

**LIVESTOCK FACILITY SITING REVIEW BOARD**  
**c/o Wisconsin Department of Agriculture, Trade and Consumer Protection**  
**2811 Agriculture Drive, PO Box 8911**  
**Madison, WI 53708-8911**

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LEDGEVIEW FARMS, LLC  
3870 Dickinson Road,  
De Pere, WI 54115,

v.

Docket No. 18-LFSRB-02

TOWN OF LEDGEVIEW  
3700 Dickinson Road  
De Pere, WI 54115

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**TOWN OF LEDGEVIEW'S  
STATEMENT OF POSITION**

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By its attorneys, Stafford Rosenbaum LLP, the Town of Ledgeview submits this Statement of Position regarding Ledgeview Farms, LLC's petition for review of the Town of Ledgeview's denial of a livestock facility siting permit.

**BACKGROUND**

On June 4, 2018, the Town Board held a public meeting and denied a livestock siting application submitted by Ledgeview Farms, LLC (hereafter "Ledgeview Farms" or "the farm"). In that application, Ledgeview Farms had requested approval of an expansion of the number of animal units allowed at its farm in the Town, and approval of a number of structures and processes (the "Application"). At this meeting, the Town articulated findings of fact and conclusions of law supporting its decision and stated it would issue a written decision conforming to its oral decision. On June 5, 2018, the Town issued its written decision denying Ledgeview Farms' applications and providing findings of fact and conclusions of law supporting its decision in accordance with Wis. Stat. § 93.90(4)(c) and Wis. Admin. Code § ATCP 51.34(3), and other applicable law (the "Decision"). It is this Decision of the Town that is the subject of the appeal by Ledgeview Farms to the Livestock Facility Siting Review Board (the "Board").

In its Decision, the Town identifies four separate reasons for denial of the Application. Each of these reasons stands alone as sufficient, separate support for denial of the Application. If any of these four reasons for denial are not challenged in the Request for Review submitted by Ledgeview Farms, the Board has no option but to uphold the Town's decision. In the first section of this Statement of Position, the Town identifies a particular reason for denial of the Application that Ledgeview Farms did not contest, requiring the Board to find in favor of the Town in this matter.

In the subsequent sections of this Statement of Position, the Town specifically addresses the reasons for denial that *were* challenged in the Request for Review submitted by Ledgeview Farms. Where possible, the Town does so by reference to the applicable sections of its Decision to avoid unnecessary repetition of its reasoning here.

However, it worth restating that this matter presents significant questions regarding a unique application of the livestock siting law. Ledgeview Farms is asking the Town to approve an expansion while currently operating in significant noncompliance with standards to which it is already subject. Ledgeview Farms has consistently failed to communicate accurate information regarding operations, including the number of animal units present at the facility. Indeed, if the Town were required to approve the Application, Ledgeview Farms would be in noncompliance with state standards on day one.

It is important for the Board to understand that the Town of Ledgeview is not opposed to animal agriculture in and around its community. To the contrary, the Town views its agricultural businesses as a cornerstone of the character of its community and is actively engaged in ensuring the success of these endeavors. The denial of the Application submitted by Ledgeview Farms in no way represents bias or prejudice against the continuation of responsible agricultural practices, and even the expansion of those activities where appropriate.

With this context in mind, and for the reasons articulated below, the Board should uphold the Town's decision to deny the Application.

## **RESPONSE TO THE STATEMENT OF POSITION OF LEDGEVIEW FARMS**

### **Uncontested Basis for Denial**

As a separate, standalone basis for denial, the Town denied Ledgeview Farms' application on the ground that Ledgeview Farms had failed to present "*sufficient credible information* to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II."<sup>1</sup> Wis.

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<sup>1</sup> The standards in subch. II include setbacks for manure storage and other structures, requirements on wells, odor and air emissions, nutrient management, runoff management, etc.

Admin. Code § ATCP 51.34(1)(b) (emphasis added). The Town explained in section 18 of its Decision that given Ledgeview Farms' extensive history of disregard for federal, state, and local laws as described in detail above, its willingness to ignore its own promises made to avoid prosecution when caught in violation of the law, along with material, false statements that it has made, Ledgeview Farms has failed to present the necessary credible evidence that it meets and will meet the applicable state standards. The Town further explained that Ledgeview Farms' longstanding and consistent disregard for statutory and regulatory compliance provides clear and convincing evidence that the farm will not, in fact, comply with the applicable state standards moving forward. See Wis. Admin. Code § ATCP 51.34(2)(b). The Town denied the Application for this reason.

In its Statement of the Issues, Ledgeview Farms fails to challenge this basis for the Town's denial of its Application. Ledgeview Farms does not contest that Wis. Admin. Code § ATCP 51.34(1)(b) and (2) gives the Town the authority to deny an application where an applicant has failed to present sufficient credible information to show that its facility will meet state standards. Ledgeview Farms asserts that the Town cannot deny its application based on allegations that it has not complied with various local, state, and federal requirements in the past. However, as explained further below, the Town did not deny the Application on the basis of Ledgeview Farms' past noncompliance. The Town denied the Application on the ground that Ledgeview Farms had failed to present sufficient credible information that it is in compliance with and will comply with state standards.

Because Ledgeview Farms did not contest this reason for denial of its Application, the Board must decide in favor of the Town and uphold its denial of the Application.

**Issue 1. The Town Appropriately Denied the Application Based on Setback Requirements under State Law.**

Under Decision Section 15, par. e., the Town explains why the proposed manure storage facility does not meet the 350-foot setback requirement under Wis. Admin. Code § ATCP 51.12 (2). Ledgeview Farms attempted to correct this deficiency in a submittal to the Town four days prior to the Town's decision, in which it states that it will move the manure storage facility to meet this setback requirement. However, the Town does not have sufficient information to determine if this structure may be properly sited in this new location. At the very least, additional soil sampling and a recalculation of the odor score applicable to this new location must be conducted and the results considered by the Town.

**Issue 2. The Town Appropriately Denied the Application Based on Setback Requirements under its Ordinances.**

In Decision Section 16, the Town described its legal authority to adopt more stringent setback requirements for manure storage facilities, the process the Town undertook to

adopt such requirements, and the specific, reasonable and scientifically-defensible findings of fact that support this action.<sup>2</sup>

It is worth repeating that Ledgeview Farms incorrectly asserted in its filings with the Town and in its Request for Review that any local standards adopted by ordinance under Wis. Stat. § 93.90 (3) (a) 6. and (ar) must be entirely local in character and not generally applicable to livestock agriculture. The Town addressed this assertion in the last paragraph of section 16 of its Decision. There is nothing in the statutes or administrative code to support this assertion.

To further illustrate the unworkability of this position, imagine a scenario in which a new statewide public health issue associated with animal agriculture were to be identified by a full consensus of the scientific community, and DATCP's administrative code did not address that issue. Under Ledgeview Farms' read of the statutes, a local government could only adopt an ordinance to protect its citizens from that known harm if the harm is unique to the Town, and could not do so if similar harm may also occur outside of the Town. During the years-long process it may take DATCP to adopt new rules to address such an issue, new or expanding farms would be allowed to continue to put the public in harm's way. There is simply no support in the law for this assertion and it could not have been the way that the Legislature intended that this law be interpreted.

**Issue 3. The Town Appropriately Denied the Application Based on the Performance Bond Requirement under its Ordinances.**

In Decision Section 17, the Town described its authority to impose a performance bond requirement applicable to manure storage facilities, and the reasonable and scientifically-defensible findings of fact that support its actions.

**Issue 4. The Town Did Not Deny the Application Based on Documented Past Noncompliance.**

In its Decision, the Town provided a history of noncompliance at Ledgeview Farms in order to supply context for the Town's decision to deny the Application. The Town did not, however, deny the Application based on documented past noncompliance in and of itself. Rather, the Town denied the application on the ground that Ledgeview Farms' history of noncompliance, bad acts, and lack of transparency is relevant to the Town's

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<sup>2</sup> Ledgeview Farms previously attempted to call into question the process under which the Town adopted its livestock siting requirements. As provided in Decision Section 3, these requirements were first adopted on August 22, 2017, and then were readopted in their entirety with additional specific citations to supporting reasonable and scientifically defensible findings of fact on November 21, 2017, based on suggestions from DATCP. Both of these actions occurred well before receipt by the Town of the Application from Ledgeview Farms.

consideration of whether the Application contained “sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II.” Wis. Admin. Code § ATCP 51.34(1)(b).

As the Town articulated in Decision Section 18 and has explained above, in this unique case, Ledgeview Farms has failed to present *sufficient credible information* to show that it will meet the requirements in Wis. Admin. Code § ATCP 51. Ledgeview Farms has historically operated and continues to operate in noncompliance with state requirements for livestock facilities. Ledgeview Farms’ actions have resulted in documented environmental and public health and safety concerns and enforcement from EPA. Given Ledgeview Farms’ history of disregard of standards and laws as described in detail in the Decision, and its history of making material, false statements, Ledgeview Farms has failed to present the necessary credible evidence that it meets and will meet the applicable state standards. The record in this case provides clear and convincing evidence to the contrary that Ledgeview Farms has not complied with state standards in the past and will not comply with these standards in the future.

Ledgeview Farms’ assertion that the Town denied its application because of past instances of noncompliance in and of themselves is simply incorrect. The Town appropriately considered Ledgeview Farms’ significant history of noncompliance when assessing whether its Application provided “sufficient credible information” regarding Ledgeview Farms’ intent and ability to comply with state standards. The Board should reject this argument as a potential basis for overturning the Town’s decision.

**Issue 5. The Town Did Not Deny the Application Based on Ledgeview Farms’ Lack of a WPDES Permit.**

Ledgeview Farms asserts that the Town denied its application based on the farm’s lack of a WPDES permit. This is a mischaracterization of the Town’s Decision. While the Town noted that Ledgeview Farms’ lack of a WPDES permit is a violation of state law, the Town did not deny the application on this basis. The Board should reject this mischaracterization of the Decision as a reason for overturning the Town’s denial of the Application.

**Issue 6. The Town Did Not Deny the Application Based on “the Equities.”**

In its Request for Review, Ledgeview Farms asserts that the Town denied its application based on “the equities.” The basis for this assertion is unclear, as the Town’s written Decision does not mention the term “the equities.” The Town did not, as Ledgeview Farms suggests, base its decision on a balancing of interests..

**Issue 7. The Town Did Not Deny the Siting Application Based on Additional Standards in its Zoning Ordinance.**

Ledgeview Farms applied for both a livestock facility siting approval and a conditional use permit, as mandated under Town ordinances. In the Decision, the Town first addressed the livestock facility siting approval. The Town denied that Application on the four grounds articulated in Decision Sections 15-18. Having denied the Application, and in the interest of transparency, the Town additionally articulated separate grounds on which to deny the CUP. The Town's separate denial of the CUP should not be before the Board for consideration in this proceeding.

### CONCLUSION

The Town denied the Application for multiple, stand-alone reasons. Ledgeview Farms has failed to challenge the basis for denial articulated at Decision Section 18, namely, that Ledgeview Farms failed to present sufficient "credible" information to support its application. The Board must uphold the Town's Decision on this ground.

Ledgeview Farms raised challenges to the remaining grounds for denying the Application. For the reasons articulated above, the Board should reject each of these challenges and instead uphold the Town's Decision. If the Board overturns each of the four reasons supporting the Town's decision, the Town requests that the Board remand the Application to the Town so that the Town can impose appropriate conditions on the required conditional use permit for Ledgeview Farms. Given the extensive history of noncompliance at Ledgeview Farms and the lack of transparency in operating procedures, conditions are, at a minimum, necessary to ensure protection of public health and safety. In addition, the limited scope of the review that may be undertaken by the Board, and pursuant to judicial review of a Board decision under Wis. Stat. § 93.90 (5), will not encompass the range of potential legal challenges that may be filed, and will not include all potential parties who may want to bring such challenges, should the Town be directed to approve this Application. To protect these interests, remand would be necessary if the Town's Decision is overturned.

Dated: July 31, 2018

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