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Livestock Friendly Counties Statute Enacted

J. David Aiken¹

Summary and Implications

LB754, adopted in 2003, (1) allows the Nebraska Department of Agriculture to designate counties as livestock friendly and (2) changes procedures for county livestock zoning permits. Counties must upon request specify what an applicant must do in order to obtain a livestock zoning permit. Counties must provide written statements regarding why a livestock zoning permit is granted or denied. Applicants can upon request be informed of whether they will receive a county zoning permit before applying to the Nebraska Department of Environmental Control for a livestock waste control facility permit. LB754 is the latest (but not the final) chapter in an ongoing legal and political battle over livestock production.

Nebraska has always been a major livestock-producing state. Traditionally, most livestock production was on small to medium sized family operations. Nebraska has always had some large cattle feedlots, but most feedlots have been smaller. Swine production traditionally has been on small and medium sized operations. Just over one-third of Nebraska counties were zoned by the late 1970s, with quarter-mile (or smaller) setbacks being a common livestock zoning regulation.

Beginning in the late 1960s, large confined swine production facilities were developed in the eastern US, similar to the poultry industry. These large swine confinements did not begin to reach Nebraska until the mid- to late 1980s. Initiative 300's corporate farming restrictions no doubt slowed the development of large swine confinements in Nebraska until the early to mid-1990s. This development then became a

high-profile public policy issue. Strident opposition to large swine confinements from smaller swine producers and neighbors concerned about odors and pollution led to a temporary delay in processing livestock waste permit applications until regulations could be changed to deal with larger operations. Many features of the new state livestock waste control regulations were included in the 1998 Nebraska Livestock Waste Management Act.

Livestock zoning became a political battleground. Many unzoned counties sought to develop zoning to give them control over the location (and size) of large swine confinements. Anti-confinement groups sought changes in county zoning laws to allow temporary zoning so that counties had time to develop permanent zoning. Temporary zoning legislation was first proposed in 1998 but was not adopted until 1999, as confinement developers lobbied hard in 1998 to have the law delayed. This allowed some confinements to be developed before counties could regulate them through temporary zoning. Now most Nebraska counties are zoned; some regulations are strict enough to make development of new confinements difficult.

In most zoned counties, new livestock facilities need both (1) a state livestock waste control permit from the Nebraska Department of Environmental Quality (DEQ) and (2) a county zoning permit. Often counties will require the producer to first obtain the DEQ permit before the county will issue the zoning permit. Some livestock producers have received their DEQ permit, only to then have their county zoning permit request denied. A livestock producer may spend hundreds or thousands of dollars on application fees and consultants to obtain the DEQ permit.

Most producers would prefer to know whether or not the county will issue the zoning permit before spending the money to obtain the DEQ permit.

Legislative Bill 754, adopted in 2003, has two main provisions: (1) establishing the livestock friendly county designation program within the Nebraska Department of Agriculture, and (2) changing the county livestock zoning permit process.

Livestock Friendly Counties

The LB754 livestock friendly county program is based on the 2002 Minnesota livestock friendly county program administered by the Minnesota Department of Agriculture (MDA). The MDA livestock friendly county designation process requires among other things that counties (1) do not exceed the livestock facility setback distances in the table below and (2) do not establish "animal unit caps" or ceilings on livestock operation size.

Minnesota Recommended Maximum Separation Distances for Livestock Friendly County Designation

	separation distances
neighboring residence	1000 feet
park	2640 feet (0.5 mile)
church	2640 feet (0.5 mile)
10 or more residential dwellings	5280 feet (1 mile)
residential district or development	2640 feet (0.5 mile)
municipal boundaries	2640 feet (0.5 mile)

Sources: Minn Dept of Agriculture, "The Livestock-Friendly County Designation Process," page 2 (available at www.mda.state.mn.us/agdev/lfcapplication.pdf); Minn Dept of Agriculture, "Summary of Animal-Related Ordinances in Minnesota Counties," available at www.mda.state.mn.us/agdev/animalord.html.

The Minnesota recommended livestock-friendly setbacks would be exceeded by many zoned counties in Nebraska.

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LB754 first declares that “the growth and vitality of the state’s livestock sector are critical to the continued prosperity of the state and its citizens.” LB754 then authorizes the Nebraska Department of Agriculture (NDA) to establish criteria to recognize and assist county efforts to maintain or expand their livestock sector. Counties may be designated as livestock friendly if they request the NDA designation and meet the NDA livestock-friendly criteria. Counties may also designate themselves as being livestock friendly. The implicit objective of the NDA livestock friendly designation process is to allow counties to signal to producers whether or not they are receptive to new and/or expanded livestock operations. It will be interesting to what criteria the Nebraska Department of Agriculture will use to identify livestock-friendly counties, and whether many zoned counties will seek livestock-friendly designation. Livestock friendly designation may be significant in that at least one dairy recruited to Nebraska by state agriculture and economic development officials ended up losing a protracted

legal battle for a county zoning permit—a permit that the county wanted to grant! The livestock friendly designation process may help avoid such economic development misfires in the future.

County Livestock Zoning Permits

LB754 amends county zoning statutes to authorize a livestock producer applying for a livestock zoning permit to request the county to indicate what specific requirements the producer must meet in order to receive zoning permit approval. If such conditions are identified, and the producer receives the DEQ environmental permit, final zoning permit approval may be withheld by the county only (1) if there is a substantial change in the proposed use or (2) if the zoning conditions established by the county will not be met by the applicant. In addition, LB754 requires a written statement of the reasons why a the livestock zoning permit was granted or denied. The implicit objective of the LB754 zoning requirements is to allow applicants to get an advance written determination of whether or not their

permit will be granted before they seek the more expensive DEQ permit. At least a few Nebraska counties already follow this general procedure. Some counties may need to modify their livestock zoning permit process to comply with the new LB754 county zoning requirements.

In 2002 livestock and some agricultural interests sought a state study of the economic importance of the Nebraska livestock industry. That proposal was defeated by anti-confinement interests and others who saw it as laying the foundation for a political attack on county zoning. LB754 is what livestock advocates were able to obtain legislatively in 2003. It will be interesting to see how many zoned counties apply for NDA livestock friendly designation, especially since so many of them worked so hard to obtain livestock zoning authority to restrict livestock development.

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Property Valuation May Be Reduced by Proximity to Livestock Operation

J. David Aiken¹

Summary and Implications

Livestock odors must be taken into account when counties determine the fair market value of rural residences for property tax purposes. Livestock odors may reduce property values and property valuation. Such reductions may lead to legal nuisance liability claims against livestock producers who are not protected by the Nebraska Right

to Farm Act, and may also become a factor in livestock facility zoning decisions.

In Nebraska, land and buildings are valued at their fair market value for purposes of property taxation. Residential and commercial real estate is valued at 92-100% of actual value (i.e. fair market value) and agricultural real estate is valued at 74-80% of actual value. Fair market value for property tax valuation purposes may be determined by (1) comparative sales, (2)

income or (3) cost. In *Livingston v Jefferson County Board of Equalization*, 10 Neb App 934 (2002), the Nebraska Court of Appeals ruled that the county board of equalization erred in not considering a rural residence’s proximity to a swine farrowing facility in determining the residence’s fair market value.

The taxpayer started a swine farrowing operation in 1990. In 1999 the taxpayer built a house approximately 3/4 of a mile from his farrowing facility at a cost of \$328,649.