



Court Prohibits Classifying Large-Scale Hog Farms as Industry

By Margaret Rosso Grossman

A recent ruling by the Illinois Appellate Court for the Third District could make it more difficult for counties to prevent large-scale hog confinement operations from locating within their borders.

In *County of Knox v. The Highlands, L.L.C.*, the court ruled that counties do not have statutory authority to classify large-scale hog farms as industry. Nor can they require large-scale hog farms to secure building permits under county zoning regulations. In resolving the issue, the court decided that large-scale hog farms do fit within the uses of land for "agricultural purposes." These uses have been exempt from most county zoning regulations under Illinois law.

The facts outlined in the court's December 30, 1998, opinion and the appellate briefs involve The Highlands, L.L.C., a corporation connected with Murphy Family Farms of North Carolina; Knox County; and citizens concerned about the burden that animal wastes and odors would place on the surrounding land and its occupants.

At the heart of the controversy is a Knox County zoning resolution that required conditional use permits for commercial feedlots and construction permits for buildings. In December 1996, Highlands applied for and received a permit to construct six buildings as part of a hog confinement facility on 120 acres zoned for farming. In March 1997, two nearby property owners, later joined by

other individuals, appealed the Zoning Administrator's decision to the Knox County Zoning Board of Appeals.

Ultimately, the case reached the Third District Appellate Court. Central to the court's opinion was its analysis of Knox County's right, under the Illinois Counties Code (55 ILCS 5/5-12001), to regulate and restrict the location and use of structures, but not those on land used for agricultural purposes. The county had argued that the scale of Highlands' confinement facility made it commercial or industrial, and thus subject to regulation.

The appellate court relied on the Illinois Supreme Court's comprehensive definition of "agriculture" from a 1926 annexation case, which has been followed in more recent cases. The appellate court concluded that "the rearing and raising of hogs, in any quantity, constitute an agricultural purpose under the recognized definition."

The court also noted the existence of the 1996 Illinois Livestock Management Facilities Act (510 ILCS 77/1 - 77/999), enacted to maintain an economically viable livestock industry and protect the environment (77/5). The court commented that "[i]n light of the emergence of mega-hog and cattle-feeding operations..., the legislature appears to have continued to preempt agriculture from local zoning and reserved unto state government

the uniform regulation of such facilities."

One judge dissented from the majority opinion, mainly on the procedural issue of administrative review (the exhaustion of administrative remedies). He also disagreed with the majority's conclusion that raising hogs "in any quantity" is an agricultural purpose as a matter of law. He believed that the Zoning Board of Appeals had jurisdiction to decide whether the operation was agricultural. The majority responded that the dissenter's reasoning placed form over substance; the operation was agricultural and free from county regulation, thus negating the requirement of administrative review.

The decision is consistent with cases in other states. The Iowa Supreme Court, in *Kuehl v. Cass County*, held that proposed hog confinement facilities for 4,000 hogs on five acres were exempt from county zoning regulation because the buildings were used for "agricultural purposes." In *Premium Standard Farms v. Lincoln Township*, the Supreme Court of Missouri held that the township had no authority to impose set-backs and bonding requirements on Premium's 96 hog barns and 12 waste lagoons constructed on about 3,000 acres. In contrast, a recent Minnesota Court of Appeals decision, *Canadian Connection v. New Prairie Township*, allowed a township to impose reasonable set-back requirements for animal

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feedlots. That decision held that state regulation of feedlot odor allowed room for local government regulation that did not conflict with state law.

Knox County has asked the Illinois Supreme Court to review the decision. The court may or may not accept the case. In the interim, Knox County cannot use its zoning authority to regulate or require permits for large-scale livestock operations. But under the Counties Code, set-back lines can be imposed on agricultural buildings. It would seem that provisions in the Townships Code (60 ILCS 1/110-5, 1/

110-15) would prohibit townships from regulating agricultural land, as well.

Other laws presently govern Illinois livestock facilities. The Illinois Livestock Management Facilities Act establishes standards for waste lagoons, waste management, and odor control, as well as set-backs. The Illinois Environmental Protection Act and its regulations also apply. Neighbors of livestock operations may have legal recourse under common law. Nuisance suits can be filed if an operation constitutes an unreasonable interference with the use and enjoyment of other land in the area.

The Illinois right-to-farm law (Farm Nuisance Suit Act, 740 ILCS 70/1-70/5) protects some established farms from these suits, though not those operating negligently or engaged in water pollution.

The case of *County of Knox v. The Higlands, L.L.C.* bears watching for everyone concerned about the environmental and social effects of intensive livestock production in Illinois.

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