An Agricultural Law Research Article

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by

Loralea Frank

Originally published in GREAT PLAINES NATURAL RESOURCES JOURNAL
9 GREAT PLAINES NAT. RESOURCES J. 89 (2005)

www.NationalAgLawCenter.org
PROCEDURAL MISHAPS CREATED A BIG STINK FOR RESIDENTS OF YANKTON COUNTY: ZONING ATTEMPTS TO LIMIT A CONCENTRATED FEEDLOT OPERATION IN SOUTH DAKOTA

LORALEA FRANK†

In Heine Farms v. Yankton County1 the South Dakota Supreme Court upheld requirements which the legislature has established for implementing valid zoning ordinances by county governments. This decision confirmed that a county must execute certain procedures before a zoning ordinance will be upheld. Yankton County had not enacted the prerequisite comprehensive plan in order to pass community-desired zoning ordinances. As a result of this decision, the will of the majority was thwarted and Heine Farms continued to operate its 20,000 head cattle operation in Yankton County.

I. INTRODUCTION

Cattle are the leading agricultural commodity in South Dakota, generating revenue of approximately $1.5 million per year.2 This high revenue makes cattle

† Loralea Frank, J.D. Candidate, University of South Dakota School of Law, May 2006; B.S. Political Science, Nebraska Wesleyan University.
2. Agricultural Statistics—South Dakota, at
production a leading factor for South Dakota’s future. However, as essential as the cattle market may be in South Dakota, dissatisfaction has developed among citizens trying to prevent cattle feedlot expansion and the potential harmful effects of concentrated animal feedlots. Those opposed have turned to the democratic process in hopes of utilizing majority rule. Unfortunately, in some counties the democratic process has not prevailed due to failures of the government to implement prerequisite comprehensive plans. This inadequacy leaves the majority without a voice or method to halt concentrated feedlot expansion and raises the question as to what is more important: agricultural expansion that generates revenues or the will of the majority?

The situation is straightforward: giant feedlots enter a new state, concentrate thousands of cattle in a single area and create potential environmental hazards and rural disputes between residents and feedlot owners. This situation occurred in Heine Farms v. Yankton County, where the South Dakota Supreme Court affirmed that a county must enact certain procedural requirements before zoning ordinances can be executed and enforced against a growing feedlot operation. This casenote details the events leading to litigation and decisions by the trial court and the South Dakota Supreme Court in Heine Farms v. Yankton County. The background examines the evolution of land use controls and focuses specifically on governmental concerns regarding feedlots—the foundations for regulation and county zoning authority over concentrated feedlot operations. Next, the analysis section discusses local and state governmental controls as well as the foundations necessary for local governments to enact valid zoning ordinances within the State of South Dakota. The note concludes with recommendations to ensure counties have the necessary procedures in place.

Animal agriculture plays an important role in South Dakota and national economies. South Dakota is undergoing significant and rapid change in livestock production. See generally Charles Abdalla et al., Community Conflicts Over Intensive Livestock Operations: How and Why Do Such Conflicts Escalate?, 7 DRAKE J. AGRIC. L. 7 (2002) (focusing on why community groups and individuals oppose intensive scale livestock operations in their communities and why forms of economic activity have become the pariah of rural communities in the United States, with particular emphasis on Pennsylvania).


5. See Ben Shouse, Big Dairies, New Questions, ARGUS LEADER, Nov. 7, 2004, at 4A.

6. Heine Farms, 2002 SD 88, ¶18, 649 N.W.2d at 602.

7. See Ben Shouse, Study: Small Farms Cause Bulk of Water Pollution, ARGUS LEADER, Nov. 7, 2004, at 1A. Concerned citizens and upset communities can be found anywhere concentrated animal feeding operations are located. Leah N. Hansen, Note, Canadian Connection v. New Prairie Township: Sniffing Out An Opening In The Doctrines Of Preemption And Conflicts of Law, And Allowing Local Governments The Authority To Regulate Odor Concerns, 3 GREAT PLAINS NAT. RESOURCES J. 177, 195 (1999). Part of the concern is generated from the lack of local control given to local governments. Id. Concentrated feedlot operations have caused fury among residents, causing problems and turmoil for counties within the State of South Dakota to deal with. Shouse, Big Dairies, New Questions, supra note 5, at 4A. Ignoring these problems created by gigantic feedlot operations will undoubtedly lead to severe future environmental troubles and litigation issues. See generally Matt M. Dummermuth, Note, A Summary and Analysis of Laws Regulating the Production of Pork in Iowa and Other Major Pork Producing States, 2 DRAKE J. AGRIC. L. 447 (1997) (analyzing different states and the impact gigantic commercial feedlots have on the different states).

II. FACTS AND PROCEDURES

In 2001, the Heine brothers, Gary, Ronald, Gene, Thomas, and Steven purchased 360 acres of land in Yankton County. They were "residents, landowners, and taxpayers in Yankton County" and had established a corporation, Heine Farms. The brothers planned to launch a 15,000-20,000 head cattle feedlot operation through their corporation on the newly purchased land in Yankton County.

In January of the following year, the public learned of Heine Farms' proposal. Many Yankton County residents reacted to the proposal with apprehension. Those citizens initiated a petition that sought to implement certain zoning regulations in the county. Specifically, the proposed ordinance prohibited concentrated animal feedlot operations stating, "1,500 animal units or more would have to be at least one mile from any residential dwelling and three miles from any incorporated municipality." The proposed zoning ordinance also set stipulations and requirements for a cattle feedlot waste management system, by prohibiting a system with more than 7,500 head of cattle. This proposal would essentially have...
prevented Heine Farms’ feedlot from operating at the size and location originally planned.\(^7\)

In response to the initiative, a hearing was held to inform the public of Heine Farms’ plans and persuade them to abandon the initiative petition.\(^8\) Approximately 300 people attended the hearing to learn about Heine Farms’ proposal of using modern technology to control dust and odors as well as the proper disposal of animal waste without polluting the groundwater.\(^9\) At the meeting, the concerns expressed only strengthened the opposition and affirmed circulation of the initiative petition to stop Heine Farms from expanding.\(^10\)

The seeds of this conflict were sown in 1993 when the Yankton County Commissioners first attempted to establish a comprehensive plan in Yankton County.\(^21\) To enact valid zoning ordinances, a county must have a comprehensive plan in effect or be actively working toward the enactment of such a plan.\(^11\) A comprehensive plan “describes in words, and may illustrate by maps, plats, charts, and other descriptive matter, the goals, policies, and objectives” of the commissioners.\(^22\) This requirement must be fulfilled before the county commission is vested with the statutory power to enact zoning laws.\(^23\) The Yankton County Commissioners had not passed a comprehensive plan, which meant they had no authority to enact valid zoning ordinances within the county.\(^24\)

Despite the absence of a comprehensive plan, the Yankton County Commissioners attempted to impose restrictions and regulate certain areas of the county.\(^25\) To establish this county-wide ordinance, the commissioners submitted the initiative, by way of referendum, to the voters of Yankton County who soundly defeated the measure.\(^26\) Despite two failed attempts, Yankton County was unable to

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17. Family Proposes 15,000-animal Feedlot Near Utica, supra note 11, at 8B.
18. Id.
19. Id.
20. Id. A common reason for opposition is that large feedlots foul the water, they stink, creating a health hazard and a decrease in residential property values, and they hurt small farms through driving down prices. See Shouse, Big Dairies, New Questions, supra note 5, at 4A.
21. Appellant’s Brief, supra note 17, at 3.
For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.
23. Id.
24. Brief for Appellee at 13, Heine Farms v. Yankton County, 2002 SD 88, 649 N.W.2d 597 (S.D. 2002) [hereinafter Appellee’s Brief]. As early as 1967, statutes were passed authorizing preparation of comprehensive zoning plans. Heine Farms, 2002 SD 88, ¶ 17, 649 N.W.2d at 602 n.3.
25. Appellant’s Brief, supra note 17, at 3. By establishing a zoning ordinance throughout the county, the commissioners would be vested with power to oversee and authorize any zoning efforts made within the county. See e.g., Coyote Flats v. Sanborn County Comm’n, 1999 SD 87, ¶ 9, 596 N.W.2d 347, 350.
26. Appellant’s Brief, supra note 17, at 3.
27. Id. Without placing a comprehensive plan or a zoning ordinance into effect, the
enact valid land use regulations or a comprehensive plan. Therefore, Yankton County had not complied with the statutory requirements and did not have the authority to regulate and legally zone land in Yankton County at the time Heine brothers purchased their land in 2001.

Meanwhile, the dispute over Heine Farms’ new feedlot continued. On January 24, 2001, those opposed to the feedlot filed an initiative petition with the Yankton County Auditor after obtaining the required number of signatures. After review, the Yankton County State’s Attorney determined the petition was sufficient for a public vote, and the initiative was presented to the Yankton County Commission Board for approval. Heine Farms responded by filing suit in the First Judicial Circuit Court, seeking a declaratory judgment that the initiated ordinance was invalid. In the action, Heine Farms asked the trial court for a declaratory judgment because the Yankton County ordinance was “illegal and invalid, and that it [could] not be adopted by initiative.” Heine Farms also sought a temporary injunction to stop Yankton County from submitting the ordinance to a public vote, which ultimately would have prohibited adoption of the ordinance. Yankton County responded with a motion to dismiss, asserting that Heine Farms’ exclusive remedy for appealing the actions of the county commission was a direct appeal to the circuit court pursuant to S.D.C.L. section 7-8-27. Further, the county contended that the declaratory commissio

commissioners of Yankton County lacked the authority to enact or pass valid zoning ordinances throughout the county. Heine Farms, 2002 SD 88, ¶ 17-18, 649 N.W.2d at 602.

28. Appellant’s Brief, supra note 17, at 3.

29. Id. Yankton County had not met the statutory requirements to establish a comprehensive plan, which is a prerequisite for the enactment of a zoning ordinance. Appellee’s Brief, supra note 24, at 7-8. This prerequisite had not been fulfilled and the people of Yankton County were denied the right to voice their feelings on the proposed feedlot. See Heine Farms, 2002 SD 88, ¶ 18, 649 N.W.2d at 602. If the county commission had followed the procedural requirements and established a comprehensive plan and a zoning ordinance, the people would have been allowed to pass the ordinance through right of initiative and keep Heine Farms from creating their feedlot. See id. at 602 n.4.

30. See Heine Farms, 2002 SD 88, ¶ 4, 649 N.W.2d at 598.

31. Id. on January 31, 2001, the auditor verified the submitted petition through notarization and confirmed there were sufficient signatures on it to support its submission for a public vote. Id.

32. Id.

33. Id. A declaratory judgment is: “a binding adjudication that establishes the rights and other legal regulations of the parties without providing for or ordering enforcement.” BLACK’S LAW DICTIONARY 846 (7th ed. 1999).

34. Appellant’s Brief, supra note 17, at 4.

35. Heine Farms, 2002 SD 88, ¶ 4, 649 N.W.2d at 598. A temporary injunction is granted “before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case.” BLACK’S LAW DICTIONARY 788 (7th ed. 1999). Furthermore, a temporary injunction, shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. S.D.C.L. § 15-6-65(d) (2004). “It is only where the statute or ordinance is unconstitutional or otherwise invalid and where in the attempt to enforce it there is a direct invasion of property rights resulting in irreparable injury that an injunction will issue to restrain enforcement thereof.” Rutzen v. City of Belle Fourche, 20 N.W.2d 517, 519 (S.D. 1945).

36. Appellant’s Brief, supra note 17, at 4. This response was based on S.D.C.L. § 7-8-27, which states: “From all decisions of the board of county commissioners upon matters properly before it, there may be an appeal to the circuit court by any person aggrieved. . . .” S.D.C.L. § 7-8-27 (2004).
judgment sought was an “impermissible collateral attack on the Commissioners’ decision to adopt the initiative measure by the voters.”

At a hearing on February 5, 2001, the court denied Heine Fanns the temporary injunction, but deferred its ruling regarding the declaratory judgment, reasoning that more time was needed to research the entire issue. The trial court also declined Yankton County’s motion to dismiss, finding that S.D.C.L. section 7-8-27 was “not an exclusive remedy for aggrieved persons,” but abstained from giving its final decision until a later date. The court refused to dismiss the action pursuant to S.D.C.L. section 7-8-27 based on the language “may” found expressly in the statute that gives an aggrieved person the option of appealing a decision of the county commissioners to the circuit court. Subsequently, the Yankton County Commissioners accepted the proposed ordinance and set the county vote date for March 20, 2001.

Before the vote, the continuation trial of Heine Fanns’ action was held on March 15, 2001. Heine Fanns asserted that the Yankton County ordinance was illegal and invalid. Yankton County once again renewed its motion to dismiss and, in addition, made a motion for summary judgment. It was the county’s contention that since the county commission had ultimately submitted the initiated ordinance to a public vote, Heine Fanns should be required to institute an action directly against the board of commissioners in circuit court. The trial court did not rule on Heine’s motions and the trial proceeded. Meanwhile, the voters advanced to the polls on March 20, 2001, and “adopted the initiated ordinance by a vote of 3,790 to 1,714.”

On April 9, 2001, the trial court released a memorandum decision that denied the county’s motion for summary judgment and motion to dismiss. It declared “the initiated ordinance illegal and unenforceable” based upon Yankton County’s failure to have a previously enacted comprehensive plan. The court took into consideration the preliminary efforts made by Yankton County, but ultimately determined these initial efforts by the commissioners in 1993 were not adequate. The trial court stated that a comprehensive plan is a necessary predicate for county commissioners to adopt a zoning ordinance. The technical defect by the county in not enacting the proper requisites for enacting zoning ordinances made the present ordinance invalid because “the procedural requirements of S.D.C.L. section 11-2 et seq. were not followed by the initiative process.” The court expressed that it was impossible for

37. Appellant’s Brief, supra note 17, at 6.
38. Id. at 4.
39. Id. at 4-5.
41. Heine Farms, 2002 SD 88, ¶ 4, 649 N.W.2d at 598.
42. Id. ¶ 5.
43. Appellant’s Brief, supra note 17, at 4.
44. Heine Farms, 2002 SD 88, ¶ 5, 649 N.W.2d at 598.
45. Id.
46. Id. The court reasoned it needed more time to examine the entire issue before making a decision. Id.
47. Id. ¶ 6. The proposed ordinance passed by a margin of 69 % to 31 %. Appellant’s Brief, supra note 17, at 4.
48. Heine Farms, 2002 SD 88, ¶ 6, 649 N.W.2d at 598.
49. Id. at 602 n.4. In making this decision the court took into consideration “the outcomes of the vote on the initiated ordinance.” Id. at 599 n.2.
50. Id. ¶ 6.
51. Id. ¶ 15.
52. Appellant’s Brief, supra note 17, at 5. The trial court noted procedural defects which marred the enactment of the zoning ordinance in Yankton County. Id. at 1. First, there was no
the Yankton County Commission to adopt an ordinance and the court enjoined Yankton County from enforcing the proposed ordinance. \(^{53}\) Yankton County appealed this decision to the South Dakota Supreme Court. \(^{54}\)

In *Yankton County v. Heine Farms*, the county claimed that the trial court erred in two respects: first, in denying its motion to dismiss or motion for summary judgment \(^{55}\) and second, by declaring the initiated zoning ordinance illegal and enjoining the county from enforcing it. \(^{56}\) In regard to the first issue, Yankton County believed that, since the county commission had proposed the initiated ordinance to a public vote there was no remedy available. \(^{57}\) The South Dakota Supreme Court rejected this argument. \(^{58}\) By a 4-1 majority, the court held that "no appeal lies from a purely ministerial act of a county commission" and furthermore that "an appeal was not a remedy, let alone an exclusive remedy" for which Heine Farms to rely. \(^{59}\) The court based this reasoning on S.D.C.L. section 7-18A-13, which states:

> When a petition to initiate is filed with the auditor, he shall present it to the board of county commissioners at its next regular or special meeting. The board *shall* enact the proposed ordinance or resolution and *shall* submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. \(^{60}\)

Using in this statute the word "shall" demonstrates the legislative intent to create a compulsory obligation upon the county commission. \(^{61}\) The statute does not confer discretion on the county commission. \(^{62}\) With regard to this case, the compulsory obligation of the Yankton County Commission was to enact the initiated ordinance and submit it to the public for a vote. \(^{63}\) Therefore, the duty to enact the ordinance by the Yankton County Commissioners was purely ministerial and no appeal is allowed from a ministerial act by a county commission. \(^{64}\)

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54. *Id.* ¶ 6.
55. *Id.* ¶ 6-9.
56. *Id.* ¶ 14.
57. *Id.* ¶ 9. South Dakota Codified Laws section 7-8-32 states: "appeal to the circuit court from decisions of the board of county commissioners, as provided in this chapter, is an exclusive remedy." S.D.C.L. § 7-8-32 (2004).
59. *Id.* The court distinguished the cases that Yankton County had relied on by stating that the actions in those cases were based upon decisions made by the county commission and in the present situation, the action by the county commission was purely ministerial. *Id.* ¶ 11-13. Therefore, no appeal lies from a purely ministerial act by the county commission. *Id.* ¶ 13. See also *Wold v. Lawrence County Comm'n*, 465 N.W.2d 622 (S.D. 1991) (holding that the decision by the county commission was a waiver of certain zoning requirements); *Ridley v. Lawrence County Comm'n*, 2000 SD 143, 619 N.W.2d 254 (reasoning that the trial court decision dismissing of a petition for a writ of certiori should be upheld because an appeal to a circuit court is the sole avenue for relief from a decision of the board of county commissioners in granting a rezoning request); *Weger v. Pennington County*, 534 N.W.2d 854 (S.D. 1995) (asserting that the decision made by the county commission was in regard to personnel appointments to the county air quality board and therefore an appeal was an exclusive remedy).
62. *Id.* ¶ 13.
63. *Id.*
64. *Id.*
In reference to the county’s second argument, the court confirmed that the Yankton County Commission could not pass a zoning ordinance executing the goals, objectives, and policies of a comprehensive plan if a comprehensive plan had not previously been established. Furthermore, the court stated that “if the Yankton County Commission could not adopt such an ordinance, neither could the residents of Yankton County through their right of initiative.” The majority relied upon *Custer City v. Robinson*, which holds it was “fundamental that an ordinance or resolution proposed by the electors of a municipality under the initiative law must be within the power of the municipality to enact or adopt.” The *Heine Farms* court also based its reasoning on *State v. Quinn*, where the court expressed that a county has only the powers that are expressly granted through statutes and those that are reasonably inferred from the powers clearly granted. And in *Heine Farms*, without establishing the powers expressly granted through the statutes, the South Dakota Supreme Court upheld the lower court’s reasoning that it was not possible for a county commission to adopt an ordinance “implement[ing] [a] comprehensive plan” that was non-existent.

Acting Justice, Gors, in his dissent, stated that “the people’s power to initiate legislation is plenary, curbed only by the South Dakota Constitution and statutes.” The people in South Dakota have the plenary power to initiate legislation through S.D.C.L. section 7-18A-9. Justice Gors proposed, the plenary power granted by statute to the people of Yankton County provided them the ability to enact the proposed zoning ordinance limiting Heine Farms’ operation. According to Gors, the county commission’s inability to enact a comprehensive plan undoubtedly “trumps the will of the people” by not allowing them to initiate the proposed ordinance that would prohibit Heine

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65. Id. ¶ 18.
66. Id.
68. *Heine Farms*, 2002 SD 88, ¶ 16, 649 N.W.2d at 601; *Custer City v. Robinson*, 108 N.W.2d 211, 212 (S.D. 1961). The court reasoned that even though this decision was applied toward municipal ordinances, the principle was equally applicable to county ordinances initiated by the public. *Id.*
69. 2001 SD 25, ¶ 10, 623 N.W.2d 36, 38.
70. *Heine Farms*, 2002 SD 88, ¶ 17, 649 N.W.2d at 601.
71. *Id.*
72. *Id.* ¶ 23 (Gors, J., dissenting).
73. S.D.C.L. § 7-18A-9 (2004). This statute states: “The right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election.” *Id.*
74. See *Heine Farms*, 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting).
75. 533 N.W.2d 712 (S.D. 1995).
76. *Heine Farms*, 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting). In *Christensen v. Carson*, the petitioner sought a writ of mandamus to force the proposed initiative toward a public vote. 533 N.W.2d 712, 713 (S.D. 1995). The circuit court granted the request but the supreme court reversed and held that the petition was not within the proper scope of the initiative power and the petitioners had not satisfied the procedural requirements necessary under the referendum process. *Id.* at 715-16. With this said, the majority noted that South Dakota was the first state to reserve legislative power to its people and that statutes have since extended this to counties and other districts. *Id.* at 714. And, other statutes allow for particular issues to be submitted to the public for a vote. *Id.* Contrarily, Justice Sabers dissented asserting that the proposed ordinance fell within the proper scope of the initiative power. *Id.* at 716. Accordingly, Justice Sabers relied on the reasoning that the legislature’s power runs concurrent with the power of the people who have the ability to initiate laws on any subject. *Id.* at 718.
Farms from establishing their feedlot operation. To support his reasoning, Gors referenced *Vitek v. Bon Homme County,* where the court stated citizen legislation on zoning is a traditional right of the voters to "override the view of their elected representatives as to what serves the public interest and to legislate on the subject for themselves." Gors believed the people of Yankton County had voiced their desire to prevent the proposed feedlot operation and they should not suffer due to the county commissioners' failure to take appropriate actions. Regardless of Justice Gors reasoning, the majority ruled that the people within the county did not have the power to prohibit Heine Farms development.

III. BACKGROUND

In the nineteenth century few land controls were in existence. In fact, rural areas did not even become accustomed to zoning until the 1970's. The purpose of zoning was and still is to protect the community and the people by resolving conflicts between different land uses, such as the site of a proposed feedlot near a residential or recreational area. For this reason, zoning can be seen as a burden upon farm owners' desire to operate as they wish. In particular, the regulation of animal feedlots becomes more problematic as local governments respond to concentrated feedlot expansion issues. As concentrated feedlots expand, a substantial impact is placed on the environment as well as residents located near the concentrated feedlots. Regulations can limit the size of the prospective operation, in addition to

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77. *Heine Farms,* 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting).
78. 2002 SD 45, ¶¶10-12, 644 N.W.2d 231, 234-35. (quoting Spaulding v. Blair, 403 F.2d 862 (4th cir. 1968)).
79. *Heine Farms,* 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting). In *Vitek v. Bon Homme County Board of Commissioners,* the citizens within the county signed petitions with the county auditor to force the county board to submit to the people a referendum vote regarding the variance granted for the operation of a hog facility. 2002 SD 45, ¶ 3, 644 N.W.2d 231, 232. The board rejected the petitions and citizens sued for a writ of mandamus. *Id.* ¶ 3-4. The circuit court denied the writ, but the South Dakota Supreme Court reversed and applied "a liberal rule of construction permitting rather than preventing citizens from exercising their powers of referendum." *Id.* ¶ 7. The court relied on the South Dakota Constitution and asserted that the referendum process has been reserved to the people. *Id.* ¶ 10. This gives citizens the right to propose measures and have them submitted to a vote. *Id.* The majority in *Heine Farms v. Yankton County* pushed this case aside with the reasoning that no violence was done of the rights of initiative and referendum and allowing Yankton County to ignore the statutory requirements would "run afoul" the requirement that initiated legislation must be within the jurisdiction and power of the county board to enact. 2002 SD 88, ¶ 18, 649 N.W.2d at 602 n.5.
80. *Heine Farms,* 2002 SD 88, ¶ 23, 649 N.W.2d at 603.
81. See *id.* ¶¶ 17-18.
82. Wendy K. Walker, Note, *Whole Hog: The Pre-Eemption of Local Control by the 1999 Amendment to the Michigan Right to Farm Act,* 36 VAL. U.L. REV 461, 465 (2002) (The author focuses on the preservation of resources and the development of practices that will protect the environment by upholding the economic value of farming, which is so essential in many states. Furthermore, the note focuses on right to farm statutes that uproot local land use control, particularly zoning).
83. *Id.*
84. *Id.* at 466. Conflicts often arise between neighbors who own property coupled with their zealous esteem of using it the way they choose. *Id.* at 465.
85. *Id.* at 467. There are strong feelings among property owners to be able to use their land in ways that are most beneficial to them, creating many conflicts over land uses and zoning. See Coyote Flats v. Sanborn County Comm'n, 1999 SD 87, ¶ 35, 596 N.W.2d 347, 355.
86. Head, *supra* note 4, at 503.
87. *See Shouse, Big Dairies, New Questions,* *supra* note 5 at 4A.
preventing the construction of additional feedlots.  

A. FEEDLOT REGULATION CONCERNS AND ISSUES

In the past decade, animal feeding operations have significantly increased in size. Large commercial feedlots have replaced the traditional family farm, and in the late 1960's and early 1970's the transition from customary pasture livestock operations began to change into partially or totally enclosed, high capacity livestock industries. The boost in consolidation of livestock production created giant commercial animal feedlots across the United States. Out of nearly two million farms located in the United States, twenty percent of those farms generate over ninety percent of the United States' entire beef output, creating an intense agriculture system, particularly with livestock operations. In recent years, the actual number of feedlot operations in the United States has decreased while their size has significantly increased.

Local governmental regulation of large animal feedlots has become a matter of growing public debate. These new feedlots often exceed neighbors' tolerance for the odor they produce as well as the environment's ability to handle the waste,

88. Id. See generally Thomas R. Head, supra note 4 (stating that county ordinances are necessary to restrict the construction and operation of animal feeding operations). County governments are actively working toward implementation of zoning ordinance and nuisance controls to monitor and limit the expansion of the commercial feedlots. Id. at 508. Since county governments are closest to the center of the problem, they are often better equipped to manage the conflicts that arise from the growth of concentrated feedlot operations. Id. at 575.

89. See Oliver, supra note 16, at 1893.

90. Walker, supra note 82, at 462. “Today, significant transformations in the economics and technologies of the agricultural industry have challenged governmental approaches to farmland preservation.” Id. at 461.

91. See generally Oliver, supra note 16 (discussing regulations of feedlot operations and their causes).

92. Walker, supra note 82, at 471-72. See also Michael M. Maloy, An Overview of Nutrient Management Requirements in Pennsylvania, 10 PENN ST. ENVTL. L. REV. 249, 252 (2002) (The author notes as the concentration of livestock within a centralized area has increased, so has the task of safely disposing and managing the large quantities of animal waste.).

93. Head, supra note 4, at 507. See also Walker, supra note 82, at 503. “Increasing corporatization and consolidation in livestock production has created a new breed of giant animal feedlots, of sizes overwhelming previous conceptions of a ‘large’ feedlot.” See Oliver, supra note 16, at 1893. Increasingly, more industrialized and highly specialized operations establish a greater share of all animal production and has concentrated more animals into one area thus producing more manure and wastewater, as well as raising potential significant environmental damages. See Michael M. Maloy, supra note 92, at 252.

94. Head, supra note 4, at 507. Over the last decade, a rather controversial transformation has been experienced by the nation’s livestock and poultry industries. Id. The size of feedlot operations has dramatically increased in recent years, while the number of feedlot operations has steadily began to decrease. Id. In the cattle industry forty percent of all cattle produced come from just two percent of the feeding operations. Id. at 511. These changes have caused the public and counties many challenges and conflicts in determining how to best deal with the issue. Id. at 507. One explanation for the shift from small family farms to corporate farms is due to the “vertical integration.” Id. at 511 n.31. Vertically integrated farms are those operations where one corporation or entity controls many, if not all of the phases for animal production. Id. Large concentrated feeding corporations combine their own farms, contract farms and other entities dealing with animal production, such as feed mills and transportation services into one consolidated group that oversee the entire operation. Id. These corporate farms are attractive to contractors because they guarantee a steady operation and protect investors from large substantial risks. Id.
causing harmful environmental problems. Frustration and irritation has been prevalent in community meetings with those who live close to feedlot operations and among livestock farmers. In fact, small livestock farmers are opposed to huge concentrated feedlot operations and have expressed concerns toward relaxed regulatory standards and the environment. The pressure imposed by these two groups force state and local governments to confront and mitigate the concentrated feedlot operation issue.

Many states are just beginning to react to this dilemma. County and municipal governments, particularly in the Midwest, have attempted to address potential problems and generate tighter controls within the county or municipal ordinances by increasing the scope of county regulation under the belief that federal and state regulations are too lenient. Some concentrated feedlot operations are regulated

95. Oliver, supra note 16, at 1894. "The discussion in farming communities has grown more acrimonious as proponents of giant feedlots find themselves angrily opposed by smaller farms and other longtime rural residents." Id. at 1894. Expansion and building new feedlot operations have caused community meetings in rural areas to become hostile. Id. at 1896. This hostility is caused by the lack of respect and regard given to neighbors where feedlots are being created and expanded. Id.

96. Id. at 1896.

97. See id. Small dairy farmer, Norris Patrick who farms about 50 cattle argues that allowing large concentrated feedlot operations into South Dakota will put all of the local people out of business. See Shouse, Big Dairies, New Questions, supra note 5, at 4A.

98. See Oliver, supra note 16, at 1897.

99. See id. at 1894. States including Iowa, Minnesota, Oklahoma, Michigan, Missouri, Nebraska, and South Dakota have started to take varying actions via regulation and provide direction for requirements of large commercial feedlot operations. See Dummermuth, supra note 7, at 449. "The driving forces that have caused state legislatures and regulatory agencies to re-examine and revise their laws and regulations over the past few years have been similar in all the states, although in varying degrees. The major driving forces have been, and continue to be, environmental concerns about water quality and odors, structural and social concerns over vertical and horizontal integration trends, and economic issues such as adding value to agricultural products and competing with other states and countries to become the most efficient producers of pork in the world." Id. at 449. See also Walker, supra note 82, at 474-75. Missouri and Kansas have pursued legislative amendments to aid in controlling the amount of waste discharged into water. Id. at 474-75.

100. Head, supra note 4, at 537. See also Oliver, supra note 16, at 1898. In South Dakota, feedlots generally fall under the "state's general permit category for concentrated animal feeding operations." Davidson, supra note 16, at 61. The state controls feedlot operations through the surface water pollution discharge permit program. Id. at 60. This regulation is found under S.D.C.L. § 34A-2-27 which states:

No person may carry on any of the following activities without a valid construction permit from the water management board for the disposal of all wastes which are, or may be, discharged thereby into the groundwaters of the state, nor may any person carry on any of the following activities without approval of plans and specifications from the secretary of the department pursuant to § 34A-2-29 for the disposal of all wastes which are, or may be, discharged thereby into surface waters of the state:

(1) The construction, installation, modification or operation of any disposal system or part thereof, or any extension or addition thereto;

(2) The increase in volume or strength of any wastes in excess of the permissive discharge specified under any existing permit;

(3) The construction, installation, or operation of any industrial, commercial, or other establishment, or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the groundwaters of the state or would otherwise alter the physical, chemical or biological properties of any groundwaters of the state in any manner not already lawfully authorized;

(4) The construction or use of any new outlet for the discharge of any waters into the waters of the state.

under the Federal Water Pollution Control Act. However, many accidental manure spills and other environmental dangers that occur also raise questions of federal regulation adequacy. To deal with some these concerns, local governments have attempted to manage the feedlot industry by passing local laws which classify the feedlot as a nuisance, or by passing zoning ordinances which restrict the sites available. These local governments justify their management attempts through the state’s regulatory power.

B. GOVERNMENTAL FOUNDATION FOR REGULATION

1. STATE DIRECTIVE

A state’s authority to pass certain types of legislation, specifically environmental statutes, usually rests on the state’s police power and is independent of the federal regulation. By virtue of the state’s police power, each state has inherent authority to “protect the health, safety, and welfare of its citizens.” Within each state, various levels of local government, including counties possess regulatory authority. This authority varies widely and depends upon the extent of regulatory authority granted to the local governments by the state.

Most states possess constitutional or statutory provisions that allow counties and municipalities extensive authority to regulate the same issues that the state regulates. Local governments within these states hold what is referred to as “Home Rule” authority. “Home Rule” is “[a] state legislative provision or action allocating a measure of autonomy to a local government, conditional on its acceptance of certain terms.” Home Rule charters may also be granted by the state legislature, which essentially serves as a constitution for local governments.

101. Head, supra note 4, at 507-08.
102. Id. at 508.
103. Id. at 508. Believing that federal and state regulations are too lenient, many local governments have taken the initiative to regulate the location and operation of animal feeding operations within their jurisdictions. Id. at 507-08. Local governments and citizen groups have started to generate tighter controls within the county or municipal ordinances, limiting the operation and construction of concentrated animal feedlots. Id. at 507.
104. Id. at 538-40. See also Hansen, supra note 7, at 185.
105. Head, supra note 4, at 539-40. See generally Hansen, supra note 7, at 184-85 (explaining how local governments derive legislative authority through state governments).
106. Hansen, supra note 7, at 184. Local governments gain their power from the state’s power and the amount of power a state has dictates the amount of power that can be given to a local government. Id. at 185. See also Paul Dempsey, Local Airport Regulation: The Constitutional Tension Between Police Power, Preemption & Takings, 11 PENN. ST. ENVTL. L. REV. 1 (2002) (focusing on the environmental costs and economic benefits of airports faced in many communities and the local governmental attempts at regulating them).
107. Head, supra note 4, at 539. See also Dempsey, supra note 106, at 12.
108. Head, supra note 4, at 539-540. If a local ordinance conflicts with state law, state law preempts the conflicting local law. In re Appeal from decision of Yankton County Commission, 2003 SD 109, ¶ 15, 670 N.W.2d 34, 38.
109. Head, supra note 4, at 540. “County governments have gone through an enormous change.” Michelle Timmons et al., County Home Rule Comes to Minnesota, 19 WM. MITCHELL L. REV. 811, 816 (1993). Counties are now clothed with more responsibilities and wider discretion resulting in a “county government that is more professional, more flexible, and better equipped to handle the complexities that confront local governments in today’s political and social environment.” Id.
110. Head, supra note 4, at 540.
111. BLACK’S LAW DICTIONARY 738 (7th ed. 1999).
112. Timmons et al., supra note 109, at 816. “Effective home rule has two basic
Home Rule charter permits counties extensive freedom in administering and regulating county affairs.\textsuperscript{113} Thirty six states have adopted varying Home Rule statutes.\textsuperscript{114}

\section*{II. SOUTH DAKOTA STATE DIRECTIVE}

South Dakota, by statute, allows county’s to control and regulate governmental zoning issues and concerns\textsuperscript{115} by permitting localities to adopt Home Rule.\textsuperscript{116} This enables counties to exert authority over local issues when they arise rather than waiting for the state government to act.\textsuperscript{117} Home Rule authority grants counties the power to make policy decisions and regulate the same subject matter as the state, which may include regulating animal feedlots.\textsuperscript{118} A county in South Dakota is a "creature of statute and has no inherent authority."\textsuperscript{119} Therefore, a county has only those powers that “are expressly conferred upon it by statute and such that can be reasonably implied from those expressly granted.”\textsuperscript{120} The foundation for each county’s regulatory power and for the rights of county residents is found in the South Dakota statutes.\textsuperscript{121}

In 1898, South Dakota became the first state to reserve legislative authority to its citizens through enactment of an amendment to Article III, section one of the State’s Constitution.\textsuperscript{122} Article III, section one provides to the people “the right to refer legislative acts to a public vote” and grants them initiative and referendum measures at the state and municipal levels.\textsuperscript{123} The right of initiative and referendum established components. First, effective home rule includes an affirmative grant of power to a city or a county government to manage its own affairs. Second, effective home rule gives a city or county government a fair amount of autonomy from state legislative control.” Id.

113. Id. at 814. The author focuses on the concept of the Home Rule and explains the difference between traditional county governments and the charter form of government. Id.

114. Id. at 817. Currently, Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington and Wisconsin have some form of county home rule in place. Id. at 817 n.30.

115. Dummermuth, \textit{supra} note 7, at 508.

116. S.D.C.L. § 6-12-1 (2004). South Dakota’s Home Rule statute states the local government has the authority to “pay the cost of election conducted on the question of adoption or amendment of a charter.” Id.

117. See Timmons et al., \textit{supra} note 109, at 818. Local governments in many states have a provision commonly called “Home Rule” authority. Head, \textit{supra} note 4, at 540. Adoption of the Home Rule has many advantages. Timmons et al., \textit{supra} note 109, at 819. County governments are more visible and responsive to citizens. Further, the home rule process educates voters of counties about their specific county government. Id. Local citizens and officials initiate and draft the charter, and then adoption must be passed by the citizens within the county. Id. at 820. The charter form of government also promotes continued involvement by the county voters. Id. This involvement includes using initiative and referendum. Id. Regardless of whether a state allows this authority, power is usually granted to adopt resolutions or zoning ordinances that are consistent with the state law. Head, \textit{supra} note 4, at 540.

118. Timmons et al., \textit{supra} note 109, at 818. See also Head, \textit{supra} note 4, at 540.


120. Id.

121. See id.


by the constitution has now been permitted through state statutes to voters in South Dakota counties.\textsuperscript{124}

The initiative and referendum processes allow citizens the opportunity to contribute in the policy making and legislating processes of local governments.\textsuperscript{125} The important distinction between initiative and referendum is evidenced the South Dakota Constitution, codified law, and case law.\textsuperscript{126} Article III, section one of the South Dakota Constitution explains the notion of initiative and referendum.\textsuperscript{127} Initiative is the constitutional reservation of power in the people.\textsuperscript{128} The right of initiative gives people the ability to enact or reject proposed bills and laws independent of the legislative body and promotes extensive involvement by the public.\textsuperscript{129}

Referendum is a right constitutionally reserved to the people in the state or local subdivisions.\textsuperscript{130} In the course of the referendum process, proposals are submitted to the people for approval or rejection of any act which the legislature passed.\textsuperscript{131} The rationale for the referendum process is to cancel or suspend laws that are not yet effective to allow people a voice through direct legislation.\textsuperscript{132} South Dakota has reserved referendum control to the people.\textsuperscript{133} As a result, the public makes the final
determination of its greatest interest through the referendum process.  

Through referendum and initiative measures, the people can reserve in themselves power to deal with matters that might otherwise be assigned to the legislature. The people have the capacity to suggest measures that shall be submitted to a vote of the electors, giving the people the ability to get involved in local government. Thus, any legislative decision of a board of county commissioners is subject to the referendum process. A legislative decision is defined as: "one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers." A legislative decision implements a new policy or plan that has a general or permanent character. Therefore, adopting a "zoning code and a comprehensive plan" is generally considered a legislative decision. The ability held by the people to address legislative issues is also expressly extended to county governments through comprehensive plans and adjuncts as provided by S.D.C.L. section 11-2-22. Under this statute, a comprehensive plan, zoning ordinance, and subdivision ordinance may be brought to a vote of the qualified voters of the county. Additionally, the South Dakota Legislature formed an entity called a county planning commission, which has the authority to prepare a comprehensive that the use of referendum did not violate a landowner's due process rights. Id. People are able to express their desire concerning a legislative scheme proposed by the government. Christensen, 533 N.W.2d at 714. It is an ability for voters to exercise their rights through direct legislation and supersede the views of elected officials as to what best serves the public interest. Taylor Properties, 1998 SD 90, ¶ 21, 24, 583 N.W.2d at 643.

134. Taylor Properties, 1998 SD 90, ¶ 23, 583 N.W.2d at 643. We have held that where the local government has discretion as to what it may do and it acts under that discretion, it is a legislative act subject to referendum. Kirschenman v. Hutchinson County Board of Comm'n, 2003 SD 4, ¶ 7, 656 N.W.2d 330, 333 (citing Wang v. Patterson, 469 N.W.2d 577, 580 (S.D. 1991)). Furthermore, in determining whether an act is legislative or administrative, we apply a liberal rule of construction to permit citizens to exercise their powers of referendum. Id.

135. Taylor Properties, 1998 SD 90, ¶ 23, 583 N.W.2d at 643.

136. Vitek v. Bon Homme County Board of Comm'rs, 2002 SD 45, ¶ 10, 644 N.W.2d 231, 234. In addition, when a local government has discretion over what it may do and then acts, it acts legislatively and its actions are subject to standard referendum measures. Christensen v. Carson, 533 N.W.2d 712, 716 (S.D. 1995).

137. Taylor Properties, 1998 SD 90, ¶ 13, 583 N.W.2d at 640.

138. Id.

139. Id. See also Leonard v. City of Bothell, 557 P.2d 1306, 1308 (Wash. 1976).

140. Leonard, 557 P.2d at 1309 (citing Fleming v. Tacoma, 502 P.2d 327 (1972)).

141. Taylor Properties, 1998 SD 90, ¶ 24, 583 N.W.2d at 643.

142. S.D.C.L. § 11-2-22 (2004). The statute states:

The comprehensive plan, zoning ordinance, and subdivision ordinance may be referred to a vote of the qualified voters of the county pursuant to §§ 7-18A-15 to 7-18A-24, inclusive. The effective date of the comprehensive plan, zoning ordinance, or subdivision ordinance on which a referendum is to be held shall be suspended by the filing of a referendum petition until the referendum process is completed. However, if a comprehensive plan, zoning ordinance, or subdivision ordinance is referred to a referendum vote, no land uses that are inconsistent with the plan or ordinance may be established between the time of adoption of the resolution or ordinance by the board, as provided in § 11-2-20, and the time of the referendum vote.

Id.


For a county planning commission:

The board of county commissioners of each county in the state may appoint a commission of five or more members to be known as the county planning commission. If a county proposes to enact or implement any purpose set forth in this chapter then the board of county commissioners shall appoint a county planning commission. The total membership of the county planning commission shall always be an uneven number and at least one member shall be a member of the board of
plan for a county according to S.D.C.L. section 11-2-11. These foundations established by the legislature create regulatory methods for counties. Zoning ordinances and other controls are included and in accordance with comprehensive plans.

C. REGULATION METHODS

I. ZONING

The legislature "intended that the rights of landowners would be protected from arbitrary or detrimental zoning by the public hearing process." This guarantees protection for landowners and provides counties with the power to decide zoning issues. The county board, as a delegate of the county, has general power over its property and the management of its business affairs. The board has no power beyond what has been provided through the statutes. Therefore, counties, municipalities and other political subdivisions must carefully "comply with statutory requirements, including notice and hearing, in order to provide due process of law." 

Boards of county commissioners are vested with powers expressly granted through statutes and powers reasonably essential to enable them to perform the powers imposed upon them. Prior to 2000, county commissioners had extensive discretion in the area of zoning under S.D.C.L. section 11-2-36. Under this statute,
boards of county commissioners were granted extensive jurisdiction over the enactment of zoning ordinances. However, in 2000 the legislature repealed S.D.C.L. section 11-2-36 and "enacted a comprehensive statutory zoning scheme." Under this scheme, a county board falls into one of three positions when enacting zoning ordinances. First, if the county board has a comprehensive plan in place, its authority to adopt a zoning ordinance is found under S.D.C.L. section 11-2-13. Second, if the county board is in the process of establishing a comprehensive plan it may implement temporary zoning and land use controls through S.D.C.L. section 11-2-10. Third, if the county board does not have a comprehensive plan in place or is not in the process of establishing a plan, the board must follow certain statutory mandates to enact zoning ordinances within the county. Without following the proper protocol or already having in place a comprehensive plan, a board cannot enact new zoning ordinances.

location . . . [a]ll such provisions shall be uniform for each class of land or building throughout any district, but the provisions in one district may differ from those in other districts.


154. Ridley, 2000 SD 143, ¶ 9, 619 N.W.2d at 258.


156. S.D.C.L. § 11-2-13 (2004). South Dakota Codified Laws section 11-2-13 states: For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.

"Boards of county commissioners may not disregard the clear intent of a comprehensive zoning plan." Pennington County v. Moore, 525 N.W.2d 257, 259 (S.D. 1994).

157. Moore, 525 N.W.2d at 260. In establishing any temporary zoning ordinances, a county must follow all statutory mandates set forth under S.D.C.L. § 11-2-10. Id.

If a county is conducting or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a comprehensive plan, the board in order to protect the public health, safety, and general welfare may adopt as emergency measures a temporary zoning ordinance and map and a temporary subdivision ordinance, the purposes of which are to classify and regulate uses and related matters as constitutes the emergency. Before adoption or renewal of the emergency measure or measures, the board shall hold at least one public hearing. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any emergency measure is limited to one year from the date it becomes effective and may be renewed for one year. In no case may such a measure be in effect for more than two years.


158. See Moore, 525 N.W.2d at 259. "There are binding statutes that set forth procedural mandates for the adoption of zoning regulations: [t]he power to decide matters of zoning, which by necessity may include the power to exercise discretion, is not synonymous with the power to disregard the mandates of the enabling legislation and the comprehensive plan. . . . Both the enabling legislation and the comprehensive plan are specific in setting out the procedures to be followed." Id. (citing Save Centennial Valley Ass'n, Inc. v. Schultz, 284 N.W.2d 452, 457 (S.D. 1979)).

159. Id. If a county fails to implement the proper procedures, zoning ordinances that fail to comply with the state enabling statutes are void. Id.

160. See Kirschenman v. Hutchinson County Board of Comm'n, 2003 SD 4, ¶ 5, 656 N.W.2d 330, 332. See also Vitek v. Bon Homme County Board of Comm'rs, 2002 SD 45, ¶ 10, 644 N.W.2d 231, 234.
South Dakota's legislature has two methods for challenging a decision of the county commission board: 1) appeal under the provisions of S.D.C.L. section 7-8-27, by an aggrieved party, or 2) appeal under S.D.C.L. section 7-8-28, by the state's attorney. Accordingly, S.D.C.L. section 7-8-27, allows for an appeal by a person who has suffered a personal or individual grievance. On the other hand, under S.D.C.L. section 7-8-28 an appeal is granted through taxpayer challenges. This section does not require a person to be aggrieved from the county boards' decision. Rather, section 7-8-28 provides the state's attorney the authority to decide whether the case has merit and is of public interest.

II. STRIKING A PROPER BALANCE BETWEEN GOVERNMENT AND CITIZENS

The creation of only two classes of appeals against a county board's decision is due to an attempt to strike an appropriate balance between the obligation of county governments to operate in a competent and organized manner and the right of its citizens to pursue unfairness in the courts. "If every taxpayer possessed the unlimited privilege of constantly asserting the public right and interest in his own person and seeking judicial determination thereof at public expense, governmental processes might be most seriously handicapped." The South Dakota Supreme Court has recognized that the availability of strict limitations on taxpayer challenges to county commission actions was established to aid in reducing lawsuits brought by taxpayers and to prevent "unnecessary interference with the conduct of public affairs." It is important to note, this strict limitation does not refuse a taxpayer the

162. Id. In the statute, the term "any person aggrieved" is most likely broad enough to include, persons who are not actually parties to the proceeding before the county board, but we think it can only include such persons when they are able affirmatively to show that they are 'aggrieved' in the sense that by the decision of the board they suffer the denial of some claim of right either of person or property, or the imposition of some burden or obligation in their personal or individual capacity as distinguished from any grievance which they might suffer by the decision solely in their capacities as members of the body public of the county, or taxpayers or electors thereof, common in nature to a similar grievance suffered by all or many other electors or taxpayers.

163. Ridley v. Lawrence County Comm'n, 2000 SD 143, ¶ 11, 619 N.W.2d 254, 258. Even though the residents of the family farm corporation were not considered "aggrieved" by the zoning changes, there was still an appeal action through the general taxpayer challenge laid out in S.D.C.L. § 7-8-28. Id. South Dakota Codified Laws § 7-8-28 declares: upon written demand of at least fifteen taxpayers of the county, the state's attorney shall take an appeal from any action of such board if such action relates to the interests or affairs of the county at large or any portion thereof, in the name of the county, if he deems it to the interest of the county so to do; and in such case no bond need be required or given and upon serving the notice provided for in § 7-8-29, the county auditor shall proceed the same as if a bond had been filed and his fees for making the transcript shall be paid as other claims by the county.

164. Ridley, 2000 SD 143, ¶ 11, 619 N.W.2d at 258.
166. Ridley, 2000 SD 143, ¶ 7, 619 N.W.2d at 258.
167. State ex rel Cook v. Richards, 245 N.W. 901, 906 (S.D. 1932). Good public policy requires the use of discretion to prevent unnecessary interference. Id. If everyone was allowed an unlimited privilege of continuously asserting their public right at the public expense, government authority and processes would be seriously hindered. Id.

168. Weger, 534 N.W.2d at 857 (citing Simpson v. Tobin, 367 N.W.2d 757, 761 (S.D. 1985)).
ability to bring a complaint regarding public interest before the court. However, the legislature has limited the appeals of public interest to three circumstances. First, the action of the commission “must relate to the interests or affairs of the county.” Second, a “written demand of at least fifteen taxpayers must be presented.” Third, the county’s interest to appeal must be considered by the states attorney. The supreme court’s previous holdings on taxpayer dealings “stand for the proposition that where there is a remedy by appeal, that remedy must be followed, rather than actions in equity or at common law.”

The supreme court has further reasoned that in taxpayer appeals, “the intent of the statute must be determined from what the legislature said, rather than what the court thinks the legislature should have said.” The interpretation of the statute must be limited “to the plain, ordinary meaning of the language used by the legislature.”

One purpose of statutory construction analysis is to determine the true intent of the law. One of the key rules of statutory construction is to give words and phrases their basic meaning and effect, thus possibly striking the proper balance between the government and the citizens. By adhering to what the legislature has established, recognizing citizen concerns, and interpreting the language in the statutes, an acceptable balance of authority will likely be accomplished for county regulation.

D. COUNTY ZONING AUTHORITY OVER CONCENTRATED FEEDLOT OPERATIONS

The development of concentrated feedlot operations has imposed new conflicts with zoning regulations. Due to their intense nature, animal feeding operations create conflicts with neighboring property owners. In South Dakota, no law prohibits local zoning of agricultural facilities. South Dakota allows local governments to enact ordinances that require setbacks, which are separation distances to control feedlot odor, but some counties have no separation distances. This gives the local government some control over the feedlot and the community where the feedlot resides. The power granted to local governments through...
comprehensive plans has created much conflict and litigation through challenging the zoning ordinances that individual counties place into effect. These disputes are refuted by the authority granted to local governments over animal feedlots. The local government's power runs in collaboration with the principle that "initiated legislation must be within the jurisdiction and power of a county board to enact."  

IV. ANALYSIS

It is well established that zoning ordinances are often in conflict with common law property rights and only find their authority through the state police power. The capacity to operate the preferred business on one's own land should not be ignored. On the other hand, the majority of the populace has a right to be heard and their opinion should not be completely disregarded. It is a county's responsibility to find a proper zoning balance between landowner rights and desires and the will of local residents. The desire to find a balance is essential, and ideally, there should be no conflict when implementing a zoning ordinance. Finding that proper balance introduces an important question: Should the will of the people be ignored because the county does not have in place the proper procedures for enacting a valid zoning ordinance? The will of the people should not be disregarded. Despite South Dakota's long history of direct democracy, in Heine Farms v. Yankton County, the view of the registered voters in Yankton County was ignored. The court ruled that because the county had not implemented proper procedures, the zoning ordinance was

improvement of its agricultural land for the production of food and other agricultural products. The Legislature finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of §§ 21-10-25.1 to 21-10-25.6, inclusive, to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.


185. See generally Walker, supra note 82, at 475-76 and n.104-05 (discussing that a lack of state response toward concentrated animal feedlots has caused numerous local governments to adopt zoning ordinances to control the location and expansion of feedlots, which include instituting setback distances).


187. Id.

188. Pennington County v. Moore, 525 N.W.2d 257, 259 (S.D. 1994). People want to have the assurance that because they own the land, they are able to control and use the land by their personal preference and not have the government constantly monitoring and interfering with their daily activities. See Coyote Flats v. Sanborn County Comm'n, 1999 SD 87, ¶ 35, 596 N.W.2d 347, 355.

189. Coyote Flats, 1999 SD 87, ¶ 35, 596 N.W.2d at 355. A common state goal is to promote commerce and trade. See Dummermuth, supra note 7, at 513. With local zoning and regulations, this goal can be seriously diminished. Id.

190. See Heine Farms, 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting).

191. See Hansen, supra note 7, at 195. The author articulates that states, particularly Minnesota are moving in the right direction by granting counties local control in the areas of feedlot operations. Id. The author also emphasizes that in the past years an outcry for local regulation has become stronger and conventional thinking supports the idea that local governments are better able to deal with citizen needs. Id.

192. See Adams, supra note 124, at 31.


194. See id. ¶ 23 (Gors, J., dissenting).

195. See id.
unlawful.\textsuperscript{196} As a result, the people were denied their right to enact a zoning ordinance that would affect the Heine Farms feedlot operation.\textsuperscript{197}

The dissent in \textit{Heine Farms v. Yankton County} presents the better reasoned authority which should be followed.\textsuperscript{198} Justice Gors is persuasive in stressing that the court wrongfully permitted the county commission’s failure to enact a comprehensive plan to exclude the undoubtedly expressed will of the people.\textsuperscript{199} The will of the people within South Dakota is paramount to a county’s failure to adopt a zoning ordinance. This reasoning is based on the people’s power to initiate legislation, which is only limited by the South Dakota Constitution and state statutes.\textsuperscript{200}

It is inequitable for the people within the county to be denied their right to be heard.\textsuperscript{201} Citizens are given the power to determine what best serves their needs as well as the authority to legislate for themselves through initiative and referendum measures by the South Dakota Constitution.\textsuperscript{202} By granting citizens this authoritative power, they are left with the ultimate authority to decide important issues through the voice of majority.\textsuperscript{203}

In contrast, it has been argued that unbridled discretion granted to citizens of a state leads to unrestricted and illegal zoning ordinances that often cause more damage than good to the general public.\textsuperscript{204} Arguments have also been made claiming that allowing the majority of people to enact any zoning measure they desire without the oversight and direction of the government would be absurd and cause massive chaos.\textsuperscript{205} However, the South Dakota Constitution and state statutes\textsuperscript{206} have set forth mandates that citizens must follow in expressing their desires, making the argument of unbridled discretion unpersuasive.\textsuperscript{207}

The argument against legislative enactments by the county government through

\begin{itemize}
\item \textsuperscript{196} See id. \textsection 18.
\item \textsuperscript{197} See id. \textsection 17-18.
\item \textsuperscript{198} See id. \textsection 23 (Gors, J., dissenting).
\item \textsuperscript{199} Id.
\item \textsuperscript{200} See id.
\item \textsuperscript{201} See \textit{Kirschenman v. Hutchinson County Board of Comm’n}, 2003 SD 4, \textsection 7, 656 N.W.2d 330, 333 (citing \textit{Wang v. Patterson}, 469 N.W.2d 577, 580 (S.D. 1991)). \textit{But see Cary v. City of Rapid City}, 1997 SD 18, \textsection 23, 559 N.W.2d 891, 895 (concluding “the ultimate determination of the public’s best interest is for the legislative body, not a minority of neighboring property owners”).
\item \textsuperscript{202} \textit{Kirschenman}, 2003 SD 4, \textsection 7, 656 N.W.2d at 333. \textit{But see Cary}, 1997 SD 18, \textsection 23, 559 N.W.2d at 895.
\item \textsuperscript{203} \textit{Kirschenman}, 2003 SD 4, \textsection 7, 656 N.W.2d at 333.
\item \textsuperscript{204} \textit{See generally Cary}, 1997 SD 18, \textsection 23, 559 N.W.2d at 895 (asserting that “delegations of legislative authority which allow this ultimate decision [over one’s property] to be made by a minority of property owners without an opportunity for review are unlawful”). \textit{See also State ex rel Cook v. Richards}, 245 N.W. 901, 906 (S.D. 1932).
\item \textsuperscript{205} \textit{Cary}, 1997 SD 18, \textsection 23, 559 N.W.2d at 895. \textit{See also Richards}, 245 N.W. 901, 906 (S.D. 1932) (asserting that “sound public policy requires the exercise of some substantial discretion in order to prevent continual and unnecessary interference with the conduct of public affairs upon technical and picayunish objections”). \textit{But see Ridley v. Lawrence County Comm’n}, 2000 SD 143, \textsection 7, 619 N.W.2d 254, 257; \textit{Weger v. Pennington County}, 534 N.W.2d 854, 858 (S.D. 1995) (stating the legislature has clearly established the procedures for citizens to follow in regard to enacting and protesting acts of county commissions, making the argument of chaos impractical). Furthermore, “South Dakota case law establishes that improperly adopted zoning regulations are invalid and will not be enforced.” \textit{Pennington County v. Moore}, 525 N.W.2d 257, 259 (S.D. 1994) (citing \textit{City of Brookings v. Martinson}, 246 N.W. 916 (S.D. 1933)).
\item \textsuperscript{206} \textit{Hagemann v. N.J.S. Engineering, Inc.}, 2001 SD 102, \textsection 5, 632 N.W.2d 840, 843.
\item \textsuperscript{207} \textit{Brye v. City of Chamberlain}, 362 N.W.2d 69, 79 (S.D. 1985).
\end{itemize}
its citizens, however, was successfully upheld in *Heine Farms v. Yankton County.*\(^{208}\)
The majority of people in Yankton County wanted to propose an ordinance to limit the Heine Farms operation.\(^{209}\) Instead of respecting the will of the people, the South Dakota Supreme Court invalidated the county’s proposed ordinance.\(^{210}\) Furthermore, the decision by the court overlooked what the Constitution and statutes have established in regard to citizen legislation and county regulation.\(^{211}\) The court’s decision to declare the county’s zoning ordinance illegal presented a dilemma as to which level of government is better equipped to regulate concentrated animal feedlots.\(^{212}\)

### A. LOCAL REGULATION

Demands for local regulation and authority have become stronger, and county governments need to respond.\(^{213}\) It is essential that local governments not be powerless when dealing with concentrated animal feedlots, as localized zoning tackles particular conflicts within each specific county and ultimately gives county governments control to resolve land use conflicts between neighbors.\(^{214}\) Granting counties the power to enact zoning ordinances seems like common sense because conflicts can be dealt with immediately instead of waiting for state government to get involved.\(^{215}\)

Allowing local governments to decide land uses is strongly favored by local residents because local zoning gives them the opportunity to contribute their opinions to the decision making process and affords them the protection they deserve.\(^{216}\) People prefer to engage in decision making processes when the decision impacts them and where they are given some control over the result.\(^{217}\) An involved community with interests in local government procedures and a safe place to live is a common interest among county residents.\(^{218}\)

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209. *Id.* ¶ 3.
210. *Id.* ¶ 17.
211. *Id.* ¶ 23 (Gors, J., dissenting).
212. *Id.* ¶¶ 17-18. Because the county had not taken the proper steps to implement a comprehensive plan, which was a prerequisite for enactment of a zoning ordinance, the people’s right of initiative was denied. *Id.* ¶ 16. Due to the fact that Yankton County did not have a comprehensive plan in place, the trial court held that the county’s initiated ordinance was illegal and unenforceable. *Id.* ¶ 15. The preliminary efforts of establishing a comprehensive plan were not completed and Yankton County raised no argument to the contrary. *Id.* ¶ 17.
213. See generally Head, *supra* note 4, at 507-508 (discussing approaches local governments have taken in regard to citizen groups’ demanding “tighter controls” over animal feedlot operations).
214. See *id.* at 575. The author notes more uniform state law is often preferable to local government regulations, but local governments are more suited to control the location and areas of construction where animal feedlots might appear. *Id.* at 509-510. The author feels concentrated animal feeding operations have the greatest impact at the local level and therefore, local governments should be given power to deal with regulating them. See *id.* at 575.
217. Abdalla et al., *supra* note 2, at 38. Localized zoning is also preferred among local communities not only for the contribution it allows, but also for the economic benefits the agricultural community receives. Walker, *supra* note 82, at 493.
There is also a strong preference for state-wide control rather than local control. Since counties in South Dakota are free to enact zoning ordinances, a mix of state regulation and local zoning enforcement is created, making it difficult to establish a standardized system. A standardized system presents the strongest urging for state-wide control because it institutes administrative efficiency, which is an ideal way to manage issues and uphold laws within the state. A standardized system also provides security for trade and commerce. Furthermore, it would provide steady and constant regulations. The state government in many instances molds and defines the local governments’ authority through the state statutes. The South Dakota Supreme Court has stressed the necessary regulations of state statutes, which establishes procedural mandates for the implementation of zoning regulations. In addition, the supreme court has upheld what the legislature commanded in regard to enactment of zoning ordinances, stating that:

The power to decide matters of zoning, which by necessity may include the power to exercise discretion, is not synonymous with the power to disregard the mandates of the enabling legislation and the comprehensive plan. Both the enabling legislation and the comprehensive plan are specific in setting out the procedures to be followed to effectuate a change in the comprehensive plan. These provisions are mandatory and may not be disregarded by the Commission. (emphasis in original)

As a result, the legislature paved the foundation for what counties must do to effectuate a change within its jurisdiction. As a result, counties would be effectively functioning under the legislature’s mandates.

In establishing the method for enacting a zoning ordinance, the legislature wanted to ensure that the rights of landowners would be protected from arbitrary and harmful zoning. As a result, all other political subdivisions must follow the statutory requirements to guarantee due process of law. It is essential to ensure that county

219. See Dummermuth, supra note 7, at 513. See also Jacqueline P. Hand, Right-To-Farm Laws: Breaking New Ground in the Preservation of Farmland 45 U. PITT. L. REV 289, 322-23 (1984) (arguing that local ordinances are counterproductive toward encouraging farms to continue farming). Opponents to local government regulation suggest that by allowing authority at the local level, a “patchwork of inconsistent regulation” is produced making local regulation too burdensome. Head, supra note 4, at 503-04.
220. See Dummermuth, supra note 7, at 513.
221. See Dummermuth, supra note 7, at 513.
222. See id.
223. See id.
224. See Hansen, supra note 7, at 177 n.88. “In many instances, the state’s granting of a charter defines the boundaries of the unit and classifies it under state laws that provide detailed descriptions of the power and authority local governments can exercise.” Id.
226. Id.
227. Id.
228. See id. See also supra notes 179-183 and accompanying text.
229. Moore, 525 N.W.2d at 260. Only in cases where the landowner has “sat on his rights” should he be banned from fighting the proposed ordinance issued against his property. Id.
230. Id. at 259.
ordinances are lawfully passed and that the people are heard on important issues. 231 Since the legislature laid the foundation and set the procedural requirements for counties to follow, it seems reasonable that counties would follow what the legislature intended. 232 However, that did not happen in the Yankton County v. Heine Farms case. 233 There, the county had not adopted the procedural requirements making the proposed zoning ordinance invalid. 234 As a result, Yankton County stripped the people of their power to regulate Heine Farms’ feedlot. 235 In order to protect the citizens’ rights and interests and prevent another case like Heine Farms, it is essential the county follow state statutory requirements. 236 Allowing local governments the power to regulate concentrated animal feedlots should be granted cautiously to protect the system from litigation. 237 This places a huge responsibility upon local governments to comply with and follow state law, making state-wide control a safer option. 238

C. A MIX OF LOCAL AND STATE LAW

Answering the question of which is the better option, local or state-wide control, is difficult and requires that many factors be taken into consideration. 239 If South Dakota and its county governments fail to work together, the South Dakota Supreme Court will be forced to determine where the power to regulate feedlots should reside. 240 The optimal solution is to find a balance between the two levels of government. 241 A unified front by local and state governments would establish a standardized statewide system, rather than an assortment of local government regulations. 242 Sound and predictable laws gathered from logical state reasoning and local input creates the best solution to diffuse controversial claims. 243 The ideal solution is to have a balance of state and local laws and actions that allow feedlots to function freely and effectively with governmental oversight. 244

To create this balance, the state legislature or board of county commissioners

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231. See id.
232. See Hagemann v. N.J.S. Engineering Inc., 2001 SD 102, ¶ 5, 632 NW.2d 840, 843. See also Moore, 525 N.W.2d at 259-60.
234. See id.
235. Id. ¶ 23 (Gors, J., dissenting).
236. See Hansen, supra note 7, at 195. If the state legislature fails to assist local governments in adequately regulating feedlots, local governments will attempt regulation on their own, creating unnecessary litigation. Id.
237. See generally id. (commenting local governments should be granted some control but that control given should be closely monitored by state law to ensure frivolous litigation claims will not arise).
238. See Head, supra note 4, at 575.
239. See Dummermuth, supra note 7, at 513. In answering this important question, factors to consider include, environmental concerns, such as water and odor as well as the quickness that new laws can be enacted to protect the environment from damage. Id. Another factor is the economic concerns regarding feedlot operations, such as the size of the industry, the benefit of stability, the cost of enforcement, and the ability of officials to monitor current feedlot situations. Id. Determining what issues belong under which level of government is a difficult question to answer. Id.
240. See Hansen, supra note 7, at 195.
241. See generally Head, supra note 4, at 575 (discussing local and state governments working together to create a uniform system followed by the counties throughout the state).
242. See generally id. (commenting about local and state governments working together to create a uniform system followed by the counties throughout the state).
243. See id.
244. See Dummermuth, supra note 7, at 513.
within South Dakota needs to take action and make sure proper laws are being followed and the people within the state are being heard.\textsuperscript{245} By enacting the proper laws and establishing a solid foundation for citizens to follow, the situation that occurred in \textit{Heine Farms v. Yankton County} will be avoided.\textsuperscript{246} Furthermore, any action through the legislature should be considered strongly and thought out carefully to ensure local communities are getting the most benefit.\textsuperscript{247} By assuring this result, citizens of local communities within South Dakota will be able to provide input to pertinent issues and concerns directly affecting them and the vote of the majority will not be disregarded.\textsuperscript{248} It is essential that future government actions eliminate the tensions among different levels of government and provide a balanced voice for its citizens.\textsuperscript{249} In accomplishing this result, citizens in South Dakota will be granted the balance and representation they deserve throughout the various levels of government.\textsuperscript{250}

\textbf{V. CONCLUSION}

County governments are better situated to deal with concentrated animal feedlots because they have stronger relations to the agricultural community. Allowing substantial local governmental involvement with state input provides the best answer to animal feedlot regulation and diffuses frivolous claims over the proper steps regarding implementation of rules and expressing power. Local governments are usually at the center of land disputes and are better able to handle and dispose of the problem quickly and efficiently. Local governments know how to approach zoning issues in their communities, which positions them at an advantage over any state efforts made toward zoning and controlling areas.

The people have a right to be heard, but the Constitution and statutes provide mandates. The constitution provides the people within the state a right to express their will. This expression should be done through the rules established by the Constitution and statutes. The elected officials must also fulfill their duty to act in accordance with the established regulations, so the people in South Dakota are not ignored. Elected officials accept the responsibility to represent their constituents. They should listen to the people and should fulfill their position by making sure counties are following proper legislation.

The problem Yankton County faced should rouse all counties in South Dakota to re-examine the procedural steps they have taken to make certain all of the state enabling legislation has been followed. Heine Farms was able to overcome the overwhelming opposition to their proposed feedlot by virtue of the County's failure to enact proper procedural requirements. Failure of the Yankton County Commissioners to enact a comprehensive plan was absurd and resulted in a "big stink" because the electorate in South Dakota was ignored.

\textsuperscript{245} See Hansen, \textit{supra} note 7, at 195.
\textsuperscript{246} See Heine Farms \textit{v. Yankton County}, 2002 SD 88, 649 N.W.2d 597.
\textsuperscript{247} See Hansen, \textit{supra} note 7, at 195.
\textsuperscript{248} See Heine Farms, 2002 SD 88, ¶ 17-23, 649 N.W.2d at 602-03.
\textsuperscript{249} See Abdalla et al., \textit{supra} note 2, at 42. The author expresses that governments must reduce risk and uncertainty in regard to all of the issues surrounding intense livestock operations. \textit{Id}.
\textsuperscript{250} See Heine Farms, 2002 SD 88, ¶ 23, 649 N.W.2d at 603 (Gors, J., dissenting).