MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD
FEBRUARY 19, 2010

Best Western Quiet House and Suites
1130 Johns Street, Dodgeville, Wisconsin

Chair Holte called the meeting to order at 8:30 a.m. Other LFSRB members present were Andy Johnson (by phone), Bob Selk, Fran Byerly (by phone), Lee Engelbrecht, Jerry Gaska and Bob Topel. A quorum was present. DATCP staff present were Cheryl Daniels, Lori Price, Richard Castelnuovo, Mike Murray, and Steve Struss.

Call to order: open meeting notice; approval of agenda; approval of September 18, 2009, meeting minutes; election of LFSRB Officers

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Under future items, Daniel requested to report on LWCB member positions that are up for renewal this year. Topel moved to approve the amended agenda, and Engelbrecht seconded the motion. The motion passed.

Holte presented the September 18, 2009, meeting minutes for approval. Engelbrecht made a motion to approve the minutes as written, and Topel seconded the motion. The motion passed.

Topel made a motion to keep the current slate of officers, Holte for Chair, Johnson for Vice-Chair, and Selk for Secretary, as the 2010 LFSRB Officers. Engelbrecht seconded the motion. The motion passed.

Status of appeal on Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01, circuit court decision

Daniels reported that the case history and schedule of when the Court of Appeals heard oral arguments in this case were include in the meeting materials. Daniels attended the oral argument session on February 17th. The session lasted for three hours, and the four attorneys present were asked many questions by the judges. The judges focused on whether the application process allowed for only conditions relevant to ATCP 51 to be set, whether they (the judges) could second guess what the legislature intended with the application process, and whether the LFSRB could rule on individual conditions. The judges did make it clear that they were going to review the LFSRB decision. The judges will decide what deference to give the LFSRB decision. Daniels explained the different deference options. Bob Hunter, attorney for the LFSRB, presented the LFSRB's position very well.

Selk asked if the judges discussed what types of conditions were appropriate for the local government to attach to the permit. Daniels replied there was discussion about including more stringent standards during the ordinance process and if that is not done, how can the more stringent standards be brought in. The judges focused more on the overall application process

while not reviewing specific conditions, and discussed whether the LFSRB should have denied the permit in its entirety with the approval of only some of the conditions. Johnson asked if the judges talked about local government monitoring and inspecting the facility. Daniels responded that one judge commented that complaints against Larson Acres could be handled the same way a town would handle a nuisance compliant. The judges also focused on whether the LFSRB decision had changed the local government's ability to do what they could already do.

Daniels also reported that the LFSRB has received another appeal from Larson Acres requesting a review of the local decision to grant a siting permit with conditions on another farm owned by Larson. Daniels will be sending out a request for the record of decision making, and a notice that an appeal has been filed. The LFSRB will most likely hear this case at its April 16th meeting. In the meantime, if the Court of Appeals should decide on the previous case, the aggrieved party does have the option to withdraw the appeal request.

Livestock Siting rule, ATCP 51, evaluation review plan

Murray began this item by commenting that the purpose of the upcoming listening sessions on ATCP 51 are to receive feedback on how the rule has been working since its inception four years ago. Staff will also be listening to broader comments beyond just the scope of the rule. The livestock siting law required that a review of the rule be done after four years. A summary of the listening session comments will be presented to the ATCP Board in May. The ATCP Board will then appoint a technical committee to recommend changes to the rule. The technical committee will present those changes along with a scoping statement to the ATCP Board who will make a recommendation on whether to open the rule up for changes. Any proposed changes to the rule would be taken out to public hearings and would eventually go before the legislature for final approval.

Castelnuovo commented that at yesterday's Dodgeville listening session, staff were hearing comments on specific changes to the rule. It was also noted that the public was confused as to which governmental agencies govern certain aspects of farm operations. He also commented that changes to DNR Rule 445 (control of hazardous pollutants) may affect the odor standard best management practices (BMPs) but may not coincide with ATCP 51 changes. Staff should also be cognizant in changes to other rules such as NR 151 (runoff management) that could affect ATCP 51. The group then discussed potential challenges to the current rule such as building a facility prior to obtaining a siting permit.

After this item, Johnson left the meeting.

Results of the odor emission study, and hydrogen sulfide study at one Wisconsin farm

Struss gave a presentation on the Conservation Innovation Grant (CIG) livestock air monitoring and odor project. His presentation covered the following: project overview, study participants, practices studied, project objectives, equipment used in the project, baseline data used, types of manure and feedlot storage systems tested and results, key findings of the odor study and implications for the siting rule, and benefits of the study and the siting rule.

Murray then presented information from a hydrogen sulfide study done on the AV Roth Farm in Crawford County. The study came about as a result of neighbors complaining about the odor emanating from the farm. The neighbors contacted the U. S. Department of Health and Human Service's Agency for Toxic Substances and Disease Registry (ATSDR) with their concerns. ATSDR worked with Wisconsin Department of Health on monitoring the facility, from various locations near the farm, for a 27-day period. The results of the study concluded that the level of hydrogen sulfide was not high enough to harm human health.

Board schedule and future agenda items

Daniels commented that the LFSRB will not need to hold a meeting in March but will hold one in April for the Larson Acres case. Also, Holte's and Byerly's LFSRB membership will be up for renewal in 2010. There has been no word yet on Senate confirmation of Selk's and Gaska's renewals.

Adjourn

Being no further business before the LFSRB, Selk moved to adjourn the meeting, and Topel seconded the motion. The motion passed, and the meeting adjourned at 10:39 a.m.

Respectfully submitted,

4,16,10

Bob Selk, Secretary Date

Recorder: LP