

Ordinance No. 12012014A

WHEREAS, the Town of Lincoln is authorized to enact ordinances requiring manure storage facilities constructed after July, 1983, to meet the technical standards established by the Town pursuant to Wis. Stats 92.16; and,

WHEREAS, the Town of Lincoln is authorized to use its police powers and zoning authority in order to protect and promote the health, safety, and general welfare of the citizens of the Town as authorized by Wis. Stats, s.60.61, s.60.62, s.61.35, and s.62.23; and,

WHEREAS, the reciprocal setbacks between residences, businesses, and industries and manure and/or waste storage facilities, structures and system, and the regulations and standards created by the Town of Lincoln are based upon the following reasonable and scientifically defensible findings of fact which are adopted and incorporated herein by reference:

1. *The Report of the Livestock Siting Technical Expert Committee Recommendations*, dated December 21, 2010, including a recommendation on “setbacks” found on page 6 that states: “Among other options for managing the offsite impacts of larger livestock operations, DATCP should evaluate augmenting the current road and property line setbacks by requiring separation distances between livestock structures and neighboring occupied residences and high use buildings.”
<http://datcp.wi.gov/uploads/Environment/pdf/LSTechCommitteeReportFinal.pdf>
2. A two-year study by the Wisconsin Department of Agriculture, Trade, and Consumer Protection and the Wisconsin Department of Natural Resources entitled *Final Report on Wisconsin’s Dairy and Livestock Odor and Air Emission Project*, dated September, 2009, including a recommendation found on page 5 that states: “Separation distance is a simple, yet effective, tool you can use to reduce impacts on your neighbors. When planning for new facilities, and especially manure storage lagoons, site them as far from neighbors as possible, and with consideration for prevailing winds. Odors are far less noticeable at 800 feet than they are at 200 or even 400 feet. If adjacent properties go up for sale, consider buying them as a buffer against future encroachment by development.”
<http://datcp.wi.gov/uploads/Farms/pdf/CIGFinalReport.pdf>
3. A University of Minnesota publication written by Larry Jackson, David Schmidt, and Susan Wood, *Offset Odor From Feedlots Setback Estimation Tool*,
<http://www.extension.umn.edu/distribution/livestocksystems/D17680.html>
4. A Purdue University project, presented by Purdue Agricultural Air Quality Laboratory, *Odor Based Setbacks*, <http://engineering.purdue.edu/~odor/setback.html> that developed setback guidelines for production operations. The guidelines considered facility size, orientation, and shape, wind frequency, land use, topography, building design and management, manure handling characteristics, and odor design effectiveness.
5. A publication from the North Carolina Pork Council,
<http://www.ncpork.org/environment/regulations.jsp> that outlines rules and regulations that apply to hog farmers in North Carolina including the following setbacks:
 - a. 1,500 feet to occupied residence;
 - b. 2,500 feet to school, hospital, church, or historic property;
 - c. 100 feet to perennial waters;
 - d. 500 feet to any property boundary;
 - e. 500 feet to any well supplying water to a public water system or human consumption;
 - f. No component of manure management system within 100 year floodplain.
6. A research article by Susan S. Schiffman, Clare E. Studwell, Lawrence R. Landerman, Katherine Berman, and John S. Sundy, *Symptomatic Effects of Exposure to Diluted Air Sampled from a Swine*

Confinement Atmosphere on Healthy Human Subjects, Volume 113, Number 5, Environmental Health Perspectives, pages 567-576, (2005). The study concludes at page 574 as follows: “In this study that evaluated healthy volunteers, no statistical differences on objective physical measures, mood, or attention were found from a 1-hour exposure in an environmental chamber to air emissions from a swine house when compared to clean air. However, self-reported symptoms of headache, eye irritation, and nausea were significantly higher in the swine air (experimental) condition than the clean air (condition).” <http://www.ncbi.nlm.nih.gov/pubmed/15866765>

7. A research mini-monograph by Kelly J. Donham, Steven Wind, David Osterberg, Jan L. Flora, Carol Hodne, Kendall M Thu, and Peter S. Thorn, *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, Volume 115, Number 2, Environmental Health Perspectives, pages 317-320 (2007). A brief summary of this research project provides: “This workshop evaluated impacts of the proliferation of concentrated animal feeding operations (CAFOs) on sustaining the health of rural communities. Recommended policy changes include a more stringent process for issuing permits for CAFOs, considering bonding for manure storage basins, limiting animal density per watershed, and enhancing local control, and mandating environmental impacts statements.” <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817697/>
8. *Airborne cow allergen, ammonia, and particulate matter at homes vary with distance to industrial scale dairy operations: an exposure assessment*, by D’Ann L. Williams, Partick N. Breysse, Meredith C. McCormack, Gregory B. Diette, Shawn McKenzie, and Alison S. Geyh, Environmental Health 2011, 10:72, <http://www.ehjournal.net/content/10/1/72> concludes: “Concentrations of Bos d 2 (a allergen specific to cows) ammonia, and particulate matter were significantly higher for homes within ¼ mile of a facility or associated sprayfield compared to homes more than three miles away. These findings reinforce community concerns of exposure and substantiate the need for larger well designed environmental exposure and health effects studies to determine the influence of these facilities and their contaminants on health in adjacent communities. In addition, these results have important implications for dairy facility siting policy decisions, nutrient management plans, and zoning of IFAP (Industrial Food Animal Production facilities) when located close to communities. Furthermore, these results highlight the need to consider developing IFAP emission standards and air pollution regulations in order to protect public health.”
9. *Improving the Air Quality of Animal Feeding Operations with Proper Facility and Manure Management*, by Saqib Mukhtar and Brent W. Auvermann, Associate Professors and Extension Agricultural Engineers, Texas A&M System, Publication E 585, August, 2009, states: “An AFO should have a set-back distance of at least a half a mile from residential and public-use areas (parks, schools, commercial buildings), and from areas that will be developed for such uses in the future.” The publication goes on to state: “Animal facilities and manure storage structures should never be located directly upwind from neighbors.” <http://tammi.tamu.edu/improvingAQ2009pub.pdf> And,

WHEREAS, the findings of fact set forth above clearly show that the setbacks, regulations, and standards established by the zoning ordinance amendments are needed to protect public health or safety; and,

WHEREAS, the setbacks, regulations, and standards are in the public interest; and

WHEREAS, the setbacks, regulations, and standards will promote the orderly development of the community in accordance with the official Town of Lincoln Comprehensive Smart Growth Plan, July 7, 2008; and,

WHEREAS, the setbacks, regulations, and standards will promote and protect public health, safety, comfort, convenience, and general welfare of the residents of the Town of Lincoln; and,

WHEREAS, the setbacks, regulations, and standards will provide adequate standards of light, air, and open space; and,

WHEREAS, the setbacks, regulations, and standards will maintain the aesthetic appearances and scenic value of the Town of Lincoln; and,

WHEREAS, the setbacks, regulations, and standards will facilitate the adequate provision of sewerage; and,

WHEREAS, the setbacks, regulations, and standards will preserve prime agricultural land and foster a more rational pattern of relationship between residential and other land uses within the Town of Lincoln for the mutual benefit of all.

THEREFORE, the Town of Lincoln, Kewaunee County, Wisconsin, hereby adopts the following changes to its Zoning Ordinance, adding Section 3.16 and Amending Sections 2.2, 4.4, 4.5, 4.6, 4.7, 4.8, and 4.9 of the Town of Lincoln Zoning Ordinance--Regulating Setbacks Between Manure Storage Facilities or Structures and Dwellings and Habitable Structures in All Zoning Districts. (Changes are highlighted)

2.2 Words Defined

ADJACENT means located on land parcels that touch each other, or on land parcels that are separated by a transportation or utility right-of-way.

DWELLING - a building, or portion thereof, designed or used primarily for residential occupancy or as living quarters, with or without a permanent foundation, and connected to required utilities including plumbing, septic, and electrical systems, including single-family dwellings, two-family dwellings and multiple-family dwellings, but not including hotels and motels.

LIQUID WASTE means process wastewater and waste liquid products, including silage leachate, whey, whey permeate, whey filtrate, contact cooling water or boiler water containing water treatment additives, and wash water generated in industrial, commercial, and agricultural operations which result in a point source discharge to a land treatment system. (NR 214.03(27))

MANURE AND/OR WASTE STORAGE FACILITY means one or more manure storage structures. "Manure storage facility" includes stationary equipment and piping used to load or unload a manure storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. "Manure storage facility" does not mean equipment used to transfer or apply manure to land.

MANURE AND/OR WASTE STORAGE STRUCTURE means a manure storage impoundment made by construction embankments, excavating a pit or dugout, or fabricating a structure. "Manure storage structure" does not include equipment used to transfer or apply manure to land.

MANURE AND/OR WASTE STORAGE SYSTEM means a storage facility and related practices needed for the environmentally safe storage of manure at that facility. A "manure storage system" does not include any of the following:

1. A milking center waste control system.
2. Nutrient management as defined in s.ATCP 50.78(1).
3. A barnyard runoff control system as defined in s.ATCP 50.64(1).
4. Equipment used to transfer or apply manure to land.
5. Headland stacking sites that comply with DNR regulations.

OTHER WASTES means liquid waste, septage, sewage sludge, or any other material as defined by the DNR that is processed and mixed with animal waste.

SAND AND/OR BEDDING SEPARATION SYSTEM means facilities, structures, or systems, designed to separate sand and/or other bedding material from manure, liquid waste, septage, sewerage sludge, bio-solids, or other wastes. sand and/or Bedding Separation Systems are considered part of a Manure and/or Waste Storage Facility, Structure, and/or System.

SEPTAGE means the wastewater or contents of septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage pits, seepage trenches, privies, or portable restrooms. (NR 113.03(55)).

SEWAGE SLUDER or SLUDGE or BIO-SOLIDS means the solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes scum or solids removed in primary, secondary, or advanced wastewater treatment processes and material derived from sewage sludge.

SUBSTANTIALLY ALTERED means a change initiated by an owner or operator that results in a relocation of a manure and/or waste structure, facility, or system, or significant changes to the size, depth, or configuration of a manure and/or waste structure, facility, or system including:

1. An increase in the volumetric capacity or area of a manure and/or waste storage structure or facility by any amount or size;
2. A change in a manure and/or waste storage structure or facility related to a change in livestock management from one species of livestock to another, such as cattle to poultry.

3.16 Setback Requirements from Animal Waste Storage Facilities and Structures

All new construction of dwellings and business structures in the following districts shall be located a minimum of 1320 feet from any existing manure storage facilities, structures, or systems that are required to have a Livestock Facility License or WPDES Permit. These districts include:

- A-2 General Agricultural District (4.5)
- Rs-1 Single Residential District One (4.6)
- B-1 Business District (4.7)
- I-1 Light Industrial District (4.8)
- I-2 Heavy Industrial District (4.9)

4.4 A-1 Exclusive Agricultural

1. Purpose and Intent of the A-1 Exclusive Agricultural District

The purposes of the A-1 District are to: (1) preserve productive agricultural land for food and fiber production; (2) preserve productive farms by preventing land use conflicts between incompatible uses and controlling public services; (3) maintain a viable agricultural base to support agricultural processing and service industries; (4) prevent conflicts between incompatible uses; and (5) reduce costs of providing services to scattered, non-farm uses. The A-1 District is generally intended to apply to lands in productive farm operations including- (1) lands historically exhibiting high crop yield or capable of such yields; (2) lands, which have been demonstrated to be productive for dairying, livestock raising, and grazing; (3) other lands which are integral parts of each farm operation; and (4) land used for the production of specialty crops such as mint, sod, fruits, and vegetables. As a matter of policy, it is hereby determined that the highest and best use of these lands is agricultural. The Exclusive Agricultural District allows only structures and improvements that are "consistent with agriculture use" as defined by Wisconsin Stats. s 91.01(10)., and all uses in the District are restricted to agricultural uses and uses consistent with agricultural uses. Note: Readers are referred to Chapter 91 Farmland Preservation Wisconsin Statutes for additional information on exclusive agriculture zoning districts.

2. Permitted Principal Uses

The following uses are permitted in this district:

- a. Pursuant to Wisconsin Stats 91.01 (1) permitted uses in the A-1 Exclusive Agricultural District are restricted to "agricultural uses" and "uses consistent with agricultural use" including: beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts, and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising; except that large farm manure and/or waste storage structures, facilities, and systems are a conditional

use that require a manure storage structure construction permit issued by the Kewaunee County Land and Water Conservation Department.

- b. Essential Services, exclusive of commercial radio and television transmission towers, not requiring authorization under applicable state statutes or Wisconsin Public Service Commission Administrative Code (PSC 113, PSC 114, PSC 115, and PSC 116) and as defined in Section 10.1500 of this ordinance.
- c. Use consistent with agricultural "use" means any activity that meets all of the following conditions:
 - (1) The activity will not convert land that has been devoted primarily to agricultural use.
 - (2) The activity will not limit the surrounding land's potential for agricultural use.
 - (3) The activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement.
 - (4) The activity will not conflict with agricultural operations on other properties
- d. Farm ponds.
- e.. Single-family dwelling occupied by an owner (as defined in Wis. Stats. 91.01(9); also includes a partnership and a shareholder in a corporation) of the parcel and consistent with agricultural use.

3. Permitted Accessory Uses

The following uses are permitted in this district only when there is a principal permitted use present:

- a. A single-family dwelling occupied by a person who, or a family at least one adult member of which, earns the majority of his or her gross income from conducting the farm operations on the parcel. Gross income has the meaning given for adjusted gross income in Wis. Stats. 71.01(13).
- b. Roadside stands provided that the structure does not cover more than 300 square feet in ground area and does not exceed 10 feet in height and that the use complies with Wis. Stats. 91.75(8).
- c. Additional structures necessary for the continuance of the farming operation.

4. Conditional use

A conditional use in this district is to permit the following uses only after a public meeting and approval of the Town Board. The Department of Agriculture, Trade and Consumer Protection (DATCP) shall be notified of the Town's approval of conditional use permits within the A-1 Exclusive Agricultural District. All conditional uses must be "consistent with agriculture use" and found to be necessary in light of alternative locations. The Town Board shall make findings for the record:

- a. Stockyards and fur farms,
- b. Riding academies and stables, if a farm family business.
- c. Farm family business restricted to the provisions of Wis. Stats. 91.75(8) and defined as:

Farm Family Business is limited to existing farm residences or structures or portions of the existing farmstead that are not dedicated to agricultural uses. No more than 2 persons who are not members of the resident farm family may be employed in the farm family business. Farm Family Business means any lawful activity, except a farm operation, conducted primarily for any of the following:

 - (1) The purchase, sale, lease or rental of personal or real property.
 - (2) The manufacture, processing or marketing of products, commodities or any other personal property.
 - (3) The sale of services.
- d. Artificial lakes (See Section 2.0 DEFINITIONS).
- e. Institutional, governmental uses and religious uses such as: colleges, universities, schools (elementary, junior high and senior high), hospitals, sanitariums, churches and other religious institutions, cemeteries, public parks, public recreation sites, and public golf courses.

- f. Airfields, airports and heliports incidental to the farm operation and not open to the public.
 - g. Quarries, sand and gravel pits incidental to the farm operation. The Town Board must require a permit and reclamation plan under the provisions of this Ordinance and the *Kewaunee County Non-Metallic Mining Reclamation Ordinance*. All land reclaimed must be restored to agricultural use.
 - h. Supportive agribusiness activities to include grain elevators; seed, fertilizer, and farm chemical sales; commercial feedlots; feed mills; and similar agricultural-related activities.
 - i. A second single-family dwelling occupied by:
 - 1. a parent or child of an owner who conducts the majority of the farm operations on the parcel.
 - 2. a parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations on the parcel.
 - j. For the purposes of farm consolidation, farm dwellings and related farm structures existing at the time of the effective date of December 1, 1986 of the Town Zoning Ordinance adopted July 7, 1986, may be separated from the farm plot provided that the parcel created conforms with all regulations set forth in the General Agricultural District (A-2) and is no larger than reasonably necessary to accommodate the proposed use. Note: Under s. 91.75 (6) farm residences or structures with up to 5 acres of land which are separated from a larger farm parcel are not subject to the liens under s. 91.19 (8) to (10).
 - k. Gas and electric utility uses not requiring authorization under Wis. Stats. 196.491(3).
 - l. Uses related to the Ice Age Trail under Wisconsin Stats. 23.17 and 23.293.
 - m. Telecommunications Antennas and Towers not including radio or television transmission towers - see Section 7 of this Ordinance
 - n. Wildlife sanctuaries and game preserves.
 - o. Livestock facilities with more than 500 animal units including manure and/or waste storage facilities, structures, and systems. All manure and/or waste storage facilities, structures, and systems serving the livestock facility with 500 or more animal units must be located on the same parcel or an adjacent parcel as the livestock facility producing the manure and/or waste and owned by the same enterprise. A manure or waste digester serving a livestock facility with 500 or more animal units and consisting of a sealed structure in which manure is subjected to managed biological composition must be located on the same parcel or on an adjacent parcel as the livestock facility producing the manure and/or waste.
5. Lot Size, Bulk Restrictions and Yard Requirements

Within the A-1 District the following standards shall apply:

- a. Lot Size
 - AREA: Minimum 35 acres
 - WIDTH: Minimum 200 feet
- b. Building Height
 - RESIDENTIAL STRUCTURES: Maximum 35 feet
 - FARM STRUCTURES: Maximum 60 feet
 - RESIDENTIAL ACCESSORY: Maximum 14 feet-
- c. Yards-Farm dwelling and accessory structures except large farm manure storage facilities and manure storage structures
 - FRONT YARD SETBACK: See Section 3.11.1
 - SIDE YARD SETBACK:
 - Principal Minimum One Side: 25 feet
 - Accessory Minimum one Side: 10 feet
 - REAR YARD SETBACK: Minimum: 50 feet
- d. Building Area

The total minimum living area of a dwelling shall be 900 square feet.

- e. Maximum Lot Coverage - Not applicable.
- f. Livestock facilities with 500 or more but less than 1000 animal units shall comply with the following setbacks for livestock structures:

PROPERTY LINE SETBACK	100 feet
ROAD RIGHT OF WAY	100 feet
- g. Livestock facilities with 1000 or more animal units shall comply with the following setbacks for livestock structures:

PROPERTY LINE SETBACK	200 feet
ROAD RIGHT OF WAY	150 feet
- h. Livestock facilities with 500 or more animal units shall comply with the following setbacks for manure and/or waste storage facilities, structures, and systems, or any manure and/or waste storage facility, structure, or system that is substantially altered:

PROPERTY LINE SETBACK (REAR and SIDE YARDS)	350 feet
ROAD RIGHT OF WAY	350 feet
EXISTING RESIDENTIAL DWELLINGS	1320 feet
CHURCHES, SCHOOLS, PARKS, LODGING, and EATING ESTABLISHMENTS	1320 feet

- 6. Permitted Nonconforming Uses (**UNCHANGED**)
- 7. Rezoning or Exclusive Agricultural District Lands (**UNCHANGED**)
- 8. Variances

In addition to the provisions of Section 14 Board of Adjustment, any variance that is granted must be found to be "consistent with agricultural use". Variance requests for any facility that may wish to expand its storage capacity, modify its storage facilities to meet additional days of storage, or add a sand and/or bedding separation system must specifically comply with Section 14.4b and 14.7.

4.5 A-2 General Agricultural District

- 4. Requirements for Permitted and Conditional Uses
 - g. Minimum setbacks for dwellings or businesses from existing manure and/or waste storage facilities, structures, and/or systems with a Livestock Siting License or WPDES Permit shall be 1320 feet.

4.6 Rs-1 Single Residential District One

- 5. Requirements for Permitted or Conditional Uses
 - f. Minimum setbacks for dwellings or businesses from existing manure and/or waste storage facilities, structures, and/or systems with a Livestock Siting License or WPDES Permit shall be 1320 feet.

4.7 B-1 Business District

- 5. Lot Size, Bulk Restrictions, and Requirements
 - e. Minimum setbacks for businesses from existing manure and/or waste storage facilities, structures, and/or systems with a Livestock Siting License or WPDES Permit shall be 1320 feet.

4.8 I-1 Light Industrial District

- 6. Lot Size, Bulk Restrictions, and Requirements
 - e. Minimum setbacks for businesses or industries from existing manure and/or waste storage facilities, structures, and/or systems with a Livestock Siting License or WPDES Permit shall be 1320 feet.

4.9 I-2 Heavy Industrial District

- 6. Lot Size, Bulk Restrictions, and Requirements

- e. Minimum setbacks for businesses or industries from existing manure and/or waste storage facilities, structures, and/or systems with a Livestock Siting License or WPDES Permit shall be 1320 feet.

In addition, the following changes to the Town of Lincoln Zoning Ordinance were adopted in Resolution #050613A2 by the Board of Supervisors on May 6, 2013, and are hereby adopted in the Zoning Ordinance:

To be added as Section 11.3.1.a.i (page 98) and 12.3.1.j (page 103):

“Substantial” versus “minor” changes in a building permit: The Zoning Administrator, in consultation at his/her discretion with the Plan Commission Chair and/or the Chair of the Board of Supervisors, shall make a determination as to whether the changes made to the plans for a building permit are substantial or minor. If the determination is that the changes are substantial, the applicant must re-apply for the building permit and undergo a site plan review as required.

To be added as Section 12.3.1.i (page 103):

“Substantial work” shall mean a considerable amount of work has been done towards completing the project that received approval. The site work shall have progressed beyond grading and shall involve physically starting the building project. Site work shall involve the expenditure of at least 10% of the total project cost, with the burden of proof on the applicant. This may include obtaining necessary plot plans, surveys, engineering data, easements, deed restrictions, approvals, and permits. Completion of structural foundations and construction shall occur above grade within twelve (12) months of the effective date of the building permit or date of approval of an extension of the building permit. Construction must continue with reasonable progress and no interruption greater than one hundred eighty (180) consecutive days. Hardships shall be considered by the Board of Supervisors on a case by case basis.

Change to Section 8.2.1 (page 78):

Residential development having one dwelling on a lot of record are exempt from the site plan review.

To be added to Section 8.5 (page 80):

- 24. Setbacks or buildings and other structures from property lines and roads.
- 25. Location of proposed, existing, and abandoned wells on the property and their setbacks from all existing and proposed buildings and other structures, property lines, and roads.
- 26. Distances or setbacks from all drainage features on the property, including waterways, perennial and intermittent streams, ponds, and tile lines.
- 27. Location of any Karst features on the property, especially sink holes.
- 28. Location of driveways, parking, and provisions for traffic circulation.
- 29. Outdoor area lighting
- 30. Any future expansion plans.

To be added to Section 2.2 Words Defined (page 5):

DEVELOPMENT AGREEMENT - A development agreement is a contract between the Town and a person who has ownership or control of property within the Town. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval; the development will not be subject to subsequent changes in regulations. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, required mitigation measures, setbacks and dimensional requirements, and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and the Town. All development agreements shall be approved by the Board of Supervisors.

Enacted this 1st day of December, 2014 by the Town Board of Supervisors of the Town of Lincoln.

TOWN BOARD

Cory Cochart, Chairman (signed)

Nick Cochart, Supervisor #1 (signed)

Jesse Jerabek, Supervisor #2 (signed)

CERTIFICATION OF ENACTMENT

I hereby certify that the foregoing ordinance was duly enacted by the Town Board of the Town of Lincoln on this

1st day of December, 2014

Dale Massey, Town Clerk (signed)