

Cornhusker Economics

Cooperative Extension

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

County Feedlot Regulations Invalidated

Market Report	Yr Ago	4 Wks Ago	2/16/01
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb			
Omaha, cwt	\$68.08	\$79.88	\$78.87
Feeder Steers, Med. Frame, 600-650 lb			
Dodge City, KS, cwt	91.96	94.27	*
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	98.05	96.48	96.22
Carcass Price, Ch. 1-3, 550-700 lb			
Cent. US, Equiv. Index Value, cwt	104.36	121.61	120.41
Hogs, US 1-2, 220-230 lb			
Sioux Falls, SD, cwt	41.00	38.50	40.62
Feeder Pigs, US 1-2, 40-45 lb			
Sioux Falls, SD, hd	58.50	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	113.50	108.60	110.99
Slaughter Lambs, Ch. & Pr., 115-125 lb			
Sioux Falls, SD, cwt	*	75.75	80.37
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb			
FOB Midwest, cwt	168.00	157.00	165.00
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W.			
Omaha, bu	2.99	3.39	3.17
Corn, No. 2, Yellow			
Omaha, bu	1.97	1.89	1.91
Soybeans, No. 1, Yellow			
Omaha, bu	4.84	4.46	4.34
Grain Sorghum, No. 2, Yellow			
Kansas City, cwt	3.30	3.57	3.61
Oats, No. 2, Heavy			
Sioux City, IA, bu	1.23	1.36	1.42
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better			
Platte Valley, ton	82.50	115.00	115.00
Alfalfa, Lg. Round, Good			
Northeast Nebraska, ton	85.00	67.50	70.00
Prairie, Sm. Square, Good			
Northeast Nebraska, ton	*	100.00	110.00
* No market.			

The development of large swine production facilities has been highly controversial in Nebraska for the past several years. On November 1, 2000 the Nebraska Supreme Court issued its first decision dealing substantively with local government efforts to regulate large swine facilities. In *Enterprise Partners v Perkins County*, 260 Neb. 650 (2000) the court ruled that county regulations requiring swine lagoons to be covered and regulating discharges from lagoons onto county roadways were zoning regulations, and in this case were invalid because no comprehensive plan had first been adopted. The court came to the correct conclusion but used an incorrect legal rationale that will cause needless confusion regarding livestock zoning by local governments.

The livestock operators sought to construct swine production in Perkins County, which at all times pertinent to the decision had not adopted county zoning regulations. Many rural Nebraska counties have raced to adopt county zoning regulations in an effort to keep large swine facilities out. In April 1998, Perkins County notified the Nebraska Department of Environmental Quality (NDEQ) the state agency with the responsibility for permitting livestock facilities, of the county's objection to the proposed swine facilities. NDEQ replied, among other things, that it had no legal authority to address two of the county's concerns, (1) flies and odors, and (2) the impact on county roads. In response, in December 1998, the county board adopted the two ordinances at issue in an attempt to reduce the adverse impact of the proposed swine facilities. The livestock operators sought to receive a court order preventing enforcement of the county regulations, arguing that the county regulations constituted



invalid zoning regulations because no comprehensive development plan had first been prepared as required by NRS §23-114.03. The trial court ruled (correctly) that the regulations were not zoning regulations, but (incorrectly) that the regulations were valid, enforceable police power regulations. The Nebraska Supreme Court reversed on appeal.

The Supreme Court noted that “zoning is ‘the process that a community employs to legally control the use which may be made of the property and the physical configuration of development upon the tracts of land located within its jurisdiction,’ ” citing *Ford v Converse Cty Com’rs*, 924 P2d 91, 94 (Wyo 1996). The court then, with no further analysis, concluded that the two Perkins County ordinances were zoning regulations. Because the county had conceded that it had not yet prepared a comprehensive plan, the Supreme Court ruled that the ordinances were invalid zoning regulations.

In Nebraska, counties do not have general police power authority to adopt regulations to protect the public health, safety and welfare. However, NRS §23-174.10 authorizes counties to adopt police power regulations to protect the public health, safety and welfare if the county has first adopted county zoning

power regulations, but then invalidated those police power regulations because the county had not first adopted zoning regulations. Instead, the court mischaracterized the regulations as zoning regulations and invalidated them due to the absence of a comprehensive plan. The difficulty posed by this ruling is that Nebraska communities are authorized to exercise police power authorities within their extraterritorial zoning jurisdiction (1-3 miles based on population), even if the community has not adopted zoning. *Enterprise* will allow livestock operators and other land developers to resist municipal extraterritorial police power regulations as being invalid zoning regulations, thus requiring communities to adopt zoning regulations in order to be able to implement their police power regulations (as zoning regulations). Hopefully, the Supreme Court will clarify that this result was not its intent when livestock zoning issues reach the courts again (as they are likely to do in the near future).

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regulations. The *Enterprise* court should have characterized the two Perkins County regulations as police