AGRICULTURAL ZONING EXEMPTIONS: CULTIVATING CHAOS IN THE TWENTY-FIRST CENTURY?

Courtney Jayde Barnes[1]

I. Introduction 245
II. The Significance of Zoning Laws and Zoning Exemptions 246
A. The Historical and Current Purposes of Zoning Laws 246
B. Zoning Exemptions Pertaining to Farming and Agriculture 247
C. The Constitutionality of Zoning 248
III. The Current Status of Zoning Exemptions 250
A. Agricultural and Farming Exemptions in Iowa and Other Circuits 250
B. How Exemptions Are Applied in the Iowa Courts and Other Circuits… 253
IV. Problems Related to Comprehensive Zoning Plans 255
A. The Perils of Spot Zoning 255
B. The Potential for Zoning Laws to Have a Discriminatory Effect .. 257
V. Salvaging Agricultural Zoning Exemptions 259
A. Solutions for the Future 259
B. Public Policy Considerations 260
VI. Conclusion 261

I. INTRODUCTION

Whether you live in California, Maine, Iowa or another state, the likelihood that you or your town will be affected by zoning issues at some point in time is undoubtedly certain. If you take one step out of your house and look around, you may see other homes that look similar to yours. Drive by the nearest elementary school in your town and you may observe that the school is situated near a residential area and not next to an industrial plant. While the layout of any big city or small township may seem arbitrary to the casual observer, those famil-

1. J.D., Drake University Law School, December 2007; B.A., Evangel University, May 2005.

iar with zoning and land use control know that municipal planning and organization is anything but random.

At one time or another, all fifty states had some type of state or local zoning control.[2] Many states still continue to use zoning controls.[3] These controls relate to the use of land by governing architecture and prescribing the land use depending on the region (or zone) where the tract in question is located.[4] While zoning can be helpful to city planning, it can have an adverse effect on certain types of activities or industries if they become heavily regulated and are hindered in their operations. Thus, different states vary as to how much control a local county zoning board is given and whether certain industries or activities are wholly exempt from local control.[5]

This Note will discuss the importance of zoning laws and exemptions and how they pertain to various agricultural activities. This Note will identify the historical and current purposes of zoning and the ways in which local governments and the courts in Iowa and around the country have exempted agriculture and farming from zoning ordinances. In doing so, the Note will highlight some of the potential problems with agricultural exemptions and how ambiguity in the definition of "agriculture" may create unnecessary and undesirable problems related to the erroneous interpretation of zoning exemptions. Finally, this Note will offer possible solutions for preventing the inexact application of exemptions and demonstrate the importance of immediate action in an ever-changing and diverse society.

II. The Significance of Zoning Laws and Zoning Exemptions

A. *The Historical and Current Purposes of Zoning Laws*

Zoning is "the legislative division of a region, esp. a municipality into separate districts with different regulations within the districts for land use, building size, and the like."[6] Zoning is one of several types of property regulation conducted by local governments.[7] Most often, zoning is part of a comprehensive development plan effectuated by a municipality or authority.[8] Zoning ordinances or statutes generally regulate building development and uses of property.[9] Thus,

---

2. Jesse Dukeminier & James E. Krier, Property 971 (5th ed. 2002).
3. *Id.*
4. 101A C.J.S. *Zoning and Land Planning* § 1 (2005).
5. John R. Nolon & Patricia E. Salkin, Land Use in a Nutshell 68 (2006).
6. Black's Law Dictionary 791 (Bryan A. Garner ed., 3d. pocket ed. 2006).
7. 101A C.J.S. *Zoning and Land Planning* § 1 (2005).
8. *Id.*
9. *Id.*

zoning regulations can generally be divided into two classes: 1) those regulations which govern structural or architectural matters, and 2) those which prescribe the use of a building or piece of property within a certain district.[10]

In the United States, zoning was a Twentieth Century invention. The first comprehensive zoning program was enacted by New York City in 1916.[11] "In New York City, Fifth Avenue merchants were upset with the encroachment of other land uses, such as garment factories and offices, into their high-end retail neighborhood. There was broad sentiment that the city was becoming too densely settled, largely because of the spread of skyscrapers."[12] The New York City zoning program divided the city into different land use districts and regulated which type of land use could be conducted based on certain zones.[13] The idea of zoning regulation caught on quickly. In 1922, an Advisory Committee on Zoning issued a Standard State Zoning Enabling Act.[14] By 1925, at least 368 municipalities had a zoning ordinance.[15]

At one time or another, the Standard State Zoning Enabling Act [hereinafter "Standard Act"] was adopted in all fifty states and is still in effect in many of them (with modifications).[16] Today, some states continue to adhere to various versions of the Standard Act while other states have moved away from local control.[17] "[S]tates vary in how broadly they empower local governments, to what extent they guide them—mandating certain local approaches to land use control—and when they foreclose local action through preemptive, statewide laws."[18] In Iowa, zoning is still largely part of local government control.[19]

B. *Zoning Exemptions Pertaining to Farming and Agriculture*

Throughout the United States, zoning laws restrict and protect different types of land uses. Many local zoning restrictions have special provisions that protect farming and agricultural activities by allowing these activities in residen-

10. *Id.*
11. Dukeminier & Krier, *supra* note 2, at 958.
12. Nolon & Salkin, *supra* note 5, at 67.
13. *Id.* at 67-68.
14. Dukeminier & Krier, *supra* note 2, at 959. (The 1922 "Advisory Committee on Zoning . . . had been appointed by [then] Secretary of Commerce Herbert Hoover.").
15. *Id.*
16. *Id.* at 971.
17. Nolon & Salkin, *supra* note 5, at 68-69.
18. *Id.* at 68.
19. *See* IOWA CODE ANN. tit. IX, subtit. 1, ch. 335 (West 2007) ("Chapter 335, County Zoning Commission, Code 1993, consisting of §§ 335.1 to 335.31, was transferred from Chapter 358A, County Zoning Commission, Code 1991, consisting of §§ 358A.1 to 358A.31, by the Code Editor as part of the Iowa Code Reorganization.").

tial, industrial, agricultural or other zones.[20] "[A] growing number of states [including Iowa] have adopted statutes exempting agricultural uses and structures in all zones from all or most local zoning restrictions."[21] In cases where an agricultural or farming exemption hangs in the balance, the definitions of what constitutes "agriculture" or "farming" become exceedingly important.[22] Zoning boards and courts have attempted to provide some clarity in determining what is and is not agriculture; however, the ambiguity in the terms continues to create confusion and inconsistencies.[23] Other courts have offered a framework in evaluating whether an activity has an agriculture purpose by requiring that the "agricultural purpose . . . be determined from the activity itself and not from such external considerations as the property owner's intent or other business activities or objectives."[24] While the state courts have employed different techniques to come to a reasonable conclusion as to what constitutes agriculture or farming, their conclusions may leave the average farmer, or even legal scholar, perplexed and unable to predict whether a land use will qualify for an exemption.

C. *The Constitutionality of Zoning*

The purpose of zoning is to protect the health, safety and welfare of citizens.[25] In essence, zoning is an exercise of police power, which is a power normally held to reside in the states; however, all states have adopted enabling acts that delegate zoning authority to local governments in zoning cases.[26] While local governments are authorized to create comprehensive zoning schemes, these plans must comply with the rights guaranteed under the United States Constitution.[27] Under the Fourteenth Amendment of the Constitution, states are prohi-

---

20. Steve B. Long, Annotation, *Construction and Application of the Terms "Agricultural," "Farm," "Farming," or the Like, in Zoning Regulations*, 38 A.L.R. 5th 357 (1996).

21. *Id.*

22. For the purposes of this section, Iowa zoning regulations, exemptions, and court cases will not be discussed. Instead, details concerning zoning in Iowa will be covered in section three of this Note.

23. *Compare* Miami County v. Svoboda, 955 P.2d 122 (Kan. 1998) (holding that a farmer's private landing field is exempt from county ordinances because the farmer used his plane to check fences, the condition of crops, and other farm activities), *with* Town of Harvard v. Maxant, 275 N.E.2d 347 (Mass. 1971) (holding that the use of agricultural land primarily used as a landing field does not qualify as an agricultural use).

24. 83 AM. JUR. 2D *Zoning and Planning* § 309 (1964) (citing County of De Kalb v. Vidmar, 622 N.E.2d 77 (Ill. App. Ct. 1993)).

25. Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 392 (1926).

26. Dukeminier & Krier, *supra* note 2, at 971.

27. *See Vill. of Euclid*, 272 U.S. at 386 (reviewing the constitutionality of zoning).

bited from "depriv[ing] any person of life, liberty, or property, without due process of law . . . ."[28]

One of the first cases that challenged the constitutionality of zoning ordinances was *Village of Euclid, Ohio v. Ambler Realty Co*. [hereinafter *Euclid*].[29] In *Euclid*, the Supreme Court was faced with the task of determining whether a comprehensive zoning plan was an illegal deprivation of property under the Fourteenth Amendment.[30] Specifically, *Euclid* was the first case to determine whether "the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded" was valid under the Constitution.[31] The Village of Euclid, an Ohio municipal corporation, passed a comprehensive zoning plan which divided the suburb into districts and specified what types of buildings and industries could be placed in certain districts within the municipality.[32] The appellee, a commercial landowner, sought an injunction against the enforcement of a zoning ordinance passed by the Village of Euclid.[33] In its complaint, the appellee argued that it suffered harm because it was unable to sell a tract of land for certain enumerated uses forbidden by the zoning ordinance.[34] Writing for the Court in *Euclid*, Justice Sutherland observed:

> Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained . . . while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. . . . The ordinance now under review, and all similar [zoning] laws and regulations, must find their justification in some aspect of the police power, asserted for the public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities.[35]

Subsequently, the Supreme Court went on to find the comprehensive zoning plan was a valid exercise of authority under the Constitution.[36] The Court

28. U.S. CONST. amend. XIV, § 1.
29. *Vill. of Euclid*, 272 U.S. 365.
30. *Id.* at 384.
31. *Id.* at 390.
32. *Id.* at 379-82.
33. *Id.* at 384.
34. *Id.* at 396-97.
35. *Id.* at 387.
36. *Id.* at 397.

rejected the appellee's argument that it had suffered harm by analyzing the wisdom and policy behind the zoning regulations and determining that the regulations had a "substantial relation to the public health, safety, morals, or general welfare."[37] Once zoning was upheld as a legitimate practice, local governments were free to adopt uniform building and use standards to regulate various land use districts; this technique became known as "Euclidian Zoning."[38] Provided that zoning ordinances are nondiscriminatory and reasonable, and the ordinances are applied in a nondiscriminatory and reasonable manner, the regulations will generally be upheld as constitutional.[39] Thus, "[t]o successfully challenge the validity of a zoning ordinance, the challengers generally must prove that the actions of a city in adopting the regulation were unreasonable, discriminatory, or arbitrary, and that the regulation bears no relationship to the purpose sought to be accomplished by the ordinance."[40]

III. THE CURRENT STATUS OF ZONING EXEMPTIONS

A. *Agricultural and Farming Exemptions in Iowa and Other Circuits*

In Iowa, county zoning ordinances under Iowa Code Chapter 335 do not apply "to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of the nature and area, for use for agricultural purposes, while so used."[41] However, county zoning ordinances "may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream."[42] According to the Iowa Supreme Court, "agriculture is the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock."[43] The Iowa Supreme Court has expanded this definition of agriculture to conclude that facilities, which are used in connection with agricultural purposes, are also exempt.[44] Over the years, the Iowa legislature has made changes to the agricultural exemptions to limit certain types of operations. Most notably, the Iowa legislature made a

37. *Id.* at 395.
38. Nolon & Salkin, *supra* note 5, at 78.
39. 101A C.J.S. *Zoning and Land Planning* § 21 (2005) (citing Cobb County v. Peavy, 286 S.E.2d 732 (Ga. 1982)).
40. *Id.* (citing Giger v. City of Omaha, 442 N.W.2d 182, 191 (Neb. 1989)).
41. IOWA CODE § 335.2 (2007); *See supra* text accompanying note 19.
42. *Id*.
43. Thompson v. Hancock County, 539 N.W.2d 181, 183 (Iowa 1995) (citing Farmegg Prods., Inc. v. Humboldt County, 190 N.W.2d 454, 457-58 (Iowa 1971)).
44. DeCoster v. Franklin County, 497 N.W.2d 849, 853 (Iowa 1993).

change in the exemptions in 1976 when it passed Iowa Code section 172D.4(1).[45] Section 172D.4(1) requires that any person operating a feedlot must comply with local zoning requirements.[46] The statute further defines "feedlot" as "a lot, yard, corral or other area in which livestock are confined, primarily for purposes of feeding and growth prior to slaughter."[47]

Interestingly, the Iowa Supreme Court declined to expand the definition of "feedlot" to include an indoor confinement facility.[48] In *Thompson v. Hancock County*, Hancock County appealed from a declaratory judgment, which exempted hog confinement facilities owned by the plaintiffs, the Thompsons.[49] The Thompsons proposed to construct five hog confinement buildings, which would accommodate 900 pigs per building.[50] The county board of supervisors, rejecting the proposal, did not recognize an exemption to the local zoning ordinances.[51] However, the district court disagreed and determined that the Thompsons did not have to comply with the local zoning ordinances because the hog confinement facilities qualified for an exemption as an "agricultural purpose."[52] On appeal, the Iowa Supreme Court evaluated the effect of section 172D.4(1) on the section 335.2 exemption.[53] The court determined that "[t]he words 'lot, yard, and corral' all refer to outdoor or open-air facilities. Thus, under the rule of interpretation . . . the 'other area' language must be limited to an area of the same character."[54] In making this determination, the court refused to extend "feedlots" to include indoor facilities and noted that these facilities still qualified for an exemption under section 335.2.[55]

The challenge of defining the words "agriculture" and "farming" is not solely limited to the Iowa courts.[56] Different states use various approaches to define the terms. Some states, similar to Iowa, prefer to use a general definition of "agricultural land use" to preempt local zoning ordinances. For example, Kansas employs a limited statute to define agricultural exemptions, which reads in part, "[e]xcept for flood plain regulations . . . , regulations adopted pursuant to this act shall not apply to the use of land for agricultural purposes, nor for the

---

45. *See* IOWA CODE § 172D.4(1) (2007).
46. *Id*.
47. IOWA CODE § 172D.1(6) (2007).
48. *Thompson*, 539 N.W.2d at 184.
49. *Id.* at 182.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.* at 183-84.
54. *Id.* at 184.
55. *Id.*
56. *See* Long, *supra* note 20 (reviewing various inconsistent cases from different jurisdictions attempting to define "agriculture" and "farming").

erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes."[57] Other states, like New Jersey, prefer to use a more tailored definition of agriculture that includes a fairly expansive list of activities that qualify as agriculture.[58] New Jersey's definition of agriculture includes specific activities such as: processing and packaging the agricultural output of a commercial farm, controlling pests and predators, conducting on-site disposal of organic agricultural wastes, and clearing woodlands using open burning techniques.[59] While New Jersey's list is not exhaustive, it certainly provides guidance in determining whether a particular activity or operation is considered agriculture for the purpose of zoning regulations or exemptions.

Additionally, there is also a third group of states that employ a hybrid between an expansive list and a general definition. Illinois is one state that employs this technique.[60] In *Lake County v. Cushman* [hereinafter *Cushman*], the Illinois Court of Appeals evaluated whether a poultry hatchery on a small, 3.09 acre lot was considered an "agricultural use" within the meaning of the statute exempting agriculture from local zoning control.[61] The court chose to define agriculture in a broader sense than the word "farm."[62] The *Cushman* court included in its definition of agriculture the "harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man . . . ."[63]

Even the United States Supreme Court has confronted the question of what is meant by the term "agriculture." In a case involving the Fair Labor Standards Act, the Supreme Court said:

> Agriculture, as an occupation includes more than the elemental process of planting, growing and harvesting crops. There are a host of incidental activities which are necessary to that process. . . . [t]he question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity.[64]

57. KAN. STAT. ANN. § 19-2921 (2007).
58. *See* N.J. STAT. ANN. § 4:1C-9 (West 2007).
59. *Id.*
60. *See* Lake County v. Cushman, 353 N.E.2d 399 (Ill. App. Ct. 1976).
61. *Id.* at 400.
62. *See id.* at 402.
63. *Id.* (quoting People ex rel. Pletcher v. Joliet, 152 N.E. 159, 160 (Ill. 1926)).
64. Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 760-61 (1949).

Yet, despite the various methods employed in defining "agriculture," the problems related to how agricultural exemptions are (or should be) applied have yet to be resolved by the definitions alone.

B. *How Exemptions Are Applied in the Iowa Courts and Other Circuits*

Perhaps the greatest proof of the lack of a solid and predictable test for when to allow agricultural exemptions are the judgments of the courts in construing the term "agricultural purpose."[65] When the Iowa courts have been asked to determine whether an activity or land use qualifies as an agricultural purpose, the courts have attempted to use some type of objective method to come to a decision. One such example of this objective method is found in *Helmke v. Board of Adjustment, City of Ruthven*.[66] In *Helmke*, the Iowa Supreme Court was asked to review the decision of the Palo Alto County District Court and evaluate whether a grain storage facility was a permitted use under a zoning ordinance or whether it came within the "agricultural purpose" exemption to the ordinance.[67] Using an "independent productive activity" test to evaluate the grain storage facility at issue in the case, the court determined that the grain storage facility was built to supplement existing farm storage facilities.[68] Since there were existing storage facilities, the court reasoned that the new grain storage was "part of a farming continuum which begins with the planting of a crop and continues through its cultivation and harvesting."[69] Accordingly, the court affirmed the decision of the lower court and ruled that the grain storage facility qualified for the "agricultural purpose" exemption because it was part of an agricultural function.[70]

While the Iowa courts made significant steps to define a much-needed test in agricultural exemption cases, the Iowa Supreme Court issued a controversial decision in the early 1970s which caused further confusion for years to come.[71] In a case involving a landowner's proposed structures and operations for raising chicks from one day of age to twenty-two weeks of age prior to being

---

65. *See* Long, *supra* note 20 (reviewing cases from jurisdictions construing the terms "agriculture" and "farming").

66. *See* Helmke v. Board of Adjustment, City of Ruthven, 418 N.W.2d 346, 350-52 (Iowa 1988).

67. *Id.* at 347.

68. *Id.* at 351-52.

69. *Id.* at 352.

70. *Id.*

71. *Farmegg Prods., Inc.*, 190 N.W.2d 454; *See* Neil D. Hamilton, *Freedom to Farm! Understanding the Agricultural Exemption to County Zoning in Iowa*, 31 DRAKE L. REV. 565 (1982) (discussing the aftermath of and revision to *Farmegg*).

transferred to another facility, the Iowa Supreme Court determined that this activity did not qualify as an "agricultural purpose" and was not exempt from local zoning ordinances.[72] In an unusual twist, the court determined in *Farmegg Products, Inc. v. Humboldt County* [hereinafter *Farmegg*], that the proposed chicken houses at issue in the case would not be used as part of an ordinary farming operation, but rather, the chicken houses were to be used as part of a commercial operation.[73] The *Farmegg* court rested its decision on a variety of facts specific to the case which it considered as proof of a lack of an "agricultural purpose." These facts included: the lack of livestock kept on the land, the absence of any barns, sheds or buildings for the housing of livestock, none of the feed given to the chicks was to be produced on the land, and no part of the land was to be used for crop production.[74] Although the court refused to allow an agricultural exemption in a purely commercial use case, the court did acknowledge that there may be instances where a contemplated use of land may be both commercial and agricultural in nature.[75] In fact, the Iowa court acknowledged such an example in *Farmegg*.[76]

Conversely, in *Fidler v. Zoning Board of Adjustment*, the Pennsylvania Supreme Court determined that construction of pole barns on a tract of farmland located in an agricultural zone was an agricultural activity and therefore permitted by the local zoning ordinance.[77] The plaintiff in *Fidler* wanted to raise between 40,000 and 50,000 turkeys and grow grain to provide feed for less than ten percent of the turkeys.[78] The court's determination that the activities were permissible by the zoning ordinance was based, in part, on the fact that there were incidental agricultural purposes related to the overall commercial nature of the land use.[79] Further, the court went on to say that " 'all business incidental to the processing and marketing of farm product' " would generally be allowed as part of an agricultural purpose provided that these activities were not specified excluded uses, such as: commercial slaughterhouses, markets, stockyards, and fertilizer plants.[80] While *Fidler* and *Farmegg* may seem similar, the *Farmegg* court noted that there was a crucial factual distinction which made the *Fidler* decision distinguishable. In *Fidler*, some of the turkeys were to be fed using feed pro-

72. *Farmegg Prods., Inc.*, 190 N.W.2d at 459.
73. *Id.* at 457.
74. *Id.* at 459.
75. *Id.*
76. *Id.* at 458-59 (citing the plaintiff's reliance on Fidler v. Zoning Bd. of Adjustment, 182 A.2d 692 (Pa. 1962)).
77. *Fidler*, 182 A.2d at 694-95.
78. *Id.* at 694.
79. *Id.* at 695.
80. *Id.* at 693, 695 (quoting section 501(2) of the township ordinance).

duced on the same land.[81] The *Fidler* court held that the presence of a dual operation of growing feed and raising turkeys on the same land made a good argument for an ordinary farming operation as opposed to a commercial activity.[82] The agricultural versus commercial distinctions in zoning regulations are just one of the many ways in which a seemingly clear case may be decided in a way that seems contrary to case law or common sense.

Another possible distinction made in agricultural exemption litigation concerns the recreational use of farmland. Several cases have considered activities such as seasonal hayrides and festivals. In *Columbia Township Board of Zoning Appeals v. Otis*, the Ohio Court of Appeals addressed the question of if and when hayrides become non-agricultural for the purpose of zoning exemptions.[83] "A landowner, who had for some time diversified her operation to include recreational pony rides and hayrides, added Halloween and Christmas themes to the [haunted] hayrides. . . . [T]he court opined that normal hayrides are 'agricultural activity,' [; however,] the addition of the lights and sound disqualified them as such."[84] In contrast to *Otis*, a Pennsylvania court determined that haunted hayrides did qualify as an agricultural purpose because the zoning board had failed to prove that the hayrides were detrimental to the welfare of the public.[85] While zoning is largely a product of local government control, the great variances between state agricultural exemptions demonstrates an intolerable lack of predictability and continuous change in precedent, which can and will create future problems.

IV. Problems Related to Comprehensive Zoning Plans

A. *The Perils of Spot Zoning*

One of the potential problems with zoning ordinances and exemptions relates to the issue of spot zoning. When a piece of property is treated differently from other surrounding pieces of property a court may consider whether the zoning ordinance constitutes illegal spot zoning.[86] "Stated another way, 'spot zon-

---

81. *Farmegg Prods., Inc.*, 190 N.W.2d at 459.
82. *Id.*
83. Columbia Twp. Bd. of Zoning Appeals v. Otis, 663 N.E.2d 377, 377 (Ohio Ct. App. 1995).
84. Robert Andrew Branan, The Nat'l Agric. Law Ctr., Zoning Limitations and Opportunities for Farm Enterprise Diversification: Searching for New Meaning in Old Definitions 28 (2004), http://www.nationalaglawcenter.org/assets/articles/branan_zoninglimitations.pdf (discussing *Columbia Twp.*, 663 N.E.2d 377).
85. *Id.* (citing *In re* Appeal of Gunser, 22 Pa. D & C.4th 193, 197 (Pa. Com. Pl. 1994)).
86. *See* 101A C.J.S. *Zoning and Land Planning* § 44 (2005).

ing' is an arbitrary zoning action by which a small area within a larger area is singled out and specially zoned for a use classification different from, and inconsistent with, the classification of the surrounding area and the comprehensive plan."[87] Generally, courts will be suspicious of any attempt to spot zone a parcel of land; however, spot zoning may be valid if the court finds a rational basis for the modification to the zoning plan.[88]

In *Montgomery v. Bremer County Board of Supervisors*, the Iowa Supreme Court granted certiorari to review two separate cases related to the decisions of the Bremer County Board of Supervisors [hereinafter "Board"] to rezone parcels of land from agricultural to industrial.[89] Neighbors opposed to the rezoning filed suit and argued, in part, that the Board failed to adopt substantive rules to establish guidelines for when and where rezoning is appropriate.[90] The court disagreed with the plaintiffs and focused its analysis on the legislative nature of the Board.[91] Thus, the court determined that the rezoning was allowed if the Board "gave full consideration to the problem presented, including the needs of the public, changing conditions, and the similarity of other land in the same area . . . ."[92] The lesson learned from the *Montgomery* decision is two-fold: first, local county boards are given a great deal of latitude when determining whether a land parcel should be rezoned; and second, the court will enforce a local board's decision even when it violates public policy.[93]

Arguably, spot zoning and zoning exemptions are interrelated. As the *Montgomery* court noted, "zoning is not static."[94] Changes to comprehensive zoning plans are clearly permissible and likely inevitable.[95] Spot zoning is a less favorable (and often illegal) way of achieving modifications to the comprehen-

87. *Id.* (citing Life of the Land, Inc. v. City Council of Honolulu, 606 P.2d 866 (Haw. 1980)).

88. *Id.* (citing Montgomery v. Bremer County Bd. of Supervisors, 299 N.W.2d 687 (Iowa 1980)).

89. *Montgomery*, 299 N.W.2d at 691.

90. *Id.* at 694.

91. *See id.* at 695 (Focusing on the legislative power and discretion of the Board of Supervisors to amend comprehensive zoning plans, the court determined that requiring the Board to adopt "rules to guide its discretion would be an unnecessary burden.").

92. *Id.* at 695.

93. *See id.* at 696 (rejecting the petitioners' argument that the rezoning violated Iowa's public policy of preserving farmland).

94. *Id.* at 695 (citing Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 743 (Iowa 1969)).

95. *See id.* (holding county boards have the power to determine whether land should be rezoned).

sive zoning schemes.[96] On the other hand, zoning exemptions provide modifications to comprehensive zoning plans using a more systematic, albeit inexact, method. Consequently, zoning exemptions may be a "necessary evil" to some degree.[97]

B. *The Potential for Zoning Laws to Have a Discriminatory Effect*

As previously discussed, the constitutionality of zoning ordinances hinges on whether the ordinances are facially nondiscriminatory and reasonable *and* whether the ordinances are *applied* in a nondiscriminatory and reasonable manner.[98] This two-fold requirement means that some zoning laws may be invalid because, while they are neutral in terms of their purpose, they are used in a way to discriminate against certain individuals or groups. The recent influx of immigrants to the United States over the past several years has affected zoning in unforeseen ways, including highlighting the temptation to use zoning laws for discriminatory purposes.[99]

In the 1990s, St. Louis welcomed thousands of Bosnian immigrants seeking a fresh start and a new home far away from their war-torn country.[100] Bosnians were attracted by inexpensive real estate, but they found that their cultural practices prevented them from being a welcome part of the neighborhood.[101] More specifically, St. Louis residents were shocked and displeased when Bosnian immigrants began their traditional, cultural practice of slaughtering and smoking their own meat.[102] St. Louis residents complained that the smokehouses were ruining their residential neighborhoods.[103] They argued, among other things, that the smokehouses violated the residential zoning regulations.[104] While the zoning

96. 101A C.J.S. *Zoning and Land Planning* § 44 (2005) (citing numerous cases where spot zoning was found to be unreasonable and illegal).

97. Possible solutions for repairing these exemptions will be discussed in section five of this Note.

98. 101A C.J.S. *Zoning and Land Planning* § 21 (2005) (emphasis added) (citing *Cobb County*, 286 S.E.2d 732).

99. While the focus of this Note has centered on agricultural exemptions in zoning, this section contains a broader discussion pertaining to comprehensive zoning plans as a whole. The subsequent examples relate to zoning and slaughterhouses. For the sake of clarity, the author wishes to acknowledge that slaughterhouses are generally not considered "agriculture" for the purpose of agricultural zoning exemptions, nor does the author wish to suggest a position as to whether slaughterhouses should be included in such an exemption.

100. D.J. Wilson, *Keeping Up with the Jasarevics*, RIVER FRONT TIMES, March 5, 2003, *available at* http://search.riverfronttimes.com/2003-03-05/news/keeping-up-with-the-jasarevics.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

regulations may have called into question the legality of smoking and curing animal carcasses in a residential neighborhood, the dispute was over something far more sinister than zoning. As "[o]ne City Hall lifer [explains,] the complaints about smokehouses [are] a stealthy way of complaining about outsiders: 'It's like, "They're taking over the neighborhood," whoever "they" may be. In this case, it's Bosnians.' "[105] Still, Missouri is not the only state to have confronted the problem of immigration and its apparent effect on zoning.

In Colorado, for example, a new grocery store chain has also found its way into the headlines as part of immigration and zoning debates.[106] In 2006, Rancho Liborio, a Latino-themed grocery store, opened its first store in Colorado with plans to include an on-site chicken slaughtering operation.[107] While on-site chicken slaughtering operations are rarely found in grocery stores in the United States, the practice of supplying customers with fresh poultry is hardly novel in countries such as Mexico.[108] The grocery store has garnered much attention from local residents who are opposed to the on-site chicken slaughtering.[109] The neighbors opposed to the animal processing portion of the store cite issues of zoning and sanitation. In particular, the residents argue that the on-site slaughtering is banned by the comprehensive zoning scheme.[110]

As these questions of zoning become important to the outcome of cases similar to Bosnian smokehouses and the Rancho Liborio chicken slaughtering, another question must be posed. In these examples, are zoning regulations being used to prevent certain activities because of a legitimate purpose or concern, or are they being used to prevent certain activities which appear to stand in opposition to Anglo-Saxon social norms and mores? It can be argued that zoning regulations apply to Rancho Liborio's planned chicken slaughtering. However, this author suggests that the zoning arguments are merely a pretext employed to prevent cultural diversity. Using zoning laws to prevent "undesirable practices" may be legal in a technical sense. However, the constitutional test suggests that zoning laws must be applied using a nondiscriminatory approach.[111] If the test is to have any lasting significance it must be extended to prevent groups from ar-

---

105. *Id.*

106. Joanna Larez, *Chicken Slaughtering Raises Questions Among Neighbors*, GREELEY TRIB., July 23, 2006, *available at* http://www.greeleytrib.com/article/20060723/NEWS/107230085.

107. *Id.*

108. *Id.*

109. *Id.*

110. *See id.* (citing Rancho Liborio's need for zoning approval from the city's planning department).

111. *Cobb County*, 286 S.E.2d at 735 (citing City of Rome v. Shadyside Mem'l Gardens, Inc., 92 S.E.2d 734, 736 (Ga. Ct. App. 1956)).

guing zoning violations merely to subvert social development, especially development initiated by ethnic minorities.

V. Salvaging Agricultural Zoning Exemptions

A. *Solutions for the Future*

This Note has attempted to highlight and analyze the various inconsistencies and ambiguities related to the use of agricultural and farming zoning exemptions in Iowa and around the nation. While these exemptions may be flawed, they are not beyond repair. The courts have already begun to re-evaluate past decisions and create updated case law.[112]

Notably, the Iowa Supreme Court revisited its controversial decision in *Farmegg* when it decided *Kuehl v. Cass County* over twenty-five years after making the ill-fated "commercial purposes" distinction.[113] The *Kuehl* court determined that proposed hog confinement facilities were primarily adapted for agricultural use and exempt from county zoning ordinances under Iowa Code section 335.2.[114] Writing for the court, Justice Carter noted "[t]o the extent that *Farmegg Products* engrafted a requirement on exempt agricultural uses not contained in the statute creating the exemption that decision must now be disapproved."[115] The overturning of *Farmegg* marks a critical step on the path toward creating a clearer rule of law as to what activity qualifies as an agricultural use. One author has suggested that the impact of *Kuehl* is far-reaching.[116]

> For over twenty years, counties could invoke the creative *Farmegg* exception to the general ban against zoning agricultural lands. By overruling *Farmegg*, the court wiped out the semantic victory that counties maintained under the *Farmegg* definition of agriculture. In its stead the court imposed a broad definition that stripped counties of authority gained under *Farmegg*. The result kept all agriculturally related activities—regardless of size, technology or concentration—out of county reach.[117]

In addition to remedial action in the courts, the legislature could play an integral part in helping to clarify the exemptions.[118] In his 1982 article on Iowa zoning exemptions, Professor Hamilton suggested that the Iowa legislature adopt

---

112. *See, e.g.*, Kuehl v. Cass County, 555 N.W.2d 686 (Iowa 1996).
113. *Id.*; *Farmegg Prods., Inc.*, 190 N.W.2d at 457.
114. *Kuehl*, 555 N.W.2d at 689.
115. *Id.*
116. *See* Jennifer K. Bower, Comment, *Hogs and Their Keepers: Rethinking Local Power on the Iowa Countryside*, 4 Great Plains Nat. Resources J. 261, 279 (2000).
117. *Id.*
118. Hamilton, *supra* note 71, at 584.

a definition of farming similar to the definition adopted by the United States Department of Agriculture.[119] In adopting such a definition, Hamilton suggested that the clarification could "serve two purposes. First, it would clarify the actual meaning and thus the effect of the provision; and second it would give the legislature a change [sic] to restate the exemption in whatever manner it felt necessary to protect the agricultural community."[120] Certainly, there are still many areas of ambiguity in the zoning exemptions which could be easily clarified by the state legislature. Whatever the remedy taken to unweave the tangled mess of zoning exemptions and their definitions, states and their citizens would be best-served by having corrective measures enacted by the judiciary and legislature working together in a collaborative effort to make the regulations easier to understand and apply.

B. *Public Policy Considerations*

Some readers might question the value of retaining agricultural exemptions because of their flaws; however, abolishing the exemptions altogether would be a critical mistake, offending sound judgment and public policy. Abolishing the exemptions would only serve to create additional confusion and chaos, which could potentially result in a greater risk for illegal spot zoning.

In order to understand the value of retaining the exemptions (with major overhauls), one must consider the policy reasons behind creating agricultural exemptions in the first place. Originally enacted in 1947, the agricultural exemption in Iowa was a fairly novel concept that had yet to be tested.[121] Representatives of agricultural and rural interests wanted to ensure that farming would not be adversely affected by proposed county zoning regulations.[122] In essence, the agricultural and rural lobby managed to secure the exemptions before the legislature passed laws allowing counties to create their own zoning restrictions.[123]

In the 1970s, rural and agricultural interests were given more freedom from state regulation when the Iowa legislature enacted the state's first right-to-farm statute.[124] The right-to farm statute allowed farmers additional freedom from state control and protection from certain types of nuisance suits.[125] Additional rights were given to farmers and those involved in agriculture once the

---

119. *Id.*
120. *Id.*
121. *Id.* at 573.
122. *Id.*
123. *Id.* at 573-74.
124. Leah C. Hill, Note, *A Pig in the Parlor Instead of the Barnyard? An Examination of Iowa Agricultural Nuisance Law*, 45 DRAKE L. REV. 935, 951 (1997).
125. *Id.*

Iowa legislature enacted Chapter 352 in 1982.[126] Considering the importance of agriculture and farming at the local, state and national levels, it is clear that sound policy requires states to protect farming and agricultural interests wherever possible. States, like Iowa, which have a considerable economic interest in farming and agriculture, would be wise to retain control of these activities by preventing counties from creating their own zoning regulations. Thus, for states to maintain control of agriculture and farming businesses and interests, the states must retain the exemptions to prevent local zoning boards from regulating in these areas.[127]

VI. CONCLUSION

Agricultural zoning exemptions in Iowa and around the United States are complex and vary greatly from state to state. While zoning exemptions have a purpose in modern-day society, they are out-of-step with the current climate and demands of the Twenty-First Century. If farm-related zoning exemptions are to be useful for the future they must undergo a series of revisions to clarify their purposes and definitions. Sound policy and common sense dictate immediate review of the exemptions to avoid undesirable results, including discriminatory uses of zoning laws. In *Euclid*, Justice Sutherland remarked that zoning ordinances must naturally vary with circumstances and conditions.[128] "A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities."[129] Likewise, an ordinance or exemption written and intended for Twentieth Century American society might not be valid or applicable to the same society in the current century. After all, "[z]oning is not static."[130]

126. *See id.* at 956 (allowing landowners to establish "agricultural areas" of 300 acres or more).

127. *See* IOWA CODE § 335.2 (2007); *see supra* text accompanying note 19.

128. *Vill. of Euclid*, 272 U.S. at 387.

129. *Id.*

130. *Montgomery*, 299 N.W.2d at 695 (citing *Anderson*, 168 N.W.2d at 743).