STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD
2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911

IN THE MATTER OF MARK AND JANE BROTHEN, EUGENE AND JEANNE DUBORD Aggrieved Person v. VERNON COUNTY, Political Subdivision	DOCKET NO. 07-L-02 NOTICE OF DENIAL OF REQUEST FOR REVIEW

BEFORE the Wisconsin Livestock Facility Siting Review Board:

James Holte, Chair
Andrew Johnson, Vice Chair
Robert Selk, Secretary
Fran Byerly
Lee Engelbrecht
Jerome Gaska
Bob Topel

NATURE OF THE CASE

Aggrieved Persons Mark and Jane Brothen and Eugene and Jeanne Dubord ("Petitioners") filed a challenge against the political subdivision Vernon County ("County') to the Wisconsin Livestock Facility Siting Board ("Board") on November 23, 2007. In the challenge, the Petitioners challenged the County's issuance of a manure storage permit to Jeff and Bonnie Parr ("Applicants") alleging that the County exceeded its authority under s. 93.90(3), Stats., On November 30, 2007, under the authority of the Board and its bylaws, Board Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making Record to the County and Applicants. The Request for Review included a date of December 29, 2007 for all

Statements of Position to be postmarked to the Board. In addition, the Board Attorney gave notice that the Board would be deciding first if it had jurisdiction to hear the question regarding a decision of the county not to require an application to approve a new or expanded livestock facility and issuing a permit under a different ordinance.

The Board met on January 18, 2008. It considered the petition and the question of jurisdiction and renders the following decision.

RELEVANT STATUTES AND RULES

S. 93.90 Livestock facility siting and expansion.

(5) REVIEW OF SITING DECISIONS. (a) In this subsection "aggrieved person" means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) An aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under sub. (2)(a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. . .

(bm) Upon receiving a request under par.(b), the board shall notify the political subdivision of the request. The political subdivision shall provide a certified copy of the record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record under sub. (4)(b). . . The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

FINDINGS

1. On August 7, 2007, Vernon County adopted s. 93.90, Stats., the Livestock Facility Siting Law, as a licensing ordinance.

2. On October 3, 2007, Vernon County issued a manure storage permit to Jeff and Bonnie Parr. The County decided not to require an application and approval for a new or expanded livestock facility from the Applicant.

3. On November 23, 2007, the Petitioners requested a review from the Board of the issuance of the manure storage permit to the Applicant by the County and the county's decision not to require an application and approval of a livestock facility siting permit.

4. On January 18, 2008, the Board met to consider its jurisdiction to hear the matter.

5. The Board finds that, without an application for a livestock facility siting permit and decision on that application by the political subdivision, it does not have the jurisdiction under s. 93.90(5)(b), Stats., to hear the Request for Review in this matter.

ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to s. 93.90(5)(b), Stats.

The Request for Review is hereby DENIED.

DATED this 18th day of January, 2008.

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD

James Holte, Chair

Andrew Johnson, Vice Chair

Robert Selk, Secretary

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