



Livestock Facility Siting Review Board

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DATE: September 17, 2018

SUBJECT: *Ledgeview Farms, LLC (“Applicant”) v. Town of Ledgeview (“Town”)* (Docket No. 18-LFSRB-02) – LFSRB Identified Issues

**A. What are the legal implications of modifications to the siting application submitted after the town made its April 20, 2018 determination of completeness (Part 4, p. 1592).**

1. Can the application be amended by the submission of part but not all of worksheet components? For example, if applicant resubmits new odor spreadsheets, must applicant prepare and sign a new cover page for Worksheet 2 with the odor score. See Issue H.
2. Does the town have a right to revisit the application to determine its completeness or otherwise verify the submission provided after the completeness determination? See issues B and H
3. If an application is amended to remove animal lots or eliminate proposed expansion of housing, is the completeness of the application at issue if the applicant does not modify other aspects of the application to reflect the changes to housing and lots? For example, change maximum animal units in Worksheet 1 to reflect smaller capacity to house animal units?
4. For any worksheets that have been amended after the completeness determination, does the applicant retain a presumption of compliance granted under ss. ATCP 51.12(6), ATCP 51.16(2) ATCP 51.14(7) ATCP 51.18(5)(c), ATCP 51.20(8). Is the presumption lost if the application fails to comply with s. ATCP 51.30 because it is not credible, complete or lacks internal consistency?

**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 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? Are there state or other laws that might be determinative in establishing how a setback is measured?
3. The site map submitted on June 1<sup>st</sup> was one of several modifications of the siting application presented following the completeness determination. In this instance, the applicant amended the design of the storage facility to meet setback requirements and included the notation “to be verified,” on the June 1, 2018 site map (p. 2842) in regard to the ROW setback.

**C. 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?
5. Is the town’s recitation of studies, research and other information adequate to show the need for more stringent regulation? 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.

6. 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?
7. May a political subdivision use evidence of violations of environmental law, related to public health and safety, to justify the more stringent setback requirement?

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

- 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?

**E. In denying the Applicant a permit, based on failure to comply with the runoff standards in Wis. Admin. Code § 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. BARNY modeling results submitted to the Town for existing animal lots show that the existing animal lots in their current state cannot meet phosphorus runoff requirements in the rule and

that some action was necessary to meet the standard. May the applicant satisfy the runoff requirements by collecting and storing the runoff, even though the standard in the rule requires the submission of BARNY models to demonstrate the effectiveness of runoff treatment areas designed for existing lots?

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? Is there a distinction between past violations and ongoing violations?

**F. 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?

**G. 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?**

1. Is there evidence in the record – documentation by the EPA and/or DNR, as contended – indicating structural failure or leakage from a waste storage facility, and if so, which waste storage facility?
2. 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?

**H. Did the Town have the authority to deny the Applicant a permit, based upon inconsistencies in the odor spreadsheets and Worksheet 2, combined with findings about the Applicant's credibility?**

1. If an applicant submits a revised odor spreadsheets to reflect changes in livestock structures, odor control practices or separation distances, but the applicant fails to 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 Worksheet 2 showing a passing odor score, based on implementation of odor control practices and 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 commitments?

**I. 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.

**J. 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.

**K. 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? Must the Town specifically approve its written findings of fact or may it authorize the issuance of written decision consistent with its decision at a meeting?