

**WHITLEY COUNTY ADVISORY PLAN COMMISSION
STAFF MEMORANDUM**

18-W-ZOA-1 ZONING CODE TEXT AMENDMENT

Text changes related to Agricultural and Residential uses

SEPTEMBER 5, 2018

AGENDA ITEM: 1

BACKGROUND

After the public hearing at the August Plan Commission meeting, the proposal was modified to reflect the issues brought up by staff at the time, as well as other comments. The proposal was also redrafted into code changes rather than a narrative proposal.

At this time, legal counsel has initially reviewed the proposal, but is currently reviewing the actual text language. It is expected that further review will be necessary after the Plan Commission's actions.

EXECUTIVE SUMMARY OF CHANGES

- Changes are proposed to make the AGP district more usable for productive agricultural activities, instead of being perceived as only for large Confined Feeding Operations.
- Residential subdivisions of 3 lots or more will no longer be permitted in AG, and instead must be located in an appropriate residential district (e.g. RR, LR). Additionally, standards are proposed for separations between new subdivisions and CFOs ($\frac{1}{4}$ to $\frac{1}{2}$ mile), buffering, stormwater management, and traffic impacts.
- CFOs will be classified by number of animal units, most of which reflect current standards and requirements. Separations between CFOs and lakes ($\frac{1}{2}$ mile), recorded subdivisions of 3 lots or more ($\frac{1}{4}$ mile), and open waterways (300') would be implemented. Also, either a separation between the CFO structures and off-site residences (660') or a setback from the CFO property line (250') are proposed; an adjacent property owner may waive the required separation. Consideration of buffering for the mid-size CFOs will be required as part of reviews.
- The largest CFOs, Class 4, would require rezoning and special exception approval in the IN, Intensive Use district, and would have more extensive standards. Existing CFOs would be grandfathered, with the opportunity for increasing the animal unit numbers, subject to rules on special exception and rezoning.
- Notice requirements for all Plan Commission and BZA petitions would be changed to the common state standard of two property owners deep or 660' (whichever comes first). On-site notice would also be required. This applies to all petitions heard by the PC or BZA, and does not affect any required IDEM permitting notices.
- A change would require new dwellings to have an owner-acknowledged notice about agricultural activities be filed at the time of permit application. Additionally, a program to provide education regarding zoning, agricultural land use, subdivisions, and so on, would be implemented to aid property owners in understanding requirements that apply to newly acquired property.
- An overlay district is proposed with the intention to apply to areas of the county that, within a reasonable timeframe, may be expected to be developed for residential development. The regulations include provisions for no new CFOs or industrial uses in the overlay area, restrictions on roadside strip subdivisions, perimeter and individual lot landscaping requirements, street connectivity, and sidewalks or trails. This text defines regulations, but not a geographic area.

- Various other changes are proposed as well, including revising the maximum animal unit count for small AG and all RR parcels from 1 AU per acre to 1.25 AU per acre, changes and clarifications on uses based on recent cases, and other updates and corrections.

SUMMARY OF CHANGES

Below are the proposed code changes. Staff's comments regarding the intents of the changes follow the items:

Chapter 3, Section 3.1, AG, Agricultural District

Proposed changes and reasons in this section include:

1. Add intent language reflective of the 2011 Comprehensive Plan.
2. Add "animal husbandry of livestock not in a confined feeding operation". This is added as livestock farming was not previously addressed as a use except in the context of grazing or confined feeding operations.
3. Amend "greenhouses" as a permitted use up to 50,000 sq. ft. This is to proactively address potential development of large-scale greenhouses.
4. Add "lumber products" in special exception uses. This is a clarification based on BZA cases in recent years.
5. Amend "sawmill (temporary)" to "sawmill". In the same BZA cases, "temporary" was found to be a misleading term since temporary sawmills are not a common use.
6. Amend various types of special exception uses to "specialty retail". This is to remove an enumerated list of uses in favor of an interpretable list.
7. Make changes for classes of CFO corresponding to Chapter 5.

Chapter 3, Section 3.3, AGP, Agricultural Production District

Proposed changes and reasons in this section include:

1. Add intent language reflective of the 2011 Comprehensive Plan.
2. Add "animal husbandry of livestock not in a confined feeding operation".
3. Amend "greenhouses" as a permitted use up to 250,000 sq. ft., and larger as a special exception use. This is to proactively address potential development of large-scale greenhouses in agricultural areas.
4. Add "vineyard" to the permitted uses. This is for consistency.
5. Reword "residential housing" to use consistent terms. A footnote cites the next section for requirements.
6. Add home occupations and secondary dwelling unit as uses consistent with the AG district.
7. Make changes for classes of CFO corresponding to Chapter 5.

Chapter 3, Section 3.4, AGP, Agricultural Production District Development Standards

Proposed changes and reasons in this section include:

1. Clarify the minimum acreage to establish an AGP district zone as 40 contiguous acres. A minimum of 80 total acres of AGP zoning is required to establish a Class 3 CFO.
2. Minimum parcel size is 20 acres. As it does for any other district, this is the minimum area for a new parcel to be created in this district. It does not relate to whether a farm, house, CFO, etc. can be built on an existing parcel.
3. Residential use restrictions. This was previously in Section 3.3 and has been moved here. An exception for existing dwellings allows for farms with houses to be acquired as part of larger farms and used as rentals instead of demolishing the houses.

4. Other changes are reformatting of existing text.

Chapter 3, Section 3.5, RR, Rural Residential District

Proposed changes and reasons in this section include:

1. Add intent language reflective of the 2011 Comprehensive Plan.
2. Make major residential subdivisions a permitted use.

Chapter 3, Section 3.7, MR, Multi-Family Residential District

Proposed changes and reasons in this section include:

1. Make major residential subdivisions a permitted use.

Chapter 3, Section 3.9, LR, Lake Residential District

Proposed changes and reasons in this section include:

1. Add intent language reflective of the 2011 Comprehensive Plan.
2. Make major residential subdivisions a permitted use.
3. Clarify that apartments are a separate use from multi-family dwellings
4. Amend various types of special exception uses to “specialty retail”.

Chapter 3, Section 3.11, MP, Manufactured Home Park District

Proposed changes and reasons in this section include:

1. Make major residential subdivisions a permitted use. In this district, this permits the subdivision of lots that some manufactured home developments use. It would not permit conventional single-family dwellings.

Chapter 3, Section 3.17, GC, General Commercial District

Chapter 3, Section 3.19, IPM, Industrial Park/Manufacturing District

Proposed changes and reasons in these sections include:

1. Add accessory retail as a permitted use. This allows for factory outlet stores and retail sales at service counters.
2. Add “crematory” as a permitted use. This a proactive addition to place potential proposals in the appropriate district in the future.

Chapter 3, Section 3.21, IN, Intensive Use District

Proposed changes and reasons in this section include:

1. Add Class 4 Confined Feeding Operations as a special exception use.

Chapter 5, Section 5.17, MS-02

Proposed changes and reasons in this section include:

1. Change the maximum of 1 animal unit per acre permissible for AG-zoned small parcels and all RR-zoned parcels to 1.25 animal units per prorated acre. This permits some flexibility for keeping a variety of animals due to tighter restrictions from the next change. As an example, a 5-acre RR parcel may pasture 5 horses, but also has some chickens and a goat. Under the current code, the only 5 horses would be allowed; whereas the proposal also permits the birds and goats. The 1.25 figure is open for discussion; the primary goal is to permit flexibility.
2. The animal units will be counted as cumulative over all species. This has been a policy of the department that should be placed into code.

3. Note that no other changes are proposed to the animal unit calculations at this time. Staff highly recommends reviewing the animal unit multiplier factors as a separate topic, as the species and multipliers are not necessarily proportional. In particular, poultry winds up having factors that are not directly comparable to IDEM minimum animal counts for CFOs/CAFOs.

Chapter 5, Section 5.21, Confined Feeding Operations (CF)

Proposed changes and reasons in this section include:

1. Creating this section for the purpose of specific development standards related to CFOs as a use.
2. The zoning definition of a Confined Feeding Operation would be explicitly tied to the IAC definition. This is in the current code, but this is clearer. Beyond the basic definition, the zoning code and IDEM requirements for CFOs/CAFOs are separate.
3. Creation of four classes of CFO. The first three classes reflect the existing breakdowns of animal units. Class 4 is new and addresses concerns about the potential for massive operations that would be incompatible with surrounding agricultural operations.
4. Development standards.
 - a. Class 1, 2, 3 CFOs would have separations (or setbacks as the case may be) from the CFO barns and manure storage facilities.
 - i. For natural lakes, the ½ mile separation that has been consistently seen as adequate is still proposed.
 - ii. For recorded major residential subdivisions (existing subdivisions of 3 lots or more, or new subdivisions of a total of 3 lots or more), ¼ mile separation would be required.
 - iii. For open waterways and storm inlets, 300' is required; this matches but reinforces the IDEM standard.
 - iv. Two standards are proposed as options: 660' between off-site houses and the CFO structures, or a 250' building setback. The first standard has the benefit of better addressing specific concerns about impacts on existing residences; this is at the cost of possibly having spillover effects that impact the potential uses on the remainder of an adjacent property. The setback option is akin to other setbacks defined in the code and reduces "impacts" on adjacent property; however, drawbacks include being hard to apply to unusual-shaped parcels, and that a large setback may create a de facto minimum parcel area that, if high enough, could create "sprawl" of CFOs and AFOs.
 - b. A waiver of the above separations by an adjacent property owner may be considered if a deed restriction is recorded. This is a higher standard than IDEM requires for waivers and serves to place notice in the deed itself for future owners.
 - c. New Class 2 CFOs within ½ mile of RR, MR, or LR zoning districts may have buffering measures required. For Class 3 CFOs, buffering measures are required. The BZA must have due consideration of buffering requirements in special exception cases for either class. This recognizes the potential need for buffering measures, but makes it sensitive to the specific site. The requirement for consideration prevents the BZA from neglecting buffering.
 - d. Class 4 CFOs would have higher standards than Classes 1-3. This is due to the expected increased impacts on surrounding properties and the possibility that such a large CFO could be incompatible even with agricultural operations generally. The separation and setback standards and buffering requirements are accordingly higher than for Classes 1-3.

- e. Traffic management plans may be required for Class 2 or 3 CFOs and would be required for Class 4. This recognizes that traffic does increase with the larger CFOs, but specific sites may have varying needs to address the increases.
 - f. For all proposed CFOs, an IDEM permit is required at the time of permit application. This is currently a policy that is proposed for the code.
5. Existing legal CFOs would be permitted to expand. If the development standards create a nonconforming CFO location, such CFO would still be able to expand its animal unit count, with applicable special exception or rezoning requirements. However, such expansion would need to be done such that the separation or setback would not be decreased from the current level.

Chapter 5, Section 5.22, Major Residential Subdivisions (RS)

Proposed changes and reasons in this section include:

- 1. Creating this section for the purpose of specific development standards related to larger residential subdivisions as a use.
- 2. Major residential subdivisions are defined as an existing 3 or more lot subdivision, or any future residential subdivisions of a total of 3 lots or more developed from one parent tract, or any that includes a street.
- 3. New major subdivisions must have a separation from existing CFOs of ¼ mile (Class 1-2) and ½ mile (Class 3-4). This is a similar separation as new CFOs from existing subdivisions, and may be waived if the CFO owner records a deed restriction.
- 4. Major subdivisions must access a paved road. This prevents undue burden on the county's unpaved roads.
- 5. For major subdivisions less than ½ mile from Class 2-4 CFOs, the Plan Commission must include some buffering measures appropriate to the site to mitigate potential adverse effects from the CFO. This is reciprocal to the requirements of CFOs.
- 6. Stormwater management plans are required for major subdivisions, and direct discharge into waterways is to be avoided. This is a large step up for water quality management in the county, and a step in the direction of implementing a general stormwater ordinance.
- 7. Traffic studies may be required by the Plan Commission. This is important especially for larger subdivisions with high traffic generation.
- 8. AGP standards. This is a movement of standards currently located in the AGP district section.

Chapter 5, Section 5.23, Residential Development Overlay (RD)

Proposed changes and reasons in this section include:

- 1. Creating this section for the purpose of regulating development in areas that are expected to have higher levels of residential development in the near future, as determined by the availability of utilities, roads, suitability of land, etc. This makes standards for residential development in these areas that are higher than other parts of the county that may be expected to develop more slowly.
- 2. Uses. As an overlay, the underlying uses are permitted, other than new CFOs and industrial uses. Additionally, the animal units for AFOs on the same property or previously one property could be considered as cumulative. This addresses concerns that CFOs or AFOs and industrial uses may have adverse impacts on expected future residential development.
- 3. Roadside strip subdivisions would be required to retain access points to the remainder of the parent tract, and large subdivisions would be required to have internal streets. These standards protect key aspects of viable development.

4. Perimeter and lot landscaping is required. Since faster-growing subdivisions can appear to have houses growing faster than vegetation, these requirements make it a priority that trees are a part of subdivisions in the overlay area.
5. Streets must interconnect, including provision for stub streets to future development. This is a planning concept that should be implemented to avoid disconnected, disjointed development. It is important for all development, but crucial for areas where development occurs quickly.
6. Pedestrian access in the form of sidewalks or trails is required. Since the overlay area would be expected to develop more quickly and more densely than other areas, pedestrian access and connectivity throughout subdivisions is important to require at the time of development, as opposed to retrofitting at a later date.
7. Note that no geography is defined for this overlay at this time. If these standards are adopted, then the Commission will need to find geographic areas to apply it to that fit the intentions set forth.

Chapter 10

Proposed changes and reasons in this chapter include:

1. Revising the requirement for adjacent property owner notice for all Plan Commission and BZA public hearings from simply adjoining to owners within two property ownerships deep or 660' deep, whichever is satisfied first. This originates in IC 36-7-4-604, and is adopted by many Indiana communities as their standard for notice.
2. Notice would be either by certified mail with return receipt or certificate of mailing. Personal service would no longer be permitted, as it is unreliable to necessarily ascertain if the person signing is actually the property owner. Certificate of mailing is a postal certification that the letters have been deposited in the mail, though it does not track the letter to its destination. Because a signature is not required, many communities find that notification rates actually go up as opposed to certified/return receipt.
3. On-site notice will be required. This requires that a sign be placed on the subject property by the petitioner within 5' of the right-of-way in a visible location. For larger properties, the staff has the discretion to require additional signs. The cost of the signs would be included in the petition filing fees. Communities that use on-site notices usually find that it helps to defuse potentially controversial cases simply by notifying more people of pending changes.
4. In Section 10.9, special exception criterion (5) will cross-reference Section 1.4. This is an explicit cross-reference of the purpose and intent that has been missing in the current code.

Chapter 12

Proposed changes and reasons in this chapter include:

1. Section 12.2(B). For new residential dwellings, an agricultural use notice will be required to be signed by the property owner as part of a permit application. This would serve to further reiterate the right-to-farm statutes and assumptions about what constitutes nuisances in an agricultural area.
2. A new section, 12.4, would be added to create a zoning information program. In addition to the right-to-farm education we have discussed, this would include education about zoning district regulations, subdivisions and covenants, county official contacts, and other information that would help a new resident or property owner to know and understand the requirements for the property they just acquired. It would not be a waiver of rights, but would restate the importance of land use regulations across all districts.

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.

Staff will provide suggested findings at the meeting, and revise them based on the outcome of the Commission’s decision.

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: 8/31/18

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>									

