MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD MEETING
October 20, 2006
Room 106, 2811 Agriculture Drive, Madison, WI

Chair Holte called the meeting to order at 10:30 a.m. LFSRB members present were Jim Holte, Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, Dr. Jerome Gaska, and Fran Byerly. DATCP staff present were Cheryl Daniels and Lori Price.

Call to order

Holte stated the meeting had been publicly noticed, as required, and presented the agenda for approval. Johnson made a motion to approve the agenda, and Engelbrecht seconded the motion. The motion passed.

Chair Holte presented the June 30, 2006, meeting minutes for approval. Topel made a motion to approve the minutes, and Gaska seconded the motion. The motion passed.

Clarification of Board proceedings for open meetings—Cheryl Daniels, Board Attorney

Daniels commented that at a prior meeting, the Board decided to have the option to go into closed session during the decision-making process on a case. However, Daniels was informed by the Attorney General's office that the Board does not qualify to do this under Wisconsin Statute 93.90. Because the Board is the original review body therefore reviewing each case as a new one and does the review in such a fashion that no deference is given, Board deliberations need to be in open session. Board members then discussed procedural changes in the decision-making process. They decided to have Daniels frame the case issues for discussion at a Board meeting and send them to Board members through e-mail messaging prior to the meeting. Board members would then discuss the case at the meeting and instruct Daniels to write up the proposed decision. A second meeting would be needed to vote on the proposed decision. If this would be the only item on the agenda for the second meeting, it is possible the meeting could be done through conference call. Daniels added the Board bylaws do not need to be updated to reflect this procedural change, and that all e-mail messages and phone conversations regarding the case would become part of the case record.

Board schedule and future agenda items

This agenda item was moved up on the schedule to devote more time to the case discussion after lunch.

The Board members approved by consensus the 2007 LFSRB meeting schedule. The dates of the 2007 meetings are: January 19, February 16, March 16, April 20, May 18, June 15, July 20, August 17, September 21, October 19, November 16, and December 21.

Daniels asked the Board members if there were any suggestions for future meeting agenda items beyond administrative and case items. Selk suggested the Board discuss recommendations on ATCP 51 changes that will be sent to the department for its annual review of the rule. The Board could have these discussions as they see the need through reviewing cases. Topel asked if the change would go through the rule-making process again. Daniels affirmed that it would and it will also affect future decisions made by the Board before it is published in the law. Also, Board decisions will be posted on the website along with Board opinions on how they arrived at their decisions. Topel asked how decisions made by this Board will affect future Boards. Daniels responded that future Boards are not bound by previous Board decisions but hopes future Boards look at precedent first when deciding on a case.

The next scheduled Board meeting date is November 17th. Byerly commented that he may have to participate in this meeting by phone.

The Board recessed for lunch.

Larson Acres, Inc. v. Town of Magnolia, Docket No. 06-L-01

Daniels reported that on behalf of the Board, a notice was published in the local newspapers to inform interested parties in the 2-mile radius around the facility that a request for review of the local decision on this facility's livestock siting application was filed with the Board. Also, a notice was sent to the political subdivision requesting the complete record by October 13th. The record was received on October 17th. Board members were sent a portion of the record that will help them decide whether they have jurisdiction on this case. Shortly before the start of today's meeting, seven position statements were received from parties within the 2-mile radius of the facility. If the Board decides they have jurisdiction on this case at today's meeting, the rest of the record will be sent to the Board members.

The Board then began discussion on whether they should take up this case. The discussion focused on whether the Board can determine if an application is complete. The local subdivision's stance in this case is that the application is not complete while the applicant states that it is complete. The argument not in favor of the Board making a decision on completeness was the lack of this authority in the law. The argument in favor of the Board having this jurisdiction was the purpose of the law was to expedite the application process and the political subdivision might try to drag out this process with the completeness issue. Daniels added that according to the rule, application completeness can be determined by the agency (DATCP) that developed the rule or a court of law can rule that it comes back to the agency for that determination. There was further discussion on the additional information being requested by the local government in this case and if the law requires the local government to make a decision within a certain timeframe after receiving an application.

Topel made a motion that the Board does not have authority to make the determination of the application's completeness and that the Board can only review a local decision made on an application. Engelbrecht seconded the motion. The motion passed with six members voting aye and one voting nay. Daniels stated she will transmit this decision to the interested parties in the case. Gaska asked what the next steps are for the applicant in this case. Daniels responded the

applicant may take this case to the court for a completeness determination. If the town should make a decision on the application and there is a party who wishes to appeal the decision, the case would come back to the Board for review of the local decision and the Board would review the entire record.

Adjourn

Johnson made a motion to adjourn, and Selk seconded the motion. The motion passed, and the meeting ended at 1:35 p.m.

Respectfully submitted,

5.18.07

Bob Selk, Secretary Date

Recorder: LP