

Cornhusker Economics

Cooperative Extension

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

Supreme Court Rules City Can Regulate Animal Feeding Operation

Market Report	Yr Ago	4 Wks Ago	9/26/03
Livestock and Products,			
Average Prices for Week Ending			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$65.14	\$83.36	\$93.83
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	84.50	106.25	107.00
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	87.89	105.00	110.51
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	102.15	130.19	147.50
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	31.00	33.00	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	91.29	101.81	111.25
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	74.25	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	155.63	179.98	180.31
Crops,			
Cash Truck Prices for Date Shown			
Wheat, No. 1, H.W. Omaha, bu	4.95	3.68	3.47
Corn, No. 2, Yellow Omaha, bu	2.34	2.27	2.09
Soybeans, No. 1, Yellow Omaha, bu	5.22	6.00	6.32
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.50	4.14	4.13
Oats, No. 2, Heavy Minneapolis, MN, bu	2.27	1.57	1.56
Hay,			
First Day of Week Pile Prices			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	130.00	130.00	130.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	82.50	63.75	61.25
Prairie, Sm. Square, Good Northeast Nebraska, ton	117.50	*	*
* No market.			

The construction of large swine facilities has been very 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 (DEQ) 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 80. 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 legal ability of counties to regulate livestock facilities through zoning regulations was confirmed by the Nebraska Supreme Court in 2002, when the court ruled that a Holt County zoning regulation could require a conditional use zoning permit before swine production facilities could be developed. *Premium Farms v Holt County*, 263 Neb 415 (2002).

Concern regarding the effect of county zoning regulations on livestock expansion has led to the formation of the "Nebraska Agriculture Industry Partnership," a wide ranging coalition of livestock industry supporters endorsed by Gov. Mike Johanns and Rep. Tom Osborne (see the NAIP website at <http://nebraskalivestock.com>).

While much of the hog-war battles have involved county zoning, at least one community has joined the fray. In 1997, the community of Alma (pop. 1,214) learned that Furnas County Farms (FCF) and Sand Livestock Systems planned to build a large swine



confinement approximately eight miles northwest of the Alma city limits in Harlan County. The city hired an environmental engineer to prepare a report on the potential impact of the swine facility upon Alma's water supply. On the basis of the consultant's report Alma adopted five municipal ordinances, based upon Neb Rev Stat §17-536 and 17-537. Section 17-536 establishes that the authority of cities of the second class (including Alma) and villages authority "to prevent any pollution or injury to the stream or source of water for the supply of such [community] water-works, shall extend fifteen miles beyond its corporate limits." The Alma ordinances required livestock producers to obtain permits from the city before developing livestock facilities within 15 miles of Alma's city limits. The permit process required the applicant to line waste lagoons with a synthetic liner, to install monitoring wells to detect ground water pollution and to submit a financial bond for cleanup.

The city notified FCF of the permit requirements. FCF informed the city that it believed the city ordinances to be invalid, and stated its intention to proceed with construction activities. The city filed suit to stop construction and construction stopped when the suit was filed.

FCF contended in court that the 15 mile municipal water pollution control authority was preempted by the Nebraska Environmental Protection Act (NEPA), and since FCF had received its state permits from the DEQ, FCF was legally entitled to construct its livestock facilities without regard to the Alma ordinances. The district judge ruled in favor of Alma. An appeal to the Nebraska Supreme Court resulted in the matter being returned to the district court in 2001 for further proceedings. The district judge again ruled for Alma, and this decision was again appealed.

The Nebraska Supreme Court ruled that the 15 mile municipal water pollution control authorities were not preempted by NEPA. Normally, the courts will try to sustain both state law and local ordinances if they are not mutually exclusive. In its NEPA analysis, the court noted several NEPA provisions encouraging municipalities to establish their own local pollution control programs. The court did, however, invalidate the Alma cleanup bond requirement as being inconsistent with NEPA. The court also ruled that FCF could not raise the issue of whether the Alma ordinances conflicted with DEQ livestock waste control facility regulations and the Livestock Waste

Management Act because such issues had not been raised in the district court. The *Alma* decision is another judicial warning to livestock facility developers that they ignore local regulations at their peril.

Municipal and county livestock regulations 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, Nebraska cities and counties may then be willing to adjust restrictive livestock development regulations.

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