



Livestock Facility Siting Review Board

June 13, 2018 Minutes

Livestock Facility Siting Review Board Meeting
Department of Agriculture, Trade and Consumer Protection (DATCP)
2811 Agriculture Drive, Room 266
Madison, WI

CALL TO ORDER— Bob Topel, LFSRB Chair

The meeting was called to order by Chairman Bob Topel at 10:03 am. Topel, Raymond Diederich, Lee Engelbrecht, Dr. Jerome Gaska, Scott Godfrey, Scott Sand, and Bob Selk were in attendance. Attorney Cheryl Daniels, Richard Castelnuovo, and Chris Clayton, DATCP, were also present. Others present included Aaron Johnson (appellant), Rick Roedl (Daybreak Foods, Inc.), Mark Watkins, Matt Zangl, Sarah Higgins, and Lindsey Schreiner (Jefferson County), Bob Pofahl, Anita Martin, Ronni Monroe, Sherry and Michael Hellekson, and Marge Johnson.

Clayton confirmed that the meeting was publicly noticed as required.

Daniels called roll, confirming that that a quorum was present.

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

The January 25, 2018 meeting minutes were presented for approval. Gaska made a motion to approve the minutes as presented, seconded by Diederich, and the motion passed.

JOHNSON V. JEFFERSON COUNTY, NO. 18-LFSRB-01— Cheryl Daniels, Board Attorney

Topel stated that he would abstain from voting on matters related to this case because he had lived nearby Daybreak Foods, Inc., for several years and currently owns land nearby the operation. The Board agreed that Topel should otherwise retain his duties as Chair to run the meeting.

The LFSRB addressed the aggrieved person's request for review, and specifically the allegation that Jefferson County failed to properly consider air quality and odor concerns in issuing the siting permit. The Board identified the following issues that apply in this case:

1. Pursuant to Wis. Stat. § 93.90(4) (d) and Wis. Admin. Code § ATCP 51.34, did the Applicant, Daybreak Foods, Inc., in its application for approval provide sufficient credible information to show that the proposed facility meets the odor standard in Wis. Admin. Code § ATCP 51.14?
2. Pursuant to Wis. Stat. § 93.90(4) (d) and Wis. Admin. Code § ATCP 51.34, is there sufficient evidence in the record to find, by clear and convincing information or documentation, that the applicant cannot meet the standard in Wis. Admin. Code § ATCP 51.14, and therefore the county's issuance of the CUP cannot be sustained by the LFSRB?
3. Are there sufficient grounds to review the conditions placed on the Applicant's CUP by Jefferson County?

The Board discussed the following based on the first two issues: the structures and activities addressed and not addressed by the odor standard; the absence of ATCP 51 provisions addressing odor from animal mortality; odor research relating to poultry operations in general; odor research relating to animal mortalities and process wastewater; the absence of rule requirements regarding the management of mortalities; the importance of

research and science in ensuring the ongoing effectiveness of odor standard; the limited enforceability of the optional odor management plan.

There was consensus among the Board that the application appeared complete, that the applicant had satisfied the requirements of the odor standard and that the evidence in the record did not contradict this conclusion.

Regarding first issue on appeal, Gaska made a motion to determine that the application satisfied the requirements of the odor standard in ATCP 51, seconded by Godfrey, and the motion passed with Topel abstaining.

Regarding the second issue on appeal, Gaska made a motion to determine insufficient evidence in the record showing the applicant cannot meet the odor standard, seconded by Diederich, and the motion passed with Topel abstaining.

The Board discussed the third issue in this case related to the conditions placed on the CUP by the county. Since the Board identified this issue rather than the appellant, the Board questioned taking a vote on the issue. The Board did agree that the conditions in the permit do not create new standards and are reasonably related to monitoring compliance of the standards in ATCP 51.

In addition, the Board discussed the following: the facility's plans for managing manure and use of a proposed manure storage structure; water use and process wastewater related to the egg processing facility.

The Board discussed how the odor standard applies, and does not apply, to different structures and activities related to livestock facilities. The Board agreed that odor from farms is an important issue, and it expressed interest in addressing this issue in an appropriate manner. While not formally included in its decision, the Board reached a consensus on the need to identify the research and other scientific basis for better categorizing odor from different sources not accounted for in the livestock siting rule, such as odor from livestock mortalities and process wastewater.

Daniels identified July 18, 2018, as the Board's deadline for approving a final written decision.

The LFSRB members directed LFSRB Attorney Daniels to memorialize their deliberations in a written decision including their conclusions on the three issues addressed by the Board.

SET DATE FOR TELEPHONIC BOARD MEETING TO REVIEW DRAFT AND VOTE ON FINAL DECISION—Cheryl Daniels, Board Attorney

The LFSRB scheduled a meeting by telephone conference call on Friday, June 29, 2018, at noon, to review the draft decision and vote on a final decision.

ADJOURN

Engelbrecht moved to adjourn the meeting, seconded by Diederich, and the motion passed. The meeting ended at 11:10 a.m.

Respectfully submitted,

Bob Selk, Secretary

Date

Recorder: CC

Livestock Facility Siting Rule (ATCP 51)

Livestock Facility Siting Review Board Members

- Towns:** **Lee Engelbrecht** (Two Rivers, Manitowoc) – Term expires May 1, 2022
Chair, Town of Two Creeks; and
President, Wisconsin Towns Association
Nominated by Wisconsin Towns Association
Confirmed: October 31, 2017
- Counties:** **Scott Godfrey** (Dodgeville) – Term expires May 1, 2018
Director
Iowa County Planning & Development
Nominated by Wisconsin Counties Association
Confirmed: October 31, 2017
- Livestock:** **Raymond Diederich** (DePere) – Term expires May 1, 2020
Dairy Producer
Nominated by Wisconsin Farm Bureau Federation
Confirmed: March 14, 2016
- Environmental:** **Bob Selk** (Dane) -- Term expires May 1, 2019
Trout Unlimited; and Former Assistant Attorney General
Nominated by Trout Unlimited and Midwest Environmental Advocates
Confirmed: March 14, 2016
- At-Large:** **Bob Topel** (Dodge) – Term expires May 1, 2021
Vice-Chair, Foremost Farms USA;
Town of Portland Plan Commission; and dairy producer
Nominated by Cooperative Network
Confirmed: March 14, 2016
- At-Large:** **Scott Sand** (Prairie Farm) – Term expires May 1, 2020
Grow Out Production Manager at Jennie-O Turkey Store
Nominated by WI Poultry & Egg Association
Confirmed: March 14, 2016
- At-Large:** **Dr. Jerome Gaska** (Columbia) -- Term expires May 1, 2019
Gaska Dairy Health Services
Nominated by Wisconsin Veterinary Medical Association
Confirmed: March 14, 2016

Revised: 11/17

Conditional use permit stands for Jefferson Co./Lake Mills chicken operation--

On June 13, the State of Wisconsin Livestock Facility Siting Review Board (LFSRB) heard the appeal case regarding the conditional use permit for the chicken farm on County A/Crossman Road/Nelson Road. The decision stands as is, allowing Daybreak Foods Creekwood Farm (DF CF) conditional use approval for construction and expansion.

Attendees: The appellant (Aaron Johnson) and five other local residents attended the hearing, and two people from Daybreak, Rick Roedl and project engineer, Bob Pofahl. Representatives from Jefferson County included Matt Zangl, Sarah Higgins, Lindsey Schreiner, and Jefferson County Land and Water Conservation Department Director, Mark Watkins. Also present were LFSRB members Bob Topel, Bob Selk, Scott Godfrey, Scott Sand, Dr. Jerry Gaska, Ray Diederich, and Lee Engelbrecht; Attorney Cheryl Daniels, and DATCP Division of Agricultural Resource Management employees, Attorney Richard Castelnuovo and Christopher (Chris) Clayton.

Board Chairperson Bob Topel called the meeting to order and introduced himself. Topel explained that he lived within two miles of the Daybreak facility until 2001, and still owns land within two miles of the operation. As a result, Topel said he would not be acting on any decision the board makes regarding the appeal.

Both Topel and Selk stressed the uniqueness of this particular appeal. Unlike other appeals the board has acted upon, they said, the person appealing the Daybreak Foods Creekwood Farm (DF CF) conditional use permit (Aaron Johnson) did not challenge the permit decision based on errors, discrepancies, or omissions in the conditional application. The appeal also did not raise questions about possible failure to comply with standards, Selk said. The appellant did not submit any analysis by an attorney or engineer on his behalf. (Background info. from website—Bob Selk resides in Dane County. He is with Trout Unlimited and is Former Assistant Attorney General.)

Two of the main questions considered:

1. Does the applicant (DF CF) satisfy the odor standard, as defined by WI ATCP 51.34, Wisconsin Administrative Code (Livestock Facility Siting Rule)?
2. Is there clear and convincing evidence the applicant will not be able to meet the odor standard, in accordance with WI State Statute 93.94(d) and WI ATCP 51.34 (and therefore, issuance of the conditional use permit cannot be sustained)?

Selk pointed out the proposal for the farm expansion includes many new methods to reduce moisture content of the manure, and for manure handling.

Sand, Grow Out Production Manager at Jennie-O Turkey Store/Prairie Farm, addressed an issue residents raised in submitted statements. "You're not handling the mortality correctly if there's odor with mortality," he stated.

Selk said the current odor standard does not take into account mortality at a large-scale chicken operation. Clayton affirmed, the current odor standards do not take into account animal mortality. The appellant (Aaron Johnson) had questioned the proposed set up with more than 300 days of manure storage, concerned waste storage for this length of time would increase odors. Clayton indicated the manure storage structure was fully accounted for in Worksheet 2 (of the Livestock Siting application.)

The point was made, there's no requirement in siting rules for manure storage, as far as specifying a cap on the number of days you can hold manure. "The (Livestock) Siting Standards have nothing to say" pertaining this.

Addressing the DATCP staff, Selk asked for layer poultry operations such as this, what facilities are not subject to the (ATCP 51) siting law? Specifically, shouldn't the (waste) processing facility be subject, from a legal perspective?

Castelnuovo said the county could choose to adopt local standards to fill in the gaps. "...If you have not adopted local standards, you do not have the right to deny it."

"Livestock siting is livestock siting, and really not processing siting," Topel stated. "The courts will decide who will regulate that..." According to aaty. Daniels, it's definitely an open question.

The board broached the subject of how to treat mortality, saying the county could address this under their general zoning authority. Likewise, the county could put a cap on the size of manure storage facilities. (This is "not under the purview of ATCP 51 (state law).")

Selk spoke about the potential impact odors generated by large-scale farms have on citizens. "We're not talking about traditional farming methods and traditional quantities...these massive numbers overwhelm these standards."

One board member said the Daybreak farm team is not 100% sure the technologies they plan on putting into place will solve the odor problem.

"We hope it will get better with the changes," he stated. "Without any changes, we know it's not going to get any better."

Regarding the proposed technology, Selk said, "We simply don't have the authority, the discretion to receive additional evidence and decide this on our own. The legislature has not given us that power." (The Wisconsin Livestock Facility Siting Review Board by law cannot change or set policy.)

Castelnuovo said research on which the current odor standards are based was largely done on hogs and dairy farms, little on poultry and layer operations.

The board talked about the need for more scientific standards for odor control, more research and/or guidelines, in general and also, specifically regarding mortality.

Castelnuovo, acknowledging research has not kept up with the farming trends, identified the need for more studies on other odor sources and control sources. Discussion followed about available, well-recognized science, which could be applied to new settings for objective data.

Based on information provided, the LFSRB voted to uphold the conditional use permit decision by Jefferson Co. ([https://datcp.wi.gov/Pages/About Us/LivestockSitingReviewBoard.aspx](https://datcp.wi.gov/Pages/About%20Us/LivestockSitingReviewBoard.aspx))

The above is a partial summary of hearing highlights. A full summary is available upon request by calling (920)648-4720 or emailing Anita Martin, ajmartin@charter.net

---Distributed by Anita Martin at the June 25, 2018 meeting of Jefferson Co. Planning & Zoning Committee.

Jefferson County Planning and Zoning Department

Enter Year:

PDF: Excel:

Enter 2017 Actual Zoning Deposit:

Enter 2018 Budget Revenues:

MTH	Other Permits/LU 7101.432099	Private Parties Copies/Maps 7101.451002	Municipal Copies/Printing 7101.472003	Private Sewage System (County) 7101.432002	Soil Testing Fee 7101.458010	Farmland Qualifying Acreage Schedule 7101.458015	Farmland Agreement App 7101.458014	Farmland Preservation Fee/ Certs 7101.458001	Septic Replacement Fee/ Wis Fund 7101.458002	Zoning Ordinance Forfeitures 7101.441002	Wisconsin Fund Grants 7102.421001	Refunds	2018 Totals	2017 Totals	2017-2018 Difference
Jan	6,535.00	518.33		2,475.00	200.00							55.00	9,728.33	11,149.58	-1421.25
Feb	9,170.00	275.50		1,550.00	100.00							500.00	11,095.50	10,873.50	222
Mar	12,375.00	37.83		3,150.00	450.00							50.00	16,012.83	14,561.73	1451.1
Apr	17,960.00	30.34		5,775.00	1,100.00							575.00	24,865.34	22,717.76	2147.58
May	14,470.00	23.61	3.75	3,775.00	1,700.00								19,972.36	23,281.83	-3309.47
June	18,660.00	97.38		4,950.00	550.00								24,257.38	29,870.26	-5612.88
July														20,784.29	-20784.29
Aug														18,226.44	-18226.44
Sept														29,100.00	-29100
Oct														22,445.90	-22445.9
Nov														17,601.00	-17601
Dec														21,685.00	-21685
Total	79,170.00	982.99	3.75	21,675.00	4,100.00							1,180.00	105,931.74	242,297.29	-136365.55

2017 Actual Zoning Deposit: \$240,846.96

2018 Budget Revenues: \$222,190.00

2018 Deposits YTD: \$105,931.74

Committee Meeting Sign-In Sheet

Committee/Board Name: PLANNING AND ZONING

Date of Meeting: JUNE 25, 2018

Name (Please Print)	City or Township	Person/Firm Representing	Item # or General Comment
Mark Krause	Jefferson	Myself	#14 on Agenda
Bonnie Krause	"	"	" " "
✓ Anita J. Martin	Lake Mills	Self & citizens	# 7
Tim Otterstett	Watertown	JTO Property	#13
Alexa Zoellner		Daily Union	
Scott Henderson	Watertown	Intern	
Alex Morrison	Jefferson	Intern	