

Errata and Addenda

for the *Swine Farm Zoning Notebook*

The following errors and additions for the sections included on this sheet should be noted:

Volumes I & II

Cover

Correction: The last name of the co-editor Pamela “Kavel” should be spelled Kaval.

Table of Contents

Insert Editor’s Note: The following editor’s note after each volume heading should be inserted:
“Editor’s Note: Many of the articles, chapters, and sections of statutes and regulations included in this notebook are not complete. Only select portions may be included for the purposes of this notebook. For the complete version of a state’s laws or regulations go to the official printed version of that state’s laws or regulations”.

Page 126: The "Statute of Limitations for Challenging Zoning Ordinance or Amendment to a Zoning Ordinance for Counties and Municipalities" should be noted as page 127.

Page 385: "Northhampton County" should be noted as page 386.

Insert Heading: Under the North Carolina Cases section “Summaries: North Carolina Court Cases” should be inserted and noted as page 464-1.

Page 506: Update: The citation for the case *Parker v. Barefoot* should now read "Parker v. Barefoot, 130 N.C. App. 18, 502 S.E.2d 42 (1998), *reversed*, No. 408A98 (N.C. filed October 8, 1999)"

Page 566: "Right-to-Farm: Animal Feeding Operations" should be noted as page 565.

Insert Heading: Under the Iowa Cases section “Summaries: Iowa Cases” should be inserted and noted as page 581-1.

Errata and Addenda

for the *Swine Farm Zoning Notebook*

Volume I

Feedback Form

Feedback Form: "Extension Publication Feedback" form should be replaced with the attached "ARE Publication Feedback" form.

Acknowledgements

Acknowledgements: Within the description of funding sources for this notebook, "Renewable Resource Extension Act" should be replaced by "**the USDA Community and Rural Development Fund**".

North Carolina County Ordinances and Related Materials

Page 181: Pages 181 to 182 should be replaced with attached revised pages. Text on these pages has been rewritten for clarification purposes regarding the differences between ordinances and rules.

Volume II

North Carolina Court Cases

Page 465: Before page 465, three missing pages attached to this errata and addenda sheet should be inserted. They are numbered 464-1 through 464-3 and contain summaries and citations for all of the cases included in this section of the notebook. The first of these three pages is titled "North Carolina Court Cases".

Iowa Court Cases

Page 582: Before page 582, one missing page that is attached to this errata and addenda sheet should be inserted. This page, titled "Iowa Court Cases", is numbered 581-1 and contains the summary and citation for the case included in this section of the notebook.

URLs for Law Making Bodies, Statutes, and Regulations

Page 711: The contact number for Westlaw® should be (800) 850-9378.

Editor's Note: Listing of companies/services on this page does not imply approval or endorsement.

Errata and Addenda

for the *Swine Farm Zoning Notebook*

Volume II (cont.)

URLs for North Carolina State Courts

Page 713: The URL for LOIS® should be <http://www.pita.com>. *Editor's Note: Listing of companies/services on this page does not imply approval or endorsement.*

URLs for State Homepages/State Agencies

Page 714: Under the Georgia section of this page the URL for Regulations should be <http://www.ganet.org/dnr/rules.html>.

Page 715: Under the South Carolina section of this page the URL for Regulations, <http://water.dnr.state.sc.us/etc/rulesregs/rulesregs.html> is operable.

ARE Publication Feedback

for the *Swine Farm Zoning Notebook*

Please take the time to fill out and return this form so that we can improve this and future publications.

Circle the response below which best describes your views and knowledge about this publication.

(5=Strongly Agree 4=Agree 3=Neutral 2=Disagree 1=Strongly Disagree)

1. Publication is easy to read; the sentences are short and easy to understand.

5 4 3 2 1

2. Publication is durable and can be repeatedly used in the field.

5 4 3 2 1

3. Information appears to be factual.

5 4 3 2 1

4. Information is presented in a logical order

5 4 3 2 1

5. Publication is easy to understand; unnecessary and difficult words are avoided.

5 4 3 2 1

6. Tables of contents are informative; they help readers locate specific information.

5 4 3 2 1

7. Headings are informative; they summarize the content and help readers locate specific information.

5 4 3 2 1

8. Highlighting techniques such as underlining, bold face type, and italics emphasize important points.

5 4 3 2 1

ARE Publication Feedback

for the *Swine Farm Zoning Notebook*

9. I would recommend this publication to others.

5 4 3 2 1

10. Overall how do you rate this publication?

5 Excellent 4 Very Good 3 Okay 2 Not Too Good 1 Poor

11. How important is the information found in the publication to you?

3 Very important 2 Important 1 Not important

12. I use this publication with the following frequency:

4 Daily 3 Weekly 2 Monthly 1 Never

13. Extension clientele have noted that they have found the publication useful.

2 Yes 1 No

14. Extension clientele have requested information on how to obtain copies of this publication.

2 Yes 1 No

Please include any additional comments below and/or note information that should have been included in this notebook.

Thank you for your time and patience in filling out the following survey. Please send to the address below:

Theodore A. Feitshans
North Carolina State University
Department of Agricultural and Resource Economics
Box 8109, 2801 Founders Drive
Raleigh N.C. 27695

Summary: North Carolina County Ordinances and Related Materials

In 1998, county extension agents in all 100 counties in North Carolina were asked the following questions: (1) Are pigs produced in the county; (2) Does the county have zoning, health department rules, or county ordinances regulating intensive livestock operations (ILOs); (3) Had such regulations been proposed or planned for the near future; (4) Had the county been a party to litigation or other ILO regulation related to swine zoning. As a result, ordinances, rules, and related materials from 19 counties were collected. The information collected was updated in the summer of 1999. These counties govern ILOs in one of three ways; through zoning ordinances, health rules, or general ordinances. Two counties listed in the following materials have passed zoning ordinances regulating ILOs. Six counties have passed health rules and three have proposed health rules to regulate ILOs within their jurisdiction. Seven counties have passed some form of a general ordinance for ILOs and one county has proposed a general ILO ordinance. These "general ordinances" are either county ordinances passed by county boards of commissioners or hybrids, which are created by county boards of commissioners and county boards of health. Hybrid ordinances are usually enforced by county health departments. County governments are authorized to create and enforce zoning ordinances under N.C. GEN. STAT. §153A-320 et. seq. City governments are authorized under N.C. GEN. STAT. §160A-360 et. seq. County boards of health are authorized to create and enforce health rules under N.C. GEN. STAT. ch. 130A. General ordinance making authority for counties is authorized under N.C. GEN. STAT. §153A-121 et. seq. Cities are authorized under N.C. GEN. STAT. §160A-174 et. seq.

The applicable state statute sections noted above that authorize local governments to create and enforce these ordinances and rules may be found in the *North Carolina General Statutes and Administrative Code* section of this notebook. No comment on the validity of particular ordinances or rules is implied. Counties not listed here do not currently have any regulations governing swine farm operations contained within their jurisdiction.

Counties may not regulate swine farms for a variety of reasons including: swine farm operations currently do not exist in the county; the county government is allowing state regulation of swine farm operations to take precedence; the county is waiting to develop regulations or waiting on the state to develop further regulations during the period of the state moratorium on swine farm construction and expansion; the county is in the process of planning or approving regulations; or there is substantial opposition to developing such regulations. Health rules and zoning ordinances that are no longer in effect or that were proposed but never passed are noted as such and are included herein for reference and example purposes only. They are included to show the regulatory approaches that counties have considered. Other related materials collected from county extension agents and local government sources, such as letters and memoranda, are included for background.

Special thanks goes to all of the cooperative extension agents who responded to the 1998 and 1999 requests for information. Their time and assistance has been greatly appreciated. For more information on these ordinances, rules, and other related materials contact the county extension agent or county health department in the county of interest. Contacts for extension agents and

county health departments are available in the *Other URLs for North Carolina* section of this notebook: see the North Carolina Cooperative Extension County Extension Centers and North Carolina Counties On-line. For state laws and regulations that apply to ILOs see the *North Carolina General Statutes and Administrative Code* section. For the latest changes to N.C. law see the *North Carolina Senate and House Bills* section of this notebook or the North Carolina General Assembly's website under *URLs for Law Making Bodies, Statutes, and Regulations*.

Summary: North Carolina Court Cases

Zoning/Health Ordinances

State v. Rice, 158 N.C. 635, 74 S.E. 582 (1912)

The defendant was indicted for keeping hogs outside the corporate limits of Greensboro, within one-fourth of a mile away from those city limits. The N.C. Supreme Court upheld the indictment. It stated that city governments are authorized to make rules and regulations for the preservation of public health. City governments have jurisdiction over areas outside of their municipal limits in adjacent districts.

City of Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996)

The City of Roanoke Rapids challenged the statutory authority of the Halifax County Board of Health to create a county health rule governing smoking. The Court of Appeals held that the Board of Health did not have the statutory authority to issue a rule where factors other than health were a basis for it. For example, regulation of smoking based on the type of establishment, rather than for any health related reason, exceeds the authority of the Board. Boards of health must consider only health-related factors when issuing rules to protect the public health and welfare, as permitted by G.S. 130A-19.

Prestage Farms, Inc. v. The Board of Supervisors of Noxubee County, 23 F. Supp. 2d 663 (1998)

Plaintiffs claimed that ordinances passed by the Board of Supervisors of Chickasaw County and Noxubee County, Mississippi were preempted by regulations promulgated by the Mississippi Department of Environmental Quality and that the county ordinances violated their rights to due process. The plaintiffs sought preliminary and permanent injunctions to prevent the ordinances from being enforced. The United States District Court for the Northern District of Mississippi, Eastern Division granted the preliminary injunction. The Court held that there was a “substantial likelihood” that the plaintiffs would succeed in arguing that state regulations would preempt the siting restrictions contained in both local ordinances and that the ordinances would be determined to be in violation of plaintiff’s due process rights. **Editor’s Note: This Mississippi case is include here because it directly addresses the authority of boards of health to create health ordinances as does the preceding case; *City of Roanoke Rapids v. Peedin* 124 N.C. App. 578, 478 S.E.2d 528 (1996).**

Right-To-Farm

Baucom's Nursery Co. v. Mecklenburg Co. 62 NC App 396, 303 S.E.2d 236 (1983)

A greenhouse operation challenged a Mecklenburg County zoning ordinance based upon the bona fide farming operation exemption to county zoning. The Court of Appeals held that the greenhouse operation was a "bona fide farm," as defined by G.S. 153A-340, and thus exempt from the zoning ordinance.

Baucom's Nursery Co. v. Mecklenburg Co., 89 N.C. App. 542 366 S.E.2d 558 (1988), *disc. rev. denied*, 322 N.C. 834, 371 S.E.2d 274 (1988)

The zoning ordinance challenged in the previous case was amended during the pendency of the case. The greenhouse operation challenged the amended Mecklenburg County zoning ordinance. The owners of the operation were not allowed to bring an action against the county since the statute of limitations for doing so had expired. G.S. 153A-348 provided for a statute of limitations that barred challenges to a zoning ordinance more than nine months after its amendment or adoption. **Editor's Note: The statute of limitation for judicial challenges to zoning amendments for both counties and cities was changed to two months in 1996.**

Sedman v. Rijdes, 127 N.C. App. 700, 492 S.E.2d 620 (1997)

Neighbors filed suit against a greenhouse operation alleging that it was in violation of an Orange County Zoning Ordinance. The Court of Appeals held that the operation was an agricultural operation falling under the designation "bona fide farm" as defined by G.S. 153A-340, that it was used for farm purposes, and thus could not be subject to county zoning regulation.

Right-To-Farm (cont.)

Durham v. Britt 117 N.C. App. 250, 451 S.E.2d 1 (1994)
disc. rev. denied, 456 S.E.2d 828 (N.C. 1995)

Neighbors filed suit against the owner of a farming operation, which changed from a turkey farm to a hog farm, claiming that the operation constituted a nuisance. The owner sought an exemption from a nuisance suit under the "right-to-farm" law because his farm, while raising turkeys, had been in operation for over 25 years. The Court of Appeals held, however, that when an agricultural operation is fundamentally changed, such as a change in what is being grown or the hours of operation, it is not exempt from nuisance suits under N.C.'s "right-to-farm law," G.S. 106-701.

Nuisance

Mayes v. Tabor, 77 N.C. App. 197, 334 S.E.2d 489 (1985)

Neighbors that operated a summer camp that had been in operation about 60 years filed suit against a hog farming operation claiming the operation constituted a nuisance due to the smell and proximity of the operation to their property line. The hog farming operation had been in existence for about 15 years. The Court of Appeals held that the "right-to-farm" law does apply where the claim of nuisance was not based upon changes in the land use around the farm.

Parker v. Barefoot, 130 N.C. App. 18, 502 S.E.2d 42 (1998), *reversed*, No. 408A98 (N.C. filed October 8, 1999).

Neighbors filed suit against a hog farming operation claiming the operation constituted a nuisance, due to the smell from waste lagoons. The owners of the operation sought to use in their defense that they had used "state of the art" technology to control odors. The Court of Appeals held that "state-of-the-art" technology could not be used as a defense to a nuisance action. However, the use of "state-of-the-art" technology might be important in deciding whether an injunction is available. Based upon the reasoning of the dissent in this decision, the N.C Supreme Court reversed.

Summaries: Iowa Court Cases

Nuisance

Bormann v. Board of Supervisors in & for Kossuth County, Iowa, 584 N.W.2d 309, (Iowa S. Ct. 1998)

Neighbors challenged the approval of an Agricultural Area designation, by the County Board, claiming that the immunity from nuisance suits that would apply to the owners of the area of land so designated would result in a taking of their property. The Supreme Court of Iowa held that Iowa Code Section 352.11(1)(a), that provides immunity to owners of land designated Agricultural Areas, was unconstitutional and unenforceable, and that the owners of land designated as Agricultural Areas were not immune from nuisance suits.