

A GUIDE TO LOCAL LAND USE PLANNING FOR AGRICULTURE OPERATIONS

Introduction and Overview

The Indiana Land Resources Council (ILRC) has, after considerable discussion, three public listening sessions, and further discussion within the Council, voted to recommend three sets of model regulations included in this document for consideration by Indiana counties (models are summarized on page 4 and detailed in the attached). The ILRC is a nine member council appointed by the Governor to assist local and state decision-makers with land use tools and policies. The council is composed of the following members:

Business	Bruce Everhart	Wells Fargo Bank
County Government	RJ McConnell	Johnson County Commissioner
Environment	Mary McConnell	The Nature Conservancy
Farm Owners	Matt Gibson	Gibson Family Farms
Forestry	John Brown	Pike Lumber Company
Land Development	David Compton	Indiana Builders Association
Land Use Issues	Eric Kelly	Ball State University
Municipal Government	Joe Klump	Mayor of Bedford
Soil and Water Conservation	Gene Schmidt	National Association of Conservation Districts

In developing the model ordinances, the ILRC researched how certain Indiana counties as well as counties in other states have developed their zoning ordinances to minimize conflicting uses and ensure that agriculture remains a strong component of the county's economy. An analysis of university research on agricultural production practices and odor assessment tools was also conducted.

Once the model ordinances were drafted, the ILRC and the Indiana State Department of Agriculture (ISDA) hosted three Listening Sessions across the state. Over 200 interested citizens attended the listening sessions and approximately 100 comments were received. After reflecting on the public's input, the Council revised their recommendations, posted the ordinances for a second round of public comment, and made further revisions prior to final approval of the ordinances.

The Council recommends these models with the following comments, conditions and limitations:

1. The three models represent three different approaches to regulation. They are not specifically "alternatives," because it may make sense to use a combination of two of them; on the other hand, it is unlikely that any county would find it useful to adopt all of them.
2. The models contain specific standards, including distances and dimensions. The Council believes that these standards are reasonable, based on the planning, scientific, regulatory and other information available to the Council. A county considering the

- adoption of the model ordinances, however, may certainly use the models and change the numbers. The regulatory approach set forth in each model is far more important than the details included in the model.
3. These models are intended to address LAND USE issues that arise because of the variety of residential and agricultural uses found in rural Indiana today. They are not intended to address other issues and are based in part on the following assumptions:
 - a. That the Indiana Department of Environmental Management (IDEM) regulates the water quality impacts of Confined Feeding Operations (CFOs) and Concentrated Animal Feeding Operations (CAFOs) and that it will do so in a way that fully protects the people of the state of Indiana.
 - b. That the Indiana General Assembly is addressing the issue of large-scale application of fertilizer by persons who are not currently subject to permitting or licensing by the state.
 - c. That IDEM and the Indiana Department of Health regulate rural septic and wastewater systems and that they will do so in ways that fully protect the people of the state of Indiana.
 - d. That the measurement and regulation of odors is a developing science, and that the issues of odor mitigation can best be addressed with a combination of reasonable setbacks and the use of modern management practices.
 4. In recommending these models, the Council believes that all stakeholders in Indiana's rural areas are better off with a system that provides certainty about what is and is not allowed than with a system in which land use and the extent of regulation of that use evolves from case-by-case negotiations.
 5. Land use control in Indiana is a local function. In recommending these models, the Council intends to offer a resource to assist Indiana counties, not to preempt the local power and duty to set land use policy.

Model Ordinance Concepts

Counties are seeking guidance on how to update their zoning ordinances to provide for strategic growth of agricultural production while minimizing conflicting land uses. Therefore, one of the first initiatives of the ILRC has been to develop model agricultural zoning ordinances. The ILRC considered seven potential models to develop in depth. After consideration of the pros and cons of each model, the ILRC decided to focus on developing three of the agricultural zoning concepts.

These ordinances are based on the following set of principles that are fundamental to effective agricultural zoning regulation:

Focus on traditional zoning functions and coordination with state regulation. Traditional zoning functions include considerations such as odor dispersion, traffic impact, water usage, and aesthetics. These considerations complement existing state and federal environmental regulations. The ordinances developed by the ILRC are focused on considerations that are within the parameters of local zoning authority.

Lay a solid planning foundation. Many counties throughout the state have comprehensive plans that are 20-30 years old. These plans are outdated and no longer serve as a roadmap for the future of a community. It is critical that counties have laid a solid planning foundation before attempting to construct regulatory responses through zoning regulation. The comprehensive plan provides a context and basis for difficult zoning decisions.

Emphasis on Public Input. The public hearing process is integral to local zoning regulation. State law reflects this importance by requiring public hearings for certain official actions of a plan commission. These actions include the following:

IC § 36-7-4-507	Adoption or amendment of Comprehensive Plan
IC § 36-7-4-602	Adoption or amendment of Zoning Ordinance

When a plan commission is revising their comprehensive plan or zoning ordinance, it is critical that all available measures are taken to notify and engage the public. The public should take an active role in developing clear ordinance requirements for permit applicants. The model ordinances follow this approach by setting forth objective standards that facilitate administrative review of each permit application.

Some counties elect to take a case-by-case approach to permitting, which entails a public hearing for every building application. With this approach, the plan commission or board of zoning appeals (BZA) often develop standards retroactively for each individual permit. It is the ILRC's position that this approach is usually less efficient and provides little guidance to the decision-makers regarding what standards should guide their decision. In addition, the absence of clear standards upfront lends itself to subjectivity in permitting decisions and uncertainty on the part of the applicant of what is expected. The ILRC firmly supports public involvement. However, this involvement should be sought at the development stage versus the administrative stage of the zoning process.

Imposing objective, science based standards. Development and performance standards for new or expanding agricultural operations should be objective and science based. Objective standards provide for efficiency in the decision making process, which is important to county plan commissions and ensures an applicant is successful in capitalizing on a business opportunity. Requirements for agricultural operations should also be science based, such as separation distances based on scientific measurements of odor dispersion.

Being proactive rather than reactive. Implementation of new agricultural regulations should take place prior to a new or expanded operation being proposed. This proactive approach provides a better environment for developing a county's policy on agricultural growth.

Utilization of density measures to minimize conflicting uses. A fundamental principal of zoning is separation of conflicting uses. The model ordinances exemplify several approaches to address the land use needs of agriculture while also accommodating rural residential development. Some of these approaches include rural estate districts, a special exception process for residential development in agricultural zones, and utilizing a maximum lot size in conjunction with cluster development to manage subdividing of large tracts of land.

Notification as a component of rural residential development. It is critical that individuals who are moving to an agricultural zone are notified of the types of agricultural activities that occur in these areas. An effective tool to ensure this notification is the use of an agricultural clause with an accompanying deed restriction to notify successive owners. An agricultural clause notifies individuals who seek to build a home in a rural area that they may experience noise, dust, and odor associated with generally accepted farming practices.

Requirements for non-conforming uses. Addressing pre-existing non-conforming uses is an essential consideration when a county is revising its zoning ordinance. Non-conforming agricultural uses need to have the ability to expand in order to remain competitive. In addition, there must be requirements to minimize conflicts between non-conforming residential uses and new or expanded agricultural activities.

Allow for sufficient flexibility to be adapted to regional and county needs. Indiana's counties are diverse with regard to population density, types of agriculture, and the extent of agricultural industry that takes place in their county. It is important to note that any requirements contained in these ordinances need to be evaluated for their suitability for a specific county.

Summary of Model Ordinances

The ILRC has approved the following models as guidance tools for counties during the process of revising their zoning ordinance:

Multiple Agricultural Districts. The multiple tiered agricultural zone structure is a division of land currently zoned agricultural to reflect different types of modern agriculture. When there are proactive determinations made regarding where certain types of agriculture will occur, it offers residents moving into an agricultural zone greater predictability of the types of agriculture that will occur nearby. It also clearly indicates to producers where their type of agricultural business is welcome and supported by local planning policies.

Limited Use with Development Standards. In a limited use approach, objective development standards are set forth within the zoning ordinance as conditions to a permitted use rather than having a special exception process for new agricultural operations. This approach provides an applicant with clear guidance on what is expected from the plan commission to receive local approval. These standards should be science based, such as using proven odor abatement measures as an option to reduce a maximum separation distance.

Site Scoring System. The site scoring system is a mechanism to approve local application for a new livestock facility through achievement of a predetermined score based on a series of objective criteria. The score requirement is used in conjunction with minimal setbacks. This approach recognizes the difference in farms by providing many options to meet the minimum score.

Land use is a firmly rooted local control issue, and the ILRC is merely an advisory body to provide resources to local government. There are many different strategies to accommodate the land use needs of a community. The best approach for each county will be tailored to its unique characteristics.