

STAFF REPORT

Ordinance Amendment

Initiator: Pope County Land and Resource Management Department

Ordinance Title and History: Pope County Land Use Controls Ordinance

With the adoption of the Pope County Land Use Controls Ordinance (LUCO) by the Board of County Commissioners in December of 1999, county wide zoning and performance standards were instituted. The primary objectives of county wide zoning and land use planning is for the protection of public health, safety and welfare through limiting the degradation of sensitive environmental features, preserving valuable soil resources for agriculture purposes, providing for the housing needs of the community and ensuring the long-term sustainability of commercial and industrial development. These functions and uses work in tandem to limit disorderly development and to provide for a more stable population and tax base in Pope County.

Sections: The following sections of the LUCO are under consideration for amendment:

Section 10 Performance Standards

- Section 10.3 Agricultural Use Standards
 - Section 10.3.6 Non-Confinement Feeding Areas

Discussion: Staff has initiated the proposed amendments in compliance with the following goal as established in the 2018 Pope County Comprehensive Land Use Plan.

Land Use Compatibility

4. *Ensure that land use regulations are clear, promote greater certainty in the land development process, and are consistent with the goals of the Comprehensive Plan and the well-being of the County's residents and landowners.*
 - a. *Conduct a thorough review of the County's zoning and subdivision ordinances to identify those parts which are unclear or inconsistent with the Comprehensive Plan or other county policies and make the appropriate amendments.*



Throughout the years there have been amendments to the text of the ordinance. This proposed amendment relating to Section 10.3.6 is an effort to provide for clearer application and performance standards. In addition, staff is proposing to amend the issuance of the permit from an annual permit that is authorized by the Pope County Land & Resource Management to an Interim permit that is approved by the Board. An Interim permit can be granted for an extended time, such as five or six years. Having the permit issued in this manner will be beneficial to both the ag operator as well as the department. The current process is very time consuming for both parties and does not lend itself to market driven planning decisions, i.e., we recognize that operational decisions have to be made early in the year regarding contracts, logistics, feed purchases and land preparation. The current process, results in departmental administrative decisions that are not made until late in the season. This is due to the timeliness of application and supporting information as well as departmental work load. Therefore, if we can amend the ordinance by creating a permitting process that the operator is subject to on an intermittent-longer term basis rather than an annual basis would be a positive step in support of alternative agricultural practices.

A special meeting and public hearing were held on 14 July 2022 in regard to this proposed amendment. See DRAFT meeting minutes attached. Topics of discussion included:

- Stormwater runoff management
- Drinking water protection
- Professional consultant ethics
- Supplemental feeding field rotation
- Manure deposition correlation to organic matter build-up in soils and reduction in runoff

Applicable Statutes

Proposed ordinance changes are subject to the criteria and procedures as prescribed in Section 11.7 of the Land Use Controls Ordinance and Minnesota Statute 394 including:

- 394.24 Official Controls
- 394.25 Forms of Control
- 394.26 Public Hearing

Public Comments



**Pope County Mothers & Others Concerned for Health
P.O. Box 56
Glenwood, Minnesota 56334**

July 23, 2022

To: Pope County Planning & Zoning

Pope County Mothers & Others Concerned for Health appreciates the opportunity to comment on the proposed revisions to the Pope County Winter Feeding Ordinance (the "Ordinance").

The Ordinance was put in place to protect the waters of Pope County and for the safety of its citizens. Theoretically the winter feeding areas were to add manure over an area determined by acres and animal density. This practice was then seen as a manure management. To make sure this happens the livestock must be rotationally grazed to spread the manure over the entire surface of the acreage. Our Ordinance does not address the rotation to distribute the manure.

When 5600 head are brought into an area there should be concern for the private wells in towns without city water. Pope County's first goal should be to protect its citizens in towns with no public water and no public worker testing the water. The amount of manure produced from 5600 head of cattle is 9 times what a human produces, therefore it is like adding 50,000 people to our area. The entire operation is now as big as River View dairy in Morris. The Minnesota State Department of Health has created a Wellhead protection area for cities with public water. Pope County needs to establish its own drinking water protection area for cities lacking a public water source. Increasing the setbacks to vulnerable drinking water would be a good step in protecting citizens.

On May 19, 2014 the Minnesota Supreme Court made the following ruling: <https://mn.gov/law-library-stat/archive/ctappub/2014/opa131461-051914.pdf>
SMITH, Judge We affirm the order of respondent Commissioner of the Minnesota Pollution Control Agency (the MPCA) requiring relator, Reichman LLP Land and Cattle, LLP, to obtain a State Disposal System permit for its winter cattle lands because the lands are not exempt from such a permit under the statutory definition of pasture. We reverse the commissioner's order requiring a federal National Pollutant Discharge Elimination System permit because Reichmann's operation is not an animal feeding operation as defined under federal law. "Pope County has the right to be more restrictive in their ordinances, particularly when it is important to protect public health.

The Supreme Court ruling was to make sure the waters of the State were protected when there were 2000 head by Villard. The definition of pasture may have changed but the potential impact

of the current 5600 head operation on water has magnified. It is just common sense to protect the citizens.

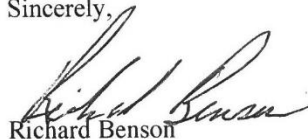
We request the following changes to the Winter Feeding Ordinance:

1. Maximum Animal units per acre reduced in an A1 area, because those areas include areas closer to cities.
2. Water sampling each spring for run-off into the Waters of the State done by Pope County.
3. Public information on the application for winter feeding published on the Land and Resource web page with a period of public comment. This makes the process more transparent for the public.
4. A 4-year permit to begin the new ordinance rather than a 6-year permit.
5. No animals in the Well Head protection area, and a new boundary established by defining a 'Pope County Well Head/Drinking Water Protection Area ' for cities with no municipal water supply.
6. Using the Geological Map to define vulnerable areas that are sensitive to pollution and allowing only 2 head per acre in those areas.
7. A separate fence to define the areas that allow only two head per acre from areas where more head per acre are allowed.

We respectfully request that Pope County make the above changes to the Winter Feeding Ordinance in order to protect the public health of people in Pope County.

Thank you.

Sincerely,



Richard Benson

President, Pope County Mothers & Others Concerned for Health

Cell 320 226-3414
Home 320 634-5502



S:\12. BOA-PAC\2022\17. July 28th\6. PAC\4. Ordinance Amendments\PAC V.A. Ordinance Amendments_Staff Report.docx

Supplemental Information

Supplemental Information Attachment 1:
DRAFT - Section 10.3.6 Non-Confinement Feeding Areas
(Land & Resource Management, July 2022)

SECTION 10 PERFORMANCE STANDARDS

10.3 AGRICULTURAL USE STANDARDS:

10.3.6 Non-Confinement Feeding Areas *(AS AMENDED 18 November 2008)*

A. Purpose:

The purpose of regulating Non-confinement Feeding Areas (NFA) is to satisfy an owner/operator's production objectives while preserving public health and safety by limiting any potential environmental impacts.

B. Defined Land Use:

A NFA is a designated area of land or group of designated areas of land in which "supplemental" backgrounding of livestock takes place. This land use must be subordinate to an established primary use such as traditional crop agriculture or pasturing. Because this **accessory** land use typically takes place during the non-cropping season (from post-harvest to pre seeding) it is also known as "winter feeding". This practice involves the locating of livestock (typically stocker or cull cows) on harvested crop or forage land, for a limited period of time, with a growth ration provided in preparation for market.

1. A NFA must not be definable as:

- a. An "animal feedlot" per Minnesota Animal Feedlot Rules Chapter 7020: Ch 7020 Rules Subp. 3. *"Animal feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. **Pastures shall not be considered animal feedlots under these parts.***
- b. An Animal Feeding Operation (AFO) per United States Environmental Protection Agency: *animals have been, are, or will be stabled or confined **and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.***

~~NFA, also referred to as "Winter Feeding Areas", are properties that foster the nontraditional agricultural practice of raising livestock in a non-confinement environment. This involves the temporary practice of supplementary feeding of livestock on harvested crop or forage land. This practice is not to be confused with pasturing as it typically is conducted in harvested cropland and continues past the traditional growing season.~~

C. Definitions

1. **Cow/calf pasture operation:** is a method of raising cattle in which a permanent herd of cows is kept by a farmer or rancher to produce calves for later sale. Cow/calf operations generally raise their stock primarily on pasture and other forms of roughage rather than grain feeds.
2. **Cull Cow:** are those cows that are no longer wanted for milk production or breeding due to poor performance or physical conditions.
3. **Stocker cow:** are those cows that are fed and maintained until they have reached a desirable weight to be sold for beef production
4. **Pasture** refers to:
 - a. areas, including winter feeding areas as part of a grazing area, where grass or other growing plants are used for grazing and where the concentration of animals allows a vegetative cover to be maintained during the growing season, except that vegetative cover is not required:
 - i. in the immediate vicinity of supplemental feeding or water devices;
 - ii. in associated corrals and chutes where livestock are gathered for the purpose of sorting, providing veterinary services, loading and unloading trucks and trailers, and other necessary activities related to good animal husbandry practices; or
 - iii. in associated livestock access lanes used to convey livestock to and from areas of the pasture; or
 - b. agricultural land:
 - i. where livestock are allowed to forage during the winter;
 - ii. that is used for cropping purposes in the growing season; and
 - iii. where the concentration of animals is such that a vegetative cover, whether of grass, growing plants, or crops, is maintained during the growing season, except in the immediate vicinity of temporary supplemental feeding or watering devices.

D. Permitted Use Requirements:

1. **Permitted by Right** provided Performance Standards in this section, specifically E.1 and E.2 are complied with:
 - a. NFAs used for typical cow/calf pasture operators (see MN 7020.0300, Subpart 18.A or subsequent legislation);
 - b. NFAs with a stocking density less than 300 head per NFA.
2. **Interim Use Permit Required:**
 - a. NFAs for cull/stocker cow operations with a stocking density of over four head per acre; or
 - b. NFAs for cull/stocker cow operations exceeding 300 head per NFA. ~~require an Administrative Interim Use Permit to be issued by the Pope County Board of Commissioners. Land & Resource Management Director.~~

E. Performance Standards:

1. ~~Non confinement Feeding Areas~~ **Zoning Districts:** NFAs are ~~permitted~~ **only permissible** in the Agricultural zoning districts (**Non-Intensive Agriculture (A-1)**), ~~and~~ **Agriculture Protection (A-2)**).

2. Setback Requirements:

- a. NFAs must meet the following setbacks:
 - i. Public Water Basins or Wetlands (identified by shoreland designation) = 1000 feet
 - ii. Public Water Watercourses (identified by shoreland designation) = 500 feet
 - iii. Karst features, wetlands, intermittent streams, tile inlets and agricultural drainage ditches = 300 foot radius
 - iv. Private water well = 200 feet
 - v. Municipal well = 1000 feet
 - vi. Residential Dwellings = 600 feet (*measured from a residential dwelling to the boundary of the NFA*)

3. Stocking Density:

- a. Stocking density will be considered based on the results of the 6-year Phosphorus Management calculation as detailed in section 5 below, to ensure phosphorus rates of all NFAs fall within the High Sensitivity screening tool in the Minnesota Rapid Phosphorus Index.
- b. The County Feedlot Officer shall provide a density recommendation to the Director. This recommendation shall be based upon physical characteristics of the site and information contained in the MMP plan.
- c. Only a low density (less than 2 cattle per acre) is allowed within any Wellhead Protection Area from any municipality.
- d. NFA's in excess of two (2) head per acre ~~is~~ are not allowed within ¼ mile of a municipal boundary, unless the municipality annually grants permission. Written permission from the municipality must be provided to the Land and Resource Management Department upon receipt of such permission.
- e. ~~Thirty (30) days prior to moving cattle to feeding sites NFAs, the producer must annually notify the Pope County Feedlot Officer.~~

4. Stormwater Management

- a. Stormwater runoff will be calculated and evaluated through the use of the Minnesota Feedlot Annualized Runoff Model (MinnFARM) as prepared by an appropriate professional for the following areas during winter use:
 - i. Holding areas;
 - ii. Travel lanes; and
 - iii. Stream crossings.
- b. Stormwater Best Management Practices (BMPs) will be employed for all areas utilized for NFAs to ensure stormwater runoff is not discharged to Waters of the State, these BMPs may include but are not limited to:
 - i. Fencing;
 - ii. Permanent vegetative buffers;
 - iii. Berming; and/or
 - iv. Ridge till, etc.

5. Nutrient Management

- a. A manure management plan (MMP) for the NFAs must be completed by a professional Agronomist utilizing the MPCA’s MMP spreadsheet or subsequent guidance documents.
- b. The following must also be prepared by a professional Agronomist and provided with the MMP:
 - i. Map of field locations & acreages;
 - ii. Stocking densities per field;
 - iii. Plan for ensuring no build-up of manure occurs;
 - iv. Manure sampling results; and
 - v. Soil sampling and reporting schedule to Land & Resource Management.
- c. The MMP must conform to Natural Resources Conservation Service Nutrient Management Technical Standards.
- d. A six (6) year Soil Phosphorus Management calculation (following the MPCA Feedlot Inspection P Worksheet or subsequent guidance) must be completed and maintained on a yearly basis by a professional Agronomist, as sampling results are obtained and/or cropping rotations are altered. The results of these calculations must be reported to the Land & Resource Management department on an annual basis.
- e. The Pope County Geological Atlas will be used as a general guide to decipher sensitivity to pollution of the buried aquifers and other related concerns. Sites that are located in areas deemed “High” and “Very High” for aquifer pollution must demonstrate environmental protection with a MMP.
- f. All provisions of the Pope County Land Use **Controls Ordinance** and all of **MN Rules Chapter 7020** dealing with deposition of manure, ~~and all of MN Rules Chapter 7020~~ must be satisfied. ~~Specific additional restrictions are as follows:~~
- g. ~~Only a low density (less than 2 cattle per acre) is allowed within any Wellhead Protection Area from any municipality.~~
- h. ~~NFAs must be 200 feet from any residential well.~~
- i. ~~NFA’s in excess of two (2) head per acre is~~ **are** ~~not allowed within ¼ mile of a municipal boundary, unless the municipality annually grants permission. **Written permission from the municipality must be provided to the Land and Resource Management Department upon receipt of such permission.**~~

F. Compliance & Enforcement

1. Land & Resource Management staff will verify compliance with performance standards through the use of:
 - a. Site visits;
 - b. Collecting photographic evidence including through the use of Unmanned Aerial Vehicles (UAVs) (drones) and other technologies as available; and
 - c. Owner/operator testimony/reporting.

2. An applicator of manure shall be deemed to be in violation of this section if the application produces:
 - a. Runoff that exceeds the nutrient level limits of the waters of the State of Minnesota; and/or
 - b. If soil testing reveals the presence of nutrients which exceed State standards.
3. Failing to adhere to the performance standards listed in this section would be deemed an enforceable ~~Any~~ violations of this ordinance and will be enforceable under Pope County Land Use Controls Ordinance 11.8. Such enforceable violations would include:
 - a. If the owner/operator fails to secure a county issued permit for the nontraditional agricultural practice; and/or
 - b. If the owner/operator fails to notify Pope County Land & Resource Management staff in advance of stocking activities.

G. IUP Application Requirements:

The following requirements are for NFA Interim Use Permit applications:

1. NFA Operations Plan providing the following details:
 - a. Identification of herd, size of herd and date of arrival;
 - b. Steps involved in the processing and sorting of cattle upon arrival including length of time kept in holding area and dates of dispersal to NFAs;
 - c. Management/rotation plan of supplemental feeding locations and watering facilities within the NFAs;
 - d. Provide actual stocking density of each NFA and report to Land and Resource Management on a monthly basis throughout the NFA period; and
 - e. Indicate steps for sorting and loading out for market.
2. Must submit a stormwater management plan per section 10.3.6.E.4.
3. Must submit a nutrient management plan per section 10.3.6.E.5.

H. Administrative Permit Requirements:

NFAs with a density of over four head per acre and/or exceeding 300 head require an Administrative Permit to be issued by the Pope County Land & Resource Management Director. No permit shall be issued unless the applicant files a Manure Management Plan (MMP) that conforms to Natural Resources Conservation Service standards to help determine the density of livestock that will be allowed for the proposed location. The County Feedlot Officer is expressly authorized to limit densities for NFAs requiring a permit. This decision shall be based upon physical characteristics of the site, information contained in the MMP plan, and recommendations of the site team.

1. A site team shall review each NFA Administrative Permit application. The site team shall consist of representation from Land & Resource Management (County Feedlot Officer), Natural Resources Conservation Service and the Minnesota Pollution Control Agency.
2. The NFA Manure Management Plan must articulate a plan to apply manure at agronomic rates. MN Rules Chapter 7020 (7020 references the NRCS Nutrient Management Technical Standard) will serve as the basis for requirements that shall be followed unless more stringent standards are adopted in this ordinance. The Pope County Geological Atlas will be used as a general guide to decipher sensitivity to pollution of the buried aquifers and other related concerns. Sites that are located in areas deemed “High” and “Very High” for aquifer pollution must demonstrate environmental protection with a MMP.
3. For the purposes of this ordinance, the practice of using Non-confinement Feeding Areas is, in itself, a land application of manure. Nothing in this part shall be construed as exempting the practice from the limits on land application of Manure set forth elsewhere in the Pope County Land Use Ordinance.
4. The Administrative Permit is a temporary permit that must be renewed annually. This is necessary to reflect changes to the MMP and general operation. Special conditions may be attached to the permit by the site team as deemed necessary.
5. An applicator of manure shall be deemed to be in violation of this section if the application produces runoff that exceeds the nutrient level limits of the waters of the State of Minnesota, or if soil testing reveals the presence of nutrients which exceed State standards. Any violations of this ordinance will be enforceable under Pope County Land Use Controls Ordinance 11.8.



Supplemental Information Attachment 2:

*Pope County Planning Advisory Commission DRAFT Meeting Minutes
(L&RM Staff, 14 July 2022)*

MEETING MINUTES
POPE COUNTY PLANNING ADVISORY COMMISSION
Thursday July 14, 2022

The Planning Advisory Commission convened in special session on Thursday, July 14, 2022 at the Pope County Courthouse, 1st floor Community Room.

Members Present: John Messenger (Chair), Mark Halls, Roger Isdahl, Ivie Cooley, Ted Kannegiesser, and Paul Gerde (County Commissioner)

Other Officials Present: David Green, Jessica Hill and Barry Bouwman (Land & Resource Management staff)

The meeting was called to order by Chairman Messenger at 6:02 p.m. with the following items being addressed by the chair:

Approval of Agenda

There were no additions or corrections to the agenda. A motion to accept the agenda was offered by Gerde and seconded by Kannegiesser

Ordinance Amendment: Section 10.3.6 Non-Confinement Feeding Areas

Director Green presented a proposed amendment to the text of section 10.3.6 of the zoning ordinance. The proposed amendment would affect permitting duration, application submittals and performance standards.

Public Hearing: Proposed amendment to Section 10.3.6 Non-Confinement Feeding Areas

At 6:15 p.m., the Chairman Messenger declares the Public Hearing to be open. Richard Benson makes a comment defending the original definition of Non-Confined Feeding Area and also makes a point regarding timeliness of availability of the draft text language. Randy Mitteness states that the definition of cow calf operator should include "bred heifers" as well. Dan Jenniges states that a longer-term permit, like a five-year permit, would be beneficial to younger farmer if they needed a loan for a tractor or spreader farmer. It would be better to show the bank that you have a multi-year permit issued from the county for your proposed operation. Dan Jenniges makes a statement regarding the importance of cover crops and manure and how they relate to good soil health and organic matter. He also mentions that his property, where he does have animal livestock in the winters, had suffered little to no erosion during the spring storms. He attributes this to the way in which soil is managed on the property including the use of livestock in the winter time. When the question is raised about potential impacts of stormwater runoff, Barry Bouwman responds that part of a site evaluation is slope conditions and having erosion control buffers in place. Allen Cooley raises question of whom are the private consultants to be used for preparing of the required submittals and questions the reliability of information and data that is to be provided by private consultants who work on behalf of the operator. Barry Bouwman identifies some of the Consultants and companies by name including Centrol Crop

Consulting. Mike Billehus volunteers that he uses/hires Centrol for his cropping and nutrient management needs. He relies on their information and trusts them. Ivie Cooley makes comments regarding porous soils and the potential for nitrate and phosphorus contamination of drinking water resources, particularly from shallow wells. Cooley states that small towns should have the same level of drinking water protection as those communities that have established well head protection areas. With no more comment received, Chairman Messenger closes the Public Hearing portion of the meeting at 6:36 p.m.

Discussion: Cooley (Ivie), makes a comment regarding frozen feeders and the hauling and spreading of manure onsite. Halls states that on his operation that they are always moving the feeders and feeding on fresh ground so that manure is deposited across the entire site. He likes to use manure for fertilizer stating that it is safer and good for soil health. Without good soil health it is difficult to work with the land. Kannegiesser states that he has noticed that some farmers can make apparatuses that can drag feeders around in the winter. Regarding the practice of winter time feeding of livestock, Isdahl states that it all comes down to proper management. Cooley points out that the original committee that worked on the NFA ordinance recommended a setback of ½ mile from city limits but that the adopted version resulted in only a ¼ mile setback. Cooley stated her concern for citizens that live in town and the impact of winter feeding activities on them. Cooley asks for display of Pope County Geologic Atlas and states that it should be used for permitting decision and that she doesn't feel that it has so far. She points out the areas indicated on the map that are associated with medium to high risk for pollution to the shallow aquifer. These are areas where the soils are very porous. Halls mentions that animal agriculture and the deposition of manure helps to build the soil content in these areas. Otherwise, more chemicals are applied over these porous soils in order to grow crops. Kannegiesser comments about the number of worms witnessed on a field that has good soil health. Dan Jenniges follows up with comments about worms and other bugs in the ground that make for good soil health. He mentions a statistic relative to predator/prey ratio. There is discussion regarding when this issue may be acted upon. Director Green states that it could be acted upon at any subsequent PAC meeting subject to notification. He states that it is a notified agenda item for the upcoming July 28th regular meeting of the PAC.

Adjournment 7:10 p.m. Chairman Messenger seeks motion to adjourn the Planning Advisory Commission meeting. Motion to adjourn is offered by Gerde with a second by Kannegiesser. Motion carried with no dissenting votes noted.

Respectfully submitted,

David Green/Director
Pope County Land & Resource Management