

received
2/19/12 MR Hoover

LAND USE AMENDMENTS 2020

NOTICE OF FORMAL PROCEEDINGS TO CHANGE THE MILLARD COUNTY LAND USE CODE TO PROHIBIT SWINE CAFOs.

Whereas: “The government of the State of Utah was founded pursuant to the people's organic authority to govern themselves.”¹

Whereas: “In conformity with this principle, the Utah Constitution vests the people's sovereign legislative power in both (1) a representative legislature and (2) the people of the State, in whom all political power is inherent.”²

Whereas: “Article VI, Section 1 of the Utah Constitution, the people exercise their direct legislative power through initiatives and referenda... Article VI, Section 1 is not merely a grant of the right to directly legislate, but reserves and guarantees the initiative power to the people...”³

Whereas: This public power of initiative “is a constitutionally guaranteed right that ‘form[s] an implicit part of the life of a free citizen in a free society.’”⁴

Whereas: “The people [are] a legislative body coequal in power and with superior advantages to the Legislature...”⁵

Whereas: The Utah Supreme Court has held “(w)e express no opinion on the wisdom, worthiness, or wording of the initiative at issue. It is for the voters ... to determine if and how the measure is to be regarded. Imposing additional steps ... has both costs and benefits, the value of which, and nature of which, are left to the consideration of the voters, as with all initiatives proposed as direct legislation by the people. Highly participatory democracy is at times inefficient, expensive, and time consuming. However, the initiative power, as with all other powers identified

¹Gallivan v Walker, SC 2002

² Utah Const. Art. VI, § 1(1), and Gallivan v Walker, SC 2002

³ Gallivan v Walker, SC 2002

⁴ Public Employees' Association, 610 P.2d at 1273

⁵ Gallivan v Walker, SC 2002

in our constitution, is a creature of the people. It is for the people to determine when, if, and how it is to be modified. That much is clear.”⁶

Whereas: The purpose land use regulation is “...to implement the goals and policies of the Millard County General Plan...(the Millard County Code)... contains standards, provisions and requirements intended to protect the health, safety, and welfare of the citizens... of Millard County.”⁷

Whereas: Millard County Code requires “consistency and conformity to the (Millard County) General Plan.”⁸

Whereas: Studies in Utah have documented “the negative health effects on CAFO the workers to be well established... (including but not limited to) changes in immune system function (and) respiratory illness...(and that) private wells ...have experienced some contamination with both total coliform and fecal coliform...”⁹

Whereas: The potential health effects of concentrated animal feeding operations (CAFOs) are so substantial that the American Public Health Association called for Precautionary Moratorium on new CAFOs noting that “increased numbers of CAFOs in an area often are associated with declines in local economic and social indicators (e.g., business purchases, infrastructure, property values, population, social cohesion), which undermine the socioeconomic and social foundations of community health...”

Whereas: In 2018 the National Association of County and City Health Officials advises federal, state, and local governments and related agencies to continue research initiatives and enact legislation to manage the human and environmental health risks of CAFOs.

Whereas: High-risk health and environmental concerns with this proposed CAFO location, manure decomposes into hydrogen sulfide, ammonia, and numerous other toxic gases.

Whereas: Serious health risks can be created from the dispersal of emissions containing dusts, particulates, drugs such as antibiotics, volatile organic compounds, fungi, viruses, bacteria, and antibiotic resistant bacteria including

⁶ Sevier Power v. Hansen, SC 2008

⁷ Millard County Code, Section 10-1-4.

⁸ Millard County Ordinance, Sections 12-12-04 and 12-4-2012.

⁹ Southwest Utah Board of Health, Circle Four Farms, Milford, Utah, 2001.

Methicillin-resistant *Staphylococcus aureus* (MRSA) from the barns and the various manure disposal sites.

Whereas: Vulnerable subgroups of residents including children, the elderly, those with pre-existing conditions such as asthma, chronic obstructive lung disease (COPD), allergies, and compromised immunity are continuously exposed to hydrogen sulfide, ammonia, other toxic airway irritants, volatile organic compounds, and inflammatory and infectious Bioaerosols. While workers are exposed for a portion of their day, community residents are exposed 365 days a year and currently have no safety net under existing regulations.

Whereas: Waste spills, leaks, and over application from CAFOs routinely occur can contain animal-specific and zoonotic (transferable between animals and humans) pathogens, including but not limited to Hepatitis E, Salmonella, *Escherichia coli* (E coli), *Campylobacter*, *Leptospira* spp., *Listeria monocytogenes*, vancomycin-resistant enterococci (VRE), MRSA, protozoa such as *Cryptosporidium parvum* and *Giardia lamblia*, heavy metals and disinfectants. These pollutants pose a threat to human and animal health if improperly managed and can threaten surface waters and private wells in the community.

Whereas: According to peer reviewed research, home values in close proximity to CAFOs can decline 3.1% to 88% loss depending on multiple factors. Additionally, municipalities routinely end up paying for increased upkeep and damage repair to local roads due to constant heavy semi-truck traffic needed to support the construction and operation of CAFOs. Large multi-year studies of CAFOs demonstrate these negative impacts, including local health impacts and community economic development and well-being.

Whereas: Counties are routinely burdened with repair of local infrastructure such as damaged local roads due to increased CAFO heavy semi-truck traffic and will place prohibitive financial burdens upon Millard County's budget during construction and in the future.

Whereas: Protecting the health, existing quality of life, use of property, and existing environment of the farmers and residents of Millard County is an essential priority.

Whereas: Swine CAFO's are not a historical use; do not conform to the Millard County General Plan; en danger the health and safety of workers and surrounding

community; pollute, impair and degrade the environmental quality from nuisance odors, emissions, groundwater and surface water contamination, and substantially impair the adjoining property owners' and community's use and enjoyment of both public and private property.

Whereas: Millard County inaction may unwittingly result in the violation of the 5th Amendment to the U.S. Constitution by taking private property rights for the exclusive benefit of Swine CAFO's without compensation."¹⁰

Whereas: Millard County has failed to protect private property rights, failed to adequately protect public health and safety, and approved multiple Swine CAFOs. The citizens of Millard County hereby notify the Millard County Commission of our intent to modify the land use regulations of Millard County through public initiative.

LAND USE AMENDMENTS 2020

The Millard County Code shall be amended as follows:

1. *Swine Concentrated Animal Feeding Operations (CAFO) are prohibited in Millard County.*
2. *CAFO as defined in this initiative; Any swine CAFO as defined by US Federal statute, regulation, or the Millard County Code whichever is more restrictive.*
3. *Swine Confined Concentrated Animal Feeding Operations (CCAFO) are prohibited in Millard County.*
4. *The Millard County General Plan shall be amended to prohibit Swine CAFO's, CCAFO's*
5. *County Commission may not repeal or make moot a successful citizen initiative.*
 - A. *A County Commission or other legislative or administrative body may not repeal the results of a citizen initiative.*

¹⁰ The essence of a private nuisance is an unreasonable interference with the comfortable use and enjoyment of real property, such as vibration, blasting, destruction of crops, flooding, pollution, and disturbance of the comfort of the plaintiff, as by unpleasant odors, smoke, or dust..." [SC of Iowa No. 96-2276 1998]

- B. *A County Commission or other legislative or administrative body may not substantially amend a citizen's initiative to make the legislative intent moot, void, and/or conflict with any other part of a land use ordinance.*
- C. *Any resolution, ordinance, or administrative rule that is adopted by the local legislative or administrative body in violation of this Chapter must be put to a vote of the people and approved by a simple majority vote to take effect.*
- D. *The County Attorney shall review all resolutions, ordinances, administrative rules to determine if they conflict with this chapter, and the County Attorney determines that they are, he/she shall direct the County Clerk to prepare a ballot question.*
- E. *If directed by the County Attorney the County Clerk shall prepare the ballot measure.*
- F. *Any person may challenge a failure to enforce these provisions in District Court.*

References

- Applying an environmental public health lens to the industrialization of food animal production in ten low- and middle-income countries (2019), <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-019-0479-5>.
- Iowa Concentrated Feeding Operation Air Quality Study, https://www.oregonlegislature.gov/citizen_engagement/Reports/2011_DEQ_Dairy%20Air%20Quality%20Task%20Force%20Appendix%20L%20Iowa%20CAFO%20study.pdf.
- Longitudinal study of the contamination of air and of soil surfaces in the vicinity of pig barns by livestock-associated methicillin-resistant *Staphylococcus aureus*, <https://www.ncbi.nlm.nih.gov/pubmed/22685139/>.
- American Public Health Association statement, <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/24/11/17/precautionary-moratorium-on-new-concentrated-animal-feed-operations>.
- NACCHO The National Association of County and City Health Officials, <https://www.naccho.org/uploads/downloadable-resources/18-06-Concentrated-Animal-Feeding-Operations.pdf>.
- Evaluation of Bioaerosols Emitted from Swine Confinement Operations, <http://www.eng.utoledo.edu/~akumar/apsymposium/OS-02-18.pdf>
- Contaminants in Livestock and Poultry Manure, Implications for Water Quality, <https://fyi.extension.wisc.edu/manureirrigation/files/2013/04/US-EPA-Office-of-Water-2013-Literature-review-of-contaminants-in-livestock-and-poultry-manure-and-implications-for-water-quality.pdf>.
- Concentrated animal feeding operations and proximate property values. The Appraisal Journal LXIX(3):301-6., Kilpatrick JA. 2001., <https://www.adeq.state.ar.us/regsdrafts/3rdparty/reg05/14-002->

r/commentsregs_5_and_6_comments_of_socially_responsible_agricultural_project
_(attachment_11)_7-1-14.pdf

Animal Operations and Residential Property Values, by John A. Kilpatrick, PhD,
MAI. Property values can decline 3.1% to 88% loss depending on multiple factors,
[http://www.greenfieldadvisors.com/wp-
content/uploads/2015/08/animaloperationsJKwinter2015.pdf](http://www.greenfieldadvisors.com/wp-content/uploads/2015/08/animaloperationsJKwinter2015.pdf).

Report: The Hidden Costs of CAFOs,
https://www.organicconsumers.org/sites/default/files/hidden_costs_of_cafos.pdf.

The community effects of industrialized farming: Social science research and
challenges to corporate farming laws,
<https://link.springer.com/article/10.1007/s10460-007-9107-8>.