

Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

LB1285 & Livestock Zoning Issues

Market Report	Yr Ago	4 Wks Ago	2/15/02
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$78.87	\$67.92	\$72.16
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	*	85.00	90.14
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	96.22	92.98	95.52
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	120.41	106.34	113.30
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	40.62	41.00	39.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	110.90	107.70	105.60
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	80.37	*	64.72
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	165.00	132.34	137.56
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	3.17	3.13	2.97
Corn, No. 2, Yellow Omaha, bu	1.91	1.92	1.88
Soybeans, No. 1, Yellow Omaha, bu	4.34	4.20	4.19
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.61	3.67	3.55
Oats, No. 2, Heavy Minneapolis, MN, bu	1.42	2.20	2.32
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	115.00	*	105.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	70.00	67.50	65.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	110.00	105.00	105.00
* No market.			

LB1285 would establish the Livestock Industry Issue Task Force to examine the economic impact of the Nebraska livestock industry and the impact of regulations, including county zoning and state water quality regulations, on livestock production. In the Introducer's statement of intent, Sen. Curt Bromm (Wahoo) notes that livestock feeding is the largest value-added agricultural export for Nebraska, and expresses concern regarding declining livestock production, particularly swine. The LB1285 task force would report to the Governor and Unicameral by December 15, 2002. The Agriculture Committee hearing on LB1285 was held February 12, 2002 and legislative action currently is pending.

Several issues could be addressed by the LB1285 task force if it is established. Recent low hog prices sparked a mass exodus of smaller swine producers. Initiative 300 discourages joint livestock production between unrelated farmers. Pending EPA water quality requirements, if implemented, may lead to a further exodus of smaller and medium sized cattle feeders and swine producers, unless livestock prices and profit margins improve.

There are two legal issues that may warrant attention by the LB1285 task force: a legal challenge to the authority of counties to regulate farm buildings through zoning regulations, and the consistency between state water quality regulations and county livestock zoning regulations.

Farm building zoning regulations. Nebraska Revised Statute §23-114.03 authorizes counties to regulate nonfarm buildings in zoning regulations, as



well as the use of agricultural land. Sands Livestock has challenged the Holt County zoning ordinance regulating housed livestock feeding operations as being an unauthorized regulation of a farm building. Holt County contends that its zoning ordinance regulates the use of land. This case was recently argued before the Nebraska Supreme Court, which may render its opinion before year end.

Sands points to court rulings in Iowa that counties are unauthorized to regulate livestock operations. Iowa Code §335.2 prohibits county zoning regulations that apply to land, buildings or structures used for agricultural purposes. In a series of decisions the Iowa Supreme Court has ruled that §335.2 prevents counties from regulating livestock feeding operations.

The Iowa county zoning statute prevents county zoning regulation of agricultural land as well as buildings and structures; while the parallel Nebraska provisions only prevents county zoning regulation of farm buildings, and not of agricultural land uses. Thus, the Iowa agricultural zoning exemption is much broader than the Nebraska farm building zoning exemption. In addition, when the Nebraska Unicameral enacted LB822 interim zoning legislation in 1999, the Unicameral explicitly approved county zoning of livestock facilities. Consequently, I expect the Nebraska Supreme Court to affirm the legal authority of counties to regulate livestock feeding operations in the Holt County zoning case.

The larger policy issue is whether counties should be authorized to zone (and limit the development of) livestock feeding operations. Suffice it to say that some counties will continue to zone out large and very large livestock feeding operations until the odors from such operations can be satisfactorily controlled. Until that time the livestock industry will continue to find that the welcome mat is not out in parts of Nebraska. Removing county zoning authority for livestock feeding operations basically makes livestock feeders legally unaccountable for the odors they generate.

facilities (LWCFs) was principally limited to protection of surface and groundwater quality. Traditionally county zoning regulation of animal feeding operations (AFOs) was limited principally to setbacks from neighboring residences.

More recently, DEQ LWCF regulations include comprehensive nutrient management plans, in which AFO operators detail how livestock waste will be applied to cropland in a way that avoids water pollution. Larger AFO operators must also submit odor control plans indicating what, if any actions they will take to reduce odors from their operations. At the same time, more counties are concerned about odors from AFOs, and some counties are regulating manure application to cropland and other livestock waste management dimensions of AFO operation.

NRS 23-174.10 requires that county regulation of nuisance activities (which would include AFOs) be consistent with state regulations. This provision suggests that county manure handling regulations might in the future be challenged as being inconsistent with DEQ requirements. A discussion of how to coordinate DEQ waste management requirements and county zoning regulations would be useful to all parties involved.

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DEQ-county zoning regulatory consistency. Traditionally the Nebraska Department of Environmental Quality (DEQ) regulation of livestock waste control