



Hometown Factory Farm Fighting

How rural Minnesotans are using local democracy to control factory livestock operations.

Supporters of industrial agriculture are no fans of local government these days. That's because townships and counties across rural America are

of Canadian Connection filed the lawsuit after they were turned down for variance and use permits to build a five-barn hog facility to house 6,936 swine (1,892.4 animal units)



forcing giant livestock factories to be accountable for their actions. The strength of local government is that the local town board member must live, work, worship and socialize daily with the same people who are his or her political constituents.

Backers of industrial agriculture argue that local regulation of giant livestock facilities will create a confusing "patchwork quilt" of regulation, making it difficult for livestock factory owners to know when they are violating the law. In fact all kinds of restrictions vary with geographical and political terrain — speed limits being just one example.

In Minnesota, which is a hotbed of township government (there are 1,856 of these six-mile-square entities in the state), local residents have been particularly effective at regulating the placement of factory livestock facilities.

Courts back local control

In general, the courts have backed local control of factory livestock operations:

◆ A prime example of such legal support came in August 1997, when a Minnesota district judge ruled that New Prairie Township had the legal right to control the placement of factory livestock facilities.

This was the second time in two years the court had ruled in favor of the township and against the owners of Canadian Connection, a hog production partnership with swine facilities in Pope and Stevens counties. The owners

in New Prairie Township.

At issue was a ordinance passed in January 1996 by the township that requires a conditional use permit for operations over 450 animal units, and minimum setbacks for operations over 250 animal units. Canadian Connection was required to seek a variance from the setback in the township's ordinance that requires that a feedlot be placed two feet per animal unit away from a neighboring residence. The minimum setback is a quarter mile.

◆ On May 25, 1999, the Minnesota Court of Appeals provided even more enforcement for local control of livestock factories. In that case, the Court ruled that the Minnesota Pollution Control Agency (MPCA) failed to do its job when it didn't require an environmental study for a proposed hog operation expansion. In September 1998, the Pope County District Court came to the same conclusion. The Court ordered the MPCA to require an Environmental Impact Statement (EIS) study be conducted before Hancock Pro-Pork, Inc., could proceed with its expansion project.

◆ On Sept. 24, 1998, the Iowa Supreme Court ruled in a 7-0 decision that nuisance lawsuit protections for agricultural operations are unconstitutional. In the past, designating certain agricultural zones — also called "right to farm" areas — immune to frivolous lawsuits has provided needed protection to farms that suddenly find themselves neighbors to non-farm residents. The original logic behind such protection was that farms should be allowed to carry on prac-

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tices that were acceptable before non-farm residents moved into the area, such as hauling manure and doing field work at night. But in recent years, factory farm boosters have used these laws as a legal shield when building and operating industrial facilities in a community. In many cases this has tied the hands of neighbors when factory facilities, masquerading as “farms,” move into an area.

◆ In 2006, the Minnesota Attorney General’s office issued an opinion in the case of Wang Township in Minnesota’s Renville County. The Attorney General concluded that an interim ordinance enacted in good faith would apply to a development that has applied for permits, even if it is the only project affected.

Local control dos & don’ts

Nancy Barsness of New Prairie Township in Minnesota has been consulted by numerous townships over the years looking for advice on developing their own ordinances. She offers a few tips for local rural residents planning on restricting the placement of factory farms in their communities:

◆ **Don’t assume you have no authority to impose restrictions.** Minnesota statute allows townships to develop their own zoning restrictions.

◆ **Don’t assume an ordinance is too expensive to develop and administer.** Barsness says a comprehensive planning and zoning ordinance can be drafted for less than \$2,500, and it costs \$100 to \$150 annually to administer such a plan.

◆ **A township should buy some “breathing room” by putting in place an interim ordinance restricting development while residents develop a permanent, comprehensive plan.** This gives the township’s residents time to develop an ordinance that will take into account the current and future needs of the community.

◆ **Consult a lawyer and a planning expert.** Lawyers alone will often not have the scholarly material needed to justify certain restrictions in an ordinance.

◆ **Be prepared to provide scientific grounding for all restrictions.** In cases where the courts have ruled against local township regulation or livestock factories, it’s often been based on the argument that the ordinances do not have scientific grounding, and were unfairly targeting one particular livestock facility owner.

◆ **All aspects of discussions pertaining to changes in a zoning restrictions must be documented if the ordinance is to stand up against a legal challenge.** The judge who ruled in the New Prairie Township case reviewed hours of township meeting video tape to determine if the changes were discussed properly.

◆ **Do not take another township’s ordinance, copy it, and call it your own.** Your township’s ordinance must have a rational basis based on your township’s geographical and environmental situation.

Want to get started?

When a Factory Farm Comes to Town: Protecting Your Township from Unwanted Development, is a Land Stewardship Project publication that provides guidance on using the Minnesota Interim Ordinance and other tools in the state’s Municipal Planning law. It also contains an extensive list of resources. The 2006 edition is a significantly updated version of the original 1997 publication. Paper copies of the 52-page publication are available from LSP’s Policy Program office by calling 612-722-6377, or e-mailing bking@landstewardshipproject.org. They are \$8 if shipped.

The publication can be downloaded free from LSP’s website at www.landstewardshipproject.org/pdf/township_manual06.pdf (5.3 MB—may take a while to download).

Sources

When a Factory Farm Comes to Town: Protecting Your Township from Unwanted Development. 2006. Land Stewardship Project. www.landstewardshipproject.org/pdf/township_manual06.pdf

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