

**WHITLEY COUNTY ADVISORY PLAN COMMISSION
STAFF MEMORANDUM**

18-W-ZOA-1 ZONING CODE TEXT AMENDMENT
Text changes related to Agricultural and Residential uses

AUGUST 15, 2018
AGENDA ITEM: 1

BACKGROUND

In May, I presented the Commission with four proposals of changes to the Zoning Code regarding the handling of Confined Feeding Operations and residential development in the county. At the time, the Code Development Committee was working through the proposals to try to come to consensus on possible common standards.

To attempt to aid in gaining some consensus, local attorney John Whiteleather volunteered his time to perform what amounted to a mediation between the various groups' perspectives. In June, staff put forth an amended singular proposal of code changes for consideration in the process. It is my understanding that the proposal was discussed, but being as staff was not privy to the process, no specifics were provided to staff. In July, a subgroup of committee members produced an updated version of what was labelled Alternative C in May's meeting for discussion at the meetings. Ultimately, this mediation process was not fruitful, with only two general statements of consensus: that the Comprehensive Plan should be brought into more conformance, and the existing overlay code could be a starting point for changes.

After the final mediation meeting, another subgroup put together a proposal based on staff's June proposal. In concept, it proposed to use an idea proposed by staff around February to utilize the existing zoning districts of the Zoning Code, rather than creating a new district outright.

With the unsuccessful mediation, staff moved forward with the three proposals at hand to draft a code proposal for the Commission's consideration. That proposal is what is attached.

SUMMARY

Staff's comments regarding the intents of the proposal as shown in italics below:

1. Various changes and recommendations
 - a. Recommend to update Comprehensive Plan by 2021, based in part on knowledge learned from these changes

This is a general recommendation to update the Comprehensive Plan at a time after the Zoning Code has been changed, so as to learn from the monitoring and evaluation of the code. 2021 is the rough life expectancy of the 2011 Comprehensive Plan. Previously, it was expected to proceed with an update in 2019. This recommendation is a return to that which I had stated at the outset of this process: to update the code and proceed with the Plan update after seeing how the code was working.

- b. Revise code §10.9 to amend Special Exception criterion #5 to state:
"The special exception shall preserve the purpose this Ordinance, as stated in Section 1.4."

This adds a reference back to the purposes of the Ordinance in Section 1.4, rather than current implicit statement.

- c. Revise Rules of Procedure of BZA and/or Plan Commission so that mailed notices go to 2 property owners or 660' deep (whichever comes first) for all petitions.

This is a standard notification area and definition for many communities in Indiana, and comes from a reference in the state code. This would apply to all petitions, be they rezonings or special exceptions, etc. Some have suggested that separate notification rules apply to certain uses, such as larger CFOs or subdivisions. This may be possible if the Commission and BZA opt to do so in their Rules of Procedure, though legal counsel would need to review that concept.

- d. Revise Rules of Procedure of BZA and/or Plan Commission to include an on-site notice for all petitions.

This too would apply to all petitions and is also a common practice. The on-site notice would likely be a corrugated plastic sign that would be incorporated into the filing fees for the petition. Another option may be a heavy-duty metal sign, though a deposit would be needed.

- e. An Agricultural Use Notice will be provided by the following methods:
 - i. A notice shall be required in the restrictive covenants applicable to any future subdivision recorded.
 - ii. A notice shall be provided and acknowledged at the same time as other required disclosures in the contract for sale of property located in AG, AGP, RR, or LR zones.
 - iii. A notarized notice signed by the property owner shall be required upon issuance of a building permit/improvement location permit for construction of any new dwelling.

These are notices for informational purposes to notify residents that the unincorporated areas of the County may have agricultural operations. Point (i) is currently required. Point (ii) would notify buyers of the potential dust, odors, etc. that accompany agricultural operations and that may not be considered nuisances for the purpose of the Zoning Code. Point (iii) would be additional notice for owners upon building permit issuance. Both (ii) and (iii) need to have detailed legal counsel review.

- f. Encourage filter strips to be installed along legal drain easements of all open drains.

This is a general recommendation that may be considered in the Zoning Code or perhaps as a separate ordinance to address water quality concerns stemming from erosion or other pollutants washing into open waterways.

- g. In §5.17(MS-02), change the number of animal units permitted on RR parcels or on AG parcels under 80,000 sq. ft. to be 2 AU per acre (pro-rated based on parcel acreage).

With the other changes below, the RR district will be utilized more extensively, so allowing for larger lot RR properties to have more than the current one animal unit per acre may be desirable, particularly when calculating multiple species of animals on a site. While 2 animal units is the current proposal, a lower value may be better suited.

2. Revise zoning districts

- a. Changes to be made with the intent to utilize existing zoning districts by revising them to align with and be comparable to Comprehensive Plan's land classifications.

This and below are general summaries of the changes made in Chapter 3, the uses and development standards. While not a literal translation of the Comprehensive Plan text, this proposal moves the existing districts closer to the land classifications listed in the Plan.

- b. Special Exception required for all Class 2 CFOs
- c. Rezoning to AGP and Special Exception required for all Class 3 CFOs

These are not changes from the existing codes, but listed for reference.

- d. Class 4 CFOs require rezoning to IN (Intensive Use) and Special Exception

The IN district is an existing district that is designed for the most intensive land uses. It seems that committee members could agree that the largest CFOs need additional scrutiny and standards. Whitley County has historically had none of the largest CFOs, although such operations exist in adjacent counties.

- e. Greenhouses regulated by size

Currently, greenhouses are permitted without standards in the AG district; while commercial greenhouses are permitted in IPM. This proposal places the larger greenhouses (over 50,000 sq. ft. in area) in the AGP district. While no proposals for large greenhouses have been put forth in this county as yet, such operations may be on the horizon. The effects of large greenhouses could include light nuisances, traffic impacts, and water quality impacts. This would be a proactive measure to at least check any greenhouse proposal.

- f. Major residential subdivisions shall not be permitted in AG or AGP districts

Currently they are not permitted in AGP anyway; this does require rezoning to RR or another residential district for subdivisions of 3 or more lots in AG areas.

- g. Other related changes

Some other changes are proposed in Chapter 3. Clarification of the minimum area to be rezoning vs. minimum new parcel size in AGP is among the most significant, as there has been confusion as to how that applies.

3. Add a Confined Feeding Operation section in Chapter 5 of the Zoning Code, with the following standards:

- a. Classes of Confined Feeding Operations (CFO). The definition of a CFO is determined by IDEM.
 - i. Class 1 CFO, the proposed animal count meets the definition of a CFO by IDEM, and is up to and including 1,200 animal units (as defined by §5.17, MS-02)
 - ii. Class 2 CFO, the proposed animal count is 1,201 to 3,000 animal units
 - iii. Class 3 CFO, the proposed animal count is 3,001 to 12,000 animal units
 - iv. Class 4 CFO, the proposed animal count is more than 12,000 animal units
 - v. The animal count is cumulative over all applicable species at a location.

This proposes to classify the previously existing levels of CFOs into Classes 1, 2, 3. Class 4 would be new and be applied to the largest CFOs. The cumulative animal unit count is currently a policy. It should be again noted that, other than the initial definition of a CFO, the animal unit calculations of the zoning code do not line up

with the IDEM classifications of CFO and CAFO. Despite this discrepancy, the current animal unit system seems to be generally accepted and so is carried forward in this proposal.

b. Development standards

- i. For CFO Classes 1, 2, and 3, the following are minimum distances from CFO structures and/or manure storage facility to:
 1. Natural lakes of 40 acres in area or more2,640'
 2. Recorded residential subdivisions of three lots or more1,320'
 3. Off-site residences.....660'
 4. Open waterways, storm drain inlets300'

These are separations for those CFOs from those features listed. The distances and types of features included could be more or less extensive, but this list seems to capture the features of biggest concern. Additional suggested features include schools, churches, and parks. Of note, these separations apply to existing features throughout the county, without the action of the property owners; unlike separations from zoning districts that could require a rezoning action. Proximity to zoning districts are however included in other standards below.

- ii. If the owner of an off-site residence records a deed restriction acknowledging the presence of a Confined Feeding Operation and waiving the required separation above, then the separation shall not be required for that residence.

This provides a means for some homeowners to waive the above separation requirements by recording a deed restriction. By being a deed restriction, this is a dedicated statement that would run with the deed.

- iii. For Class 2 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall consider and may impose conditions necessary for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.

This is a standard that the BZA must consider in its Findings of Fact the necessity of buffering measures in a CFO request, given that site conditions vary and some well-sited smaller CFOs may not need additional buffering.

- iv. For Class 3 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.

This is a standard that the BZA must not only consider in its Findings of Fact but also implement some type of buffering for Class 3 CFOs. The exact type is left to be determined by the characteristics of the site and surroundings, but due to the size of the CFO, some type is to be required.

- v. For Class 4 CFOs, these standards apply:
 1. Minimum parcel size to construct a Class 4 CFO shall be 80 acres.
 2. The minimum distance from a Class 4 CFO structures and/or manure storage facility to:
 - a. Natural lake of 40 acres in area or more5,280'

- b. Recorded residential subdivisions of three lots or more 2,640'
 - c. Off-site residence..... 1,320'
- 3. The BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures from the following list, as it deems most applicable to mitigate adverse effects from the CFO:
 - a. Existing natural buffers
 - b. Windbreaks, per NRCS 3 row guidelines
 - c. Odor control measures
 - d. Other measures of comparable ability to mitigate adverse effects

Due to the large nature of Class 4 CFOs, more extensive standards are proposed. These standards exceed those of the IN district in which Class 4 CFOs would be located, and so where they may overlap, these would apply in place of those of the IN district.

- vi. The BZA shall require a traffic study and/or management plan for all Class 4 CFOs, and may require one for Class 2 or 3 CFOs.

Traffic impact is a concern of the largest CFOs, and can be a concern for smaller ones depending on the location. This would give the BZA the authority to require a study on traffic to evaluate the impacts.

- c. An approved IDEM permit shall be required prior to issuance of a building permit/improvement location permit for a CFO.

This is already a policy that would be placed into the ordinance.

- d. Expansions of existing CFOs
 - i. Any legally existing CFO as of [date of ordinance adoption] shall be permitted to expand even if the CFO would be nonconforming with the development standards set forth above. Special Exception and Rezoning requirements apply.
 - ii. Any legally existing CFO made nonconforming by a zone map amendment shall be permitted to expand up to two times the animal units permitted at the time of becoming nonconforming.

These establish the ability of a legal nonconforming CFO to expand despite being nonconforming due to changes in the surrounding area that may affect the otherwise required separation standards. While permissible to expand, the same animal unit criteria for rezoning and special exceptions would still apply.

- 4. Add residential subdivision standards in Chapter 5, with the following standards:
 - a. Definition of major residential subdivision:
 - i. A total of three (3) platted lots or more, each of 10 acres or less in area, from one parcel in existence as of [date of ordinance adoption] (cumulative) intended for residential use; or
 - ii. Subdivisions intended for residential use that include new streets (public or private)

This defines a major residential subdivision. In the future, this definition may be placed in the Subdivision Control Ordinance.

- b. Development standards

- i. The minimum distance from a new major residential subdivision to:
 - 1. Class 1 or 2 CFOs 1,320'
 - 2. Class 3 or 4 CFOs 2,640'

These distances are similar to the separations from new CFOs to existing subdivisions, and serve a similar purpose.

- 3. If the owner of a CFO records a deed restriction acknowledging the presence of a subdivision within the above separations, then the separation shall not be required for that subdivision.

This would provide a method by which an existing CFO property owner could waive the above required separations.

- ii. Major residential subdivisions shall access to a paved public road.

This avoids placing residential properties onto roads that may not be of sufficient capacity or construction. It is a minimum standard; the option for a traffic study could provide more recommendations for road improvements in specific instances.

- iii. Major residential subdivisions shall not be permitted in AG or AGP districts [as shown in Chapter 3]
- iv. For major residential subdivisions proposed to be located within 2,640' of an existing Class 2, 3, or 4 CFO, the Plan Commission during the Preliminary Plat process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects to or from the subdivision, as appropriate for the site and surrounding area.

This is a recognition that buffering may be appropriate for residential subdivisions. In many communities, buffering landscaping standards are extensive; however, since this proposal is focused on the relationships between CFOs and residential areas, this is the proposal.

- c. A stormwater management plan shall be required for major residential subdivisions.
 - i. Stormwater shall include water quality measures.
 - ii. Discharge of stormwater directly to drains shall be avoided.

The county does not currently have a stormwater management ordinance, though stormwater management plans are already required for commercial Development Plans. This requirement would be another step in the direction of controlling stormwater quantity and potentially bettering quality by requiring at least a plan to show how stormwater is to be dealt with in a residential project.

- d. A traffic study and/or management plan may be required.

For larger conventional suburban subdivisions, traffic impacts can be significant, so this would put into ordinance the authority to require a study on how to mitigate the impacts.

- e. All new residential subdivisions within 300 feet of an AGP zoned property must address as part of the Primary Plat the following [this is existing text moved from section 3.3]:
 - i. Off site surface drainage impacts
 - ii. Subsurface tiling system impacts
 - iii. Security of AGP zoned property from residential uses.

- iv. Subdivision plat notes and restrictive covenants on the property deeds holding harmless agricultural production in the AGP district when operating under normal practices.

This moves this existing text from Section 3.3 (the AGP development standards) to the new residential standards section. No changes are proposed here.

ADDITIONAL COMMENTS

This is pending legal counsel review, as noted in sections above. Changes may be necessary based on counsel's comments.

Staff is aware of an oversight in drafting this code proposal, regarding some of the areas stated in the current Overlay code. In applying standards of separations from existing features, the concept of proactively designating expected growth areas, as shown in the Overlay, was overlooked. A means to address this should be included in the final recommendation, and staff will provide a proposal at the meeting.

Additionally, regulation of multiple AFOs (animal operations that fall under the criterion of a CFO) on adjacent parcels formerly part of one parent tract was identified as an important topic in order to attempt to prevent circumventing of CFO regulations. This proposal does not currently include a mechanism to address this, but staff can provide a proposed standard at the meeting.

Further public comments and input at the public hearing will likely yield more potential ideas for the Commission to consider. Given the pending legal review, outstanding standards to propose, and the expected public input, it is staff's suggestion to the Commission that it may take more than one meeting to fully deliberate on the proposals and comments.

REVIEW CRITERIA

Indiana Code §36-7-4-603 and Section 12.2(F) of the zoning ordinance state the criteria listed below to which the Commission must pay "reasonable regard" when considering amendments to the zoning ordinance.

1. The most recently adopted Comprehensive Plan;
2. The current conditions and the character of current structures and uses in each district;
3. The most desirable use for which the land in each district is adapted;
4. The conservation of property values throughout the jurisdiction;
5. Responsible development and growth;
6. The public health, safety and welfare.

Date memo completed: 8/11/18

PLAN COMMISSION ACTION

Motion By:

Second By:

<i>Vote:</i>	Hodges	Deckard	Johnson	Mynhier	Western	Wolf	Wolfe	Woodmansee	Wright
<i>Yes</i>									
<i>No</i>									
<i>Abstain</i>									