

**Planning and Zoning for Animal
Agriculture in Minnesota:**
A Handbook for Local Government

Planning and Zoning for Animal Agriculture in Minnesota:

A Handbook for Local Government

Prepared by James Duncan and Associates
in association with
Iowa State University
for the

Minnesota Department of Agriculture

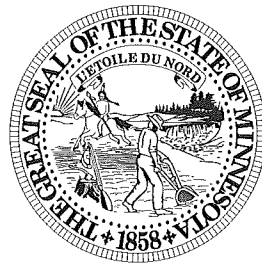


Table of Contents

Foreword	vi
Acknowledgments.....	vi
Executive Summary	vii
Chapter 1:	
Introduction	
Factors Shaping the Debate Over Livestock	I-1
Agriculture and Rural Trends	I-2
Economics	I-3
The Role of Government	I-4
Chapter 2:	
Planning for Animal Agriculture	
Recognizing the Need	II-1
Choosing the Approach	II-3
Organizing the Process	II-4
Developing the Plan	II-5
Implementing the Plan	II-13
Monitoring and Updating the Plan	II-13
Conclusion	II-13
Chapter 3:	
Legal Issues Involved in Rural Planning and Zoning Regulation	
Planning and Implementation Authority of Local Governments	III-2
<i>Police Power</i>	
<i>Limits on the Police Power</i>	
<i>Planning and Zoning in Minnesota</i>	
<i>Constitutional Limitations of Authority—Takings and Others</i>	
<i>Constitutional Protection of Rights through Process</i>	
<i>Unreasonable Delegation of the Police Power</i>	
<i>Statutory Limitations on Authority—the Doctrine of Preemption</i>	
<i>Implied Limitations on Authority—Exclusion of Uses</i>	
<i>Enforcement</i>	

Unique Aspects of Planning for and Regulating Agriculture	III-18
<i>Unique Status of Agriculture in Minnesota</i>	
<i>Zoning Authority and Agriculture</i>	
<i>The Takings Issue and the Regulation of Agriculture</i>	
<i>Preemption and the Regulation of Animal Agriculture</i>	
<i>Enforcement Issues</i>	
Table of Authorities	III-24
Highlighted Cases	III-26
<i>Crooks Township</i>	
<i>Blue Earth County</i>	

Chapter 4: Implementation Options

The Foundation for Regulations: Separation vs. Mitigation	IV-1
<i>Separation-Based Strategies</i>	
<i>Mitigation-Based Strategies</i>	
<i>The Hybrid Approach</i>	
Regulatory Options	IV-5
<i>Zoning Districts</i>	
<i>Conditional Uses</i>	
<i>Use-Specific Standards</i>	
<i>Performance Standards</i>	
<i>Nonconformities</i>	
<i>Definitions</i>	
<i>Right-to-Farm Provisions</i>	
Sample Regulations	IV-11

Appendix A: Planning Approaches

Appendix B: Information and Technical Support

Bibliography

Foreword

Many counties and other local governments in Minnesota are currently attempting to address issues relating to the siting and expansion of new and existing feedlots. While a fair amount of information exists on the protection of water quality, considerably less information is available to local officials to help them with the process of making decisions on land use permits for feedlots. With support from the Minnesota Legislature, the Minnesota Department of Agriculture (MDA) is attempting to meet this need for information through its Animal Agriculture Land Use Technical Assistance Program and this handbook, *Planning and Zoning for Animal Agriculture in Minnesota: A Handbook for Local Government*.

The MDA is engaged in assisting local government leaders in planning and zoning for animal agriculture because it believes the interests of agricultural producers, citizens concerned about feedlots and the public interest as a whole will be best served by a planning process and regulatory system that is open, fair, objective and comprehensive.

A theme running throughout this handbook is that land use issues regarding feedlots are best addressed through comprehensive planning, followed by land use regulation aimed at implementing that planning. Without a background of careful planning, land use standards for livestock facilities may provide only partial solutions to identified problems, and may result in unintended adverse consequences for the local agricultural economy. Considering animal agriculture comprehensively, in the context of other land uses in the county, township or city, holds the promise of providing a more complete range of options to address these difficult and controversial issues.

In some communities, conflicts over feedlots have been particularly divisive. Local officials have the difficult and serious responsibility of striving to balance competing interests, heal divisions within their communities, and act for the common good. We hope this handbook and the MDA's assistance will be useful in this important work.

Gene Hugoson, Commissioner
Minnesota Department of Agriculture

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Executive Summary

Animal agriculture land use issues are being hotly debated throughout the state of Minnesota and other livestock producing states. These debates are largely being played out at the local government level where long time and recent residents are joining together and asking local government to protect their lifestyles from change. On the other side, of course, are livestock operators. They provide a key element in food production in the United States. They cannot operate in cities because of land costs and other concerns. The only place that they can operate is in rural areas. Although they might welcome the opportunity to move to a location that is far from the nearest neighbor, that is hard to do in an area settled on quarter-section tracts, with a house every half-mile or so along roads at one-mile intervals.

Local governments have an extremely difficult job to do in this situation. Rational officials recognize the value of the livestock industry to the entire state, and to their own communities. On the other hand, local officials recognize their duty to the citizens who want to preserve a good quality of life. Although the day-to-day business of government may have more to do with road maintenance than with disputes over land uses, the most fundamental role of government in our society is to balance competing interests and to provide a reasonable set of rules to protect all interests.

Finding balance here means planning for animal agriculture as a viable and acceptable part of the rural community. That involves addressing the reasonable expectations of residents that the location of livestock operations will be considered with the same care as the location of other business enterprises, while protecting the ability of livestock operators to continue to be an important part of the business of Minnesota.

The purpose of this handbook is to help local governments in Minnesota to do exactly that—to create an environment in which their citizens are comfortable living with livestock and in which responsible agricultural operators are comfortable doing business.

Chapter 1: Introduction

Chapter 1 describes the key factors that have contributed to the current political and policy debate over the location of livestock facilities: increases in farm size; specialization within the farm economy; and changes in rural development patterns. It also provides an overview of the important role that agriculture plays within the state economy.

Farm Size

From 1983 to 1993, average farm size in Minnesota increased by more than 14 percent, from 298 acres to 341 acres. Similar shifts have occurred in the animal sector of Minnesota's agricultural economy. Although there are still many smaller livestock operations, there has been a general increase in the number of larger operations in most livestock categories.

Exurban Development

Today's animal agricultural issues must also be considered in the context of changes in demographic and work patterns in rural areas. Although farm-based population figures have declined greatly over past decades, sprawling development patterns have blurred the line between "rural" and "urban" areas in some parts of the state.

Agricultural Specialization

Insight into the animal agriculture controversy can also be gained by listening to the terms that people use while engaged in the debate: "family farm," "factory farm," and "corporate farm," for example. Large livestock

operations are perceived by some as symbols of a future of increasingly larger farming operations. This greatly complicates the issue because some opposition to proposed livestock facilities has more to do with social change than land use impacts.

Economics

Agriculture remains a key ingredient in Minnesota's economy, and a dominant economic force in the state's many rural counties. Chapter 1 argues that in planning for the future of towns and counties, public officials and citizens should not overlook the vital economic role played by livestock and other forms of agriculture.

The Role of Government

Thrust into the middle of debates surrounding animal agriculture are local governments--in Minnesota, the counties and townships that have land use jurisdiction over rural areas. Long-time and recent residents are joining together and asking local government to protect their lifestyle from change.

Chapter 2: Planning for Animal Agriculture

Through long-range planning, Minnesota's counties can avoid some land use controversies and prepare for ones that cannot be avoided. At their best, plans can help prevent future land use conflicts from developing and help address present conflicts by providing self-implementing guidance for what otherwise might be difficult planning decisions. When that does not work, plans at least provide a method for weighing competing interests.

Recognizing the Need

Planning provides a vital foundation for dealing with tough land use issues like feedlot siting. It provides a forum for stepping back, taking a look at the forest as well as the trees and charting a course based on long-term goals. Whatever the motivation, however, one of the most important steps in the process of planning is the first one: recognizing the need and setting out to get it done.

After explaining the importance of long-range planning as a foundation for effectively dealing with the animal agriculture issue, Chapter 2 goes on to provide guidance to those Minnesota counties interested in preparing a plan. It begins by describing a range of general planning approaches that can be followed. It goes on to describe a common-sense strategy for preparing a plan.

Choosing the Approach

Choosing the appropriate planning approach is critical to the success of a plan and public support for it. Each involves different steps, different levels of required professional expertise, and different levels of citizen participation.

Trends-Driven. A trends-driven approach to planning simply projects current trends into the future and uses those as the basis for planning.

Opportunity-Driven. In an opportunity-driven planning process, a community assesses its future based on opportunities and constraints, rather than on simple projections of trends.

Issue-Driven. In an issue-driven planning process, a community identifies the critical issues facing it and focuses its planning efforts on those issues.

Goal-Driven. The goal-driven approach establishes long-range goals for the community, and allows those goals to guide the rest of the planning process.

Vision-Driven. Vision-driven plans focus on an over arching goal that controls the entire planning process.

Blended Approach. Most local plans are developed using some combination of planning approaches.

Organizing the Process

Before setting out to work on the plan there are a few organizational matters to consider; namely who oversees the process and who does the work?

Oversight

Someone or a group will need to assume an oversight role. Their responsibility will be to convene meetings, review information, provide policy direction and coordinate the process.

Legwork

The legwork of planning will likely fall to a combination of groups and individuals.

Volunteers

Local volunteers can have a key role to play in preparing rural area plans. In fact, including as many people as possible in the planning process is advisable.

Consultant

Even with the involvement of local officials and citizens, some counties or towns may need the services of outside consultants. The role of consultants can take several forms.

Developing the Plan

Assessing Existing Conditions

Most good plans start with an assessment of existing conditions. An existing conditions analysis generally includes at least the following elements:

Natural Environment. This assessment consists of an inventory and analysis of natural environmental features found within the county or town and the surrounding area, with a particular emphasis on the opportunities and constraints suggested by those features.

Human-Made Environment (Public Infrastructure). The presence of major roadways and the availability of public sewer and water service greatly influence an area's development potential.

Human-Made Environment—Private. Existing land use and development patterns are an extremely important determinant of future land use patterns. Moreover, the availability of private facilities such as railroad lines, truck terminals, grain elevators, sale barns, industrial parks, and even vacant industrial buildings also offer significant opportunities, while lack of such facilities may be a significant constraint on attracting or keeping some types of development in an area.

Population Characteristics. A region's overall population and its characteristics—age, education, employment—are critical influences on its future.

Economic Base. A county or town's current economic base has a profound

influence on its future. The industries and businesses now located in a county are likely to provide a large percentage of future employment. To the extent that new businesses come into an area, they are likely to be similar to or related to existing businesses.

Other Resources. There may be other unique factors that influence a region's future. The reputation of an area's public schools or the existence of nearby recreational opportunities, for example, can provide a springboard for growth or tourism-related development. These and other types of unique community resources should be included in the inventory of existing conditions.

Arriving at a Vision of the Future

This step of the planning process can be used as an opportunity to establish local residents' long-term vision of the future or to set general long-range goals for the county or town. It can also serve as the first opportunity to define a list of critical issues and concerns to be addressed in the plan.

Citizen participation and broad-based community involvement are critical features of any successful planning effort, especially at this point in the process.

Although some vision or goal-setting work can occur prior to or simultaneously with data-gathering and analysis, it will usually be helpful to have collected information before working to develop a vision for the future. Information on existing land use, environmental features, and economic factors can be used to educate and inform decision-makers, interest groups, and the public on the opportunities and constraints that will affect the future.

Developing Alternatives (Scenarios)

After completing the assessment of existing conditions, and garnering consensus about the county or town's long-range, shared vision, the next step is to develop different alternatives for getting there. These alternatives, sometimes referred to as scenarios, are really just a series of options or paths to the future.

Consolidating Alternatives into Plan

Ideally, the preferred plan will be consistent with and move the county or town closer to the vision established earlier in the process. Moreover, the selected plan should be consistent with other plans and strategies in effect throughout the county. If it is not, action will need to be taken to remedy such inconsistencies.

Types of Plans

A box on page II-10 describes several different types of plans: comprehensive plan; land use plan; capital improvements program; and strategic plan.

Putting the Plan in Black and White

A key step in the planning process, and one that is essential to implementation, is publishing the plan in an accessible format. A box on pages II-14 and II-15 describes approaches to accomplishing that.

Implementing the Plan

Once a plan has been adopted, no decisions related to growth, development, land use or public facility planning and budgeting issues should be made without examining whether such decisions would be consistent with the plan. Additionally, implementation tools should be developed and adopted to help ensure that the plan's goals are carried out in day-to-day activities. The most common plan implementation tools are the zoning ordinance, subdivision regulations and capital improvements programs.

Monitoring and Updating the Plan

Monitoring a plan's effectiveness is an important follow-up activity to the process of preparing it. Ideally, the plan will include a number of measurable objectives that will allow the county or town to track how much progress is being made toward its goals.

Chapter 3:

Legal Issues Involved in Rural Planning and Zoning Regulation

Chapter 3 discusses the legal issues involved in the regulation of animal agriculture.

Planning and Implementation Authority of Local Governments

The chapter begins with a general discussion of the legal principles that underlie any regulation of land use and then discusses some unique issues that arise in the regulation of agriculture.

This chapter provides general information on the state of the law only. Anyone proposing to act in this field should do so only with appropriate advice of counsel. Although the authors are confident that the principles used by counsel in advising clients who act in this area will be similar to those set out in this chapter, two areas of related law are changing particularly rapidly. Anyone dealing with the "takings" issue or with the issue of "preemption" of local authority by the state is likely to find that the law will have evolved further or even changed direction shortly after publication of this handbook.

Police Power

Local governments regulate the use and development of land under the police power, which is the right and duty to regulate private activity for the protection of the public health,

safety and welfare. Most valid local government regulations fall under the police power. Among those is zoning. Courts in Minnesota have broadly construed the notion of the police power to uphold local zoning and land use controls.

The apparent conflicts between the police power and property rights are discussed later in this chapter, but it is important to understand that "The right to use property as one wishes is subject to and limited by the proper exercise of police power." *City of St. Paul v. Carlone*, 419 N.W.2d 129 (Minn. Ct. App. 1988) (citing *McShane v. City of Faribault*, 292 N.W.2d 253 (Minn. 1980)).

Limits on the Police Power

Although the police power itself is broad, the general view is that the broadest form of the police power rests with state government. Local governments exercise the police power only in accordance with the terms of various constitutional provisions and "enabling acts."

Planning and Zoning in Minnesota

The Minnesota Legislature has separately authorized planning and zoning authority for townships, counties, municipalities and the Metropolitan Council in the Twin Cities metro area. In addition, there are separate provisions for regional planning. The scope of authority granted to municipalities, counties and townships differs somewhat. Nonetheless, there are similarities among the provisions, such as the requirement that all should be based on a comprehensive plan.

The basic nature of zoning for all three forms of local governments is similar. All contemplate the division of the jurisdiction into districts and the regulation of the uses to which land and

buildings may be put in each of those districts. In addition, the local governments can regulate within those districts the location, height, bulk, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces and the density and distribution of land uses.

Constitutional Limitations—

Takings and Others

Farmers and other landowners have responded to increased government regulation of land by arguing that some land use regulations amount to an unconstitutional taking. The “takings” issue is based on constitutional provisions adopted to address issues of eminent domain .

The U.S. Supreme Court initiated the current period of “takings” litigation in 1922, when it held squarely that excessive regulation might amount to a taking. Four years later, the Supreme Court upheld zoning as a valid form of regulation, explicitly finding that residential zoning as applied to land that an owner wished to use for industrial purposes did *not* amount to an unconstitutional taking.

The Supreme Court finally found a compromise by giving local government a choice. It concluded that, if a local regulation is found to be a taking, a local government ought to be able to choose between keeping the regulation in effect and buying the land, as though it had actually been condemned, or repealing the invalidated regulation and compensating the owner simply for the lost use of the property from the date of adoption of the regulation to the date of its repeal. Since that time, the Court has established several clear principles governing takings law. First, it has held that in determining whether there is a taking, one must consider the impact of the regulation on the entire property held by the owner, not on a

small part of it. The Court has also established some categorical rules for determining when an unconstitutional taking has occurred. It is quite clear, however, that, where the purpose of the regulation is to prevent a clear nuisance or otherwise to protect essential public health and safety values, a local government may impose significant restrictions on property. Case law in Minnesota is similar in many ways.

Evolution of Takings Law in the Minnesota Courts

Minnesota separately treats the cases of physical invasion by governmental activity and restriction of use by governmental regulation. The cases involving direct physical invasion by government are not discussed here. In a 1980 case, the court, for the first time, recognized a distinction between regulation “designed to effect a comprehensive plan,” where “reciprocal benefits and burdens accrue to all landowners from the planned and orderly development of land use” (the “arbitration function”), and regulation “for the sole benefit of a governmental enterprise” where “the burden of its activities falls on just a few individuals while the public as a whole receives the advantage of property rights for which it did not pay” (the “enterprise function”).

Although the Minnesota court has not typically used the phrase “substantive due process,” it has used similar criteria in resolving some major zoning cases. The court has also noted:

Our case law distinguishes between zoning matters which are legislative in nature (rezoning) and those which are quasi-judicial (variances and special use permits). 313 N.W.2d at 417-17.

Constitutional Protection of Rights through Due Process

The more typical use of the phrase “due process” is to refer to the fairness of the process itself. The basic concept of due process holds that one whose rights are to be affected by proposed government action ought to have: (1) **notice** of that proposed action; (2) the opportunity for a **fair hearing** on the matter; and (3) before an **unbiased tribunal**.

Issues of due process arise when individual rights are at stake, not when the government is acting in its more general, or legislative capacity. “When a municipal governing body adopts or amends a zoning ordinance its action will usually affect an open class of individuals, interests, or situations, so that the governing body is then acting in a legislative capacity.” *Sun Oil Co. v. Village of New Hope*, 300 Minn. 326, 220 N.W.2d 256 (Minn. 1974).

Unreasonable Delegation of the Police Power

The Minnesota Supreme Court has also held that “A municipal corporation may not condition restricted uses of property on the consent of private individuals.” *State ex re. Foster v. city of Minneapolis*, 255 Minn. 249, 97 N.W.2d 273 (1959).

Statutory Limitations on Authority—Preemption

In general, local governments have only the authority expressly granted them through state enabling legislation. One limitation on this power is “preemption.” In general terms, when a higher level of government has, within its constitutional and statutory authority, regulated a matter, it is said that the higher government level has “preempted” lower levels of government from regulating the same matter. The issue becomes complex, however, when federal or

state regulations do not fully cover a subject.

The Minnesota Supreme Court has set forth principles to be followed in determining whether the state has intended to preempt the field of legislation on a particular issue:

- (1) What is the “subject matter” that is to be regulated?
 - (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?
 - (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?
 - (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?
- 143 N.W.2d at 820.

Implied Limitations on Authority—Exclusion of Uses

One of the issues that may arise in the planning for and regulation of animal agriculture is the question of whether a particular community can exclude a particular use totally from its boundaries. The answer to that question is not clear. There are only two cases in Minnesota that address this issue in any way—one of which involving the permissibility of single-use zoning by a township—and neither resolves it in this context. Although the ultimate disposition of this issue under Minnesota law is subject to speculation, it is an important issue to consider. Any rational consideration of it must take place in the context of the vast geographic areas of most counties and of the preferred status given agricultural under Minnesota law.

Enforcement

Enforcement is a critical element in the success of any government regulation. Restrictions included in adopted ordinances and other regulations have usually received the sort of review necessary to ensure that they are reasonably enforceable. A condition developed in the heat of public protests at a particular meeting is much less likely to be an enforceable one.

Unique Aspects of Planning for and Regulating Agriculture

Historic Perspective

Zoning originally evolved primarily in urban and suburban areas, providing a management tool to separate sometimes incompatible uses from one another. Beginning in the 1950s, zoning in rural areas became increasingly common.

Part of the difficulty of addressing the issue of animal agriculture through planning and zoning is that many people still think of rural zoning as something that allows or even encourages the development of a variety of agricultural and residential uses in comfortable proximity to one another. In most cases, that is not a realistic scenario today.

Unique Status of Agriculture in Minnesota

Minnesota gives special legal protection to farmers and farming operations through several separate state laws. Two particularly important ones are the so-called “right-to-farm” and the Minnesota Agricultural Land Preservation Act. The state’s right-to-farm law provides that “agricultural operations” that have operated for two or more years and that continue to operate “according to generally accepted agricultural practices” are immune from most public and private nuisance actions.

The state’s Agricultural Land Preservation Act establishes state policies recognizing the importance of agricultural land and also provides a great deal of regulatory protection for agriculture, at least for lands included in “agricultural preserves.” Land in an agricultural preserve is more difficult to annex, and the ability of public agencies to condemn and use such lands for public projects is significantly restricted. The Metropolitan Agricultural Preserves Act provides similar protection for lands within the Twin Cities Metropolitan Area. Additionally, the State Agricultural Land and Conservation Policy provides some protection from state agency actions that would adversely affect agricultural land.

Zoning Authority and Agriculture

Like right-to-farm and agricultural preservation laws in other agricultural states, the unique status of agriculture under state law imposes significant limitations on the ability of local government to regulate agriculture through zoning and other local controls. Unlike some states, however, Minnesota does not provide a blanket exemption from zoning for agriculture.

The Takings Issue and Agriculture

Property owners in rural areas often have great concerns about the interference of government regulation with their property rights. In that context, they often cite the takings issue as a basis for objecting to local regulation. Farm owners on the fringes of urban areas sometimes challenge exclusive agricultural zoning on the ground that it interferes with their right to sell their land for development. Although there is not much Minnesota law on this subject, courts elsewhere have generally upheld exclusive agricultural zoning in the face of “takings” challenges.

Preemption and the Regulation of Agriculture

The issue of preemption seems like quite an abstract one, until it is applied to a particular set of facts and circumstances. The legal issue that arises in this context is the question of whether the state's direct regulation of water quality and other environmental impacts through its permitting system for such facilities preempts local efforts to regulate such matters.

Due to MPCA's role in regulating the environmental impacts of feedlots, the question of whether local governments can address environmental issues with their land use regulations, however, is open to significant question. Given the level of interest in this issue, it seems likely that the Supreme Court will issue a determinative ruling on the issue at some time in the next several years.

Enforcement Issues

Enforceability of zoning provisions in rural areas is a particular concern. Townships and counties typically have limited personnel for any function and may have no one assigned full-time to enforcement duties.

This chapter also includes sidebar discussions of two recent Minnesota cases discussing the preemption issues and a complete table of authorities cited.

Chapter 4:

Implementation Options

Chapter 4, the final chapter, addresses regulatory strategies for implementing animal agriculture and land use planning objectives.

Separation vs. Mitigation

The chapter begins by describing the differences between separation-based land use control strategies and mitigation-based approaches.

Separation-based land use control strategies

are based on the notion that spatial segregation is the best method of ensuring that different land uses do not have an adverse effect on one another. Traditional zoning districts and use-specific separation standards are presented as examples of separation-based approaches. Use-specific separation standards are those that require minimum distances between specified uses—between feedlots and residences, for example. A box on page IV-2 discusses the role of “intensity” in planning for and regulating land uses.

Mitigation-based strategies, on the other hand, are based on the idea that it is not the type of use or its location that matters, but rather how well it handles its impacts on surrounding areas. The earliest mitigation-based regulations came in the form of industrial performance standards, aimed at controlling dust, smoke and other emissions of industry. Performance zoning takes this concept and applies it to land uses in general. Advocates claim that such an approach offers communities a very flexible, effective and fair tool for addressing land use compatibility issues. For a variety of reasons, however, pure performance-based land use control systems remain rare, although it is not uncommon to find individual performance-based provisions within local zoning ordinances. It is also common to find industrial performance standards in local ordinances.

As a result of the shortcomings of pure separation and pure mitigation-based approaches, most modern land development ordinances are comprised of a combination of separation and mitigation-based controls. Zoning districts, with their focus on the grouping together of uses with similar characteristics, continue to form the backbone of most ordinances. Increasingly though, separation-based regulations are being supplemented, if not supplanted, by flexible

regulatory strategies focusing on how a use operates in its setting, not necessarily what the use is called.

Regulatory Options

After presenting the theoretical underpinnings of potential control strategies, the chapter goes on to present specific regulatory options.

Zoning Districts

Agricultural zoning districts, although commonly used for addressing farmland preservation, are not widely used to address animal agriculture because they do not focus on the potential differences among different types of agricultural land uses. Chapter 4 suggests that creating two or more zoning districts aimed at different types of agriculture—something local governments have long done with business and manufacturing uses—is an idea that should receive greater attention.

The idea behind the multi-level agricultural zoning is that, through sound land use planning, it may be possible to identify areas that are appropriate for different types of agricultural activities. Analysis of residential development patterns, soil conditions, environmental features, drainage patterns, prevailing winds, aesthetic and other pertinent considerations may enable jurisdictions to develop a long-term land use plan that specifically addresses crop and animal agriculture. Of course, such a plan should also analyze and take into account the role of all forms of agriculture within the area economy and the substantial investment that agricultural activities represent for their owners.

Conditional Uses

Some jurisdictions use conditional use requirements as a means of regulating animal agriculture and other types of uses. Although this approach offers the opportunity to review the

particular issues involved with a particular proposal, it has the unfortunate side effect of forcing a public hearing on every controversial land use proposal. Further, the public hearing approach to facility siting issues can become an excuse for not facing up to the complex issues involved in planning for agricultural and setting reasonable standards.

Use-Specific Standards

Regardless of whether uses are permitted by-right or conditionally, towns and counties may want to impose special conditions on some types of development. By devising objective standards, the number of uses classified as conditional can be kept to a minimum. Clear standards are also easier to enforce.

Performance Standards

Performance standards are a form of regulation based upon objective measurements of a use's impacts on the environment and on nearby uses of land. Although the concept is sound in theory, there are a number of technical problems in developing workable performance standards for a use like animal agriculture.

Nonconformities

The adoption of new zoning standards governing animal agriculture may result in the creation of "nonconformities." In zoning parlance, nonconformities are lots, buildings or uses that were legal when established but that violate one or more subsequently adopted zoning standards. Regulations governing nonconformities are a vital component of zoning ordinances. Sample ordinance provisions are also presented.

Definitions

Precise definitions are essential in crafting regulations that can be understood, administered and enforced. The sample ordinance includes definitions.

Right-To-Farm

Minnesota has a state right-to-farm law that provides broad protection against nuisance suits. Some towns and counties have chosen to enact their own declarations of the right-to-farm

Sample Regulations

Pages IV-11 to IV-25 set out sample ordinance provisions for regulating and protecting all forms of agriculture, with an emphasis on animal agriculture. Provisions include:

Chapter 101, Zoning Districts

Chapter 102, Development Review
Procedures

Chapter 103, Land Use Standards

Chapter 104, Nonconformities

Chapter 105, Definitions

There is a separate model “right-to-farm” ordinance that a local government might use to supplement state law. It is supplemented by a “right-to-farm” disclosure statement designed to be used in real estate transactions in agricultural areas.

Appendix A:

Planning Approaches

Appendix A provides additional detail about several planning approaches described in Chapter 2 that local government can use in planning for agriculture or for other purposes.

Appendix B:

Information and Technical Support

Appendix B provides an annotated list of sources of additional information and technical support, including regional, state, federal and private agencies. All listings include phone numbers. Most include addresses and fax numbers, and several also include E-mail addresses for those who use electronic communication. Each listing includes a brief description of available resources, and several tables provide cross-references from types of information needed to the resource agencies that provide it.

Appendix C:

Bibliography

Appendix C includes an extensive bibliography of reference materials on planning, agricultural land preservation, feedlot issues and trends, capital improvements, livestock, economic importance of agriculture and general materials related to the handbook.

Chapter 1:

Introduction

Livestock have always been part of rural America, from the earliest New England farms to the mammoth Western ranches that marked the settlement of the frontier. A classic early battle over livestock in the West was waged over sheep and cattle on the open range. The question then was not whether livestock ought to be there, but rather which livestock were acceptable.

Many people in the United States today envision farming in Grandma Moses' terms—a quarter-section of land with a small truck garden, a field of corn, a field of beans and a pasture with Holsteins grazing peacefully. Combine that picture with a small town in the background and it creates what may be the most common conception of life in the United States outside of cities.

This vision of farm life was never entirely accurate. Like many artistic representations, Grandma Moses' idyllic view was also idealized. Missing from the paintings were the long hours of hard work, the years of failed crops, the odors of animals, and other realities of farm life.

Factors Shaping the Debate Over Livestock

Three changes in rural Minnesota (and in other states) have contributed to the current political and policy debate over the location of livestock facilities.

First, the 160-acre family homestead is no longer the predominant farm size, due in part to mechanization. Farming has become more mechanized and thus more capital-intensive. That has both enabled and forced an increase in farm size.

Second, farming has become specialized, primarily due to market forces. For animal agriculture this has meant instead of a few dozen animals on most farms, there are now many farms with few if any animals and some operations with several dozens or even hundreds of head of cattle or swine.

Third, rural development has changed. The flight to the suburbs and rural areas began in earnest after World War II. It was stimulated in part by the search for this idealized American lifestyle, but there were other forces behind it as well. Among those were the pent-up demand for housing after the war, the sudden availability of a new federal mortgage insurance program to help first-time homebuyers, and the construction of the predecessors of the interstate highway system to provide rapid access to outlying areas. With this dispersed growth came the beginnings of land use conflicts in suburban and rural areas.

When the people in town were mostly farmers or merchants who made a living serving farmers, the differences between rural activities and more urban ones rarely turned into serious conflicts. Everyone recognized that the business of farming was really the business of the town. They typically viewed the activities on the farm as being no more a problem than the inconvenience created by a large truck temporarily blocking a street while it unloaded goods at a local store. Both were clearly serving the community, and the inconveniences of both were simply a factor of community life.

As urban dwellers fled to the suburbs and rural areas, however, the political nature of the relationship changed. The person living in the

house on the edge or outside of town now might be a shift worker in an electronics plant or a teacher in an urban school or a clerk in a local boutique. Although all of those people depend on the farm economy for food, and the fortunes of farmers affect the economic well-being of entire communities, the practical and emotional connections are less direct. The sense of disconnection from farm life and the farm economy tends to make residents less tolerant of the realities of living near farming operations. Nonfarming populations have moved even further from city centers into rural Minnesota. Some of these new commuters have purchased farm houses on former homesteads. Others have moved into large lots divided from farmland. Their expectations of peace and quiet are those of city dwellers, not those of traditional rural people.

Agriculture and Rural Development Trends

Trends in agriculture and rural development provide a partial context for understanding the debate over animal agriculture in Minnesota.

Farm Size

Despite a general shift in population away from farms, total farm production has remained at high levels. Further, in most areas, the total acreage in production has remained relatively stable. The reasons are complex, ranging from technical factors, such as mechanization, to social ones, such as the increased exposure to the outside world that rural people received through participation in two world wars and the revolution in communications technology.

The result of these many forces is that the number of farms in Minnesota has dwindled, but average farm sizes have increased. From 1983 to 1993, the number of farms in Minnesota decreased significantly, from 102,000 to 82,000. The land area in farms also decreased from 30.4 million acres to 29.7 million acres. During the same ten-year period, average farm size increased from 298 acres to 341 acres.

There have been similar shifts in the animal sector of Minnesota's agricultural economy. Although there are still a significant number of smaller livestock operations, there has been a general increase in the number of larger operations in most livestock categories. This shows a trend toward larger animal confinement operations.

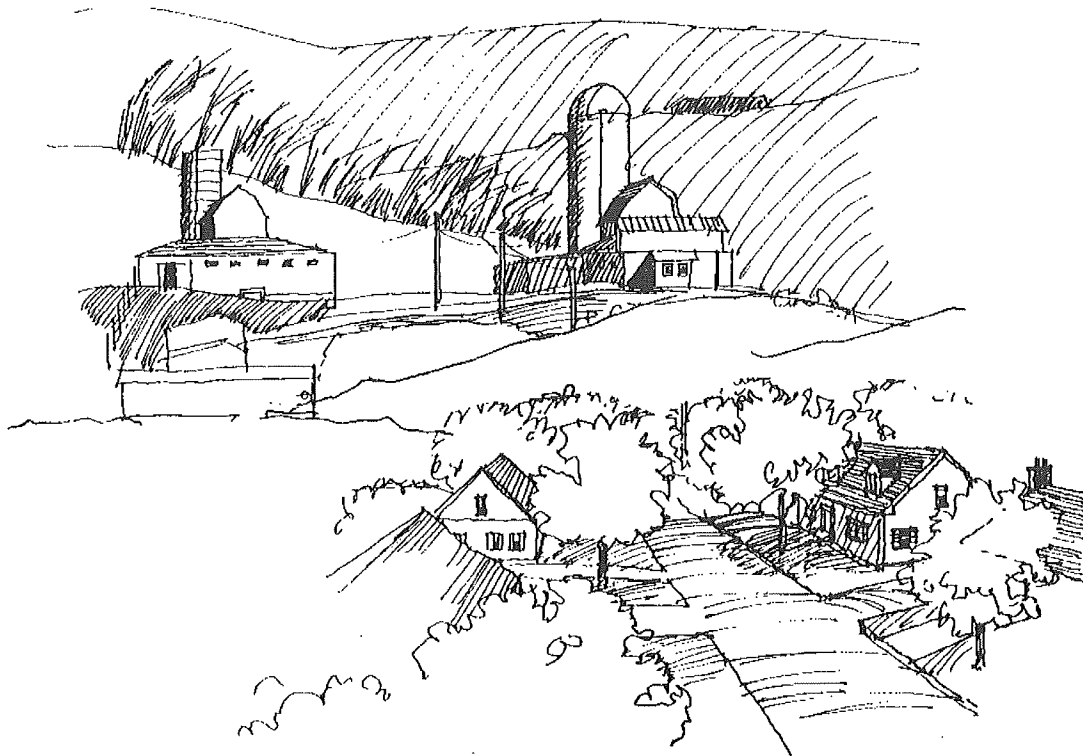
Exurban Development

Today's animal agricultural issues must also be considered in the context of changes in demographic and work patterns in rural areas.

Population has generally shifted from rural areas to urban areas in the United States over the last several decades. Further, part of the remaining rural population works in cities and towns rather than on farms. Over 75 percent of the U.S. population was "urban" in 1990, an increase of 12 percent in ten years. The 1990 percentage of rural population in the nation was 24.8 percent. There was a rural population change from 1980 to 1990 of 3.6 percent. By 1990, only 1.6 percent of the U.S. population remained on farms.

Agricultural Specialization

Tensions over the changing nature of farming appear to be driving part of the debate over



Where the city meets the farm, land use issues become more complex and planning becomes critical.

animal agriculture. Some of these concerns relate to trends toward increasing farm size, while others relate to who owns farms. Labels that are used in this debate are “family farm,” “factory farm,” and “corporate farm.” In terms of animal agriculture, large livestock operations are perceived by some as symbols of a future of increasingly larger farming operations. This complicates the debate because some of the opposition to proposed livestock facilities may have little to do with their impacts on surrounding land uses or the environment.

Economics

Like the rest of the United States, Minnesota is an increasingly urban state. The Mall of America, a major national tourist attraction, is symbolic of the shift from a rural lifestyle to an urban and suburban one. Agriculture, however, remains a key ingredient in the state’s economy

and a dominant economic force in the state’s many rural counties.

As public officials and citizens work together to plan for their regions, it is important to recognize the vital role of livestock and other forms of agriculture in the state’s economy. By all measures, agriculture and its directly related industries fuel a large percentage of the state’s economic engine. According to research conducted by the Minnesota Department of Agriculture, the agriculture and food industry is the state’s largest exporter, accounting for over \$12 billion (22 percent) of the state’s \$55 billion export sector in 1990. Outside of the Metro Area, export activity generated by the food and agriculture industry plays an even larger role, accounting for more than 40 percent of export sales.

The export sector produces products for markets outside of Minnesota and is generally

regarded as the base of any economy. Revenue generated by the export sector circulates through towns and counties, creating income and jobs. When agriculture is measured in terms of direct, value-added, income and employment generated by exports, it again ranks near the top of the state's various industries. Agriculture is second only to the high-tech manufacturing sector in generating income and employment at the local level.

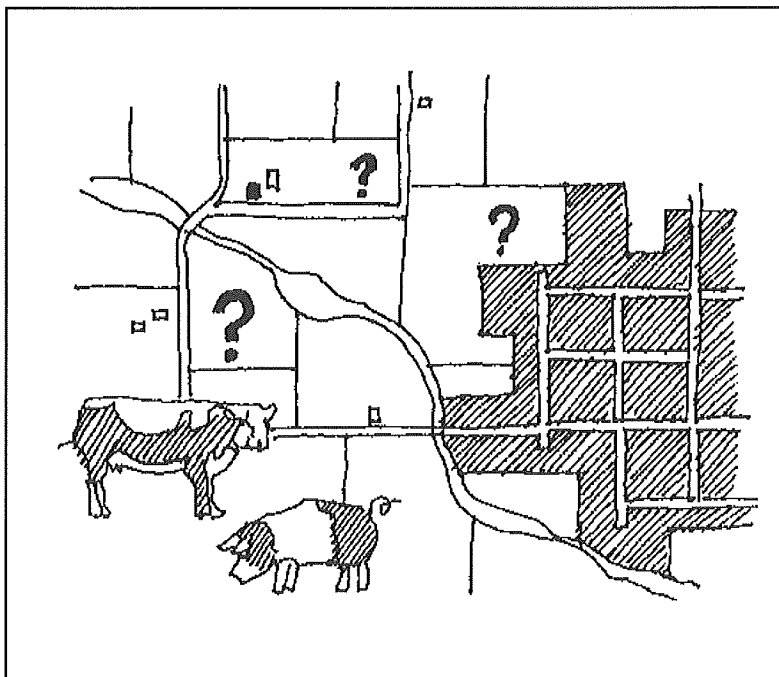
combined with the economic impacts from other forms of livestock production, provide a keen illustration of the economic role of animal agriculture in Minnesota.

The Role of Government

Thrust into the middle of debates surrounding animal agriculture are local governments—in Minnesota, the counties and townships that have land use jurisdiction over rural areas.

Long-time and recent residents are joining together and asking local government to protect their lifestyles from change. In doing so, they are little different from their neighbors in town who band together to oppose a new convenience store on the corner or a discount store on the entrance road to their neighborhood. In asking for protection, they cite entirely rational concerns about odor, noise, traffic and possible water problems from runoff.

On the other side, of course, are livestock operators. They provide a key element in food production in the United States. They cannot operate in cities, because of land costs and other concerns. The only place that they can operate is in rural



Homeless livestock? Good planning will provide locations for livestock operations.

Livestock production and related food-processing activities represent a substantial portion of the overall food and agriculture sector. By the early 1990s, for example, pork production and processing alone were responsible for \$2.6 billion in direct and indirect economic impacts. These sorts of figures, when

areas. Although they might welcome the opportunity to move to a location that is far from the nearest neighbor, that is hard to do in an area that was settled on quarter-section tracts, with a house every half-mile or so along roads at one-mile intervals. There is no doubt that part of the reason that some livestock

operators are relocating their operations to states such as Kansas and Colorado is that those areas were settled on larger tracts, leaving larger clearances between neighbors and fewer neighbors within a given distance of a proposed operation. Fewer neighbors means less potential opposition.

Local government has a difficult job to do in this situation. Rational county and township officials recognize the value of the livestock industry to the entire state, as well as to their own communities. On the other hand, rational county and township officials recognize their duty to the citizens who want to preserve a good quality of life. Although the day-to-day business of government may have more to do with road maintenance than with disputes over land uses, the most fundamental role of government in our society is to balance competing interests and to provide a reasonable set of rules to protect all interests.

Finding balance in this case means planning for animal agriculture as a viable and acceptable part of the rural community. That involves addressing the reasonable expectations of residents that the location of livestock operations will be considered with the same care as the location of other business enterprises, while protecting the ability of livestock operators to continue to be an important part of the business of Minnesota.

The purpose of this handbook is to help local governments in Minnesota to do exactly that—to create an environment in which their citizens are comfortable living with livestock and in which responsible agricultural operators are comfortable doing business. The following chapter, Chapter 2, lays the groundwork by explaining the need for long-range planning as a means of effectively dealing with the animal

agriculture issue. Besides arguing for the importance of planning, the chapter describes a number of planning approaches that can be used and presents a common-sense guide to preparing a plan. Chapter 3 describes the legal framework in Minnesota for dealing with agriculture, rural land uses, and livestock issues. In Chapter 4, the handbook goes on to describe zoning techniques that can and have been used to implement animal agriculture planning strategies.

Chapter 2:

Planning for Animal Agriculture

Land use conflicts can create enormous amounts of controversy. Historically, the definitive breeding ground for such conflicts has been the single-family residential neighborhood. Imagine, for example, the developer of an apartment complex in such an area or the nonprofit group that is attempting to renovate an old residence as a halfway house for substance abusers. The actors involved in the debate over feedlots and livestock operations may be different and the physical landscape that provides the context may look different, but the issue is still one of land use. Any approach to seeking balance among different land uses and different activities should be based on planning. So it is with agriculture in general and animal agriculture in particular.

Recognizing the Need

Recognizing the need for a plan is the critical first step of any planning process. Planning is an orderly, thoughtful, proactive way of preparing for the future. Prominent planner Bruce McClendon has referred to planning and the ways that plans are put into effect as methods of mastering change. Regions and communities do change over time, and planning offers them an opportunity to manage that change.

Planning also underlies rational public policy-making. As anyone who has held an elected or appointed position within government knows, it is extremely difficult to make a calm and rational decision in an emotionally-contested case. Emotions can run particularly high when local economic needs clash with a citizen group's or neighborhood's apparent desires.

When a new facility, such as a truck terminal, manufacturing plant, or livestock operation is proposed, there are likely to be positive

economic benefits for the county or town, but there may also be concerns about the impacts of the project on the neighborhood or area in which it is to be located. If decision-makers try to weigh these types of competing interests in the absence of established policy, they are unlikely to reach a rational decision. In many cases, it is like comparing apples and horses (not oranges), because the issues raised by any one individual or group often appear to have little to do with the economic issues of the larger community. Both are important, but the two are so unrelated that it is difficult to strike a balance between them.

Through planning, local governments can establish long-range policies to direct their day-to-day actions and to provide guidance in dealing with difficult decisions. Counties and towns in Minnesota and elsewhere have long used planning to accomplish just such purposes. Through planning and zoning policies they have decided that some businesses—banks and retail stores, for example—belong in the downtown area while others, like auto body shops, do not. They have reached a decision that some types of businesses—offices, perhaps—are acceptable home occupations within residential areas, while most other businesses are not compatible with the residential character of such settings. And they have decided they want to encourage uses that are important to the region's economic well-being: the industrial park, the grain elevator, and the animal confinement facility.

Those types of plans and the community values they reflect become law through the zoning map and zoning ordinance, and they guide public officials and private citizens in making decisions. The zoning map and ordi-

nance tell the prospective body shop operator that the business cannot be located downtown and the hair stylist that such a business cannot be conducted at home. The map and ordinance also tell neighbors in the residential area that the only businesses that will be allowed in their areas are professional offices. Finally, they show downtown merchants that retailers, rather than manufacturers, will be allowed downtown. All of this adds up to predictability for existing residents and for those interested in developing a new use in the area. In essence, the plan provides early notification of the county or town's desires regarding land use relationships.

The predictability of the zoning map and ordinance can help to ward-off land use controversies before they become controversies. In those cases where a decision regarding a land use comes before a planning commission or governing body, the zoning map and ordinance provide policy guidance in reaching a decision. In the absence of such guidance, public officials are back to comparing apples and horses—making impossible choices. The circumstances remind one of the old lawyer's saying that "hard cases make bad law."

Through long-range planning, Minnesota's counties can avoid some land use controversies and prepare for ones that cannot be avoided. At

their best, plans can help prevent future land use controversies from developing and help address present conflicts by providing self-implementing guidance for what otherwise might be difficult planning decisions. When

that does not work, plans at least provide a method for weighing competing interests.

Planning provides a vital foundation for dealing with tough land use issues like feedlot siting. It provides a forum for stepping back, taking a look at the forest as well as the trees and charting a course based on long-term goals. Regardless of the motivation, however, one of the most important steps in the process of planning is the first one: recognizing the need and setting out to get it done.

This chapter is intended to provide guidance to those Minnesota counties interested in preparing a plan. It begins by describing a range of general

planning approaches that can be followed based on a county's resources and specific needs. Following these brief descriptions (each approach is described in greater detail at the end of the chapter) the chapter goes on to describe a general strategy for preparing a plan. It is hoped that the chapter can be used by those who are about to embark on their first planning effort as well as by those counties that simply need to update and amend an existing plan to better meet their long-range needs.

At their best, plans can help prevent future land use problems from developing and help address present conflicts by providing self-implementing guidance for what otherwise might be difficult planning decisions. When that does not work, plans at least provide a method for weighing competing interests.



Developing a workable plan requires significant community participation.

Choosing the Approach

Choosing the appropriate planning approach is critical to the success of a plan and public support for it. There are a variety of methods that can be used, the most common of which are briefly described below (please refer to Appendix A for greater detail). Each involves different steps, different levels of required professional expertise, and different levels of citizen participation.

Trends-Driven. A trends-driven approach to planning simply projects current trends into the future and uses those as the basis for planning. This is a relatively technical and not particularly participatory approach. Because trends are so likely to change, it is not the ideal process to form the core of a community planning process. It can, however, provide a useful point of reference for other planning approaches.

Opportunity-Driven. In an opportunity-driven planning process, a community assesses its future based on opportunities and constraints,

rather than on simple projections of trends.

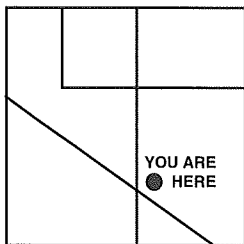
Typically conducted as a fairly technical exercise, opportunity-driven planning is not a particularly participatory process. It is best used in areas where natural and human-made opportunities/constraints are the driving issues.

Issue-Driven. In an issue-driven planning process, a community identifies the critical issues facing it and focuses its planning efforts on those issues. This is a simple and practical approach to planning that can be broadly participatory. It is typically very results-oriented.

Goal-Driven. This is the classic approach to planning. It establishes long-range goals for the community, and those guide the rest of the planning process. Establishing long-range goals is often a complex process, however, sometimes requiring sophisticated management. Public participation in this process is very important but sometimes complicated.

Vision-Driven. Although the term visioning is now sometimes used loosely to refer to a goal-

setting process, a true vision is an over-arching goal that controls the entire process. True visions generally arise from within a community through strong leadership (which is often informal leadership). A plan to fulfill a vision can be one of the most exciting kinds of plans to develop. It is difficult to use a vision-driven planning process to extract a vision where one does not exist, however.



Without knowing where one is starting, it is impossible to figure out how to get anywhere, even with a map.

Blended Approach. Most local plans are developed using some combination of planning approaches. Sometimes separating them, as done above, tends to oversimplify matters. On the other hand, simplification makes them easier to explain and understand. In preparing a plan, counties or towns should feel free to blend one or more approaches to best meet unique local needs.

Organizing the Process

Before actually setting out to work on the plan there are a few organizational matters to consider; namely who oversees the process and who does the work?

Oversight

Typically, the planning commission, which serves in an advisory capacity to the governing body (the board of county commissioners) will assume an oversight role in the plan preparation process. Sometimes a joint planning committee comprised of county commissioners and planning commission members will be set up for this purpose. Occasionally, special planning advisory groups, comprised exclusively or primarily of citizen members, are formed to oversee the planning process.

Whomever the board appoints to serve as the advisory group, their responsibility will be to convene meetings, review information, provide policy direction and coordinate the process. This group's role is advisory only. Ultimately, they will be recommending a plan to the board for adoption.

Legwork

The legwork of planning will likely fall to a combination of groups and individuals. Certainly, county staff can play a vital role in the planning effort. Staff members will likely have knowledge of and ready access to key information sources. Moreover, they are often well-equipped to deal with logistical and organizational details, as well as technical questions that may arise.

Volunteers

Local volunteers also have a key role to play in preparing rural area plans. In fact, it is advisable to include as many people as possible in the planning process. Involving a broad cross-section of the county or town helps ensure that the plan presents a balanced approach, and therefore that it can be adopted. With volunteer citizen involvement, the work of preparing the plan can be spread out, which will be particularly important in those counties that are not in a position to devote substantial staff time to the process.

Consultant

Even with the involvement of local officials and citizens, some counties or towns, particularly those unable to devote at least part-time staff support, may need the services of outside

consultants. The role of consultants in the planning process can take several forms. Some jurisdictions have hired consultants to do nearly all of the technical work, while some get outside help only to perform discrete tasks like data collection and technical analysis. Others have solicited assistance in facilitating meetings and in helping to ensure open and productive dialogues among various interest groups and citizens.

Developing the Plan

Assessing Existing Conditions

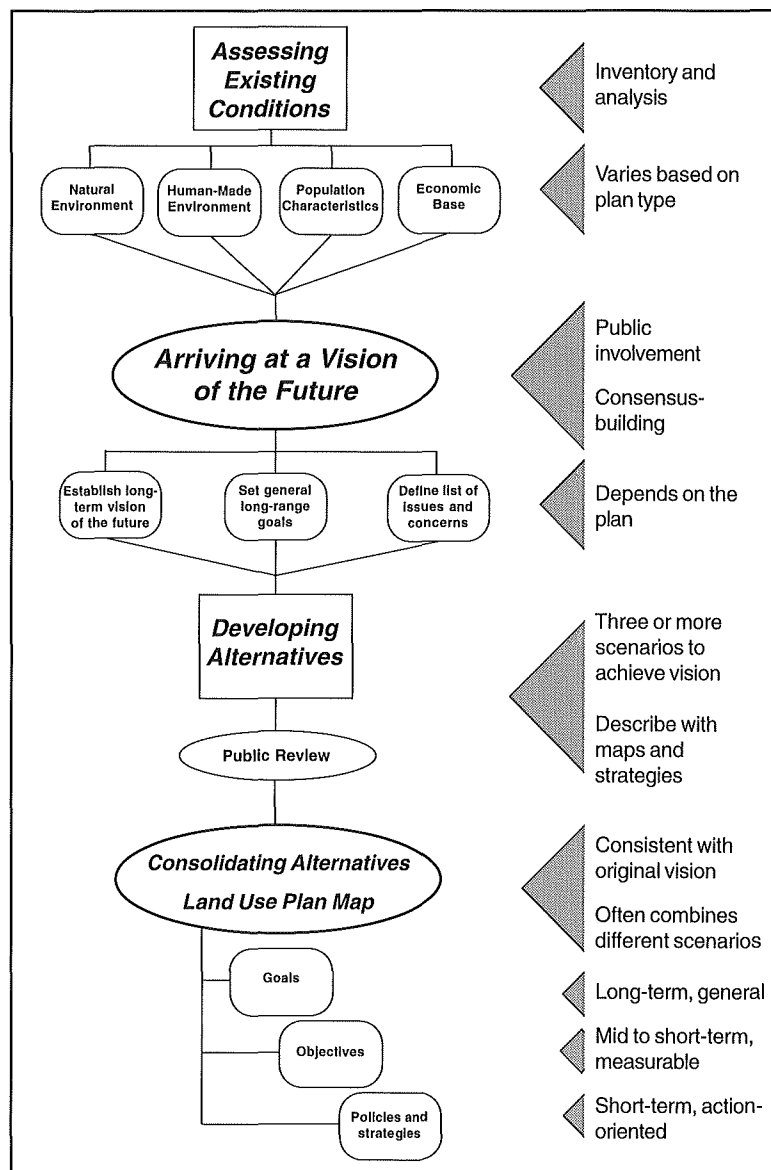
Most approaches to community planning start from the present. It is essential to know the current status of a county or town before trying to plan for its future. Knowing what and where the community is now is as important as the little star with the “you are here” note on a directory map—without knowing where one is starting, it is impossible to figure out how to get anywhere, even with a map.

In that respect, planning for a county or town is quite different from planning for a new business, for a wedding, or for a new military campaign. In planning for something entirely new, one starts with a clean slate. In contrast, much of the future of a community is created by the reality of its present. A college town will consider the future of the college in planning the future of the town. A community with high unemployment due to the closure of a manufacturing plant will plan differently than will a community that has a shortage of workers. Rural counties in Minnesota will undoubtedly want to develop plans around a future that includes agriculture, and possibly animal

agriculture in particular.

Thus, most good plans start with an assessment of existing conditions. An existing

Developing a Plan



Soils maps—particularly when used in conjunction with tables of soil suitability found in soils surveys—yield a great deal of useful information on agricultural land productivity and on opportunities and constraints for other types of development. One good way to convey soils information is to create a table with soil characteristics converted to suitability classifications (agricultural productivity, on-site sewage disposal, construction, etc.). This table is from the Mower County plan.

SOILS CHARACTERISTICS			LAND USE SUITABILITY				
Association (% County)	Drainage Character	Relief	Building Development	Septic Systems	Sanitary Landfills	Sewage Lagoons	CER Rating
Marshan Wauke (12%) Hayfield	Poor Well Well	Little	Severe Slight/Moderate Slight/Moderate	Severe Severe Severe	Severe Severe Severe	Severe Severe Severe	85 65-75 65
Rossfield Taopi (2%) Faxon	Well Well Poor	20-75'	Slight Moderate Severe	Slight Moderate Severe	Severe Severe Severe	Severe Severe Severe	74-80 55-65 80
Udolpho Schley (14%) Clyde	Poor Somewhat Poor Poor	10'	Severe Severe Severe	Severe Severe Severe	Severe Severe Severe	Severe Severe Severe	60 70 80
Sargent Brownsdale (4%)	Somewhat Poor Poor	30'	Severe Severe	Severe Severe	Severe Severe	Slight Severe	60 75
Tripoli Oran (55%) Readlyn	Poor Somewhat Poor Somewhat Poor	20-50'	Severe Moderate/Severe Moderate/Severe	Severe Severe Severe	Severe Severe Severe	Severe Severe Severe	82 75 82
Clyde Floyd (9%) Racine	Poor Somewhat Poor Well	20-40'	Severe Severe Slight	Severe Severe Slight	Severe Severe Slight	Severe Severe Moderate	80 80 70-82
Blooming Max Creek (4%) Havana	Well Poor Poor	Little	Moderate Severe Severe	Slight Severe Severe	Slight Severe Severe	Moderate Severe Severe	80-90 85 75

conditions analysis generally includes at least the following elements:

- Natural Environment
- Human-made Environment
- Population Characteristics
- Economic Base

These elements are described below, with suggestions for the types of information to collect, how the information should be presented, and where it can be obtained.

Natural Environment. This assessment consists of an inventory and analysis of natural

environmental features found within the county or town and the surrounding area, with a particular emphasis on the opportunities and constraints suggested by those features. Floodplains, for example, are generally considered a development constraint. Other environmental resources may represent a constraint and an opportunity. Sandy soils, for instance, may be excellent for growing potatoes but too permeable for on-site sewage disposal. The very simplest form of opportunities and constraints assessment can, in fact, be based on a careful interpretation of the soil surveys that are available throughout Minnesota.

Information to Collect. An assessment of the natural environment should be based on an inventory of environmental features. As is true of nearly all of the existing conditions assessments, the kinds of information that should be included in the inventory depend on (1) the type of plan being prepared and (2) the nature of the community for whom the plan is being prepared. Environmental inventories typically include information on several of the following features:

- Floodplains
- Wetlands
- Surface Water and Watersheds
- Ground Water Supplies
- Soils
- Vegetation

How to Present the Information. The information collected as part of the environmental assessment should be presented on maps and explained in accompanying tables and text.

Where to Get the Information.

- USGS Maps
- Soil Surveys
- Soil Conservation Service Offices
- County Extension Office
- Minnesota Department of Natural Resources
- Land Management Information Center (Office of Strategic and Long-Range Planning)
- Field Surveys

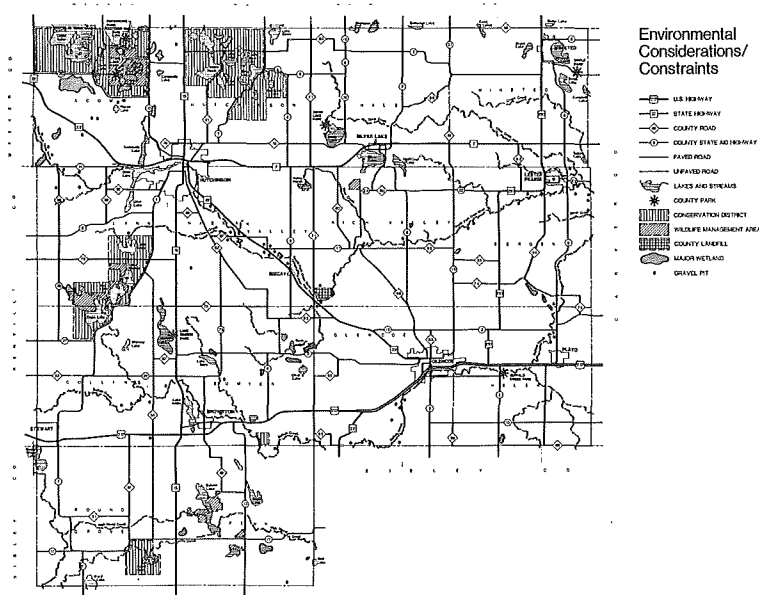
Human-Made Environment—Public (Infrastructure). The presence of major roadways and the availability of public sewer

and water service greatly influence an area's development potential. Undeveloped portions of a region served, or proposed to be served, by major roadways, public water, and sewer are likely areas of future nonfarm growth. Knowing where future nonfarm growth is likely to occur is helpful in planning where future animal agriculture should and should not be located.

Information to Collect. An assessment of the human-made environment should be based on an inventory of existing and planned public facilities. Again, the type of information that should be collected depends on the type of plan and the nature of the county or town. Assessments of public facilities nearly always include information on transportation, water, and sewer facilities. The following types of public facilities and services might also be assessed:

- Drainage
- Fire and Public Safety
- Emergency Medical
- Schools
- Parks and Recreation
- Libraries and Public Buildings
- Solid Waste

How to Present the Information. The information collected as part of the infrastructure assessment should be presented on maps and explained in accompanying tables and text. In the case of water and sewer service, for example, a map showing existing and proposed service areas could be prepared to visually depict potential growth opportunities. This map data could be



This environmental resources inventory map, from the McLeod County *Comprehensive Land-Use Plan*, shows the location of wetlands, surface waters, wildlife habitats and other features. Such a map goes a long way toward defining environmental constraints to growth.

accompanied by tables and text discussing capacity issues and estimates of when planned improvements are likely to become available.

Where to Get the Information.

- Comprehensive Plans
- Utility Master Plans
- Department of Transportation
- Capital Improvement Programs
- Local Public Works Departments
- Field Surveys

Human-made Environment—Private.

Existing land-use and development patterns are an extremely important determinant of future land use patterns. Moreover, the availability of private facilities such as railroad lines, truck terminals, grain elevators, sale barns, industrial parks, and even vacant industrial buildings also offer significant opportunities, while lack of such facilities may be a significant constraint

on attracting or keeping some types of development in an area.

Information to Collect. An assessment of land use patterns and other features in the human-made private environment should be based on a visual inventory of the community. For the purposes of preparing a county plan it is not necessary to collect detailed land use data for the incorporated areas. It would be a good idea, however, to collect at least general land use and development trend information for areas just inside the corporate limits of cities and towns. This type of information will yield valuable insights into future geographic growth trends. While conducting the land use inventory, land development and construction activity should be noted; it will come in handy later on as you think about where growth seems to be moving.

The following list of land use types should provide an ample level of detail for the land use inventory:

- Residential, Single-Family
- Residential, Duplex
- Residential, Multi-Family (3+ units in same building)
- Commercial (retail, wholesale, service and office)
- Warehouse (warehouse and storage)
- Industrial (manufacturing, processing, fabricating, etc.,)
- Civic/Institutional (school, hospital, church, etc.,)
- Agricultural, Crop Production (note type of crop)

- Agricultural, Animal Production (note feedlots, livestock, dairy and poultry)
- Agricultural Support (Commercial and Industrial)
- Forest Land
- Vacant/Undeveloped

How to Present the Information. The information collected as part of the land use and human-made environment assessment should be presented on maps and explained in accompanying tables and text. A table showing existing acreage devoted to different land uses is an excellent supplement to the map. If historical information on land use and other resources in the human-made environment is available, comparing that data with the existing inventory can provide a keen illustration of local trends.

Where to Get the Information.

- Aerial Photography
- Land Management Information Center
- Field Surveys
- Assessor's Office

Population Characteristics. A region's overall population and its characteristics—age, education, employment—are critical influences on its future. A county with a well-trained labor force and relatively high unemployment has many opportunities that are simply not available to a county with a poorly-educated labor force or with one that is fully employed. Similarly, historical population trends offer at least some insight into the likely pace of future growth. In addition to an analysis of existing conditions and past trends, many plans need to

184 Housing Units * 175 Households *	160 HU 147 HH	104 HU 93 HH	111 HU 108 HH	175 HU 171 HH
UDOLPHO 3.84/2.78 PPH 1960/1990	WALTHAM 3.68/2.66 PPH	SARGEANT 4.23/2.91 PPH	PLEASANT VALLEY 4.16/2.70 PPH	RACINE 3.70/3.08 PPH
514 HU 489 HH	291 HU 276 HH	118 HU 104 HH	124 HU 120 HH	129 HU 120 HH
LANSING 3.80/2.60 PPH	RED ROCK 4.00/2.73 PPH	DEXTER 4.05/2.74 PPH	GRAND MEADOW 4.13/2.82 PPH	FRANKFORD 3.73/2.90 PPH
673 HU 644 HH 40 GROUP	224 HU 204 HH	134 HU 125 HH	62 HU 54 HH	69 HU 61 HH
AUSTIN 3.90/2.70 PPH	WINDOM 3.98/2.89 PPH	MARSHALL 4.15/3.10 PPH	CLAYTON 4.00/3.56 PPH	BENNINGTON 3.77/2.98 PPH
151 HU 144 HH	143 HU 128 HH	150 HU 139 HH	89 HU 83 HH	154 HU 147 HH
LYLE 3.84/2.91 PPH	NEVADA 3.95/3.05 PPH	ADAMS 4.52/3.29 PPH	LODI 4.42/3.22 PPH	LEROY 3.86/2.67 PPH

Source: U.S. Census Bureau

* All Housing Unit and Household Data is for 1990

include projections of future growth trends.

Information to Collect. An assessment of population characteristics and trends should be based on the most up-to-date and reliable data available, typically the last U.S. census. The following basic types of demographic data are usually collected during this sort of assessment:

- Number of People (by age, sex and race)
- Number of Housing Units
- Number of Households
- Average Number of People
- Population Projections (20 years)

How to Present the Information. Most types of population-related information can

This illustration from the Mower County Comprehensive Plan depicts housing unit growth and changes in household size during the 1960-1990 period.

Types of Plans

There are many types of plans. Almost any type of plan can be developed using one or some combination of the approaches laid out in this chapter. It may be helpful to review briefly some of the more common types of plans and the basic characteristics of each:

Comprehensive Plan. Planners learn in professional school that such plans should be comprehensive geographically (covering the whole geographic area of the jurisdiction) and substantively (addressing all matters of interest to the community, from schools to solid waste), and that they should be relatively long-range, usually with a planning horizon of twenty years. A comprehensive plan often consists of multiple elements, dealing with things such as land use, parks and recreation and capital improvements programming. Comprehensive plans almost always include a thorough Trends Analysis and at least some Opportunities and Constraints Analysis to provide context for the planning effort.

Land Use Plan. A land use plan focuses on physical land use issues in the community. This is the element of a Comprehensive Plan that is most relevant to issues like preserving agricultural lands and finding appropriate locations for livestock operations. Although the best land use plans have a Comprehensive Plan for context, a community can develop a relatively freestanding land use plan.

Capital Improvements Program. A capital improvements program (CIP) is a plan for spending money on specific capital improvements—things like new parks, roads and sewer and water plants. Clearly there is a strong relationship between the CIP and the future land use plan. It is important to understand the role of the CIP in the community because it indicates how the human-made Opportunities and Constraints are likely to change and thus influence future land use patterns.

Strategic Plan. This type of plan is based on a concept widely used in the military and corporations and increasingly in government. In strategic planning, the goal is known before the plan is developed. Thus, this is a type of implementation plan. It is a very useful implementation technique for an adopted comprehensive plan or for an element of it. A Capital Improvements Program is really a type of strategic plan. Strategic planning results in strategies and implementation steps to achieve an organization's goals by involving stakeholders and analyzing strengths, weaknesses, opportunities and threats.

be analyzed and compared in tables and charts. Geographic growth trends can best be depicted on a map showing the general location of past, present and future projected development activity in the county.

Where to Get the Information.

- U.S. Census Bureau Publications
(City and County Data Book, Census of Population and Housing)
- Minnesota Planning, Office of State Demographer (Projections)
- Public Utilities

Economic Base. A county or town's current economic base has a profound influence on its future. The industries and businesses now located in a county are likely to provide a large percentage of future employment. To the extent that new businesses come into an area, they are likely to be similar to or related to existing businesses.

Information to Collect. As is the case with population and demographics, a county or town's economic base can best be analyzed by examining up-to-date and reliable data widely available from other sources, notably the U.S. Bureau of the Census and the State Demographer's Office. The following basic types of economic data will provide useful insights into the local economy.

- Employment by "Industry" Type (Standard Industrial Classification)
- Unemployment Rates (Existing and Historical)

- Labor Force Estimates by Occupation Group
- Tax Base Data
- Land and Improvements by Land Use Type (Residential, Commercial, Industrial, Agricultural)

How to Present the Information. Economic data can best be presented in tables and charts. A geographic (map) portrayal of data on economic investment in livestock operations would be a very useful way of identifying areas where protection of existing operations (i.e., investments) may be necessary, or where new facilities and expansions of existing ones may be desirable.

Where to Get the Information.

- Assessor's Office
- County Business Patterns, U.S. Census Bureau (Existing and Historical Data)
- Minnesota Planning, Office of State Demographer
- Public Utilities

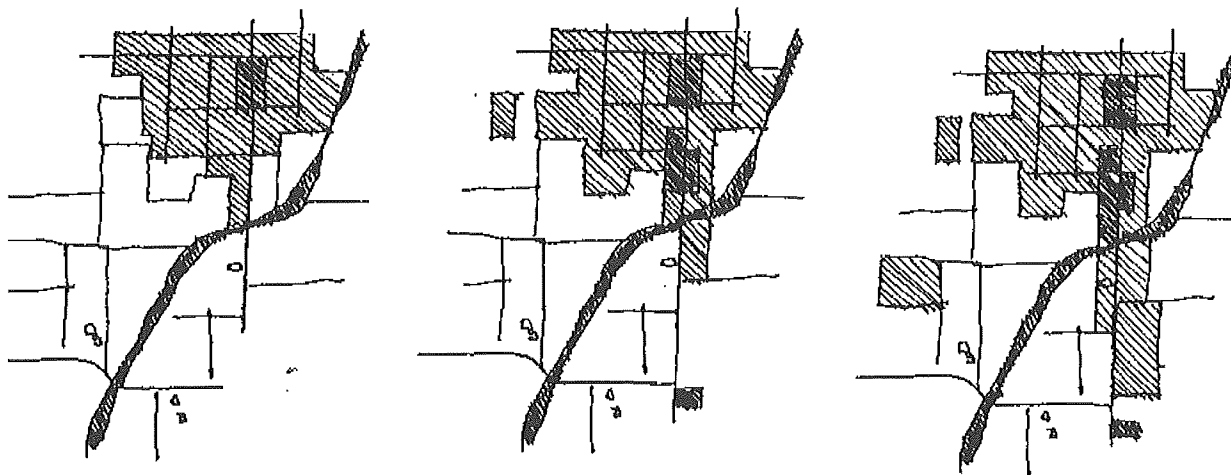
Other Resources. There may be other unique factors that influence a region's future. The reputation of an area's public schools or the existence of nearby recreational opportunities, for example, can provide a springboard for growth or tourism-related development. These and other types of unique community resources should be included in the inventory of existing conditions.

Arriving at a Vision of the Future

The specific purpose of this step of the planning process depends on the precise nature of the plan being prepared. It can be used as an opportunity to establish local residents' long-term vision of the future or to set general long-range goals for the county or town. It can also serve as the first opportunity to define a list of critical issues and concerns to be addressed in the plan.

Citizen participation and broad-based community involvement are critical features of any successful planning effort, especially at this point in the process. The purpose of setting goals and of developing a shared vision, after all, is to achieve consensus about the "big picture" from individuals and groups with different views (sometimes referred to as stakeholders, because they have a stake in the outcome). Even when used as an issue identification exercise, the desired outcome is broad-based consensus.

Although some vision or goal-setting work can occur prior to or simultaneously with data-gathering and analysis, it will usually be helpful to have collected information before working to develop a vision for the future. Information on existing land use, environmental features, and economic factors can be used to educate and inform decision-makers, interest groups, and the public on the opportunities and constraints that will affect the future.



These schematic maps of a community's growth from 1970, 1980 and 1990 (left to right) show its suburban edge gradually sprawling into surrounding countryside.

Developing Alternatives (Scenarios)

After completing the assessment of existing conditions and garnering consensus about the county or town's long-range, shared vision (or, in the case of an Issue-Driven process, the issues that need to be addressed), the next step is to develop different alternatives for getting there. These alternatives, sometimes referred to as scenarios, are really just a series of options or paths to the future. Typically, three or more such scenarios are presented in the form of maps and general descriptions of the types of strategies that can be used to ensure that they can be carried out.

Once the alternatives have been developed, they should become the focus of public review and discussion. Again, using a process that is broad and inclusive, the scenarios should be scrutinized and reviewed by the public with an eye toward identifying which alternative is likely to do the best job of helping the community realize its previously stated vision. In weighing the alternatives, citizens are likely to encounter just the sorts of balancing issues described in the introduction to this chapter.

Consolidating Alternatives

Very often, no single scenario will offer such clear advantages that it can be selected as the preferred plan. Ultimately, some combination of alternative scenarios may best reflect the desires of the community as a whole.

Ideally, the preferred plan will be consistent with and move the county or town closer to the vision established earlier in the process. Moreover, the selected plan should be consistent with other plans and strategies in effect throughout the county. If it is not, action will need to be taken to remedy such inconsistencies.

The preferred plan should include statements regarding the long-term goal toward which the plan is aimed, as well as a series of mid-range and short-term objectives that can be used to evaluate progress toward the overall goals. As with the scenarios developed in the preceding task, it should include a description of the types of policies and strategies that will be used to ensure the plan's implementation. The preferred plan will ultimately be the subject of review at public hearings before the planning commission and board of county

commissioners. These sessions will provide still additional opportunity for public comment and input. The board has authority to adopt the plan, reject it or refer it back to the planning commission (or other advisory group) for revisions.

Implementing the Plan

Once a plan has been adopted, no decisions related to growth, development, land use or public facility planning and budgeting issues should be made without examining whether such decisions would be consistent with the plan. Additionally, implementation tools should be developed and adopted to help ensure that the plan's goals are carried out in day-to-day activities. The most common plan implementation tools are the zoning ordinance, subdivision regulations and capital improvements programs.

Monitoring and Updating the Plan

Monitoring a plan's effectiveness is an important follow-up activity to the process of preparing it. Ideally, the plan will include a number of measurable objectives that will allow the county or town to track how much progress is being made toward its goals.

No matter how thoughtfully and carefully prepared, all plans need to be updated and revised every few years, usually at least every five years. And no matter what its age, any plan that is not working as a guide to decision-making should be revised or redone.

Conclusion

Planning provides a guide to the future. Perhaps more important, it provides a context for making decisions about the future. A county or town can best make decisions about the agricultural activities and agricultural operations in and around it if it has a plan to provide that context.

Putting the Plan in Black and White

Planning is often described as a process, and that process has been outlined in this chapter. But a plan is also a document (hopefully, a living document). A local government must consider not only how to conduct the planning process, but what the outcomes of the process might look like.

Plans generally consist of certain components and contain certain types of information. According to the text *The Practice of Local Planning* (International City Managers Association, 1988), plans consist of several typical elements:

- Demographic conditions (existing and expected population and employment composition);
- Land use (current and projected);
- Transportation (proposals for changes to street, highway, transit, path, etc. systems);
- Community facilities (schools, parks, public buildings, etc.);
- Other components, such as housing, energy, employment, or human services.

Plans also address three areas for each element:

- a description of existing conditions
- a statement of goals and objectives; and
- a description of future needs and proposals for meeting those needs.

Categorized another way, plans often cover a set of elements or issues through:

- Background information and analysis, including existing conditions, trends, and projections of future conditions;
- Statements of policy, both in written and graphic form. Written statements of policy often include such items as principles, vision statements, goals, and objectives (more specific and measurable than goals). Graphic expressions of policy are usually in

the form of maps, such as a land use map or a transportation map; and

- Implementation strategies--how the local government intends to accomplish policy objectives.

There are many ways to organize a plan. For example, one can organize by element (e.g., land use, transportation, housing, etc.), by component types of information (e.g., existing conditions, trends, and projections; goals, objectives, policies; implementation strategies), or various combinations of each. The contents of the Mower County Comprehensive Plan (1993), provide one of many good Minnesota examples:

1. Introduction
2. Background (including history, physiography, population, housing, and economic activity)
3. Assumptions and Projections
4. Planning Goals
5. Land Use Element
6. Transportation Element
7. Economic Development Element
8. Environmental Protection Element
9. Waste Management Element
10. Public Services Element
11. Implementation Plan

Each element of the Mower County Plan contains some discussion of existing conditions and plans for the future.

Even in counties and towns that need to plan for animal agriculture, that planning must be done in the context of all the other objectives and issues that the local governments face. Planning for animal agriculture, therefore, must be integrated with the local comprehensive plan.

Issues of animal agriculture, and related issues of agricultural land protection and conflicting nonfarm land uses, relate most strongly to the land use element. However, they also relate to elements such as economic development, environment, or even housing (due to issues of nonfarm development). For example, discussion of the importance of animal agriculture to the local economy might occur in a chapter of the plan on economic development.

Regardless of which elements of a plan animal agricultural issues are assigned, the necessary information on animal agriculture can be categorized according to the following scheme, which provides some insight as to how they can be incorporated into a plan:

Existing Conditions, Trends, and Projections

This is background information you will need in order to determine where animal agriculture and other compatible uses should be encouraged over the long-term, and where nonfarm growth should be allowed to occur, including:

- Land use inventory information;
- Relative productive value of land based on crop equivalent rating (CER);
- Existing level of investment in agricultural buildings and equipment;
- Growth projections for agriculture, particularly animal agriculture;
- Existing and proposed public sanitary sewer and water systems; and
- Demographic and economic trends and projections.

Statements of Policy

These consist of text and maps, particularly the land use map, including:

- Statements of policy on land use, including agriculture, nonfarm development, and other matters of local importance. These state-

ments should provide rationale for more specific parts of the plan, such as why one alternative growth scenario was chosen over another (as reflected in the land use map), or why certain implementation steps are favored; and

• Maps:

—identifying areas suitable for long-term agricultural uses and animal agricultural uses. These might be divided into two or more types of agricultural use, reflecting intensity of the encouraged agricultural uses and their potential for issues of compatibility with other uses; and

—identifying areas adequate to meet projected housing and other nonfarm development needs. An urban growth boundary could be used to define the outer edge of these areas.

Implementation Strategies

These outline how you intend to accomplish policy objectives, and could be:

- General statements; or
- Specific criteria used to determine where zoning districts would be created and whether rezoning requests would be approved.

MDA staff can assist counties and towns in integrating planning for animal agriculture with their local plans.

Chapter 3:

Legal Issues Involved in Rural Planning and Zoning Regulation

This chapter discusses the legal issues involved in the regulation of land use in general, with a particular emphasis on issues arising in rural areas. It begins with a general discussion of the legal principles that underlie the regulation of land use and then applies those principles to some of the unique issues that arise in the regulation of agriculture, including animal agriculture.

Please note that this chapter provides general information on the state of the law only. Anyone contemplating or seeking specific action involving a particular local government, a particular piece of property or a particular facility involved in animal agriculture should do so only with appropriate legal advice. The authors have made every effort to provide accurate information. **Most of the legal issues addressed in this chapter are relatively clear.** On those issues it is likely that the advice of counsel will lead to conclusions similar to those that might be deduced from a careful reading of this chapter. **In two important areas, however, the law is still evolving and thus is not clear:**

- 1) The **takings** issue continues to evolve both nationally and in Minnesota. Although it is unlikely that there will

be a significant change in the basic principles outlined here in the near future, additional state and federal cases will almost certainly provide additional definition and precision to those principles.

- 2) The issues involved in the question of possible **preemption** of some local authority over animal agriculture because of the extensive state regulation of these facilities is **distinctly unsettled in Minnesota**. There is litigation in the courts and legislation pending in the Minnesota legislature on this issue. The principles suggested in this chapter by reference to cases addressing this issue thus may be superseded by the time this handbook is published, or they remain substantially unchanged, or they may evolve in some peculiar direction. On this point in particular, it is very important to obtain current advice from competent Minnesota counsel before making any decisions regarding the adoption or implementation of or a challenge to a regulation involving animal agriculture.

This chapter provides citations to relevant cases and statutes in Minnesota for the convenience of attorneys who may be familiar with land use or real estate law but who may not be familiar with all of the specific principles involved in the regulation of animal agriculture. Users seeking the advice of counsel on these issues may wish to provide their attorneys with a copy of this chapter as a starting point for their own analysis.

Although current discussion of issues involved in the regulation of animal agriculture often focuses on perceived limitations on the ability of government to regulate this particular type of activity, it is important to understand the broad powers of local governments in the land use field before considering specific limitations on them.

Planning and Implementation Authority of Local Governments

Police Power

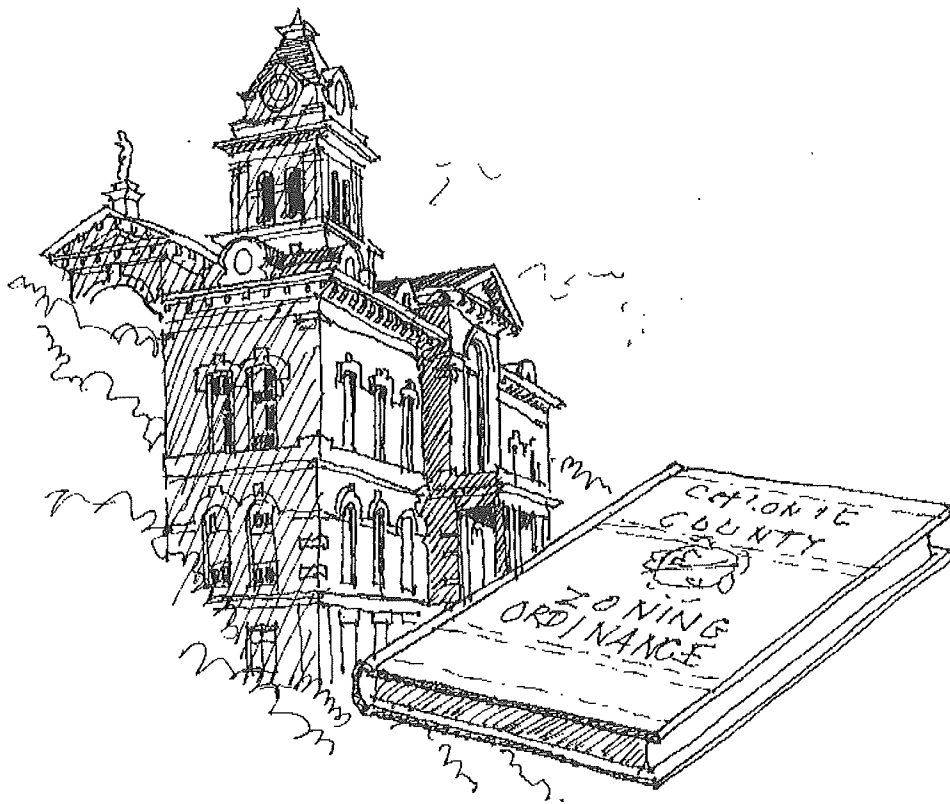
Local governments regulate the use and development of land under the “police power.” Although law enforcement officers also act under the police power, the legal notion of police power is much broader than the term might suggest. Stated simply, the police power is the right and duty to regulate private activity for the protection of the public health, safety and welfare. Police power is inherent in the state and is delegated to local governments through specific enabling acts that also specify the scope of the delegation.

The authority of government to regulate private activity, including the use of private land, for the protection of the public health and safety is one that is fundamental to the notion of democratic government in a civilized society. Through the police power, government peacefully resolves and often avoids conflicts over private activity ranging from the discharge of

firearms in an urbanized area to smoking in confined quarters.

Most valid local government regulations fall under the police power. Among those is zoning. Courts in Minnesota have broadly construed the concept of the police power to uphold local zoning and land use controls, although there are some differences in interpretation between municipalities and counties. **“Under its police power, the governing body of a ... municipality, in the interests of public health, safety, morals, or general welfare, may restrict an owner’s use of his property for commercial or annoying occupations deemed undesirable to the community as a whole.”** *State ex. rel. Howard v. Village of Roseville*, 244 Minn. 343, 70 N.W.2d 404 (1955). In this case, the Minnesota Supreme Court denied the Plaintiff’s application for a writ ordering the local government to issue permits for a trailer park in a “farm residential” zone.

Property owners sometimes view zoning and other police-power regulations as attempts to interfere with their property rights. In fact, property owners were among those who lobbied for the creation of the earliest zoning ordinances, primarily to *protect* property rights. Zoning and other land use regulations do protect property rights, by keeping factories out of residential neighborhoods, by keeping dangerous activities (such as the manufacture of explosives) far from most other human activities, and by protecting agricultural areas from the unnecessary intrusion of incompatible uses. “A zoning ordinance is not a safety statute in the usual sense of that term. Generally, zoning ordinances are regarded as being aimed primarily at conserving property values and encouraging the most appropriate use for land. Nevertheless, the general safety of the community is unquestionably improved by such ordinances; and...safety ranks among the purposes for their enactment.” *Hutchinson v. Cotton*, 236 Minn. 366, 53 N.W.2d 27 (1952).



The apparent conflicts between the police power and property rights are discussed later in this chapter, but it is important to understand that "The right to use property as one wishes is subject to and limited by the proper exercise of police power." *City of St. Paul v. Carlone*, 419 N.W.2d 129 (Minn.Ct.App. 1988) (citing *McShane v. City of Faribault*, 292 N.W.2d 253 (Minn. 1980)). As those early property owners who lobbied for zoning recognized, it may be necessary to limit individual action to protect the rights of all. Through the police power, responsible local governments attempt to balance the interests of individual liberty with the interests of the larger community in preserving order. Thus, most local governments prohibit junkyards in residential areas, choosing to protect the interests of the residents even at the expense of limiting the freedom of action of a property owner in the area who might prefer to enjoy the profits of a junkyard on his

or her property.

Although there are limits, many of which are discussed in the next section, "the police power, which is the authority for zoning ordinances, operates in the interest of public welfare by restricting an individual in his use of his property, with no provision for compensation for loss." *Conner v. Chanhassen Township*, 249 Minn. 205, 81 N.W.2d 789 (1957).

Limits on the Police Power

The general view is that the broadest form of the police power rests with state government. Local governments exercise the police power only in accordance with the terms of various constitutional provisions and "enabling acts." Through enabling acts, addressing zoning and many other subjects, the state gives to local governments the authority to exercise the police power for specific purposes. Those acts typi-

cally set forth explicit terms and limitations under which a local government may exercise that particular aspect of the police power.

“A municipality receives power to zone only by a legislative grant of authority and in exercising such a delegation of power a municipality cannot exceed the limitations imposed by the enabling legislation.” *Costley v. Caromin House, Inc.*, 313 N.W.2d 21 (Minn. 1981, citing *Denney v. City of Duluth*, 295 Minn. 22, 202 N.W.2d 892 (1972); and *Reilly Tar & Chemical Corp. v. City of St. Louis Park*, 265 Minn. 295, 121 N.W.2d 393 (1963)). In *Costley*, neighbors sought an injunction against the location of a group home in a residential neighborhood. Under the state enabling acts, the group home was defined as a single-family residential use and thus was permitted in any neighborhood allowing single-family homes. The Court rejected an argument for local autonomy and upheld this explicit limitation on the exercise of zoning by a local government.

To understand the scope of authority of Minnesota’s local governments to engage in planning and zoning, it is important to look at the enabling acts that set forth both the authority to plan and zone and a number of limitations on that authority. That is the subject of the next section of this chapter.

Planning and Zoning in Minnesota

The Legislature has separately authorized planning and zoning authority for counties, municipalities, and the Twin Cities metro area. Those statutes can be found in the following sections of the state code:

- Planning and zoning for counties, Minn. Stat. §§394.01 *et seq.*
- Planning and zoning for municipalities, Minn. Stat. §§462.01 *et seq.*

- Metropolitan planning (Twin Cities), Minn. Stat. §§473.01 *et seq.*

In addition, there are separate provisions for regional planning (Minn. Stat. §§472.371 *et seq.* The state law on agricultural preservation (Minn. Stat. 40A.01 *et seq.*, discussed separately, below), limits the exercise of planning and zoning authority in certain circumstances.

The scope of authority granted to municipalities and counties differs somewhat. It is not the purpose of this report to describe all of the differences. It is important, however, for any local government considering the adoption of amendment of such controls to review carefully the specific zoning provisions applicable to it (for townships, see especially Minn. Stat. §§366.12 through 366.14; for counties, see especially Minn. Stat. §394.25 ; and for municipalities, see especially Minn. Stat. §462.357).

There are similarities among the authorizing provisions, however. For example, local zoning in all jurisdictions should be based on a comprehensive plan, which is defined under the county provisions as:

the policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities, including recommendations for plan execution, documented in texts, ordinances and maps, which constitute the guide for the future development of the county or any portion of the county (Minn. Stat. §394.22, subd. 9).

The definition of a comprehensive plan for municipalities is somewhat different, although not inconsistent with the more general one for counties. Because it is not as relevant to this handbook, it is not set forth in full here (see Minn. Stat. §462.352, subd. 5).

The basic nature of zoning for both forms of local governments is similar. Both contemplate the division of the jurisdiction into districts and the regulation of the uses to which land and buildings may be put in each of those districts. In addition, the local governments can regulate within those districts the location, height, bulk, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, and the density and distribution of land uses. There are slight variations in the wording, but both types of local government have the authority to regulate all of these matters. In addition to these basic powers, counties also have the express authority to regulate “appearance, signs, lighting, hours of operation and other aesthetic performance characteristics, including but not limited to noise, heat, glare, vibrations and smoke, the area required to provide for off-street loading and parking facilities....” (Minn. Stat. 394.25, sub. 3). Municipalities have these powers and more not discussed in depth here (see generally Minn. Stat. §462.357).

The relationship of zoning to the comprehensive plan is an important one to understand. **The question of how closely a local government must follow its own plan is one that has been subject to a good deal of debate and litigation around the country.** The Minnesota courts have addressed this question several times, providing some guidance for local governments in the state.

The first Minnesota case to interpret the interaction of zoning with planning is *Conner v. Chanhassen Township*, *supra*. The court “examined the authorities” and “interpreted Minn. Stat. §366.14” to say:

The term ‘comprehensive zoning’ does not necessarily mean a plan which makes allowances for the establishment of districts to be set aside for various

commercial and professional purposes which provide a defined area with complete business and professional service. The term comprehends that the ordinance shall take the place of and include within its provisions the numerous ordinances which were formerly enacted independently and included such subjects as “tenement house codes,” ‘sanitary codes,’ ‘fire zone’ provisions and parts of ‘building codes,’ as well as provisions with reference to codes relating to restrictions with reference to height, proportion of parcels that must be kept open, and unbuilt yard lines, etc.

Three fairly recent cases illustrate the current state of the law regarding municipalities in this area. In *Rochester Association of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn 1978), the court interpreted the language of Minn. Stat. §462.357(2) (which is still the language currently in the statute) concerning the enactment of zoning ordinances “for the purpose of carrying out the policies and goals of the land use plan.” In this case, the city rezoned a parcel of land. Subsequent to the approval of the rezoning, the city amended the land use plan to conform to the rezoning classification. The court held:

We read the statute to require only that a land use plan be adopted before the initial zoning ordinance is adopted. The statute in fact does not require even that the zoning ordinance conform exactly to the city’s land use plan. While it may seem desirable as a matter of municipal planning to amend the land use plan before adopting an inconsistent zoning ordinance, such a requirement is properly a matter for the legislature, not for this court, to consider. This court has frequently noted consistency between a city’s land use plan or planning

commission's recommendation and the zoning ordinance as a factor supporting the reasonableness of the city's legislative judgment in passing the zoning ordinance. 268 N.W.2d at 889-90.

The court decided in favor of the city.

Six years later, the court did everything it could to get around *Rochester*. In *Amcon Corporation v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984), the court was asked to interpret a rather confusing municipal ordinance to determine whether Planned Unit Development zoning requires a related underlying rezoning (from agricultural to "roadside business" (RB) classification) when the land use plan classifies the property as RB. Unfortunately, the court issued a meandering opinion that seemed to call into question the principal holding in *Rochester* without actually confirming it or overruling it. First, it addressed the holding in *Rochester* that consistency of zoning ordinances with the land use plan is not required. It stated:

The designation of land uses on such a master plan is generally viewed as advisory and the city is not unalterably bound by its provisions. However, the recommendations should be entitled to some weight, particularly where the plan has been adopted by the legislative body although not implemented. 348 N.W.2d at 74.

The court built on the last sentence by saying "the city's own comprehensive plan and map designate the property at issue as roadside business. While this designation is not binding, a refusal to zone accordingly is [also] evidence that the city is acting in an arbitrary manner." 348 N.W.2d at 75.

It went on to cite authorities from other jurisdictions, treatises, and law review articles that support the proposition that amendments that do not conform to the comprehensive plan

should be found invalid. It finally meandered into a due process-type holding, stating that the fact that the city refused to rezone the property to a classification consistent with the plan, coupled with the city's "failure to articulate a legally sufficient basis for its determination" was an "arbitrary and capricious action." The court ordered the city council to grant the requested rezoning.

In its attempt to further distinguish *Amcon* from *Rochester*, the court, in a footnote, recognized that the statutes controlling planning and zoning in the metropolitan area, Minn. Stat. §§473.851—473.872 did not apply to the *Rochester* case; implying that metropolitan governments may be required to maintain a greater consistency between plans and zoning. Minn. Stat. 473.865(2) states that a municipality should not adopt zoning that conflicts with its comprehensive plan. Subd. (3) states that if a conflict between zoning and the plan arises because of an amendment to the plan, the zoning ordinance shall be amended.

In *R.A. Putnam & Associates v. Mendota Heights*, 510 N.W.2d 264 (Minn.Ct.App. 1994), the most recent case to discuss the relationship of planning to zoning, the Minnesota Court of Appeals brushed off any suggestion that metro area governments should be held to a different test. The court cited the sections of Minn. Stat. 473.865 quoted above, yet went on to say that "[n]onetheless, a comprehensive plan's designation of land uses is advisory and does not unalterably bind a city [citations omitted]. Nor does a discrepancy between a zoning ordinance and a comprehensive plan affect the presumption that a municipal zoning decision is valid." The court concluded that the city did not act arbitrarily in denying plaintiff's zoning request.

Although the courts have not addressed the issue as directly as one might hope, it seems clear that a county engaging in land use

regulation must do so substantially in accord with an adopted comprehensive plan. The county enabling act is, if anything, more explicit than either of the other two. After stating in § 394.23 that the board of county commissioners “shall have the power and authority to prepare and adopt by ordinance a comprehensive plan,” the act provides in the very next section that “Official controls, which shall further the purpose and objectives of the comprehensive plan and parts thereof shall be adopted by ordinance” (Minn. Stat. §394.24, subd. 1). Clearly any official controls adopted by a county must “further the purpose and objectives of the comprehensive plan.” **That may not require rigid adherence to every detail of the plan, but it certainly requires consistency with its spirit and intent.** Considering that explicit language, and the increasing interest of the Minnesota Supreme Court in consistency between planning and zoning, well-advised counties will base their zoning and other “official controls” on a current and carefully-considered comprehensive plan.

There is one other aspect of the enabling legislation that is important to understand in rural areas and that is the relationship between planning and zoning activities of a township and the planning and zoning of the county of which it is a part. The statutes address this explicitly:

The governing body of any town may continue to exercise the authority to plan and zone as provided by law, but after the adoption of official controls for a county or portion thereof by the board of county commissioners, no town shall enact official controls inconsistent with the standards prescribed in the official control adopted by the board. Nothing in this section shall limit any town’s power to zone more restrictively than provided in the controls adopted by the county.

(Minn. Stat. §394.33).

With the increasing interest in comprehensive planning and land use patterns in rural areas, it is likely that the pattern of overlapping regulation by townships and counties will continue and expand.

Constitutional Limitations of Authority— Takings and Others

Farmers and other landowners have responded to increased government regulation of land by arguing that some land use regulations amount to an unconstitutional taking.

The takings issue is based on constitutional provisions adopted to address issues of eminent domain. The Fifth Amendment to the U.S. Constitution provides that “nor shall private property be taken for public use without just compensation.” Because the Minnesota Constitution contains broader language than that just quoted (it applies to property “taken, destroyed or damaged;” see Minn. Const. Art.1, sec. 13), the Minnesota Supreme Court has implied that the takings cause of the Minnesota constitution must be given a broader interpretation than that of the U.S. Constitution. See, *Alevizos v. Metropolitan Airport Commission*, 298 Minn. 471, 216 N.W.2d 651 (1974). However, since that decision was handed down, the U.S. Supreme Court has broadened the interpretation of the federal “takings” clause and the recent evolution of case law at the federal and state levels appears generally consistent.

Evolution of Takings Law in the U.S. Supreme Court

The U.S. Supreme Court initiated the current period of “takings” legislation in 1922, when it held squarely that excessive regulation might amount to a taking. *Pennsylvania Coal Co., v. Mahon*, 43 S.Ct. 158 (1922). Although it largely left the question of “how much regulation is

excessive?” unanswered for six decades, it is important to note that only four years after handing down that decision, the Supreme Court upheld zoning as a valid form of regulation, explicitly finding that residential zoning as applied to land that an owner wished to use for industrial purposes did *not* amount to an unconstitutional taking. *Village of Euclid v. Ambler Realty Co.*, 47 S.Ct. 114 (1926).

Beginning in the 1970s, the Supreme Court began to consider this issue again in more depth, partially resolving a debate over remedies in a series of decisions handed down in the 1980s and 1990s. The Court clearly recognized two competing public policy interests involved in this issue. On the one hand, the notion of private property and its protection is a fundamental one in this society, as the “takings” provision in the Bill of Rights acknowledged. On the other hand, living in a civilized society requires some reasonable regulation to avoid land use disputes among neighbors and to provide for a peaceful resolution of those that arise. Clearly if a local government must pay compensation every time that it decides that a particular piece of property ought only to be used for agricultural or residential use rather than for industrial or commercial purposes, it would be prohibitively expensive for local government to regulate land.

The Supreme Court finally found a middle ground between the competing interests by giving local government a choice. It concluded that, if a local regulation is found to be a taking, a local government ought to be able to choose between keeping the regulation in effect and buying the land, as though it had actually been condemned, or repealing the invalidated regulation and compensating the owner simply for the lost use of the property from the date of adoption of the regulation to the date of its repeal. See, *San Diego Gas &*

Electric v. City of San Diego, 101 S.Ct. 1287 (1981). Although there was no majority opinion in that case, the notion of a “temporary taking” established there underlies all of the subsequent takings litigation. The Court subsequently adopted that position more clearly in *First English Evangelical Lutheran Church v. City of Los Angeles*, 482 U.S. 304 (1987).

Since that time, the Court has established several clear principles governing takings law. First, it has held that in determining whether there is a taking, one must consider the impact of the regulation on the entire property held by the owner, not on a small part of it. *Penn Central Transportation Company v. New York City*, 98 S.Ct. 2646 (1978), and *Keystone Bituminous Coal Association v. DeBenedictis*, 107 S.Ct. 1232 (1987). That is an important principle for zoning law. Most zoning ordinances establish yard area and setback requirements, prohibiting most uses in those yard and setback areas but allowing a reasonable use of the entire property.

The Court has also established some categorical rules for determining when an unconstitutional taking has occurred:

- Where a local ordinance purports to permit others to invade the physical space of the landowner, there is an unconstitutional taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 102 S.Ct. 3164 (1982). This case involved stringing television cable across buildings, but the same principles would apply to a law that permitted utility or canal companies to cross rural lands without easements.
- Where an ordinance deprives a landowner of “all economically viable use” of her or his land, there is an unconstitu-

tional taking. *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). In that case, state law designed to limit the exposure of people and property to hurricanes, prohibited the owner from building residences on two residential building lots that appeared to have little other use.

- There must be a “rational nexus” between the purpose of a regulation and its effect; otherwise there may be an unconstitutional taking. *Nollan v. California Coastal Commission*, 107 S.Ct. 3141 (1987). In that case, the Court found insufficient nexus between the owner’s proposal to replace one house with a larger house on the same lot and the state’s demand that the owner dedicate land for a beachfront trail.
- Where there is a rational nexus between the purpose of the regulation and its effect, there must also be a “rough proportionality” between the burden imposed on the property owner and the impact of the owner’s proposed use or development. *Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994). In that case, the Court found insufficient evidence of proportionality where the city demanded dedication of land for a trail and installation of a variety of improvements as conditions of approving the expansion of an existing business.

It is quite clear, however, that where the purpose of the regulation is to prevent a clear nuisance or otherwise to protect essential public health and safety values, a local government has greater authority to impose significant restrictions on property. For example, in *Dolan*, the Court saw no constitutional bar to the city’s adoption of a very restrictive floodplain ordinance; it simply objected to the city’s requiring that the owner transfer title to the floodplain to the city.

Evolution of Takings Law in the Minnesota Courts

Minnesota law is similar in many ways. Under Minnesota law, the question of whether or not a governmental agency has exceeded its authority to such a degree as to amount to a taking of property is a question of law to be determined in the initial instance by the trial court. *Alevizos*, 216 N.W.2d at 661.

Minnesota treats separately the cases of physical invasion by governmental activity and restriction of use by governmental regulation. The cases involving direct physical invasion by government are not discussed here, because they are not directly pertinent to this analysis. For the interested reader, however, *Alevizos*, cited above, is a leading case on the subject.

Under the category of taking by governmental regulation, the Minnesota courts have defined and treated separately two types of governmental activity— “enterprise functions” and “arbitration functions.”

Takings law in Minnesota evolved during a period when some of the issues remained unsettled in the U.S. Supreme Court. In 1980, in *McShane, supra*, the Minnesota Supreme Court adopted a consistent method of analysis for approaching regulatory takings cases. In *McShane*, the city passed an airport zoning ordinance to regulate the land use in the approach zones of the runway. As a result, the landowners raised a takings claim against the city. The court, for the first time, recognized a distinction between regulation “designed to effect a comprehensive plan,” where “reciprocal benefits and burdens accrue to all landowners from the planned and orderly development of land use” (the arbitration function), and regulation “for the sole benefit of a governmental enterprise” where “the burden of its activities falls on just a few individuals while the public as a whole receives the advantage of

property rights for which it did not pay” (the enterprise function). In the case of governmental arbitration functions, a taking does not occur “unless it deprives the property of all reasonable use,” a standard entirely consistent with the U.S. Supreme Court’s later holding in *Lucas*. Zoning ordinances will be upheld “even where the value of the property declined significantly as a result of the restrictions,” citing *Czech v. City of Blaine*, 312 Minn. 35, 253 N.W.2d 272 (1977).

In the case of enterprise functions, however, a stricter standard will be applied. Compensation to landowners will be required if the regulation results in “substantial and measurable decline in market value.” As a result, the enterprise test set forth in *McShane* seems to apply a test that lies between physical invasion cases and arbitration cases. This is a logical evolution of the law. In the case of airport zoning, for example, there is a good argument that the real purpose of the restrictions on building heights and residential uses is to help the airport authority avoid buying the adjacent land. That land is thus arguably part of the operation of the government enterprise and should be subject to outright condemnation.

The *McShane* court went on to state that the appropriate judicial remedy was an injunction against enforcement of the ordinance, not mandamus to compel eminent domain proceedings, as the plaintiffs requested. However, it also stated that money damages may be available if the damage caused by the challenged regulation is irreversible and an injunction would not return the property owner to his original status. “If the city decides it is wiser to close the airport than to spend potentially huge amounts of money on the necessary property rights, clearly it has the discretion to do so.” *Id.*, at 259.

The Minnesota Supreme Court purported to decide *McShane* on both federal and state

constitutional grounds, making no distinction between the Fifth Amendment to the U.S. Constitution and Article I, Section 13 of the *Minnesota Constitution*. However, in referring to “a substantial and measurable decline in market value” as one of the tests that it used in that case, the Minnesota court has treated property owners more generously than has the U.S. Supreme Court.

Few regulatory takings cases have been decided since *McShane*. One of particular interest deals with the question of how to characterize a regulation that has both enterprise and arbitration functions. In *Pratt v. State ex rel. Department of Natural Resources*, 309 N.W.2d 767 (Minn. 1981), the court had to decide whether a statute regulating the harvest of wild rice in public waters, to which the landowner had riparian rights, was an enterprise function (to preserve the traditional wild rice harvest for Native Americans) or an arbitration function (to conserve the stock of wild rice and protect it from undue depletion). The court stated that it would be reading too much into the legislative intent to characterize the regulation as either “predominantly” enterprise or arbitration. It held that “where the governmental enterprise function is *prominent*, a taking may occur if the landowner’s property is substantially diminished in value.” *Id.*, at 774 [emphasis in original].

Issues raised in takings cases are sometimes characterized differently, as issues of “substantive due process.” The right to due process is also protected by the Fifth Amendment to the U.S. Constitution. Procedural due process issues, which are more common, address questions of the fairness of the decision-making process. Substantive due process addresses the fairness of the decision itself. A number of commentators and scholars believe that *Dolan* should have been resolved as a substantive due process case rather than a takings case.

Although the Minnesota court has not typically used the phrase “substantive due process,” it has used similar criteria in resolving some major zoning cases. Some of these cases seem to have been decided on substantive due process grounds without reference to Minn. Const. Art. 1, sec. 7 or the Fourteenth Amendment. In *Pearce v. Village of Edina*, 118 N.W.2d 659 (Minn. 1962) the court found a zoning ordinance classifying plaintiff’s property for office building purposes to be unconstitutional. In fact, the court made the following statement concerning the presumption of validity of legislative enactments that is totally contrary to today’s reasoning: “That there may be disagreement as between experts with reference to the purpose or the effect, or the need for a particular zoning ordinance; or that the opinions of some such experts support the viewpoint of the municipal body adopting the ordinance, does not compel a finding that it is reasonable and valid.”

Since that time, the court’s tendency toward overturning legislative actions has declined. In a case that distinguished itself from *Pearce* on the grounds that *Pearce* dealt with an “ordinance based primarily on aesthetic considerations,” the court stated that “zoning regulations need not be a necessity but need only be reasonably related to public health, safety, morals or the general welfare of the community to meet constitutional requirements of reasonableness.” *Naegele Outdoor Advertising Co. of Minnesota v. Village of Minnetonka*, 281 Minn. 492, 162 N.W.2d 206 (1968), upholding an ordinance prohibiting replacement of nonconforming billboards in city limits.

Since *Naegele*, the court has stayed fairly close to that relatively limited standard of review. Undoubtedly the case that most clearly sets out the current status of Minne-

sota case law on judicial review of zoning decisions is *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981). *Honn* clarifies and synthesizes standards set out in the earlier cases of *State, by Rochester Association of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978) and *Zykla v. City of Crystal*, 283 Minn. 192, 167 N.W.2d 45 (1969). In *Honn*, the Minnesota Supreme Court recognized the distinction between zoning map amendments, conducted under the broad legislative authority of local governments, and other types of zoning decisions, exercised under much more limited, quasi-judicial authority. In that case, the Court held:

Our case law distinguishes between zoning matters which are legislative in nature (rezoning) and those which are quasi-judicial (variances and special use permits). Even so, the standard of review is the same for all zoning matters, namely, whether the zoning authority’s action was reasonable. Our cases express this standard in various ways: Is there a “reasonable basis” for the decision, or is the decision “unreasonable, arbitrary or capricious,” or is the decision “reasonably debatable?” Nevertheless, while the reasonableness standard is the same for all zoning matters, the nature of the matter under review has a bearing on what is reasonable....For rezoning the standard is whether the classification is reasonably related to the promotion of the public health, safety, morals or general welfare....But the approach is different in a special use permit case...[where] an arbitrary denial may be found when the requested use is compatible with the basic use authorized within the particular zone and does not endanger the

public health or safety or the general welfare of the area affected or the community as a whole. 313 N.W.2d at 417-18.

Cases decided since *Honn* have substituted “rational basis” for “reasonable basis,” but the test itself has remained consistent. Although this is a limited standard of review, it is a meaningful one of which local governments should be conscious in their actions. In the recent case of *Communications Properties v. Steele County*, 506 N.W.2d 670 (Minn. 1993) the court found no rational basis existed for the county’s refusal to rezone a parcel currently zoned for agricultural use, when the nature of the property prohibited its use for agricultural purposes, and abutting properties had all changed from agricultural to commercial uses.

Constitutional Protection of Rights through Process

The more typical use of the phrase “due process” is to refer to the fairness of the process itself. **The basic concept of due process holds that one whose rights are to be affected by proposed government action ought to have (1) notice of that proposed action; (2) the opportunity for a fair hearing on the matter (3) before an unbiased tribunal.**

Due process is an issue that affects far more than zoning. It affects many different types of government action. Despite its broad applicability, in many cases, there is no serious issue involving due process. Issues of due process arise when individual rights are at stake, not when the government is acting in its more general, or legislative capacity. “When a municipal governing body adopts or amends a zoning ordinance its action will usually affect an open class of individuals, interests, or situations, so that the governing body is then acting in a legislative capacity.” *Sun Oil Co. v. Village of New Hope*, 300 Minn. 326, 220

N.W.2d 256 (Minn. 1974). “Any rights of procedural due process in such proceedings is minimal.” *Barton Contracting v. City of Afton*, 268 N.W.2d 712 (Minn. 1978).

As the Court noted in *Barton*, however, “When the governing body considers an application for a special-use permit pursuant to such ordinance, its action no longer bears on an open class of persons but directly on the particular interests of the applicant, in which case it acts in what is usually called a quasi-judicial capacity.

The basic rights of due process required in that case are reasonable notice of hearing and a reasonable opportunity to be heard. These quasi-judicial proceedings do not invoke the full panoply of procedures required in regular judicial proceedings, civil or criminal....” 268 N.W.2d at 716.

Notice issues usually are not complex. State statutes and local ordinances typically specify what notices must be given. Most courts require at least substantial compliance with such requirements, although they may not always require absolute adherence to the requirements (for example, a court may accept a notice published in a weekly newspaper 29 days before a hearing as being in “substantial compliance” with a requirement for 30 days’ notice). For specific requirements regarding hearings, local governments should refer to any specific requirements in the enabling act for the specific action being taken, as well as to the state open meetings law, found at Minn. Stat. §471.705.

Issues related to a fair hearing are almost equally obvious to a disinterested observer, although they may be much less clear to those involved. For example, counting the number of persons attending a hearing who “oppose this application” or allowing opponents to dominate a hearing may deprive an applicant of a fair hearing.

Although public officials often enter a hearing with opinions on matters before them, any expression of those opinions before the hearing (whether in public or in private) raises questions about whether the decision-making tribunal is in fact unbiased.

Unreasonable Delegation of the Police Power

On a related issue, the Minnesota Supreme Court has held that, “A municipal corporation may not condition restricted uses of property on the consent of private individuals, such as owners of adjoining property. It is an unreasonable delegation of the police power to vest control of property uses in hands of owners of other property.” *State ex rel. Foster v. City of Minneapolis*, 255 Minn. 249, 97 N.W.2d 273 (1959). Any provision requiring the consent of neighbors to a proposed use raises significant due process questions, as well as the issue of unreasonable delegation of the police power.

Statutory Limitations on Authority—the Doctrine of Preemption

Local governments have only the authority expressly granted them through state enabling legislation. As discussed in the previous section, the enabling legislation in Minnesota provides a good deal of authority for local governments to plan for animal agriculture and other farming operations and to adopt regulations to help implement land use objectives. Limitations do exist, however, and a local government adopting regulations that may relate directly to or even overlap state regulations must carefully consider this doctrine to ensure that the local regulations will withstand a legal challenge.

One limitation is “preemption.” In general terms, when a higher level of government, such as the state, has, within

its constitutional and statutory authority, regulated a matter, it is said that the higher government level “preempts” lower levels of government from regulating the same matter. In legal parlance, the state has “occupied the field.” Thus, for example, once the state has set age limits for those buying or consuming alcoholic beverages, local governments cannot set lower or higher age limits for the same activity.

The preemption doctrine is an accepted part of the legal system in the United States. There are a number of good reasons for the doctrine’s existence. The principal policy reason is that it limits the number of conflicts arising between laws and regulations of different levels of government. To use the previous example, if the state prohibited the sale of alcohol to anyone under 21 years-of-age, but one county in Minnesota decided that the legal drinking age should be 22; genuine confusion would exist about which law must be obeyed. Preemption prevents local governments from enforcing laws that conflict with state laws.

There is yet another way to consider the preemption doctrine. Local governments derive all of their power from the state. If the state exercises a particular power, this implicitly suggests that it is denying local governments the authority to exercise that power, and is choosing instead to exercise it at the state level.

The issue becomes somewhat more complex, however, when federal or state regulations do not fully cover a subject. What if, for example, the state prohibited the operation of hazardous waste facilities in agricultural zones. Could a local government then prohibit such facilities in other zones? Could a local government prohibit other types of industry in agricultural zones? The courts resolve such questions by trying to determine whether the state intended to “occupy the field” or whether it simply intended to pass a very narrow law addressing a

very specific issue.

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966) appears to be the seminal Minnesota case on the issues of preemption and conflict. Plaintiff operated a retail store in the village of Richfield. In 1962, the village passed an ordinance prohibiting the sale of “restricted items” by a business on Sundays. After the passage of the ordinance, plaintiff began closing its store on Sunday. Other businesses, however, did not close and openly sold “restricted items.” Plaintiff notified the village of its intent to reopen on Sundays. On the first Sunday plaintiff reopened, the village issued the owner a citation for violation of the ordinance.

Plaintiff challenged the ordinance on the grounds that it was (1) inconsistent with a Minnesota state statute regulating activities on Sunday; (2) preempted by the state statute, and (3) enforced in a discriminatory manner in violation of the Fourteenth Amendment. The court addressed each issue in this (seemingly backwards) order.

The Court first set forth principles to be followed in determining whether there is even a conflict between the local and state regulations:

- (a) As a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other.
- (b) More specifically, it has been said that conflict exists where the ordinance permits what the statute forbids. *Powers v. Nordstrom*, 150 Minn. 228, 184 N.W.967.
- (c) Conversely, a conflict exists where the ordinance forbids what the statute expressly permits.... [emphasis in original] [citation omitted].

- (d) It is generally said that no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute....[citation omitted]. The court found that the ordinance was not in conflict with the state statute because the prohibition on grocery stores with four or more employees from opening on Sundays was complementary and in furtherance of the state’s general prohibition of the sale of groceries on Sundays. 143 N.W.2d 819-20.

The Court referred to preemption as the “occupation of the field” concept, and set forth a four-part test for determining if the state has intended to preempt the field of legislation on a particular issue:

- (1) What is the “subject matter” that is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state? 143 N.W.2d at 820.

The Court went on with a fairly extensive review of other Minnesota cases concerning preemption to explain the doctrine further. In particular, it provided some guidance for the interpretation of the four-part test it outlined (see above) . In *State ex rel. Sheahan v. Mulally*, 257 Minn. 27, 99 N.W.2d 892 (1959) , concerning an ordinance regulating disorderly conduct, the court examined whether the legislature had acted comprehensively on the subject, and whether there were adverse effects of local regulation which outweighed the

historical regulation of this area by local governments. In *Minnetonka Electric Co. v. Village of Golden Valley*, 273 Minn. 301, 141 N.W.2d 138 (1966), a case involving licensing of electrical contractors, the court found that the adverse effects upon the electrical contractors of the state outweighed the policy of allowing local regulation.

In *Mangold*, the court concluded that the state Sabbath regulation did *not* preempt the field. The subject matter was not such that local regulation would have unreasonably adverse effects upon the general populace of the state. Moreover, it was not a matter solely of state concern, like taxing or traffic provisions, but a “rather complete policy statement” by the legislature which the local municipality could shape to its own needs by supplementary ordinances.

The question of preemption is important to the issue of regulating animal agriculture when local governments attempt to address environmental aspects of animal agriculture through performance standards and other land use controls. That subject is discussed below.

Implied Limitations on Authority—Exclusion of Uses

One of the issues that may arise in planning for and regulating of animal agriculture is the question of whether a particular community can exclude a particular use totally from its boundaries. The answer to that question is not clear.

Two treatises have addressed this question. In *Zoning and Land Use Controls*, Rohan concluded that “Where the interests affected are not deemed fundamental, a court will normally uphold such an exclusion if a rational basis exists for it.” (Sec. 40.01[4]). The uses cited in the footnote, however, are commercial and industrial uses, not agricultural ones. Norman Williams reached a similar conclusion, saying

that “it is therefore absurd to argue that every municipality has to find a place for every possible use, including heavy industrial establishments.” (Williams, *American Land Planning Law*, Sec. 101.13).

The issues in regulating animal agriculture are different, however. Most of the cases involving the exclusion of a particular use from a community involve the exclusion of industrial and commercial uses. Those uses do not have the same sort of unique status that Minnesota law gives to agricultural uses (see discussion below). Further, most of the cases addressing these issues involve relatively small communities with limited geographical areas. To hold that a small town consisting of only a few hundred acres in area can exclude a steel mill or a waste disposal site is quite different from holding that an entire county can exclude a viable agricultural use.

There are only two cases in Minnesota that address this issue at all, and neither resolves it in this context. The first addressed the permissibility of single-use zoning by a township. In *Conner v. Chanhassen Township*, *supra*, the township enacted a zoning ordinance designating the entire township as a farm-residence district. A later amendment divided the township into six districts. However, none of these districts allowed commercial or industrial uses. Another subsequent amendment zoned three sections of the township for industrial uses. Business establishments could be built in the industrial zone.

Plaintiffs had a small engine repair shop that became a nonconforming use after enactment of the revised ordinance. Pursuant to condemnation proceedings brought by the state to acquire a highway right of way, plaintiffs had to destroy their shop. Plaintiffs rebuilt their shop on another part of the same lot, without interference from the township. However, plaintiffs brought suit for declaratory judgment

to have the zoning ordinance declared invalid, to eliminate possible liability and improve the marketability of the lot.

The court discussed issues related to the propriety of an action for declaratory relief, and whether condemnation proceedings initiated by the state interrupts the continuance of a nonconforming use. But relevant to our discussion is the court's holding that a township on the periphery of a large metropolitan center may constitutionally pass a one-use ordinance in order to maintain its rural character. In support of this holding, the court found:

The township of Chanhassen, which has a population of 1,795, is largely agricultural and has numerous lakes. It is located on the edge of a large and expanding metropolitan area. The township government may well anticipate the effects of the inevitable overflow into its area...and it may be expected to use the protection measures which Secs. 366.10 to 366.18 provide to determine the future character of the area in a manner it deems will be in the best interests of the public welfare of the community. It was certainly within the discretion of the town board to determine that the township of Chanhassen is to remain a rural residential community where its inhabitants may enjoy use or ownership of property free from the hazards of indiscriminate uses of land which might depreciate the value of surrounding property and impair its livability....

Merely because the town board provided in the original ordinance that the entire township was classified as farm-residential does not make the ordinance so arbitrary as to render the ordinance

unconstitutional. A municipality on the periphery of a large metropolitan center may constitutionally pass a one-use ordinance in order to retain its residential character., *Conner v. Chanhassen Township*, 81 N.W. 2d at 794-95 (citing *Valley View Village v. Proffett*, 221 F.2d 412, *Village of Old Westbury v. Foster*, 83 N.Y.S. 148).

Plaintiffs asserted that zoning of sections as commercial or business districts is necessary to establish comprehensive zoning; in other words, zoning "in accordance with a comprehensive plan." The court rejected this argument, stating that the comprehensive plan is found in the zoning regulations themselves. Comprehensive zoning does not mean a plan which allows for the establishment of various districts. Comprehensive, in this context, means an ordinance that takes the place of numerous ordinances, such as "fire zones," "sanitary codes," and "house codes."

The court concluded by holding that the condemnation by the state, and the destruction of the old shop, did not give rise to the provision of the ordinance prohibiting nonconforming uses after the use has been discontinued.

The second case is an 8th Circuit case in which a farmer raised a federal constitutional claim, asserting that Winona County deprived him of his civil rights when, pursuant to a state court ruling that his worm-farming operation was a nuisance, the county went onto his property and removed "junk." *Hubenthal v. County of Winona*, 751 F.2d 243 (1984). The court set out the ordinance's definition of a junkyard, agreed with the state court that the plaintiff's collection of junk constitutes a junkyard, and held:

Absent a showing of arbitrariness or capriciousness and recognizing that the zoning function is traditionally a governmental task which requires the "balancing

of competing considerations” [citations of U.S. Supreme Court cases omitted] the courts have shown a reluctance to upset zoning laws...Our consideration of the circumstances as a whole leads us to the conclusion that the Winona zoning ordinance in question as applied by the state court of Minnesota is not void for overbreadth or vagueness. 751 F.2d at 246.

Unfortunately, it was not clear from the opinion whether the ordinance prohibited all junk collection (even if carried on as a commercial activity) or just junk collection that constitutes a nuisance.

Although the ultimate question of whether a local government may entirely exclude certain uses remains subject to speculation in Minnesota, it is an important issue to consider. Any rational consideration of it must take place in the context of the vast geographic areas of most counties and of the unique status given agriculture under Minnesota law.

Enforcement

Enforcement is a critical element in the success of any government regulation.

Shoppers in a downtown area take only a few days to discover that a community does not issue parking tickets for meter violations. After that, the meters become meaningless. Similarly, an unenforced, or unenforceable, land use regulation is so useless to a community that it may amount to a misrepresentation of the intent of the local government adopting it.

To take an urban example, it is fairly common for a local government approving a retail use (such as a convenience store) on the edge of a residential area to impose on it conditions related to the operating hours and to the delivery of goods. Such conditions might require that deliveries be made “only between 7 a.m. and 7 p.m.” and that the store operate “only

between the hours of 7 a.m. and 11 p.m.” Some even go farther, and restrict particular activities (such as the sale of gasoline or alcohol) during particular hours. The difficulty with all of these restrictions is that enforcement must take place during the hours when certain activities are prohibited—in other words, between 11 p.m. and 7 a.m. (for operating hours) or between 7 p.m. and 7 a.m. Few communities have zoning enforcement officers on duty overnight. Most must pay over-time and endure a good deal of employee grouching to bring enforcement officers in during those hours. Although a community might decide to do so to halt a pattern of continuing and obvious violations (such as operating hours that regularly continued to 1 or 2 a.m.), enforcing something like delivery times is even more troublesome. Not only must an inspector work odd hours to enforce the restriction on delivery times, she or he must wait at the location, perhaps for hours, to catch the one or two trucks that may be violating the condition.

Local governments imposing such conditions often seek “win-win” solutions, permitting the development to proceed while offering some protection to the neighborhood. The problem is that the unenforceable conditions offer essentially no protection to the neighborhood. If the proposed use would be acceptable only with such conditions in place, then the local government should not have approved the use—because the conditions are unenforceable and thus meaningless. If the use was acceptable with or without the conditions, then the local government should have been honest with the neighbors and approved the use without the conditions. Of course, in some cases there may be voluntary, good-faith compliance with the conditions, but a local government cannot count on that as it adopts regulations, just as states do not count on voluntary compliance with speed limits.

Enforceability is often a problem with tailor-made conditions that arise during the regulatory permitting process. Restrictions included in adopted ordinances and other regulations have usually received the sort of review necessary to ensure that they are reasonably enforceable. A condition developed in the heat of public protests at a particular meeting is much less likely to be enforceable.

Unique Aspects of Planning for and Regulating Agriculture

Historic Perspective

Zoning originally evolved primarily in urban and suburban areas, providing a management tool to separate relatively intense but sometimes incompatible uses from one another. Land use conflicts were less significant in rural areas, largely because the level of activity was less intense. The combination of large spaces between rural land uses and a relatively low intensity of those uses that existed tended to mitigate the sorts of problems that led to early demands for zoning in cities and suburbs.

Zoning expanded to counties and townships for several reasons. First, a proliferation of special districts and other service providers in many states permitted suburban-type development to take place outside of municipalities. The intensity and character of that development often required suburban-type regulations to manage it and mitigate land use conflicts. Second, as suburbanites fled the suburbs for rural areas, they often sought the protection of suburban-type zoning in their new, exurban environments. Third, as family farmers expanded their scope of activities, the nature of land use conflicts in rural areas increased. Although a corn farmer might have lived in relative peace next to a

soybean farmer or even a dairy farmer, when one of the farmers built a machine shop or a trailer court on the family farm, neighbors sometimes became concerned about conflicts between the different land use types. Finally, local governments began to use zoning to ensure that development in rural areas occurred on lots large enough for septic tanks and wells where those provided the only form of services.

Thus, beginning in the 1950s, zoning in rural areas became increasingly common. Now all states except Texas provide zoning authority to the counties and/or townships that have general jurisdiction over rural areas, and a significant number of counties and townships in most of those states have used that authority to implement their own zoning controls.

As zoning has evolved and spread, it has also changed. Early zoning ordinances in urban areas allowed single-family homes everywhere in the community. Similarly, early rural zoning permitted all agricultural activities in every zone. The assumption underlying such regulations was that the fundamental purpose of zoning was to protect residential and agricultural uses from incompatible uses. Although that remains one of the valid purposes of zoning today, many communities have begun to recognize that some uses besides agriculture and residences need protection. For example, major industries now prefer to be located in industrial parks where residences are prohibited, thus eliminating a possible source of citizen complaints and/or suits. **Communities have also begun to recognize that residences and agriculture may need protection from one another.** The location of new subdivisions near agricultural lands may limit the practical ability or willingness of farmers to use pesticides and other farm chemicals, and that proximity may lead to conflicts between the children and dogs who live in subdivisions and the animals and plants that live on farms.

Further, many people have an idyllic view of rural life and believe that they might welcome the opportunity to live in a subdivision next to a cornfield or meadow with a few cows. When faced with an animal feedlot, some may not be as comfortable with the odor, noise or hours of operation of such a facility. Thus, contemporary zoning involves distinctions and protections that did not seem necessary and that thus typically did not exist under early zoning regulations.

Part of the difficulty of addressing the issue of animal agriculture through planning and zoning is that many people still think of rural zoning as something that allows or even encourages the development of a variety of agricultural and residential uses in comfortable proximity to one another. In most cases, that is not a realistic scenario today.

Unique Status of Agriculture in Minnesota
Minnesota law recognizes the unique land use status of agriculture in the state under several state laws. Two particularly important ones are the so-called “right-to-farm” law (Minn. Stat. §561.19) and the Minnesota Agricultural Land Preservation Act (Minn. Stat. Ch. 40A).

The state’s right-to-farm law is based on a fairly standard model. It protects “agricultural operations” that have operated in substantially the same way for two or more years and that continue to operate “according to generally accepted agricultural practices” from most public and private nuisance actions. “Agricultural operations” are defined as “a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.” An agricultural operation is operating according to “generally accepted agricultural practices”

if it is “located in an agriculturally zoned area and complies with the provisions of all applicable federal and state statutes and rules or any issued permits for the operation.”

Although the state’s definitions provide broad protection to agricultural operations, a specific provision of the same statute exempts some animal agriculture operations from protection:

(4) ... an animal feedlot facility with a swine capacity of 1,000 or more animal units as defined in the rules of the pollution control agency for control of pollution from animal feedlots, or a cattle capacity of 2,500 animals or more[.] Minn. Stats. 561.19).

The state’s Agricultural Land Preservation Act also establishes state policies recognizing the importance of agricultural land and provides a great deal of regulatory protection for agriculture, at least for lands included in “agricultural preserves.” (Minn. Stats. 40A.01 *et seq.*). Land in an agricultural preserve is more difficult to annex, and the ability of public agencies to condemn and use such lands for public projects is significantly restricted. Under the Agricultural Land Preservation Act local governments accept or adopt preemptions of some local regulations in agricultural preserve areas. Moreover, the Act specifically directs local governments to address the issue of residential density within preserve areas. The Metropolitan Agricultural Preserves Act provides similar protection for lands within the Twin Cities Metropolitan Area (Minn. Stats. 473H.01 *et seq.*). Additionally, the State Agricultural Land and Conservation Policy provides some protection from state agency actions that would adversely affect agricultural land.

Through the planning process for agricultural land preservation and the right to

approve the formation of a preserve area, counties retain very significant control over the location of protected agricultural activities.

Zoning Authority and Agriculture

Like right-to-farm and agricultural preservation laws in other agricultural states, **the unique status of agriculture under state law imposes significant limitations on the ability of local government to regulate agriculture through zoning and other local controls.**

Unlike some states, however, Minnesota does not provide a blanket exemption from zoning for agriculture. While it would appear to be inconsistent with state policy for a local government to impose significant limits on the conduct of agriculture in rural areas, the law leaves room for reasonable regulation of the location of agricultural uses and their respective relationships to other uses. Further, the exclusion of large feedlots from some of the protections of state law suggests that there is also room under the law to make regulatory distinctions based on the intensity of the regulated activity. (*see discussion of "Intensity" in box on page IV-2.*) Further, there is also the opportunity to define agriculture for purposes of zoning. For example, a local government might reasonably prohibit the manufacture of tractors or other agricultural equipment in a farming area. That may seem an extreme example, but it illustrates the point that the protection of agriculture under state law does not extend to every activity that a farmer may decide to conduct on a farm.

The Takings Issue and the Regulation of Agriculture

Property owners in rural areas often have great concerns about the interference of government regulation with their property rights. In that context, they often cite the taking issue as a basis for objecting to local regulation.

Where the takings issue may arise in rural areas is under regulations limiting the use of land strictly to agricultural purposes. Farm owners on the fringes of urban areas sometimes challenge exclusive-agricultural zoning on the ground that it interferes with their right to sell their land for development. Although such cases are often resolved when a local government simply rezones the farm to allow its development, some local governments have refused to do that, leading landowners to sue. In his treatise, *American Land Planning Law*, Norman Williams has discussed the result of those cases, finding broad support for exclusive agricultural zoning (see, generally, Williams, Sec. 158.21, including pocket-part supplement). The common theme among those cases, from a variety of jurisdictions, is that agriculture itself is a "reasonable use" of land and that the limitation of land to an agricultural use thus is not arbitrary, unreasonable, unconstitutional or otherwise proscribed by legal principles. Among the cases that Williams cites is *Farmington Township v. High Plains Coop.*, 460 N.W.2d 56 (Minn.Ct.App. 1993), a case that involved the refusal of a local government to permit a 30,000-gallon storage tank in an agricultural zone; although the court recognized that farmers often store fuel, it also found that the proposed tank was much larger than those typically used on farms.

Preemption and the Regulation of Animal Agriculture

The issue of preemption seems like quite an abstract one, until it is applied to a particular set of facts and circumstances. Such a set of facts and circumstances can arise in the regulation of feedlots and other animal agriculture. Although zoning addresses land uses, some of the issues relevant to regulating land uses may relate to concerns also addressed by the state. For example, industrial performance standards

related to smoke emissions that were long used in zoning have now largely been preempted and effectively superseded by a comprehensive system of state and federal regulation of air pollution.

Some of the issues involved in animal agriculture are classic zoning and land use issues. The noise and odors associated with such facilities may serve as the basis for regulating them, just as they serve as the basis for regulating other types of uses that generate noise and odors. To the extent that some such facilities generate unusual traffic, that is a classic land use issue. The very nature of the use and its intensity are standard zoning issues. On the other hand, legitimate concerns about the quality of runoff from such facilities may influence local government land use regulations, but they are matters also addressed by the Minnesota Pollution Control Agency (MPCA) through its responsibility for environmental regulation in the state. Although it is unlikely that a local government will attempt to regulate water quality directly (a matter which would seem to fall squarely within the scope of state preemption), local governments may establish special setback requirements for such facilities from streams, may prohibit holding ponds as uses in floodplains and may require special runoff management plans, much as a city might impose on an urban development. The legal issue that arises from such approaches is the question of whether the state's direct regulation of water quality and other environmental matters through its permitting system for such facilities preempts local efforts to regulate such matters.

As noted in the discussion above, the leading Minnesota case on preemption is *Mangold*, *supra*. It set out a four-part test regarding the preemption issue. (1) What is the "subject matter" that is to be regulated? (2) Has the subject matter been so fully covered by state

law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state? 143 N.W.2d at 820.

Two other important cases are directly relevant to addressing the preemption issue in this context. One other recent Minnesota state court case concerns itself with the preemption issue. *Minnesota Agricultural Aircraft Association v. Township of Mantrap*, 498 N.W.2d 40 (Minn.Ct.App. 1993) addressed whether a local ordinance regulating aerial pesticide spraying was preempted by Minn. Ct.App.18B.02, entitled "Pesticide Control." Like the other Minnesota preemption cases, it cites the tests for conflict and preemption set forth in *Mangold*. Its only significance (other than the fact that it was decided fairly recently) is that it discussed language in the statute that specifically defined the scope of the statute's preemption, making it unnecessary to analyze the conflict and preemption issues under the tests of *Mangold*. The statute specifically preempted local ordinances addressing the "...use, application, or disposal of pesticides." It also stated that it was not the intent of the legislation to preempt local responsibilities for "zoning, fire codes, or hazardous waste disposal." The township argued that because the grant of zoning authority given to local governments under Minn. Stat. §462.357 covered land as well as the air space above the surface, the township's ordinance fell within the zoning exception to the preemption clause. The court rejected the township's argument, stating that the township's ordinance was clearly directed at the aerial application of pesticides, not the use of the air space above the land. The court stated that following the township's interpreta-

tion of the statute would render the preemption language of the state statute meaningless.

A recent 8th Circuit case should also be considered because it deals with the issue of local regulation of pollution and the scope of MPCA regulations regarding waste disposal. In *Anderson v. Douglas County*, 4 F.3d 574 (8th Cir. 1993), a landowner claimed that the county and its zoning administrator violated his equal protection and due process rights by denying him permission to "thin spread" petroleum-contaminated soil he received from the city. The court concluded that no violation of rights occurred. In the process of deciding the constitutional questions, it examined, as an ancillary issue, the question of whether the county government's policy "regarding thin spreading of contaminated soil originating outside Douglas County" conflicted with the MPCA's authority to regulate waste disposal. The court, citing *Mangold*, stated that "conflict exists only when an ordinance and a statute contain express or implied terms that are irreconcilable; no conflict exists where an ordinance is merely additional and complementary to, or in aid or furtherance of, a statute." 4 F.3d at 578. The court rejected plaintiff's argument, citing Minn. Stat. §§400.16 and 400.161 which state that local governments have the power to regulate waste to the extent that such regulation does not conflict with state regulation. The court also pointed out language in the MPCA application for spreading of soil that indicates that local regulations may apply. The court concluded that the local regulations were, in fact, complementary to, and not in conflict with, the authority of the MPCA.

Since this case was decided, the Minnesota legislature has apparently amended Minn. Stat. §116.07 to address the issue of spreading contaminated soils in townships other than the township of origin of the soil. See Minn. Stat. 116.07(11).

Due to MPCA's role in regulating the environmental impacts of feedlots, the question of whether local governments can address environmental issues with their land use regulations, however, is open to significant question. In *Crooks Township, Renville County v. ValAdCo.*, 504 N.W.2d 267 (Minn.Ct.App. 1993), the Minnesota Court of Appeals struck down a township's attempt to regulate the establishment of a feedlot because the regulation involved a permitting system, applicable only to feedlots, that was very similar to the state's environmental review permitting requirement. The case is discussed in a sidebar. It is important to note that this decision came from the Minnesota Court of Appeals and not the Supreme Court and that it involved a township, not a county. Whether the Supreme Court will ultimately agree with that opinion and whether either of the high courts would apply it to a county are among several questions that remain unresolved. Although the case is the only appellate case in Minnesota that directly addresses the issue of preemption as it relates to the regulation of feedlots, it is very likely that continued litigation in this field will lead to one or more appellate court opinions that may clarify, limit, expand or even throw out this opinion. A local government contemplating the regulation of feedlots should certainly be cognizant of this case, but it may be unwise to rely on this as a final determination of the law in the field.

The continuing evolution of the law in this field is reflected in a more recent district court case involving Blue Earth County's feedlot regulations. In that case, the court faced with this issue found that local governments and the state share responsibility for regulating animal confinements. That court, in ruling on a motion for a preliminary

injunction, determined that the state has not fully occupied the field of regulating animal confinements and that there is both the opportunity and the need for local governments to participate in that regulation. This case is also discussed in a sidebar. The fact that it involved a county rather than a township may or may not explain the fact that the district court reached a conclusion that on its face appears inconsistent with the holding of the Minnesota Court of Appeals in the Crooks Township case, discussed in the previous paragraph.

Given the level of interest in this issue, it seems likely that the Supreme Court will issue a determinative ruling on the issue at some time in the next several years. That decision may or may not follow the Court of Appeals position in this case. This section of this handbook is provided as background information only. Changes in the law, either in the courts or in the legislature, seem likely. Users of the handbook should treat this particular section as generally informational only. As on any legal issue, users should rely only on specific advice from their own attorneys. Because of the rapidly-evolving law in this field, there is a significant chance that the attorney's advice on this specific issue may differ from the conclusion that a reasonable person might reach from simply reading this section.

Enforcement Issues

Enforceability of zoning provisions in rural areas is a particular concern. Townships and counties typically have limited personnel for any function and may have no one assigned full-time to enforcement duties. Building inspectors and health officers often drawn enforcement duty in rural areas. Although some become well-versed in land use issues from participation in professional seminars, others have so many demands on their time that they

never have the time to master the complexities of zoning. Thus, zoning enforcement in general is often lacking in rural areas.

To complicate that through the adoption of complex performance standards or other seemingly-innovative techniques may ultimately be a disservice to the community. **A county or township considering the adoption of any complex or sophisticated form of regulation of animal agriculture (or any other complex use) ought to study carefully the issue of enforcement before acting.** Only if local officials are satisfied that their staff can enforce what they adopt should they approve such regulatory programs.

This warning need not act as a bar to appropriate regulation. Techniques like locational restrictions and setbacks are relatively easy to administer and enforce. Persons currently responsible for enforcement of other zoning regulations can easily manage the administration and enforcement of such regulations. It is only with the more complex controls or those requiring constant vigilance (such as restrictions on the hours of arrival and departure of trucks) that the enforcement issues become uniquely difficult. Although the more sophisticated regulations may appear to offer unique solutions to complex problems, they only make sense if they are simple enough to be enforced.

Table of Authorities

CASES

- Alevizos v. Metropolitan Airport Commission*, 298 Minn. 471, 216 N.W.2d 651 (1974).
..... III-7,9
- Amcon Corporation v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984). III-6
- Anderson v. Douglas County*, 4 F.3d 574 (8th Cir. 1993). III-22
- Barton Contracting v. City of Afton*, 268 N.W.2d 712 (Minn. 1978). III-12
- Bd of Supervisors of Crooks Twp., Renville County v. ValAdCo*, 504 N.W.2d 267 (Minn.Ct.App. 1993). III-22,26-29
- City of St. Paul v. Carlone*, 419 N.W.2d 129 (Minn.Ct.App. 1988). III-3
- Communications Properties v. Steele County*, 506 N.W.2d 670 (Minn. 1993). III-12
- Conner v. Chanhassen Township*, 249 Minn. 205, 81 N.W.2d 789 (1957). III-3,5,15
- Costley v. Caromin House, Inc.*, 313 N.W.2d 21 (Minn. 1981). III-4
- Czech v. City of Blaine*, 312 Minn. 535, 253 N.W.2d 272 (1977). III-10
- Denney v. City of Duluth*, 295 Minn. 22, 202 N.W.2d 892 (1972). III-4
- Dolan v. City of Tigard*, 114 S.Ct. 2309 (1994).
- Farmington Township v. High Plains Coop.*, 460 N.W.2d 56 (Minn.Ct.App. 1993). III-20
- First English Evangelical Lutheran Church v. City of Los Angeles*, 482 U.S. 304 (1987).
..... III-8
- Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981). III-11
- Hubenthal v. County of Winona*, 751 F.2d 243 (1984). III-16
- Hutchinson v. Cotton*, 236 Minn. 366, 53 N.W.2d 27 (1952). III-3
- Keystone Bituminous Coal Association v. DeBenedictis*, 107 S.Ct. 1232 (1987). III-8
- Loretto v. Teleprompter Manhattan CATV Corp.*, 102 S.Ct. 3164 (1982). III-8
- Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). III-9,10
- Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966).
..... III-14,15,21,22,26
- McShane v. City of Faribault*, 292 N.W.2d 253 (Minn. 1980). III-3,9,10
- Minnesota Agricultural Aircraft Association v. Township of Mantrap*, 498 N.W.2d 40 (Minn.Ct.App. 1993). III-21
- Minnetonka Electric Co. v. Village of Golden Valley*, 273 Minn. 301, 141 N.W.2d 138 (1966). III-15
- Naegele Outdoor Advertising Co. of Minnesota v. Village of Minnetonka*, 281 Minn. 492, 162 N.W.2d 206 (1968). III-11
- Nollan v. California Coastal Commission*, 107 S.Ct. 3141 (1987). III-9
- Pearce v. Village of Edina*, 263 Minn. 553, 118 N.W.2d 659 (1962). III-11
- Penn Central Transportation Company v. New York City*, 98 S.Ct. 2646 (1978). III-8
- Pennsylvania Coal Co., v. Mahon*, 43 S.Ct. 158 (1922). III-7
- Pratt v. State ex rel. Department of Natural Resources*, 309 N.W.2d 767 (Minn. 1981).
..... III-10
- R.A. Putnam & Associates v. Mendota Heights*, 510 N.W.2d 264 (Minn.Ct.App. 1994).
..... III-6
- Reilly Tar & Chemical Corp. v. City of St. Louis Park*, 265 Minn. 295, 121 N.W.2d 393 (1963). III-4
- Rochester Association of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978).
..... III-5,6,11
- San Diego Gas & Electric v. City of San Diego*, 101 S.Ct. 1287 (1981). III-8
- State ex rel. Foster v. City of Minneapolis*, 255 Minn. 249, 97 N.W.2d 273 (1959). III-13
- State ex rel. Sheahan v. Mulally*, 257 Minn. 27, 99 N.W.2d 892 (1959). III-14
- State ex. rel. Howard v. Village of Roseville*, 244 Minn. 343, 70 N.W.2d 404 (1955).
..... III-2
- Sun Oil Co. v. Village of New Hope*, 300 Minn. 226, 220 N.W.2d 256 (1974). III-12
- Village of Euclid v. Ambler Realty Co.*, 47 S.Ct. 114 (1926). III-8
- Zykla v. City of Crystal*, 283 Minn. 192, 167 N.W.2d 45 (1969). III-11

STATUTES

- Minn. Stat. §116.07(11). III-22
- Minn. Stat. §366.12. eet seq. III-4,5

Minn. Stat. §394.01 et seq..	III-4,5,7
Minn. Stat. §40A.01 et seq..	III-4,19
Minn. Stat. §462.01 et seq.	III-4,5
Minn. Stat. §471.705	III-12
Minn. Stat. §472.371 et. seq.	III-4
Minn. Stat. §473.01 et seq.	III-4,6
Minn. Stat. §473H.01 et seq.	III-19
Minn. Stat. §561.19.	III-18

TREATISES

Rohan, Patrick J., <i>Zoning and Land Use Controls</i> , Matthew Bender and Company, 1978, updated to 1995.	III-15
Williams, Norman, Jr., <i>American Land Planning Law</i> , Clark Boardman Callaghan, various, updated to 1995.	III-15

CONSTITUTIONAL PROVISIONS

Minn. Const. Art.1, sec. 13.	III-7,10
U.S. Constitution, Amd. 5.	III-7,10

Highlighted Case 1—Crooks Township

Note: The cases highlighted in these two boxes are extremely important to review in considering the issues discussed in this chapter, because they deal directly with some of those issues. It is not clear, however, that either will ultimately be the law in Minnesota on these important issues.

Board of Supervisors of Crooks Township, Renville County v. ValAdCo, 504 N.W.2d 267 (Minn.Ct.App. 1993) is the case most relevant to the feedlot regulation issue. It is also, apparently, the most controversial as to its meaning and application, according to the comments made on the first handbook.

In *Crooks Township*, the township enacted an ordinance requiring anyone desiring to operate an animal feedlot to obtain a permit from the township. The issue was whether the manure control regulations promulgated by the Minnesota Pollution Control Agency (MPCA) to comply with the state pollution policies of Minn. Stat. Chapters 115 and 116 were a comprehensive scheme that preempted local action on the subject.

In *Crooks Township*, the court used the four-part test outlined in *Mangold* to determine whether that state action preempted the field and thus precluded local action. In its application of the test: (1) The court determined that the subject matter being regulated by the state under Minn.R. 7020.0100-.1900 was the control of pollution from manure produced in animal feedlots. This was the very subject the township ordinance purported to regulate. (2) The court determined that the breadth of the state statutory scheme, as evidenced by the extensive review and permitting procedures undertaken by the MPCA, indicated that control of pollution from manure was fully covered by state law. (3) It determined that pollution, by its very nature, is difficult to confine to particular geographic areas. For that reason, the state has set up a statutory structure for issuing animal feedlot permits “that provides for local input but retains ultimate control in the state,” promoting “uniform interpretation and application of state rules and [allowing] the state to take into account the environmental and economic welfare of the state as a whole.” *Id.* at 269. The court also noted that allowing townships to enact their own pollution controls would result in a “patchwork of different rules. Compliance with varying local rules would be burdensome and would have a detrimental effect on the efficient operation of the state’s agricultural industry.”

The township raised several issues in support of its position that local controls of feedlots were not preempted. First, it took the position that regulating animal lots was an appropri-

ate exercise of the police power. The court responded by stating that “although municipalities have the power to regulate in the interest of public health, safety, and welfare, a township cannot invoke ‘police power’ to accomplish what is otherwise preempted by state statute.” *Id.*, at 271. [citing *Minnesota Agricultural Aircraft Association v. Township of Mantrap*, 498 N.W.2d 40 (Minn.Ct.App. 1993) (discussed later)].

The township also took the position that the state laws themselves authorize the local governments to enact ordinances concerning manure management. It cited Minn. R. 7020.0100, which reads “the agency will look to local units of government to provide adequate land use planning for residential and agricultural areas. It has been the agency’s experience that residential and agricultural uses of land are often incompatible and that the best forum for resolving the conflicting use of land is at the local level.” The court reasoned, however, that this provision committed to the local government determinations on the best *type of use* for land, not control over the construction and operation of animal feedlots.

Finally, the township asserted that local action by a township was allowed because of language in the regulations that discussed a cooperative program between MPCA and *counties*, including a statement that reads: “[A] joint county-state program is desirable because it will insure local involvement, minimal disruption to agricultural operations and protect the environment from further degradation.” Minn.R. 7020.0100. The court rejected this argument by zeroing in on the word “counties,” concluding that references to “local” action meant county action. It further stated that “in all cases the MPCA retains ultimate reviewing authority over county decisions.” *Crooks*, at 271.

The court held that the township ordinance was preempted by state law. It also held that the ordinance was in conflict with the state law because the ordinance’s setback requirements would prohibit construction of the facilities that the MPCA has already approved.

Highlighted Case 2—Blue Earth County

Note: The cases highlighted in these two boxes are extremely important to review in considering the issues discussed in this chapter, because they deal directly with some of those issues. It is not clear, however, that either will ultimately be the law in Minnesota on these important issues.

Adding to the controversy over the implications of *Crooks Township* is the May 1995 District Court case of *Blue Earth County Pork Producers, Inc. v. Blue Earth County*, largely because the District Court Judge in *Blue Earth* went to such great lengths to distinguish *Crooks Township* from the facts in *Blue Earth*.

Blue Earth county adopted a “Livestock Manure Management Ordinance,” designed to control pollution from manure produced in animal feedlots. The Blue Earth County Pork Producers brought the subject action, seeking a declaratory judgment as to the validity of the ordinance. Plaintiff argued that the county ordinance was preempted by state pollution control laws, and cited *Crooks Township* in support of its position. Defendant Blue Earth County distinguished *Crooks Township* from the present action on the ground that county governments are treated differently than townships under the Minnesota pollution control statutes. Specifically, they cited a portion of Minn. R. 7020.0100 which reads:

These rules provide for a cooperative program between counties and the Minnesota Pollution Control Agency. County programs, in many instances, represent considerable experience and sensitivity to local agricultural practices and to successful soil and water conservation. Pollution control measures, where deemed necessary by the agency, should be individually designed and developed to provide the site specific controls needed for the operation in question. Therefore, a joint county-state program is desirable because it will insure local involvement, minimal disruption to agricultural operations and protect the environment from further degradation.

The District Court sided with the county, holding that the subject matter of feedlot manure control has not been so fully covered by state law as to become solely a matter of state concern. The court agreed with the county that the above-cited provision of the pollution control regulations afforded counties a significant role in manure management. It also considered several other factors that it believed supported the county’s position. First, the MPCA provides feedlot permits for less than one-half of the feedlots in the state; second, of those that have been permitted by the MPCA, many have never been inspected by the MPCA, nor are they subject to regular inspection; third, much of the responsibility for permitting and inspecting feedlots has been delegated by the MPCA to the counties.

Whether the District Court was correct in distinguishing this case from the decision of the appellate court in *Crooks Township* is not clear. An appellate court may overrule that decision, or the legislature may change the law. It is true that the statutes and the regulations purport to create a different arrangement between counties and the Minnesota Pollution Control Agency than between townships and the MPCA, but the language of the appellate court in the *Crooks Township* case seemed to place limits on the actions of “local government” generally. In *Crooks*, the appellate court interpreted the regulatory language of Minn. R. 7010.0100 to mean that “local government” is the best forum for resolving conflicts over the best type of use of land. “It does not express the intention that, once land has been properly zoned for agricultural use, local government may impose specific requirements on the construction and operation of animal feedlots.” 504 N.W.2d at 271. In that decision, the appellate court emphasized the ultimate authority of MPCA over the issuance and denial of permits for livestock operations.

Chapter 4:

Implementation Options

Strategies designed to address animal agriculture land use issues should not be developed in a vacuum. This handbook stresses the importance of laying a solid planning and legal foundation before attempting to construct a regulatory response to what is often a very controversial and sometimes emotional issue. It also recognizes that plans become meaningful only when they are carried out. The “rubber meets the road” in terms of the specific measures used by counties and other local governments to implement a plan’s adopted goals and policies. This chapter begins with a discussion of the theoretical foundation for land use implementation strategies affecting animal agriculture. From there, it goes on to provide an overview of specific types of regulations that are now being used or could be used to implement animal agriculture planning policies. It concludes by presenting sample ordinance provisions to further illustrate the concepts discussed throughout the chapter.

The Foundation for Regulations: Separation vs. Mitigation

Towns and counties face many choices about how to put their land use plans, including those geared toward addressing animal agricultural, into action. Ideally the most fundamental question—whether special land use regulations should be imposed on animal agriculture uses—will have been answered during the planning process. If that question is answered affirmatively, the next questions will undoubtedly revolve around where and under what circumstances animal agriculture will be allowed. It is at this point that towns and counties will be deciding whether to use a “separation-based” strategy or to use an approach that emphasizes “mitigation” of animal agriculture’s potential impacts. In most cases, a hybrid approach, combining the best features of both strategies, will constitute the most effective, fair and workable approach for Minnesota’s rural towns and counties.

Separation-Based Strategies

Separation-based land use control strategies are based on the notion that spatial segregation is the best method of ensuring that different land uses do not have an adverse effect on one

another. Nearly all early zoning ordinances were built around the separation-based model, and most continue to rely on that model today.

Intensity

The term intensity is often used in land use and zoning discussions, but what does it really mean? Strictly speaking, land use intensity is a measure of the degree to which land is used, usually expressed as a ratio of land use to land area. Residential density--the number of dwelling units per acre of land--is the most common intensity measure. For nonresidential uses, intensity is tracked on the basis of the amount of building floor area per square foot of lot area. Although uncommon, livestock density--quantifying the number of animal units per acre of land represents another way to express intensity.

Defined in these strict terms, intensity can be an excellent measure of public facility demands. When it comes to measuring a land use's full range of impacts, however, intensity tells only part of the story. The number of dwelling units or the amount of nonresidential floor space on a site provides basic and vital information that can be used to project future traffic volumes, water and wastewater needs, and other service demands. Quantitative expressions of intensity do not offer a clue, however, about the hours that a facility might operate, where its outdoor lighting will be located, what type of pollution control measures it will employ or other operational matters. In short, intensity, when defined as a quantitative measure of use, is not always a reliable gauge of whether uses will be good neighbors.

Strict definitions aside, it is common for the term intensity to be used in a broader sense than merely "how much of a use exists on a site." When people talk of one land use being more intensive than another use, it is generally safe to say that they are not confining their thoughts to a comparison of residential densities or nonresidential floor area ratios. They are, instead, referring to a wide range of factors that influence the relationship among land uses, factors that influence whether one use is compatible with another. This broader notion of intensity can be thought of as "qualitative intensity."

Land uses can have a variety of effects on their surroundings. Those impacts can affect natural systems, the visual environment, local economic conditions and nearby property values. Zoning regulations are intended to address land use impacts (or "qualitative intensity") by imposing controls aimed at 1) **use** (such as agricultural, residential, commercial or industrial); 2) **site development** (such as lot size, width, building height or setbacks); 3) quantitative **intensity** and 4) **operating characteristics** (such as hours of operations, lighting, pollution control, and other management practices). Frequently, the most dependable way to address "qualitative intensity" will come about through consideration of all these factors, particularly, the operating characteristics of a given use.

Zoning

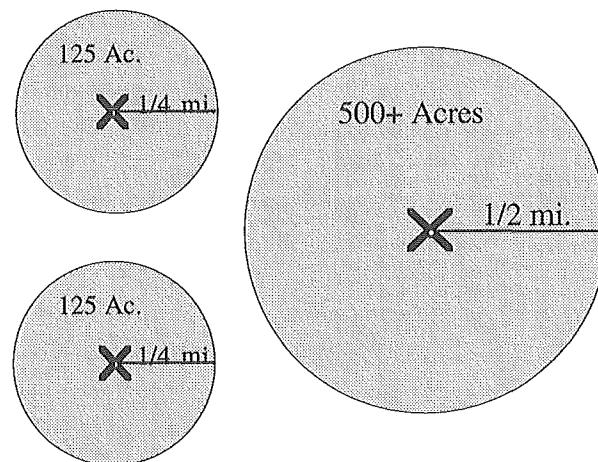
Zoning is a classic and time-tested example of a separation-based land use control strategy. Through zoning, a community is divided into different zones or zoning districts, each of which allows different types of uses and different levels of development intensity (See “Intensity” sidebar on the previous page). The boundaries shown on the zoning map and the regulations that apply within zoning districts are based on land use goals and policies developed during a planning process.

Interestingly, the earliest forms of zoning in the U.S. did not actually ensure the separation of potentially incompatible uses. Most early zoning ordinances relied on cumulative use zoning schemes (sometimes referred to as pyramidal zoning). Under the cumulative use approach, commercial and industrial uses were prohibited in residential zoning districts, but residential uses were not necessarily prohibited in higher intensity commercial and industrial districts. The theory was that a person’s residence constituted a substantial investment and that investment needed to be protected from nonresidential encroachment. On the other hand, policy makers did not necessarily see the need for protecting industry from residences.

Over time, the cumulative use approach was supplanted by the exclusive use approach, which is now the most common zoning approach. In its purest form, exclusive use zoning ensures separation and isolation of incompatible land uses by simply prohibiting different types of uses from locating in the same zoning district. Under exclusive use zoning, commercial and industrial uses are prohibited in residential districts, and vice-versa¹.

Use-Specific Standards

Use-specific standards differ from zoning district regulations by focusing on individual use types rather than groupings of uses. Regulations that establish required separation distances between different types of uses are examples of use-specific standards, in this case use-specific *separation* standards. Requiring alcohol sales establishments and adult entertainment businesses to be located some minimum distance from schools is an example of a use-specific separation standard. Also common are billboard separation



If a use is required to be located at least one-quarter mile from each residence, 125 acres will be off-limits for each residence in the area.

requirements that call for new billboards to be placed some distance from existing ones.

Separation requirements are increasingly common in the animal agriculture arena. Some counties in Minnesota have adopted requirements that animal agriculture activities be separated from other land uses and

development types. Jurisdictions using the use-specific separation approach have established minimum separation distances from public parks, city limit lines, residential subdivisions and low-density residential zoning districts. Others have imposed minimum separation distances between feedlots and urban expansion zones around a municipality. Such requirements probably owe their origins to state regulations requiring that feedlots be “separated” from environmental resources and other features (shorelands, wetlands, wells, etc.).

Critics of separation requirements argue that use-specific separation standards may have the effect—planned or not—of all but prohibiting animal agriculture from relatively large areas. In fact, each time a one-quarter mile separation radius is imposed, over 125 acres of land are rendered off-limits for the regulated use. With a separation radius of one-half mile, over 500 acres become ineligible. Critics of separation standards also question the fairness of an approach that allows individual landowners to control the use of vast amounts of land that they do not own.

Other critics argue that if separation requirements are going to be used as a regulatory response, they should be evenhanded—designed to keep residences and other urban uses away from agriculture (animal and crop) as well as vice-versa. In response, some local ordinances are beginning to view separation as a two-way street, requiring that new nonfarm development be located some distance from animal agriculture uses.

Mitigation-Based Strategies

By the early 1950s, some planners were beginning to question the static and rigid nature of conventional zoning and other separation-based land use control strategies. They argued that land uses should be evaluated on the basis of their impacts on surrounding areas (and how

well they mitigate those impacts). Proponents of the mitigation-based approach to land use control argue that it is unfair and illogical to assume that an entire class of uses will have the same impact on surrounding areas.

Performance Standards

The earliest mitigation-based regulations came in the form of industrial performance standards which were aimed primarily at controlling the dust, odor, vibration, noise, light and smoke associated with “heavy” manufacturing uses. Although one of the benefits of industrial performance standards was they could be written in very objective, precise terms, many communities found themselves without the personnel or equipment to measure whether compliance was being achieved.

Due to the growing involvement of state and federal governments in environmental protection during the 1960s and 1970s, industrial performance standards fell from favor for a period. Recently, however, interest in mitigation-based strategies has been increasing, as local governments have been moving back into the “business” of regulating environmental impacts.

Over the past three decades, performance-based standards have been championed as a means of dealing with industrial and nonindustrial land use issues. Performance zoning advocates claim that such an approach offers communities a very flexible, effective and fair tool for addressing land use compatibility issues. Administration of a performance-based system of land use controls is widely regarded as more complex and time-consuming than administration of traditional zoning strategies. As a result, true performance-based land use controls are rare, although it is not uncommon to find individual performance-based provisions, such as those aimed at ensuring adequate landscape

buffers and visual screens between different land use types. It is also common to find industrial performance standards in local ordinances.

The Hybrid Approach

As a result of the shortcomings of pure separation and pure mitigation-based approaches, most modern land development ordinances are comprised of a combination of separation and mitigation-based controls. Such a hybrid approach—combining zoning district regulations, use-specific standards and performance-based land use controls in one package—will likely represent the most effective, fair and workable approach for Minnesota's rural towns and counties. The following section discusses a number of options for dealing with the land use and regulatory issues taken up in this handbook.

Regulatory Options

Zoning Districts

Zoning has long been championed as a means of implementing land use planning objectives, including those that address agricultural issues. One of the most effective means of advancing agricultural land preservation objectives, for example, is to establish exclusive use zoning districts in which only agriculture and directly related uses are allowed. Exclusive use agricultural zoning districts help preserve land for long-term agricultural use. By separating farm and nonfarm uses, they also prevent the types of land use conflicts that can arise when modern agricultural practices are carried out near nonfarm development.

Despite the fact that exclusive use agricultural zoning is an increasingly common tool for addressing farmland preservation objectives, zoning district regulations have not been used

extensively as a means of carrying out animal agriculture planning objectives. Because traditional agricultural zoning districts tend to lump all types of agriculture together in a single district, they do little to address the different impacts associated with crop and animal-based agricultural operations.

One method of implementing a county's long-term goals for all types of agriculture might be to create two or more agricultural zoning districts, each geared toward specific types of agricultural activities. A two-tiered agricultural zoning scheme, for instance, might include one district geared toward crop-based uses and another that allows crop *and* animal agriculture uses. Another variation on the multi-tiered theme might involve the creation of a rural residential or hobby farm district in addition to full-scale agricultural districts.

Precedence for a multi-tiered agricultural zoning scheme can be found in most zoning ordinances. It is quite common, for example, for jurisdictions, to use "light" and "heavy" industrial zoning districts to differentiate among locations that are appropriate for different levels of manufacturing activity. Most ordinances also include different types of residential districts (single-family, duplex, multi-family, etc.) and more than one kind of commercial district.

The idea behind the multi-level agricultural zoning is that through sound land use planning it may be possible to identify areas that are appropriate for different types of agricultural activities. Analysis of residential development patterns, soil conditions, environmental features, drainage patterns, prevailing winds, aesthetic and other pertinent considerations may enable jurisdictions to develop a long-term land use plan that specifically addresses crop and animal agriculture. Of course, such a plan should

also analyze and take into account the role of all forms of agriculture within the area economy and the substantial investment that agricultural activities represent for their owners.

A multi-tiered scheme recognizes that not all agricultural uses are the same when it comes to impacts on surrounding uses, including agricultural uses. It acknowledges that, while any use is capable of generating adverse land use impacts, some have a stronger likelihood of doing so than others. A multi-tiered strategy allows jurisdictions to distinguish among the types of agriculture uses that will be allowed in different areas. The result offers residents in and near agricultural areas greater predictability about the types of agriculture likely to occur nearby. It also offers counties the ability to clearly indicate to farm operators exactly where their activities are welcome.

New zoning districts should not be viewed as a device for zoning controversial uses out of an area. It should also be noted that the zoning district approach is likely to have the most significant and noticeable effect in jurisdictions that have not yet experienced much development pressure for new animal agriculture uses. In short, the sooner a multi-tiered zoning district strategy is put into effect, the more likely it is to achieve its purpose.

The sample zoning district provisions at the end of this chapter provide the starting point for crafting multi-tiered agricultural districts. The two sample agricultural zoning districts presented on pages IV-11 through IV-14 rely on a very simple distinction. One permits crop-based agriculture only; the other permits crop *and* animal agriculture. This simple use-specific approach avoids the sometimes arbitrary distinction made between sizes of animal agriculture operations. The

sample provisions avoid the use of size as the primary criterion for regulation under the assumption that a poorly managed small operation may cause as many if not more problems than a well managed large facility. Those who wish to craft multi-tiered district schemes on the basis of other measures, such as animal units, should do so only after careful consideration of the land use basis for such distinctions.

Conditional Uses

Some jurisdictions use conditional use requirements as a means of regulating animal agriculture and other types of uses. The advantage of such an approach is that it allows an opportunity to review specific issues related to a particular combination of site and use. There is, however, a major disadvantage to the conditional use approach: requiring a special public hearing on

“Conditional Use” Defined

Minnesota’s County Planning and Zoning statutes define a conditional use as “a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that (1) certain conditions as detailed in the zoning ordinance exist, and (2) the use or development conforms to the comprehensive land use plan of the county and (3) is compatible with the existing neighborhood.” Minn. Stat. §394.22, Subd. 7.

every controversial development proposal—be it a feedlot, a car wash or a convenience store—tends to politicize every land use siting issue. The result can be a large and contentious public hearing and the very understandable temptation to base land use procedures are adopted in-lieu-of dealing rationally with an issue through up-front planning. Through planning and citizen

participation, land use decisions can be made early before investments have been made and expectations set. Very often, public officials have no more objective information to make land use siting decisions after conditional use public hearings than they did before such hearings. Delaying the decision will not make it easier. In many ways, it will make it harder.

For the reasons stated above, classifying controversial uses as “conditional” is not a recommended approach. Some towns and counties will, nonetheless, wish to classify animal agriculture and other activities as conditional uses. It is hoped that the sample conditional use review procedures presented on pages IV-15 to IV-17 (Sec. 102-1) will help lay the framework for rational conditional use review and approval procedures.

Use-Specific Standards

Regardless of whether uses are classified as “permitted” or “conditional,” towns and counties may want to impose special conditions on some types of uses. By devising objective standards—ones that can be fairly and consistently administered—the number of uses classified as conditional can be kept to a minimum, since objective standards can be administered by staff. Moreover, clear standards are easier to understand, administer and enforce, and if challenged, they will be easier to defend in court. The sample provisions on pages IV-17 to IV-21 (Chapter 103) provide an illustration of some common use-specific standards.

Performance Standards

Performance standards are a form of regulation based upon objective measurements of a use’s impacts on the environment and on nearby uses of land. They differ from zoning district and use-specific standards in many ways. They are not necessarily tied to

particular zoning districts or land uses. They usually apply to all uses in all districts. Since performance standards seek to address end-state objectives, they are thought to be more flexible than prescriptive standards that mandate where uses can locate and how buildings must be situated on the land.

Although the theory behind performance standards may be sound, there are also several difficulties with the approach. It is, for example, difficult and expensive to establish measurable impact criteria. And even when such criteria can be established, they are sometimes incomprehensible to all but a few highly trained personnel, a fact that makes adoption of the standards difficult. Finally, administering technical performance standards is beyond the capability of many local jurisdictions. As discussed in the “Enforcement Issues” section of Chapter III (page III-23), jurisdictions should carefully consider how a regulation will be enforced before adopting any complex or sophisticated form of regulation.

When it comes to the land use aspects of animal agriculture, the impact of greatest concern to local residents is odor. Unfortunately, odor-based standards have received less attention in the environmental and land use arena than have other impacts such as noise, vibration and air pollution. As a result, local ordinances that do address odor generally tend to lapse into the trap of using subjective language, such as the following:

No malodorous gas or matter shall be permitted to produce a public nuisance or hazard on any adjoining lot or property.

Even odor-related performance control provisions that do establish real standards tend to leave questions of administration and enforcement unanswered, as in this example:

No emissions of noxious gases or particles shall be permitted in any zoning district so as to exceed the odor threshold as measured beyond the lot lines. The

odor threshold is defined as the concentration in the air of a gas or vapor that will evoke a response in the average human olfactory system.

In 1995, odor rules, which would have applied to animal agriculture, were proposed by the Minnesota Pollution Control Agency. These rules would have set up a formal process to guide the agency in matters involving complaints about odor. At the time of this writing, the MPCA odor was proceeding through the adoption process, although agricultural uses had been exempted from compliance. Under proposed plans, agricultural uses may eventually be governed by odor rules to be incorporated into the state feedlot regulations (Minn. R. Chapter 7020).

Because of the difficulty in establishing fair and workable odor-based performance standards, and because rules and regulations at the state level may preempt local odor regulations in the future, no sample odor-related provisions have been included in this Chapter. Despite the difficulties of establishing standards, some local governments may choose to develop a regulatory response. Those who attempt to use a performance standards approach should keep in mind that true performance standards should apply equally to all uses.

Nonconformities

The adoption of new zoning standards governing animal agriculture may result in the creation of “nonconformities.” In zoning parlance, nonconformities are lots, buildings or uses that were legal when established but that violate one or more subsequently adopted zoning standards. Nonconformities are not “illegal” and should not be confused with illegal uses. Nonconformities were perfectly legal when established, but, due to the imposition of new or revised standards, they

no longer comply with the regulatory requirements set forth in the zoning ordinance.

There are a number of nonconforming situations that might arise due to the adoption of new or revised agricultural zoning regulations. If, for example, animal agriculture was removed from the list of allowed uses in a particular zoning district, existing animal agriculture operations in that district would become nonconforming uses. If new or revised zoning district setback or separation requirements were enacted, and existing buildings did not comply with those new standards, those existing buildings would be considered noncomplying structures, another type of nonconformity.

According to the State Statutes (Chapter 394), a nonconformity may continue to exist in counties until such time as it is discontinued for a period of more than one year or until it is destroyed to the extent of 50 percent or more of its market value. State law also allows counties to adopt other regulations governing nonconformities. They may require, for example, the elimination of nonconformities after a specified period of time, a concept known as “amortization.” County ordinances may also impose additional restrictions on nonconformities, such those relating to appearance, signs, lighting, hours of operation and other issues.

Under the enabling authority of Minnesota Statutes Chapter 366, towns may have more limited authority over nonconformities. Town enabling statutes (Chapter 366) say that zoning regulations “shall not prohibit the continued use of a building for any trade or industry for which it was used when the [zoning] resolution took effect or the alteration of or the addition to an existing building or structure to carry on a prohibited trade or industry in the zone where it is located.” (Minn. Stat. §366.18)

Regulations governing nonconformities are a

vital component of zoning ordinances. Sample ordinance provisions are presented on pages IV-21 to IV-24 (Chapter 104).

Definitions

If zoning districts provide the foundation for a zoning ordinance, definitions provide the mortar. Precise zoning definitions are essential in crafting zoning regulations that can be understood, administered and enforced. Definitions for terms used in the sample ordinance provisions are presented on pages IV-24 to IV-25.

Right-to-Farm Provisions

Minnesota has a state right-to-farm law that provides farmers broad protection against nuisance suits. Some towns and counties have chosen to make their own policy declarations about the importance of agriculture by adopting local right-to-farm provisions, either as part of a zoning ordinance or as a stand-alone ordinance.

Local right-to-farm protections can address at least one issue not addressed in state law: providing early notice to prospective purchasers in an agricultural area that agricultural activities will be occurring in the area. Local right-to-farm provisions sometimes require that written notification be included in all contracts for the sale or lease of rural land and in all building permits issued for residences and other structures in an agricultural area.

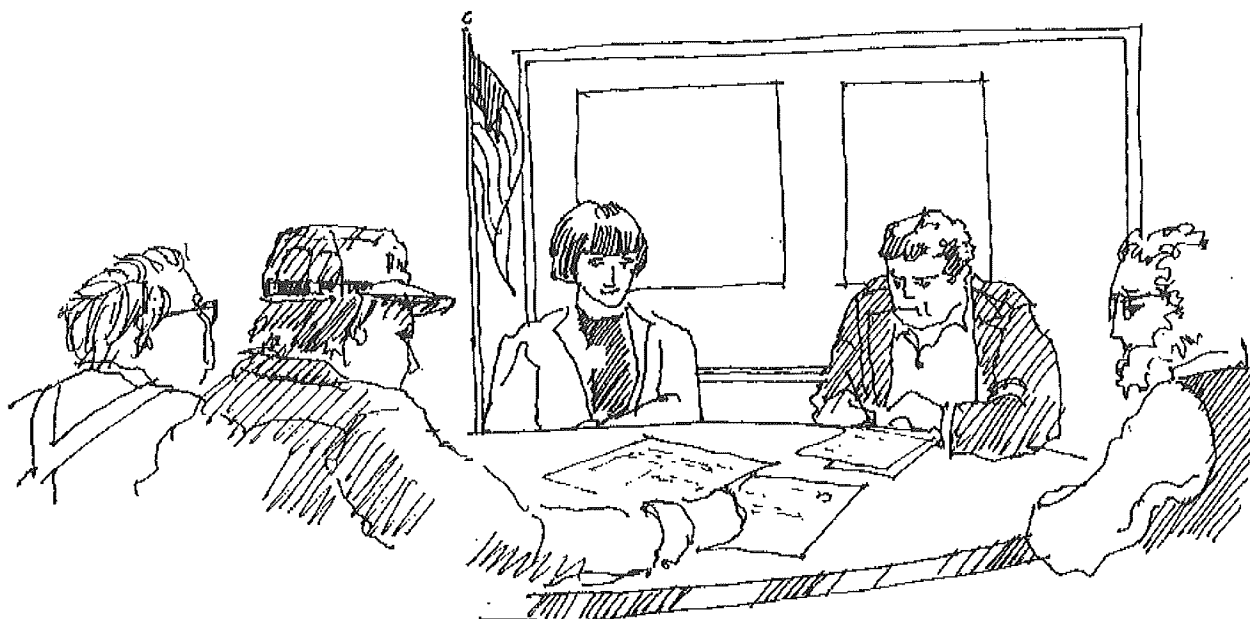
These types of right-to-farm provisions have been somewhat effective in placing those planning to move into a rural area on notice about what is involved in modern farming. This type of local legislation can be effectively used to prevent people from “moving to the nuisance”—to keep them from locating too close to animal agricultural uses, for example. Such

provisions will be far less effective in dealing with situations in which nonfarm development existed prior to the agricultural use, since the courts have tended to place emphasis on who was there first when considering nuisance claims.

Local right-to-farm ordinances are probably best viewed as a clear policy statement on behalf of local officials. A sample right-to-farm ordinance and disclosure statement can be found at the conclusion of this chapter.

Sample Regulations

The following sample ordinance provisions provide an illustration of many of the concepts described in this chapter. Choice of the term “sample regulations” was deliberate. These provisions are not intended as a model that will fill every jurisdiction's needs. Those interested in drafting local land use regulations should consult legal counsel.



Selections of regulatory options, like other decisions on major public policy issues, are never easy. Such choices require careful deliberation after thorough study of the issue.

Chapter 101: Zoning Districts

Section 101-1: L-AG, Limited Agriculture District

A. Purpose

The L-AG, Limited Agriculture district is intended to help preserve existing agricultural land resources and prevent the premature conversion of rural lands to urban use. The district's use and development regulations are designed to implement *Comprehensive Plan* goals by discouraging urban and suburban development in areas that have prime agricultural soils and that are not well served by public facilities and services. The L-AG district is generally compatible with the "Agriculture" and "Open Space" land use designations of the *Comprehensive Plan*. The district can also be used as a transitional zoning designation to buffer residential uses from general agriculture districts.

Comment: Purpose statements should tie zoning district provisions back to the Comprehensive Plan and explain the intent of the district. By doing so, property owners and public officials will be given an indication of what a district is intended to do and where it is intended to be applied (mapped).

B. Permitted Uses

The following uses are permitted by-right in the L-AG district:

- Agriculture, Crop
- Agricultural Sales and Service
- Agricultural Storage
- Agricultural Research and Development
- Utility, Minor

C. Conditional Uses

The following uses may be allowed in the L-AG district if reviewed and approved in accordance with the procedures and standards of Sec. 102-1. (page 15)

- Communication Tower, Commercial
- Mining and Extraction
- Single-Family Residence
- Utility, Major

Comment: The sample Limited Agriculture zoning district presented here does not allow "Animal Agriculture." What this means depends on the definition of animal agriculture. Two possible definitions of the term are presented on page 76, one that parrots the MPCA definition of "animal feedlot" and one that modifies the MPCA definition slightly. There are, of course, other options that have been or could be used, a few of which follow:

1. *Non-feedlot based animal agriculture could be listed as an allowed "accessory use" in the L-AG district. An accessory use is often defined as a use or structure that is subordinate to and serves a principal use; is subordinate in area, extent and purpose to the principal use or structure served; occupants of the principal use or structure served; and is located on the same lot and in the same zoning district as the principal use.*
2. *Animal agriculture involving fewer than ____ animal units could be listed as a permitted use in the district.*
3. *Animal agriculture could be classified as a conditional use in the district.*
4. *Animal agriculture involving fewer than ____ animal units could be listed as a conditional use in the district.*

Comment: Reviewers will also notice that single-family dwelling units are listed as an allowed conditional use. Again, not all jurisdictions will want to follow this approach. Some will want to prohibit single-family residential development within agricultural zoning districts, while others may decide to permit such uses by-right. It is important to note that the term "single-family residence," as defined in these provisions (page IV-25), refers only to dwelling units that are a principal use, as distinguished from a residence for farm operators (which would be an accessory use).

D. Property Development Standards

The following property development standards apply to all land within the L-AG district.

- (1) *Minimum Lot Size*
The minimum lot size shall be ____ acres.

Comment: This minimum lot size provision is suggested as a way of establishing some minimum requirement for allowed nonresidential uses within the district. It is recognized that minimum lot size requirements are an ineffective and sometimes counterproductive technique for preserving prime farmland. In fact, large-lot zoning can do more harm than good when it comes to farmland protection. By spreading development throughout the countryside, large-lot zoning can result in a waste of land and an increase in environmental problems.

- (2) *Maximum Residential Density*
The maximum residential density shall not exceed one dwelling unit per ____ acres.

Comment: In contrast to minimum lot size standards, residential density requirements are generally viewed as a fairly good technique for advancing agricultural land preservation objectives. Density requirements vary from place to place. Minnesota's Metro Agricultural Preserves Act (Minn. Stat. §473H) allows a maximum density of one unit per 40 acres, while some Minnesota counties outside the Metro Area require at least 160 acres per unit.

- (3) *Minimum Setbacks*
Principal and accessory structures shall comply with the following minimum setback standards:

Setback From	Minimum Distance (ft)
State Road ROW Line	----
County Road ROW Line	----
Township ROW Line	----
Interior (Nonroad) Lot Line	----

Comment: Zoning district setback requirements should not be confused with use-specific separation standards. Setbacks are primarily useful as a means of protecting adjacent rights-of-way and lots from encroachment by buildings and structures. Although many agricultural zoning districts require that buildings be set back 50 to 100 feet from lot lines, there is no magic setback distance. Sample use-specific separation standards are presented in Sec. 103-1-C (page IV-18 to IV-21).

- (4) *Height*
Building heights shall not exceed ____ feet, provided that this standard shall not apply to grain elevators, silos and barns.

Section 101-2: G-AG, General Agriculture District

A. Purpose

The G-AG, General Agriculture district is intended to help preserve existing agricultural land resources, promote the area's agricultural economy, prevent the premature conversion of rural lands to urban use and accommodate animal agriculture uses and other uses that may be more intensive than crop production. The district's use and development regulations are designed to implement *Comprehensive Plan* goals by discouraging urban and suburban development in areas that have prime agricultural soils and that are not well served by public facilities and services. The G-AG district is generally compatible with the "Agriculture" and "Open Space" land use designations of the *Comprehensive Plan*. Due to the more intensive nature of uses allowed, the G-AG district is not intended to be applied near urbanized areas, and it is not intended to accommodate residential uses as a principal use.

B. Permitted Uses

The following uses are permitted by-right in the G-AG district:

Agriculture, Animal, subject to the land use standards of Sec. 103-1.
Agriculture, Crop
Agricultural Sales and Service
Agricultural Storage
Agricultural Research and Development
Stable, Commercial
Utility, Minor

C. Conditional Uses

The following uses may be allowed in the G-AG district if reviewed and approved in accordance with the procedures and standards of Sec. 102-1.

Communication Tower, Commercial
Mining and Extraction
Utility, Major

D. Property Development Standards

The following property development standards apply to all land within the G-AG district.

(1) *Minimum Lot Size*

The minimum lot size shall be ____ acres.

(2) *Maximum Residential Density*

The maximum residential density shall not exceed one dwelling unit per ____ acres.

Comment: It may be appropriate to adopt a stricter residential density standard in the General Agriculture district, given the intent of the district to strongly discourage urban and suburban uses.

(3) *Minimum Setbacks*

Principal and accessory structures shall comply with the following minimum setback standards:

Setback From	Minimum Distance (ft)
State Road ROW Line	----
County Road ROW Line	----
Township ROW Line	----
Interior (Nonroad) Lot Line	----

(4) *Maximum Height*

Building heights shall not exceed ____feet, provided that this standard shall not apply to grain elevators, silos and barns.

Chapter 102: Development Review Procedures

Comment: Conditional use review procedures would normally be placed with all other development review procedures, such as those governing the processing of rezoning requests and variances.

Section 102-1: Conditional Uses

A. Application Submittal

A complete application for Conditional Use approval shall be submitted to the OFFICIAL in a form established by the OFFICIAL, along with a nonrefundable fee that has been established by the governing body to defray the cost of processing the application. No application shall be processed until the application is complete and the required fee has been paid.

B. Review and Recommendation—Planning Commission

The Planning Commission shall hold a public hearing on the application as soon as possible after administrative reviews are complete and required notices have been given. After the public hearing, the Planning Commission shall act to recommend approval, approval with conditions, or denial of the application for Conditional Use approval, based on the review criteria of Sec. 102-1.D. In acting upon the application, the Planning Commission shall make written findings of fact regarding the proposed use's compliance with the review criteria of Sec. 102-1.D.

Comment: The sample provisions presented here set out a two-step review process: review and recommendation by the Planning Commission, with final approval by the Governing Body. Either body can be authorized to approve conditional uses, but such authorization should be stated in the ordinance.

C. Review and Action—Governing Body

The Governing Body shall hold a public hearing on the application as soon as possible after the Planning Commission makes its recommendation and all required notices have been given. After the public hearing, the Governing body shall act to approve, approve with conditions, or deny the application based on the criteria of Sec. 102-1.D. In acting upon the application, the Governing Body shall make written findings of fact regarding the proposed use's compliance with the review criteria of Sec. 102-1.D.

Comment: Counties must give notice of public hearings on conditional uses at least ten days in advance of the hearing by: publication in an area newspaper of general circulation; and written notice to all property owners within one-quarter mile of the affected property or to the ten properties nearest the subject property, whichever would result in notification of the greatest number of owners.

D. Review Criteria

The Planning Commission shall recommend approval and the Governing Body shall approve an application for a Conditional Use permit unless it finds that the proposed use:

Comment: The preceding provision attempts to make it clear that conditional uses must be approved if they comply with all applicable ordinance standards and satisfy all applicable review criteria. Such an approach will help avoid arbitrary decisions and add some predictability to the conditional use process.

- (1) when completed in accordance with proposed plans will not comply with all applicable requirements of this Ordinance, including the Land Use Standards of Chapter 103;
- (2) creates more adverse impacts on existing uses in surrounding areas than which reasonably might result from development of the site with a use that is permitted by-right in the underlying zoning district;
- (3) is not compatible with existing or permitted uses on abutting sites, in terms of building height, setbacks, open spaces, bulk and scale, landscaping, drainage, traffic generation or hours of operations;
- (4) will be injurious to the use and enjoyment of other property in the immediate vicinity, or substantially diminish or impair property values within the area;
- (5) will impede the normal and orderly development and improvement of surrounding property for uses permitted in the underlying district;
- (6) will not be served by adequate utilities, access roads, drainage and other necessary facilities;
- (7) will not be served by ingress and egress routes that will minimize traffic congestion on public streets or roads;
- (8) will be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity for reasons specifically articulated by the Planning Commission or Governing Body.

The applicant shall have the burden of demonstrating that the proposal satisfies applicable Conditional Use Review Criteria.

Comment: Some believe that the economic viability of a proposed use should be included as a review criterion, with the rationale that economic viability may mean less likelihood of problems developing over time.

Comment: The key to rational, fair and efficient conditional use procedures lies in the review criteria by which proposed uses will be evaluated. County planning and zoning statutes have this to say about conditional use review criteria:

Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use. (Minn. Stat. §394.301) [emphasis added]

Comment: The types of review criteria presented in the sample conditional use review procedures are examples of the “general requirements” referred to in the statutes. Examples of the types of “requirements specific to each designated conditional use” are presented in Chapter 103 , which follows.

Chapter 103: Land Use Standards

No permit shall be issued for any development or use of land unless the activity is in compliance with all applicable land use standards of this section. In the case of conflict with zoning district property development standards or other regulations of this Ordinance, the more restrictive requirement shall apply, unless otherwise specifically stated.

Section 103-1: Agriculture, Animal

Animal Agriculture uses shall be subject to the following land use standards:

A. Other Regulations

Compliance with all applicable local, state and federal standards shall be required, including...[list the most relevant, such as local feedlot ordinance, state feedlot regulations (Minn. R. 7020), Shoreland Development (Minn. Stat. §103F.201), etc.]

Comment: The sample zoning provisions presented here would supplement, not replace, other regulations and standards that apply to animal agriculture. This provision attempts to make that clear.

B. Setbacks

Animal feedlots and animal waste areas shall comply with the following minimum setback standards:

Setback From	Minimum Distance (ft)
State Road ROW Line	---
County Road ROW Line	---
Township ROW Line	---
Interior (Nonroad) Lot Line	---

C. Separation Standards

(1) Distance

(a) From Municipalities and Urban Expansion Zones

No animal feedlot or animal waste area shall be located within ___ feet of the corporate limits of a municipality or the outer boundary of an adopted Urban Expansion Zone.

(b) From L-AG Zoning District

No animal feedlot or animal waste area shall be located within ___ feet of the boundary of the L-AG zoning district.

Comment: Note that the first two sample separation standards are based on distance from urban areas limits and zoning district boundaries, rather than individual uses. The idea behind such an approach is that Urban Expansion Zone and zoning district boundaries will have been carefully considered during the planning process leading to their adoption. As such, the boundaries will be reliable indicators of the presence of land uses in need of "protection." Such an approach also helps to deflect criticism about individual land uses controlling development of nearby property.

(c) From Existing Uses in G-AG Zoning District

No animal feedlot or animal waste area shall be located within ___ feet of a Single-Family Residence, School, Park or Church for which a development permit had been issued prior to DATE (insert effective date of G-AG district mapping).

Comment: Inclusion of this type of standard could be used to help ensure separation from uses that predate establishment of the new Animal Agriculture zoning district. The wording of this sample provision is intended to make it clear that separation is only required from uses that were established (or approved) prior to mapping of the new district. If such a provision is used, the term "development permit" (sometimes called a "development order") should be defined.

(2) Measurements

The separation distances established in this section shall be measured from the perimeter of the animal feedlot or animal waste area lagoon to the nearest referenced boundary or the exterior wall of the principal structure containing the referenced use, whichever applies. In case a use is not contained within a structure, an imaginary perimeter boundary shall be drawn around the referenced use, and measurements shall be taken from that perimeter boundary.

Comment: There are a number of possible variations on the separation standard approach. Some jurisdictions may want to employ a strictly use-based separation requirement. Others may elect to base separation requirements on whether the “protected” use is located in an urban area or a rural area. Optional language for such an approach follows:

- (a) *Uses Outside Municipalities and Urban Expansion Zones*
No animal feedlot or animal waste area shall be located within ____ feet of a Single-Family Residence, School, Park or Church that is outside the boundary of a municipality and outside the boundary of an Urban Expansion Zone.
- (b) *Uses Inside Municipalities and Urban Expansion Zones*
No animal feedlot or animal waste area shall be located within ____ feet of a Single-Family Residence, School, Park or Church that is inside the boundary of a municipality or Urban Expansion Zone.

Comment: Separation standards could also be varied by animal species, by size of operation (animal units) or by the types of management practices employed by the operator of the facility.

Another approach that has been suggested would be to establish different separation distances to be employed based on whether the animal agriculture use was to be located upwind or downwind of the “protected” district. At the time of this writing, only one Minnesota jurisdiction—Blue Earth County—had developed zoning provision using such an approach. Jurisdictions choosing to vary separation distances according to prevailing winds should define carefully the terms “upwind” and “downwind,” so that separation distance determinations may be made objectively and definitively by the zoning official. The definitions should probably specify the compass directions constituting “upwind” or “downwind” from the feedlot to the “protected” use or district. The compass directions, in turn, should be based upon accurate meteorological information on prevailing winds.

The following table presents an illustration of how such “differential” standards might work:

Feedlot Type	Separation Distance (feet)							
	Upwind Land Use Type				Downwind Land Use Type			
	I	II	III	IV	I	II	III	IV
1								
2								
3								

Comment: As discussed above, this type of table, combined with a definition of feedlot types and land uses, could be used to set different separation standards based on any number of considerations, such as size of operation, management practices, species, location relative to prevailing winds, etc. The land use types (I-IV) are intended to represent groupings of similar uses. An alternative to that approach would be to refer to zoning districts, instead of use types.

Comment: Some observers have suggested that regulations should include exemption (waiver) provisions to address situations in which the owner of a “protected” use consents to a waiver of the separation distance requirement. This approach is not recommended because such provisions may constitute an unreasonable delegation of the police power (see Chapter 3, p. III-13). While the approach is not recommended, jurisdictions that wish to pursue the idea should consider use of a recorded odor easement as a condition of exemption. A recorded odor easement represents a good method of ensuring that future owners receive adequate notice of the fact that a previous owner has waived the right to separation. The following sample provision illustrates use of an odor easement in an exemption provision.

Exemption from Separation Standards

The separation standards of this section shall not be triggered by a lot on which there is a recorded odor easement.

D. Minimum Site Area

See following comment.

Comment: Minimum lot size/site area (based on size of operation) is another form of use-specific standard that some believe should be applied to Animal Agriculture uses. Proponents of this type of standard argue that minimum site area requirements, in conjunction with setback requirements, could take the place of use-specific separation standards.

Section 103-2: Residential Uses

No residence shall be permitted within ____ feet of an animal feedlot or animal waste area. This provision shall not apply to dwelling units that are accessory to the Animal Agriculture use from which the separation is required.

Comment: If separation requirements are to be imposed on new animal agriculture uses, jurisdictions may also want to require that new residential (and other) uses adhere to the same requirements. Such an approach seems not only fair, it can also prevent situations in which new uses "create" nonconforming separations for the animal agriculture use.

Chapter 104: Nonconformities

Section 104-1: General

A. Authority to Continue

A nonconformity may be continued so long as it remains otherwise lawful, subject to the standards and limitations of this chapter.

B. Ordinary Repair and Maintenance

Normal maintenance and incidental repair may be performed on a complying structure which contains a nonconforming use or on a noncomplying structure. Nothing in this chapter shall be construed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the Chief Building Official who declares a structure to be unsafe and orders its restoration to a safe condition.

Section 104-2: Nonconforming Uses

A. Abandonment

(1) When Abandoned

A nonconforming use of land or of a structure in a district that is discontinued or remains vacant for a continuous period of one year shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or land site must conform with the regulations for the district in which it is located.

(2) Overcoming Presumption of Abandonment

The presumption of abandonment may be rebutted upon a showing, to the satisfaction of the OFFICIAL that during such period the owner of the land or structure (i) has been maintaining the land and structure in accordance with the Building Code and did not intend to discontinue the use, or (ii) has been actively and continuously marketing the land or structure for sale or lease, or (iii) has been engaged in other activities that would affirmatively prove there was not intent to abandon.

(3) Calculation of Period of Abandonment

Any period of discontinuance caused by government action, fire or natural calamities, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance pursuant to this section.

B. Movement, Alteration and Enlargement

No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land, except in the manner provided in this chapter.

(1) Enlargement

A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or site, that it did not occupy on (Date of Adoption of Regulation) of this Zoning Ordinance. However, a nonconforming use may be extended within the same structure, provided no structural alteration of the structure is proposed or made for the purpose of the extension.

(2) Exterior or Interior Remodeling or Improvements to Structure

Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed provided there is no expansion of the nonconforming use.

(3) Relocation of Structure

A structure containing a nonconforming use may not be moved unless the use shall conform to the regulations of the zoning district into which the structure is moved.

(4) **Change of Nonconforming Nonresidential Use to Another Nonconforming Use**

Upon review and approval of the OFFICIAL, a nonconforming use may be changed to another nonconforming use of the same or similar type or intensity or to another nonconforming use of the same or similar type but of less intensity. Whenever any nonconforming nonresidential use is changed to a less intensive nonconforming use, such use shall not later be changed back to a more intensive nonconforming use. Whenever any nonconforming nonresidential use is changed to a conforming use, such use shall not later be changed to a nonconforming use.

(5) **Destruction of Structure with Nonconforming Use**

If a structure that contains a nonconforming use is destroyed to the extent of 50 percent or more by fire or natural calamity or is voluntarily razed or is required by law to be razed, the nonconforming use shall not be resumed, and the structure shall not be restored except in compliance with all applicable requirements. The determination of the extent of damage or destruction under this section shall be based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated market value of the entire structure as it existed prior to the damage or destruction.

Section 104-3: Noncomplying Structures

A. Movement, Alteration and Enlargement

No noncomplying structure may be moved, enlarged or altered, except in the manner provided in this section or unless required by law.

(1) **Repair, Maintenance, Alterations and Enlargement**

Any noncomplying structure may be repaired, maintained, altered or enlarged; provided, however, that no such repair, maintenance, alteration or enlargement shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure.

(2) **Moving**

A noncomplying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

(3) **Damage or Partial Destruction of Noncomplying Structure**

If a noncomplying structure is damaged or destroyed by fire or natural calamity to the extent of 50 percent or more, the noncomplying structure shall not be restored except in compliance with all applicable requirements. The determination of the extent of damage or destruction under this section shall be based on the ratio of the estimated cost of restoring the structure to its

condition before the damage or destruction to the estimated market value of the entire structure as it existed prior to the damage or destruction.

Section 104-4: Determination of Nonconforming Use and Noncomplying Structure Status

The burden of establishing that a nonconforming use or noncomplying structure lawfully exists under this Zoning Ordinance shall, in all cases, be the owner's burden and not the County's.

Chapter 105: Definitions

Animal Feedlot means a lot or building or combination of contiguous lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area where manure may accumulate, or where the concentration of animals is such that vegetative cover cannot be maintained within the enclosure. Open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered animal feedlots, but pastures shall not be considered animal feedlots.

*Alternate: **Animal Feedlot** means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area where manure may accumulate, or where the concentration of animals is such that vegetative cover cannot be maintained within the enclosure during the months of May, June, July and August. Open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered animal feedlots, but pastures shall not be considered animal feedlots.*

Comment: The alternate "animal feedlot" and "crop agriculture" definitions presented in this section would allow jurisdictions to permit "non-feedlot"-based animal agriculture as an accessory use based on a distinction that the MPCA feedlot definition attempts to make—the ability to maintain vegetative cover within the confinement area. The alternative feedlot definition recognizes that it may be impossible to maintain vegetative cover in any animal enclosure during non-growing seasons.

Animal Waste Area means a holding area or lagoon used or intended to be used for the storage or treatment of animal manure and other waste products associated with an animal feedlot.

Agriculture, Animal means the use of land for Animal Feedlots or Animal Waste Areas.

Agriculture, Crop means the use of land for the production of row crops, field crops, tree crops; timber, bees, apiary products, and fur-bearing animals.

*Alternate: **Agriculture, Crop** means the use of land for the production of row crops, field crops, tree crops; timber, bees, apiary products, and fur-bearing animals. Crop Agriculture may include, as an accessory use, the raising or keeping of animals, but in no event shall a use containing an Animal Feedlot be considered a Crop Agriculture use.*

Agricultural Sales and Service means an establishment primarily engaged in the sale or rental of farm tools and small implements, feed and grain, tack, animal care products, farm supplies and the like, excluding large implements, and including accessory food sales and machinery repair services.

Agricultural Storage means facilities for the warehousing of agricultural products. Typical uses include grain elevators.

Nonconforming Use means the *use* of any land, building or structure that does not comply with the use regulations of the zoning district in which such use is located, but which complied with the use regulations in effect at the time the use was established.

Noncomplying Structure means a building or structure, or portion thereof, that does not comply with applicable property development standards or other dimensional standards, but which complied with all applicable property development standards and dimensional standards in effect at the time the building or structure was established.

Nonconformity means a Nonconforming Use, Noncomplying Structure or other development situation that does not comply with currently applicable zoning regulations, but which complied with zoning regulations in effect at the time the use or development was established.

Single-Family Residence means the principal use of a lot for only one dwelling unit.

Urban Expansion Zone means a boundary or mapped area surrounding a municipality and officially designated by the governing body of the municipality as the area in which future urban development will be allowed to occur as the municipality grows.

SAMPLE RIGHT-TO-FARM ORDINANCE

WHEREAS, _____ COUNTY desires to enhance and encourage agricultural operations within the County and its environs; and

WHEREAS, when non-agricultural uses extend into agricultural areas or exist near agricultural areas, agricultural operations can become the subject of nuisance complaints that may have the effect of discouraging agricultural operations and investments;

WHEREAS, it is the intent of the County to prevent the loss of area agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance; and

WHEREAS, it is the intent of the County that agricultural operations that comply with all applicable County ordinances and State laws will not be considered nuisances; and

WHEREAS, it is the intent of the County to provide to its residents proper notification of the County's recognition and support of the right-to-farm; and

WHEREAS, it is not the intent of the County to abridge or modify State law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, MINNESOTA.

Section 1. **Short title.** This chapter shall be known and may be cited as the Right-To-Farm Ordinance.

Section 2. **Definitions.** The following terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

2.1 **Agricultural land** means all the real property within unincorporated _____ County that is used for agricultural operations, zoned for agricultural use or designated for agricultural purposes by the County *Comprehensive Plan*.

2.2 **Agricultural operation** means the use of agricultural land for the production of crops, tree farming, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in the processing of agricultural products.

Section 3. **Nuisance.** An agricultural operation conducted or maintained on agricultural land shall not be or become a nuisance, public or private, if the operation was not a nuisance when it began. This provision shall not apply:

3.1 To a condition or injury that results from the negligent or improper operation of an agricultural operation or from operations conducted and maintained in a manner that is contrary to commonly accepted agricultural practices;

3.2 When an agricultural operation causes injury or direct threat of injury to health or safety of any person;

3.3 When an agricultural operation causes the pollution of, or change in the condition of, waters of the State or the water flow of water on the lands of any person; or

3.4 When an agricultural operation causes the obstruction of free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, street or highway.

Section 4. Disclosure in development permits. Prior to the issuance of any development permit for a use on agricultural land, the owner of the property shall be required to sign a statement of acknowledgment containing a Right-to-Farm disclosure, as set forth in Sec. 5. The acknowledgment shall be on a form provided by the Planning Director and made available to the public. The Planning Director shall file development permit disclosure forms with the _____ County Recorder.

Section 5. Disclosure to buyers. Upon any transfer of real property by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, the transferor shall deliver to the prospective transferee a Right-to-Farm disclosure statement *[see Disclosure Statement on pages 80-81]* signed by the transferee and filed with the _____ County Recorder in conjunction with the transfer instrument.

Section 6. Repeal of Laws in Conflict.
All County Ordinances applying in conflict with any provisions of this Ordinance are hereby repealed.

Section 7. Severability.
Should any section, paragraph, sentence, clause, or word of this Ordinance be held to be unconstitutional, inoperative, or void, such holding shall not affect the validity of the remainder of this Ordinance.

Section 8. Inclusion in Code.
The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of _____ County, Minnesota and the various sections may be retitled, renumbered, or relettered to accomplish this purpose.

Section 9. Effective Date.
The provisions of this Ordinance shall become effective immediately upon passage by the Board of County Commissioners as provided in the County Charter.

APPROVED AND ADOPTED by the Board of County Commissioners of _____ County, Minnesota on the _____ day of _____, 1996.

SAMPLE RIGHT-TO-FARM DISCLOSURE STATEMENT

This disclosure statement concerns real property situated within _____ County, state of Minnesota, legally described as _____. This statement is a disclosure of the condition of the described property in compliance with the _____ code of ordinances of said County, Chapter ?? It is not a warranty by the Seller or any agent(s) representing any principal(s) in this transaction, and it is not a substitute for any inspections or warranties the principal(s) may wish to obtain.

I. Seller Information

The Seller discloses the following information with the knowledge that, although this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent representing any principal in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of property. The following are representations made by the Seller and are not the representations of the agent, if any. This information is a disclosure and is not intended to be part of any contract between the Seller and the Buyer.

The above-named County permits and supports operation of property conducted agricultural operations, as defined in the County's Right-to-Farm Ordinance (Chapter ?? of the County Ordinances). If the property Purchaser is acquiring is located near agricultural lands or operations, included within an area zoned or designated by the Comprehensive Plan for agricultural purposes, Purchaser may be subject to inconveniences or discomforts arising from such operation. Such discomfort or inconveniences may include, but are not limited to, noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, solid amendments, herbicides and pesticides. One or more of the inconveniences described above may occur as a result of any agricultural operation that is in conformance with existing laws and regulations and with accepted customs and standards. The County has determined that the use of real property for agricultural purposes is a high priority and favored use, and the County has determined that those inconveniences arising from such agricultural operations should not be considered to be a nuisance, provided that the agricultural operations are established and conducted in compliance with the Right-to-Farm Ordinance. If Purchaser or any other party wants further information about the effect of the Ordinance, that information is available from _____.

Anyone living near an agricultural area should be prepared to accept the inconveniences and discomforts arising from agricultural operations as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Seller certifies that the information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

II. Buyer Information

Buyer(s) and Seller(s) may wish to obtain professional advice and/or inspections of the property and to provide for appropriate provisions in a contract between Buyer(s) and Seller(s) with respect to any advice, inspections and/or defects. I/we acknowledge receipt of a copy of this statement.

Buyer _____ Date _____
Buyer _____ Date _____
Seller _____ Date _____
Seller _____ Date _____

**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE
MATTERS. IF YOU DESIRE LEGAL ADVICE, PLEASE CONSULT YOUR
ATTORNEY**

Appendix A:

Planning Approaches

Trends-Driven Approach

Description: The simplest form of planning is also in many ways the most misleading—that is simply to project today's trends into the future and to plan around those. The trends typically used as the basis of such future planning are population and employment trends. As many investors have learned the hard way, the most certain thing about a trend line is that it will change. Thus, simply to project current growth (or non-growth) rates will not produce a realistic view of the future. On the other hand, it is useful information. Russell Ackoff has referred to such projections as reference projections. It is useful to consider those trends in the context of understanding what created them and what may change them. For example, if a community's past growth was tied to increasing employment at an auto parts manufacturer, it becomes important to examine the continued growth potential of that industry. Reference projections may also show undesirable trends—like a continued youth drain or brain drain. By understanding those trends and recognizing which ones it might like to change, a community can make its future better than a simple trend projection. Thus, a series of trends scenarios can provide the basis for developing an excellent issue-drive plan—from the trends come many of the issues to be resolved.

Process: Like all other plans, this begins with an analysis of existing conditions. In this planning process, however, it is important that the existing conditions analysis include historic information, also. Future trends are generally based on past trends, so it is important to gather population, employment, economic and other data from several past periods (usually decennial census dates) as well as from the most recent period. Professional planners or consultants hired by the local government analyze and project those trends, indicating one or more possible future scenarios. A sophisticated trends analysis includes what if alternatives,

indicating how the trends might be changed if particular variables change.

Personnel Requirements: Trends analysis is a relatively sophisticated technical process. Projecting trends involves analysis of those trends rather than just extending a line from past dots on a graph to future ones. Thus, use of this process often requires outside assistance. Simple trends can be analyzed by County Staff using Census data and information from the State Demographer's Office. Additionally, technical assistance is available from MDA.

Citizen Participation: There is little opportunity or need for citizen participation in a trends analysis. The work is largely technical. Communities typically present the trends analysis to the public for comment, but it is often difficult for citizens to comment usefully on such a technical process.

Best Use: A trends analysis provides an ideal reference projection or context for other types of planning.

Opportunity-Driven Approach

Description: In an opportunity-driven approach, a community examines its opportunities and constraints—or, stated differently, its strengths and weaknesses. Those planning the community assess its future based on these opportunities and constraints, rather than on simple projections of trends. In land-use planning, the opportunities and constraints generally fall into two categories: natural environment; and human-made environment, or infrastructure. The environmental opportunities and constraints (features like good agricultural soils, floodplains, unstable soils) are long-term factors in planning. Human-made features like roads, sewage treatment plans, and water supply systems are medium-term factors that will significantly influence

development over several years but that are almost certain to change over the long-run. Planning may involve the simple projection of what can or is likely to happen in the context of these opportunities and constraints, or it may involve the development of alternative scenarios, based on these opportunities and constraints, leaving to policy-makers the choice among scenarios.

Process: The process begins with an assessment of opportunities and constraints. That is typically a very technical process, particularly where it involves mapping environmental constraints and assessing the growth potential within current infrastructure systems. At the conclusion of the technical analysis, the planners conducting that analysis present it to policy-makers to consider its implications. If they develop alternative scenarios, the policy-makers, usually with public comment, then choose among those scenarios.

Personnel Requirements: This process requires highly-trained technical staff. Not all professional planners are able to conduct a complete opportunities and constraints analysis, so even a community that has a professional planning staff may need to hire a consultant to implement this approach. It is also extremely time-consuming and thus can be an unreasonable burden on a busy professional staff.

Citizen Participation: This is not a particularly participatory process, although it is both appropriate and useful to solicit citizen comments in selecting a preferred scenario at the end of the process.

Best Use: This process is best used in areas where opportunities or constraints—natural or human-made—represent the key determinant of future

growth and development potential.

Issue-Driven Approach

Description: This process begins by identifying major community issues. The focus of the planning effort is then on what to do about those issues. In most communities, the list of major issues can be narrowed down to about a dozen, although the number may vary between half a dozen and twenty. Issues that arise through the issue identification process are likely to include issues like these: revitalize downtown, expand employment base, improve traffic flow, and expand housing opportunities. The first stage of this process—issue identification—can and should have broad-based citizen participation, although the resolution of the issues is typically best accomplished by a small group, such as the governing body. The result of this process is typically a policy plan with a series of policy statements intended to resolve the issues.

Process: This process starts with issue-identification, which can and should involve broad community participation. If the community plans to do a **Trends Analysis** as a starting point for the plan, it is useful to do that before the issue identification process begins. The public participation can be in the form of mailed surveys, public town meetings, television town meetings, neighborhood meetings, focus groups, meetings with interest groups, or special workshops. Where information from the **Trends Analysis** is available, it should be presented to people participating in the issue identification process as useful background information—that can be communicated in a report or in an oral presentation at the beginning of a public or small group meeting. The form of the participation is simple—asking people to list the five most important issues

facing this community as it plans for the future or to list the community's three greatest strengths and the two things that it ought to work to improve. Staff or a small committee then compiles the lists of issues or lists of strengths and weaknesses. That is not simply a clerical task—someone needs to compile the lists thoughtfully, recognizing that economic development and more jobs are part of the same issue. Once there is a list of issues to consider, policy-makers (ideally the governing body, with advice from staff and the planning commission) develop recommendations for those issues. For some issues, there may be one recommendation that seems most appropriate. For others, there may be alternative recommendations. Those recommendations, including alternatives, then become the subject of a public review process. That can be as formal as a public hearing or as informal as having members of the policy-making body take the draft recommendations and alternatives back out to the groups who contributed to the issues list. With the benefit of the public comments and suggestions, the policy-makers then revise the recommendations and compile them into a policy plan to guide the community.

Personnel Requirements: This is the planning process that can most easily and most successfully be conducted by volunteers. A skilled staff member or outsider who can serve as facilitator of the process and help to compile the results can improve the process and help to keep it objective, but this is a process that a community can manage itself.

Citizen Participation: This is in many ways the most satisfying process for citizens, because it asks them what they know best—what they think about their community. Other processes ask them to make technical and policy judgments for which they may

be ill-equipped. This process simply asks them what concerns them. The rest of the process then focuses on addressing those concerns. The resulting plan is typically directly responsive to citizen concerns and consistent with their perceptions of the opportunities and challenges facing the community.

Best Use: This process can work in any context, but it is particularly useful in three sets of circumstances: 1) where there is little or no professional assistance available to facilitate the process; 2) where the primary reason for the planning process is because of public concern over one or more critical issues; and 3) where the community wants and needs relatively quick and strategic results.

Goal-Driven Approach

Description: This approach to planning begins with goal-setting. An effective goal-setting process almost always requires a professional planner or other facilitator. One of the interesting challenges in such a process is identifying the list of topics to be addressed by goals. Communities that use this process generally attempt to develop an all-encompassing list of topics and then to develop a list of goals under each. General topics on such a list generally include: natural environment; infrastructure; economic base; taxes and fiscal issues; downtown; neighborhoods, and open space.

Process: Someone has to develop the goals—elected officials, a planning commission, professional staff, or one or more advisory committees. Some communities use separate advisory committees to address separate topics, but that approach can lead to conflicting goal statements from different committees; even if some central committee, like a governing body, resolves those conflicts, there can be

hard feelings among participants if their committee's goals are given short shrift. If it will be a governing body or other small group, that makes a fairly simple process. If the process is to involve a diversity of citizens and interest groups in goal-setting, the process becomes more complex. Probably the most typical form of goal-driven planning process involves the creation of several subcommittees, each focused on one topic area. Such topic areas might include: agriculture; manufacturing; downtown; natural environment; open space; infrastructure. Each committee then develops its own set of goals for that particular topic area. A central body, usually the planning commission or governing body, then assembles all of those goals into a plan. Ideally, that central body reconciles conflicting goals and sets priorities among different goals; for example, one committee may want a new airport for the community and another may want a new convention center—both may be desirable goals, but both cost money and it is thus essential to set relative priorities. Unfortunately, this step is sometimes omitted and the result is then a collection of different goals rather than a plan. At its best, this kind of process results in a comprehensive set of goals and priorities to guide the community into its future. Late in the process, the assembled goals and policies are typically presented to the larger community for consideration and comment. The central policy-making body then makes revisions and additions to the goals before formally adopting them.

Personnel Requirements: Of the policy-oriented processes, this requires the most intensive staff support. Committees working with goals often need technical support to facilitate their discussions. The very task of coordinating the efforts of a variety of committees can take a great deal of time. Assisting

the central body in compiling and reconciling the goals from all of the committees is a process that requires considerable organizational abilities and a good deal of political acumen. It is very difficult to accomplish this sort of planning effort without considerable professional staff support.

Citizen Participation: Citizen participation in this sort of process is awkward at best. If too many citizens become too involved in the initial goal-setting, the process becomes too complex and too many goals result. On the other hand, if citizen participation is deferred to the end of the process, the entire effort may be preemptive or may appear so. That is, the effort may have focused on the wrong issues—for example, emphasizing the expansion of open space in the community when most citizens are concerned about expanding the job base. Even where the goal-setting process has been responsive to current community needs, that fact may not be obvious if there has not been significant community participation in the effort. In its purest form, this sort of process is very frustrating to citizens. Note, however, that the **Issue-Driven Approach** ultimately results in goals and provides for significant citizen participation in the early stages of the plan.

Best Use: This is the classic process for developing a comprehensive plan for a community. It works best when the community can afford to devote significant professional staff time to it or can afford to hire a consultant to manage the process.

Vision-Driven Approach

Description: A vision is typically an over-arching goal that drives an entire planning process. A vision like that of San Antonio's River Walk or the lakeshore plan in Chicago that arose from planning

for the Columbian Exhibition can truly change the face of a community. Such visionary planning ideas, however, are relatively rare. Some, like Robert Moses vision of a New York dominated by highways, are not widely accepted as desirable. A true vision generally arises on its own rather than from an orchestrated planning process; in most cases, a single individual or a small group develops and promotes the vision, although the strongest visions find their roots in the larger community. The challenge for community leaders and planners is to recognize when a vision is so strong and so good that it should become the focus of the community's entire planning efforts. Visioning efforts led by consultants for communities can range from goal-setting processes under a different name to unfocused exercises in imagining impossible futures. Communities that recognize a vision that can drive their future should generally follow a goal-setting planning process to develop that vision into a workable plan.

Process: For reasons suggested in the description of this approach, there is no process that a community can use to create a vision where none has arisen naturally. The emphasis of a vision-driven planning process should be on fleshing out the goals suggested by the Vision. **An Opportunities-Driven Approach** is particularly useful to supplement this approach, identifying opportunities and constraints as they relate to the adopted vision.

Citizen Participation: Typically, a vision-driven plan is not broadly participatory in development, although it is very important to solicit citizen comments on the vision and its implementation. Although the best visions are drawn broadly from a community and its character, the vision itself is

usually driven and carried by a small group or a single individual. The visionary group is not always in a position of elected leadership—in fact, many commentators would argue that most visionaries are not public officials. In that sense, this process is potentially quite egalitarian, but it is not particularly participatory.

Best Use: This process works well when there is a vision that finds wide community acceptance or interest. To try to use it in other circumstances is usually futile.

Appendix B:

Information and Technical Support

This guide is intended to assist local governments with information and data collection for comprehensive planning. It offers suggestions on what information may be needed, and where it might be found.

Typical information necessary to conduct an analysis of a county's, town's or city's existing conditions can be obtained from many sources, although the availability of information and resources may vary by county:

Many of the information sources, such as floodplain maps, utilities maps, or budget documents may be available in a local government office (administration, planning, public works, assessor, etc.) or a public library. Alternative local providers of information are soil and water conservation districts (SWCDs), Consolidated Food Service Agency (CFSA) offices, county offices of the Minnesota Extension Service (MES), regional development commissions, school districts, public utilities and service providers (for example, school districts public utilities often collect demographic information to develop demand projections), and chambers of commerce. Additionally, sporting goods or outdoor equipment stores often carry United States Geologic Survey (USGS) maps.

Where local sources are unavailable, the Minnesota Bookstore, or regional or state offices of agencies may be able to supply the information. Following the tables of information sources by subject area is a directory of statewide resources (information/data providers, information and technical assistance, and research tools).

Natural Environment

TYPE OF INFORMATION TO COLLECT	POTENTIAL INFORMATION SOURCES	PROVIDERS ⁹
Floodplains	Federal Emergency Management Administration (FEMA) Floodplain or Flood Insurance Rate Maps	Local offices, libraries, SWCDs, FEMA, Land Management Information Center (LMIC)
Climate	Climatological records	County extension offices, universities, radio and television stations, DNR Climatology Unit, U of M, Minnesota Climatology Working Group, NOAA, Midwestern Climate Center
Topography	USGS maps	Local offices, libraries, SWCDs, retail stores, LMIC, MN Bookstore, USGS
Surface water and watersheds	Watershed maps	Local offices, libraries, SWCDs, DNR, LMIC, MN Bookstore
Wetlands and Protected Waters	National Wetland Inventory (NWI) maps Protected Water Inventory (PWI) maps Local inventories	Local offices, libraries, SWCDs, DNR, LMIC, USFWS, MN Bookstore
Groundwater	Groundwater maps	DNR, MPCA, LMIC
Geology	Geologic maps	MGS, USGS, LMIC
Soils	Soils survey & other soil maps	Local offices, libraries, SWCDs, MES, LMIC
Vegetation	Land use/land cover maps	Local offices, LMIC

Human-Made Environment: Public

TYPE OF INFORMATION TO COLLECT	POTENTIAL INFORMATION SOURCES	PROVIDERS
Transportation	Road classification maps State highway maps Regional transportation plans	Local offices, libraries. RDCs, railroad companies, MNDOT, MN Bookstore
Sewer Water Drainage Solid Waste	Utilities maps Utilities master plans Capital improvement programs Drainage maps USGS maps Field surveys, inventories Interviews with service providers	Local offices, libraries. local providers, USGS, MN Bookstore
Emergency and Public Safety Schools Parks and Recreation Libraries and Public Buildings	Local government budget documents Master plans Field surveys, inventories Interviews with service providers Tourism maps and guides	Local offices, libraries. local providers, chambers of commerce
Historical/Archeological Resources	Publications, maps, inventories, historical documents	Local historical societies, MHS

Human-Made Environment: Private

TYPE OF INFORMATION TO COLLECT	POTENTIAL INFORMATION SOURCES	PROVIDERS
Land Use Inventory <ul style="list-style-type: none"> Residential: single family Residential: duplex Residential: multiple family Commercial Warehouse Industrial Civic/Institutional Forested land Vacant/ undeveloped Agricultural: crop production Agricultural: animal production Agricultural support 	CFSA/SWCD aerial photography DNR aerial photography LMIC land cover/land use maps (digitized and nondigitized) Assessors maps/records Field surveys, inventories Topographical maps Satellite imagery	Local offices, SWCD, CFSA, DNR, LMIC, USGS
Historical/Archeological Resources	Publications, maps, inventories, historical documents	Local historical societies, MHS

Population Characteristics

TYPE OF INFORMATION TO COLLECT	POTENTIAL INFORMATION SOURCES	PROVIDERS
Population size <ul style="list-style-type: none"> • Number of People • Number of Housing Units • Number of Households Population Composition <ul style="list-style-type: none"> • Age • Race • Income • Education Population Distribution (density analysis)	U.S. Census Bureau Publications (City and County Data Book, Census of Population and Housing) Minnesota annual population estimates (cities and townships) (State Demographer) <ul style="list-style-type: none"> • Population • Households Minnesota population projections (county level, every ten years) (State Demographer)	Local offices, libraries, school districts, public utilities, State Demographer, U.S. Census
Housing trends, tenure and distribution Population Projections (20 years)		

Economic/Employment

TYPE OF INFORMATION TO COLLECT	POTENTIAL INFORMATION SOURCES	PROVIDERS
Existing economic conditions Employment by industry type (Standard Industrial Classification) Unemployment Rates (Existing and Historical) Labor Force Estimates by Occupation Group Econometric and Employment Projections	U.S. Census Bureau data <ul style="list-style-type: none"> • <i>County Business Patterns</i> • <i>Census of Manufacturing, Business, Wholesale Trade, and Selected Services</i> <i>Compare Minnesota: An Economic and Statistical Fact Book</i> (DTED) <i>Rural Investment Guide</i> (DTED) <i>Economic Report to the Governor</i> (Economic Resource Group)	Local offices, libraries, DTED, U.S. Census
Tax Base Data	Assessors records	Local offices
Land and Improvements by Land-Use Type (Residential, Commercial, Industrial, Agricultural)	Land use survey (see <i>Human-Made Environment: Private</i> , above)	see <i>Human-Made Environment: Private</i> , above

Directory of Statewide Resources

Information and Data Providers

Minnesota Historical Society (MHS)

The Minnesota Historical Society provides technical assistance regarding historical and archeological resources.

History Center
345 Kellogg Blvd. W.
St. Paul, MN 55102
Telephone: 612-296-6126
TTY /TDD: 612-282-6073

Archeology Department
Telephone: 612-297-4701

Historic Preservation, Field Services, Grants
Telephone: 612-296-5434

Minnesota Department of Natural Resources (DNR)

500 Lafayette Road
St. Paul, MN 55155-4001
Telephone (Information): 612-296-6157
TTY/TDD: 612-296-2144 or 297-3926

The following regional offices provide assistance and information regarding floodplains, shorelands, protected waters, fish, wildlife, forestry and recreational lands.

Region I

2115 Birchmont Beach Rd., N.E. , Bemidji, MN 56601
Telephone: 218-755-3955

Region II

1201 East Highway 2, Grand Rapids, MN 55744
Telephone: 218-327-4455

Region III

1601 Minnesota Drive, Brainerd, MN 56401
Telephone: 218-828-2561

Region IV

Box 756, Highway 15 South, New Ulm, MN 56073
Telephone: 507-359-6000

Region V

P.O. Box 6247, Rochester, MN 55903
Telephone: 507-285-7420

Region VI

1200 Warner Road, St. Paul, MN 55106
Telephone: 612-772-7900

Climatology Unit

The state climatologist collects and analyzes climatological records on Minnesota. In addition to historical data the office produces seasonal and special condition maps for current conditions.

Telephone: 612-296-4214

E-mail: jzandlo@soils.umn.edu (Jim Zandlo, State Climatologist) or gspoden@soils.umn.edu (Greg Spoden, Assistant State Climatologist)

Internet address: <http://www.soils.agri.umn.edu/research/climatology>

Office of Strategic and Long-Range Planning (Minnesota Planning)

300 Centennial Building
658 Cedar Street
St. Paul, MN 55155
Telephone: 612-296-3985

Land Management Information Center (LMIC)

LMIC provides environmental information to governmental agencies and individuals in the form of computerized maps, statistics and data on the state's natural resources and demographics. Services provided include inventory and analysis of geographic information and access to DATANET. The type of information available includes land cover maps, digitized and mylar land use maps.
Telephone: 612-296-1211

Office of the State Demographer

The State Demographer office collects, analyzes and distributes demographic information. The office prepares annual estimates of the state's population and households for counties, cities and townships. Projections of the state's population and labor are also prepared. The State Data Center and U.S. Census and U.S. Census Data Center are located in the Office of the State Demographer which provides business and census information. Information is also available by calling the help line.

Telephone (State Demographer Help Line): 296-2557

Minnesota Pollution Control Agency (MPCA)

MPCA establishes standards and regulations on air quality, water quality, ground water, solid waste, toxic and hazardous waste, and noise pollution. Information and assistance is available to communities.

520 Lafayette Road
St. Paul, MN 55155
Telephone: 1-800-652-9747 or 612-296-6300
TTY/TDD: 612-282-5332

Minnesota Department of Trade and Economic Development (DTED)

Information to assist in evaluating economic conditions including opportunities, constraints, and trends, is available through the Information and Analysis Division, and the Office of Business Development, Finance and Training.

500 Metro Square
121 7th Place E.
St. Paul, MN 55101-2146
Telephone: : 1-800-657-3858 or 612-296-1290

Minnesota Department of Transportation (MNDOT)

MNDOT central and regional offices provide information and assistance on aviation, rail and highway transportation.

Transportation Information Center
Transportation Building
395 John Ireland Boulevard
St. Paul, MN 55155
Telephone: 612-296-3000

District 1A
1123 Mesaba Avenue, Duluth, MN 55811
Telephone: 218-723-4801

District 1B
101 N. Hoover Road, Virginia, MN 55792
Telephone: 218-749-7793

District 2

Box 490, Bemidji, MN 56601
Telephone: 218-755-3800

District 3A

199 Industrial Park, Baxter, MN 56401
Telephone: 218-828-2460

District 3B

Box 370, 3725 12th Street N., St. Cloud, MN 56302
Telephone: 612-255-4181

District 4A

P.O. Box 666, 1000 W. Highway 10, Detroit Lakes, MN 56502
Telephone: 218-847-1500

District 4B

P.O. Box 410, 610 Highway 9 S., Morris, MN 56267
Telephone: 612-589-7000

Metro District

N. Lilac Drive, Golden Valley, MN 55422
Telephone: 612-593-8400

District 6A

Box 6177, 2900 48th St. N.W., Rochester, MN 55903
Telephone: 507-285-7350

District 6B

Box 307, 1010 21st. Avenue N.W., Owatonna, MN 55060
Telephone: 507-455-5800

District 7A

P.O. Box 4039, Mankato, MN 56001
Telephone: 507-389-6351

District 7B

Box 427, Co. Rd. 26, Windom, MN 56101
Telephone: 507-389-6860

District 8

P.O. Box 768, 2505 Transportation Rd., Willmar, MN 56201
Telephone: 612-231-5195

University of Minnesota

Minnesota Extension Service (MES)

MES is an outreach of the university. It offers information and assistance relating to agriculture including production and statistics. Information is also available on community economic development and tourism. Information may vary by county.

240 Coffey Hall

1420 Eckles Avenue

St. Paul, MN 55108

Telephone: (General information) 612-625-1915

Department of Soil, Water and Climate

429 Borlaug Hall

St. Paul, MN 55108

Telephone: 612-625-1244

E-Mail: mseeley@soils.umn.edu (Mark Seeley, Extension Climatologist)

College of Natural Resources
235 Natural Resources Admin
St. Paul, MN 55108
Telephone: 612-624-1234

Department of Applied Economics
231 Classroom Office Building
St. Paul, MN 55108
612-625-1222

Minnesota Geologic Survey (MGS)

The Minnesota Geologic Survey is a source of survey publications, maps, atlases, and computerized data regarding the geology of Minnesota.

2642 University Avenue
St. Paul, MN 55114-1057
Telephone (survey publications, maps, atlases): 612-627-4782
Telephone (computerized data): 612-627-4784

Minnesota Bookstore (MN Bookstore)

The bookstore offers publications and products produced by governmental agencies. Numerous maps, studies, guides, directories, videos, legal decisions, laws, and rules are available through the book and map store.

117 University Avenue, St. Paul, MN 55155
Telephone: 1-800-657-3757 or 612-297-3000

The Minnesota Climatology Working Group

The Minnesota Climatology Working Group is a cooperative effort between several public entities that produce, gather, archive, dispense or use climatic data of Minnesota. The Working Group maintains a home page on the World Wide Web of the Internet. The four principal cooperators of the Minnesota Climatology Working Group are:

- State Climatology Office (see listing under Minnesota Department of Agriculture: Climatology Unit)
- Extension Climatology (see listing under University of Minnesota: Department of Soil, Water and Climate)
- Academic Climatology (University of Minnesota)
- Other Cooperators (see listing under National Oceanic and Atmospheric Administration: National Climatic Data Center)

Internet Address: <http://www.soils.agri.umn.edu/research/climatology>

Federal Emergency Management Agency (FEMA)

Flood maps and/or indices may be ordered from:

Federal Emergency Management Agency
Flood Map Distribution Center
6730 (A-G) Santa Barbara Court
Baltimore, Maryland 212-227-6227

Telephone: 1-800-358-9616 or 1-800-638-6620

United States Census Bureau

Census data is available through publications, CD-ROM disks, other computer media, and on-line through the Internet.

Census Bureau Customer Services
Customer Services
Bureau of the Census

Washington, DC 20233
Telephone: 301-457-4100
TDD: 301-457-4611
Internet: <http://www.census.gov>

United States Geologic Survey (USGS)

USGS maps and publications are available through the Earth Sciences Information Center.
Satellite imagery is available through Earth Resources Observation Systems Data Center.

Earth Sciences Information Center (for maps and publications)
Telephone: 1-800-USA-MAPS

Listing of USGS Map Dealers in Minnesota
Internet: <http://www-nmd.usgs.gov/esic/usimage/test/mn.html>

The Earth Resources Observation Systems (EROS) Data Center

The EROS Data Center, located in Sioux Falls, SD holds the world's largest collection of space and aircraft acquired imagery of the Earth. These holdings include over 2 million images acquired from satellites and over 8 million aerial photographs. The Center is also a major focal point for information concerning the holdings of foreign Landsat ground reception stations and data acquired by other countries' Earth observing satellites.

EROS Data Center
Sioux Falls, SD 57198
Telephone: 605-594-6151
TDD: 605-594-6933
Fax: 605-594-6589
Internet: <http://edcwww.cr.usgs.gov/eros-home.html>

National Oceanic and Atmospheric Administration (NOAA) National Climatic Data Center

The National Climatic Data Center is a source for weather and climate information.

Federal Building
151 Patton Avenue
Asheville, NC 28801-5001
Telephone: 701-271-4800
Fax: 704-271-4876
Internet address: <http://www.ncdc.noaa.gov/>

The Midwestern Climate Center

The Midwestern Climate Center is a cooperative program of the U.S. National Weather Service and the Illinois State Water Survey in Champaign, Illinois. It is a source of weather and climate information, including historical climate information from weather stations in Minnesota.

2204 Griffith Drive
Champaign, IL 61820
Telephone: 217-244-8226
Internet address for Minnesota climate summaries:
<http://mcc.sws.uiuc.edu/Summary/Minnesota.html>

Information and Technical Assistance

Minnesota Department of Agriculture

The Minnesota Department of Agriculture provides information and technical assistance to local governments through its Animal Agriculture Land Use Technical Assistance Program and Agricultural Land Preservation Program.

Agricultural Marketing and Development Division
Minnesota Department of Agriculture
90 West Plato Boulevard
Saint Paul, MN 55107-2094
Telephone: 612-215-0369
E-mail: bbalk@mda-is.mda.state.mn.us

Metropolitan Council

The Metropolitan Council offers information and technical assistance to local governments in the Twin Cities Metropolitan Area.

Community Development Division
Telephone: 612-291-6359
TTY/TDD: 612-291-0904

Office of Strategic and Long-Range Planning (Minnesota Planning)

Minnesota Planning is responsible for developing a long-range plan for Minnesota, stimulating public participation in the state's future, and coordinating public policy with state agencies, the legislature, and other units of government. In addition its data resources (LMIC and the Office of the State Demographer—see listing above), the agency offers information and assistance in areas such as land use planning, zoning and growth management, environmental review, and sustainable development.

Minnesota Planning Critical Issues Team
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155
Telephone: 612-296-2884

Environmental Quality Board

The Environmental Quality Board programs include the state environmental review program (under the Minnesota Environmental Policy Act, Minnesota Statutes xx), and the Minnesota Sustainable Development Initiative.

300 Centennial Building
658 Cedar Street
St. Paul, MN 55155
Telephone: 612-296-3985

Environmental Review Program

Telephone: 612-296-8253

Minnesota Sustainable Development Initiative

Telephone: 612-297-2377

Minnesota Board of Water and Soil Resources (BWSR)

The Board of Water and Soil Resources administers a number of state programs designed to protect Minnesota's soil and water. The Board is service-oriented, and administers a number of grant and technical assistance programs to SWCDs, watershed districts (WDs), watershed management districts (WMOs), and counties. Among programs that BWSR administers are the Comprehensive Local Water Planning Program, and the Wetlands Conservation Act.

Suite 200
One West Water Street
St. Paul, MN 55107
Telephone (Information): 612-296-3767

Water Planning
Telephone: 612-297-5617

Wetlands
Telephone: 612-297-3432

Research Tools

Environmental Conservation Library (ECOL)

The ECOL supplies information on all aspects of the world's natural resources, environmental problems, and ecological stress, with special emphasis on Minnesota and the Upper Midwest. Environmental information is provided through loans of materials (including inter-library loans), research assistance, referrals to specialized information sources, computer-assisted bibliographic searching, and public photocopy machines.

Minneapolis Public Library and Information Center
300 Nicollet Mall
Minneapolis, MN 55401
Telephone: 612-372-6570

Northstar (State of Minnesota) Home Page

Northstar provides access to a wide variety of information about Minnesota, including links to state agency offices and the legislature. Home pages for state agencies listed above are accessible through Northstar.

Internet address: <http://www.state.mn.us/>

Government Information

This web page is a guide and link to government web sites and other government information.

Internet address: <http://www.clark.net/pub/lshank/web/gov.html>

The Villanova Center for Information Law and Policy, The Federal Web Locator

The Federal Web Locator is a comprehensive web site directory/link to federal agencies and programs.

Internet address: <http://www.law.vill.edu/Fed-Agency/fedweb.exec.html#wh>

Bibliography

Basic Planning Literature

Bryson, John M. and Robert C. Einsweiler, eds. *Strategic Planning: Threats and Opportunities for Planners*. APA Planners Press, 1980.

(An examination of strategic planning approaches as they relate to land use issues and traditional comprehensive planning approaches.)

Caves, Roger W. *Land Use Planning: The Ballot Box Revolution*. Newbury Park, CA: Sage Publications, 1992.

(Caves describes the trend toward using direct democracy legislation and its relation to making public policy decisions. Direct democracy is discussed in relation to broad-scale planning issues.)

Chapin, Jr., F. Stuart and Shirley F. Weiss, eds. *Urban Growth Dynamics in a Regional Cluster of Cities*. New York: John Wiley and Sons, Inc., 1962.

(Discusses the economic and social impacts of urbanization, and patterns of urban development.)

Daniels, Thomas, John W. Keller, Mark B. Lapping. *The Small Town Planning Handbook*. Chicago: American Planning Association, 1995.

(Aimed at helping small towns and rural communities in the areas of physical design, economic development, and planning in general.)

Erbev, Ernest, ed. *Urban Planning in Transition*. New York: Grossman Publishers, 1970.

(Addresses the changing societal context that planning takes place in, changing changes in planning methods and techniques, and the changing roles of planners.)

Ervin, David E., James B. Fitch, R. Kenneth Godwin, W. Bruce Shepard, and Herbert H. Stoevner. *Land Use Control: Evaluating Economic and Political Effects*. Cambridge: Ballinger Publishing Company, 1977.

(Presents a framework for evaluating land use policies. Other topics discussed include socio-political constraints on land use, zoning, and transferable development rights.)

Garret, Jr., Martin A. *Land Use Regulation: The Impacts of Alternative Land Use Rights*. New York: Praeger Publishers, 1987.

(The book is an extensive analysis of land use in a market economy.)

Getzels, Judith and Charles Thurow, eds. *Rural and Small Town Planning*. Chicago: Planners Press.

(General plan preparation, implementation tools, and planning techniques are presented in this book for rural planners.)

- Kaiser, Edward J., David R. Godschalk, and F. Stuart Chapin, Jr. *Urban Land Use Planning*. Urbana: University of Illinois Press, 1995.
(Often used as a textbook for graduate students and referencing planners, this book reviews a complete methodology for making a plan and operating a planning program. It fully analyzes methods and techniques of land use plan making.)
- Knapp, Gerrit and Arthur C. Nelson. *The Regulated Landscape: Lessons on State Land Use Planning from Oregon*. Cambridge: Lincoln Institute of Land Policy, 1992.
(Gerrit and Nelson review the Oregon land use program, and it offers insights on planning from several fields of study.)
- Kelly, Eric Damian. *Growth and Public Transportation Investments: Growth Management Strategies to Reduce Transportation Capital Costs in and Near Midwestern Urban Areas*. Ames: Iowa State University, 1994.
(Describes alternative growth management techniques, and provides a legal analysis of the applicability of such techniques.)
- Siegan, Bernard H. *Land Use Without Zoning*. Lexington, MA: D.C. Heath and Company, 1972.
(The effects of current exclusionary zoning practices, and the benefits of cities without zoning. Recommends solutions to the zoning problem.)
- Slater, David C. *Management of Local Planning*. Washington, D.C.: International City Management Association, 1984.
(Slater analyzes the relationship between planning, management, and policy decision making. He focuses on the skills required for effective planning at the local level.)
- Smith, Herbert H. *The Citizen's Guide to Planning*. Chicago: American Planning Association, 1979.
(Written as a guide for planning board members or interested citizens. It discusses the major aspects of the planning process and actual plans.)
- So, Frank S., and Judith Getzels, eds. *The Practice of Local Government Planning*. Washington, D.C.: International City/County Management Association, 1988.
(So and Getzels cover a wide-range of planning issues, and the nature of planning in general. Often called the "planner's greenbook," it is used as a textbook for students of planning as well as practicing professionals.)

Agricultural Land Preservation

- Coughlin, Robert E. and John C. Keene. *The Protection of Farmland: A Resource Guidebook for State and Local Governments*. A Report to the National Agricultural Lands Study from the Regional Science Research Institute, Amherst, Massachusetts. December 1980.
(The intent of this guidebook is to provide a reference guide to farmers, state and local governments, farm organizations, and others who are interested in agricultural land preservation. The book outlines ways of protecting agricultural land.)

"Farming on the Fringe." *Developments*. Vol. 3, No. 1 (September 1993). 11-15.
(The article outlines various strategies used to prevent urban expansion onto productive agricultural lands.)

Humbach, John. "Private Property and Community Rights." *Developments*. Vol. 3, No. 1 (September 1993). 8-9.
(Humbach provides suggestions for regulating land uses in the public interest.)

Kasowski, Kevin. "Rural America at a Crossroads." *Developments*. Vol. 3, No. 1 (September 1993). 3-4.
(The author examines land conservation solutions that are gaining popularity in the United States.)

Kusler, Jon A. *Regulating Sensitive Lands*. Cambridge: Ballinger Publishing Company, 1980.
(This resource includes a survey of several existing sensitive area programs. It also suggests future directions for conservation of critical resources.)

Minnesota Agricultural Land Preservation Program Status Report 1993-1994. St. Paul: Minnesota Department of Agriculture, January 1995.
(The Minnesota Department of Agriculture provides readers with an explanation the Ag Land Preservation Program in the state, and a status report on the preservation of ag land in Minnesota and other states. The report also includes information on program participation, funding and tax credits, and other major findings.)

Rust, R.H. and L.D. Hanson. *Crop Equivalent Rating Guide for Soils of Minnesota*. University of Minnesota: Agriculture Experiment Station.
(This report provides soil management and crop production information on a variety of Minnesota soils.)

Steiner, Frederick. *Ecological Planning for Farmlands Preservation*. Chicago: American Planning Association, 1981.
(Steiner hopes to help the reader achieve a clear understanding of ecological planning, and policies to preserve ag land.)

Feedlot Issues and Trends

Brown, David L., J. Norman Reid, Herman Bluestone, David A. McGranahan, and Sara M. Mazie, eds. *Rural Economic Development in the 1980's: Prospects for the Future*. Agriculture and Rural Economy Division, Economic Research Service, U.S. Department of Agriculture, September 1988. Rural Development Research Report No. 69.
(The papers in this book provide explanations of the changing rural economy, and policy recommendations to facilitate the adjustments made by rural families and communities.)

- "Buffering Can Prevent Headaches." *Zoning News*. February 1990, 1-4.
(Zoning News devoted this issue to describing standards for bufferyards, and to explaining recent cases involving bufferyards.)
- Corser, Susan Ernst. "Preserving Rural Character Through Cluster Development." *PAS Memo*. July 1994, 1-4.
(Corser provides a definition of rural character, the advantages and disadvantages of cluster development, and the reasons for preserving open space in cluster development. Water and sewage issues are also presented, along with issues that pertain to site planning and design.)
- Hamilton, Neil D. *What Farmers Need to Know About Environmental Law*. Des Moines: Drake University Agricultural Law Center, 1990.
(This book was written for a farm audience or other nonlawyers who want to learn more about laws and regulations affecting farm operations and agriculture.)
- Heyer, Fred. *Preserving Rural Character*. Chicago: American Planning Association, 1990. PAS Report Number 429.
(Heyer's report looks at the means of protecting a communities rural character by the use of planning tools.)
- "Hogs and Pigs County Estimates." *Minnesota Ag News*. St. Paul: Minnesota Agricultural Statistics Service, May 9, 1995.
- Lasley, Paul, F. Larry Leistritz, Linda M. Lobao, and Katherine Meyer. *Beyond the Amber Waves of Grain: An Examination of Social and Economic Restructuring in the Heartland*. Boulder: Westview Press, 1995.
(The authors discuss the restructuring of the farm sector in depth, with special emphasis on the farm crisis of the 1980's. They also discussed how the crisis affected the lives of rural families and the vitality of their communities.)
- Wright, Linda, ed. *Minnesota Agriculture Statistics 1994*. St. Paul: Minnesota Agricultural Statistics Service, July 1994.
(This yearly publication discusses in detail the trends in agriculture within the state of Minnesota for 1994. It covers crop reports as well as livestock reports.)
- Wyckoff, Mark A. "Zoning Options to Protect Rural Character." *Planning and Zoning News*. March 1992, 5-8.
(The articles examines the concept of rural character, the reasons for protecting it, and the means to protect it.)

Capital Improvements and Impacts on Development

Bowyer, Robert A. *Capital Improvements Programs: Linking Budgeting and Planning*. Chicago: American Planning Association, 1993. PAS no. 442.

(This research shows how planning pays off where capital improvements are concerned. It also links the budgetary process to the planning process, and it discusses the CIP as a policy statement.)

Kelly, Eric Damian. *Planning, Growth, and Public Facilities: A Primer for Local Officials*.

Chicago: American Planning Association, September 1993. PAS, 447.

(This PAS report discusses the impact of public facilities on the future growth of an area. Other topics include planning for the future, the regulatory process, and recommended systems.)

Schaenman, Philip S., and Thomas Muller. *Measuring Impacts of Land Development: An Initial Approach*. Washington, D.C.: The Urban Institute, 1974.

(This report examines a system for assessing the effects of land development proposals. It concentrates on ways to develop comprehensive data on the expected impacts of development.)

So, Frank S., Michael J. Mashenberg, and Judith Getzels. *Local Capital Improvements and Development Management: Literature Synthesis*. Chicago: American Planning Association, 1977. H2496.

(How local governments plan and program capital facilities to carry out development objectives is reviewed in this literature synthesis. It also talks about the effects of capital improvements on development, and it includes a summary of legal issues involved with capital improvements.)

Livestock Industry

Freese, Betsy and Rodney J. Fee. "Livestock-Hungry States." *Successful Farming*. 92 (January 1994): 19-22.

(This article discusses the expansion of the livestock industry in certain states, and residents' feelings about the expansion. The article discusses possibilities for growth in the East, Upper Midwest, the Mid-Plains, the West, and Missouri.)

Bixby, Donald E. *Taking Stock: The North American Livestock Census*. Blacksburg, VA: McDonald & Woodard Publishing Company, 1994.

(The American Livestock Breeds Conservancy sponsored this book. It looks at the importance of livestock and conserving genetic diversity. *The North American Livestock Census* is presented for all types of livestock. A discussion about trends in the livestock industry is also provided.)

Dorsch, Jennifer. "Yes, You Can Compete." *Successful Farming*. 88 (September 1991). 18-19.

(The author discusses how family farms can compete with large producers by changing their tactics. The article outlines these tactics.)

"Let Us Take You Where the Action Is." *Successful Farming*. 90 (November 1992). 24-30.
(A special cover story examines hotspots in the livestock industry throughout the nation. It discusses how these spots develop after one or two entrepreneurs establish a good track record.)

National Pork Producers. "Here's Help for Legal Issues." *Successful Farming*. 92 (January 1994). 34-35.

(The NPP has created livestock guides whose purpose is to increase understanding of the regulations and laws that affect a livestock operation. A table provides data on livestock regulations in 17 states, and information on ordering a guide is given.)

Palmquist, Raymond B., Fritz M. Roka, and Tomislav Vukina. *The Effect of Environmental Impacts from Swine Operations on Surrounding Residential Property Values*. Raleigh: Department of Economics and Department of Agriculture and Resource Economics, North Carolina State University, May 16, 1995.

(The authors discuss the findings of their research on environmental effects from swine operations, and the way swine operations may affect adjacent property values.)

Sweeten, John M. "Odor Measurement and Control for the Swine Industry: Recent Developments." *Journal of Environmental Health*. 50 (March/April 1988). 282-286.
(Sweeten discusses how odor can be measured on large farms and tactics that can be used to control odors.)

"The Livestock Industry and the Environment." Conference Proceedings, October 31-November 1, 1991, Scheman Building, Iowa State University, Ames, Iowa. Conference sponsors: Iowa State University, College of Agriculture, and others.

The Economic Importance of Agriculture in Rural Communities

Korsching, Peter F. and Judith Gildner, eds. *Interdependencies of Agriculture and Rural Communities in the Twenty-first Century: The North Central Region*. Ames: Iowa State University, 1986.

(The papers in this book explain the nature of the changes that are occurring in agriculture and rural communities. They are from a conference specifically devoted to the interdependencies of agriculture and rural communities.)

Jones, Sue H., ed. *Options in Developing a New National Rural Policy: Rural Development Policy Workshops*. College Station: Texas Agricultural Extension Service of the Texas A&M University System, 1989.

(The results of several workshops on rural development policies are presented in this publication.)

Summers, Gene F., Leonard E. Bloomquist, Thomas A. Hirschl, and Ron E. Shaffer. *Community Economic Vitality: Major Trends and Selected Issues*. Ames: Iowa State University, 1988.
(This publication was intended for rural development practitioners and extension educators. It was prepared to provide information on community economic vitality trends and issues to those people who help communities strengthen their future.)

General

P. Fisher/Legis. Environmental Advisory Group, Land Use Controls and the Costs of Urban Fringe Development, Institute of Urban and Regional Research, University of Iowa, (Jan. 1980)
(Fisher)

N. Hamilton. *A Livestock Producer's Guide To: Nuisance, Land Use Control, and Environmental Law*. (Jan. 1992) Published by Drake University Agricultural Law Center.

P. Salkin, *Preservation of Rural Character and Protection of Natural Resources*. Government Law Center (April 1991).

P.W. Salsich, Jr., *Land Use Regulation-Planning, Zoning, Subdivision Regulation, and Environmental Control*. (1991) McGraw Hill

Saving the Farm: A Handbook for Conserving Agricultural Land. American Farmland Trust
(January, 1990)

Legal Cases

Trout Unlimited, Inc., et. al., v. Minnesota Department of Agriculture

Board of Supervisors of Crooks Township, Renville County v. Valadco
504 NW2d 267 (Minn. App. 1993)

Haen v. Renville County Board of Commissioners v. Valadco
495 NW2d 466 (Minn. App. 1993)

Madson v. Overby, City Administrator, City of Lake Elmo, et al.
425 NW2d 270 (Minn. App. 1988)

Amcon Corporation v. City of Eagan
348 NW2d 55 (Minn. 1984)

Reiss Greenhouses, Inc. v. County of Hennepin
290 NW2d 785 (Minn. 1980)

Campion, et al. v. County of Hennepin
221 NW2d 549 (Minn. 1974)

Elwell v. County of Hennepin
221 NW2d 538 (Minn. 1974)

Connor v. Township of Chanhassen
81 NW2d 789 (Minn. 1957)

Minnesota Statutes and Rules

Corporate Use of Agricultural Lands §500.24-500.25

Environmental Quality Board, Minnesota Rules, Chapter 4410

Green Acres Preferential Property Tax Law §273.11

Housing, Redevelopment, Planning, Zoning, Chapter 462

Metropolitan Agricultural Preserves Act, Chapter 473H

Metropolitan Government, Chapter 473

Minnesota Pollution Control Agency–Water Quality Division–Animal Feedlots, Minnesota Rules,
Chapter 7020

Municipal Annexation, Chapter 511

Planning, Development, Zoning, Chapter 394

Real Estate and Personal Property Taxes, Objections, Defenses, Chapter 278

Right-to-Farm Law §561.19

RIM Reserve Program, Minnesota Rules, §8400.3000-8400.3730

Taxes, Levy, Extension, Chapter 275 §275.01-275.62

Town Board, Chapter 366

Town General Law; Town Meeting Powers, Chapter 365

Town Officers, Chapter 367

Agricultural Land Preservation Program, Chapter 40A

Conservation easements, Chapter 84C

Comprehensive Local Water Planning and Management §103B.301-103B.3369

Shoreland Development §103F.201-103F.221

Watershed Management Plan §103D.401

Environmental Protection §116.07-116.101

Taxes, Listing, Assessment §273.075-273.112