WISCONSIN TOWNS ASSOCIATION
Empowering Town Officials

LEAGUE OF WISCONSIN MUNICIPALITIES

TO: Livestock Facility Siting Review Board
FROM: Wisconsin Towns Association & League of Wisconsin Municipalities
RE: 18-LFSRB-02
DATE: July 31, 2018

Although the League of Wisconsin Municipalities (LWM) and Wisconsin Towns Association (WTA) understand that the Livestock Facility Siting Review Board (the Board) does not frequently accept comprehensive non-party briefs, these organizations ask the Board to consider this brief letter supporting the Town of Ledgeview. In addition to the plethora of arguments put forth by the town, the denial of the livestock facility permit should be upheld because finding otherwise would have severe negative statewide impacts for local governments, the general public, and the farming community.

The first issue of statewide concern is the scope of Wis. Stat. §§ 93.90(3)(a)6. and (ar) and Wis. Admin. Code § ATCP 51.10(3). Under these sections, local governments may enforce standards stricter than state regulations if the requirement is enacted through an ordinance prior to an application, and based upon "reasonable and scientifically defensible findings of fact adopted by the political subdivision that clearly show that the requirement is necessary to protect the public health or safety." Wis. Stat. §§ 93.90(3)(a)6.b. and (ar). (Wis. Admin. Code § ATCP 51.10(3) has the same general requirements).

Ledgeview Farms (LF) attempts to create a requirement for local governments to establish "locale-specific findings". Ledgeview Farms Statement of the Issues, P.3. It is unclear how LF would define "locale-specific", but it is clear this language never appears in the statutory language nor the Department of Agriculture, Trade, and Consumer Protection (DATCP) regulations.

Indeed a plain language analysis of Wis. Stat. §§ 93.90(3)(a)6. and (ar) shows a "locale-specific" determination is not required. Neither section places any sort of boundary or geographic restriction on the findings of fact. The standards need only be implemented prior to the filing of an application and be based on "reasonable and scientifically defensible findings of fact adopted by the political subdivision that clearly show that the requirement is necessary to protect the public health or safety." By creating this addition to state siting standards, the legislature clearly gave local governments the authority to put extra protections in place when necessary. Had the legislature

intended a "locale-specific" requirement, it could have easily included such language in either section. Since no such verbiage exists, it cannot be created out of thin air.

Because Wis. Stat. §§ 93.90(3)(a)6. or (ar) do not specify any type of geographic or zone restriction, the proper interpretation is that there is no such restriction. The facts and findings need only be reasonable and scientifically defensible. This is not to say that a Wisconsin local government could rely on a study concerning conditions specific to a different region (e.g. a study on California soils and topography). That would possibly violate the "reasonable" component. The statutes, however, do not require that it be specific to the site or even the town. Although the legislature has withdrawn some power from local governments in regards to livestock facility siting (*See Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85, 342 Wis.2d 444, 820 N.W.2d 404), if the legislature wanted truly uniform standards statewide, it would not have given local governments discretion to exceed state standards.

Creating a "locale-specific" requirement will negatively impact the public, local governments, and the agricultural community. Local governments would need to spend a large sum of limited taxpayer dollars on "locale-specific" research, which could span years. Consequently, the costs of administering a livestock facility siting ordinance would either become too great for local governments to bear, or they would spend unreasonable amounts of money to conduct locale-specific findings. These increased costs would diminish the quality and quantity of services that local governments provide, or result in increased taxes for everyone in the community.

In the face of increased costs/decreased services, local governments would find an incentive to modify zoning ordinances to limit where large livestock operations are allowed. Communities would simply zone out agriculture altogether. This would circumvent the entire livestock facility siting process because local governments can deny an application if the facility is not in an agricultural zone. Wis. Stat. § 93.90(3)(a)1.. Thus if an individual wanted to operate a livestock facility they would first need to pursue a zoning change, which is a purely discretionary and opinion based decision making process that does not require any sort of science. This is the probable and logical next step for local governments to take if their ability to create more stringent local standards is further eroded.

It should not be lost that more stringent requirements are in furtherance of public health and safety. Adopting LF's artificial standard would greatly inhibit local government's ability to effectively protect public health and safety. The Town of Ledgeview did their homework in this case. The Town found studies and adopted them by ordinance that show the public health and safety demand more stringent standards. LF had advance notice of the more stringent standards, which the Wisconsin Supreme Court stated is one purpose of the local option. *Adams v. State Livestock Facilities Siting Review Bd.* 2012 WI 85 ¶ 45, 342 Wis.2d 444, 820 N.W.2d 404. The Town followed all requirements to enact stricter standards outlined in statute. Adopting the "locale-

specific" requirement would create a major barrier to enact ordinances that truly further the public health and safety. The legislature clearly gave local governments a way to protect public health and safety. LF is seeking to take that ability away.

The second issue of statewide concern is Ledgeview Farms' erroneous assertion that past/current non-compliance is irrelevant. Under Wis. Admin. Code § ATCP 51.34(4) a political subdivision may withdraw approval for a livestock facility if the applicant "materially misrepresented relevant information in the application", or if the operator "fails to honor relevant commitments made in the application". Wis. Admin. Code §§ ATCP 51.34(4)(b)1. and 2.. This language definitively allows a local government to rescind a permit if the operator violates the standards. If a farm does not currently comply with state standards, there is no reason for a local government to issue the permit. It would lead to an absurd result if a local government were forced to approve an application for a permit only to then rescind the permit for non-compliance immediately. This would unnecessarily increase the amount of time and resources spent on the application process. The local government would need to go through the approval process for the permit. After approval of the permit, it would then have to go through a formal process to rescind the permit. This creates uncertainty for the farmer, the local government, and the adjacent landowners. That is why ATCP § 51.34(1)(b) allows for a local government to deny an application if there is clear and convincing information showing the applicant cannot meet the standards under ATCP 51. Current non-compliance is clear evidence the applicant cannot meet state standards.

Ledgeview Farm's interpretation that past non-compliance is irrelevant would completely eliminate local government discretion. It raises several important questions: if past non-compliance is irrelevant, then what is relevant? How could a local government ever find an applicant will not comply with state standards? Why give local governments express authority to deny a permit if that authority can never be used? There are no logical answers to these questions under LF's interpretation. It is clear under the statutory framework and DATCP regulations local governments were not meant to be rubber stamps. Considering past/current non-compliance is completely consistent with those regulatory frameworks.

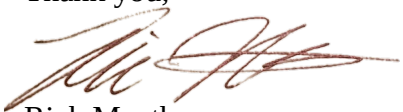
Disallowing the use of past/current non-compliance will lead to the same result as creating the "locale-specific" requirement. Local governments will utilize their zoning authority in ways to give them more discretion over particular uses, namely by limiting or eliminating agricultural zones. Eliminating local discretion for denying a permit coupled with handcuffing the ability to develop more stringent standards creates a major incentive for local governments to bypass the livestock facility siting framework by zoning out agriculture. It will lead to the exact opposite of what the agricultural community wants; that being uniform state standards. If it becomes a local legislative decision over whether to grant a rezone, farmers will have no clarity on what the outcome will be. It will become a more subjective process that creates presumptions in favor of the local government rather than the farming community. To be clear, this is not what local

governments seek. Local governments simply want a fair solution that takes into account all interests rather than favoring one group over another. But left with the choice between having no say, and some say in the process, local governments will choose the one that gives them the best opportunity to protect public health and safety.

The League of Wisconsin Municipalities and Wisconsin Towns Association appreciate the Livestock Siting Review Board's attention to this matter. Both organizations ask the Board to uphold the decision of the town. Overturning the denial will create many statewide negative impacts that severely limit local governments' ability to effectively implement the livestock facility siting law, thereby creating incentives for local governments to find ways to bypass the regulatory framework entirely.

The League of Wisconsin Municipalities has authorized WTA to submit this joint letter.

Thank you,



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