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EMERGING RURAL FARM-NONFARM CONFLICTS: WHOSE PREFERENCES COUNT?

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Conflict over property rights is certainly not a new topic. Conflicts arise because individuals or groups expressing different preferences claim rights to the same good, whether that good be an acre of land or a cubic foot of air. The agricultural sector, once the basis for the dominant lifestyle in the United States, has more recently clashed with suburban interests over issues of appropriate rural resource use. When the policy process fails to address the underlying sources of conflict, the question of whose preferences count may be answered in a nonparticipatory setting that fails to resolve the issue.

Using their assigned police power, local governments have promulgated rules through the adoption of zoning ordinances regulating land use in an attempt to manage community growth and minimize conflict related to the use of property.

The environmental movement championed the expansion of property rights for society to include the rights to clean air and clean water, and for citizens to live in communities free from hazards that degrade the environment. The passage of federal environmental legislation such as the Solid Waste Disposal Act (1965, 1970), the Federal Water Pollution Control Act (1972), the Safe Drinking Water Act (1974) and the National Environmental Policy Act (1969), along with similar legislation adopted by states, either exempted much of agriculture or limited regulation to specific types of agriculture.

Guidance for treatment of rural farm-nonfarm conflicts has historically come from court decisions, though in the last twenty years, the changing rural landscape has driven these problems into the state and local legislative realms.

The Suburbanization of the Rural Landscape

The suburbanization of the United States, spawned by the post World War II housing boom, accelerated the movement for adoption of comprehensive planning and zoning measures aimed at regulating the use of a community's stock of land resources. The publicly

adopted rules were viewed as policy instruments to be used to insure orderly growth and to minimize potential incompatibility of land uses. Rural governments were reluctant to adopt comprehensive land use planning and zoning in part due to the opposition expressed by agricultural producers. Land use planning was often viewed as a restraint or infringement on private property rights and a limitation of the perceived inherent right to the capitalization of land value.

Property rights conflicts and debate over whose preferences counted were exacerbated as residential development—driven by an increasing demand for rural housing sites by those seeking the serenity of the rural landscape—encroached into agricultural areas. In addition, rural housing site demand resulted in escalating farm property tax assessments, the adoption of rural land use planning ordinances and an attempt by some states to regulate agriculture under previously adopted environmental protection laws.

The changing rural landscape brought about by residential development also resulted in a change in the composition of rural town legislative boards. Rural townships and town boards, once dominated by officials drawn from the agricultural sector, experienced the emergence of leaders who were not agricultural landowners and thus viewed land use planning from a different perspective. The rural nonfarm official looked at zoning as an enforcement tool to be applied to all sectors of the community, including agriculture. Rural zoning was seen by many (but often not by agricultural producers) as a policy tool to protect agriculture, but may have aggravated conflict situations. Increasing numbers of nuisance complaints and lawsuits brought by rural nonfarm residents against agricultural producers were filed, often in response to perceived insensitivity by agricultural producers to quality-of-life preferences of rural nonfarm residents.

Frequent granting of zoning variances for the construction of rural nonfarm housing by local officials often destroyed the integrity of zoning ordinances aimed at protecting agricultural regions. Increased demand for rural housing sites, growing concern for the environment and expansion of intensive livestock operations into areas of higher population density accelerated the pressure for stricter control of farming operations through state legislation and further application of local government police power. The trend toward suburbanization insures that these preferences will continue to be expressed, and, where voting power shifts toward suburbanites, to be counted.

Agricultural Community Response

In response to the attempt by local governments to more closely regulate agricultural land use and operations, the agricultural com-

munity turned to state legislatures, seeking both relief and an affirmation of property rights. By 1985, thirty-two states had adopted *right-to-farm laws*, thirty-four states had initiated *property tax relief or preferential assessment programs*, thirty-four states had enabled, through legislation, *purchase of development rights programs and corresponding tax credits*, nine states had passed *agricultural districting legislation*, four states had provided for *exclusive agricultural zoning*, and eight states had succeeded in soliciting a *Governor's Executive Order*, a policy statement declaring the importance for agricultural land preservation, but without attached policy prescriptions (NASDA Research Foundation Farmland Project, p. 13).

Since 1985, all but one state have passed some form of *right-to-farm* legislation (Hamilton and Bolte). These laws were in direct response to the increasing frequency of nuisance suits being filed against farmers and ranchers covering a wide range of complaints about odor, dust, machinery noise, flies, facilities construction and chemical drift that may arise in the normal course of agricultural activities. Right-to-farm laws reduce the probability that a plaintiff will win a nuisance suit against an agricultural producer conducting reasonable and necessary farming activities. Right-to-farm laws explicitly recognize producers' property rights, and extend protection to their preferences for land uses, provided the uses are consistent with "generally accepted agricultural practices." Land grant universities often have been called upon to define the generally accepted agricultural practices for use in legislation.

The adoption of right-to-farm laws has not always deterred nuisance lawsuits, nor conflict over differing preferences for land use, in part due to the interpretive nature of the terms "generally accepted agricultural practices" and "traditional farm," another phrase used in some right-to-farm laws.

Additionally, the lack of explicit preemption in regulations creates confusion over which level of government is responsible for the oversight of agricultural operations. For example, in Michigan, both the state Department of Agriculture and the Department of Natural Resources assume a role in determining the outcome of nuisance complaints against farmers. The state exempts agricultural operations from liability under several state environmental laws, provided the generally accepted agricultural practices are followed. However, if the operation meets certain criteria under the Federal Clean Water Act or Clean Air Act, it may be required to obtain permits from U.S. agencies, and is subject to criminal prosecution if in violation of these standards.

Local governments, dissatisfied with state and federal responses affirming farmers' property rights and land use preferences, have enacted their own regulations governing agriculture.

Local Government Policy Response

In Michigan, local governments, using zoning ordinances, have altered the property rights assignments made by the state government and more heavily weight preferences of rural nonfarm residents. Local regulations initially were aimed at controlling activities on, and in some cases discouraging expansion of, intensive livestock operations (ILOs). ILOs are concentrated animal feeding operations deemed to be “intensive” once the number of animal units on the site reaches a given threshold. Animal units were first defined in the 1972 Federal Water Pollution Control Act and reiterated in the more recent Federal Clean Water Act (FCWA) (Jacobs) and are used to establish limits for animal densities that protect surface water from manure runoff. Under the FCWA, an animal feeding operation containing 1,000 animal units (wherein, for example, an animal unit is equivalent to a 1,000-pound steer, 2.5 swine heavier than 55 pounds, or 100 chickens) is required to apply for and receive an operation permit for water discharge. A 300-animal unit limit is in effect in operations in which the discharge passes through an engineered ditch or in which surface water flows through the livestock facility.

In Michigan, some local townships have incorporated the concept of animal units into zoning ordinances in an attempt to define the operation as an industrial facility, thus justifying treatment as a special exception use subject to permitting. From the local government’s standpoint, existing agricultural zoning and permitted uses were established for “traditional” farms, not highly concentrated industries that generate significant negative externalities.

The ordinances adopted thus far in Michigan have established threshold levels for animal units in the range of the strictest limits in the FCWA, generally between 300 and 500 animal units. Several ordinances adopted by Michigan townships contain features such as setback limits from neighboring nonfarm residences, consideration of wells and roads during animal manure and chemical application, requirements for homeowner notification prior to application, and limits on times during the day and week for operation of farm machinery within designated distances of residences. These ordinances acknowledge nonfarm residents’ preferences and property rights, while virtually ignoring those of farmers.

Judicial Response

In a nuisance suit, courts are charged with determining the weighting of property rights and the determination of the direct and indirect effects of the activity in dispute. The plaintiff must demonstrate property interest in the land on which the nuisance occurred, impaired enjoyment of that interest and actions by the defendant that caused the harm (Keene). Once these conditions are met, the court must determine whether the impact is unreasonable. Right-to-

farm laws are designed to eliminate a finding of unreasonable impact, because they designate particular farm activities and, by association, their externalities, as generally accepted.

For protection under right-to-farm laws, most states require operation of the farm that predates changes in neighboring land uses that cause a nuisance to occur. This is consistent with the doctrine of prior use, which stipulates that the first use of the land is the preemptory use. In other words, whoever was there first gains the property rights, within the bounds of legal restrictions. When the farm was there first, courts have tended not to award nuisance damages to neighbors who moved in later. The same would apply to residences that predated farming operations.

A difficulty arises in the case of expansion of existing farms, since many right-to-farm laws are vague on whether farms must continue to operate as they did before residential development took place in order to qualify for legal protection. In three states in which rural residential uses predated farm expansion decisions have designated feedlots as nuisances (Hamilton and Bolte). On the other hand, a cattle feedlot operator in Idaho was successful in arguing that the social benefits of the operation outweighed the negative externalities of expansion, even though neighboring residential use predated the expansion (Hamilton and Bolte).

Courts have not yet tested the constitutionality of the Michigan Right-to-Farm Law. However, state preemption over local ordinances was upheld on the basis that the law was created to protect farms threatened by alleged violations of local zoning ordinances and regulations as well as threat of private nuisance lawsuits (Maturen). In other words, local governments may not threaten the viability of farms by passing ordinances against their generally accepted practices.

Zoning variances granted by local governments for construction of residences in areas zoned for agriculture were a driving force in the escalation of nuisance suits and formal complaints brought against agricultural operations. Rural nonfarm residents, seeking the peace and tranquility of a rural area, were surprised by the odors, dust, noise, and other negative features of normal farming operations. These individuals pressured local governments to develop ordinances to limit their exposure to the nuisances by restricting the activities causing the nuisances. Through the sharing process between local governments, ordinances aimed at reducing or minimizing exposure to the nuisances have proliferated in a preemptive way, expanding into areas that are just beginning to experience suburbanization. Meanwhile, farmers feel their property rights are being violated and their preferences ignored, and they continue to exert pressure at the state level for protection from nuisance suits and local interference in onfarm activities.

Public Policy Education Opportunities

Land grant universities and the Cooperative Extension Service historically have assumed educational roles related to land use planning. The existing and emerging conflict over whose preferences count in rural land use decisions presents an opportunity for public policy education. Unfortunately, in situations such as previously described, attention is not usually paid to the problem until a complaint is lodged or a lawsuit filed. By that time, both sides in the conflict have usually drawn their battle lines, and may be unwilling to enter the policy discussion. We advocate seizing on the "teachable moment" to educate farmers and nonfarmers of their rights and responsibilities before conflict begins. We suggest this may be done through interaction with concerned individuals and with public policy officials.

The first step in education is recognizing that the potential for a problem exists. Try to experience the farm through the nose, eyes and ears of a person unfamiliar with normal farm operations. If such a person would consider a particular farm to be a nuisance as a neighbor using current practices or if it expanded, then chances are, someone will complain about the farm. If the nuisance can be abated by changes in farming practices that are consistent with generally accepted agricultural practices, then the farmer should be made aware of the alternative practices. If a potential neighbor is unfamiliar with how a farm works, education through local entities (realtors, chambers of commerce, even the farmer) may produce a more positive viewpoint of the farm, and reduce the shock of experiencing the externalities associated with production. Activities of nonfarmers that may create conflict should also be recognized and addressed with education. For example, unfamiliarity with farm operations may lead nonfarmers to drive at excessive speeds around farms or to generate noise or activity levels that stress livestock.

If education alone will not resolve the conflict, it may be desirable to act as a facilitator to help involved parties educate themselves. In this role, it is important first to identify those who are claiming property rights that conflict. It may be more inclusive to identify the property rights first, then consider who might be claiming the rights. For example, if odors from a farm cause a neighbor to cancel an outdoor activity, the conflict over claims of the right to operate the farm and the right to enjoy the nonfarm property may be more pervasive than the case at hand. The rights may be claimed by two groups (farmers and nonfarmers), rather than simply two individuals.

The second step in facilitative education is to solicit the perceptions of the problem from the concerned individuals. Environmental annoyances have both cognitive and emotional components, and perceptions of an annoyance may be affected by input from more than one sense (Craik). For example, if a nuisance source both appears unclean and is associated with an unpleasant odor, the two

sensory images may intensify the degree of the negative response. A perception of an unpleasant odor may be correlated with a belief that the source of the odor creates an unhealthy environment, even when no objective measure of health effects exists (Cavalini, et al.). In other words, for the affected individuals, perception is reality. An affected individual either adapts to or alters the situation creating the nuisance, depending on the nature, intensity and duration of the annoyance (Campbell). Filing a complaint about a farm is a form of action to change the context of the problem. By introducing new information that addresses the particular views expressed, an extension educator may encourage reevaluation of negative perceptions.

A third step in this process is to clarify the desired outcomes of each party. With nuisance issues, emotional responses to the perceived problem are fairly common. For example, a nonfarmer may talk about wanting guarantees of clean water when what is really desired is the elimination of odors from the neighboring livestock facility. The nonfarmer may see clean water as a more legitimate or more compelling basis for complaint about the way the farm is operated than is odor. Framing desired outcomes to emphasize common goals between concerned parties encourages cooperative problem solving.

Sometimes the most important service an extension educator can offer is the validation that the problem is being heard and understood. When all parties feel their views are comprehended and recognized as valid, a solution is more likely to emerge. If the problem can be stripped of pejorative statements and emotionalism, it is possible to attack the issue rather than the individuals involved. Establishing and maintaining a group perception that the extension educator is a neutral and credible facilitator may be critical to successfully presenting outcomes as mutually beneficial.

Since nuisances arise from conflicting property rights, the assignment of those rights must be addressed. At this point, the question of whose preferences count becomes important. Regulation of agricultural operations may mean financial hardship for the farmer and for all agricultural producers in the jurisdiction of the regulating body. On the other hand, failure to act may result in a loss of value to homes and businesses affected by the nuisance. The groups who gain and lose should be given the opportunity to express the advantages and disadvantages they see in proposed actions. Not only do the farmer and neighbor have to be considered, but also the community members who derive other benefits and costs from the existing situation.

One way to begin this process is to consider the logical results of desired outcomes previously expressed. For example, eliminating all odor from a livestock farm may require closing it down. There may be implications for input suppliers; local citizens who value the farm as a resource for teaching, for wildlife habitat or for flood control;

and local citizens who endure traffic congestion from farm machinery or object to animal treatment. Even qualitative determinations of the net social value (the benefits less the costs) of a nuisance generator can help guide the solution process.

Proposed regulations should be subjected to several criteria. The first criterion is *redundancy*: does the regulation duplicate an existing protection? There is no value in enacting a zoning ordinance that uses environmental protection as a standard when state and federal laws are adequate to address the problem. The second criterion is *reasonableness*: does the regulation consider difficulty and expense of compliance? Unintended business hardships may result from mandating particular actions to reduce or eliminate a nuisance. The third criterion is *effectiveness*: is the regulation a long-term solution and does it target the problem? Zoning ordinances directed toward a particular operation or class of operations may fail in the long run to protect against nuisances from similar sources, or may become outdated by changes in technology or preemptive state and federal legislation. The last criterion is *balance*: does the regulation take account of gains and losses and which groups are affected? Local regulations should not disadvantage large groups of people for the benefit of a few individuals in the community.

Public policy educators may play a role in assisting local officials to determine whose preferences count in rural farm- nonfarm conflicts. In those cases in which property rights force a choice that disadvantages one group, the decision should be reached by weighing all the benefits and costs of potential solutions.

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