

## SUMMARY

### **BASIS AND PROPOSAL FOR AMENDING THE WHITLEY COUNTY ZONING ORDINANCE TO ENSURE LAND USE DECISIONS INVOLVING CONFINED FEEDING OPERATIONS (CFOs) AND CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs) ARE CONSISTENT WITH THE 2011 COMPREHENSIVE PLAN**

#### **Submitted by Code Development Committee Members and Reserve Members including:**

Stanley Crum	Doug Driscoll	Joan Null
Pete Eshelman	Rita Harness	John O'Connell
Byron Lamm	Denise Heckman	Jackie Weber
John Popp	Paul Mills	

**April 27, 2018**

#### **I. Code Development Committee Charge and Process:**

**Section 3.5 of the Whitley County Ordinance 2017-10 [the Interim Overlay-Agricultural Residential District ("IO-AGR")]** expressly directs the Plan Commission to undertake, "a detailed planning effort that is expected to result in changes to the zoning code." The stated reason for the necessary changes is:

The 2011 Whitley County Comprehensive Plan makes recommendations for the locations and uses of "Agricultural", "Transitional Agricultural", and "Rural Residential" development; however, the Zoning Map and districts do not generally reflect these recommendations. Without further planning and establishment of revised regulations, these areas have potential for incongruous land uses to be developed in close proximity to each other without regard to the long-term implications.

As a result of this directive, the Plan Commission, with County Commissioner advice, appointed a Code Development Committee (CDC) charged with researching, reviewing, discussing and proposing zoning code changes to address potential conflicts between CFOs/CAFOs and residential uses of land.

Accordingly, in the spirit of offering sensible zoning changes to reduce land use uncertainty, protect public health and safety, guard against adverse environmental impacts and provide for county prosperity and property value protection, we respectfully submit the following six recommendations to the CDC as the basis for amending the zoning ordinance with respect to CAFOs and CFOs.

## II. Recommendations to the Code Development Committee

### **Recommendation #1: Implement the 2011 Whitley County Comprehensive Plan which provides a reasonable basis for adoption of Transitional Agriculture and Rural Residential Zoning Districts and associated development standards.**

Transitional Agriculture and Rural Residential zoning districts as defined in the Comprehensive plan, should be implemented by the Zoning Code and defined in an updated Jurisdictional Area Zoning Map. Greater certainty will be provided for both livestock agriculture and non-agricultural land uses, future development, and protection of property values. The Comprehensive Plan is a common sense road map for the development of new ordinances.

Specifically implementing the 2011 Whitley County Comprehensive Plan:

- Will bring the County into compliance with the Indiana Code requirement that a county zoning ordinance and zoning decisions are consistent with the Comprehensive Plan ( IC § 36-7-4-504(a)(3))
- Protect the planned residential growth corridor along and between State Roads 9 and 109 and parts of southeastern Jefferson Township as well as other areas of the county where residential growth has occurred or is expected, which is critical to economic growth in the county.
- Leave most AG zoned land in the county available for CFO/CAFO development. Furthermore, land that would no longer be available for CFO/CAFO development, would still be available and unrestricted for other agricultural uses as clearly seen in the 2011 Comprehensive Plan (page 41).

There has been discussion about updating the Comprehensive Plan instead of implementing the current one. However, doing so would be ill-advised. The current Comprehensive Plan offers sufficient guidance to move forward with urgently needed CFO/CAFO and residential development ordinances. There is simply no reasonable basis to disregard the significant and thoughtful planning and work that already went into developing the existing 2011 Comprehensive Plan. And, undergoing the lengthy process of revising the Comprehensive Plan before moving forward on enacting urgently needed new ordinances would cause an unacceptable and unnecessary delay. The time to act is now and the basis for action should be the 2011 Comprehensive Plan recommendations .

### **Recommendation #2: Redefine CFOs/CAFOs as Special Exception Uses in all AG Zoning Districts to Ensure Citizens' Due Process Rights are Protected**

CFOs/CAFOs are industrial animal production facilities, not "farms" in the traditional sense. For this reason, many Indiana counties have updated or are in the process of updating their zoning ordinances to reflect this reality.

- Whitley County should follow the Indiana State Department of Agriculture Model Agricultural Ordinances Official Schedule of Uses which calls for CFOs/CAFOs in AG districts to be considered Special Exception Uses, not permitted uses by right. Doing so would place the burden of proving the proposed CFO/CAFO will meet all requirements for a Special Exception where it belongs, on the CFO/CAFO developer, not impacted citizens.
- The Indiana Department of Environmental Management (IDEM)'s authority to regulate CFOs/CAFOs is narrowly limited to manure management and protection of water quality. As listed on the IDEM website (<https://www.in.gov/idem/cfo/2342.htm>), IDEM does not regulate CFOs/CAFOs for the following. Regulation of these items is left to the counties.

- Property Values
- Public Road Conditions and Traffic
- Where CFOs/CAFOS Locate
- Disposal of Dead Animals
- Groundwater Use
- Odors
- Vectors (flies, mosquitoes, or other nuisance insects).

### **Recommendation #3: Changes to the Notification Process**

IDEM's 'best effort' neighbor notification process is inadequate both in geographic coverage and certainty of notification.

- Accordingly, the Planning Department shall be required to provide written notice of all pertinent aspects of a proposed CFO/CAFO to all property owners within 2 miles of the proposed CFO/CAFO site and manure storage facilities. The written notice shall also advise residents of their due process rights.

### **Recommendation #4: Standards for Reducing Land Use Conflicts**

Two objectives set forth in the 2011 Comprehensive Plan are critical to addressing land use conflicts that can arise between CAFOs/CFOs and residential uses:

**Objective 1.3:** “Minimize land use conflicts by strengthening buffering requirements and through careful deliberation of proposed developments that are not consistent with the *Land Classification Plan Map*. “  
(According to the Purdue Report a “Buffer: is defined as a “Separation distance between two uses or a use and a zoning district or municipality [and] used as a tool to reduce land use conflicts between uses not usually deemed compatible with each other.”)

**Objective 1.6:** “Protect rural character and prime agricultural land from development that has a suburban or urban character, or that erodes farmers' rights to farm”.

In support of these goals we recommend:

- Require special exception for development of any residential subdivisions in agricultural districts.
- Impose a buffer of at least 1,320 feet between any land zoned Agricultural that is adjacent to a different zoning district. Such a buffer would prevent a CFO/CAFO including its animal confinement buildings, manure storage structures or mortality compost sites from being located within 1,320 feet of the zoning district boundary.

#### **Recommendation #5: Address Multiple Co-Located AFOs Equivalent to a CFO/CAFO**

A confined feeding operation that is similar to a CFO but has too few animals to qualify as a CFO under IDEM rules is called an Animal Feeding Operation (AFO) and is not regulated by IDEM nor is it proposed to be regulated by the new Whitley County ordinances.

In order to avoid multiple co-located AFOs from growing to the size of a CFO without regulation by the county as a CFO the following is proposed:

- Any group of Animal Feeding Operation buildings that are built within 660 feet of each other and are designed to house the same type of animal shall be considered as a single operation for purposes of determining applicability of county ordinances. If the combination of the total animal unit capacity of the buildings reaches the threshold for a CFO as defined by IDEM then the combination of buildings shall be regulated by Whitley County as if the operation were a CFO.

#### **Recommendation #6: CFO/CAFO Development Standards**

Indiana local governments are free to use their broad “Home Rule” authority to address the potential adverse impacts of CFOs/CAFOs as well as other Animal Feeding Operations (AFOs) not addressed by state regulation.

The following development standards are based on specific CFO/CAFO common practices from across Indiana Counties:

- **CFO/CAFO Site Plan:** Continue to require submission of CFO/CAFO site plan as part of the county application process.
- **Disclosures:** Disclose and list all persons with an ownership interest in CFO/CAFO.
- **Expansions:** Impose these development standards to any existing CFO/CAFO that expands any existing building or constructs a new building to increase the number of animals by 25% based on the number of animals approved on the IDEM permit or by Whitley County, whichever is less.
- **Minimum Lot Size:** A minimum lot size of 40-acres shall be required for new or expanding CFOs/CAFOs.
- **CFO/CAFO:** Setbacks as measured from the CFO/CAFO's buildings and structures. No CFO/CAFO shall locate and operate within:
  - 1,320 feet of the property lines of neighboring residential property, school or other educational institution property, church or religious institution property.
  - 7,920 feet from lakes > 40 acres.
  - 5,280 feet from another CFO/CAFO.
  - 5,280 feet of either an incorporated or unincorporated municipality.
  - 1,320 feet from recreational areas and public use areas.

- 2,640 feet of parcels legally platted within a recorded subdivision with at least 6-lots developed for residential dwelling units.
- 500 feet from onsite wells and 1,000 feet from offsite wells.
- 200 feet from an adjacent right of way.
- **Filter Strips:** There shall be a designed green space/filter strip of 50 feet in width on each side along any surface water or open ditch or waterway to provide for collection of sediment and cleansing runoff.
- **Manure Storage Structure Setback:** A CFO/CAFO's waste management system, compost facility and mortality staging shall not be within 220 feet of any county road center-line.
- **Ground Water Study:** Shall be completed to verify water usage at a proposed CFO/CAFO will not lessen the water supply or water quality for those residing in that area.
- **Monitoring Wells:** Two 2" diameter monitoring wells shall be installed at distances not to exceed 50 feet from each confinement building, manure storage facility and mortality barn.
- **Water Testing of Monitoring Wells:** The County Health Department shall test these two monitoring wells prior to start up in order to establish a baseline with annual testing done by CFO/CAFO operator.
- **Environmentally Sensitive Areas:** Any new CFO/CAFO or expansion of an existing CFO/CAFO shall be prohibited in karst terrain, flood plains or other environmentally sensitive areas including wetlands, areas where ponding occurs, or where the standing water reflects the water table.
- **Satellite Manure Storage Setbacks:** Same as CFO/CAFO Setbacks listed above.
- **Environmental Assessment:** An objective assessment shall be required for all new and expanding CFOs/CAFOs.
- **Odor Control:** The Indiana State Department of Agriculture cites that the measurement and regulation of odors is a developing science and that the issues of odor mitigation can best be addressed with a combination of setbacks and the use of modern management practices. We recommend requiring submission and approval of a detailed odor control plan that uses at least three (3) of the following odor control technologies:
  - Bio filters or similar controls for all hog and fowl CFO/CAFOs.
  - Functional Shelterbelts shall be established in accordance with the Natural Resources Conservation Service Practice Standard for Windbreak/Shelterbelt Establishment Code 380.
  - Wet Scrubbers
  - Diet Manipulation
  - Catalytic converters
  - Composting
  - Aerodynamic deduster/air cleaner
  - Solids separation
  - Biomass filter
  - Acidification of manure
  - Ozonation
  - Dry manure storage

➤ **Digester**

- **Insect and Rodent Control Plan:** Shall be submitted at the time of application to the Health Department for review and approval to prevent a public health nuisance.
- **Financial Security:** The practice of several Indiana counties requires either a cash escrow or a surety bond in addition to evidence of liability insurance to protect the county against CFO/CAFO facilities that erode the economic and environmental value of the county. We recommend the amount of \$1,500 for each 100,000 gallons of manure storage capacity. In addition an insurance policy will be furnished in an amount equal to or greater than the amount of the cash or surety bond.
- **Reciprocal Separation Distance:** According the Purdue Report a Reciprocal Buffer is: "a standard that requires that new uses, that is residences, follow the same buffer as required of a new CFO to that buffered use". Twenty Three (23) other counties have reciprocal requirements according to the Purdue Report. We recommend using Reciprocal Buffers to avoid potential conflicting land uses.

References:

2016 Purdue Extension County Regulation of Confined Feeding Operations in Indiana (Purdue Report)

Ordinance # 2017-10 An Ordinance Amending the Whitley County Zoning Code

2014 Indiana State Department of Agriculture Model Agricultural Zoning Ordinances

Indiana Administrative Code