

Devil is in the Details

Zoning Laws Can Impact Your Operation

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If you have any involvement with the livestock or farming business, a little background knowledge about zoning is probably a good thing to have.

Zoning is a tool that county and local governments use to regulate land use within their boundaries – and in the case of municipalities, a little outside their boundaries, too. For example, towns generally divide themselves into residential, commercial and industrial zones, which together provide comfortable areas to live and work, and help everyone coexist peacefully.

But when it comes to livestock and ag producers, zoning restrictions often

to restrictions imposed by a township. These aren't technically "zoning," but can restrict agricultural activities in a similar way. This is a new and controversial area of Nebraska law; the Nebraska Supreme Court just confirmed these township powers in 2013.

Although there are some differences, this article focuses on county zoning regulations because they are most likely to affect livestock and ag operations.

Types of Zoning Regulations

Generally, zoning regulations split an area into zones, and the zone where your land falls dictates what types of things

you can or cannot do there. The details of zoning regulations vary widely across jurisdictions.

Usually, the land nearest a town or municipality is surrounded by an intermediate zone of some kind, where only specified types of agricultural activities might be allowed. Beyond those boundaries, agricultural land can be organized

into "lesser" and "intensive" zones that further dictate where certain types of operations can take place. In other cases, there may just be an "ag" zone classification, with no further distinctions.

Although counties are prohibited by statute from requiring "building permits" for farm buildings such as grain bins, they can require "zoning permits" that impose restrictions, such as where a farm building can be located.

Within ag zones, zoning regulations are generally more restrictive for livestock operations. Minimum distance requirements (or setbacks) are found in almost all county zoning regulations. These regulations typically require livestock operations to be located a minimum distance away from other types of activities. In Buffalo County, up to 300 head can be any distance from a residence, industrial or commercial facility, church or school. An operation of more than 10,000 head must be at least a mile away from any of those.

Other types of zoning regulations are more friendly toward livestock operations. For example:

Cherry County requires a "cattle country" easement be signed before any non-agricultural building can be constructed in an agricultural zone. In effect, the easement makes the non-ag building owners acknowledge that they might experience some consequences from nearby ag operations.

Cuming County requires folks who want to build a home in an ag-intensive zone to sign and file a waiver of risks to their property stemming from ag activities.

Some fairly recent changes in the Nebraska Livestock Waste Management Act (promoted by Nebraska Cattlemen and others) provide some additional protections for existing livestock operations and basically trump a county's ability to deny an expansion.

If you are curious about how your county stacks up, one place to look is the Nebraska Department of Agriculture's "Livestock Friendly County" program, which includes a review of county zoning schemes. The designation has been awarded to 23 counties to date. More information is available at http://www.nda.nebraska.gov/livestock_friendly/

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make operations more difficult and cause unwelcome surprises.

Zoning Schemes

Counties can (but don't have to) adopt zoning schemes. In Nebraska, 82 of the 93 counties have, so county zoning regulations are the first place to look to see what zoning laws might apply to your land.

Even when your county hasn't adopted a zoning scheme, you may be subject

Conditional and Special Use Permits

Even if what you want to do with your operation is not within the zoning laws that apply to your land, the zoning regulations may allow you to request permission – a conditional or special use permit – to site an operation or expand. Essentially, this allows the county zoning authority to review your proposal and impose specific conditions that apply only to your operation, such as the design or location of buildings or waste control facilities.

These applications vary widely from county to county, and are based on the specifics of what an operation is trying to accomplish. They often require several complicated hearings in front of the planning commission and county board. These hearings can sometimes draw attention from other interests in the community, and become more emotional than you might expect. We certainly recommend retaining experi-

enced legal counsel to assist you through the zoning process.

Impact of Zoning on Farm Buildings

As noted above, county zoning authorities can require “zoning permits” for buildings used on a farm or livestock operation, but they cannot require “building permits.” So even if you are not a livestock feeding operation, you still need to check with the county authorities before erecting any buildings such as grain bins, storage sheds or similar structures. Many counties require a structure to be set back a minimum distance from roads. For example, some counties require a building to be set back a minimum distance of 83 feet from road center. In order to obtain a “zoning permit,” you will need to apply for such a permit and make sure it meets all minimum distance requirements.

Careful communication with the County Zoning Administrator is required to ensure that all zoning requirements are met. If a farm building is built

that is not in compliance with the county zoning regulations, you may still seek relief through a variance from the county’s Board of Adjustment, which is a group of citizens appointed by the County Board to grant variances and exceptions from zoning regulations. However, the best policy is to ask for permission from the Zoning Administrator beforehand rather than forgiveness from the County Board of Adjustment afterwards. In all situations when dealing with adding buildings or uses to your property, it is always prudent to check with the county and make sure any zoning requirements are being met. **NGI**

Editor’s note: Steve Mossman and Patti Vannoy are partners with Mattson Ricketts Law Firm in Lincoln. Mattson Ricketts is a full-service law firm that specializes in the unique legal needs of the cattle industry, including livestock zoning and nuisance issues, environmental compliance, litigation and defense of EPA and NDEQ cases, water rights, feeder financing and livestock contracts and the Packers and Stockyards Act. Steve and Patti can be reached at (402) 475-8433, sdm@mattsonricketts.com or plv@mattsonricketts.com.

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