

Agricultural Uses and Zoning

David W. Owens, Professor, Institute of Government, The University of North Carolina at Chapel Hill, CB# 3330, Knapp Building, UNC-CH, Chapel Hill, N.C. 27599-3330
May 1998

North Carolina cities can regulate agricultural operations through zoning.^[1] There is no agricultural exemption in the city zoning enabling statute. City zoning can be applied to farm uses both within a city's corporate limits and in any city extraterritorial area. The 1959 legislation extending extraterritorial authorization to all cities exempted bona fide farms from zoning coverage because this exemption existed for county zoning. The farm exemption in the extraterritorial area of cities was deleted in 1971.

By contrast, when the authority to adopt zoning ordinances was extended to all counties in 1959, the legislation provided that bona fide farming must be exempt from zoning regulation. The single exception to the county zoning exemption for farming operations concerns hog farms. As the presence of large-scale hog farms dramatically expanded in North Carolina in the 1990s, steps were taken to provide additional local regulation of these farms. Several counties adopted moratoria and health board regulations on large-scale hog farms in the early and mid-1990's. A proposal to allow county regulation of intensive livestock operations was considered by the Blue Ribbon Study Commission on Agricultural Waste in 1995-96. However, prior to 1997 the General Assembly elected to enact uniform state standards for hog lots^[2] and to allow no county zoning of hog farms.

In 1997 G.S. 153A-340 was amended to removed large swine farms from the bona fide farm exemption from county zoning.^[3] All hog farms with 250 or more swine are required to have an animal waste management system approved by the state.^[4] Those hog farms served by an animal waste management system with a design capacity of 600,000 pounds steady state live weight or greater can be subjected to county zoning. A county may subject these large hog farms to its zoning ordinance, such as by prohibiting their location in certain zoning districts and establishing conditions for approval where they are permitted. A county may not, however, adopt regulations that have the effect of excluding such farms from the zoned area of the county nor require the discontinuance of large swine farms that are in existence at the time county regulations are adopted.^[5]

A critical threshold question related to the agricultural exemption for all other farming operations is what constitutes a *bona fide farm*. G.S. 153A-340(b)(2) provides that bona fide farm purposes "include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market." Use of farm property for non-farm purposes can be subject to zoning. Thus a residence on a farm is generally subject to county zoning; however, a residential structure occupied exclusively by temporary farm workers is likely exempt.

Four cases provide additional clarification on the definition. The first case,

Development Associates, Inc. v. Board of Adjustment, [6] involved a dog-breeding and kennel facility on a 2.5-acre tract in Wake County. The county zoning ordinance defined agricultural and farming purposes to include any area of realty comprising 40 acres or more, or any area smaller than 40 acres that had an annual gross income of \$500 or more from any agricultural, farming, livestock, or poultry operation, exclusive of home gardens. The court ruled that G.S. 153A-340 exempted only farming and livestock operations from zoning. Because G.S. 153A-340 did not define the terms, the court looked to various agricultural, criminal, and negligence statutes relating to animals for guidance on what livestock included. The court concluded that dogs were not livestock and therefore ruled that the kennel was subject to county zoning.

The second case, *Baucom's Nursery Company v. Mecklenburg County*, [7] involved a nursery and greenhouse on a 19.6-acre tract in Mecklenburg County. The county had secured local legislation in 1967 explicitly authorizing it to define bona fide farms for the purpose of the G.S. 153A-340 agriculture exemption. The county adopted this definition:

Farm, Bona Fide. Any tract of land containing at least three (3) acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry and including facilities for the sale of such products from the premises where produced provided that, a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms.

The court held that the nursery and greenhouse was a bona fide farm because agricultural operations included the growing of vegetables, flowers, and shrubs. The third case, *Sedman v. Rijdes*, [8] involved a plant and vegetable greenhouse operation on a forty-one acre tract adjacent to the plaintiff's property in Orange County. The operation included four greenhouses, fans, a loading dock, and some sales of the plants on the premises. The court dismissed the contention that the operation was in violation of the zoning ordinance, ruling the entire horticultural operation was exempt from zoning as a bona fide farm.

The fourth case, *Ball v. Randolph County Board of Adjustment*, [9] held that treatment of petroleum contaminated soil through a process known as "land farming" can not be considered an agricultural use. This process of soil remediation involves transportation of contaminated soil to the site and treating the soil chemically with nutrients to stimulate microbial consumption of the contaminants. The process requires tilling the soil to stimulate the process. The Randolph County zoning ordinance did not specifically address this use. The staff ruled that this was a permitted use in the Residential-Agricultural district because of its similarity to common farming practices, a determination upheld by the board of adjustment. However, on appeal the courts held since no crops, plants, or other agricultural products were involved, this was, as a matter of law, a waste treatment process and not an agricultural use of the land.

1.
G.S. 106-701, limiting local governments' ability to adopt ordinance making agricultural

operation a nuisance, does apply within cities. However, a substantial change in an agricultural operation may limit the applicability of this protection. In *Durham v. Britt*, 117 N.C. App. 250, 451 S.E.2d 1 (1994), *rev. denied*, 340 N.C. 260, 456 S.E.2d 829 (1995), the court held that conversion of three turkey houses to a hog production facility (consisting of two buildings and a waste treatment lagoon) is not protected by G.S. 106-701. The court held if there is a fundamental change in the nature of the agricultural activity, there is no liability shield.

[2.](#) G.S. 106-800 to 106-805.

[3.](#) S.L. 1997-458.

[4.](#) G.S. 143-215.10C.

[5.](#) S.L. 1997-458, § 2.2.

[6.](#) 48 N.C. App. 541, 269 S.E.2d 700, *rev. denied*, 301 N.C. 719, 274 S.E.2d. 227 (1980).

[7.](#) 62 N.C. App. 396, 303 S.E.2d 236 (1983). Cases decided in other contexts may also be useful in defining bona fide farm. In a workers' compensation case that also involved an agricultural exemption, the court ruled:

Traditionally, agriculture has been defined as “the science or art of cultivating the soil and its fruits, especially in large areas or fields, and the rearing, feeding, and management of livestock thereon, including every process and step necessary and incident to the completion of products therefrom for consumption or market and the incidental turning of them to account.” This traditional definition has been extended to encompass the storage and marketing of agricultural products.

Hinson v. Creech, 286 N.C. 156, 159-169, 209 S.E.2d 471, 474 (1974) (citations omitted).

Also, G.S. 105-277.2 defines *agricultural land* as being a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals. Similarly, *forestland and horticultural land* are defined as areas actively engaged in the commercial growing of trees, or of fruits, vegetables, or nursery or floral products, respectively. In all three instances the activity must be carried out under a sound management program and must meet size and income standards set by G.S. 105-277.3. These size and income standards are as follows: (1) for agricultural lands, 10 acres in actual production with an annual average gross income in the preceding three years of at least \$1,000; (2) for horticultural lands, at least 5 acres either in Christmas tree production or with an annual average gross income in the preceding three years of \$1,000; and (3) for forestland, at least 20 acres in actual production.

[8.](#) ___ N.C. App. ___, ___ S.E.2d 620 (1997).

[9.](#) ___ N.C. App. ___, ___ S.E.2d ___ (1998).

School of Government | CB# 3330 Knapp-Sanders Building | [UNC at Chapel Hill](#) |
Chapel Hill, NC 27599-3330

T: 919.966.5381 | F: 919.962.0654 | Copyright 2002 to present