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Livestock Facility Siting Review Board

**July 12, 2019 Minutes**

Livestock Facility Siting Review Board Meeting  
Department of Agriculture, Trade and Consumer Protection (DATCP)  
Room 231  
2811 Agriculture Drive, Madison, WI

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**CALL TO ORDER— Bob Topel, LFSRB Chair**

The meeting was called to order by Chairman Bob Topel at 10:05 am. Topel, Raymond Diederich, Lee Engelbrecht, Dr. Jerome Gaska, Scott Godfrey, and Bob Selk were present by telephone. Sand was absent. Also present were Attorney Cheryl Daniels and Chris Clayton of DATCP.

Clayton confirmed that the meeting was publicly noticed as required. Daniels called roll, confirming that a quorum was present.

Godfrey moved to approve the agenda as presented, seconded by Diederich, and the motion carried.

The June 28, 2019 meeting minutes were presented for approval. Topel made a motion to approve the minutes with minor edits, seconded by Selk, and the motion carried.

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**ELECTION OF OFFICERS— Bob Topel, LFSRB Chair**

The Board conducted the election of officers in the following order:

Diederich nominated Topel as Chair, seconded by Engelbrecht. The LFSRB closed nominations and cast a unanimous ballot for Topel. Motion carried.

Topel nominated Gaska as Vice Chair, seconded by Diederich. The LFSRB closed nominations and cast a unanimous ballot for Gaska. Motion carried.

Topel nominated Sand as Secretary, seconded by Diederich. The LFSRB closed nominations and cast a unanimous ballot for Sand. Motion carried.

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**LEDGEVIEW FARMS V. TOWN OF LEDGEVIEW, NO. 19-LFRSB-01— Cheryl Daniels, Board Attorney**

Daniels led the discussion on the draft decision, and the following changes were made:

1. On page 1, fourth paragraph under Procedural History, the number of e-mails from other aggrieved persons was corrected to 17.
2. On page 2, under G. in the Issues for Decision, the word “the” was inserted immediately after “Was there sufficient evidence in.”
3. On page 8, under 2. in the Findings of Fact, the word “a” was inserted immediately after “...the Applicant had engaged in.”
4. On page 14, under 20. G. ii. in the Findings of Fact, the sentence was amended to read, “The proposed use and location of the storage structure at the Heifer Site is not reasonable and appropriate, given the neighboring residential uses.”
5. On page 15, under 1. in the Conclusions of Law, the word “the” was inserted immediately after “undertaken to verify the conditions of,” and the word “grounds” was made singular.

6. On page 15, under 3. in the Conclusions of Law, the final word was changed to “denied” to properly reflect the Board’s decision on this issue.
7. On page 15, under 5. In the Conclusions of Law, the word “the” was inserted immediately before “understanding that the Applicant’s window for attaining compliance may vary.”

Daniels clarified that the LFSRB’s decisions on the issues means that the Town’s decision to deny the siting permit is upheld based on the lack of credible information contained in the application. The LFSRB stated that the applicant may remedy these issues, but is required to reapply with a new application for a livestock siting permit from the Town.

Engelbrecht made a motion for the LFSRB to approve the decision as modified, seconded by Godfrey, and the motion carried unanimously. Selk was authorized to sign the final written decision on behalf of the Board.

**BOARD SCHEDULE AND FUTURE AGENDA ITEMS**

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Daniels reported that the Secretary’s Office will work on securing Bob Selk’s replacement on the Board.

The LFSRB decided to schedule a meeting at the DATCP building in Madison on September 6<sup>th</sup> to review the hearing draft ATCP 51 and LFSRB bylaws.

**ADJOURN**

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Selk moved to adjourn the meeting, seconded by Gaska, and the motion passed. The meeting ended at 10:45am.

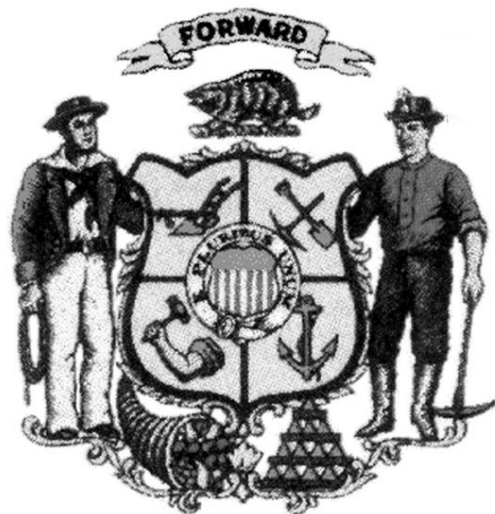
Respectfully submitted,

\_\_\_\_\_ Date: \_\_\_\_\_  
Robert Selk, Secretary

Recorder: CC

*WISCONSIN*  
*Livestock Facility Siting Review Board*

*BYLAWS*



*Adopted June 30, 2006*  
*Amended January 18, 2008*  
*Amended January 21, 2011*  
*Amended*

*Wisconsin Department of Agriculture, Trade  
and Consumer Protection*  
*P.O. Box 8911*

Madison, WI 53708-8911  
(608)224-4622

DRAFT

I. PURPOSE

The Wisconsin Livestock Facility Siting Review Board (~~board~~Board), which is attached to the Department of Agriculture, Trade and Consumer Protection (DATCP), is responsible for determining whether challenges to local livestock facility siting decisions are valid. Specific authorities and duties are listed in Appendix A.

II. MEMBERS

A. Members

As required by Wis. Stat. § 15.135(1)(a) ~~of the Wisconsin Statutes~~, the ~~b~~Board consists of:

~~1.~~1) A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association;

~~2.~~2) A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association;

~~3.~~3) A member representing environmental interests, selected from a list of names submitted by environmental organizations;

~~4.)~~4. A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.

~~5.)~~5. Three other members

The members shall be nominated by ~~the DATCP's secretary~~Secretary of agriculture, trade, and consumer protection, and, with the advice and consent of the Wisconsin sSenate, appointed, for 5-year terms.

B. Vacancies

Vacancies shall be filled in accordance with Wis. Stat. § 15.135(1)~~, Stats.~~

~~Consistent with this authority, t~~The procedures for filling vacancies are as follows. In the event of a vacancy of one of the four designated member seats, ~~the DATCP's secretary~~Secretary of agriculture, trade, and consumer protection will solicit names from the appropriate organization or organizations and choose a member from among the nominees. If one of the at large member seats is vacant, ~~the sDATCP's Secretary of agriculture, trade, and consumer protection~~ will nominate a member. All nominations are subject to the advice and consent of the ~~senate~~Wisconsin Senate.

C. Terms

The terms of members are for five (5) years and shall expire on May 1. ~~Terms of the initial board members were designated in 2003 Wisconsin Act 235, Section 4. Nonstatutory Provisions (2).~~

D. Attendance

If a member is absent at three consecutive meetings without good ~~reasons~~cause, as determined by the ~~board~~Board, the ~~B~~board shall bring the matter to the attention of ~~the~~ sDATCP's eSecretary of agriculture, trade, and consumer protection.

\_\_\_\_\_ E. Oath of Office

\_\_\_\_\_ Each member shall take and file the official oath prior to assuming office, pursuant to Wis. Stat. §. ~~[s. 15.07(7), Stats.]~~

III. OFFICERS

At its first meeting in each year, the ~~board~~Board shall elect a chairperson, vice chairperson and secretary, each of whom may be re-elected ~~for to~~ successive terms. If an office becomes vacant, the ~~board~~Board may hold a special election at any regularly scheduled board meeting.

IV. AUTHORITIES AND RESPONSIBILITIES

A. Adjudication

The ~~board~~Board has quasi-adjudicatory authority to perform the following functions:

1. Review challenges filed by aggrieved persons with respect to decisions to approve or deny an application for local approval of new or expanded livestock facility.
2. Determine if a challenge is valid, based on whether the decision of the political subdivision incorrectly applied the state standards under Wis. Stat. § 93.90(2) (a) that are applicable to the livestock facility siting or expansion or violated Wis. Stat. § 93.90(3).
3. Affirm the decision of the political subdivision or reverse that decision based on whether or not the challenge is valid.
4. Prepare policy recommendations in connection with individual decisions, and direct transmission of the decisions as necessary.

A detailed description of the adjudicatory procedures is provided in Appendix A.

B. Board Management

The ~~board~~Board has policy and rule making authority to perform the following functions:

1. Establish how the ~~board~~Board will conduct its business, including procedures to review cases.
2. Establish how others interact with the ~~board~~Board.
3. Evaluate and make recommendations regarding the operation and management of the ~~board~~Board.
4. Pursue ~~formal rules~~rulemaking, if needed.

V. DECISION MAKING PROCESSES

A. \_\_\_\_\_ Functioning in its quasi-adjudicatory capacity, the board will use the procedures outlined in Appendix A.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ DATCP will support the board as follows:

1. ~~Provision~~ Provide of legal and other assistance to explain statutory and rule requirements.
2. Management of case files and ~~communications~~ communicate about cases, ~~including the use of docket sheets to~~ track Board activity and ensure prompt, proper, and timely compliance with the review procedure.
3. ~~Preparation~~ Prepare and ~~issuance of~~ e required notices and orders.
4. ~~Scheduling~~ Schedule and ~~coordinating~~ coordinate ~~board~~ Board meetings, including ~~agenda preparation~~ preparing the agenda and ~~distribution of~~ g meeting materials.
5. ~~Provision~~ Provide of legal ~~assistance~~ services as required to resolve cases, including ~~preparation~~ preparing draft and of a final decisions.
6. ~~Provision~~ Provide of expert assistance, as needed, on water quality issues.

## VI. MEETING PROCEDURES

### A. Schedule and Place of Meetings

1. Meetings will be scheduled ~~monthly as required, to handle case deliberation and decisions, and~~ may be cancelled, if not needed.
- ~~2. Additional meetings may be called by the chair at anytime, as required to take action on cases.~~
- ~~3.2.~~ Meetings ~~will~~ may be held at DATCP's central office, in Madison, ~~or~~ at other appropriate locations, ~~as determined by the board or~~. ~~The board may also hold meetings by conference call,~~ as determined by the Board.
- ~~7.3.~~ All meetings shall be noticed in accordance with the open meeting ~~laws~~ statutes, subch. IV of Wis. Stat. ch. 19. Chapter 19, Stats.

### B. Agendas

#### ~~1) Individual Meeting Agendas~~

~~The agenda shall be prepared by the DATCP staff in consultation with the Board chair of the board, at least 14 calendar days prior to the next scheduled meeting. The agenda and materials will be sent to mailed to members, usually via e-mail, at least 10 days prior to the next regularly scheduled meeting, except when a shorter interval is allowed under certain conditions (e.g. to accommodate an additionally scheduled meeting) necessary.~~

The agenda shall include:

1. ~~Aa)~~ a approval of minutes of the previous meetings(s),
2. ~~b) a~~ A approval of agenda and additions or changes,
3. ~~e) a~~ Actions as authorized by statutes,
4. ~~d) e~~ Other business authorized by law, and
5. ~~e) f~~ Future meetings scheduled.

### C. Minutes



Minutes of each meeting shall be taken by DATCP staff and signed by the Board secretary following Board approval ~~by the board~~. Minutes shall record all ~~b~~Board actions. Minutes shall be sent to members, usually via e-mailed to each member. Minutes and all other records of the ~~board~~Board shall be retained as required by law.

D. Board Materials

~~1)~~ Review

~~M~~Materials related to board decisions on individual cases shall be prepared by the ~~board~~Board attorney.

~~In~~Informational materials or materials ~~related to board decisions on matters of policy~~ shall be prepared by DATCP staff or the ~~board~~Board attorney.

~~2)~~ Distribution

All ~~board~~Board materials ~~will be distributed to the board under the signature of the board attorney or livestock facility siting review board staff~~will be distributed by electronic means, except when impractical.

Materials shall be mailed to the board at least 10 days prior to the board meeting, and sooner if possible. ~~However, upon permission of the board chair, s~~Staff may distribute certain materials at ~~board~~Board meetings to supplement presentations to the ~~board~~Board, when appropriate.

~~Electronic distribution of meeting materials is preferred except when impractical.~~

~~All press releases prepared by staff pertaining to board issues shall be reviewed and approved by the board chair.~~

~~E.~~ Conduct of Meetings

~~1)~~ Conduct of Meetings.

The chair or, in the absence of the chair the vice chair or, in the absence of both, the secretary, or in the absence of all three, any member chosen by the members present, shall call the meetings of the board to order and shall act as chair of the meetings.

2. The board secretary shall act as secretary of all meetings of the board. In the absence of the secretary, the presiding officer may appoint any member present to act as secretary of the meeting. The secretary shall direct the department to prepare minutes of all ~~board~~Board meetings.

3. Any subject matter regarding procedure not covered by these bylaws will be covered by *The Sturgis Standard Code of Parliamentary Procedure*.

4. Meetings shall be conducted in accordance with Wisconsin's open meeting law.

~~F.~~ ~~2)~~ Manner of Acting

Except as otherwise expressly provided in these bylaws, action shall be taken by the ~~board~~ Board upon a vote of a majority of the members present at a meeting and the same shall be the action of the ~~board~~ Board. The voting on all matters at a meeting for which a roll call vote is requested shall be by yeas and nays and the yeas and nays shall be entered upon the minutes of the meeting. In the case of a tie vote, the motion will fail. Each member is allowed one vote on all motions concerning business of the board.

~~G.~~ ~~3)~~ Quorum

Four board members shall constitute a quorum and no formal business may be transacted unless a quorum is present.

~~H.~~ ~~4)~~ Conflict of Interest

If a member recognizes that his or her own participation in a particular discussion or vote represents a conflict of interest, that member shall so state publicly and abstain from that discussion or vote. See additional provisions in Appendix A.

VII COMPENSATION AND EXPENSES

~~board~~ Board members who are not employees of state agencies are eligible to receive reimbursement of expenses "incurred in the performance of their duties." The following policy defines the duties of members of the ~~board~~ Board, the performance of which establishes eligibility for per diem and expenses.

A. No Prior Approval Required

Board members will receive expenses for attending official meetings of the Livestock Facility Siting Review Board.

~~B.~~ ~~B.~~ Prior Approval Required

Board members will receive expenses for attending the following meetings or activities if prior approval has been obtained from the board chair.

Meetings and activities for which prior approval is required are:

~~1)~~ Attendance at an ATCP Board meeting where presence is requested as part of a report on board activities

1.

~~2)~~ Other public appearances on behalf of the ~~board~~ Board.

VIII. REVIEW OF AND AMENDMENTS TO THE BYLAWS

~~Bylaws shall be reviewed at the December meeting of even numbered years.~~ These bylaws may be altered, amended or repealed and new bylaws may be adopted by an affirmative vote of two-thirds (2/3) of the members present at any regular meeting provided that notice of each proposed change hereof or addition hereto has been delivered personally, or mailed, via electronic or US Mail, to each member at such address as the member shall have designated to the board, not less than 10 days prior to the time of meeting at which the proposed change or addition is to be considered.

~~IX. STAFF ASSISTANCE~~

~~———— DATCP shall provide staff to assist the board in performing its statutory duties. [s. 93.90 Stats.]~~

~~Bylaws originally a~~A~~dopted~~ A ~~by the LFSRB Board~~ on June 30, 2006.

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~~Amended by the Board on: January 18, 2008.~~

~~Amended by the Board on January 21, 2011—1-21-11.~~

~~Amended by the Board on~~

# Wisconsin Livestock Facility Siting Board Bylaws

## Appendix A

For further information, the Department will use the Board's website to convey any changes in procedures or other information. That website is [https://datcp.wi.gov/Pages/About\\_Us/LivestockSitingReviewBoard.aspx](https://datcp.wi.gov/Pages/About_Us/LivestockSitingReviewBoard.aspx)

### A. INITIATION OF PROCEEDING

#### 1. Request for review

An aggrieved person, as defined in sec. 93.90, Stats., may initiate a review of proceeding by filing ~~an~~ appropriate document form.

**REQUEST FOR REVIEW OF DECISION REGARDING AN APPLICATION FOR LOCAL APPROVAL** that includes all of the following:

- (a) The name and address of the aggrieved person, and the name and address and telephone number of its principal representative, if any.
- (b) A clear and concise statement that the person filing the request meets the definition of aggrieved, s. 93.90(5)(a), Stats.
- (c) The name and address of the political subdivision, including the local administrative body that issued the decision, whose decision is being challenged.
- (d) The date the political subdivision issued the decision that is the subject of the request for review.
- (e) The name and address of the applicant, as listed on lines 1, 4 and 5 of the first page of the Application for Local Approval, if different from the aggrieved person.
- (f) A clear and concise statement of the issue or issues and grounds upon which the aggrieved person is challenging the decision along with the arguments supporting those grounds. The statement of position may not exceed ten (10) 8 1/2" x 11") pages with a font no smaller than 12-point.

The appeal must be sent electronically as a pdf file or, if necessary, post-marked no later than thirty (30) calendar days from the date that the political subdivision issued the written decision which is the subject of the request for review. ~~The preferred method for submitting an appeal is an electronic pdf file.~~ A request for review filed after this deadline will not be considered. The ~~board~~ Board may require a party to provide additional information to meet the requirements of (a)-(f) above. ~~and Aa~~ request is not complete without meeting these unless it meets the requirements of (a)-(f) above.

#### 2. Docket

Upon receipt of a request for review, ~~the board~~ Board staff will assign a docket number and create a docket sheetfile.

#### 3. Notice of Request for Review

~~The Board staff~~ will provide the following parties-in-interest a ~~notice of a request for review~~ **NOTICE OF REQUEST FOR REVIEW:**

- (a) The aggrieved person filing the request for review.
- (b) The applicant, if the request for review was filed by another party.

(c) The political subdivision that issued the decision.

The Board staff will also ~~provide notice~~ generate a press release sent to all media outlets that are reasonably calculated to inform anyone who owns, occupies, or has some other legal interest in the property, within two (2) miles of the proposed livestock facility, that the local decision has been appealed to the ~~board~~ Board so they may participate in the proceedings as provided by ~~these bylaws~~ law. Failure to provide this notice shall not invalidate the appeal process.

The notice shall include:

- (a) A copy of the request for review filed by an aggrieved person.
- (b) The docket number assigned to the request, which shall be used on all papers subsequently filed with the ~~b~~ Board.
- ~~—(c)~~—(c) A description of the review procedures of the ~~board~~ Board, including explanation that the ~~board~~ Board may delay its request for the record of decision-making to resolve jurisdictional issues.
- (d) A statement that the political subdivision, or any person meeting the definition of an “aggrieved person”, other than the original aggrieved person making the appeal, may also file a statement of position, with a date by which they must electronically submit or postmark their filing. The statement of position may not exceed ten (10) 8 1/2" x 11") pages with a font no smaller than 12-point. The notice will indicate that the preferred method for submittal is an electronically transmitted .pdf file which can be read and copied easily with current technology.

#### 4. Request for ~~record of d~~Decision-making Record

As soon reasonably appropriate, ~~the board~~ Board staff shall send a notice to the political subdivision requesting the record of a **REQUEST FOR CERTIFIED COPY OF DECISION-MAKING RECORD** decision-making. The ~~notice~~ request shall be e-mailed, unless another method is requested by the political subdivision mailed by certified mail, return receipt requested or by personal delivery, with a signed affidavit to the clerk of each affected political subdivision. The political subdivision shall provide a certified copy of the record, as defined in Wis. Admin. Code § ATCP 51.36 to the ~~board~~ Board within thirty (30) days after the day on which it receives the ~~notice~~ request. The ~~notice~~ request shall include the fact that the certified record shall comply with the following:

- (a) The copy of the record shall be in an electronic searchable portable document format (.pdf) file which can be read and copied easily with current technology.
- (b) The copy of the record shall be organized by date.
- (c) The copy of the record shall include a table of contents or index of all materials submitted as part of the record.
- (d) The electronic recording of any public hearing must be in a digitized format, provided on a medium such as a compact disk (CD) or a portable USB flash drive, which can be read and copied easily with current technology.

Note: Wis. Admin. Code § ATCP 51.36, ~~Wis. Adm. Code,~~ provides identifies the following as ~~part~~ components of a complete written record of ~~its~~ a political subdivision’s decision-making related to an application, pursuant to Wis. Admin. Code § ~~under s.~~ ATCP 51.30:

- ~~(a) (1)~~—The application under Wis. Admin. Code § ATCP 51.30(1), and all subsequent additions or amendments to the application.
- ~~(b) (2)~~—A copy of any notice under Wis. Admin. ATCP Code § ATCP 51.30(5), and copies of any other notices or correspondence that the political subdivision issues in relation to the application.
- ~~(c) (3)~~—A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.
- ~~(d) (4)~~—Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application.
- ~~(e) (5)~~—Minutes of any board or committee meeting held to consider or act on the application.
- ~~(f) (6)~~—The written decision required under Wis. Admin. Code § ATCP 51.34(3).
- ~~(g) (7)~~—Other documents that the political subdivision prepared to document its decision or decision-making process.
- ~~(h) (8)~~—A copy of any local ordinance cited in the decision.

Note: The political subdivision must receive an application for approval that includes all the information required by Appendix A of the rule [Wis. Admin. Code § ATCP 51.30(1)], issue a notice of complete application and a notice to adjacent property owners [Wis. Admin. Code § ATCP 51.30(5) and (6)], issue a written decision to approve or deny a application [Wis. Admin. Code § ATCP 51.34(3)], and ~~have~~ have adopted an ordinance that requires local approval. [Wis. Admin. Code § ATCP 51.10(2)]

A political subdivision that does not comply with the ~~notice request~~ within 30 days shall be sent a second ~~notice request~~. The ~~board Board~~ may enforce this requirement using available legal remedies.

#### 5. ~~Board's Time to make its decision~~ Decision-making Time

The ~~60-~~day requirement for making a final decision shall not ~~start commence~~ until the ~~board Board~~ has received a certified ~~and complete~~ copy of the ~~record of~~ decision-making ~~record~~. ~~The board will make a dated entry on the docket sheet~~ Board staff will note when the political subdivision has filed a certified copy of the record. The Board may extend the 60-day time limit for good cause specified by the Board in writing.

### B. ~~Pre decision administrative procedures~~ PRE-DECISION ADMINISTRATIVE PROCEDURES

#### 1. ~~Board Attorney~~ Scheduling

~~The attorney assigned to the board~~ Board counsel shall be provided a copy of the request for review and the certified record.

After receipt of the request and record, ~~the board attorney~~Board counsel will schedule the matter for consideration ~~by the board~~ at ~~its~~the Board's next available meeting. ~~The board attorney~~Board Counsel will arrange for the parties to receive notification about ~~board~~Board review of the request.

~~The board attorney~~Board counsel may make any other arrangements to expedite or facilitate review of a case including arrangements for the ~~board~~Board to consult with ~~the department~~Department of ~~agriculture~~Agriculture, ~~trade~~Trade and ~~consumer~~Consumer protectionProtection or ~~the department~~Department of ~~natural~~Natural resourcesResources ~~staff~~ concerning the application of the requirements related to water quality.

## 2. Requirement for ~~communications~~ Communications and ~~papers~~ Documents.

All communications and ~~papers~~documents related to a case before the board shall clearly show the title of the proceeding and the docket number.

~~All communications, documents and papers~~If submitted ~~to the board~~ by any attorney, and preferably by any aggrieved person, all documents shall be ~~one copy by an~~ electronically transmitted .pdfs ~~file that which can may~~ be read and copied easily with current technology. The e-mail address is: [SDATCPSitingBoard@wisconsin.gov](mailto:SDATCPSitingBoard@wisconsin.gov). All parties are requested to have a single e-mail address for the Board and its staff to utilize for all communications.

All communications, documents and papers submitted to the board by U.S. Mail during any point in a proceeding, shall be submitted to the board at this address:

Livestock Facility Siting Review Board  
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

~~For further information, the Department will use the Board's website to convey changes in procedures or other information. That website is [www.livestocksiting.wi.gov](http://www.livestocksiting.wi.gov).~~

Except as otherwise provided in these rules, any document submitted to the board by U.S. Mail, prior to, during, or after hearing shall be submitted with seven (7) copies in addition to the original. All matters submitted to the ~~board~~Board shall be printed, typed or otherwise legibly duplicated. The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by an officer of the party if it is a corporation or an unincorporated association.

~~All communications and papers submitted to the ~~board~~ Board shall be served on all parties not represented by counsel or upon their agents designated by them or by law. E-mail to the address provided to the Board shall constitute service.~~ -Submission upon such counsel or representative shall constitute submission upon the party.

Proof of submission shall be submitted to the board only if the submission is challenged.

### 3. Statement of Position

By the date specified in the notice, any person who meets the definition of an aggrieved person including the applicant and the political subdivision may file a statement of position that explains why the challenge is or is not valid. A statement of position may not exceed ten (10) 8 1/2" x 11") pages with a font no smaller than 12 point.

Within ten days after the date specified in the notice for filing position statements, any person who has filed a statement of position may submit a response to other position statements. A response may not exceed five (5) 8 1/2" x 11") pages with a font no smaller than 12-point. If a response exceeds five (5) pages, it will not be accepted by the ~~board~~Board.

### 4. Corrections to Position Statement

If a statement of position is longer than ten (10) pages, the Board will immediately contact the author to state that the statement will not be accepted at its page length. The ~~author-party~~ will have five (5) days to submit a statement of position within the correct page length.

### 5. Amicus Briefs

A non-party with an interest in the outcome of the proceedings may request leave from the Board to file an amicus brief. The request will include a statement as to the interest of the person filing the brief and the reasons for the request. The requestor shall attach the amicus brief which may not exceed ten (10) 8 1/2" x 11") pages with a font no smaller than 12-point. The request and attached amicus brief must be submitted by the date specified in the notice for submission of position statements by the parties. If an amicus brief exceeds ten pages, it will not be accepted by the Board.

The Board will vote on whether to grant the request for filing any amicus brief. If the Board grants leave ~~to for the~~ filing of any amicus brief, that brief will become part of the record that the Board will consider in making its decision in the case.

## C. ~~Decision-making process~~DECISION-MAKING PROCESS

### 1. Summary ~~disposition~~Disposition

At any time during review, a case may be summarily dismissed if a request for review is filed by a person who is not "aggrieved" or if the request does not challenge a matter within the ~~board's~~Board's jurisdiction. A summary disposition of a case will not become final for fifteen days after the decision is made. Within this period, the person who filed the request for review may request that the Board reconsider its summary disposition.



~~Note: S. Wis. Stat. § 93.90(5)(b)~~ provides that 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 S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated Wis. Stat. § 93.90 (3), by requesting the ~~board~~Board to review the decision.

An aggrieved person is a person who applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility, or a person who owns land within two miles of the proposed livestock facility.

2. Board ~~consideration~~—Review

~~The board~~Board members shall be provided the certified record at least two (2) weeks in advance of the Board’s deliberation meeting~~date of the board’s deliberation~~.

3. Additional ~~evidence~~—Evidence and ~~argument~~—Argument

No party has a right to submit additional documentary evidence, provide testimony from any witnesses, or present oral argument to the ~~board~~Board. The ~~board~~Board may open the record to receive additional evidence to resolve jurisdictional questions, and may seek oral argument, if members deem it necessary. A party may request oral argument ~~at least 10 days prior to the meeting where the board will deliberate on the matter in which the party has an interest, when submitting its position statement.~~

4. ~~Record of Board hearings or p~~Proceedings ~~before board~~

A record of Board proceedings in open session shall be made ~~using a tape recorder or other device, and~~ minutes shall be prepared to recording board~~Board~~ actions.

5. Standard of ~~review~~—Review

The ~~board~~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, pursuant to Wis. Stat. § 93.90(5)(c).

6. Deliberation

Every board meeting will be conducted in open session except that the board may convene in closed session for the specific statutorily authorized purposes “[d]eliberating concerning a case which was the subject of a quasi-judicial hearing before the board.” A closed session will only convene upon proper notice and compliance with procedures. As a matter of policy, the board will vote in open session in regard to any case, unless doing so would compromise the need for the closed session.

The board will follow the procedures in Wis. Stat. ~~§§~~ 19.83 and 19.85(1).

~~See Wis. Stat. § 19.83~~ requires that every meeting of the Board, as a governmental body, ~~such as the board~~ be preceded by a public notice and be held in open session. All discussion at these meetings shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session, except as provided in ~~see Wis. Stat. § 19.85~~.

Before convening in closed session, ~~see Wis. Stat. § 19.85(1)~~ requires that the Board, as a governmental body ~~such as the board~~, pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under ~~see Wis. Stat. § 19.85(1)~~ by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting.

No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session.

~~Under~~ As required in see Wis. Stat. § 19.85(2), ~~no governmental body~~ the Board may not commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within twelve (12) hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

## 7. Final Decision

Board staff will prepare a draft final decision for the Board. The board-Board will notice a meeting to review the draft decision and make any changes, before issuing a final written decision. If the ~~board's~~ Board's final decision is appealed ~~to circuit court~~, the ~~board chair or designee~~ Board's counsel shall certify the ~~board's~~ Board's decision and record to the circuit court, in consultation with the Board's appellate counsel.

## 8. Extension of Time

Any time limit prescribed in Wis. Stat. § 93.90(5) may be extended for good cause shown. Extensions may be granted even if a party has not requested an extension. Any such request to extend any time limit shall be in writing and be received at least three (3) workingbusiness days before the expiration of such time limit. Each party of record will be provided written notice of any extension.

## D. ~~Rules of Conduct~~ RULES OF CONDUCT

## 1. Communication ~~b~~By and ~~t~~To the Board

No ~~member of the board~~Board member shall communicate, directly or indirectly, with any party or other person outside of the formal proceedings of the board regarding any issue related to the request for review ~~without first consulting with board chair and then providing notice and opportunity for all parties to participate.~~

No person having knowledge that a request for an appeal hearing has been filed and no party ~~to~~in an appeal ~~hearing~~ shall communicate, directly or indirectly, with any ~~member of the board~~Board member outside of the review process as to the appeal.

A ~~board~~Board member who receives an ex parte communication in violation of this section shall place on the case record all written communications received, all written responses made, a memorandum stating the substance of all oral communications received and responses made, and the identity of each person from whom the Board member received an ex parte communication. The ~~board~~Board member shall advise all parties that these matters have been placed on the record. Upon request made within ten (10) days after notice of the ex parte communication, any party or other person involved in such ex parte communication desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

## 2. Disqualification and Recusal

A ~~board~~Board member shall be subject to disqualification for bias, prejudice, interest, or any other good cause. Immediately upon becoming aware of facts or circumstances supporting disqualification, a party shall file with ~~the Chair~~Board counsel of the board a motion of disqualification against ~~any the Board member of the board.~~ Upon a party's motion for disqualification, the Board member ~~of the board~~ against whom the motion was filed shall consider the motion and determine whether to disqualify himself or herself. A determination not to disqualify oneself may be overturned by a favorable vote of at least three members of the ~~board~~Board. A person who is disqualified cannot participate in or be present for any aspect of a ~~board's~~Board's decision.

Board members, on their own initiative, shall recuse themselves whenever they determine they have irreconcilable conflicts of interest or the appearance of such conflicts of interest. A Board member ~~of the board~~ shall accomplish file a written notice of recusal ~~by filing a written notice of recusal with the Chair of the board with Board counsel and include . Such written notice shall include~~ sufficient details ~~to enable the Chair~~ to understand the basis for recusal.