

MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD MEETING
July 20, 2007
Room 106, 2811 Agriculture Drive, Madison, WI

Chair Holte called the meeting to order at 8:05 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, Jerome Gaska, and Fran Byerly. DATCP staff present were Cheryl Daniels and Lori Price.

1. Call to order

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

Holte presented the May 18, 2007, meeting minutes for approval. Topel moved to approve the minutes, and Gaska seconded the motion. The motion passed.

2. Larson Acres, Inc. v. Town of Magnolia case, Docket #07-L-01

a. Case review process

Daniels stated that Larson Acres is appealing the conditions on the permit and not the permit itself. A number of motions have been requested by various parties involved with this case. Daniels recommended the board accept the documentation received as is, but in the future, the board will want to evaluate the case review process to come up with specifics on receiving and reviewing documentation. She will add this as an agenda item for the August board meeting. There was further discussion on whether the board should make a motion to accept the documentation as is based on the fact that this is the board's first case. Board members were concerned about setting precedence or jeopardizing the final decision by accepting the documentation. Daniels stated the decision will include the findings of fact and conclusions of law in order to indicate the basis for the decision and only refer to those items that support that decision, which is what any future court would look at.

Holte reviewed the three main motions that were requested by the parties involved in the case. The first motion was to strike the Town of Magnolia's position statement because of its length and timing, the second motion was to accept oral arguments at today's meeting, and the third motion was to strike the amicus brief submitted by the department. Gaska moved to accept the Town of Magnolia's position statement and any additional documentation pertaining to the Town's statement. Selk seconded the motion. The motion passed. Before a motion was made on the amicus brief, Selk asked for Daniels' opinion on this matter. Daniels commented that the department is given the authority to work with local governments on livestock siting, therefore, the department would have an opinion on where the law stands. But, it should also be clear that the board has the ultimate decision in appeal cases. Board members agreed that there was no

harm to the case in allowing the brief to be submitted. Selk moved to deny the request to strike the amicus brief submitted by the department and accept the brief into the record. Gaska seconded the motion. The motion passed. Before a motion was made on allowing oral arguments, Daniels read the portion of the LFSRB bylaws prohibiting oral arguments unless the board deems it necessary. Engelbrecht moved to not accept oral arguments. Johnson seconded the motion. The motion passed.

b. Identification of issues on appeal

The board members discussed and identified the issues on appeal. Those issues were:

- does this case belong before the LFSRB
- what are the siting standards utilized under the law
- has the applicant satisfied those standards
- were the permit conditions imposed by the political subdivision appropriate within the state standards

c. Discussion

On the first issue of case venue, the board discussion focused around the facts that the conditional use permit would allow for up to 1500 animal units and the applicant had already built a facility that would allow for expansion. Selk commented that the applicant currently has less than 1000 animal units, and Gaska added that the applicant was requesting a permit for a new facility. Daniels commented that it can be assumed the applicant built a large enough facility in order to expand. Johnson moved that the LFSRB has the authority to review this case. Byerly seconded the motion. The motion passed.

On the second issue of what siting standards apply, the board determined that the Town had not passed more stringent standards beyond the state standards so the standards listed in s. 93.90, Stats., and ATCP 51 apply to this case.

On the third issue of the applicant meeting the standards, the board discussed the purpose of the standards, the Town's struggle to deal with an existing resource problem in the area around the farm, and other laws to address resource concerns, particularly the DNR WPDES permitting process. Topel commented he did not see anything in the record where Larson Acres indicated they would not make changes in order to mediate any threats or problems that may occur. The applicant followed best management practices up to this point, but research is showing that some best management practices may not work. Selk added that by initially granting the permit, the Town also agreed the applicant met the standards. Board members agreed that applicant had met the standards.

The board began the discussion on the fourth issue of conditions being appropriate to the siting law by discussing whether they have the authority to review the conditions set forth in the permit. Daniels referred to s. 93.90 (5) (b) and (d), Stats., that gives the aggrieved party the right to challenge the local subdivision's decision and the board the authority to determine if the

challenge is valid and reverse the decision. The challenges in this case are to the conditions within the permit and not the permit itself. The board would inform the local subdivision of its decision through an order. If the subdivision does not comply with the order, then it would be up to an aggrieved party to pursue compliance with the order through the circuit court. Reversing the conditions is not reversing the permit. Selk moved that the Livestock Facility Siting Review Board has the authority under s 93.90 (5) (b) and (d), Stats., to review any challenge to conditions placed by the political subdivision on a livestock facility siting permit as to whether those conditions comply with the law. Johnson seconded the motion. After further discussion on the authority of the board in this area and a meeting break, the board took a vote on the motion. The motion passed.

The board moved on to discussion of the conditions and challenges to the conditions, if any. Daniels read each condition as listed on the permit and then read the challenges. On Condition 1, board discussion focused around the three farming strategies listed in the condition as to whether they exceeded the state standards in whole or in part. Topel moved that Condition 1 including the three strategies listed exceeds the limits of the livestock siting rule and should be reversed. Gaska seconded the motion. The motion passed with Selk voting no only as to Part C of Condition 1 not exceeding the standards.

Condition 2 was moved to the end of this discussion to allow more time to decide first whether condition was being challenged.

On Condition 3, board discussion focused around the town's authority to access the property for monitoring purposes, this condition as the beginning of a monitoring plan, whether this condition would be covered under a DNR WPDES permit, and monitoring the wells surrounding the facility. Selk moved that Condition 3 be permitted to stay in the permit. Engelbrecht seconded the motion. A roll call vote was taken: Byerly-nay, Engelbrecht-aye, Gaska-nay, Holte-nay, Johnson-aye, Selk-aye, and Topel-nay. The motion failed. Gaska moved that Condition 3 should be reversed. Topel seconded the motion. A roll call vote was taken: Byerly-aye, Engelbrecht-nay, Gaska-aye, Holte-aye, Johnson-nay, Selk-nay, and Topel-aye. The motion passed.

Holte stated that Condition 4 was not be challenged by the aggrieved party.

On Condition 5, board discussion focused around whether this condition was too broad in its wording to include laws beyond ones pertaining to livestock siting. Selk moved to reverse Condition 5 and that the Town of Magnolia be directed to enter a condition that complies with requirement in s. 93.90 (3) (ae), Stats. Johnson seconded the motion. The motion passed.

On Condition 2, the board first discussed whether this condition was being challenged. They came to the conclusion that it was being challenged because the aggrieved party is proposing to limit information to that under the law. The discussion then focused on the potential for the information on management practices that must be exchanged between the Town and Larson Acres to be very broad as the condition is currently written. Selk moved to affirm Condition 2 as a condition and direct the findings in the order to state that this condition be limited to those

practices required by the standards. There was further discussion on what would happen if the Town does not comply with the order. There was no second to the motion so the motion died.

The Board took a lunch break at this time.

After lunch, discussion continued on the ambiguous wording in Condition 2, the possible purpose of the condition as it is currently written, and other means to monitor other than through this condition. Daniels reread Selk's earlier motion with clarification on the laws. The motion was the board affirm Condition 2 but make clear in the findings that it needs to be harmonized with the standards to be utilized are in s. 93.90, Stats., and ATCP 51, and that all information exchanged must be within the scope of those laws. Selk sponsored this motion, and Engelbrecht seconded it. The motion passed.

There was no challenge to Condition 6.

On Condition 7, board discussion focused around the consequences to the applicant if the Town fails to review the conditional use permit, the purpose of the condition as informing the citizens surrounding the facility, and the condition placed in an ordinance rather than on a permit. Topel moved to reverse Condition 7 in the permit. Byerly seconded the motion. There were 6 ayes and 1 nay. The motion passed.

d. LFSRB decision

Daniels reviewed the decisions made by the board during their discussion of the conditions. These decisions along with other motions made to decide case review procedures will be put into writing for the board to review before the next meeting. The public will be allowed to look at the draft decision but will not be allowed to comment on it since the decision was final at today's meeting.

e. Set date for special meeting to resolve case on or before July 30th or 31st

Since the board made its final decision at this meeting, no meeting later in July was required to resolve the case.

f. Set date for LFSRB signoff of final written decision on case for August 17, 2007

Holte reaffirmed with Daniels that the August 17th meeting date will be when the board signs off on the final decision made at today's meeting. Daniels added that a look at the procedures for reviewing a case will be included on the August agenda in order to further refine the procedures. Topel asked if there are any other cases that may come before the board. Daniels responded that there is the possibility that another one may come before the board, but she has not seen anything yet.

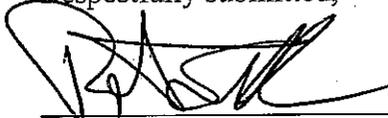
3. Remaining LFSRB meeting dates in 2007—August 17, September 21, October 19, November 16, and December 21

Holte asked the board members if they had any conflicts with remaining board meeting dates in 2007. Engelbrecht stated he may not be able to attend the September 21st meeting.

Adjourn

Johnson moved to adjourn the meeting, and Engelbrecht seconded the motion. The motion passed. The meeting ended at 1:20 p.m.

Respectfully submitted,


Bob Selk, Secretary

17 Aug 07
Date

Recorder: LP