

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:

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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, and in turn reflected on the Future Land Classification Map 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 recommendations 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
- 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 given less than 3% unemployment
- 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 at this time 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 rezoning 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: Animal units for AFOs located on the same parcel or same parent parcel (being defined as the parcel in existence as of five (5) years prior to permit application) shall be calculated cumulatively. _

Recommendation #6: CFO/CAFO Buffers, Setbacks and 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.

IDEM specifically excludes where CFOs/CAFOs locate (per their website). Any separation from other uses is left to the county. To that end we suggest the following Buffers and Setbacks:

- **CFO/CAFO: Buffers and 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, recreational areas and public use areas.
 - 5280 feet from lakes > 40 acres.
 - 2640 feet from another CFO/CAFO.
 - 5,280 feet of either an incorporated or unincorporated municipality.
 - 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.

The following development standards are based on specific CFO/CAFO common practices from across Indiana Counties and should be followed for any new CFO/CAFO or any existing CFO/CAFO that expands any existing building or constructs a new building to increase the number of animals by 25% or more based on the number of animals approved on the IDEM permit or by Whitley County, whichever is less. :

- **Disclosures:** Disclose and list all persons with an ownership interest in CFO/CAFO.
- **Minimum Lot Size:** A minimum lot size of 30 acres shall be required for new or expanding CFOs/CAFOs.

- **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.
- **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 (per NRCS Code 380)	Wet Scrubbers
Catalytic converters	Composting	Diet Manipulation
Aerodynamic deduster/air cleaner	Solids separation	Acidification of manure
Ozonation	Dry manure storage	Biomass filter
Digester		

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