

**PROPOSED AMMENDMENTS TO WHITLEY COUNTY ZONING ORDINANCE
FOR THE WHITLEY COUNTY PLAN COMMISSION REGARDING LAND USE DECISIONS INVOLVING
CONFINED FEEDING OPERATIONS (CFOs)**

Submitted to Nathan Bilger for Consideration - July 30, 2018

Submitted by AG Code Development Committee Members and Reserve Members

ISSUE: Minimize conflict of land use between CFOs and various Residential Districts.

SOLUTION:

A combination of making general changes of procedures and/or processes

And, amending . . .

- current zoning districts' permitted uses and special exceptions
- district standards
- development standards

1. PROPOSED GENERAL CHANGES

a. Repeal the Interim Overlay District

Rationale: Interim overlay district was implemented as a temporary district as a hold so that proposed amendments to the zoning ordinance could be made to resolve conflicts.

b. Require all defined terms in the Zoning Ordinance applicable to a CFO, which also are specifically defined by Indiana statute or regulation that governs the construction or operation of a CFO, to be consistent with such Indiana definitions.

c. Recommend to update the Comprehensive Plan in 2-3 years

Rationale: To give time for any current amendments to the Zoning Ordinance to be monitored for efficacy.

d. Retain code 10.9 #5 as currently stated.

e. Revise Rules of Procedure of BZA and/or Plan Commission so that mailed notices go to property owners 2 deep or 660' deep, whichever is nearest, for all petitions.

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

g. Require an Agricultural Use Notice to be included:

i. In the restrictive covenants applicable to any future subdivisions within or adjacent to an agricultural district

ii. All property transfers of ownership going forward in or adjacent to an agricultural district must receive a copy of the Agricultural Use Notice by the seller/realtor at the 1st viewing of the property and must have a second copy signed, dated, and witnessed by the purchaser at the closing. The witness must be an employee of the County Planning

and Building Department, or a licensed realtor, or a notary. No permits will be granted for any property without this document.

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

Rationale: Taxation of property without ability for use.

i. Encourage non-crop land use to utilize phosphorus-free fertilizer in any LR zoning district.

Rationale: For legal and/or legal non-conforming crop lands on or adjacent to lakes must use phosphorous. Crops cannot produce without phosphorous.

2. AMEND CURRENT ZONING DISTRICT USES AND SPECIAL EXCEPTIONS TO COMPLY WITH THE COMPREHENSIVE PLAN

a. A new Agricultural Residential (AR) zoning district is unnecessary as potential reasonable concerns are properly addressed in existing requirements applicable to the RR, AG, and AGP districts and match the current Comprehensive Plan Land Classifications. (see Attachment 1)

b. The argument regarding CFOs is that they are not “farms”. This is a flawed premise in that we do not have “farm” districts, we have agricultural districts which CFOs are agricultural endeavors.

c. Allow land owners in AG district of [parcels](#) over 20 acres a onetime opt-in to rezone to AGP contingent upon acceptance of the following proposed amendments:

i. Amend the permitted uses and special exception uses, as well as district standards in AG (see Attachment 2) and,

ii. Amend the permitted uses and special exception uses, as well as district standards for AGP (see Attachment 3)

3. ADD A CONFINED FEEDING OPERATION SECTION TO CHAPTER 5 (DEVELOPMENT STANDARDS) OF THE ZONING CODE WITH THE FOLLOWING STANDARDS

a. Classes of Confined Feeding Operations. CFOs are as defined by IDEM and specified as such in the current code.

i. Class 1 CFO: proposed animal count is minimum IDEM units for CFO to 1201 animal units – permitted use in AG and AGP districts

ii. Class 2 CFO: proposed animal count is 1201 to 3000 animal units requiring Special Exception in AG and permitted use in AGP

iii. Class 3 CFO: proposed animal count is 3001 to 12,000 animal units requiring Special Exception and Re-zoning to AGP

iv. Class 4 CFO: proposed animal count is more than 12,000 animal units requiring Special Exception and Re-zoning to AGP

v. The animal count is cumulative over all animal species [on a property](#).

b. Development Standards

i. Contingent upon passage of Ag Use Notice Standard - For all Classes 1, 2, 3, and 4 of CFOs, the following are minimum distances from a CFO structure and manure storage facility to:

1. Residential subdivisions with occupied residence of 3 lots or more 1,320'
2. Natural lakes of 40 acres in area or more 2,640'
3. Open waterways or storm drain inlets 300'

ii. For Class 3 and 4 CFOs proposed to be located within 2,640' of RR or LR zoning districts, the BZA during proceedings to review a proposed special exception, may consider the need for imposing as a condition of approval of the special exception, a requirement for construction or installation of one or more buffering measures, as the BZA deems reasonably necessary, in order to mitigate potentially adverse effects from use of the CFO at the proposed sites; given the existence of other adjacent uses or zoning districts. (Examples might include vegetation buffers, natural buffers, windbreaks, odor control measures, and traffic patterns.)

iii. CFO structures shall be avoided in a SFHA (floodplain).

c. An approved IDEM permit is required prior to CFO building permit.

Animal units for AFOs located on same parcel or same parent parcel (defined as the parcel in existence as of 5 years prior to permit application) shall be calculated cumulatively. This was omitted purposefully as zoning regulation of AFOs is unnecessary and inappropriate.

d. Expansions of existing CFOs

- i. Any current 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

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 parent parcel (cumulative). *Effect of cumulative clause is that 3rd lot of more from a parent tract requires rezoning to a district that permits major residential subdivisions*
- ii. A definition of a parent parcel should be created, so its boundaries are determined as of a date 5 years previous to the date of the application.
- iii. Subdivisions that include new streets (public or private)

b. Development Standards

- i. The minimum distance from a new major residential subdivision with occupied residence to:
 1. Class 1 or 2 CFOs 1,320'

2. Class 3 or 4 CFOs 2,640'

- ii. Major residential subdivision shall have access onto a paved public road
- iii. Construction of dwellings in the SFHA (floodplain) shall be avoided.
- 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 may consider the need for imposing as a condition of approval of the plat, a requirement for construction or installation of one or more buffering measures, as the Plan Commission deems reasonably necessary, in order to mitigate potentially adverse effects from use of the major residential subdivision at the proposed sites; given the existence of other adjacent uses or zoning districts. (Examples might include vegetation buffers, natural buffers, windbreaks, noise control measures, and traffic patterns.)

c. A stormwater management plan shall be required.

- i. Stormwater shall include water quality measures.
- ii. Discharge of stormwater directly to drains shall be avoided.

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

ATTACHMENT 1 – CONSISTENCY OF CURRENT COMPREHENSIVE PLAN AND CURRENT ZONING DISTRICTS

Rationale: Land Use planning is a very important geographic component that must be represented in the Comprehensive Plan (WCCP, p. 27). In Part 3 of the Comprehensive Plan on page 28, it is stated that “Land classifications should not be confused with zoning districts. They are more conceptual and broad guidelines while zoning is lot specific and legally binding regulations.”

In our Whitley County Comprehensive Plan the conceptual and broad guidelines are as follows and when overlaid with our County Zoning Ordinance one can see that the defined intent and practice of these zones are consistent with the land classifications in our Comprehensive Plan.

LAND CLASSIFICATION	ZONING DISTRICT
Conservation and Open Space	Parks and Recreation (PR)
Agricultural	Agricultural Production (AGP)
Transitional Agricultural	Agricultural (AG)
Rural Residential	Rural Residential (RR)
Residential	Manufactured Home Park (MP) Multi-Family Residential (MR)
Lake Residential	Lake Residential (LR)
Government and Institutional	<i>These have been located in incorporated municipalities</i>
Village Commercial	Village Commercial (VC)
General Commercial	General Commercial (GC)
Industrial	Industrial /Manufacturing (IPM)

ATTACHMENT 2 – AG Proposed Amended list of Permitted Uses, and Special Exception Uses

AG Agricultural District

District Intent

The “AG”(Agricultural District is intended for agricultural use while permitting residential development, which meets the requirements of Section 3.2 of the Whitley County Zoning Ordinance.

This also meets the intent of the Transitional Agricultural land classification of the Whitley County Comprehensive Plan.

Permitted Uses

Residential

- child care home (owner occupied home)
- dwelling, single family
- dwelling, Type 1 manufactured home
- residential facility for intellectually disabled (small)
- residential facility for mentally ill

Agricultural Uses

- agricultural crop production
 - agricultural feed and seed sales
 - confined feeding operation, Class 1
 - cider mill
 - commercial raising of non-farm animals (subject to maximum animal unit limits)
 - animal husbandry of livestock and non-livestock (subject to maximum animal unit limits)
 - farm market (produced on-site)
 - grazing and pasture land
 - greenhouse
 - orchards
 - plant nursery
 - processing agricultural crop products produced on site
 - riding stable/trails
 - storage of farm vehicles, equipment, and materials (used in the farming operation – not for sale)
 - storage off agricultural products
 - tree farms
 - vineyards
- ##### Miscellaneous
- home occupation (non-traffic generating)

Special Exception Uses

Residential

- bed and breakfast facility
 - dwelling, mobile home
 - temporary second dwelling unit
- Omitted the large residential facilities bc they are not legal in IN

Agricultural Uses

- CFO Class 2
- farm equipment sales/service
- processing of agricultural products not produced on site, not to include slaughterhouses
- storage of agricultural products not produced on site

Business: General Business

- kennel
- landing strip
- mini-warehouse
- sawmill (temporary)
- plant nursery (including office, retail, and landscaping services)

Business: Auto Sales/Services

- automobile body shop (enclosed)
- automobile repair shop (enclosed)

Business: Food Sales/Services

- farmer’s market

Business: Retail

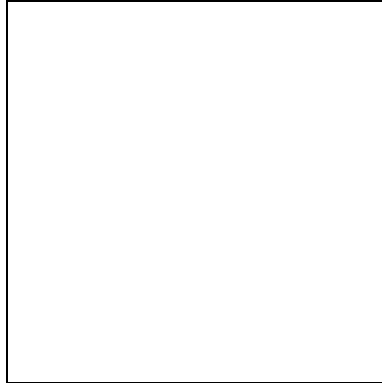
- small shops: i.e. antique, fabric, flower, furniture, gift, flower, jewelry, clothing, variety store
- bait/tackle shop
- electrical supply shop
- hardware store
- heating/cooling/sales and service
- lumber yard
- plumbing supply store
- winery

Industrial Uses

- gravel/sand/mixing
- liquid/dry fertilizer storage and distribution
- machine shop

Institutional/Public Facilities

- church
- school
- cemetery
- corporate retreat center



-recycling collection point (no
outside storage)
Communication/Utility
-cellular/communication/radio/
television tower
-pipeline pumping station
-utility substation
-public well
-telephone exchange
Miscellaneous
-home occupation (traffic
generating)

(Attachment 2 continued)

AG District Standard Changes Proposed: No changes

ATTACHMENT 3 – AGP Proposed Amended list of Permitted Uses, and Special Exception Uses

AGP Agricultural Production District

District Intent

The “AGP” (Agricultural Production) District is intended to provide a land use category for intensive agricultural uses and to recognize certain needs of the agricultural community. The goals of this land use district would be for enhanced Right-to-Farm protection, recognition by community, and to promote agricultural economic development.

Non-agricultural uses that are located within this zoning district may not object to any permitted agriculture use, whether such uses currently exist, are enlarged, or change in the future to another agricultural use.

Whitley County’s Plan commission and BZA should strive to protect this district from conflicting businesses, and any use that may inflict significant environmental impacts or be injurious to neighbors.

This district is consistent with the Comprehensive Plan’s Agricultural land classification.

Permitted Uses

Agricultural Uses

- agricultural crop production
- agricultural seed sales
- Class 1 and 2 CFOs
- commercial raising of non-farm animals (subject to maximum animal unit limits)
- AFOs
- farm market
- grazing and pasture land
- orchards
- processing agriculture crop products on site
- storage of farm vehicles, equipment, and materials (used in the farming operation –not for sale)
- storage of agricultural products
- tree farms

Residential Uses

- new residential housing (only for owners of the agricultural operation or immediate family members involved in the agricultural operation on the premises)
- existing residential housing owned by the ag operation or landowners may be rented.
- Miscellaneous**
- home occupation (non-traffic generating)

Special Exception Uses

Agricultural Uses

- Class 3 and 4 CFOs

Residential Uses

- ~~-residential housing (only for employees or tenants employed in the agricultural operation on the premises)~~
- temporary, non-transferable secondary dwelling for family members only

Miscellaneous

- home occupation (traffic generating)

(Attachment 3 continued)

AGP District Standard Proposed changes:

Minimum Parcel Size:

-Multiple contiguous parcels totaling 40 acres – singularly or multiply owned.

-40 acres or contiguous to an existing AGP district

Maximum Lot Coverage:

-Square feet of Primary and Accessory Structures, and --- impervious surface cannot exceed 30% of the Lot Area.

Questions for Nathan (not to be included in proposal)-

- 1) Can land zoned AGP be rezoned back in the future if appropriate?
- 2) Can we add a default clause to zone back a platted subdivision if development has not taken place within a specified time?
- 3) Define property

