

HB1423 Strongly Advocate for a “Do Not Pass” Recommendation

Good planning practices support the concept of pro-active planning for the siting of AFOs, looking at the state as a whole. Like other uses that generate significant impacts on surrounding properties, it can be extremely difficult for AFO applicants to obtain approvals to locate and operate. All the while, AFOs serve a purpose in the state economy and meet continuing market demand for animal-based products.

Finding suitable locations for such uses should be a coordinated effort between local political subdivisions and the state. The technical and environmental evaluation of large-scale AFOs is best left to the state, as the state has the capacity to retain FTEs with the specific expertise to perform that evaluation. However, local political subdivisions should retain broad authority to pro-actively identify the best areas for AFOs to be located.

A functional approach would be for political subdivisions, that wish to identify suitable locations for AFOs within their boundaries, be allowed to do so during an initial “grace period.” Political subdivisions would be encouraged to conduct a community input process to identify community assets that they wish to buffer from potential AFOs in the future. Political subdivisions would generate maps that identify “pre-approved” AFO zones as well as areas buffered from AFO uses. At a specified point in time, political subdivisions would submit their maps to the state. The state would aggregate the maps. The end product would be a state-wide map showing all the “pre-approved” areas where AFOs could locate.

In this way, AFO operators would not be subjected to the uncertainty of local approval when they submit applications for the siting of a new AFO. An aggregated state-wide map illustrating all the locations where AFOs are “pre-approved” to locate should, in fact, be a major service to AFO applicants. At the same time, political subdivisions would have the peace of mind to know that proactively identified community assets will be buffered from the impacts of AFOs.

In order for this to be a manageable process the state should use a tool like ArcGIS as the repository for the state-wide map. It is the industry-standard tool for planning and geospatial data aggregation. There are many political subdivisions that do not maintain a subscription to GIS because their tax base does not allow for it. In these cases, the political subdivision should be allowed to develop maps via whatever means they identify as being manageable and appropriate. The maps submitted to the state by political subdivisions would then need to be aggregated to create a state-wide map. The state already has many GIS data sets available on the publicly available state GIS hub. The AFO pre-approval map would just be one more data set.

There must be a partnership in solving this issue. Local political subdivisions *must* do their part to engage in pro-active planning. “No at every turn” is not an acceptable response. It is also unacceptable for the state to completely strip political subdivisions of their ability to plan for and protect community assets. The authority of political subdivisions has been progressively eroded on the AFO issue for the past few legislative sessions and this bill would effectively be the final nail in the coffin. We need to move back to negotiation, not farther from it.

A major obstacle to low-population political subdivisions engaging in pro-active planning is a lack of resources and technical expertise. Everyone wants the state to have a healthy economy. Supporting the

vibrancy of small towns *and* creating opportunities for AFOs to locate in North Dakota do not have to be an “either or” proposition. Both can be accomplished.

The state would be well-advised to help solve this issue by devoting a nominal amount in the budget to fund planning activities. A little will go a long way. In the current budget bill, the Department of Commerce is asking for one FTE to serve as a planning consultant for small-population political subdivisions. Perhaps this exercise in identifying community assets and pre-approved AFO areas could fall under that umbrella. Or perhaps a contract consultant could be engaged for a defined period of time to complete this project.

Remediation

AFOs that are not managed properly or are suddenly abandoned can create environmental hazards and/or brownfield sites that can be beyond the capacity of local political subdivisions to remediate.

Any model ordinance for the permitting of AFOs, particularly if such permitting becomes a process handled exclusively by a state commission, should include requirements that the AFO operator return the property to its pre-AFO condition, upon discontinuation of the AFO use. AFO operators should be required to bond for said remediation in the event of bankruptcy or other sudden and unexpected discontinuation of use. This is not dissimilar to the remediation required for mines and other intensive industrial uses.

Model Ordinance

If any legislation is going to pass on this issue, the legislation should state nothing more than that all the stakeholders in this issue must work together to arrive at a solution. The latitude to create a model ordinance *cannot* be limited to simply debating what the setback distance can be from a CAFO to the nearest occupied dwelling. A model ordinance must incorporate best practices to identify and map community assets in a holistic fashion. If done right, this approach will yield better results for all parties involved.

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