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Farmer-Nonfarmer Conflicts in the Urban Fringe: Will Right-to-Farm Help?

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Turnaround migration and leapfrog development have juxtaposed new kinds of neighbors near farms and altered the composition of many rural communities (*1, 4, 16*). Exurbanites moving to the countryside are often seeking a more bucolic environment. Unfortunately, the Currier and Ives images of rural tranquility among many nonfarmers do not include some of the less appealing aspects of modern agricultural practices (*2, 13, 14*).

A land use conflict is "simply any dispute or harm which results when one person interferes with the way another person wants to use his land" (*24*). Nonfarmers clash with farmers over a variety of issues, such as machinery noise, aerial spraying, animal odors, dust, and the recreational use of farmers' fields. Resolution of such conflicts can vary from private negotiation between neighbors to formal litigation. Nonfarmers also sometimes try to restrict or eliminate certain kinds of agricultural activities, such as animal husbandry, by changing local ordinances or zoning (*6, 9, 11, 12, 21*).

The most direct and final effect of urbanization on agriculture is the conversion of land from rural to urban uses. Prior to actual land conversion, however, there are transitional consequences of the development process, or to use Berry's term, "indirect effects of urbanization" (*2*). These include the loss of critical mass; the impermanence syndrome; spillover effects, such as land use conflicts and vandalism; and various forms of land speculation (*13, 15, 16, 17, 19, 22*).

Although indirect effects are often assumed to have a major contributory role in the decline of agriculture near cities, relatively little is known about

their dynamics, especially regarding agricultural land use conflicts. Available information tends to be anecdotal and often does little more than list the types of conflicts that occur (*2, 25*). Little is known about conflict frequency, the types of farms involved, their effects, and how they are resolved.

This lack of information makes it difficult to alleviate the adverse effects of disputes. However, despite a dearth of data, 47 states since 1979 have adopted legislation designed to mitigate the effects of agricultural land use conflicts (*5, 9, 21*). These statutes have become known collectively as "right-to-farm laws." Relatively new and untested, the effectiveness and implications of right-to-farm laws are largely unknown (*5, 25*).

Background on Right-to-Farm

The two concepts, right-to-farm and farmland preservation, are frequently linked. Both focus on land use and preserving agriculture. However, there are some key differences. First, national concern about declining amounts of agricultural land is more longstanding, dating back to the 1960s, when some states began to develop policies to preserve farmland (*2, 5, 13*). Most right-to-farm laws are less than seven years old (*9*). Another major difference is that farmland preservation policies focus almost exclusively on *land,* whereas right-to-farm policies focus on helping maintain *farmers* on that land. That is, the right to farm developed to address disputes between people engaged in different land uses, to mitigate difficulties, and to help protect farmers' "rights" to continue activities necessary to the farm operation (*5, 6*).

Although right-to-farm laws vary across the nation, almost all seem designed to bolster the legitimacy of agricultural concerns (in general), better defend farmers' right-to-farm without undue outside interference, and help diminish or resolve public and private land use conflicts.

Most right-to-farm statutes have the following characteristics. First, a pro-agriculture sentiment is articulated. Second, there is a component that tries to limit or proscribe certain kinds of litigation involving agricultural operations or calls for a mediation option to try to resolve conflicts without litigation. Third, most right-to-farm laws implicitly or explicitly call for an assessment of the farming practices in dispute to ascertain the defensibility of the case. Lastly, many link right-to-farm protection to a farmer's participation in a farmland preservation program. As such, right-to-farm becomes an incentive for farmers to join such programs (*5, 7, 15*).

Although right-to-farm legislation is recent, certain basic trends are

discernable. First, while in the broader sense the notion of right to farm originally referred to relief from all kinds of undue interference (*25*) and in the narrower sense referred to land use conflicts (*5*), in practice most legal interpretations have focused on nuisance issues. This is partly because "the essence of right-to-farm laws is a modification of the common law doctrine of nuisance" (*9*). Several authors discuss the legal background and implications of nuisance law, prior and reasonable use, and other aspects of relevant court cases (*6, 7, 8, 9, 10, 26*). The goal here is not a legal evaluation. The relevant point is the narrowing focus of right-to-farm on nuisance issues.

Second, a majority of the above-cited literature is written by attorneys and not surprisingly focuses almost exclusively on litigation. However, an original impetus for right-to-farm was an attempt to reduce the adverse effects of disputes. Legal discussions focus attention on the costs of litigation but tend to neglect other kinds of adverse effects of conflicts, such as ill will between neighbors, changed production decisions, or the impermanence syndrome. In addition, little attention had been paid to the potential of alternative methods to resolve disputes or other routes for mitigating land use conflicts.

The New Jersey Experience

New Jersey, the most densely populated and highly urbanized state in the nation, serves as an excellent example of a state trying to cope with both the direct and indirect effects of urbanization on agriculture (*24*). Sandwiched between the two major metropolitan centers of New York and Philadelphia, New Jersey's population growth was above the national average in the 1940s, 1950s, and 1960s, and its population has been redistributed into more rural areas over the past two decades (*19, 23*). The resultant leapfrog development pattern has had significant spillover effects on nearby agriculture (*3, 15, 19*).[1]

Between 1945 and 1974 New Jersey lost more than two-thirds of its farms, with the total number declining from 26,226 to 7,409. Concern about the loss of farmland has been on the state policy agenda since the early 1960s, and New Jersey was one of the first states to adopt farmland assessment (thereby lowering taxes on farmland) to counter land conversion. The subsequent two decades saw increased attention to retaining agriculture by improving land use planning and passage in 1983 of the Agri-

[1]Personal communication with Rober Bruch, 1985.

culture Retention and Development Act, which created New Jersey's farmland preservation program. This law also mandated the creation of county agricultural development boards, coordinated by a new state-level committee, to carry out farmland preservation activities.

In 1983 the New Jersey legislature also adopted the Right to Farm Act, designed to lessen the impact of land use conflicts by mandating mediation as an alternative to litigation and to encourage enrollment in farmland preservation programs by offering right-to-farm protection as an incentive (*6, 7, 14*).

The New Jersey law, although somewhat ambiguously worded, does show the four basic right-to-farm characteristics previously described. First, it expresses strong support for the state policy of agricultural retention and development. Second, the statute tries to limit the effectiveness of litigation, specifically nuisance actions, against farm operations. At the same time, the law also mandates negotiation of disputes by the newly formed county agricultural development boards. Third, the law calls for an evaluation of the farming practices in dispute to ascertain that the farmer is using approved management practices. The fourth aspect is that farmers who are enrolled in farmland preservation programs would receive more right-to-farm protection than farmers who are not.

The latter aspect works as follows. Farmers in an official farmland preservation program who were evaluated to be using approved management practices would benefit from an irrebuttable presumption that the operation did not constitute a nuisance. Farmers not enrolled in preservation programs but evaluated as using approved management practices would benefit from rebuttable presumption that the operation did not constitute a nuisance. These legal phrases appear to try to redefine what a nuisance could be in a court of law. However, the farmer in the preservation program receives a stronger, that is, irrebuttable, presumption of innocence than the farmer not in a program, whose presumption is rebuttable and, therefore, still debatable. The law has not yet been tested in litigation, so its effectiveness in providing this right-to-farm protection cannot yet be evaluated (*7, 15, 18*). The relevant points here are that a distinction is made between the reward offered to farmers in or out of preservation programs and that the right-to-farm protection is actually activated by litigation.

Research Findings

Our survey questionnaire on the regulatory environment for New Jersey agriculture, mailed to approximately one-fourth (2,000) of all New Jersey

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farm households and returned by 66 percent, included a series of questions focused on right-to-farm and land use conflict issues. We were especially interested in the kinds of land use conflicts reported, the types of farms experiencing them, and the ways farmers had resolved them. In addition, we also asked a variety of questions about effects, including psychological costs and occupational satisfaction, to ascertain a wider sense of the impact of these indirect effects of urbanization.

We suspected that the dynamics of agricultural land use conflicts were probably more complicated than one might assume from the central concerns of the right-to-farm law. Our preliminary research led us to formulate the following three propositions. First, we thought it highly likely that the types of land use conflicts farmers actually experienced included more than just nuisance issues. Second, we suspected that different kinds of farmers, depending particularly upon enterprise and size, would have different kinds of concerns. Lastly, it seemed probable that relatively few disputes reached litigation, so that it was important to know how disputes were actually being resolved.

The analysis largely supported these propositions (*7, 15, 18*). Our research showed that New Jersey farmers are concerned about three main kinds of local-level land use conflicts: (1) nuisance issues, (2) municipal ordinances, and (3) trespass and vandalism. Nuisance issues usually involve complaints or actions about effects of agricultural activities, such as noise, odors, or dust. Municipal ordinances affecting agricultural activities include those pertaining to livestock, roadside marketing, and other zoning ordinances. The majority of problems relate to ordinances that restrict or prohibit certain kinds of agricultural activities (*11, 15*). Trespass and vandalism encompasses a wide range of problematic activities from simple theft to damage to agricultural machinery (*3, 15*).

Based on the percentage of farmers reporting adverse effects, trespass and vandalism was the number one concern of the surveyed farmers; 82 percent stated that they had experienced negative effects from it. The second most frequently cited problem was nuisance issues, with 55 percent indicating it had been a problem for them. Livestock limitation ordinances were problematic for 43 percent of those surveyed, restrictive marketing ordinances for 39 percent, and other municipal ordinances—usually zoning—for 32 percent.

Although more than half of the surveyed farmers said they had experienced difficulties with nuisance complaints or actions, the research showed that farmers were also concerned and affected by other kinds of land use conflicts. Focusing on nuisance issues alone provides a distorted picture

of what farmers are actually coping with.

We also found that not all kinds of farmers experience the same types of problems. The key variables were size and enterprise type. In terms of size, the smallest farms (annual gross sales under $5,000) not surprisingly reported the fewest land use conflicts of all kinds. Above this size, however, different sizes had somewhat varied concerns. The largest farms (annual gross sales above $250,000) had the most problems with nuisance issues, while large farms (annual gross sales between $100,000 and $250,000) reported the most difficulties with trespass and vandalism. Livestock limitation ordinances affected smaller farms (annual gross sales between $5,000 and $10,000) the most.

Similar variations were found with respect to enterprise type. Overall, hog, fruit, vegetable, dairy, and grain operations reported more local land use conflicts than horse, poultry and egg, nursery, and other meat animals and miscellaneous operations. However, within this general pattern, different kinds of conflicts had disparate effects on the types of enterprises. Virtually all enterprise types had serious difficulties with at least one kind of land use conflict.

Fruit, vegetable, dairy, grain, and nursery operations had significantly more problems with trespass and vandalism than other kinds of farms. The same group, except for nurseries, had the most problems overall with nuisance issues. Municipal ordinances restricting roadside markets were most serious for poultry and egg, fruit, hog, nursery, and vegetable operations. Hog operations reported the most difficulties with municipal livestock limit ordinances.

It again seems reasonable to question the right-to-farm law's emphasis on nuisance issues when these concerns are not equally shared by a very diversified agricultural structure. The above mentioned patterns provide support for expanding the notion of what constitutes agricultural land use conflicts and who is affected by them.

Our data also supported our proposition that relatively few agricultural land use conflicts end up in court. Only 9 percent of the surveyed farmers reporting disputes had resolved them by litigation since 1980. The legal review conducted for our project also found very few right-to-farm related cases since the law had been adopted in 1983 (*7*). It seems relevant to ask how farmers are resolving disputes.

Fifty-seven percent reported some kind of third-party involvement in resolving the conflict. The most popular methods were hiring a lawyer (18 percent) or getting the help of a Cooperative Extension agent (13 percent). While almost 9 percent reported going to court, 7 percent resolved the

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It is of interest that 43 percent reported resolving the dispute privately without any third-part intervention whatsoever. One may tentatively conclude from these findings that many disputes are resolved informally. Further, while approximately one-quarter of the conflicts involved courts or lawyers, almost three-quarters were resolved without using the legal system. The right-to-farm focus on litigation may mean that its effectiveness is limited to a relatively small portion of agricultural land use conflicts.

Will Right-to-Farm Help?

The answer to this question appears to be a cautious "yes," at least for New Jersey. Several aspects of the right-to-farm policy seem commendable and potentially helpful. First, it is important that policymakers have officially recognized the indirect effects of urbanization and land use conflicts in particular as authentic issues. Our data support the notion that such land use conflicts are indeed adversely affecting farmers, but that the effects are often complex, diffuse, and difficult to measure.

Second, the law reiterates the state's official commitment to the goal of retaining and developing agriculture in New Jersey. While largely rhetorical, such support reflects a widespread though vague sentiment on the part of the nonfarming public that it is crucial to preserve agriculture and green space (*2, 12, 13*). Although less tangible than concrete action, such recognition of farmers' concerns is a step in the right direction, particularly for its public relations value in fostering a better appreciation of the agricultural perspective.

The third aspect, which is especially encouraging in the New Jersey statute, is the mandate for negotiation of disputes. While the promise of mediation has not yet been realized, the idea seems constructive because many disputes will not escalate into litigation yet still create problems for farmers. Alternative dispute resolution techniques could conceivably be a relatively inexpensive and efficient way to reduce the adverse effects of agricultural land use conflicts (*14*).

In trying to answer the question of how right-to-farm could be made more effective, several criticisms of the policy have been implicit in our discussion of the research findings. First, despite the legal rationale, we argue that the narrowed focus of some right-to-farm laws on nuisance issues is overly restrictive and ignores other kinds of agricultural land use con-

flicts. Our data show that farmers experience a broad range of problems and that different kinds of farmers have different types of concerns. We argue that right-to-farm programs would be more applicable to more farmers if they were broadened to encompass a wider range of disputes.

Second, approaches to right-to-farm have been overly legalistic and therefore very focused on questions of litigation (*7, 9*). We do not deny that several of the legal issues raised by right-to-farm statutes, such as reasonable use, prior rights, and definitions of what constitutes a nuisance, are important to farmers. However, three-quarters of the disputes reported by farmers in our survey did not involve the legal system in any way. Yet farmers report a variety of adverse effects from these land use conflicts and indicate that they contribute to the impermanence syndrome.

Therefore, the concept of right-to-farm must be broadened to also address the needs of farmers involved in disputes that are unlikely to go to court. This means placing a greater emphasis on less formal dispute resolution methods, such as mediation. The current emphasis on litigation means that right-to-farm protection is likely to be largely irrelevant to most farmers.

Our third main criticism of right-to-farm is the attempt to use it as an incentive to encourage farmers to enroll in farmland preservation programs. Apparently, those who developed this idea wanted to create rewards for farmers joining programs. This was partly to counterbalance possible losses from committing the land to agricultural uses. It was thought that right-to-farm would be an incentive by helping to counter the negative indirect effects of urbanization by providing relief from litigation.

We question the capacity of most right-to-farm programs—as they are currently conceived—to provide a sufficient reward in the form of protection from the adverse effects of land use conflicts. As previously explained, many right-to-farm statutes deal exclusively with nuisance issues and are really only applicable in cases of litigation. Therefore, while they may significantly benefit some farmers, specifically those in court on a nuisance suit, they are unlikely to be perceived as a reward by the majority of farmers whose disputes do not fall into the appropriate categories. Further, the incentive value of the right-to-farm protection is somewhat diminished by automatically providing some protection to all farmers, with the stronger irrebuttable presumption reserved for those who join preservation programs. The difference between the two kinds of legal protection remains murky to most people. Lastly, New Jersey's lack of legal precedence indicating that right-to-farm protection actually works in litigation weakens the credibility that this benefit is worthwhile.

The logic linking right-to-farm with farmland preservation is faulty. Right-to-farm programs, which are designed to encourage agricultural activities and mitigate land use conflicts, should be extended on an equal basis to all farmers, regardless of whether or not they are enrolled in officially approved farmland preservation programs. We think using right-to-farm as a reward for committing land to agriculture is putting the cart in front of the horse. Right-to-farm should ideally function to help farmers stay in business. If farming remains a viable option, it will be easier to design and implement farmland preservation programs that commit land to agricultural uses. In other words, improving conditions for farming will help accomplish the objective of farmland preservation, which is keeping land in agriculture. Therefore, we argue that right-to-farm benefits should be provided for all farmers and not used as a reward system.

A fourth problem with New Jersey's right-to-farm program as it currently stands is the definition of approved management practices. The law noted a need to establish standards of good farming, yet how this was to be done and by whom was not stipulated. In addition, creating standards for all possible agricultural activities is a monumental job. Being able to show that farmers are using improved management practices is important in litigation and in any argument in defense of specific modern farming practices. However, determining these standards continues to be highly problematic within the New Jersey right-to-farm program.[2]

The last criticism of the New Jersey right-to-farm law is the slowness with which it is being implemented. This in turn relates to the ambiguity about approved management practices and lack of legal precedence (*7, 18*). The law was adopted in 1983 but remained largely unimplemented as of early 1987.[3] Many farmers interviewed for the project expressed disappointment in right-to-farm, specifically in its lack of clarity and its apparent irrelevance to many of their problems (*15, 18*).

It is still too early to tell how successful right-to-farm policies will be in reducing the adverse effects of agricultural land use conflicts. They appear to be a step in the right direction, especially for farmers near cities. However, these policies also seem flawed, in part perhaps because they were created without accurate information about farmers' actual problems. Our research findings support the argument that the right-to-farm concept needs to be broadened. Specifically, it should be broadened to encompass a wider range of land use conflicts and to devote more attention to

[2] Ibid.
[3] Ibid.

informal methods of resolving disputes. It is difficult to retain farmland without farmers. It is also difficult for farmers to continue to live and work when they experience increasing conflicts with their nonfarming neighbors and communities. Right-to-farm could bridge this gap, reduce conflicts, and help make farmers and nonfarmers into better neighbors. We hope that efforts will continue to improve right-to-farm programs in New Jersey and elsewhere across the nation.

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