

When a Factory Farm Comes to Town:
**Protecting Your Township
From Unwanted Development**



A guide for Minnesota townships on using an interim ordinance to promote responsible development.

A
Land Stewardship
Project
publication



**2nd Edition
August 2006**

This is an updated version
of a publication that was
originally published in
February 1997.

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A guide for Minnesota townships on using an interim ordinance to promote responsible development.

Acknowledgements

This manual is designed for and dedicated to the township officers and residents across Minnesota who envision responsible local development that benefits their environment and economy. The interim ordinance and planning and zoning powers described in this manual provide a powerful tool for making those visions a reality and ensuring responsible development and growth in a township.

The second edition of this manual is the result of the experience and hard work of many people. Lynn Hayes of Farmers' Legal Action Group (FLAG) did the legal research for the second edition of this manual (as well as the first edition). Over the years, FLAG has also provided critical legal research and assistance for the Land Stewardship Project's work to protect and enhance township rights.

Nancy Barsness, Clerk of New Prairie Township in Pope County, reviewed the manual for clarity and accuracy. Nancy's contributions to protecting township rights and helping townships effectively use planning and zoning deserves special recognition. Through trainings, organizing meetings, legal battles and her publication *Township Tips*, Nancy has been one of the most effective advocates for township rights in Minnesota.



This is an updated version of a publication that was originally published in February 1997.

Copies of this publication are available from the Land Stewardship Project's Policy Program office: 2919 42nd St. E., Minneapolis, MN 55406; phone: 612-722-6377; e-mail: bking@landstewardshipproject.org. This publication is available on-line at www.landstewardshipproject.org.

Help Protect Our Township Rights – Join the Land Stewardship Project

The powers of local control described in this manual are granted by the state. While we often think of them as inherent, they are not. In Iowa, township and county local control of factory farms has been eliminated. In Wisconsin, these rights have been severely restricted. In Minnesota, these rights are perpetually under attack from special interests. The best way to protect these rights is to use them. Attempts by corporate interests – corporate ag interests in particular – to weaken township zoning powers have failed, in part, because of the hundreds of township officers and residents who have used these rights and who speak up when they are attacked.

Protecting these rights has been and will continue to be a priority for the Land Stewardship Project. Our strength is through our membership of farmers, township officers, residents and others concerned about Minnesota's rural communities. Please, consider joining:

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When a Factory Farm Comes to Town

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I. Introduction

A. Why this guide was created & how to use it

Many townships in Minnesota are dealing with the negative effects of large-scale feedlots. The size of these operations makes them more *industrial* than *agricultural*, and their negative consequences for the environment, human health, property values and family farms have been well documented by scientific studies. In addition, county and state officials have sometimes proven to be unsympathetic to the concerns of township residents.

But local residents and township officials can chart their own course as a community and control unwanted development, including factory farms, at the township level. Minnesota laws give townships the authority to control land use in their township through comprehensive planning and zoning. In fact, townships have planning and zoning powers as powerful as that of cities. This guide outlines how townships can use planning and zoning and an interim ordinance to begin the process of controlling unwanted developments such as large-scale livestock operations.

While it is not mandatory for townships to use their planning and zoning authority, it is a useful tool and allows townships to control local development in a way that protects the health, safety and welfare of its citizens. As part of its planning and zoning authority, a township can

declare a moratorium on certain types of developments which may interfere with its planning process. That moratorium, called an interim ordinance, can stop specific types of developments, including large-scale feedlots, for at least one year—and in some cases may be extended for an additional year—while the township is engaged in a planning and zoning process.

Because of the purpose of an interim ordinance and how the laws are written, a township should not pass an interim ordinance if it is not sincere about studying the need for creating or amending a comprehensive plan or zoning ordinance.

This guide uses the term “large-scale feedlot” to mean one that is 500 animal units in size or larger. In Minnesota, 500 animal units is the equivalent of about 100,000 chickens, 1,666 swine, and 350 cows. “Animal units” are defined by the legislature and state rules and used for permitting and regulatory purposes. (See Appendix H on page 48 for more information about animal units and the size of farms in Minnesota.)

This guide is written for township residents and town board members. This guide focuses on what town board members and residents need to

What is an interim ordinance?

An interim ordinance allows a township to put a temporary ban or moratorium for up to a year on major development while the township considers adopting or amending a comprehensive plan and zoning ordinances. In effect an interim ordinance calls a “time out” so the township can take stock and assess what if any local controls are needed to protect the character of the township and quality of life of township residents. Without this time-out, developers could rush to receive permits and start building in anticipation of the township adopting an ordinance that prohibits or limits the type of development they want to do. Interim ordinances are a long-established and necessary tool for orderly and thoughtful development of a comprehensive plan and zoning ordinances.

know in order to use an interim ordinance. This guide is most effective when used in addition to working with an attorney or a planning and zoning consultant, or both. *It is not a manual on how to write a comprehensive plan or zoning ordinances.*

None of the information contained in this guide is intended as legal advice for any particular township. A well-written comprehensive plan and zoning ordinance can save a township money in the long run; paying for good advice is a good use of township funds.

B. Things to consider in using comprehensive planning & the interim ordinance to control large-scale feedlots

Township planning and related zoning controls are some of the most effective tools in Minnesota today for controlling undesirable developments such as large-scale feedlots. Many Minnesota townships have adopted interim ordinances, comprehensive plans and zoning ordinances to control controversial developments. It is up to the residents, organizers and town board members to make sure the town board makes effective use of its planning and development authority.

✓ **Act early.** Once township residents or officials have decided that large-scale feedlots or other controversial developments are an issue that needs to be addressed by their township, they should begin the planning process right away, and should adopt an interim ordinance to protect the process. The planning process is much easier to conduct when the township is not under pressure from a developer who is trying to proceed with construction of a large-scale feedlot. However, townships frequently discover the need to create or amend their plans or zoning ordinances after large-scale feedlots (or other controversial developments) have applied for or have received permits. In either case, township residents and officials should act as soon as they know that existing or potential developments are an issue for their township.

✓ **Keep a well-documented record.** A comprehensive plan is both a process and a product. If a township's comprehensive plan, zoning ordinance, or interim ordinance undergoes judicial review, the court will look at the documents used in creating the plan and ordinances, as well as the actual plan and ordinances. Township officials should make sure the decisions they make throughout the planning process are well documented.

✓ **Do not be intimidated by threats of lawsuits.** Developers who may be affected by an interim ordinance will sometimes threaten to sue the township. Township officials should not let a fear of being sued be a reason for not using their authority to use planning and zoning tools, including the interim ordinance. It is true that they are legal tools which bear legal risks and rewards. Using them properly will minimize the risks (e.g., lawsuits) and maximize the rewards (e.g., control over the township's development). Proper use of the township's authority includes using a good faith process. Working with an attorney and a planning and zoning consultant is highly recommended and may reduce the likelihood of legal challenges. Courts have generally ruled in favor of townships that have used a careful and well-documented process when adopting local ordinances. The township should have insurance that covers their defense if sued.

C. Understand the permit process that a large-scale feedlot must follow

Feedlot permit activity is one way of monitoring whether new or expanding feedlots are being developed. This section offers background on how to monitor feedlot permits. No matter what the current state of permit activity, once a township has decided that issues related to large-scale feedlots are important to the township, the town board should begin the planning process.

✓ **Public notice requirements for large-scale feedlot permit applications.** There are minimum state requirements for providing public notice that a permit for a large-scale livestock operation over 500 animal units has been applied for. The township must be notified by a first class letter to the clerk 20 business days before a permit can be issued. Neighbors within 5,000 feet must also be notified through the mail or via a notice in a local newspaper 20 business days before a permit can be issued. Keep in mind that the notice in the newspaper is in small print and can be easily missed. In both cases, notice must be provided 20 business days before a permit is issued (*Minnesota Statutes* 116.07 Subd. 7a; see

sidebar below).

✓ **State feedlot permits.** The Minnesota Pollution Control Agency (MPCA) regulates animal feedlot pollution. The MPCA regulates feedlots under Chapter 7020 of Minnesota rules, often referred to as the 7020 rules. These rules govern the storage, transportation, disposal and utilization of manure. Most feedlots under 300 animal units do not require permits from the MPCA. For feedlots over 300 animal units, one of the three permits explained below is required.

✓ **Construction Short Form.** For feedlots between 300 and 999 animal units, generally a streamlined permit called a Construction Short Form is required. This permit does not require a public hearing and there is no official opportunity for public comment. If the proposer meets the rule requirements, then the permit is granted. Often these permits are issued by the county feedlot officer and are best tracked through that office. The application for a permit is public information and should be made available upon request.

Minnesota Statutes 116.07 Subd. 7a

Notice of application for livestock feedlot permit

(a) A person who applies to the Pollution Control Agency or a county board for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not less than 20 business days before the date on which a permit is issued, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot. Notification under this subdivision is satisfied under an equal or greater notification requirement of a county or town permit process. A person must also send a copy of the notice by first class mail to the clerk of the town in which the feedlot is proposed not less than 20 business days before the date on which a permit is issued.

(b) The agency or a county board must verify that notice was provided as required under paragraph (a) prior to issuing a permit.

✓ **General State Disposal System (SDS) / National Discharge Elimination System (NPDES) permit.** This is for most feedlots over 1,000 animal units and is handled by the MPCA. The general permit is actually a single permit for the entire state that applies to most all feedlots over 1,000 animal units. Rather than applying for a specific permit, the proposer is actually applying to be covered by this already existing general permit. The application by the feedlot proposer for general NPDES/SDS permit coverage is accessible for review by the public. (This general permit is available on-line at: www.pca.state.mn.us/publications/feedlot-gp-permit-06.pdf .)

The MPCA maintains a public database of site-specific information for all livestock facilities that have applied for coverage under the general NPDES/SDS permit. This list provides the county, name of the feedlot, township, section, animal type, animal numbers, total animal units, date the permit application was received and the issuance date of permit. The list is updated approximately once every two weeks and facilities remain on the list for approximately 30 days after the permit is granted (see the sidebar on page 5 for information on how to get this list).

✓ **Individual State Disposal System (SDS)/ National Discharge Elimination permit (NPDES).** In some cases the feedlot may not be eligible for coverage under the general SDS/ NPDES permit. If the facility is considered a pollution hazard as defined in statute or rules, or the proposers have had enforcement actions levied against them, among other reasons, an individual permit may be required. Individual permits require a 30-day public comment period. Draft individual NPDES/SDS permits are open for public comment and are available at the MPCA website.

✓ **Delegated county program.** Many counties

have entered into an agreement with the MPCA to allow a county feedlot officer to implement the state feedlot rules. In other words the MPCA has “delegated” the responsibility for implementing the state rules to the county. This delegation includes responsibility for issuing permits for most feedlots under a 1,000 animal units. Fifty-four counties are part of the delegated county program. The county planning and zoning administrator will know if your county is delegated. If so, much of the information you need to track feedlot activity will be available from the county feedlot officer.

✓ **County conditional use permits.** Many counties require conditional use permits for feedlots after they reach a certain size. These are land use permits that counties require and issue through their planning and zoning powers. As an example, in Winona County feedlots over 300 animal units are required to get a conditional use permit. This permit is in addition to the feedlot permit and requires review by the planning commission and approval by the county board. The county can approve the permit as applied for, deny it or approve it with conditions. Possible conditions could be requiring a specific type of odor reducing technology, moving the location further from neighbors or limiting the size of the manure lagoon.

Counties have very broad discretion in granting or denying conditional use permits. The county must have a valid reason for denial and these reasons should be documented as part of the decision making process. The county zoning ordinance will spell out the criteria to be considered when granting conditional use permits. Often these criteria include consideration of the proposed use’s impact on “property values” and “quality of life.” These criteria can be used to add conditions to or deny a permit.

The rules for granting conditional use permits vary from county to county but by state

law in all cases at least one public hearing is required before the conditional use permit can be granted. Call your county zoning administrator to get the rules for your county. It is a good idea for the township to have a complete copy of the county's comprehensive plan and zoning ordinances.

✓ **Environmental Review.** New feedlots over 1,000 animal units or existing feedlots expanding by more than 1,000 animal units must undergo an Environmental Assessment Worksheet (EAW). Once completed, the EAW has a 30-day public comment period. Comments are sent to the MPCA and the MPCA is required to respond. After the response to comments, there is a public hearing in front of the MPCA Citizens Board to determine if a more in-depth environmental review called an Environmental Impact Statement (EIS) is required. No permits can be issued until the environmental review process is completed. A list of all projects,

including feedlots, undergoing an EAW is on the MPCA's website at: www.pca.state.mn.us/news/eaw/index.html.

The Environmental Quality Board oversees the rules governing environmental review and has some helpful guides on the process. The guidelines are available on-line at: www.eqb.state.mn.us/documents/newenreviewguidance_2006.01.pdf. The EQB can be reached by phone at 651-201-2480.

✓ **If a proposed large-scale feedlot concerns you, get a copy of the state and county permit applications.** If you are interested in a particular feedlot proposal, get a copy of the feedlot permit application, the conditional use permit application and related documents. Most of these documents will be at the county planning and zoning office. According to state law, this is public information and should be made available to you.

Who has applied?

Information about who has applied for both general and individual SDS/ NPDES permits is online at: www.pca.state.mn.us/hot/feedlot-generalpermit.html. In addition, the MPCA maintains a feedlot help line at 1-877-333-3508 or 651-296-7327.

D. Science & experience demonstrate the negative impacts of large-scale feedlots

One of the major reasons townships want to control the development of large-scale livestock facilities is because their waste production can rival small cities in terms of volume. These operations rely on waste management facilities that accumulate millions of gallons of liquid manure in concrete pits, fiberglass tanks or earthen lagoons. This liquid manure is stored until it is pumped out and spread on land. The storage facilities are designed to be large enough to store as much as a year's worth of manure. When it is pumped out, the manure is either spread on the surface of cropfields, or "knifed" in using tillage equipment that places the manure beneath the soil surface.

As numerous scientific studies have documented, the handling, storage and disposal of such massive amounts of manure carries with it many inherent problems for the local environment and community.

The effects on human health

Liquid manure lagoons not only produce odors, they also emit hundreds of compounds, including acids, alcohols, aldehydes, amides, amines, aromatics, esters, ethers, nitrogen-containing compounds, steroids and sulfur-containing compounds.¹ Neighbors of large-scale hog confinement operations report higher rates of respiratory problems.^{2, 3, 4, 5, 6, 7, 8, 9}

Antibiotic-resistant bacteria is a major concern among health care professionals and scientists. Overprescribing drugs in hospitals and doctors' offices is one culprit. But there is increasing evidence that large-scale confinement agriculture is also helping produce superbugs through its massive use of subtherapeutic antibiotics.^{10, 11}

The effects on the environment

Large scale confinement operations can pose major threats to lakes, rivers, streams and even underground aquifers. Large-scale livestock operations are one major reason agriculture is the leading cause of nonpoint source water pollution in the United States. Animal waste is the largest contributor to pollution in 60 percent of the rivers and streams classified as "impaired" by the Environmental Protection Agency.¹²

The effects on property value

Large consolidated feedlots can have an effect on neighboring land value. Research has shown the closer a home or property is to a feedlot, and the nicer that property or home is, the more the value of that property or home will decrease. Research has shown that there can be anywhere from a 50 percent to 90 percent decrease in value if the property is located near a large-scale feedlot.^{13, 14, 15, 16}

A list of concerns

When outside investors proposed to build a 3,000 animal-unit dairy operation in Dodge County's Ripley Township, residents did research and came up with a list of concerns:

- ✓ Large-scale livestock operations have been proven to drastically decrease surrounding property values.
- ✓ Large-scale livestock operations have helped make agriculture one of the largest sources of water pollution in the country.
- ✓ Large-scale livestock operations damage community roads and make them costly to maintain.
- ✓ Large-scale livestock operations tend not to buy local and don't contribute to good rural development.
- ✓ Large-scale livestock operations emit toxic air emissions and odor that impacts the health and quality of life of nearby residents.

E. Livestock farming that benefits family farmers, the environment & rural communities

Livestock farming is a key economic engine in rural Minnesota. Often supporters of large-scale animal production argue that the only way farming can be economically competitive is if animals are concentrated in large numbers on industrialized operations. Townships that propose to limit the growth of such facilities, say the supporters of large-scale industrial agriculture, are anti-agriculture.

In 2004 the Land Stewardship Project joined with three other farm organizations in creating the Citizen Task Force on Livestock

Farmers and Rural Communities. This Task Force created a report that outlined how the state can promote more livestock on family farms while respecting local democracy and the rural environment. This report outlines how family farm-based livestock operations are necessary for healthy rural communities and integral to a sustainable form of agriculture.

See Appendix G on page 45 for more information about the Citizen Task Force and how the Land Stewardship Project works to promote livestock farming.

II. Overview of Comprehensive Planning

A. Townships have authority to do comprehensive planning and zoning and to protect that process with the interim ordinance

In the mid-1960s, the Minnesota Legislature passed the statute entitled, “Municipal Planning” (*Minnesota Statutes* sections 462.351 to 462.364; see Appendix B on page 22) to give municipalities the powers and a uniform procedure for planning for the future development of land. In the mid-1980s, the Minnesota Legislature included townships in the definition of “municipality” used in section 462, thereby giving townships the same zoning authority as cities. This statute names three areas in which a township can use its authority:

- ➔ To insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities;
- ➔ To preserve agricultural and other open lands, and
- ➔ To promote the public health, safety and general welfare.

(*Minnesota Statutes* section 462.351)

An understanding of the comprehensive planning process can help prepare township officials for writing a strong interim ordinance. A well-planned and well-written interim ordinance will give a township maximum protection for completing a comprehensive plan and zoning ordinance.

A comprehensive municipal plan is defined in statute as: “*a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and*

recommendations for plan execution. A comprehensive plan represents the planning agency’s recommendations for the future development of the community.”

(*Minnesota Statutes* section 462.352, subd. 5)

A comprehensive plan should provide policies and guidelines for evaluating different types of development. Official controls are the specific zoning ordinances and regulation for implementing the comprehensive plan. A township should adopt a comprehensive plan before adopting or amending a zoning ordinance.

The process for writing a comprehensive plan and zoning ordinance involves studies, public hearings, and consultations with attorneys as well as planning and zoning consultants. The purpose of the interim ordinance is to limit development while the community undergoes this process. Studies help the town board and township residents consider the township’s overall development issues and identify the types of land use they want in order to protect the public welfare of township citizens. Public hearings keep the planning process open and inclusive by communicating the board’s findings and by getting input from residents and experts.

Writing a comprehensive plan and zoning ordinances requires the expertise of a planner who has experience with comprehensive planning and zoning, and an attorney who knows township law, and preferably, feedlot issues. An attorney can help with legal issues such as interpreting the law, jurisdiction, documentation and proper meeting notice. Planners can help design a process for developing land use goals and a plan for meeting them.

B. Protect the planning process with the interim ordinance

The authority to enact the interim ordinance is part of the township's overall planning authority. The interim ordinance can act as a moratorium on developments that may interfere with the planning process. *Minnesota Statutes* section 462.355, subdivision 4 (see Appendix B, page 22), authorizes a township to adopt an interim ordinance, "for the purpose of protecting the planning process and the health, safety and welfare of its citizens." In effect, the interim ordinance is a time-out which gives the town board time to conduct its planning process slowly and methodically without having to rush into poorly informed decisions. Section III of this guide is devoted to the interim ordinance. Specifically, state law gives townships the authority to pass interim ordinances to protect the planning process in five described scenarios:

- ◆ The township is conducting a study for the purpose of adopting or amending a comprehensive plan or official controls (zoning ordinances, regulations, official maps, etc.);
- ◆ the township has authorized a study to be conducted;
- ◆ the township has held a hearing to consider adopting or amending a comprehensive plan or official controls (zoning ordinances, regulation, etc.);
- ◆ the township has scheduled a hearing to consider adopting or amending a comprehensive plan or zoning ordinances and regulations, or;
- ◆ new territory for which plans have not been adopted is annexed to the township.

(*Minnesota Statutes* section 462.355 subd. 4)

This guide uses the first two planning scenarios regarding a study as examples in the following sections. All five scenarios are valid, and any one of them may fit a particular

township's circumstances.

Township supervisors should be sincere about starting a planning and zoning process before they adopt the interim ordinance, and they must attempt to do whatever activity the interim ordinance cites regarding planning and zoning. The decision to start a planning and zoning process should happen *before* the interim ordinance is passed. Activity regarding planning and zoning should begin soon after the interim ordinance is adopted. If at some point the township's decisions are challenged, a court will probably review the documented record for evidence of the town board's sincerity in following through on the actions cited in the interim ordinance. Operating in good faith could be critical in a court challenge.

The content and depth of studies may vary from township to township, and should match the individual township's needs. One township may appoint local residents to study what other townships have done with large-scale livestock facilities. Another township may hire legal and planning expertise to conduct a more in-depth study to begin a comprehensive plan that covers existing development patterns, existing and potential land use conflicts, adequacy of public services, etc., in addition to large-scale feedlot issues in general. Yet another township may study how well its existing comprehensive plan or zoning ordinance will control large-scale feedlot developments.

The initial interim ordinance can be effective for one year, or until a comprehensive plan and related zoning controls have been adopted, whichever comes first. If the township was starting from scratch and had no comprehensive plan or zoning in place when the interim ordinance was adopted, the township can extend the interim ordinance for up to another year. (*Minnesota Statutes* section 462.355 subd. 4(c).) The length of the extension should match

the workload before the board. Township supervisors may extend the interim ordinance a full year in one vote, or they may make shorter, more frequent extensions as necessary.

Township supervisors should extend the interim ordinance by passing a resolution. The total interim ordinance period cannot exceed two years.

III. The Interim Ordinance

A. What town board supervisors should do to pass an interim ordinance

Previously, we described the purpose of the comprehensive plan and zoning ordinance in controlling local development, and the purpose of the interim ordinance in protecting that planning and zoning process. This section focuses on the interim ordinance specifically, and offers guidelines and strategies for using this tool. Township residents and township supervisors have some distinct, as well as overlapping, roles in passing an interim ordinance. Some steps outlined in the sections below are required by law and must be done by township officials. Other steps are recommendations based on the experience of other townships, and can be done by township residents or township supervisors, depending on the township's situation.

On the following pages are the major steps involved for township supervisors in adopting an interim ordinance. While it is important for township supervisors to understand the process thoroughly, it is strongly advised that once the township begins serious consideration of commencing the planning process and adopting an interim ordinance that the township retain and work with an experienced attorney.

Steps involved in adopting an interim ordinance:

1. Assess the township's situation.
2. Create a well-documented public record of the need for an interim ordinance.
3. Develop a strategy for creating and

using the interim ordinance.

4. Write the draft interim ordinance.
5. Hold a public hearing with adequate public notice.
6. Adopt the interim ordinance.
7. Establish and begin the process for studying comprehensive planning and zoning.

1. Assess the township's situation. Here are some questions to consider when doing that:

- ➔ Does the township have a comprehensive plan or zoning ordinance, or both? (The town clerk should have copies.) If yes, does the zoning ordinance provide adequate control of large-scale feedlots or other controversial developments? If no, has the town board ever discussed the need for planning and zoning in general, or to control specific types of development?
- ➔ Are feedlot permit applications pending? Have large-scale feedlots been built in the township? This information is important for conducting a thorough planning process. However, township leaders should not let permit activity or the presence of large-scale feedlots discourage or delay the township's planning process. A well-written comprehensive plan and zoning ordinance can control future feedlot development such as the expansion of

existing facilities and the construction of new facilities.

- ➔ Does the township face other land use issues, such as housing developments, quarries, mobile home parks, junkyards or gravel pits?

2. Create a well-documented public record on the need for an interim ordinance.

A documented record provides evidence to a court that the town's process was procedurally correct; thus, the documented record should show what decisions the township supervisors make, how they were made and on what information their decisions were based. Keeping a thoroughly documented record may be key to winning a legal challenge. The town clerk should take minutes of all board meetings and hearings, and should maintain all documents (including handouts, etc.) used during the meetings as part of the records of the meeting. The minutes should fairly characterize discussions and actions that take place in town board meetings.

Audio or video recording of town board meetings is not commonly practiced but is an option for township officials to consider using in addition to the written minutes. Some attorneys and consultants believe that a recording of a meeting can be the best way to accurately document the town board's discussion regarding the interim ordinance and the development issues that have created a need for a township's planning. It is important for township officials to be aware of this option, and to choose whether or not it is appropriate to their township's situation.

3. Develop a strategy for creating and using the interim ordinance. Seek out a planning and zoning consultant or an attorney, or both. (See Appendix A on page 21 for a list of resources.) They can help outline the whole process and draft language that will help prevent or withstand legal challenges. Hire people who

know how to use the interim ordinance and write comprehensive planning and zoning ordinances where large-scale feedlot issues are involved.

Do your homework and hire competent help. Here are key questions to ask when hiring a consultant: What is their experience with Minnesota's municipal planning law and township law in general? What is their experience with comprehensive planning and zoning in general and planning and zoning when large-scale feedlot issues are present? Who were their previous clients and may they be contacted for references? Consultants and attorneys will cost money, so part of the strategy may include how to pay them. Townships have the authority to appropriate money to finance their planning and zoning activities.

4. Write the draft interim ordinance. The interim ordinance is a legal document that can be as brief as a few pages. In general, an interim ordinance should document the board's evidence and reasons for passing a restriction or moratorium on the specific types of developments listed in the interim ordinance, cite the grant of authority to pass the interim ordinance as *Minnesota Statutes* section 462.355 subd. 4, and list whether the board is conducting studies or has authorized a study to be conducted or has held or is scheduled to hold a hearing to consider adopting or amending a comprehensive plan or official controls and the dates the interim ordinance will begin and end. (Refer to *Minnesota Statutes* section 462.355, subdivision 4 in Appendix B when reading the list below, and when writing the interim ordinance.) Key sections of an interim ordinance are suggested below; this list should be adapted to fit each township's situation with the help of a consultant or an attorney.

- State that the town board intends to study the need for writing a comprehensive plan and zoning ordinance, or the need to review an

existing plan and zoning ordinance, and that the town board has the authority to adopt an interim ordinance in order to protect the town board's planning process.

- ❑ Cite the date when the town board will report the findings of that study (e.g., "six months from date the interim ordinance is adopted"). The town board should conduct a hearing on that date to make a final report, or if a final report is not complete, to report findings to date.
- ❑ Cite why the town board is considering starting a planning and zoning process.
- ❑ Specify the specific types of developments the interim ordinance is stopping or restricting and how any such restrictions apply. For example, to stop large-scale feedlots of a particular size, specify that the interim ordinance is intended to prohibit the building of new or the expansion of existing feedlots with more than 400 animal units. The language and size specified should fit each township's situation. Other types of developments that are commonly included in interim ordinances are gravel quarries, housing subdivision, racetracks, adult entertainment facilities and junkyards.
- ❑ Cite the sections of Minnesota law that give townships the authority to use an interim ordinance to protect the townships planning and zoning process.
- ❑ Include "Findings of Fact" that document the township's objective reasons for stopping certain types of developments while the town board completes its planning process. Good sources for these findings of fact are scientific and government reports which give objective reasons for public concern about the relationships between large-scale feedlots

(or other controversial developments) and the health, safety and welfare of the township. The township's consultant or attorney should help document an objective findings-of-fact section.

- ❑ Document the date or event that will end the moratorium. Language that would give the town board some flexibility would read: "The interim ordinance will end in one year from the date of approval, or when the comprehensive plan and zoning ordinance has been implemented, whichever comes first." If the town board has not completed its comprehensive plan after a year and the interim ordinance is about to expire, it may extend the interim ordinance only under specific circumstances.

The interim ordinance requires a majority vote of the township officers to pass and, at a minimum, the signature of the town board chair, the date of approval, and the signature of the town clerk who attests the chair's signature.

In Appendix D on page 33 are examples of interim ordinances enacted by townships. These are included to give an idea of the scope of an interim ordinance. **These interim ordinances may help your township in creating your own unique ordinance but should not be simply copied. Your interim ordinance should be drafted with the advice of an attorney and must be created for the unique situation in your township.**

5. Hold a public hearing with adequate public notice. If your proposed interim ordinance affects feedlots, then a public hearing is required with at least 10 days public notice:

If a proposed interim ordinance purports to regulate, restrict, or prohibit activities

relating to livestock production, a public hearing must be held following a ten-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

(Minnesota Statutes Section 462.355 Subd. 4(b).)

The town clerk should be familiar with the requirements for giving proper public notice. It is important to give proper notice so that it does not become a problem if there is a legal challenge to the interim ordinance.

The township should create an orderly process for public testimony at the hearing. This means creating simple rules, making them clear to those attending and sticking to them. You may want to distribute or post the rules at the meeting. The township board should require that everyone state their name and address before testifying. To assist with the public record they should also sign in. The township board may want to limit the time of testimony, both how long each person can speak and how long overall testimony will be taken. The board can give priority to those wanting to testify who live in the township. The public hearing should be fair, but if the time allotted does not permit, it is not mandatory that everyone be allowed to give oral testimony. The board can accept written testimony also.

At the hearing, residents in favor of an interim ordinance should be prepared to present clearly the reasons why the township should begin the planning process and adopt an interim ordinance to protect the community from unwanted development such as large-scale feedlots, racetracks, adult entertainment facilities, etc., during the comprehensive planning and zoning process. These should include scientific studies that demonstrate the

potential harm of large-scale feedlots and other unwanted development, as well as the residents' own life experiences.

6. Adopt the interim ordinance. The interim ordinance can be enacted by a simple majority vote of the township supervisors either at the same meeting at which the public hearing is held, or at a subsequent meeting. ***It should be publicly noticed that the township has adopted the interim ordinance.***

7. Establish and begin the process for studying comprehensive planning and zoning. It is important to remember that the purpose of the interim ordinance is to protect the planning process. The township board should establish a process for studying the issue of comprehensive planning and zoning and move forward with it in a timely manner.

A recent change in law requires that a township proposing to adopt or amend a feedlot zoning control notify the Minnesota Pollution Control Agency and the state commissioner of agriculture at the beginning of the process, but no later than the date notice is given of the first hearing proposing the adoption or amendment of the zoning control. (Minnesota Statutes section 462.357 subd. 1g). The law does not clearly define "the beginning of the process." However, because this section refers to adopting or amending a "zoning control," it appears that the reference is to the beginning of the process to develop a zoning ordinance itself, and not the beginning of the development of the interim ordinance. (Interim ordinances are distinct from and are defined in a separate section of law than zoning ordinances.) Townships should discuss the timing of this required notice with their attorney. It may be prudent to notify these agencies of the public hearing regarding the interim ordinance. Keep in mind that these agencies have no power to prevent enactment of an interim ordinance.

B. What township residents can do to make sure the town board adopts an interim ordinance & uses its planning and zoning authority

Make township supervisors aware of the following:

✘ Residents' concerns regarding the potential negative impact of large-scale feedlots.

Township supervisors have the authority to protect the public health, safety and general welfare, to insure a safer, more pleasant and more economical environment for residents. Residents can base their concerns on how large-scale feedlots negatively impact these areas and urge township supervisors to take action.

✘ Ideas about how to solve existing or potential problems caused by large-scale feedlots. When presenting ideas, residents may want to remind township supervisors they have the same legal authority as a city to plan and zone, and to use the interim ordinance to protect their planning and zoning process, and *encourage them to use it*.

✘ Refer town board members to resources, such as this guide, which can help them use their planning and zoning authority legally and with good long-term results for the township.

✘ Encourage the town board to appropriate adequate funding to pay for expertise needed for writing a comprehensive plan and zoning ordinance. Remind the town board that a key benefit of planning is the amount of public and private money that can be saved as a result of planning.

Before presenting issues to a town board, residents should know who their township

supervisors are and their stand on these issues. How residents present information to their town board will differ from township-to-township. It may be strategic in some townships for residents to make a formal presentation at a town board meeting; in other townships, it may be more strategic for residents to meet with township supervisors individually, or both strategies may be appropriate.

Once it begins, become an active participant in the town board's planning and zoning process:

- ➔ Attend town board meetings and hearings. Most town boards meet monthly. To find out when they meet, contact a town board member, visit the town hall where the meeting schedule should be posted or available, or consult the paper of record where the town clerk may have published the board's schedule of meetings.
- ➔ Help township supervisors assess the township's situation. For example, identify any existing or proposed large-scale feedlots or other controversial developments, either in that township or in nearby townships. Anyone can find out if a large-scale feedlot is being proposed. (See Section C on page 3 for how to do this.) Also, state law requires the proposer notify the township clerk via first class mail when a large-scale feedlot is proposed in the township.
- ➔ Join committees of the town board. Let board members know that if they move forward with planning and zoning you and others will be on key committees and help with the

work. Often township supervisors are reluctant to move forward unless they know they have help to do the work of creating a comprehensive plan and zoning ordinances.

→ Know what the town board is required to do

so that residents can help the board follow correct procedures. When working with an unfriendly town board, residents may want to monitor whether a documented record is being kept and make a duplicate record if this is unclear.

C. What can happen when a township adopts an interim ordinance

NOTE: The following cases are included to give readers examples of what may happen when an interim ordinance is adopted. These case examples presume that the township has followed procedures outlined in the township planning laws and has thoroughly documented its planning process. Readers should be aware that a court will make its decisions based on the specific facts of each case, and its decisions may differ from what's noted in the cases cited here.

◆ **Case 1 – Prevention, no large-scale feedlots or other major development pending.** The best time for the township to use its planning authority is before any large-scale feedlot permits are applied for and before such feedlots are built in the township. These conditions give the township time to conduct a thorough planning process that can prevent unwanted development and its related costs and conflicts. Even if township residents and officials think that no developments are planned, begin the comprehensive planning and zoning process and adopt the interim ordinance anyway. There is no way for township officials to know whether or when new developments may begin during the township's planning process. The interim ordinance offers insurance against unanticipated developments

disrupting the township's planning process.

◆ **Case 2 – An application for a feedlot permit is pending but not yet granted.** If a proposed feedlot has merely applied for, but not been granted, its county and state permits then it is subject to the interim ordinance. Mere application for a permit does not give the applicant any special rights. Therefore, if the interim ordinance places a moratorium on development of feedlots over 1,000 animal units and a proposed feedlot is over 1,000 animal units and has not received its permits, it cannot be built while the interim ordinance is in place provided the ordinance was properly enacted in good faith.

If a township zoning ordinance is complete when the interim ordinance expires, this new zoning ordinance will determine whether any pending developments will be allowed to move forward and if so, how. The new ordinance may prohibit them or require a township permit. The development's proposers may need to modify their plans to meet the township's new zoning requirements. For example, a township zoning ordinance can prohibit some types of development, limit the size of some developments or their proximity to nearby residences, right-of-ways and waterways. Pending developments may have to modify their plans accordingly to meet these new ordinances.

◆ **Case 3 – Feedlot or other necessary permits have been granted but construction has NOT begun.** In many cases, the interim ordinance can delay the start of construction during the moratorium period, even if the permits have been granted. This may not be true in all situations. If the date the interim ordinance is adopted and the date when the development has scheduled its construction to begin are close, the effect of the interim ordinance on that development may be more complicated and less clear than usual. In this case, the town board’s actions are more likely to be challenged by the developer—a development that has obtained permits has also invested a lot of money in blueprints and other documents for those permits. This possibility should not intimidate township supervisors from using their authority. Rather, supervisors should be aware that the developer will be watching the town board very closely. In the worst case scenario, the developer may challenge the township supervisors’ decisions in court at which point a well-documented record regarding the passage of the interim ordinance will be of

utmost importance. However, this problem can be avoided entirely if townships watch for notifications for proposed large feedlots and upon learning of any such proposed operations immediately begin the process of passing an interim ordinance to protect the township’s ability to complete planning and zoning.

◆ **Case 4 – A development has received its permits AND has begun construction.** If a development has begun construction, there is little the township can do to control that project. In such a case, the township should consider applying its authority to control the expansion of existing or new developments.

◆ **Case 5 – The township already has large-scale livestock feedlots.** The township has no authority to undo existing developments. The township can use its planning and zoning authority, including the interim ordinance, to control the expansion of existing developments and to control new developments.

D. What if township supervisors are unwilling to adopt an interim ordinance?

Township supervisors may be unfriendly to residents’ goals to control large-scale feedlot developments. While this type of situation will make a planning and zoning process more challenging, residents can try to hold township supervisors accountable to using their planning authority for addressing development issues within the township’s jurisdiction. It may happen

that a majority of township supervisors vote against the interim ordinance. There is no way to appeal the township supervisors’ decision refusing to pass an interim ordinance. In this instance the only recourse available to residents is at the town elections, which are held on the second Tuesday in March.

IV. After the Interim Ordinance Passes

Since the interim ordinance is by definition temporary, the period after it passes and before it expires is crucial for writing and adopting, or reviewing and amending, a comprehensive plan and zoning ordinance. A well-written

comprehensive plan and zoning ordinance will be specific enough to control large-scale feedlots as they are currently designed and general enough to control future undesirable land uses.

A. Follow up to ensure that effective plans and ordinances are in place when the interim ordinance expires

◆ **Begin or continue the study that was specified in the interim ordinance.** Continue to keep a documented record of what the town board studies, and how it conducts its study. Keeping a thoroughly documented record may be key to winning a legal challenge. A documented record provides evidence to a court that the town's process was procedurally correct; thus, the documented record should show what decisions the township supervisors made, how they were made, and on what information decisions were based.

The documented record should include the written minutes of meetings and may include audio or video recordings of hearings held by the town board. The town clerk should take minutes of all board meetings and hearings, and should include all documents and handouts used during the meeting as part of the record of the meeting. Township officials should seek their attorney's advice about whether to document meetings of committees created by the town board.

A recording of a meeting can be the best or only way to accurately document the public testimony and discussion at a public hearing on the issues being considered as part of the comprehensive plan or the zoning ordinance. Any testimony offered at a hearing, either oral or written, should become part of the documented record. Any documents submitted with testimony or otherwise should also be maintained as part of

the record.

◆ **Monitor the dates or events that trigger the expiration of the first interim ordinance.** Township supervisors should prepare and enact a new resolution to extend the moratorium for whatever time the town board needs to complete its planning and zoning process.

◆ **Hire the necessary legal and planning expertise.** They can advise township officials on such matters as:

- Whether the planning agency that will develop the comprehensive plan should include representatives from the town board and/or other individuals with appropriate experience and knowledge.
- Preparing a checklist to ensure that all procedures required by chapter 462 of Minnesota law are followed.
- Following notice requirements for meetings and hearings.
- Continuing to document the record of the township's planning and zoning process.

◆ **Write or amend the township's comprehensive plan and zoning ordinance.** Writing a comprehensive plan can be a rewarding exercise for the community. A proposed large-scale feedlot or other potentially harmful development may have prompted the township to

adopt an interim ordinance. Because of that, for a time the focus may have been on what the township does not want, but ultimately a comprehensive plan is about what the township does want. The comprehensive plan will lay out the history, current condition and vision for the future of your community. It will become a map to guide your township and be a proactive document the township can use to take control of its future.

Many townships that go through the process are surprised at the talent and commitment of residents that volunteer to help create this plan. Creating the comprehensive plan will take some assistance from professionals to help guide the process but do not forget that it is township residents that will provide the time, vision and energy to make the comprehensive plan a reality and a document that reflects community values.

B. Barriers that townships can face in comprehensive planning and zoning

Often, townships don't exercise their planning and zoning authority because board members fear being sued for their actions. This guide is intended to help officials treat such a threat with a balanced point of view. On the one hand, legal challenges are possible and township supervisors should be aware of that possibility. On the other hand, township officials who plan and zone in good faith, follow proper procedures, and thoroughly document their decisions are less likely to be challenged in court, or if sued, are more likely to win the legal challenge.

There are no guarantees on how a court will decide each case it hears, but conducting a good faith process is a good defense for the township. Good advice from a planning and zoning consultant and an attorney will help the township act in good faith and avoid legal challenges. The township planning statute allows for any person "aggrieved" by actions of a township in using its comprehensive planning and zoning authority to request the district court to review that action. In a judicial review, the types of issues the court will look at include whether the action was within the township's jurisdiction, whether the

action was reasonable, whether the policy created by the action promotes the public welfare, and whether the action is consistent with the comprehensive plan (if one exists), among other standards. ***The documented record is very important and must be maintained throughout the planning and zoning process. This cannot be emphasized enough.***

Legal issues on which some townships have been challenged:

● **Discrimination.** Townships should avoid conducting their business in a way that may be judged as discriminating against an individual person or company. Courts have ruled that a municipality may not arbitrarily enact an interim ordinance to delay or prevent a single project. This does not mean that an interim ordinance cannot be enacted that only affects one project. Rather it means the intent of the interim ordinance cannot be to only affect that one project. Since a court will probably look at the documented record of the township's planning process, the issue of discrimination affects *how* the township gathers its information, *how* it writes its plan and ordinances, and *what* board mem-

bers say at meetings.

● **Township authority.** In general, different governing bodies (federal, state, regions, county, townships) have different legal authorities and powers to help prevent their policies from conflicting with or preempting each other and to allow governments to operate smoothly. Townships have the legal authority and power to do comprehensive planning and zoning so as:

- To insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities;
- to preserve agricultural and open lands, and;
- to promote the public health, safety and general welfare.

However, when exercising this authority as it relates to large-scale feedlots, townships should take into account certain legal authorities of the Minnesota Pollution Control Agency (MPCA) and the county.

1) **State agency authority.** In general, the MPCA holds the primary jurisdiction over pollution control regulation of feedlots. Therefore townships should create zoning controls for issues over which the township has zoning authority. They should not attempt to create zoning controls that would be viewed as pollution control because the state has almost exclusive authority over pollution regulation. For example, a township has the authority to establish parameters on where a large-scale feedlot can be located in relation to other types of land use in the township (residential, recreational, etc.), but a township does not have the authority to establish controls on the amount of waste generated by large-scale feedlots in that township. Depending on any one township's situation, it's possible that there would be no appropriate location for a large-scale feedlot because of the goals established in the comprehensive plan, the presence of existing

land uses, and the natural limits imposed by the landscape.

2) **County authority.** For many issues over which the county also has zoning authority, the township zoning ordinance must be as strict as, or stricter than, the county ordinance. For example, if the county ordinance requires a building to be set back 500 feet from the nearest residence, the township cannot adopt an ordinance specifying a 400-foot setback. The township, in this instance, can specify a setback of 500 feet or more.

These and other examples of how governmental bodies carry related or overlapping legal powers and authority may affect how the township should draft ordinances. An attorney can help township officials identify and appropriately deal with these legal powers and authority issues.

A commonly heard criticism is that if townships want to control large-scale feedlots, then the township must be against animal agriculture. It's a common way to confuse an issue by making misleading generalizations about it. However, the reality is that township citizens who oppose huge livestock factories are generally supportive of family farm-based livestock production and of sustainable agriculture.

Organizers and township officials should anticipate this argument, and be prepared to distinguish the type of developments they seek to control—industrial, large-scale feedlots—from the type of agriculture they want in their community—independent, family-based or sustainable farms. Some key points for distinguishing industrial livestock factories from independently owned livestock farms are their size (as measured by the number of animals concentrated in one facility), the amount of waste they generate per acre of land, and how much control the land owner has over the management of the facility located in the

township.

This guide provides organizing resources in the next section that can help township officials and organizers avoid political debates that can pit neighbors against neighbors, or help residents where debates have become divisive. Debates

should not prevent a township from using its authority to plan for the types of developments residents want in their community, and thus to control the types of developments that pose risks to the health, safety and general welfare of township citizens.

Attorney General issues opinion supportive of township powers

Wang Township in Renville County enacted an interim ordinance that stopped construction of a proposed large-scale hog confinement that had applied for but not yet received a permit. This project was the only proposed development affected by the interim ordinance. The township asked Attorney General Mike Hatch's office for an opinion on the issue.

In 2006, the Attorney General's office confirmed that an interim ordinance enacted in good faith would apply to a development that has applied for permits, even if it is the only project affected. (See Appendix E on page 39 for the full opinion.)

V. Appendix A

More Resources for Township Zoning Assistance

Land Stewardship Project offices

→ 2919 East 42nd St.

Minneapolis, MN 55406

612-722-6377

→ 180 E. Main St. Box 130

Lewiston, MN 55952

507-523-3366

→ 2200 4th Street

White Bear Lake, MN 55110

651-653-0618

→ 301 State Road, Suite 2

Montevideo, MN 56265

320-269-2105

→ LSP website:

www.landstewardshipproject.org

Attorneys

→ Peters and Peters, PLC

507 North Nokomis Street, Suite 100

Alexandria, Minnesota 56308

320-763-8458

www.lawyers.com/peters&peterslaw/

→ Peter Teide

Murnane Brandt, P.A.

30 East Seventh Street, Suite 3200

St. Paul, MN 55101

651-227-9411

www.murnane.com/index.htm

→ Einar Hanson

Strobel & Hanson, P.A.

406 West Third Street, Suite 200

Red Wing, MN 55066

651-388-1891,

www.lawyers.com/strobel&hanson/index.jsp

→ Rebecca Anderson

Fuller, Wallner, Cayko & Pederson, P.A.

514 America Ave NW

Bemidji, MN 56601

218-751-2221

800-552-6881

Minnesota Association of Townships

→ Edgewood Professional Bldg

PO Box 267

St. Michael, MN 55376

763-497-2330

800-228-0296

E-mail: info@mntownships.org

Website: www.mntownships.org

The Minnesota Association of Townships (MAT) is a voluntary membership organization representing 1,786 of Minnesota's 1,790 organized townships. MAT provides education, training and technical services to township officers. MAT has also provided workshops for township residents involved in the planning process. Their website has resources on township planning and zoning.

V. Appendix B

Minnesota Statutes chapter 462: “Municipal Planning”

Section 462.351 to 462.355, from 2005 session laws

The following is the portion of the municipal planning law that pertains to this guide. These laws, as well as all *Minnesota Statutes*, are available on-line at www.leg.state.mn.us/leg/statutes.asp.

Municipal Planning Statutes

462.351 MUNICIPAL PLANNING AND DEVELOPMENT; POLICY STATEMENT.

The legislature finds that municipalities are faced with mounting problems in providing means of guiding future development of land so as to insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities, to preserve agricultural and other open lands, and to promote the public health, safety, and general welfare. Municipalities can prepare for anticipated changes and by such preparations bring about significant savings in both private and public expenditures. Municipal planning, by providing public guides to future municipal action, enables other public and private agencies to plan their activities in harmony with the municipality's plans. Municipal planning will assist in developing lands more wisely to serve citizens more effectively, will make the provision of public services less costly, and will achieve a more secure tax base. It is the purpose of sections 462.351 to 462.364 to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning.

HISTORY: 1965 c 670 s 1; 1980 c 566 s 18

462.352 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 462.351 to 462.364 the terms defined in this section have the meanings given them.

Subd. 2. **Municipality.** “Municipality” means any city, including a city operating under a home rule charter, and any town.

Subd. 3. **Planning agency.** “Planning agency” means the planning commission or the planning department of a municipality.

Subd. 4. Repealed, 1980 c 566 s 35

Subd. 5. **Comprehensive municipal plan.** “Comprehensive municipal plan” means a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and recommendations for plan execution. A comprehensive plan represents the planning agency's recommendations for the future development of the community.

Subd. 6. **Land use plan.** “Land use plan” means a compilation of policy statements, goals, standards, and maps, and action programs for guiding the future development of private and public property. The term includes a plan designating types of uses for the entire municipality as well as a specialized plan showing specific areas or specific types of land uses, such as residential, commercial, industrial, public or semipublic uses or any combination of such uses. A land use plan may also include the proposed densities for development.

Subd. 7. **Transportation plan.** “Transportation plan” means a compilation of policy statements, goals, standards, maps and action programs for guiding the future development of the various modes of transportation of the municipality and its environs, such as streets and highways, mass transit, railroads, air transportation, trucking and water transportation, and includes a major thoroughfare plan.

Subd. 8. **Community facilities plan.** “Community facilities plan” means a compilation of policy

V. Appendix B—“Municipal Planning” —*continued...*

statements, goals, standards, maps and action programs for guiding the future development of the public or semipublic facilities of the municipality such as recreational, educational and cultural facilities.

Subd. 9. **Capital improvement program.** “Capital improvement program” means an itemized program setting forth the schedule and details of specific contemplated public improvements by fiscal year, together with their estimated cost, the justification for each improvement, the impact that such improvements will have on the current operating expense of the municipality, and such other information on capital improvements as may be pertinent.

Subd. 10. **Official map.** “Official map” means a map adopted in accordance with section 462.359, which may show existing and proposed future streets, roads, highways, and airports of the municipality and county, the area needed for widening of existing streets, roads, and highways of the municipality and county, and existing and future county state aid highways and state trunk highway rights-of-way. An official map may also show the location of existing and future public land and facilities within the municipality. In counties in the metropolitan area as defined in section 473.121, official maps may for a period of up to five years designate the boundaries of areas reserved for purposes of soil conservation, water supply conservation, flood control, and surface water drainage and removal, including appropriate regulations protecting those areas against encroachment by buildings or other physical structures or facilities.

Subd. 11. **Governing body.** “Governing body” in the case of cities means the council by whatever name known, and in the case of a town, means the town board.

Subd. 12. **Subdivision.** “Subdivision” means the separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or other use or any combination thereof, except those separations:

- (1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- (2) creating cemetery lots;
- (3) resulting from court orders, or the adjustment of a lot line by the relocation of a common boundary.

Subd. 13. **Plat.** “Plat” means the drawing or map of a subdivision prepared for filing of record pursuant to chapter 505 and containing all elements and requirements set forth in applicable local regulations adopted pursuant to section 462.358 and chapter 505.

Subd. 14. **Subdivision regulation.** “Subdivision regulation” means an ordinance adopted pursuant to section 462.358 regulating the subdivision of land.

Subd. 15. **Official controls.** “Official controls” or “controls” means ordinances and regulations which control the physical development of a city, county or town or any part thereof or any detail thereof and implement the general objectives of the comprehensive plan. Official controls may include ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.

Subd. 16. **Preliminary approval.** “Preliminary approval” means official action taken by a municipality on an application to create a subdivision which establishes the rights and obligations set forth in section 462.358 and the applicable subdivision regulation. In accordance with section 462.358, and unless otherwise specified in the applicable subdivision regulation, preliminary approval may be granted only following the review and approval of a preliminary plat or other map or drawing establishing without limitation the number, layout, and location of lots, tracts, blocks, and parcels to be created, location of streets, roads, utilities and facilities, park and drainage facilities, and lands to be dedicated for public use.

Subd. 17. Repealed, 2001 c 7 s 91

Subd. 18. **Urban growth area.** “Urban growth area” means the identified area around an urban area within which there is a sufficient supply of developable land for at least a prospective 20-year period, based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area.

HISTORY: 1965 c 670 s 2; 1973 c 123 art 5 s 7; 1974 c 317 s 2; 1980 c 509 s 153; 1980 c 566 s 19-23;

V. Appendix B—“Municipal Planning”—*continued...*

1982 c 507 s 21; 1982 c 520 s 3; 1985 c 194 s 17-22; 1989 c 209 art 2 s 1; 1997 c 202 art 4 s 7-9; 2001 c 7 s 69-73; 2005 c 41 s 16

462.353 AUTHORITY TO PLAN; FUNDS; FEES; APPEAL.

Subdivision 1. **General authority.** A municipality may carry on comprehensive municipal planning activities for guiding the future development and improvement of the municipality and may prepare, adopt and amend a comprehensive municipal plan and implement such plan by ordinance and other official actions in accordance with the provisions of sections 462.351 to 462.364.

Subd. 2. **Studies and reports.** In exercising its powers under subdivision 1, a municipality may collect and analyze data, prepare maps, charts, tables, and other illustrations and displays, and conduct necessary studies. A municipality may publicize its purposes, suggestions, and findings on planning matters, may distribute reports thereon, and may advise the public on the planning matters within the scope of its duties and objectives.

Subd. 3. **Appropriation and contracts.** A municipality may appropriate moneys from any fund not dedicated to other purposes in order to finance its planning activities. A municipality may receive and expend grants and gifts for planning purposes and may enter into contracts with the federal and state governments or with other public or private agencies in furtherance of the planning activities authorized by sections 462.351 to 462.364.

Subd. 4. **Fees.** (a) A municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to sections 462.351 to 462.364 or an application for a permit or other approval required under an official control established pursuant to those sections. Except as provided in subdivision 4a, fees as prescribed must be by ordinance. Fees must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed.

(b) A municipality must adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected. Upon request, a municipality must explain the basis of its fees.

(c) Except as provided in this paragraph, a fee ordinance or amendment to a fee ordinance is effective January 1 after its adoption. A municipality may adopt a fee ordinance or an amendment to a fee ordinance with an effective date other than the next January 1, but the ordinance or amendment does not apply if an application for final approval has been submitted to the municipality.

(d) If a dispute arises over a specific fee imposed by a municipality related to a specific application, the person aggrieved by the fee may appeal under section 462.361, provided that the appeal must be brought within 60 days after approval of an application under this section and deposit of the fee into escrow. A municipality must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee. An approved application may proceed as if the fee had been paid, pending a decision on the appeal. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with municipally installed improvements of the type described in section 429.021.

Subd. 4a. **Fee schedule allowed.** A municipality that collects an annual cumulative total of \$5,000 or less in fees under this section may prescribe the fees or refer to a fee schedule in the ordinance governing the official control or permit. A municipality may adopt a fee schedule under this subdivision by ordinance or resolution, either annually or more frequently, following publication of notice of proposed action on a fee schedule at least ten days prior to a public hearing held to consider action on or approval of the fee schedule. A municipality that collects a cumulative total in excess of \$5,000 in fees under this section may prescribe a fee schedule by ordinance by following the notice and hearing procedures specified in this subdivision.

Subd. 5. **Certify taxes paid.** A municipality may require, either as part of the necessary information on an application or as a condition of a grant of approval, an applicant for an amendment to an official control established pursuant to sections 462.351 to 462.364, or for a permit or other approval required under an official control established pursuant to those sections to certify that there are no delinquent property taxes, special

V. Appendix B—“Municipal Planning” —*continued...*

assessments, penalties, interest, and municipal utility fees due on the parcel to which the application relates. Property taxes which are being paid under the provisions of a stipulation, order, or confession of judgment, or which are being appealed as provided by law, are not considered delinquent for purposes of this subdivision if all required payments that are due under the terms of the stipulation, order, confession of judgment, or appeal have been paid.

HISTORY: 1965 c 670 s 3; 1982 c 415 s 1; 1996 c 282 s 3; 1997 c 2 s 3; 2001 c 207 s 11; 2003 c 93 s 1,2; 2004 c 178 s 1

462.3531 WAIVER OF RIGHTS.

Any waiver of rights of appeal under section 429.081 is effective only for the amount of assessment estimated or for the assessment amount agreed to in the development agreement. An effective waiver of rights of appeal under section 429.081 may contain additional conditions providing for increases in assessments that will not be subject to appeal if:

- (1) the increases are a result of requests made by the developer or property owner; or
- (2) the increases are otherwise approved by the developer or property owner in a subsequent separate written document.

HISTORY: 2001 c 207 s 12

462.3535 COMMUNITY-BASED PLANNING.

Subdivision 1. **General.** Each municipality is encouraged to prepare and implement a community-based comprehensive municipal plan. A community-based comprehensive municipal plan is a comprehensive plan that is consistent with the goals of community-based planning in section 4A.08.

Subd. 2. **Coordination.** A municipality that prepares a community-based comprehensive municipal plan shall coordinate its plan with the plans, if any, of the county and the municipality's neighbors both in order to prevent the plan from having an adverse impact on other jurisdictions and to complement the plans of other jurisdictions. The municipality shall prepare its plan to be incorporated into the county's community-based comprehensive plan, if the county is preparing or has prepared one, and shall otherwise assist and cooperate with the county in its community-based planning.

Subd. 3. **Joint planning.** Under the joint exercise of powers provisions in section 471.59, a municipality may establish a joint planning district with other municipalities or counties that are geographically contiguous, to adopt a single community-based comprehensive plan for the district. A municipality may delegate its authority to adopt official controls under sections 462.351 to 462.364, to the board of the joint planning district.

Subd. 4. **Cities; urban growth areas.** (a) The community-based comprehensive municipal plan for a statutory or home rule charter city, and official controls to implement the plan, must at a minimum, address any urban growth area identified in a county plan and may establish an urban growth area for the urbanized and urbanizing area. The city plan must establish a staged process for boundary adjustment to include the urbanized or urbanizing area within corporate limits as the urban growth area is developed and provided municipal services.

(b) Within the urban growth area, the plan must provide for the staged provision of urban services, including, but not limited to, water, wastewater collection and treatment, and transportation.

Subd. 5. **Urban growth area boundary adjustment process.**

(a) After an urban growth area has been identified in a county or city plan, a city shall negotiate, as part of the comprehensive planning process and in coordination with the county, an orderly annexation agreement with the townships containing the affected unincorporated areas located within the identified urban growth area. The agreement shall contain a boundary adjustment staging plan that establishes a sequencing plan over the subsequent 20-year period for the orderly growth of the city based on its reasonably anticipated development pattern and ability to extend municipal services into designated unincorporated areas located within the

V. Appendix B—“Municipal Planning”—*continued...*

identified urban growth area. The city shall include the staging plan agreed upon in the orderly annexation agreement in its comprehensive plan. Upon agreement by the city and town, prior adopted orderly annexation agreements may be included as part of the boundary adjustment plan and comprehensive plan without regard to whether the prior adopted agreement is consistent with this section. When either the city or town requests that an existing orderly annexation agreement affecting unincorporated areas located within an identified or proposed urban growth area be renegotiated, the renegotiated plan shall be consistent with this section.

(b) After a city’s community-based comprehensive plan is approved under this section, the orderly annexation agreement shall be filed with the municipal board or its successor agency. Thereafter, the city may orderly annex the part or parts of the designated unincorporated area according to the sequencing plan and conditions contained in the negotiated orderly annexation agreement by submitting a resolution to the municipal board or its successor agency. The resolution shall specify the legal description of the area designated pursuant to the staging plan contained in the agreement, a map showing the new boundary and its relation to the existing city boundary, a description of and schedule for extending municipal services to the area, and a determination that all applicable conditions in the agreement have been satisfied. Within 30 days of receipt of the resolution, the municipal board or its successor shall review the resolution and if it finds that the terms and conditions of the orderly annexation agreement have been met, shall order the annexation. The boundary adjustment shall become effective upon issuance of an order by the municipal board or its successor. The municipal board or its successor shall cause copies of the boundary adjustment order to be mailed to the secretary of state, Department of Revenue, state demographer, and Department of Transportation. No further proceedings under chapter 414 or 572A shall be required to accomplish the boundary adjustment. This section provides the sole method for annexing unincorporated land within an urban growth area, unless the parties agree otherwise.

(c) If a community-based comprehensive plan is updated, the parties shall renegotiate the orderly annexation agreement as needed to incorporate the adjustments and shall refile the agreement with the municipal board or its successor.

Subd. 6. **Review by adjacent municipalities; conflict resolution.** Before a community-based comprehensive municipal plan is incorporated into the county’s plan under section 394.232, subdivision 3, a municipality’s community-based comprehensive municipal plan must be coordinated with adjacent municipalities within the county. As soon as practical after the development of a community-based comprehensive municipal plan, the municipality shall provide a copy of the draft plan to adjacent municipalities within the county for review and comment. An adjacent municipality has 30 days after receipt to review the plan and submit written comments.

Subd. 7. **County review.** (a) If a city does not plan for growth beyond its current boundaries, the city shall submit its community-based comprehensive municipal plan to the county for review and comment. A county has 60 days after receipt to review the plan and submit written comments to the city. The city may amend its plan based upon the county’s comments.

(b) If a town prepares a community-based comprehensive plan, it shall submit the plan to the county for review and comment. As provided in section 394.33, the town plan may not be inconsistent with or less restrictive than the county plan. A county has 60 days after receipt to review the plan and submit written comments to the town. The town may amend its plan based on the county’s comment.

Subd. 8. **County approval.** (a) If a city plans for growth beyond its current boundaries, the city’s proposed community-based comprehensive municipal plan and proposed urban growth area must be reviewed and approved by the county before the plan is incorporated into the county’s plan. The county may review and provide comments on any orderly annexation agreement during the same period of review of a comprehensive plan.

(b) Upon receipt by the county of a community-based comprehensive plan submitted by a city for review and approval under this subdivision, the county shall, within 60 days of receipt of a city plan, review and approve the plan in accordance with this subdivision. The county shall review and approve the city plan if it is consistent with the goals stated in section 4A.08.

(c) In the event the county does not approve the plan, the county shall submit its comments to the city

V. Appendix B—“Municipal Planning”—*continued...*

within 60 days. The city may, thereafter, amend the plan and resubmit the plan to the county. The county shall have an additional 60 days to review and approve a resubmitted plan. In the event the county and city are unable to come to agreement, either party may initiate the dispute resolution process contained in chapter 572A. Within 30 days of receiving notice that the other party has initiated dispute resolution, the city or county shall send notice of its intent to enter dispute resolution. If the city refuses to enter the dispute resolution process, it must refund any grant received from the county for community-based planning activities.

Subd. 9. **Plan adoption.** The municipality shall adopt and implement the community-based comprehensive municipal plan after the Office of Strategic and Long-Range Planning has reviewed and commented on the county’s plan that incorporates the municipality’s plan. The municipality shall thereafter, where it deems appropriate, incorporate any comments made by the office into its plan and adopt the plan.

Subd. 10. **No mandamus proceeding.** A mandamus proceeding may not be instituted against a municipality under this section to require the municipality to conform its community-based comprehensive plan to be consistent with the community-based planning goals in section 4A.08.

HISTORY: 1997 c 202 art 4 s 10

462.354 ORGANIZATION FOR PLANNING.

Subdivision 1. **Planning agency.** A municipality may by charter or ordinance create a planning agency. A planning agency created by ordinance may be abolished by two-thirds vote of all the members of the governing body. The planning agency shall be advisory, except as other powers and duties are imposed on it by sections 462.351 to 462.364, by statute, by charter, or by ordinance consistent with the municipal charter. The planning agency may take the following alternative forms:

(1) It may consist of a planning commission, which may or may not include municipal officials among its members. The planning commission may be provided with staff which may be a division of the administrative structure of the municipal government. The commission shall be advisory directly to the governing body.

(2) It may consist of a planning department with a planning commission advisory to it and shall function as a department advisory to the governing body and the municipal administration. The planning department may be provided with an executive director and other staff as in the case of other municipal departments.

Subd. 2. **Board of adjustments and appeals.** The governing body of any municipality adopting or having in effect a zoning ordinance or an official map shall provide by ordinance for a board of appeals and adjustments. The board shall have the powers set forth in section 462.357, subdivision 6 and section 462.359, subdivision 4. Except as otherwise provided by charter, the governing body may provide alternatively that there be a separate board of appeals and adjustments or that the governing body or the planning commission or a committee of the planning commission serve as the board of appeals and adjustments, and it may provide an appropriate name for the board. The board may be given such other duties as the governing body may direct.

In any municipality where the council does not serve as the board, the governing body may, except as otherwise provided by charter, provide that the decisions of the board on matters within its jurisdiction are final subject to judicial review or are final subject to appeal to the council and the right of later judicial review or are advisory to the council. Hearings by the board of appeals and adjustments shall be held within such time and upon such notice to interested parties as is provided in the ordinance establishing the board. The board shall within a reasonable time make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. Any party may appear at the hearing in person or by agent or attorney. Subject to such limitations as may be imposed by the governing body, the board may adopt rules for the conduct of proceedings before it. Such rules may include provisions for the giving of oaths to witnesses and the filing of written briefs by the parties. The board shall provide for a record of its proceedings which shall include the minutes of its meetings, its findings, and the action taken on each matter heard by it, including the final order. In any municipality in which the planning agency does not act as the board of adjustments and appeals, the board shall make no decision on an appeal or petition until the planning agency, if there is one, or a

V. Appendix B—“Municipal Planning”—*continued...*

representative authorized by it has had reasonable opportunity, not to exceed 60 days, to review and report to the board of adjustments and appeals upon the appeal or petition.

HISTORY: 1965 c 670 s 4; 1967 c 493 s 1

462.355 ADOPT, AMEND COMPREHENSIVE PLAN; INTERIM ORDINANCE.

Subdivision 1. **Preparation and review.** The planning agency shall prepare the comprehensive municipal plan. In discharging this duty the planning agency shall consult with and coordinate the planning activities of other departments and agencies of the municipality to insure conformity with and to assist in the development of the comprehensive municipal plan.

In its planning activities the planning agency shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The planning agency shall periodically review the plan and recommend amendments whenever necessary.

Subd. 1a. **Update by metropolitan municipalities.** Each municipality in the metropolitan area, as defined in section 473.121, subdivision 2, shall review and update its comprehensive plan and fiscal devices and official controls as provided in section 473.864, subdivision 2.

Subd. 2. **Procedure to adopt, amend.** The planning agency may, unless otherwise provided by charter or ordinance consistent with the municipal charter, recommend to the governing body the adoption and amendment from time to time of a comprehensive municipal plan. The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan or to a major geographical section of the municipality. The governing body may propose the comprehensive municipal plan and amendments to it by resolution submitted to the planning agency. Before adopting the comprehensive municipal plan or any section or amendment of the plan, the planning agency shall hold at least one public hearing thereon. A notice of the time, place and purpose of the hearing shall be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

Subd. 3. **Adoption by governing body.** A proposed comprehensive plan or an amendment to it may not be acted upon by the governing body until it has received the recommendation of the planning agency or until 60 days have elapsed from the date an amendment proposed by the governing body has been submitted to the planning agency for its recommendation. Unless otherwise provided by charter, the governing body may by resolution by a two-thirds vote of all of its members adopt and amend the comprehensive plan or portion thereof as the official municipal plan upon such notice and hearing as may be prescribed by ordinance.

Subd. 4. **Interim ordinance.** (a) If a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls as defined in section 462.352, subdivision 15, or if new territory for which plans or controls have not been adopted is annexed to a municipality, the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

(b) If a proposed interim ordinance purports to regulate, restrict, or prohibit activities relating to livestock production, a public hearing must be held following a ten-day notice given by publication in a newspaper of general circulation in the municipality before the interim ordinance takes effect.

(c) The period of an interim ordinance applicable to an area that is affected by a city's master plan for a municipal airport may be extended for such additional periods as the municipality may deem appropriate, not exceeding a total additional period of 18 months. In all other cases, no interim ordinance may halt, delay, or impede a subdivision that has been given preliminary approval, nor may any interim ordinance extend the time deadline for agency action set forth in section 15.99 with respect to any application filed prior to the effective date of the interim ordinance. The governing body of the municipality may extend the interim ordinance after a public hearing and written findings have been adopted based upon

V. Appendix B— “Municipal Planning” —*continued...*

one or more of the conditions in clause (1), (2), or (3). The public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing. The interim ordinance may be extended for the following conditions and durations, but, except as provided in clause (3), an interim ordinance may not be extended more than an additional 18 months:

(1) up to an additional 120 days following the receipt of the final approval or review by a federal, state, or metropolitan agency when the approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance;

(2) up to an additional 120 days following the completion of any other process required by a state statute, federal law, or court order, when the process is not completed at least 30 days before the expiration of the interim ordinance; or

(3) up to an additional one year if the municipality has not adopted a comprehensive plan under this section at the time the interim ordinance is enacted.

HISTORY: 1965 c 670 s 5; 1976 c 127 s 21; 1977 c 347 s 68; 1980 c 566 s 24; 1983 c 216 art 1 s 67; 1985 c 62 s 1,2; 1995 c 176 s 4; 2004 c 258 s 1; 2005 c 41 s 17; 1Sp2005 c 1 art 1 s 91

V. Appendix C

One Township's Experiences with Comprehensive Zoning & Planning

News - Record

Offices in Harmony and Mabel, Minnesota www.bluffcountrynews.com Vol. 97, No. 39 Thursday, Sept. 29 2005

Preble Township seeks to protect natural resources

By Lisa Brainard
News-Record

Hosting a Preble Township meeting Sept. 20 – which included a public hearing on a comprehensive land use plan and drew a small crowd – were township supervisors at the table, from left, Brad Kelly, Clerk David Larson, President Gerald Peter, David Williams and Treasurer Chuck Olson.

Preble Township sits on the eastern edge of Fillmore County. The “Big Woods” and the South Fork of the Root River, as well as Weisel Creek, seem to give the township the feeling of a more primitive, wild area.

It's far from the more populous areas of the county. There are no towns to speak of, other than a few buildings in the Choice valley and monuments to communities long gone at Tawney and Chickentown.

The Preble Township officers voted unanimously at their meeting last Tuesday to protect this landscape and a way of life by passing a comprehensive township land use plan.

But it was not without controversy. Questions on the plan were raised by some of the dozen or so township residents who showed up for the comprehensive land use plan public hearing.

Immediate concerns addressed by the plan included the proliferation of hunting cabins on small tracts of land in the township, as well as fear of large livestock operations taking root in Preble Township.

Purpose

Fred Horihan asked from the audience, “What did you want to do it for?”

Township Board member David Williams explained



Hosting a Preble Township meeting Sept. 20 – which included a public hearing on a comprehensive land use plan and drew a small crowd – were township supervisors at the table, from left, Brad Kelly, Clerk David Larson, President Gerald Peter, David Williams and Treasurer Chuck Olson. (Republican-Leader photo by Lisa Brainard)

how the comprehensive land use plan came to be. Two surveys had been sent out with a 50 percent response rate. Two hundred surveys had been sent to township residents. Preble sports a population of around 277, according to its website.

Responses came from 99 people. Williams noted that 84 percent said livestock manure or lagoons were a concern.

“Should Preble Township get involved in land use planning?” Eighty-four percent said yes,” stated Williams.

A membership board was created to look at land use issues which, he said, included animal feedlots, cabins and housing in general.

“The comprehensive land use plan is a first step,” stated Williams. He noted it does not prohibit or regulate anything at this point.

“It begins to identify what we want to be preserved,” he added. “It starts to set up policies... It looks at maybe a dozen areas (of concern.)”

Township clerk David Larson stressed that Preble

V. Appendix C—Preble Township experience —*continued...*

Township is different than many, noting the woods and streams.

“I’d like to see the woods protected. They are being broke up into 10-acre tracts with cabins and access roads,” he stated. If this happens enough, Larson said there would not be areas available for the wildlife that’s hunted in the township.

He said farmers often sell off 10 to 20 acres from their land when they retire, which he noted is their right. But the small tracts of land can be a problem, stated Larson. Also, he noted people moving in do not always allow hunting on their land, further splitting up wildlife populations.

Larson said, “It’s happened elsewhere.”

Township Board President Gerald Peter later stated, when questioned, “We want to be involved in this before it starts (before big issues present themselves). I don’t want the younger generation saying, ‘What did you do (to our land)?’

“The (comprehensive land use) committee felt – and we felt – the eastern part of the county is fragile. We want your input on feedlots and cabins.”

“... It’s for the kids,” he stated, more than once.

Supervisor Brad Kelly added later in the discussion, “It’s a goal we’re striving towards... a bunch of ideas on a piece of paper.”

Supervisor Chuck Olson expressed one problem with many cabins throughout the township by asking if all the cabins would need the roads to them graveled and the related expenses that could entail.

Trudy Horihan, raising hogs with husband Fred, in Preble Township, had questions on the comprehensive land use plan proposed. She wondered about a timeline for its implementation.

Also, she asked about an interim feedlot ordinance put in place by the township in April of this year, which limits certain types of feedlot expansion and prohibits others, according to total animal units.

Comprehensive plan

In part — and posted on the Preble Township website at www.prebletownship.com — the 14-page comprehensive land use plan gives a background on the township and also includes the following information:

- The entire township is zoned as an agricultural district (by Fillmore County), except for a small Highway 43 corridor through Choice, which is zoned for rural residential uses.

- Fillmore County Zoning regulates the township currently, other than the interim feedlot ordinance.

- “Over the past few years, members of the Preble Township Board of Supervisors have heard land use concerns from residents and property owners. Some people complained that

too many recreational cabins were being built on too many small parcels of land. Other people feared that residential housing subdivisions would be built on good quality farmland, thereby diminishing the dominant agricultural industry in the area.

“And still other people were concerned that large animal feedlots and their accompanying manure management problems might be developed on farmland intended for small family farms, feedlots and dairies. Residents are mindful that animal manure provides beneficial and replenishing qualities to the soil and aids in the production of agricultural crops.

“However, when animal manure is improperly stored, transported or disposed of, in large quantities, it may negatively affect the township’s environment and residential lifestyle. Large accumulations of manure emit hydrogen sulfide, methane and ammonia, which may negatively affect the health and safety of township residents.”

Policies for land use

Fourteen township land use “policies” were adopted with passage of the land use plan. They included:

- Family farms should be supported. Encouragement and incentives should be given for the upgrading, continuation and expansion of family farms. Existing farmers should be encouraged to provide housing and farming opportunities on their farms for younger members of their families. Existing, expanded and new livestock feedlots, under 500 animal units in size, should be supported.

- New permanent housing development should be encouraged in the township. However, housing density should be discouraged to (i) maintain the township’s rural character and lifestyle, (ii) preserve productive farmland, (iii) preserve a viable and unpolluted South Fork Root River stream corridor, and (iv) minimize the need for excessive road maintenance.

- New housing should be scattered, and not be built in close proximity to existing housing. Existing rural residents have an expectation of privacy, green space and distance around their homes, and would be repelled by new housing being built too close. Setbacks could be used as zoning tools to restrict new housing from being built too close to existing housing.

- The township should continue studying opportunities for housing subdivision development, including tightly managed subdivision zones. Preble Township should support rural home-based commercial activity, especially homebased businesses, such as Hy View Feed, which provide supplies to farmers. However, the definition of “home-

V. Appendix C—Preble Township experience —*continued...*

based commercial activity” should be limited to prevent general commercial or industrial projects from being sited within the township.

Cabin subdivision?

An interesting listing that created discussion was a suggestion for a cabin “subdivision:”

“Siting of new cabins should be regulated to prevent excessive cabin proliferation. Setbacks and other planning tools should be used to prevent too many recreational cabins from being built in the township. Construction of new recreational cabins should be discouraged in the woods where hunting occurs. The township government should encourage the development of a recreational cabin ‘subdivision’ sited away from the woods to provide housing for hunters and part-time recreational residents.”

Trudy Horihan asked what the current policy was for cabins. Paul Spande, a member of the Comprehensive Land Use Policy Committee, said they sit on lots of 5- to 10-acre woodlots. He noted you can’t hunt within 500 feet of cabins.

Fred Horihan commented there are plenty of these type lots available in the Big Woods area of Preble Township.

Daughter Ellie Horihan asked from the audience why people would want their cabins placed close together, “Isn’t the point to get be away from people?”

Larson responded that with cabins every 10 acres, a person doesn’t get away from anyone. Chad Cushion, on hand to request a building permit to move a home onto his property, again noted that people who buy such lots often won’t let others hunt on it.

When Trudy Horihan asked about keeping family farms, Spande replied that the township wants people and is not trying to restrict uses.

Voting approval

As the public hearing on the comprehensive land use plan came to an end, Trudy Horihan said she wanted to go on record as being against it, apparently due to feelings it would regulate farming expansion too much.

Bill Stahl said from the audience that he was in favor of it, “You’re heading in the right direction. There will be lots of issues and controversies, but you said it well.”

Kelly asked that a date be set for another large group meeting to further look at suggestions in the land use plan. Trudy Horihan asked that more farmers be included.

Fred Horihan then stated he had a “gut feeling” that baby boomers moving back to the area will peak in five years and that current uses and trends in Preble Township “will be completely different.”

Larson asked, “You’re sure? What if you’re wrong in 20 years?”

Fred Horihan, who works in the Fillmore County assessor’s office, said he’s seen the current sales in the county and thinks it will change.

Peter again stated of the comprehensive land use plan, “It’s for the kids.”

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V. Appendix D

Examples of Interim Ordinances Passed by Minnesota Townships

IMPORTANT NOTE: These interim ordinances may help your township in creating your own unique ordinance but should not be simply copied. Your interim ordinance should be drafted with the advice of an attorney and must be created for the unique situation in your township.

RED ROCK TOWNSHIP INTERIM ORDINANCE

WHEREAS, on the 10th day of December, 1996, at a monthly township board meeting, proper notice being provided, the issue of whether the township should adopt a township comprehensive plan and ordinance to address the township road issues and health and safety issues caused by large developments having significant impact upon the township was introduced;

WHEREAS, the town board has authority to adopt an Interim Ordinance/moratorium during which time the township will conduct a study of the possibility of adopting a comprehensive plan or official controls to fulfill the township's legal obligation to adequately protect the public roads, health, safety and welfare;

WHEREAS, other townships and counties have adopted moratorium ordinance to study the effects of large commercial enterprises upon rural townships;

WHEREAS, the town board makes the following

FINDINGS OF FACT:

1. The town board has authorized a study to be conducted for the purpose of considering adoption of a comprehensive plan as defined in section 462.352, subdivision 15.
2. The Interim Ordinance is to protect the health, safety and welfare of Red Rock Township residents and to protect the planning process, and not to delay or prevent a single project.

NOW, THEREFORE, based on the above findings of fact, the Red Rock Town Board hereby resolves:

To protect the planning process under the authority of Minnesota Statutes Section 462.355, Subdivision 4 and to protect the roads, health, safety and welfare of our citizens, the Red Rock Township Board hereby adopts an Interim Ordinance which prohibits the following land use developments within the township's jurisdiction:

1. the establishment and construction of any new animal feedlot over 1000 total animal units or an expansion of an existing animal feedlot which will have a cumulative total of over 1250 animal units as defined by Minnesota Pollution Control Agency Rules 7020.0300, also referred to as the Minnesota Pollution Control Agency-Water Quality Division-Animal

V. Appendix D—Red Rock Township ordinance—continued...

Feedlots;

2. the construction of any new manure storage area with a capacity to accumulate manure from more than 1000 animal units, said animal units defined in number 1 above;
3. the establishment of any junkyard or salvage yard containing more than 6 unlicensed motor vehicles for resale purposes;
4. the establishment of any new industrial facility for storage of hazardous waste or demolition of waste;
5. the establishment of any commercial or industrial tire recycling facility;
6. the opening of any new gravel pit or rock quarry for commercial purposes.

This Interim Ordinance shall be in effect until the 9th day of December, 1997 or until the final adoption of an ordinance to regulate land use and development in Red Rock Township, whichever occurs first.

Approved by the Red Rock Town Board of Supervisors, on this 10th day of December, 1996, and signed this 10th day of December, 1996.

Supervisor

Supervisor

Supervisor

Attest:

Clerk

CERTIFICATION

I hereby certify that the attached is a true and correct copy of an Interim Ordinance duly passed, adopted and approved by the Red Rock Township Board of Supervisors on the 10 day of Dec., 1996.

Township Clerk

SEAL

BLOOMING PRAIRIE TOWNSHIP INTERIM ORDINANCE

THE TOWN BOARD OF BLOOMING PRAIRIE TOWNSHIP HEREBY ORDAINS:

WHEREAS, Blooming Prairie Township, Steele County, State of Minnesota, has adopted no zoning ordinance or animal feedlot ordinance regulating land use within the Township; and

WHEREAS, the Township needs time to consult with legal experts and/or technical experts and to review information in order to study the issues being raised by a number of possible large developments which could have a significant impact upon the Township roads, property values and upon the health, safety and welfare of our residents; and

WHEREAS, the Township hereby authorizes a study to be conducted to determine whether the Township should adopt a zoning ordinance; and

WHEREAS, the Township hereby sets the date of June 7, 2005 to conduct a public hearing for the purpose of presenting a proposed zoning ordinance(s) of Blooming Prairie Township;

NOW, THEREFORE, THE BLOOMING PRAIRIE TOWNSHIP BOARD ORDAINS:

Section 101 Title

This Interim Ordinance shall be known, cited and referred to as the Blooming Prairie Township Interim Ordinance.

Section 102 Intent and Purpose

This Interim Ordinance is adopted with the intent and purpose of:

- To protect the planning process under the authority of Minnesota Statutes Section 462.355.
- To protect public facilities, such as roads.
- To protect the health, safety, and welfare of our citizens.
- To protect property values of our citizens.

Section 103 General Provisions

103.001. Jurisdiction.

The jurisdiction of this Interim Ordinance shall apply to all the areas of Blooming Prairie Township.

V. Appendix D—Blooming Prairie Interim Ordinance—*continued...*

Section 104 Definitions

- “animal feedlot” and “animal units” have the meaning given those terms in Minnesota Rules Section 7020.0300.
- This Interim Ordinance adopts the other definitions set forth in Minn.R. 7020.0300.

Section 105 (Reserved for Future Use)

Section 106 Interim Prohibition on Land Use Developments

The Township Board hereby adopts an Interim Ordinance that prohibits the following land use developments within the Township’s jurisdiction:

1. The development or construction of any manure storage structures for any animal feedlots over 800 animal units. There shall be no new concrete pits or earthen manure basins for proposed animal confinement operations with a capacity of over 800 animal units;
2. The development or construction of any buildings for any animal feedlots over 800 animal units. No new animal feedlot over 800 animal units shall be constructed/operated within 1500 of a neighboring dwelling or residence.
3. This Interim Ordinance does not apply to repairs, renovations, replacements or updates to existing structures or buildings that do not involve an increase in the number of animal units at an existing feedlot.

Section 107 Violations and Enforcement

107.001 Violations.

Any person, firm or corporation who shall violate any of the provisions hereof or who shall fail to comply with any of the provisions hereof or who shall make any false statement in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.

107.002 Enforcement.

a. Stop Work Orders. Whenever any work is being done contrary to the provisions of this Interim Ordinance, the Township Board may order the work stopped by written notice personally served upon the contractor performing work or the owner or operator of the

V. Appendix D—Blooming Prairie Interim Ordinance—*continued...*

property and/or project. All activities shall cease and desist until subsequent written authorization to proceed is received from the Township Board.

b. Injunctive Relief and other Remedies. In the event of a violation of this Interim Ordinance, the Township Board may institute appropriate actions or proceedings, including requesting injunctive relief, to prevent, restrain, correct or abate such violations.

c. Costs of Enforcement Proceedings. All costs incurred for corrective action may be recovered by the Township Board in a civil action in District Court, or at the discretion of the Township Board, the costs may be certified to the Township Auditor as a special tax against the real property. These and other remedies, as determined appropriate by the Township Board, may be imposed upon the responsible person either in addition to, or separate from, other enforcement actions.

Section 108 Severability and Validity

It is hereby declared to be the intention that several provisions of this Interim Ordinance are severable in accordance with the following:

a. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions not specifically included in said judgment.

b. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building or structure, such judgment shall not affect other property, buildings or structures.

V. Appendix D—Blooming Prairie Interim Ordinance—continued...

Section 108 Effective Date

This Interim Ordinance shall be in full force and effect from and after its passage and approval, as provided by law, until JAN 1, 2006 or until final adoption of a land use and/or feedlot Ordinance of Blooming Prairie Township, whichever occurs first.

PASSED AND APPROVED BY THE BLOOMING PRAIRIE TOWNSHIP BOARD OF SUPERVISORS THIS 7 day or June 2005.

Myron Fickl
By: _____
Its: Chair

ATTEST:
Thomas J. Troiman
By: _____
Its: Township Clerk

The foregoing instrument was acknowledged before me this 8 day of JUNE, 2005, by Myron Fickl, Chair of the Blooming Prairie Township Board.

Subscribed and sworn to before me this 8 day of JUNE 2005.



Brian A. Betlach
Notary Public

The foregoing instrument was acknowledged before me this 8 day of JUNE, 2005, by THOMAS TROIMAN, Clerk of the Blooming Prairie Township Board.

Subscribed and sworn to before me this 8 day of JUNE, 2005.

Brian A. Betlach
Notary Public



THIS INSTRUMENT WAS DRAFTED BY:
Peters & Peters PLC
James P. Peters #177623
507 N. Nokomis St., #100
Alexandria, MN 56308
(320) 763-8458

V. Appendix E

Minnesota Attorney General's Opinion on Wang Township Interim Ordinance



MIKE HATCH
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

June 29, 2006

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (651) 296-6196

James P. Peters
PETERS & PETERS, PLC
507 N. Nokomis St. # 100
Alexandria, MN 56308

Dear Mr. Peters:

I thank you for your letter dated April 18, 2006 requesting an opinion from the Attorney General and your letter dated June 15, 2006 with respect to the issue discussed below.

FACTS

You state that you represent Wang Township, Renville County, Minnesota. You indicate that Wang Township has planning and land use authority. On November 7, 2005, Wang Township adopted the Wang Township Interim Ordinance ("interim ordinance") pursuant to Minnesota Statute § 462.355 for the stated purpose of protecting the planning process, public facilities, and the health, safety, welfare and property values of its citizens.

The interim ordinance prohibits, for a period of one year or until adoption of a zoning ordinance, whichever comes first, certain land uses, including the following: new earthen manure storage facilities for operations with over 300 animal units; animal confinement facilities with a capacity of over 300 animal units; industrial facilities for hazardous, biomedical or demolition waste, and; commercial gravel pits or rock quarries over 40 acres. You indicate that while the interim ordinance is in effect, the Township intends to consult with legal and technical experts, to study land use issues being raised by a number of possible large developments, and to develop and hold a public hearing on a proposed zoning ordinance.

Ten days prior to the November 7, 2005 public hearing and special meeting at which the interim ordinance was adopted, Wang Township had published public notice and provided written notice to the Minnesota Department of Agriculture and the Minnesota Pollution Control Agency. At the November 7, 2005 special meeting, the Township scheduled a public hearing and special meeting for February 28, 2006 for consideration of a proposed zoning ordinance. At the February 28, 2006 special

Appendix E—Minn. Attorney General’s Opinion—*continued*...

meeting, the Township gathered additional public comment on a proposed final ordinance and authorized continued study of the impact of industrial confinement operations in the Township.

Prior to enactment of the interim ordinance, a proposed hog confinement facility of over 1,000 animal units had made application to Renville County for the required use permit. The County had not granted the use permit for the proposed project at the time the interim ordinance was adopted by Wang Township.

QUESTION

May the Township’s interim ordinance be applied to stop construction of a facility of a type prohibited by the interim ordinance if, at the time of the adoption of the interim ordinance, the facility proposer had applied for, but not yet received, regulatory permits allowing the project to go forward?

LAW AND ANALYSIS

The specific question you raise is not squarely addressed in Minnesota statutes or case law. Our interpretation of existing authority that speaks most directly to your specific question is set forth below.

In *Almquist v. Town of Marshan*, 245 N.W.2d819 (1976), the Minnesota Supreme Court upheld a township’s authority to impose a development moratorium in order to facilitate comprehensive zoning. Before the Court was a landowner who had sought a special-use permit from the town for development of his property. The landowner had been involved in ongoing discussions with the planning commission and town board for six months prior to reaching apparent agreement on the plan. *Id.* at 822. At the meeting of the town board where the landowner formally presented his application, however, the board declined to take action on the application, instead choosing to adopt a six month moratorium on development in order to study and plan orderly development and further the best interests of the health and welfare of township residents. *Id.* at 823.

Notwithstanding the fact that the plaintiff landowner and other potential developers had submitted development proposals, the Court in *Almquist* upheld the township’s development moratorium on the grounds that it was of limited duration and it represented a “good faith effort” on the part of the town board to systematically study and address comprehensive land use and zoning issues. *Id.* at 825. The Court found that the town board was confronted with complex planning and development issues, and that it acted reasonably in temporarily delaying development and choosing to utilize the expertise of professional planners to achieve orderly planning and zoning. *Id.*

Appendix E—Minn. Attorney General’s Opinion—*continued*...

At the time of its decision in *Almquist*, the Court also noted that, unlike counties, the legislature had not specifically granted townships the authority to adopt interim ordinances (also referred to as moratorium ordinances). *Id.* The Court then held that:

...in the absence of explicit expression of a contrary purpose by the legislature, we are free to hold that under general principles conferring on municipalities broad police powers, they have authority to adopt moratorium ordinances of limited duration provided they are enacted in good faith and without discrimination.

Id.

Subsequent to the *Almquist* decision, the legislature enacted Minn. Stat. § 462.355, subd. 4, authorizing municipalities to adopt interim ordinances, as follows:¹

(a) If a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls..., the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

Since the adoption of Minn. Stat. § 462.355, subd. 4, it appears that Minnesota courts have continued to apply the good faith standard established in *Almquist*.² For example, in *Medical Service, Inc. v. City of Savage*, 487 N.W.2d. 263 (Minn. Cr. App. 1992), the project proponent had applied to the city for a conditional use permit to construct an infectious waste processing facility. The city, by resolution, terminated the permit application on the grounds that the proposed facility did not constitute a permitted use under the existing zoning ordinance. The city then rejected a proposed amendment to its zoning ordinance that would have permitted the proposed use. The project proponent subsequently filed a declaratory action lawsuit against the city on the question of whether the existing ordinance in fact prohibited the proposed use. Subsequent to the filing of the lawsuit, the city enacted a moratorium on the issuance of special use permits in industrial zones, pursuant to Minn. Stat. § 462.355, subd. 4. *Id.* at 264.

¹ Pursuant to Minn. Stat. § 462.352, subd. 2, the term “municipality” includes any city and any town.

² There have been recent legislative efforts to prohibit enforcement of an interim ordinance against a development proposal for which an application is pending prior to adoption of the interim ordinance. See S.F. No. 2932, as introduced – 84th Legislative Session (2005-2006). To date, no such provision has been passed into law.

The Court of Appeals held that the city acted arbitrarily in adopting the moratorium. *Id.* at 267. The Court found that the grant authority in § 462.355 is not unlimited, and that the city’s moratorium ordinance did not appear designed to protect the planning process; rather it was a reaction to litigation and designed to delay or prevent a single project. The Court noted that the city, prior to adopting the interim ordinance, had ordered no further study concerning the treatment and disposal of infectious waste and had made no other attempts to address the problems with its existing ordinances. *Id.*

By contrast, where the zoning authority adopts an interim ordinance in good faith to protect the planning process, Minnesota courts have upheld the township’s authority to enforce the ordinance against proposed projects. To illustrate, in *Duncanson v. Board of Supervisors of Danville Township*, 551 N.W.2d. 248 (Minn. Ct. App. 1996), *rev. denied* (Sept. 20, 1996), landowners wished to construct a hog feedlot facility accommodating 4800 hogs. The landowner had engaged in initial discussions with the township board about the proposal. The township did not have a zoning ordinance in place at the time. Subsequent to meeting with the landowner, the township began to gather information on zoning and ultimately adopted a one year moratorium ordinance pursuant to Minn. Stat. § 462.355, subd. 4. The moratorium prohibited certain land uses, including feedlots of the size proposed by the landowner. The landowner sued the township claiming that the moratorium was adopted arbitrarily and that it discriminated against the proposed project, which was the sole pending project in the township. *Id.* at 249.

In upholding the interim moratorium and reversing the district court, the Court of Appeals found the township’s good faith intent to plan for orderly development to be a critical factor. *Id.* at 252. The Court distinguished its decision in *Medical Services* on multiple grounds, characterizing the moratorium in that matter as having been in response to litigation, as an attempt to stop a project that the city had been aware of for years, and as a response to a project that was compliant with an existing zoning ordinance. *Id.* at 251. Instead, the Court found the facts and reasoning from *Almquist* to be applicable, noting the good faith attempt by the board to study the impact of a facility on the township rendered its decision to adopt an interim moratorium lawful. *Id.* at 251-52.

CONCLUSION

We believe the current state of the law on the question that you raise is set forth in the *Duncanson* decision described above. We also believe, as illustrated by the *Medical Services* decision, that a township’s authority to apply an interim moratorium against a specific development project or use is not unlimited, and that the analysis is decidedly fact intensive. We further note

Appendix E—Minn. Attorney General’s Opinion—*continued...*

that, in connection with rendering opinions, the Attorney General is unable to make factual determinations or decide questions likely to arise in litigation which is underway or is imminent. See Op. Atty. Gen. 629a, May 9, 1975.

We nonetheless offer the general opinion that, when a township enacts an interim ordinance pursuant to Minn. Stat. § 462.355, subd. 4 in good faith and for the nondiscriminatory purpose of providing the township with the opportunity to study and undertake orderly planning and zoning, then it is valid under Minnesota law, even if applied against a sole development project pending at the time of adoption of the interim ordinance. We do not believe that the submission of an application for a permit automatically exempts the applicant from the interim ordinance.

Very truly yours,



KRISTINE L. EIDEN
Chief Deputy Attorney General

KLE/as
AG: #1630585-v1

V. Appendix F

Court Supports Township's Right to Enact Interim Ordinance

Mankato Free Press

July 12, 1996

Court overturns appeal on feedlot Mapleton couple unsure what their next step will be

By ROBB MURRAY
Free Press Staff Writer

MANKATO — A state Appeals Court has overturned a Blue Earth County District Court ruling that said a Danville Township moratorium on new development discriminated against a Mapleton farm couple.

The decision stems from a district court case pitting the township's board of supervisors against hog farmers Pat and Kristin Duncanson. At a township board meeting last July, the Duncansons proposed construction of a 4,800-hog feedlot on their land in Danville Township near Mapleton.

At the next township board meeting, zoning questions surfaced. By August, the township had enacted a one-year moratorium on new feedlots of more than 300 animal units, junkyards, salvage yards, hazardous waste facilities, mining and gravel pits and tire recycling facilities.

The Duncanson believe the ordinance specifically targeted them. They also believe the board's action was illegal because it held no hearings and published no public notices in local newspapers to adequately warn residents.

The district court said the ordinance was legal, but that it unfairly targeted the Duncansons. Judge Richard Kelly said the Duncansons could commence building their proposed feedlot near the intersection of Blue Earth County Roads 21 and 14.

But the township board appealed that decision, and the appellate court on Tuesday filed a ruling in its favor.

The township was not targeting the Duncansons, the court said, but merely acting in the best interest of township citizens. Because the board members didn't know how a feedlot of that size would affect the township, they were within their rights to limit development until the advice of experts could be sought.

"The Duncansons' proposal demonstrated the need for Danville to address a topic that had not previously been relevant to a primarily rural community," the appeals court said. "We find in this case that the board acted in good faith. It is in the good faith effort demonstrated here to plan for orderly development that must, we believe, defeat any objection that this ordinance is directed at a single project."

Regarding the Duncansons' claim the township violated state law by not publicizing its intention before enacting the morato-

rium, the court again sided against the Mapleton family.

The Danville ordinance, the court said, was enacted temporarily, thereby exempting it from state laws governing permanent zoning ordinances.

"We're obviously disappointed," Kristin Duncanson said. "We're weighing our options to see what's going to happen next. I think this sends a very interesting message about zoning, and we're going to have to address that at the state level. I personally think it's dangerous for people at the township level to be zoning. They don't necessarily have the resources available to them to make all the right decisions."

Duncanson said she isn't sure if she and her husband will appeal the latest decision.

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Mankato Free Press

August 15, 1996

LETTERS

Many townships handle their zoning

K. Duncanson's statement regarding townships and zoning in your July 12 issue warrants a response.

She states, "I personally think it's dangerous for people at the township level to be zoning."

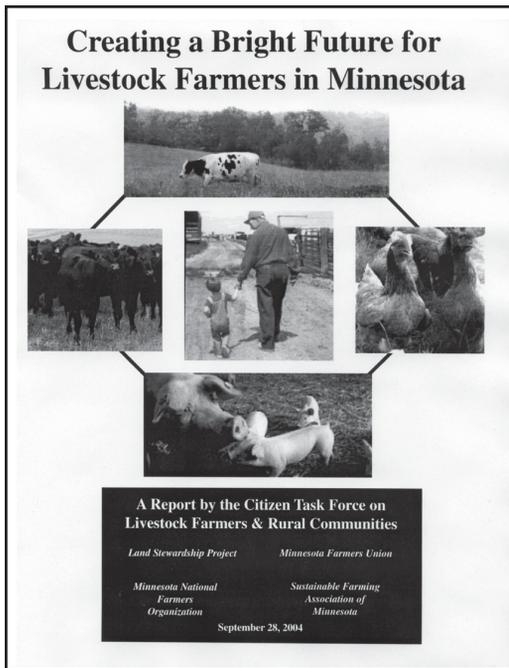
Many townships in the state have had a zoning ordinance for years. My township's ordinance has been in effect for 16 years, and it has been very successful in avoiding damage to our roads, protecting property values, and protecting the health, safety and welfare of our citizens.

Duncanson's concern is township authority over their proposal to build a large confinement feedlot. She states, "Townships don't necessarily have all the resources available to them to make all the right decisions." Yet is it any more dangerous for townships to make decisions about controlling large feedlots than it is for local farmers to decide to build them? If necessary, township officials can consult with the experts the same way farmers consult the experts.

Duncanson obviously has no faith in grassroots government. Yet even the state acknowledges in the preamble to feedlot regulations that decisions about land-use planning are best made at the local level. Townships should decide what is best locally, because they are the government closest to the people.

Nancy Barsness
Clerk and Zoning Administrator
New Prairie Township
Pope County

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V. Appendix G

Promoting More Livestock on Family Farms that Benefit the Environment & Rural Communities

In January 2004, four Minnesota farm groups—the Minnesota Farmers Union, National Farmers Organization of Minnesota, Land Stewardship Project and the Sustainable Farming Association of Minnesota—came together to create the Citizen Task Force on Livestock Farmers and Rural Communities. Below is the Executive Summary of a report created by this task force. The full report is at www.landstewardshipproject.org/pr/04/newsr_041001.html.

Executive Summary

The Citizen Task Force on Livestock Farmers and Rural Communities has studied the challenges and opportunities facing livestock farmers and rural communities, and assembled a list of priority recommendations to policy makers and community leaders on ways to increase the number and profitability of Minnesota livestock farmers in ways that benefit rural communities, recognizing that livestock farmers and vibrant rural communities are interrelated.

I. Ensuring Fair Prices & Open Markets

Policies must be enacted that allow farmers to receive a fair price through open markets. Competition must be restored to the marketplace by limiting corporate concentration and encouraging farmers to use collective bargaining strategies.

The Citizen Task Force Recommends:

1) Minnesota's corporate farm law be strengthened. The law places limitations on corporate ownership of farms in order to protect and promote a family farm based system of agriculture. The Legislature can maintain and improve the effectiveness of the law by:

A) Creating an effective fine for violating the law. *Currently there is no significant penalty for violating the corporate farm law.*

B) Requiring that compliance with the law be demonstrated before the state grants articles of incorporation to a farm. The state must verify compliance annually.

C) Retaining language in the law that prohibits dairy from being included in the definition of an "Authorized Livestock Farm Corporation."

2) The Minnesota Agricultural Bargaining Act be aggressively implemented by the Minnesota Department of Agriculture (MDA). The MDA must use the law to create a comprehensive program to assist interested farmers in using collective bargaining to ensure a better price for their products.

Appendix G—Promoting More Livestock—*continued...*

3) The Minnesota Legislature enhance competition for Minnesota livestock farmers by encouraging the development of producer-owned cooperative processing facilities or independent processing facilities that purchase livestock from independent farmers. This could be done by providing financial incentives similar to what the ethanol industry receives.

4) The Legislature pass a resolution urging the Minnesota Congressional delegation to support Country of Origin Labeling (COOL) and a ban on packer ownership of livestock.

5) The Legislature pass and the state aggressively enforce legislation prohibiting Milk Protein Concentrate (MPC) in food sold in Minnesota. MPC is being imported to the United States and is used illegally in food products to displace domestically produced milk. In addition, the Legislature should pass a resolution urging our federal delegation to demand the federal government begin enforcing the regulations that prohibit MPC in dairy products.

II. Creating the Next Generation of Livestock Farmers

Creating incentives and programs that encourage young people to become livestock farmers is critical to maintaining livestock as part of Minnesota's family farm system of agriculture. These beginning farmers need opportunities to enter into livestock farming that do not require large amounts of debt be incurred and that rely on low-cost, efficient livestock systems.

The Citizen Task Force Recommends:

1) The Legislature create a program that provides beginning dairy farmers with \$1 per hundred weight of milk produced not to exceed \$10,000 per year. This legislation, entitled the "Milk Production Development Program," was introduced in the 2004 legislative session as Senate File 2656.

2) The legislature create a Minnesota Dairy Investment Credit. This program would provide a state tax credit to dairy farmers who make improvements in their operation. The credit would be 10 percent of up to \$500,000. Included in eligible expenditures are upgraded milking parlors, pasture development, fencing, watering facilities and on-farm processing.

3) Minnesota create and implement a program to preserve farmland for future generations and keep it affordable for beginning farmers. The state can do this by creating a program to purchase the development rights of farms and tap into federal money available through the Purchase of Agricultural Conservation Easement (PACE) program.

III. Promoting Livestock Farming that Benefits the Environment

Livestock farmers can play a major role in protecting our environment by using environmentally minded farming practices that improve water quality, create wildlife habitat and reduce greenhouse gas emissions that exacerbate climate change problems. This is best accomplished when livestock is raised on diversified family farms.

The Citizen Task Force Recommends:

1) The Minnesota Legislature pass a bonding proposal to fund the "Green Lands, Blue Waters" initiative proposed by the University of Minnesota. This initiative is working to improve water quality, wildlife habit and human health by promoting agricultural systems based on perennial crops such as grass and hay which significantly reduce soil erosion and chemical runoff. With a focus on non-regulatory incentives that "keep working lands working," raising livestock on pasture is an important feature of the program.

2) The Minnesota Legislature pass a bonding proposal to fund the purchase of multi-year easements on farmland to grow perennial crops such as pasture and hay. Well-managed perennial systems, including livestock that is raised on pasture, reduce erosion, protect water quality and enhance wildlife habitat. This program would be similar to the Minnesota Conservation Reserve Enhancement Program, but instead of idling farmland would operate with the philosophy of "keeping working lands working."

Appendix G—Promoting More Livestock—*continued...*

3) The Minnesota Legislature allow land in the Minnesota Conservation Reserve Enhancement Program to be used for grazing livestock as long as there is a state approved grazing plan that protects the environment and wildlife habitat.

4) The Minnesota Legislature restore citizens' ability to petition for environmental review of proposed large feedlots. This long standing right, which has protected the rural environment, was stripped in the 2003 Legislative session.

IV. Creating Local Food Systems That Benefit Farmers, Consumers & Rural Communities

Minnesota must proactively meet the growing consumer demand for food that is family-farm raised, locally grown and identity-preserved, using organic, grass-based, deep-straw and other ecologically sound farming systems. Failing to do so will put Minnesota farmers at a major competitive disadvantage in meeting the growing demand for healthy and locally grown food.

The Citizen Task Force Recommends:

1) The Legislature provide funding for community-based processing, handling and distribution systems for locally produced food from sustainable and organic family farms.

2) The Legislature restore \$200,000 in funding for the Minnesota Institute for Sustainable Agriculture (MISA) Information Exchange program.

3) The University of Minnesota's Alternative Swine Program be extended and expanded to include dairy and other livestock systems. The Minnesota Legislature must provide \$150,000 per year to do this.

4) The Minnesota Legislature provide \$200,000 in funds for the Demonstration Grant Program in the Energy and Sustainable Agriculture Division of the Minnesota Department of Agriculture.

V. Protecting Rural Democracy

Strong local communities depend on strong local control. Therefore, local governments should maintain the right to put in place and enforce local planning and zoning ordinances stricter than state minimum standards that protect the health and well being of their communities from potentially harmful development.

The Citizen Task Force Recommends:

1) The Legislature uphold the current rights of townships and counties to enact zoning ordinances to regulate development in their communities, including large feedlots.

V. Appendix H

Animal Unit Definitions & Information About the Size of Livestock Operations in Minnesota

Animal Unit Definitions¹⁷

(From MPCA 7020 Rules)

Dairy cow (over 1,000 pounds)	1.4 animal unit
Beef cow	1.0 animal unit
Hogs	
-over 300 pounds	0.4 animal unit
-between 55 & 300 pounds	0.3 animal unit
-under 55 pounds	0.05 animal unit

Livestock Farms by Animal Unit Size in Minnesota¹⁸

Animal units	No. of operations	% of total
10-49 animal units	3,757	16%
50-99 animal units	6,341	26%
100-299 animal units	9,511	40%
300-499 animal units	1,743	7%
500-999 animal units	1,614	7%
Over 1,000 animal units	946	4%
	23,912	
<p>82% of livestock operations are less than 300 animal units (300 animal units = 214 dairy cows, 1,000 hogs between 55 & 300 pounds, or 300 beef cows)</p>		

Appendix H—Size of Livestock Operations in Minnesota—*continued...*

Types of livestock operation by size in Minnesota¹⁹

Hog Farms (2004)					
1-99 head	100-499 head	500-999 head	1,000-1,999 head	2,000-4,999 head	5,000+ head
1,300	1,300	780	600	730	290
26%	26%	16%	12%	15%	6%
<i>68% of hog farms are less than 1,000 head</i>					

Types of livestock operation by size in Minnesota²⁰

Dairy Farms (2004)					
1-29 cows	30-49 cows	50-99 cows	100-199 cows	200-499 cows	500+ cows
670	2,000	2,500	640	230	60
11%	33%	41%	10%	4%	1%
<i>95% of dairy farms are less than 200 cows</i>					

Types of livestock operation by size in Minnesota²¹

Farms with beef cows (2004)			
1-49 head	50-99 head	100-499 head	500+ head
12,700	1,700	780	20
84%	11%	5%	.1%
<i>95% of beef cow operations are less than 100 head</i>			

V. Appendix I

List of Studies & Reports Detailing Harm of Large-Scale Livestock Operations to Rural Communities, the Environment & Family Farms

Human Health

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Environmental Pollution

- ☐ Crawford, Nicholas. *Leakage and Sinkhole Collapses Under Hog Waste Lagoons in Kentucky*, Center for Cave and Karst Studies, Department of Geography & Geology, Western Kentucky University, Aug. 5, 1998
- ☐ Jackson, Laura L. (Department of Biology, University of Northern Iowa); Keeney, Dennis R. (Leopold Center for Sustainable Agriculture). *Analysis of Regional Manure Management Plans to Assess the Potential for Nonpoint Source Pollution in North-Central Iowa: Nutrient Loading and*

Appendix I—Harm of Large-Scale Livestock Operations —*continued...*

Policy Implications, April 1999

- ❑ Kenney, D., R. Levins, J. Schimmel. 2002. Phosphorus Balance in Minnesota Feedlot Permitting. In Generic Environmental Impact Statement on Animal Agriculture. Minnesota Environmental Quality Board. www.mnplan.state.mn.us/eqb/geis/TWP_Economic.pdf.
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- ❑ Wright, Andrew G. “A Foul Mess: EPA takes aim at factory farms, the No. 1 water polluter in the U.S.,” *Engineering News-Record*, Oct. 4, 1999, p. 26

Economic Health

- ❑ Bartlett, Donald L. & James B. Steele. “The Empire of the Pigs: A Little-Known Company is a Master at Milking Governments for Welfare,” *Time*, Nov. 30, 1998, pages 52-64; website: www.time.com
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- ❑ Gomez, Miguel and L. Zhang. “Impacts of Concentration in Hog Production on Economic Growth in Rural Illinois: An Economic Analysis.” April 2000. Illinois State University, Normal, Ill. www.factoryfarm.org/docs/Gomez.pdf
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