



To: Amy Shambach, Regional Aquaculture Marketing Extension Specialist, IL-IN Sea Grant

From: Terra Bowling, J.D., Research Counsel II, NSGLC and Tess Bradly, NSGLC Summer Research Associate

Re: Local Government Zoning Ordinances and Aquaculture in Indiana (NSGLC-26-04-04)

Date: August 5, 2026

Advisory Summary

Illinois-Indiana Sea Grant requested information on behalf of a Marshall County, Indiana aquaculture producer on the county's authority to require zoning variances. This advisory memorandum will explore whether aquaculture activities constitute a form of agricultural land use under Indiana state law, discuss the general authority that Indiana bestows upon local governments to adopt and enforce zoning ordinances, and evaluate potential limitations on this power.

AQUACULTURE AS AGRICULTURE

When federal, state, and local governments view aquaculture as agriculture, certain protections and benefits may be extended to aquaculture activities. Indiana law defines aquaculture as a "form of agriculture," nesting aquaculture development under the Indiana State Department of Agriculture Director's responsibilities.¹ Additionally, in the context of the livestock industry, Indiana law defines livestock to include "[a]quatic animals that are the subject of aquaculture."² Although aquaculture activities are defined as agricultural land use at the state level, land use planning and zoning is the responsibility of local governments.³ The inclusion of aquaculture as an agriculture use in local zoning ordinances may vary across counties in Indiana.

ZONING AUTHORITY OF LOCAL GOVERNMENTS

The federal government grants each state with the power to enact laws in furtherance of the "public health, safety, morals, or general welfare."⁴ State legislatures may delegate this power, known as "police power," to local governments so that they can enact zoning ordinances.⁵ These ordinances "have the force of laws passed by the legislature of the state."⁶

¹ IND. CODE ANN. §§ 15-11-7-1 to 15-11-7-2.

² *Id.* § 15-11-5-1 (11).

³ *Id.* § 36-7-4-202.

⁴ *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

⁵ *Id.* at 387; *New Orleans Water Works Co. v. New Orleans*, 164 U.S. 471, 481 (1896).

⁶ *Id.*

In Indiana, the state legislature enacted the “Home Rule” statute to give local governments broad discretionary power to carry out local affairs.⁷ Furthermore, any doubt as to the existence of a local government’s power must be “resolved in favor of its existence.”⁸ Under the statute, local governments have the authority to create zoning ordinances to allow or prohibit certain land uses in each district and define key land-use-related terms.⁹ Local governments also have the authority to grant or deny zoning variances for proposed developments that deviate from existing zoning ordinances.¹⁰

Indiana local governments have extensive authority under the Home Rule statute, unless the Indiana Constitution or another state statute expressly denies the unit that power, or expressly grants it to another entity.¹¹ The Home Rule Act expressly denies local governments the power to regulate conduct already regulated by a state agency.¹² For example, the Indiana Department of Natural Resources (DNR) has authority to permit and regulate aquaculture operations in the state;¹³ therefore, a local government would not have the authority to implement its own aquaculture permit regime where the DNR has already regulated. However, local governments still retain authority to make zoning designations in the county that may impact the siting of aquaculture operations, as they are explicitly given that authority by state statute and the DNR does not regulate local zoning.

MARSHALL COUNTY ORDINANCE

In Marshall County, Indiana, the Planning Commission prepares and administers the county’s zoning ordinance, which has three agricultural zoning districts in which farming operations—like crop and animal production—may take place.¹⁴ The ordinance defines agriculture as the “use of land for agriculture purposes, including farming, dairying, pasturage, apiculture, agriculture, horticulture, floriculture, viticulture, forestry and animal and poultry husbandry, and the necessary accessory uses, all of which are directly related to the production of food.”¹⁵ This definition does not mention aquaculture, nor similar terms like fish farming, aquaponics, mariculture, or pisciculture.

According to information provided by Illinois-Indiana Sea Grant, a farmer is proposing new aquaculture operations in the A-1 zoning district. The Marshall County Zoning Ordinance provides, “Agricultural uses appropriate for [A-1] areas include traditional farming uses, as well as agricultural product storage and distribution facilities (commercial grain elevators), stables,

⁷ IND. CODE § 36-1-3-2.

⁸ *Id.* § 36-1-3-3 (b).

⁹ *Id.* § 36-1-3-6.

¹⁰ *Id.* § 36-7-4-918.4.

¹¹ *Id.* § 36-1-3-5.

¹² *Id.* § 36-1-3-8 (7).

¹³ IND. CODE ANN. § 14-22-2-6; 312 Ind. Admin. Code §§ 9-10-14, 9-10-15, 9-10-17.

¹⁴ Marshall County, Indiana Zoning Ordinance, MARSHALL COUNTY PLAN COMMISSION 22-26 (Nov. 5, 2007) (https://www.co.marshall.in.us/egov/documents/1729002587_82316.pdf).

¹⁵ *Id.*

natural preserves, and other animal or food production related activities.”¹⁶ The ordinance states, “Any use not listed as a permitted use or a special exception is considered not permitted unless the Planning Director makes a determination otherwise.”¹⁷ Animal production is defined in the ordinance as “the production of livestock for profit” and does not include aquaculture.¹⁸ However, “traditional farming activities” are allowed, and “farm” is defined in the ordinance to include properties classified as farms by the Internal Revenue Service (IRS).¹⁹ According to IRS guidance, someone is in the business of farming if they “cultivate, operate, or manage” farms, including fish farms, for profit.²⁰ It could be argued that, based on the IRS guidance, that an aquaculture operation would fall under the ordinance’s definition of “farm” and therefore be a permitted use in the A-1 district.

Agricultural Nonconforming Uses

Indiana has an agricultural “nonconforming use” law that preempts the application of new zoning ordinances to agricultural uses when a current, lawful use becomes unlawful due to the enactment of a new law or the amendment of an existing law.²¹ To constitute a nonconforming use, an agricultural use must have been permissible before the adoption of the most recent applicable zoning ordinance.²² In these instances, the land use is grandfathered in, and local zoning authorities may not require a variance or otherwise restrict the agricultural use.²³ Marshall County adopted its current zoning ordinance in 2007, and the zoning ordinance before that in 1974. If the 1974 ordinance defined agricultural use to encompass aquaculture, and the 2007 ordinance defined agricultural use in a way that excludes aquaculture, then an aquaculture farm that was in continuous operation between 1974 and 2007 would be grandfathered in as an agricultural nonconforming use.

Conclusion

In sum, local governments in Indiana have broad discretionary power to enact and enforce zoning ordinances. The Marshall County Planning Commission can exercise this power by requiring variances for land use that does not comply with the county’s zoning ordinance. While crop and animal production is allowed in the agricultural districts, aquaculture and related terms are not explicitly defined in the zoning ordinance. If Marshall County interprets its zoning ordinance to exclude aquaculture as agricultural use, it is within the county’s discretion to require a variance to allow that use.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Farmer’s Tax Guide, IRS 1 (Nov. 5, 2025) (<https://www.irs.gov/pub/irs-pdf/p225.pdf>).

²¹ IND. CODE § 36-7-11.1-13.1.

²² *Id.*

²³ *Id.*