

ZONING IN SUPPORT OF AGRICULTURE IN OHIO: WHAT ARE THE OPTIONS?

*A Summary of Ohio Zoning Law and
Existing Zoning Mechanisms that can Support Agriculture*

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INTRODUCTION

Many of us use the term “agricultural zoning” as if we all understand and agree upon its meaning. Our research¹ at Ohio State University suggests, however, that there is no universally accepted definition of agricultural zoning. The term refers to both zoning that allows agricultural land uses and zoning that permits only agricultural land uses. Many associate agricultural zoning with the “leftover lands” after other districts are created, while others relate it to a certain zoning technique, such as large lot zoning, limited permitted uses and lot split limitations.

While we do not have a common definition for agricultural zoning, there is commonality in the questions we receive about agricultural zoning at the Center for Farmland Policy Innovation. Communities are repeating the same inquiry: how can we use agricultural zoning techniques to sustain and protect agriculture in our community?

This policy brief addresses the question of how zoning can support agricultural activities in Ohio’s unincorporated areas – those lands under township and county governance. In Part I of this brief, we explain how Ohio zoning law addresses agriculture. Part II provides examples of agricultural zoning approaches and in Part III, we present agricultural zoning mechanisms currently used by Ohio townships. In the final part, we make recommendations for instituting zoning that supports agriculture. Our hope is that this brief will answer many of the zoning questions we hear from townships and counties grappling with the issue of how to retain agricultural lands and activities in Ohio.

¹Beginning in 2005, Peggy Kirk Hall and Jill Clark (with assistance from Kimberly Bitters) collected Ohio township zoning ordinances to evaluate how zoning ordinances in unincorporated Ohio addressed agriculture. The white paper that covers the results of this research is located at the following web site: <http://cffpi.osu.edu>.

PART I. THE LEGAL BASIS FOR AGRICULTURAL ZONING

1.1 What does Ohio law say about zoning and agriculture?

The Ohio legislature grants zoning authority to counties and townships in Chapters 303 (county zoning) and 519 (township zoning) of the Ohio Revised Code. The enabling law allows counties and townships to adopt zoning regulations and states the purposes for which zoning may be instituted Ohio Revised Code 303.02 and 519.02. Due to recent legislative changes, the law is rather confusing. In 2005, the General Assembly expanded county and township zoning authority beyond its traditional “public health and safety” purposes to the broader “general welfare” purposes long held by Ohio municipalities. But the law was immediately revised to remove general welfare authority for some residential regulations. For a good explanation of the new law, refer to the County Commissioners Association of Ohio Handbook, Chapter 86 on County Zoning, available at <http://www.ccao.org/db/publications/hdbkchap086-2006.pdf>.

Despite the concerns about whether townships and counties have general welfare authority for certain types of zoning regulations, it is possible to base agricultural zoning regulations entirely on the authorized purpose of promoting public health and safety. Considering the needs and activities of agricultural operations, there are valid public health and safety reasons for separating agricultural land uses from conflicting land uses. For example, farmers must often move large, heavy equipment from field to field on public roadways. Safety concerns could justify limiting residential development and in-

creased residential traffic in areas of high agricultural roadway use.

But there is an important exception for agriculture in the county and township zoning enabling statute. Ohio law states that zoning authority does *not* confer power on counties and townships to use zoning “to prohibit the use of any land for agricultural purposes”, to prohibit the construction or use of agricultural buildings or structures, or to require building permits for agricultural buildings and structures. Ohio Revised Code 303.21(A) and 519.21(A).

Many in Ohio refer to this section of law as the agricultural “exemption” from zoning. This is not an accurate depiction of the statute, as it does not declare that agriculture is *exempt* from all zoning regulations. Rather, it states that counties and townships may not use zoning *to prohibit agricultural activities* in unincorporated areas, to prevent agricultural landowners from constructing buildings to be used for agriculture or to require building permits for agricultural buildings. There are a few exceptions to this provision: zoning may be used in certain situations to regulate agriculture on small lots that are part of a platted subdivision or in a developed area of subdivided lots. Some zoning regulations may also apply to farm markets that derive more than 50% of their receipts from off-farm sources. Ohio Revised Code 303.21(B), (C) and 519.21(B),(C).

In sum, Ohio zoning law effectively prohibits counties and townships from “zoning out” agricultural activities. Agriculture must be allowed to exist in Ohio’s unincorporated areas. Counties and townships may use zoning to regulate factors that could impact agriculture, such as other land uses, population density and lot

sizes. The purpose for regulating such factors must be based on public health and safety reasons, and in some situations, such as for non-residential property, the regulations may be based on the broader purposes of public convenience, comfort, prosperity and general welfare.

1.2 What is “agriculture”?

Since counties and townships may not use zoning to prohibit agriculture, it is important to understand what activities constitute “agriculture”. The zoning statute specifically defines agriculture for purposes of county and township zoning. Any of the following cannot be prohibited by way of zoning regulations:

“farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production.”

-Ohio Revised Code 303.01 and 519.01.

A local zoning definition for agriculture can be more expansive than Ohio’s legal definition of agriculture, and the scope of a county or township’s “agricultural zoning” need not be limited to the types of agriculture defined by the statute. For example, if a township wants to include “agri-business” land uses that are not within

Ohio's definition of agriculture—such as agricultural support services, off-farm processing facilities, or new types of agricultural economic development activities—it could do so by specifically designating those uses as permitted uses in the district or by including the uses in the local resolution's definition of "agriculture". The resolution may not, however, "withdraw" an agricultural activity from the state's legal definition of agriculture and use local zoning to prohibit that legally protected agricultural activity.

1.3 *Is agricultural zoning a taking of property rights?*

There is an apparent nervousness in some communities when discussing zoning that supports or protects agriculture and limits non-farm development. A question that often arises is whether an agricultural zoning resolution is subject to a legal challenge by property owners for a "taking" of their property rights.

The Ohio Supreme Court, relying on rulings from the United States Supreme Court, provides us with a legal test for determining whether a regulatory action such as zoning constitutes a taking of private property that requires compensation from the government. According to the Court, if the application of the zoning ordinance does not substantially advance a legitimate state interest, or the zoning ordinance denies a landowner of all economically viable use of the land, then a taking of private property has occurred. *State ex rel. Shemo v. Mayfield Hts.* (2002), 95 Ohio St. 3d 59.

We could consume a large part of this policy brief trying to further explain legal takings analysis, but will simplify the topic by pointing out the most recent challenge to agricultural zoning in

Ohio. In *Trafalgar Corp. v. Miami County Board of Commissioners*, landowners challenged the right of local voters to subject a zoning change to the referendum process. The landowners had requested a rezoning from General Agricultural to Single Family Residential in order to develop a 53 residential lot development on a 50 acre tract of land. While the Board of County Commissioners approved the zoning change, voters in the area successfully placed the issue on the ballot and denied the rezoning by referendum. Four additional attempts by the landowners to rezone the land were approved by the county, but disapproved on the ballot by residents. The landowners requested a court order to compel the county to initiate eminent domain proceedings, arguing that their property had essentially been "taken" by the repeated referenda. The Ohio Supreme Court resolved the case by determining that the landowners had failed to produce competent evidence showing that the agricultural zoning deprived them of all economically viable uses of the land. According to the Court, the landowners could still farm the land, and could also develop the land with lesser density.

In the lower court proceedings, the county testified that retaining the land in its General Agricultural district designation was consistent with the comprehensive plan and was related to the interest of preserving rural areas and limiting over-development. Community residents testified that they opposed the rezoning because preservation of farmland and the rural aesthetic was important, and the proposed development would increase traffic, pollution and local resource and service needs.

1.4 Zoning and planning

Ohio law states in ORC 519.02 and 303.02 that the township or county may “regulate by resolution, in accordance with a comprehensive plan” such factors as land uses, building locations and heights, population densities, etc. There is much debate over whether this statutory language requires that zoning be based on a comprehensive plan, and many disagreements over the definition of a “comprehensive plan”. Many in the profession insist, however, that thorough and current planning must precede zoning—be it a legal requirement or not. Common sense supports this philosophy that zoning be based on and consistent with an updated comprehensive plan for the community. While we do not intend to address planning within this brief, we think it important to note that neither a discussion or implementation of agricultural zoning should take place without consideration of the relationship between planning and zoning.

PART II: TYPES OF AGRICULTURAL ZONING

Academic literature presents several types of agricultural zoning techniques that can be used singularly or in combination to create an agricultural zoning district. Experts disagree on the most effective technique, and some question the validity of a few mechanisms, such as large lot zoning. The following are brief descriptions of the common types of agricultural zoning found in academic literature, and a summary of the advantages and disadvantages of the different approaches.

2.1 Definitions of agricultural zoning types

Exclusive agricultural zoning takes a straightforward approach: the agricultural district is designated exclusively for agricultural land uses and farm residences. Non-agricultural land uses are not permitted in the district.

Conditional use zoning prefers agricultural land uses, but non-agricultural uses may be permitted as conditional uses upon a showing that they do not conflict with agriculture.

Large lot zoning establishes large lot sizes that encourage agricultural land uses and allow only low density residential development.

Area-based zoning takes a population density approach by limiting the number of permitted residences according to lot size. Fixed area-based zoning follows a fixed house-per-acres ratio, while sliding scale area-based zoning allows a certain number of housing lots based upon the size of the parcel, essentially “sliding” the number of permitted residences downward as the size of the parcel decreases.

Cluster zoning promotes efficient land uses by specifying that residences in an agricultural district be on small lots and clustered together.

Conservation development zoning is similar to cluster zoning, but can also include perpetually protected natural resource features, such as open space or agricultural land that is permanently protected by an easement.

Agricultural buffer zoning requires buffers that separate agricultural and non-agricultural land uses and protect land and water resources.

2.2 Advantages and disadvantages of agricultural zoning types

Perhaps the most cited criticism of agricultural zoning techniques regards large lot zoning, which attempts to establish a minimum lot size that is appropriate for agriculture but too large for residential use. Many argue that large lot zoning ordinances usually create lots that are too small to sustain a farm. And although the lot size may be larger than needed for residential use, the size is not always a disincentive for certain types of residential development, such as higher-end rural “estate” developments. Some believe that large lot zoning with a minimum lot size of less than 40 acres results in “rural sprawl” rather than the retention of farmland. Large lot zoning that allows residential development, then, should carefully determine two criteria: the minimum amount of farmland needed to successfully conduct the business of agriculture on the parcel and the minimum size of lot that will deter non-farm residential development.

Any zoning technique that allows both agricultural land uses and non-farm residential development, like large lot zoning, is another subject of criticism by farmland protection experts. By failing to prohibit land uses that conflict with agriculture, the zoning creates a district that is not entirely favorable to either farm activities or residential development. Agricultural landowners who do not have the assurance that they are protected from conflicting land uses have less certainty of their ability to continue agricultural activities in the future. A clear separation of farm and non-farm land uses is the advantage of exclusive agricultural zoning.

Some claim that area-based agricultural zoning has the most desirable characteristics of the zoning types, particularly where it uses a sliding scale. The area-based approach can protect the land base and permit flexibility in site planning at the same time, which other types of agricultural zoning can't accomplish. Additionally, planned districts such as cluster or conservation developments allow communities to have more control over spatial arrangement in the district. This benefit also applies to conditional use zoning, which can restrict the spatial impact of non-farm development by requiring smaller lot sizes for conditionally granted uses.

PART III: AGRICULTURAL ZONING IN OHIO TOWNSHIPS

In a recent study of 80 Ohio township zoning resolutions at Ohio State, we sought to characterize the nature of agricultural zoning districts and the types of agricultural zoning mechanisms employed by Ohio townships. We identified whether a zoning resolution included districts zoned for agricultural activities, and examined the purpose and function of those districts. By studying a district's purpose language, we aimed to clarify the intent for creating the district. We then analyzed how the district actually functioned in regards to supporting agriculture by assessing mechanisms such as permitted and conditional uses, lot sizes, residential density and conservation techniques. Our research revealed distinct categories of agricultural zoning purpose language and a broad range in how the districts functioned in regards to agriculture.

3.1 *Research results: district purposes*

We identified three different classes of agricultural zoning purposes. Surprisingly, many zoning districts that carry the “agricultural” designation do not have a stated intent within the purpose language to support or protect agriculture. We categorized these types of districts as having “no agricultural purpose”. A second group of zoning districts did declare agriculture to be a purpose for the agricultural district, but included other purposes for the district such as providing for residential development. These districts were designated as having “agriculture and other purposes”.

The final category of purpose language we identified was the “sole purpose” district, which declared agriculture as the main purpose for the zoning district. For example, the purpose of a district in Greene Township, Ashland County, is “[T]o protect and preserve the prime agricultural lands in the township for agricultural use. To prevent or minimize conflicts between common farm practices and non-farm uses.” Another district in Pittsfield Township, Lorain County, aims “[T]o provide for protection of agricultural economic uses from incompatible land uses and more intense development patterns which would deteriorate agricultural viability” and “to provide an environment which encourages residents to continue farming investments...” These purposes represent the strongest of intentions to protect or maintain agricultural land uses.

3.2 *Research results: district functions*

Purpose language is a first step for establishing a zoning district. The next step is to employ mechanisms that implement the district pur-

pose. These zoning techniques determine how the district actually functions on the landscape.

In our study, we found many districts with strong purpose language signifying an intent to “protect agriculture from incompatible land uses” or to “limit the infiltration of urban uses”. However, we identified provisions in the districts that are in direct conflict with the purpose language. For example, this type of district often had no restrictions on or planning for non-farm single family housing, had housing densities of up to one home per acre, or allowed many permitted uses and conditional uses in addition to agriculture. Although the purpose of the district was to protect agriculture, the zoning techniques functioned to provide opportunities for land uses that would interfere with agriculture.

We did find a small number of zoning districts in Ohio that do function in a way that favors, supports or segregates agricultural land uses. Below is a summary of the mechanisms utilized in these districts.

3.3 *Research results: examples of agricultural zoning resolutions*

Several of the agricultural zoning mechanisms found in Ohio draw on the agricultural zoning types presented in Part II, above. We also discovered a few techniques not addressed by academic agricultural zoning types, such as voluntary zoning and lot split limitations. Below is a brief sampling of different township zoning techniques in place in Ohio’s agricultural zoning districts. Note that we collected the zoning resolutions in 2005, and do not account for revisions or amendments to the resolutions after the date of collection. Each resolution is available on our website at <http://cffpi.osu.edu>.

3.3.1 *Exclusive agricultural zoning*

- Mandatory exclusive zoning exists in Perry Township, Muskingum County. The Agricultural District permits only agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture and animal and poultry husbandry.
- Green Township, Ashland County also has a mandatory exclusive zoning district. Permitted uses in the Prime Farm District are limited to agriculture, farm dwellings, home occupations, essential services and accessory uses, with a minimum lot size of one acre. While a non-farm dwelling for immediate farm family members may be requested as a conditional use, the district does not allow any other residential uses. Also available upon approval as conditional uses are oil/gas wells, public and semi-public uses, commercial and custom butchering and cell towers.
- A *voluntary* exclusive district is in Pittsfield Township, Lorain County, titled the Primary Agricultural Use District. Landowners of 300 or more acres may enroll in the district. The permitted uses are primarily agricultural in nature -- principal farm dwellings, relative farm help dwellings, general agricultural operations, forestry, vet clinics, home occupations, commercial nurseries, private kennels and stables, roadside stands, community supported agriculture, government facilities and public parks. Conditional uses include farm help dwellings, bed and breakfasts (4 room maximum), homestead retention dwellings, cell towers, agricultural tourism, u-pick operations, family businesses, agricultural support services, exotic animal uses

and churches.

3.3.2 *Conditional use zoning*

- Milford Township in Defiance County uses a “conditional use” approach in its Agricultural District. The permitted uses are limited to agriculture, public uses, public service facilities and non-commercial recreation. Single family dwellings are conditional uses, granted only if consistent with the goal of substantially preserving the agricultural character of land, if can be adequately served by public utilities and services, and if will not create excessive congestion of adjacent roads. Other conditional uses include sand/gravel/mineral extraction, quasi-public uses, commercial recreation, cemeteries, churches and cottage businesses.
- In Perry Township, Allen County, the Agricultural District permits any agricultural use, public owned buildings and facilities, schools and public parks and community centers less than five acres. A single family dwelling is allowed only with approval as a conditional use and if on a lot of at least 2.5 acres. Other conditional uses include country clubs, private clubs or lodges, golf courses, commercial stables, cemeteries, churches, elder-care facilities, veterinary hospitals and clinics, all with lot size requirements.

3.3.3 *Large lot zoning*

- Harrison Township, Darke County has a 20-acre minimum lot size for uses in its Agricultural District. The district allows agriculture, one single family dwelling, accessory uses and public uses as permitted uses, and also allows conditional uses upon approval for

related uses such as agribusiness, animal hospitals and kennels, child care, churches, mineral extraction, landing strips, cemeteries, recreation, landfills, private schools and temporary mobile homes. However, churches and private schools have a minimum lot size of five acres.

- Pittsfield Township, Lorain County has a 40 acre minimum lot size for dwellings in its voluntary Primary Agricultural Use District.

3.3.4 Planned district zoning

- Miami Township, Montgomery County has a Planned Agriculture District that permits agricultural uses, single family dwellings, recreation and open space uses on tracts of land of at least 20 acres that must be developed according to a development plan. At least 50% of the plan must be dedicated to open space for agriculture, and the remainder may be developed as conventional development or as clustered development. Conventional, non-clustered housing must abide by a five acre lot minimum. Cluster developments have no minimum lot size requirement, and can receive a housing density bonus of up to 35% over conventional developments according to the clustering and open space design. Bonuses are awarded for minimizing fragmentation of open space and disturbances to resources, creating riparian buffers and connecting to other open space projects.

3.3.5 Lot split limitations

- After the effective date of the current zoning resolution for St. Mary's Township, Auglaize County, a single tract of land in the Agricultural District may be subdivided "so as to

provide no more than four residential lots which are less than five acres."

- A similar provision is in place in Montgomery Township, Marion County, where a parcel of land in the Agricultural District on the record as of January 1, 1997, may be subdivided for residential use to provide a maximum of four new residential lots that are less than ten acres.

3.3.6 Varying lot sizes

- Harrison Township, Darke County has an Agricultural District that prescribes different lot sizes for different uses within the district to reduce the impact of non-farm development. This district has a 20-acre minimum lot size. A residential lot can be split under these regulations given that the remaining agricultural parcel meets the 20-acre minimum. This new residential lot size is variable and can be as small as the health department will allow.

3.4 Analysis of Ohio agricultural zoning approaches

The few zoning districts we identified as exclusive agricultural districts in Ohio offer agricultural landowners the obvious benefit of not having to compete with conflicting land uses. Competition with non-farm land uses can arise in many forms and have many impacts, such as use of roadways, complaints about agricultural production practices, interferences with drainage systems and changes in land values. The exclusive agricultural district can minimize these impacts for agriculture.

Voluntary agricultural districts present an interesting alternative to mandatory regulation. The

approach can capitalize on individual desires to retain farmland and avoid some of the political contention affiliated with agricultural zoning. Certainly, the local government's ability to offer information and education to landowners on the voluntary option could impact participation in a voluntary zoning program. Finally, the approach taken by Pittsfield Township, Lorain County addresses the problem of spot zoning and the concern of building a critical mass of farmland by requiring that the land enrolled must be at least 300 acres (with one more landowners).

Lot split limitations, cluster development, conservation development and planned districts can enable farmland protection while addressing landowner equity issues. Opposition to agricultural zoning often focuses on the loss of development opportunities. Communities may be more accepting of a zoning district that allows development, but with limitations or according to a plan that coordinates with agriculture. Depending on the design, the potential for incompatible uses is a concern, however. For lot split limitations, there is also concern that a restriction that fails to account for original parcel size may not be legally defensible. That is, the local government must have a rational reason for allowing a 50-acre parcel the same number of lot splits as a 200 acre parcel, or should adjust the allowable lot splits according to the size of the original parcel.

One factor that can have powerful impacts on an agricultural district is the minimum lot size. The issues raised in academic literature with large minimum lot sizes apply to the Ohio agricultural zoning examples we reviewed. Is twenty or thirty acres a lot size that will support an agricultural business and deter non-farm

residential development? Or does it merely encourage low density residential development rather than agricultural development? In any agricultural district, the minimum lot size will dictate how much land converts from agricultural to non-agricultural land uses. If the goal of the district is to retain farmland, the number must reflect careful consideration of the needs for both the agricultural activities and the permissible non-farm development.

An alternative to large lot zoning is to allow lot sizes to vary within a district, according to the land use. Since a residence requires less land than an agricultural operation, the district could establish a smaller lot size for dwellings and a larger lot size for agriculture. Some may raise concerns that this approach violates the requirement in Ohio zoning law that zoning be "uniform", but similar arguments challenging planned unit development zoning techniques have failed. The appeal of this approach is that it could reduce the amount of land lost to conversion from agricultural to residential land use and quiet the debate over the "correct" minimum lot size for a large lot zoning strategy.

PART IV. OUR RECOMMENDATIONS FOR ZONING THAT SUPPORTS AGRICULTURE

While zoning to support agriculture is a complex and potentially contentious undertaking for local officials, it is a tool that farmland protection experts believe can effectively retain a community's agricultural lands. For those communities who wish to engage in this effort, we offer a number of recommendations.

4.1 Plan for agriculture

As noted in part 1.3 above, we would be remiss to suggest that agricultural zoning can take place without appropriate planning. Our first two recommendations expand on the need to utilize zoning as an implementation tool that follows planning—with a special emphasis on planning for agriculture.

- *Assess existing agricultural resources*

Assessing what type of agriculture exists and where agricultural resources are located in the community is the necessary first step to planning and zoning for agriculture. Identify types of farming activities, farm locations, prime agricultural soils, and locally unique soils and climates. Consider the locations of agricultural support services and infrastructure such as grain elevators, agricultural markets, processing facilities, water and seed, feed, chemical and equipment dealers. Identify land enrolled in Ohio's Agricultural District Program, Agricultural Security Areas Program, Agricultural Easement Purchase Program, and land subject to an agricultural or conservation easement. Also note areas supporting land uses and tools that may conflict with agricultural activities, such as residential subdivisions and subdivision regulations. The types and locations of existing agricultural areas and resources can supply clear directives for the placement of agricultural zoning districts.

- *Examine agricultural capacity and future needs*

Agriculture is a constantly changing industry. Consider opportunities not only for retaining existing agriculture, but also for ex-

panding the community's agricultural capacity in the future. Identify emerging trends in agricultural land uses and additional agricultural development that utilizes or builds on current resources. Determine the needs of new development and whether there are logical locations and prospects for expanding agricultural capacity. Clarify the community's definition of "agriculture" and give careful deliberation to providing long-term viability for agriculture.

4.2 Identify the true purpose of an agricultural district

Communities have varied reasons for wanting agriculture and diverse definitions for the type of agriculture desired. For example, is the reason for an agricultural district to create an open or bucolic landscape for the enjoyment of rural residents, to establish a district dedicated to agricultural production, or both? It is important to understand these differences and develop a purpose statement that truly reflects the community's vision for agriculture.

We found many purpose statements in different township zoning resolutions that were quite similar to one another. Goals such as "to control the indiscriminate infiltration of urban development", "to promote the predominantly rural character", and "to protect agriculture from the infringement of unguided development" were common amongst different communities. We advise against replicating another community's purpose statement without first giving direct and honest consideration to the desired roles of agriculture.

Strong purpose statements will help guide the selection of appropriate zoning techniques for

the district. They will also enhance the legal defensibility of the zoning regulation. A well-written purpose statement that is closely tailored to zoning techniques and is within the delegated zoning authority will be in a good position to withstand legal scrutiny.

4.3 Consider different agricultural districts with different purposes

Perhaps a community has more than one purpose for agriculture, or maybe there are external factors that affect one agricultural area but not another. Rather than trying to address competing needs within one agricultural district, consider establishing more than one agricultural district, with each focusing on a unique purpose or addressing differing influences on agriculture.

A district that proposes to “maintain a rural character” could utilize different zoning techniques than one that claims to “protect land best suited for agricultural use from encroachment”. A district located closer to an urban area could focus more on urban land uses and needs than a district located in a more rural area. A district well suited for new agricultural development could use zoning mechanisms to encourage such development. Separate the agricultural districts to represent the range of agricultural purposes and address varying influences on agriculture. But remember that in any of these zoning districts, the zoning resolution may not prohibit those types of agricultural activities defined in Ohio zoning law as “agriculture”.

4.4 Understand the relationship between district purpose and function

A surprising discovery we made by examining Ohio township zoning resolutions is that many districts have different names and different pur-

poses, yet are strikingly similar when comparing zoning techniques. A “Rural Residential District” whose goal is to “provide for low density rural residential development” sounds much different than an “Agricultural District” having the purpose to “promote the continuance of agriculture”. But an evaluation of the two districts’ zoning techniques reveals no difference in how the districts actually function. Provisions for permitted uses, lot sizes and conditional uses are substantially the same. On the actual landscape, the two districts are indistinguishable.

This finding highlights the importance of the relationship between a district’s purpose and function. Zoning techniques and approaches should be selected to implement the purpose of the district. If the goal of a district is to “create a critical mass of land available for agricultural production”, then drafters should carefully assess the techniques that can accomplish the purpose. Those techniques should not be the same as techniques selected to regulate a district that aims to “protect the area’s semi-rural character and provide for low density housing opportunities”.

This step requires consideration and knowledge of how zoning techniques play out on the landscape. What differences might result on the landscape, for example, between a five acre minimum lot size and a 1.5 acre minimum lot size? What impact results by allowing unlimited single family dwellings as a permitted use, versus allowing only farm-related dwellings or permitting non-farm housing as a conditional use? Which of these techniques is best suited to a district whose primary goal is to support agriculture? The potential outcome on the land resource should be clear where there is a tight relationship between the purpose and tech-

niques, and an understanding of how each plays out on the landscape.

4.5 Utilize several zoning techniques in a district

Many zoning districts rely on one “magic” technique to maintain an agricultural district. But a district can utilize several agricultural zoning mechanisms concurrently within the district. For example, the district could limit the number of lot splits from an original parcel and could also vary minimum lot size according to permitted uses and soil conditions. Or a district could restrict permitted uses and vary lot sizes according to the permitted uses. A mix of zoning techniques may be necessary to fully address the needs and intended outcomes for the district. For examples of different agricultural zoning techniques, see section 3.3 above.

4.6 Define “incompatible” land uses

It is common to find agricultural zoning districts in Ohio townships containing zoning purpose language that aims to “protect agriculture from *incompatible* land uses”. Yet this basic goal of zoning – separating incompatible land uses – appears to be overlooked in Ohio zoning regulations. A laundry list of permitted and conditional uses in agricultural districts suggests that we have not defined those uses that are truly incompatible with agriculture. The consequences of failing to separate incompatible uses are many – conflicts over farm management practices, roadway use and surface water drainage, to name a few.

What other land uses are incompatible with agriculture? The answer may depend on the nature and type of agricultural activities in an area, and the types of non-agricultural activities per-

mitted. The most obvious and perhaps most controversial question is whether agriculture and non-farm residential development are compatible, and if so, at what level of density? Establishment of an agricultural zoning district should include careful scrutiny of permitted and conditional uses and analysis of whether those uses can coexist with the area’s agricultural activities.

4.7 Focus on density

Arguing over the appropriate lot size or number of lot splits can detract us from the big picture: what is the desired population density for the area? Perhaps we should begin by analyzing an area in terms of maximum density that the land can support, establish a desired density threshold, and provide flexibility in how development in the area can be configured to stay within the density threshold. Once the density is reached, further development is prohibited. This approach, referred to as density based zoning, should result in more efficient land use that can be mindful of the agricultural resources in the area.

4.8 Address the equity issue

Anecdotal evidence suggests that one reason for opposition to agricultural zoning is the loss of financial gain from selling farmland for non-farm development. Landowners argue that it’s unfair to restrict some property owners to agricultural use and allow others to capitalize on development values. Restricted landowners may claim that an agricultural zoning designation takes the financial equity in their land.

A few zoning techniques can address the equity issue. First, a township can vary the typical mandatory agricultural zoning approach by of-

fering a voluntary agricultural zoning district. A parcel that meets specified criteria such as location and acreage may voluntarily enter an agricultural district designed to protect the parcel from non-agricultural land uses (see Pittsfield Township, Lorain County, section 4.3 above). Offering a voluntary enrollment option may allow agricultural areas of critical mass to develop by private will rather than by regulation, and may offset political opposition. A voluntary zoning program should include a plan for educating landowners about the opportunity, and should be designed so that it is simple and inexpensive for a landowner to enroll in the district. For planning and legal purposes, land voluntarily enrolled in an agricultural district should be subject to the rezoning process if the landowners want to change the zoning designation.

A second approach to the equity issue is to establish and provide incentives for alternative development mechanisms such as conservation design, density based zoning and planned unit developments. These tools can allow non-farm development in an agricultural district, but the development can be designed to minimize conflicts between land uses and impacts on agricultural land. Such tools are often more complex and time consuming than traditional zoning techniques, and will require the community to establish an effective approval process.

4.9 *Be prepared for growth and change*

A township that desires to maintain agricultural lands may also need to ensure that there are sufficient areas in the township to accommodate growth and change. Establishing desirable growth areas that are suited to development can relieve pressures on agricultural areas. These growth areas can also provide opportuni-

ties for creative development tools that establish relationships between agricultural districts and growth districts, such as planned unit developments, community authorities and the transfer of development rights. This final recommendation leads us back to our first recommendation: plan first.

For further information:

The zoning resolutions we refer to in this brief and other agricultural zoning examples are available on our [website at http://cffpi.osu.edu](http://cffpi.osu.edu).

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ABOUT THE CENTER:

Established in 2006, the mission of The Ohio State University's Center for Farmland Policy Innovation (CFFPI) is to enable Ohio local governments to achieve farmland protection priorities. The Center provides educational programming and partners with Ohio communities on innovative farmland policy projects. Our policy briefs are developed in conjunction with local government roundtable discussions, and are available with other resources on the CFFPI web site, <http://cffpi.osu.edu>. Please visit our web site to learn more about the Center and other opportunities we offer.

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