of Planning Agencies in Indiana, EC-318.*
   *Answers to Your Questions about Planning and Zoning in Indiana, EC-208.*
   *Waste Handling and Disposal Guidelines for Indiana Dairymen, ID-81.*
   *Waste Handling and Disposal Guidelines for Indiana Poultrymen, ID-82.*
   *Waste Handling and Disposal Guidelines for Indiana Swine Producers, ID-83.*
   *Waste Handling and Disposal Guidelines for Indiana Beef Producers, ID-84.*
WHO SHOULD BE REGULATED

Defining Confined Feeding

As the advisory committee sets out to formulate a proposed ordinance, their first major problem will be to define a confined feeding operation. It is recommended that the definition as used in Indiana’s 1971 Confined Feeding Control Law be used and changes or additions desired by the committee be made at a later point in the ordinance.

The definition used in Indiana’s 1971 Confined Feeding Control Law, which is administered by the Indiana Stream Pollution Control Board (SCPB), is as follows: (1) any confined feeding of 300 or more cattle, 600 or more swine or sheep, and 30,000 or more fowl; or (2) any animal feeding operation that is causing a violation of IC 1971, 13-1-3 or any regulation of the Board.

There are several good reasons for using this definition when writing the county ordinance. First of all, it has been accepted and appears legal and workable. Second, when discussing confined feeding operations, the state and county are talking about the same thing. And thirdly, if a majority of counties use the same definition, uniformity is obtained among counties as well as between county and state.

It is also recommended that when the state-accepted definition is used at the local level, the words “and as may be amended” be added. Then if the state changes its definition, the county’s definition will automatically be amended at the same time and uniformity maintained.

Feeding Operations Not Included in the Definition

Some counties may wish to bring under their ordinances facilities not now included in the state’s definition of a confined feeding operation. This can be accomplished several ways, the two most common being: (1) to add a statement which reduces the number of animals per facility from that specified in the state’s definition to the desired number, or (2) to specify as coming under the ordinance those operations which exceed a certain number of animals per acre on a confined basis.

If considering the second alternative, the following animals-per-acre figures may be used, since at these concentrations manure removal (and thus odor) under certain conditions might be a problem—4 or more cattle, 20 or more swine, 700 or more poultry, 10 or more sheep or goats, and 4 or more horses or mules.

Location of the Operations

All types of confined feeding operations are agricultural in nature and, for this reason, should be permitted in any area zoned “agriculture.” All proposed feeding operations should be prohibited from establishing anywhere but in agriculturally-zoned districts. Attempts to regulate confined feeding operations by classifying them as non-agricultural enterprises and calling them “commercial agriculture” or “industrial operations” should be avoided, since this only tends to confuse the issue.

WHAT SHOULD BE REGULATED

Now, to get down to the real issues of the ordinance! What aspects of confinement feeding of poultry and livestock concern people most? In other words, what needs to be regulated? Following are the items most often considered in confined feeding zoning ordinances—odor; setbacks (location as related to other buildings); management of the facility; water pollution; noise, dust, feathers, flies, rodents, etc.; and aesthetics of the countryside. Each will be discussed in some detail.

Odor

Odor seems to be the first item that nearly everyone wants to see regulated. Unfortunately, it’s the one most difficult to regulate, especially when it comes from a combination of sources. In fact, in legal terms, a combination of odors from various sources, such as “barnyard odor,” is almost impossible to chemically define or measure. Odor by itself is not necessarily the problem. It’s more often the concentration, for it must be realized that some odor is a normal part of any livestock or poultry operation.

The Indiana Air Pollution Control Board presently classifies odors as air pollutants only when the gases making up the odor cause a public nuisance or become a health hazard. Regulations are currently being considered; and once written and found to be legal and workable, the county ordinances can be written to complement them. But until then, odor regulations should not be included in proposed ordinances.

Presently, most odor problems are classified and dealt with, legally, as nuisances or as health hazards. “Nuisances” fall into three categories—property, health and public nuisances. Property nuisances are conditions that affect adjoining property owners so as
to create damage or property devaluation. Health nuisances are conditions, such as fly and mosquito breeding, rat infestation, and surface or ground water pollution, which cause a hazard to the health of a person. Public nuisances include health nuisances, but can encompass property nuisances affecting groups of persons and can include odors.

Property nuisances are not covered under jurisdiction of state or local governments. Therefore, such matters must be handled as private suits under provisions of Section 2-506 of Burns 1933 Statutes IC 1971, 34-1-5.2-2. Health nuisances are covered under Section 410 of Burns 35-501-35-515 IC 1971, 16-1-4-1, which provides that the county health department, through the county prosecutor, can take action to abate conditions. Public nuisances are also under the jurisdiction of local health agencies.

At this time, probably the most effective way to deal with confined feeding odor problems in a zoning ordinance is through setbacks.

Setbacks (Location and Distance)

Potential problems of odor, noise, dust, flies and feathers can often be averted simply by locating the confined feeding operation away from people. For this reason, the setback or location regulations may be the most important part of the zoning ordinance.

Here are some actual "setback" regulations taken from ordinances already implemented or being considered by county and area planning commissions. Distances greater or lesser should be considered with reservations.

1. "All structures and confined lots designed to house or contain livestock should be set back 500 feet from any existing family residence except that of the confined feeding operator."

2. "All structures and confined lots designed to house or contain livestock should be set back 1,000 feet from any existing church, business, school, recreational area (public or private) or any public buildings; and 1,300 feet from any area zoned residential or any area that has a recorded residential plot."

3. "All structures should be set back 30 feet from the highway right of way."

If the waste handling facility of an operation is an open earthen pit, the setback distance should be increased to 1,000 feet in statement No. 1 above; 1,500 and 2,000 feet, respectively, in statement No. 2; and 50 feet in statement No. 3.

The purpose of the setback is to separate the homeowner and others from the normal noises and odors which accompany confined feeding operations. And this purpose should be so stated in the ordinance.

Setback Protection for the Confined Feeding Operation

But, it is equally important to keep non-farm uses (homes, businesses, churches, etc.) from encroaching on existing or approved confined feeding operations. Therefore, the zoning ordinance should include also non-farm-use setback restrictions similar to the confined feeding setbacks. For example, in addition to statements No. 1 and No. 2 above, the following reciprocal statements should be included:

1. No family residence except that of the confined feeding operator may be constructed within 500 feet of an existing or granted (permit or otherwise) confined feeding operation.
2. No church, business, school, recreational area (public or private) or public building may be constructed or operated within 1,000 feet of an existing or granted (permit or otherwise) confined livestock or poultry feeding operation.

Exception to these regulations may be obtained by requesting a variance from the board of zoning appeals. However, if or when such a variance is granted, the party obtaining the variance should be required to sign a deed covenant protecting the farming enterprise being encroached upon. The covenant must be attached to the deed and recorded. Two examples of such covenants are:

"In accepting this deed, grantees do hereby acknowledge that the surrounding land is agriculture in usage; and grantees, and their successors in interest, are precluded from complaining and/or attempting to enjoin the farm operation because of nuisances which might result from said operation."

or

"Grantees and all subsequent owners accept and assume the operational environment incident to rural-farm dwellings."

Some counties are currently recommending that a covenant similar to these be included whenever a farmer sells a tract of land for residential use.

Management of the Feeding Operation

Poor management of a confined feeding facility cannot be corrected or prevented with a zoning ordinance. Many textbooks would be required to specify exactly what good management is as opposed to poor management. In addition, regulations needed to correct or prevent poor management would be too restrictive for the good operator and probably not restrictive enough for the poor one. Poor management may result in odor, dust, feather, fly and/or rodent problems. Odor problems have been discussed; dust, feather, fly and rodent problems will be covered later.

Water Pollution

The danger of waste pollution from feedlot operations was the major consideration of Indiana’s 1971 Confined Feeding Control Law. And, therefore, all confined feeding operations as defined by that law must now register with and have their waste disposal systems approved by the Stream Pollution Control Board.

The Board is required also to accept or reject all applications on feeding operations submitted to them, regardless of size. This means that a county could require any confined feeding operator to obtain state approval of his operation simply by including in the ordinance the requirement that he must submit application to the state for this purpose.

However, waste disposal requirements beyond those specified by the Confined Feeding Control Law are seldom needed, and should not be written in the ordinance so as to include all operations. Livestock and poultry operations smaller than those falling under the state's requirements will seldom present serious waste pollution problems.

Nevertheless, if it is felt that, because of concentration, certain of these might cause pollution problems, it may be well to require those operations to obtain state approval. This is best done by providing the board or individual granting county approval (more on this later) the authority to decide whether or not the operator must submit plans to the state before receiving county approval. Only those operations where concern exists should be required to submit plans to the Stream Pollution Control Board.

Noise, Dust, Feathers, Flies, Rodents, Etc.

These items are very difficult to regulate and, for this reason, probably should not be included in an ordinance. Proper location or setbacks should eliminate or reduce to an acceptable level most of these problems. Very objectionable noises can best be handled as nuisances; whereas, severe dust problems, flies and rodents can be handled as health problems. Therefore, the procedure for dealing with these problems is the same as was discussed under the section on odors.

Aesthetics

A beautiful, prosperous countryside is everyone's dream; but remember, it's just that—a dream. Regulations for aesthetic purposes should not be included in an ordinance because they would be difficult to write and even more difficult to enforce. It's impossible to objectively measure aesthetics, at least in legal terms.
PUTTING THE ORDINANCE INTO EFFECT

Once the proposed ordinance has been written, it is submitted to the plan commission for review and any changes the members feel should be made. If they wish to proceed, a public hearing is held.

As a result of the hearing, the plan commission may make further changes in the ordinance. If the changes are major, another public hearing is usually held. If there are no changes or if the changes are minor, the ordinance is sent to the county commissioners with the recommendation to accept or reject.

The county commissioners may accept or reject the ordinance. If accepted, they may or may not make revisions. The county commissioners then hold a public hearing, after which they either adopt the ordinance or reject it.

If the ordinance is adopted, it becomes law, either as part of a zoning ordinance currently on the books, or as a separate ordinance.

ADMINISTERING THE ORDINANCE

Once passed, how is the ordinance administered and enforced? Two methods currently in use (with regard to zoning ordinances regulating confined feeding operations) are the permit system and the special exception.

The Permit System

So far, the permit system appears to be the most workable, and for this reason is recommended. Here is how it operates.

The confined feeding operator applies to the zoning administrator (or in some cases, the building inspector) for a permit. If the operation meets the specifications set forth in the ordinance, he is automatically issued the permit. The permit does not need to be renewed, unless the operator plans to expand or to construct new facilities which requires a permit. There may be a small charge for the permit.

If the operator feels he must have some relief from certain requirements in the ordinance, he may apply for a variance. He then is usually required to go before a board of zoning appeals at a public hearing, where he may or may not be granted the variance.

The Special Exception

This system designates a confinement feeding operation as an exception to the normal type of farming permitted in an area zoned “agriculture.” Therefore, all new operations and all existing ones that either increase in size or expand to the size defined as a confined feeding operation must be treated as a special exception. The operator then must go before the board of zoning appeals, and often a public hearing.

The purpose of this system is to bring all proposals for such operations before the board of zoning appeals and, in many cases, a public hearing, so that the board will have an opportunity to review each operation and to make a decision on it. When approving a special exception, the board of zoning appeals may apply any “reasonable conditions” to the approval of the application in order to minimize adverse effects of its use on neighboring properties. However, experience has been that, in bringing proposals for confined feeding operations before a public hearing, heated discussions have often resulted and considerable animosity formed between farmers and non-farmers.

In areas where this system is used, few new operations have formed and expansion of existing operations has been discouraged. As a result, economic growth of the agricultural segment of the county has been curtailed.
A FINAL WORD ON THE IMPORTANCE OF YOUR TASK

As stated at the outset, this publication is directed toward those responsible for preparing a zoning ordinance dealing with confined feeding operations. Having just reviewed some of the factors to consider and available alternatives in writing such an ordinance, you should now sit back and reflect on the importance of your task.

Whenever a new law or regulation is put on the books, it usually means certain restrictions are placed on someone’s “freedom” — a freedom he has enjoyed. At the same time, it puts a little more control of people’s actions into the hands of governmental authority.

The confined feeding ordinance you are about to write, in effect, does just that; and therefore, you should ask yourself: Do I really understand the consequences of such an ordinance? Will this restriction on the freedom of some truly serve the greater good? In other words, is a confined feeding zoning ordinance really necessary?

If, after pondering such questions, you feel an ordinance is still needed, then do your best to:

1. Write an ordinance that is equally fair to all parties involved.

2. Keep the ordinance simple and workable. To make it a good ordinance, don’t feel that you need to come up with something new or complicated.

3. Be thorough; take your time. Once on the books, the ordinance will probably be with you for a long, long time.