

Cornhusker Economics

Cooperative Extension

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

Nebraska Supreme Court Rules County Livestock Zoning Regulations Legal

Market Report	Yr Ago	4 Wks Ago	7/5/02
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$71.08	\$63.01	\$63.16
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	*	*	*
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	*	89.16	89.63
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	109.72	101.89	99.83
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	53.50	*	41.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	24.71	17.71
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	123.50	99.03	109.76
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	58.50	78.75	83.25
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	161.71	145.71	160.25
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	3.10	3.03	3.49
Corn, No. 2, Yellow Omaha, bu	1.77	1.91	2.14
Soybeans, No. 1, Yellow Omaha, bu	4.73	4.89	5.36
Grain Sorghum, No. 2, Yellow Kansas City, cwt	3.46	3.44	3.96
Oats, No. 2, Heavy Minneapolis, MN, bu	*	2.31	2.29
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	102.50	107.50	112.50
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	75.00	62.50	72.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	105.00	90.00	95.00
* No market.			

The development of large swine production facilities has been highly controversial in Nebraska for the past several years. A major focus of the "hog wars" has been county livestock zoning regulations. In Nebraska, livestock facilities are subject to state environmental regulation by the Nebraska Department of Environmental Quality, and to local zoning regulations if the county is zoned (or if the livestock facility will be located near a zoned community). The number of zoned counties has more than doubled in the last decade from 36 to at least 75. Most of the newly zoned counties have adopted zoning in order to regulate the size and location of confined livestock facilities (which typically would be swine confinements).

The Nebraska system of dual livestock facility regulation is in contrast to Iowa, where counties cannot zone agricultural land or buildings. In Iowa, the Department of Natural Resources issues environmental permits for livestock operations with state setbacks of 750-1,875 feet depending upon the facility waste handling system. In contrast, most county zoning regulations of livestock facilities in Nebraska have much larger setback requirements, and some have capacity limits, putting a ceiling on larger facilities.

Some members of the Nebraska livestock industry have expressed concern that county zoning regulation would severely limit or prevent livestock expansion within the state, suggesting that Nebraska should follow the Iowa example of prohibiting county zoning of livestock facilities. Those opposed to county zoning of livestock facilities were heartened by a June 16, 2000 ruling by the Holt County District Court that Nebraska county zoning statutes prevented counties from regulating farm buildings, including livestock confinements.

On March 15, 2002, the Nebraska Supreme Court reversed the Holt County District Court ruling and determined that a Holt County zoning regulation could require



a conditional use zoning permit before hog production facilities could be developed. *Premium Farms v. Holt County*, 263 Neb 415 (2002). Premium Farms wanted to build a large swine facility in Holt County. The county's zoning regulations required Premium Farms to obtain a conditional use zoning permit before constructing the hog confinement. Premium Farms began construction without obtaining the zoning permit, contending that the county zoning permit requirement was illegal and unenforceable. The county then took Premium Farms to court for beginning construction without the zoning permit.

Premium Farms argued that Nebraska zoning statutes prohibited counties from requiring permits for farm buildings. Premium Farms argued that because they were constructing a farm building, they were not subject to county permit requirements. The county argued that the farm buildings statute applied only to building permits and not to zoning permits. The county also argued that Nebraska zoning statutes clearly authorized counties to regulate agricultural land uses.

The district court ruled that the zoning statute prohibited counties from regulating farm buildings. The district court concluded that the county could regulate the use of the land surrounding the farm building but not the farm building itself. This ruling was overturned by the Nebraska Supreme Court, which ruled that the farm building statute applied only to building permits and not to zoning permits. The Supreme Court also ruled that the Holt County zoning permit requirements for the hog buildings were legal.

Premium Farms will have to decide whether it wants to limit the number of hogs in its facility to the number allowed by the county, without a conditional use which is substantially less than the building's capacity. Premium Farms will either operate the facility at a smaller scale or else will discontinue operations.

have required most Nebraska counties to rewrite their zoning regulations, and would allow new livestock facilities to be developed throughout the state if they met DEQ environmental regulations (which contain no setback requirement).

County livestock zoning will continue to generate controversy. Most zoned counties establish zoning setbacks for livestock operations, and some counties have larger setbacks (up to 2 miles) for very large facilities. These types of zoning regulations will make livestock expansion (especially swine expansion) difficult in much of Nebraska. Hopefully, in the long-run, livestock production techniques and facilities can be improved such that the nuisance aspects of livestock production (odors, flies, etc.) can be reduced. If such improved production practices can significantly reduce the nuisance aspects of livestock production, counties may then be willing to adjust restrictive livestock facility zoning regulations.

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The *Premium Farms* decision is a major legal decision. The Iowa Supreme Court ruled in a similar case that Iowa counties are not authorized to zone agricultural land. A similar decision by the Nebraska Supreme Court would