



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Sheila E. Harsdorf, Secretary

DATE: August 20, 2018

TO: Wisconsin Livestock Facility Siting Review Board (LFSRB)

SUBJECT: *Ledgeview Farms, LLC (“Applicant”) v. Town of Ledgeview (“Town”)* (Docket No. 18-LFSRB-02)  
Issues presented to LFSRB for consideration

**A. Did the Town have the authority to deny the siting permit because the Applicant’s design for the manure storage structure at the heifer facility failed to meet the 350-foot setback for a road right of way (ROW)?**

1. How should a political subdivision measure building setbacks in a zoning ordinance in the case of a storage facility: from the outside edge of a structure (i.e. outside of the berm) or the interior where manure is stored, (i.e. the odor source used in measuring odor)?
2. Should the LFSRB look to the definition section in the Town’s zoning ordinance to determine how setbacks are measured?
3. What is the significance of the language “to be verified”, on a June 1, 2018 site map (p. 2842), which depicts the ROW setback?

**B. Did the Town have the authority to deny the siting permit because the Applicant’s design for the manure storage structure at the heifer facility failed to meet local setback standard of 1320 feet from the property line?**

1. Is a challenge, based on the failure to adopt a local standard according to the procedures in identified in ch. 93, Stat., reviewable by the LFSRB as a violation of Wis. Stat. § 93.90 (3). See [93.90\(5\)\(b\)](#)?
2. At the time that the Town adopted the findings of fact in support of its more stringent setback standard, was it required to have the documentation referenced in the findings in its possession similar to incorporation by reference concept that applies to state rule making?
3. When adopting a local standard, does a political subdivision need to identify specific local conditions that justify the specific standards?
4. What is the scope of the term “public health and safety?” Does it include exposure to odor from manure that can affect health and create a public nuisance? *State v. Quality Egg Farm, Inc.*, 104 Wis.2d 506, 311 N.W.2d 650 (1981). Does it include a reduction in property values?

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5. What threshold of findings relating to public health or safety does the Town need to meet? What is the significance of the terms “clear” and “necessary” in the following requirement for adoption:

“Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.” Sec. 93.90(3) (ar) 2.

- a. May a political subdivision rely on expert testimony presented at the public hearing, after the fact, as findings to justify or support an ordinance’s more stringent standards?
- b. May a political subdivision use evidence of violations of environmental law, related to public health and safety, to justify the more stringent setback requirement?

**C. Did the Town have the authority to enforce requirements for a performance bond, as part of issuing the siting permit?**

1. May a political subdivision adopt a bond requirement, as a more stringent standard, given the prohibition in Wis. Admin. Code ch. ATCP 51? If so, is one finding in the ordinance adequate to support the performance bond standard as a more stringent standard?
2. May the LFSRB review a claim that DATCP exceeded its statutory authority in creating a rule that bans performance bonds?

**D. In denying the Applicant a permit, based on failure to comply with the runoff standards in ATCP 51.20, did the Town have the authority to consider the Applicant’s history of violations of state and federal law, in determining the credibility of the information in the application?**

1. May the Applicant satisfy the runoff requirements for an animal lot by collecting runoff and storing the runoff, even if the BARNY models shows that the animal lots, pre-construction, cannot meet phosphorus runoff requirements in the rule?
2. May a political subdivision consider the credibility of the information and commitments in an application? May it evaluate an applicant’s credibility in the light of past violations and patterns of documented behavior?

**E. Did the Town have the authority to deny the Applicant a permit because the manure storage at the headquarter facility did not have emergency overflow protection?**

- May a political subdivision deny a siting permit based on the applicant’s failure to meet a requirement that is not included in the NRCS 313 referenced in the rule?

**F. Did the town have a legal basis for denying the farm’s permit based on structural failure or leakage from existing waste storage facilities in violation of Wis. Admin. Code § ATCP 51.18 (2), as documented by the EPA and the DNR?**

- What evidence is necessary to show structural failure or leakage from a storage facility when the applicant's engineer in Worksheet 4 certified that the existing manure storage facility at the headquarters was recently constructed to standards, and showed no signs of leaks or failures?

**G. Did the Town have the authority to deny the Applicant a permit, based upon inconsistencies in the odor spreadsheets and worksheets, combined with findings about the Applicant's credibility?**

1. If an applicant submits a revised worksheet to reflect changes in practices or separation distances, but the applicant fails sign and submit a new worksheet #2 to reflect changes to the odor scoring, what is the significance of this inconsistency?
2. If applicant fails to update an odor management spreadsheet to remove an animal lot and expanded housing facility, what is the significance of this inconsistency?
3. If the Applicant submitted worksheets showing a passing odor score, based on implementation of odor control practices or an odor management plan, may the Town find the Applicant failed to meet the odor standard, based on past violations evidencing a lack of credibility to honor comments?

**H. To what extent could the Town enforce requirements on the Applicant for a performance bond or setbacks through a separate construction or building permit for a "man-made body of water?"**

- Wis. Stat. § 93.90(3) (a) 3. and 4. authorize a local government to disapprove a livestock facility if the proposed new or expanded livestock facility violates an ordinance adopted under Wis. Stat. § 60.627, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234, or 87.30 or violates a building, electrical, or plumbing code that is consistent with the state building, electrical, or plumbing code for that type of facility.

**I. Besides the setback requirement discussed above, did the Town have the authority to rely on additional grounds for denying the Applicant a siting permit, not authorized under Wis. Stat. § 93.90, if the Town had other authority to deny the permit?**

- Findings and Conclusions Sections 20-24 of the Town's decision (p. 3010-3013) rely on the following criteria as reasons to deny the Applicant a siting permit:
  - a. The proposed use by Ledgeview Farms is not consistent with the purposes of the Farmland Zoning Preservation Zoning District. See Town Ord. § 135-81 A. (1). 21.
  - b. The proposed use and its location of the storage structure at Heifer Site is not reasonable and appropriate use given the neighbor residential neighbors.
  - c. Ledgeview Farms failed to pursue reasonable alternatives.to mitigate impacts.

- d. Ledgeview Farms failed to show that it will immunize and repair damage incurred during construction.
- e. Ledgeview Farms' proposed livestock facility expansion and new manure storage lagoon would have a detrimental impact on public health and safety, comfort, convenience and general welfare and would harm the aesthetic appearances and scenic values of the Town.
- f. The proposed use does not foster a more rational pattern of relationship among agricultural, residential, business, commercial and manufacturing uses for the mutual benefit of all.

**J. Did the Town base the decision to deny the Applicant a siting permit on written findings of fact supported by evidence in the record?**

- Can the Town meet the requirement of preparing written decision with findings of fact if it makes its decision on one date, and issues its decision on later date?