

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD
2811 Agriculture Drive P.O. Box 8911
Madison, Wisconsin 53708-8911

Ledgeview Farms, LLC v. Town of Ledgeview	Aggrieved Person Political Subdivision	DOCKET NO. 19-LFSRB-01 DECISION OF THE BOARD
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BEFORE the Wisconsin Livestock Facility Siting Review Board:

Bob Topel, Chair; Dr. Jerome Gaska, DVM, Vice Chair; Robert Selk, Secretary;
Raymond Diederich, Lee Engelbrecht, Scott Godfrey, Scott Sand

PROCEDURAL HISTORY

This is the second appeal (Ledgeview II) filed by Ledgeview Farms, LLC (“Applicant”) challenging the Town of Ledgeview’s (“Town”) denial of a Conditional Use Permit (“CUP”) for the expansion of a dairy facility. By its November 30, 2018 decision in case No. 18-LFSRB-02) (“Ledgeview I), the Wisconsin Livestock Facility Siting Review Board (“LFSRB”) affirmed the Town’s June 4, 2018 denial of a CUP on limited grounds, and notified the Applicant of the requirement to re-apply for a CUP to obtain a local approval of its proposed expansion. Following the Town’s denial of its amended CUP application, the Applicant submitted a second Request for Review on April 3, 2019 setting forth seven (7) issues for the LFSRB’s consideration.

On April 8, 2019 pursuant to authority of the LFSRB and its bylaws, LFSRB Attorney Cheryl Furstace Daniels provided electronic notice to the Applicant, Town and their attorneys that included a Notice of Request for Review and Request for Certified Copy of Decision-Making Record. These documents set May 10, 2019 as the date for the LFSRB to receive a certified copy of the record from the Town and position statements from any aggrieved persons, who are defined in Wis. Stat. § 93.90(5) (a) as any person who lives or owns land within two miles of the Applicant’s facility, and the Town.

On April 8, 2019, the LFSRB Attorney authorized the sending of a news release to media outlets that cover the area where the Applicant’s facility is located or are statewide news outlets covering the agricultural subject matter under review. This was to give notice per the LFSRB bylaws, to all potential aggrieved persons, as defined in Wis. Stat. § 93.90(5) (a), that they could file a statement of position on this particular review.

By May 9, 2019, the LFSRB received the Town’s Certified Decision-Making Record. Within the period allowed for filing, the LFSRB received Statements of Position from the Applicant, the Town, and 66 e-mails from other aggrieved persons.

On June 28, 2019, the LFSRB held a meeting properly noticed under the Wisconsin Open Meetings Law, to review the appeal in this matter. Based upon the record in the matter, including the certified record submitted by the Town, the submitted statements of position, the discussion by the LFSRB at the meeting, and the vote of the LFSRB, the LFSRB issues the following decision.

ISSUES FOR DECISION

- A. By failing to cooperate with a lawful inspection of the livestock facility undertaken to verify the conditions on farm and the credibility of the information related to commitments in the application, did the Applicant's actions constitute a constructive withdrawal of its application or provide another basis for the denial of the permit?
- B. May the Town deny the CUP application based on Applicant's failure to provide information that is complete, consistent or credible regarding current or planned number of animal units to be housed on the livestock operation as demonstrated by:
- Deliberate actions to misled DNR to avoid a CAFO Permit
 - Inconsistencies in the reporting of animal units in submissions to Town for a CUP
 - Deliberate actions to block access to accurate information by refusing to allow an inspection authorized by a warrant to determine the conditions on the farm.
- C. Was the Town required to consider the CAFO permit eventually issued the Applicant in determining compliance with siting standards if the CAFO permit was not referenced in the application for local approval?
- D. May the Town deny the CUP application under Wis. Admin. Code § ATCP 51.34(4) on the grounds that Ledgeview Farms did not correctly characterize its status as a CAFO and the permits issued to farm?
- Do misstatements in the application go to the issue of the credibility of the application, which under ATCP 51.30(1) must contain the information that is credible and internally consistent?
- E. May the Town deny the CUP application under Wis. Admin. Code § ATCP 51.34(4) on the grounds that Ledgeview Farms has violations that would warrant a revocation of a permit?
- How soon must the Applicant act on commitments made in the application to perform repairs to address ongoing violations of the siting standards?
- F. Was there sufficient evidence in record to overcome the presumption of compliance arising from the engineer certification in Worksheet 4 that existing manure storage structures were not failing or leaking? (Which facility is there evidence of leaking or failing?)
- G. Was there sufficient evidence in record to overcome the presumption of compliance arising from the commitments in Worksheets 2 and 5 to:
- Meet the odor standard by maintaining a bio-cover as an odor control practices for the proposed HS manure storage structure and implementing the odor management plan?

- Prevent significant discharges of manure and process waste water into waters of the state from existing livestock structures?
- Prevent unrestricted livestock access to surface waters of the state?

To what extent could the Town base its denial of a permit on the following factors affecting the credibility of the information relating to the Applicant's commitments to rectify continuing discharges and meet other siting requirements?

- The Applicant's history of violations of state and federal law including the ongoing violations determined by DNR in its November 4, 2018 inspection report prepared nine days after Ledgeview Farms submitted its second siting permit application which included representations about the installation of the interim measures required by DNR.
- The refusal to provide the Town access to the farm after being served with a warrant for inspection.

H. Did the Town meet the criteria for adopting and enforcing the following more stringent local standards:

- An increased property line setback of 1,320 feet for the manure storage structure planned for the heifer site?
- The general CUP conditions in Sections 20-24 of the Town's June, 2018 decision?

RELEVANT STATUTES AND RULES

S. 93.90 Livestock facility siting and expansion.

(2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department shall promulgate rules specifying standards for siting and expanding livestock facilities. . .

(3) POLITICAL SUBDIVISION AUTHORITY.

(ae) A political subdivision that requires a special exception or conditional use permit for the siting or expansion of any of the following livestock facilities shall require compliance with the applicable state standards under sub. (2) (a) as a condition of issuing the special exception or conditional use permit:

1. A new or expanded livestock facility that will have 500 or more animal units.

(ar) Notwithstanding par. (ae) a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

1. Adopts the requirement by ordinance before the applicant files the application for approval.
2. 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.

(4) POLITICAL SUBDIVISION PROCEDURE

(a) No later than 45 days after a political subdivision receives an application for approval, the political subdivision shall notify the applicant whether the application for approval is complete and, if it is not complete, what information is needed to complete the application for approval. As soon as the applicant has provided all of the required information, the political subdivision shall notify the applicant that the application for approval is complete.

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval.

(c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. (b).

(d) Except as provided in par. (e), a political subdivision shall approve or disapprove an application for approval no more than 90 days after the day on which it notifies the applicant that the application for approval is complete. If an applicant complies with the rules promulgated under sub. (2) (e) 1. and the information and documentation provided by the applicant is sufficient to establish, without considering any other information or documentation, that the application complies with applicable requirements for approval, the political subdivision shall approve the application unless the political subdivision finds, based on other clear and convincing information or documentation in the record, that the application does not comply with applicable requirements.

(e) A political subdivision may extend the time limit in par. (d) if the political subdivision needs additional information to determine whether to approve or deny the application for approval, if the applicant makes a material modification to the application for approval, or for other good cause specified in writing by the political subdivision.

(5) REVIEW OF SITING DECISIONS.

(a) In this subsection “aggrieved person” means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) 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 sub. (2)(a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. . .

(bm) Upon receiving a request under par. (b), the board shall notify the political subdivision of the request. The political subdivision shall provide a certified copy of the record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The 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 under sub. (4) (b). . . The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

Chapter ATCP 51 LIVESTOCK FACILITY SITING

ATCP 51.10 (2) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE. Beginning on November 1, 2006, a political subdivision may not deny a local approval covered by this chapter unless the political subdivision incorporates by local ordinance the standards in this subchapter and the application requirements in subch. III. A local ordinance may incorporate the standards and application requirements by reference, without reproducing them in full.

(3) MORE STRINGENT LOCAL STANDARDS. A political subdivision may not apply local standards that are more stringent than the standards in this subchapter unless all of the following apply:

(a) The political subdivision is authorized to adopt the local standards under other applicable law.

(b) The political subdivision enacted the standards by local ordinance, before the livestock facility operator filed the application for local approval.

(c) The political subdivision enacted the standards based on reasonable and scientifically defensible findings of fact adopted by the political subdivision's governing authority.

(d) The findings of fact under par. (c) clearly show that the standards are needed to protect public health or safety.

ATCP 51.12 Livestock structures; location on property. (2) MANURE STORAGE STRUCTURE; SETBACK. A waste storage structure may not be located within 350 feet of any property line, or within 350 feet of the nearest point of any public road right-of-way, unless one of the following applies:

(a) The location of the waste storage structure complies with a local ordinance that specifies a shorter setback that is specific to waste storage facilities or waste storage structures.

(b) The waste storage structure existed prior to May 1, 2006. This paragraph does not authorize an expansion, toward a property line or public road right-of-way, of a waste storage structure that is located within 350 feet of that property line or public road right-of-way.

(c) The waste storage structure is a single new waste storage structure constructed no closer to the relevant property line or public road than a waste storage structure that existed on the same tax parcel prior to May 1, 2006 provided that the new structure is no larger than the existing structure and is located within 50 feet of the existing structure.

ATCP 51.14 Odor and air emissions.

(1) ODOR STANDARD. Except as provided in subs. (2) to (4), a livestock facility shall have an odor score of at least 500. The operator shall calculate the odor score according to *Appendix A, worksheet 2*, or by using the

equivalent spreadsheet provided on the department's website. An application for local approval shall include *worksheet 2* or the spreadsheet output.

(3) CLUSTERS. If all of the livestock structures in a livestock facility are divided among 2 or more clusters, such that no cluster is located closer than 750 feet to any other cluster, an operator may choose to calculate an odor score under sub. (1) for each cluster rather than for the entire livestock facility. Each cluster shall comply with the odor standards in sub. (1).

ATCP 51.18 Waste storage facilities.

(1) DESIGN, CONSTRUCTION AND MAINTENANCE; GENERAL. All waste storage facilities for a livestock facility shall be designed, constructed and maintained to minimize the risk of structural failure, and to minimize the potential for waste discharge to surface water or groundwater. A waste storage facility may not lack structural integrity or have significant leakage. An unlined earthen waste storage facility may not be located on a site that is susceptible to groundwater contamination.

Note: A "site that is susceptible to groundwater contamination" is defined in s. ATCP 51.01 (39).

(2) EXISTING FACILITIES. For purposes of local approval, an existing waste storage facility is presumed to comply with sub. (1) if a registered professional engineer or certified agricultural engineering practitioner certifies one of the following in the application for local approval:

(a) The facility is constructed of concrete or steel or both, was constructed within the last 10 years according to then-existing NRCS standards, and shows no apparent signs of structural failure or significant leakage.

(b) The facility was constructed within the last 3 years according to then-existing NRCS standards, and shows no apparent signs of structural failure or significant leakage.

(c) The facility was constructed according to NRCS standards that existed at the time of construction, is in good condition and repair, and shows no apparent signs of structural failure or significant leakage.

(d) The facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater comply with *NRCS technical guide manure storage facility standard 313, table 1 (November, 2004)*.

(e) The facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, is located entirely above ground, and is located on a site at which the soils comply with *NRCS technical guide manure storage facility standard 313, table 5 (November, 2004)*.

(4) CLOSED FACILITIES. If a waste storage facility is closed as part of the construction or expansion of a livestock facility, the closure shall comply with *NRCS technical guide closure of waste impoundments standard 360 (December, 2002)*. A closure is presumed to comply with this subsection, for purposes of local approval, if the application for local approval includes the closure plan and certification required under s. ATCP 51.30.

ATCP 51.20 Runoff management.

(1) NEW OR SUBSTANTIALLY ALTERED ANIMAL LOTS. New or substantially altered animal lots shall comply with *NRCS technical guide wastewater treatment strip standard 635 (January, 2002)*.

(2) EXISTING ANIMAL LOTS.

(a) The predicted average annual phosphorus runoff from each existing animal lot to the end of the runoff treatment area, as determined by the *BARNY* model, shall be less than the following applicable amount:

1. Fifteen pounds if no part of the animal lot is located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

2. Five pounds if any part of the animal lot is located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

Note: The *BARNY* model is a computer model that predicts nutrient runoff from animal lots. Copies of the *BARNY* model are on file with the department and the legislative reference bureau. An Excel spreadsheet version may be obtained from the NRCS Wisconsin website (engineering directory).

(b) Runoff from an animal lot may not discharge to any direct conduit to groundwater.

(3) FEED STORAGE.

(a) Feed storage shall be managed to prevent any significant discharge of leachate or polluted runoff from stored feed to waters of the state.

(b) If an existing paved area may be used, without substantial alteration, to store or handle feed with a 70% or higher moisture content:

1. Surface water runoff shall be diverted from entering the paved area.

2. Surface discharge of leachate from stored feed shall be collected before it leaves the paved area, if the paved area covers more than one acre. Collected leachate shall be stored and disposed of in a manner that prevents discharge to waters of the state.

(4) CLEAN WATER DIVERSION. Runoff from a livestock facility shall be diverted from contact with animal lots, waste storage facilities paved feed storage areas and manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

Note: See ss. NR 151.06 and ATCP 50.04 (1). Runoff may be diverted by means of earthen diversions, curbs, gutters, waterways, drains or other practices, as appropriate.

(5) OVERFLOW OF WASTE STORAGE FACILITIES. A livestock facility shall be designed, constructed and maintained to prevent overflow of waste storage facilities.

(6) UNCONFINED MANURE PILES. A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

(7) LIVESTOCK ACCESS TO SURFACE WATERS OF THE STATE. A livestock facility shall be designed, constructed and maintained to prevent unrestricted livestock access to surface waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water. This subsection does not prohibit a properly designed, installed and maintained livestock crossing or machinery crossing.

ATCP 51.30 Application. (1) GENERAL. If local approval is required for a new or expanded livestock facility, a person seeking local approval shall complete and file with the political subdivision the application form shown in *Appendix A*. The application shall include all of the information required by *Appendix A* and attached *worksheets*, including any authorized modifications made by the political subdivision under sub.

(2). The information contained in the application shall be credible and internally consistent.

(4) LOCAL FEES

(b) A political subdivision may not require an applicant to pay any fee, or post any bond or security with the political subdivision, except as provided in par. (a).

(5) COMPLETE APPLICATION. Within 45 days after a political subdivision receives an application under sub. (1), the political subdivision shall notify the applicant whether the application contains everything required under subs. (1) to (4). If the application is not complete, the notice shall specifically describe what else is needed. Within 14 days after the applicant has provided everything required under subs. (1) to (4), the political subdivision shall notify the applicant that the application is complete. A notice of completeness does not constitute an approval of the proposed livestock facility.

ATCP 51.34 Granting or denying an application. (1) GRANTING AN APPLICATION. Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP 51.30(1) if all of the following apply:

(a) The application complies with s. ATCP 51.30.

(b) The application contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II. To the extent that a standard under subch. II vests discretion in a political subdivision, the political subdivision may exercise that discretion.

(3) WRITTEN DECISION. (a) A political subdivision shall issue its decision under sub. (1) or (2) in writing. The decision shall be based on written findings of fact included in the decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36. Findings may be based on presumptions created by this chapter.

(4) TERMS OF APPROVAL. An approval under sub. (1) is conditioned on the operator's compliance with subch. II and representations made in the application for approval. This chapter does not limit a political subdivision's authority to do any of the following:

- (a) Monitor compliance.
- (b) Withdraw an approval, or seek other redress provided by law, if any of the following apply:
 1. The operator materially misrepresented relevant information in the application for local approval.
 2. The operator, without authorization from the political subdivision, fails to honor relevant commitments made in the application for local approval. A political subdivision may not withhold authorization, under this subdivision, for reasonable changes that maintain compliance with the standards in subch. II.
 3. The livestock facility fails to comply with applicable standards in subch. II.

FINDINGS OF FACT

1. Prior to November 5, 2018, the Applicant made representations concerning the animal units at the livestock facility as documented in this Board's final decision in Ledgeview I including:
 - a. Engaging in a level of deliberate deception and avoidance of legal responsibilities from 2007-2016 by promising to reduce the animal units below 1,000, to avoid a CAFO permit, while continuing to operate above that threshold. (Ledgeview I Part 5 pp. 1974-2051) (Ledgeview II Part 5 pp. 1129-1427)
 - b. Submitting CAFO animal unit calculation worksheets dated July 26, 2017 indicating 1659 animal units at the two sites. (Part 5, pp. 1614-1617)
 - c. Submitting a WPDES Permit Application NMP for 2018-2022 that shows an actual size of 1,568 AUs on May 24, 2017 and projected increases from 2,765 AUs in 2018 to 3,243 AUs by 2022. (Ledgeview I, Part 3 pp. 1126-1132)
2. Prior to November 5, 2018, the Applicant had engaged in pattern of non-compliance with federal and state environmental requirements as documented in this Board's final decision in Ledgeview I including:
 - a. A February 19, 2009 notice of violation based on the Applicant's operation of a CAFO without a permit and documented discharges from an animal lot. (Ledgeview I part 5 pp. 2161-2163) (Ledgeview II Part 5 pp. 1158-1160)
 - b. A Sept. 13, 2013 EPA Administrative Order for Compliance (Ledgeview I Part 5 pp. 2086-2121, 2219-2389) (Ledgeview II Part 5 pp. 1216-1388,) based on findings of discharges from feed bunkers and open lots at the headquarter and heifer facilities, a

discharge of a septic like waste and process waste water from a concrete pit at the headquarter facility, animals that had direct access to a waterway, and manure runoff in a waterway. The order established compliance requirements including a schedule.

- c. A December 14, 2015 EPA notice of failure to submit a compliance plan (Ledgeview I Part 5 pp. 2034-2037) and Dec. 8, 2015 written report concerning the April 9th inspection (Ledgeview I Part 5 pp. 2038-2049, 2446-2616) (Ledgeview II Part 5 pp. 1443-1613) documenting manure and process discharges from various livestock structures.
- d. A November 29, 2016 EPA Notice of Intent to file a Civil Administrative Complaint against the Applicant seeking a \$128,000 penalty. (Ledgeview I Part 5 pp. 2029-2031, 2437-2439) (Ledgeview II Part 5 pp. 1434-1436)
- e. A September 21, 2017 DNR compliance inspection report and notification of actions required by the Applicant to address discharges and other noncompliance including runoff controls for feed storage, barns, stacking areas and animal lots, with October 2017 deadlines for taking interim actions. (Ledgeview I Part 5 pp. 2632-2634) (Ledgeview II, Part 5 pp. 1437-1438, 1629-1685)
- f. The related CAFO compliance report (Ledgeview I Part 5 pp. 2635-2688), based on July 18, 2017 inspection, documents continued discharges from barns, feed storage, stacking areas, and animal lots. The violations were not confined to negligent behavior but rise to the level of deliberate deception and avoidance of legal responsibilities. For example, there was evidence of deliberate acts to deceive regulators by promising to reduce the animal units below 1,000, to avoid a CAFO permit, while continuing to operate at above that threshold. (Ledgeview I Part 5 pp. 1974-2051)
- g. A December 6, 2017 notice of violation and scheduling an enforcement conference for failure to submit required documentation. (Ledgeview I, Part 5 pp. 2703-2706) (Ledgeview II Part 5 pp. 1700-1703)
- h. A May 3, 2018 DNR evaluation of the CAFO application identified the absence of runoff controls for feed storage and an animal lot (creating risk of continuing discharge to nearby waterways), and the need to close a manure storage that was structurally defective. (Ledgeview I Part 6 pp. 2859-2860) (Ledgeview II, Part 5 pp. 1742-1787)

3. On November 5, 2018, when the Applicant submitted the application for local approval that is the subject of this case, the Town's zoning ordinance had the following CUP requirements:

- a. Secs. 135-79 through 135-81 established a system of permitted and other uses for AG-FP Farmland Preservation District and required a conditional use permit for “[a] new or expanded facility that will be used to keep cattle, swine poultry, sheep or goats, and that will have more than 500 animal units” (Part 6 pp. 1870-1876)
- b. Sec. 135-79 B. provided that “the livestock facility siting standards established in Wis. Admin. Code Ch. ATCP 51, including all appendixes, worksheets, and any future amendments to that chapter, are incorporated by reference and adopted.” (Part 6 pp. 1870-1871)

- c. Sec. 135-85 C., D. and E. of the Town’s zoning ordinance established a more stringent property line setback for waste storage facilities (1320 feet for livestock facilities with over 500 animal units), livestock structures, and feed storage. (Part 6 pp. 1877-1878)
- d. Sec. 135-79 D. included a list of studies, research and reports and other references numbered (1)–(8) that represented the Town’s findings in support of its more stringent local standards. No specific findings of fact were associated with these references. (Part 6 pp. 1871-1873)
- e. Secs. 135-221 to 135-233 imposed requirements for conditional use permit for new or expanded waste storage under the category of “Man-Made Bodies of Water” including the 1,320 foot setback requirement. (Part 6 pp. 1879-1884)
- f. Sec. 135-242 assigned the Zoning Administrator to administer and enforce the zoning ordinance included among the Administrator’s duties the responsibility for conducting “inspection of buildings, structures and use of land to determine compliance with the terms. (Part 6 pp. 2056)

4. On November 5, 2018, the Ledgeview Farms’ application narrative represented that its livestock facility consisting of headquarters site (HQ) and heifer site (HS) housed approximately 1,084 milking and dry cows, 770 replacement heifers and 838 steers (Part 1 p. 5), which range from 2,400 to 3,200 animal units depending on the weight of the heifers and the steers.

5. On November 5, 2018, the Applicant submitted an application for local approval to the Town and payment of \$1,000 [the delivery of which was acknowledged (Part 1, Page 2)], and provided the Town subsequent submissions through November 20, 2018 (collectively referred as the “second application”), which included the following:

- a. Applicant’s authorized representative Jason Pansier signed the main application certifying all livestock structures including manure storage meet the applicable requirements in ATCP 51.12. (Part 1 pp. 16-120)
- b. Worksheet 1 (Part 1 p. 21), signed by Pansier, indicates 3,483 as the maximum number of animal units to be housed at the livestock facility, composed of 1455 milking and dry cows, 450 heifers between 800-1200 pounds, 270 heifers from 400 to 800 pounds and 270 dairy calves, 675 beef cattle over 600 pounds and 400 beef calves.
- c. None of the applicable worksheets (3,4 &5) claim the exemption based on an operator holding WPDES permit for the same proposed livestock facility, and that permit is based on housing for a number of animal units that is equal to or greater than the number for which the operator seeks local approval. (Part 1 pp. 31, 34-35)
- d. Worksheet 2 (Part 1 pp. 22-23, 83-95), signed by Pansier, presented a passing odor score of 513 for the HQ (Cluster A) and a score of 530 for HS (Cluster B)
- e. For Cluster A to receive passing score over 500 points, the Applicant had to submit an advanced odor management plan to earn 20 additional points. The plan (Part 1 pp. 178-179) identified practices to control odor including frequent cleaning of housing, moisture management in housing, covering feed storage, removal of excess and waste feed, manure application strategies such as incorporation shortly after application.

- f. For Cluster B to receive a passing odor score, the Applicant relied on a bio cover to control odor from a proposed waste storage facility (W2) and attain a passing odor score. The Applicant submitted an operation and maintenance plan for the bio cover (Part 1 p. 153, Part 3, p. 873), which includes creating the cover in spring using PTO powered bedding chopper and weekly inspections to ensure adequate coverage.
- g. Accompanying documentation to Worksheet 2 shows that the proposed waste storage structure at HS will be located 389 feet to the west of Lime Kiln Road and 355 feet from the property line to the north of the HS (Part 1 p. 59)
- h. Worksheet 4 (Part 1 p. 34), signed by the Applicant's consulting engineer, certifying the following regarding HQ structures:
 - i. The waste storage facility (WSF 1) was constructed within 3 years according to NRCS 313 technical standards, and showed no signs of structural failure or significant leakage.
 - ii. Pits 1 and 2 would be closed, and attached plans for the closure. (Part 1 pp. 133-146, Part 2 pp. 548-562)
- i. Worksheet 5 (Part 3 pp. 972-977), signed by Pansier and Applicant's engineering consultant included commitments to manage feed storage to prevent significant discharge of leachate or polluted runoff to waters of the state, divert runoff from contact with animal lots, waste storage facilities paved feed storage areas or manure piles within 300 ft. of a stream or 1,000 ft. of a lake; prevent any overflow of waste storage facilities, and restrict livestock access to waters of the state, as necessary to maintain adequate vegetative cover on banks adjoining the water. (Part 1 pp. 35-36)

6. By a separate application dated November 16, 2018, the Applicant requested approval for a CUP to construct waste storage structures as required the Town's zoning ordinance for a "man-made body of water." (Part 2 pp. 659-669)

7. By letter dated November 14, 2018 (Part 2 pp. 655-658, Part 4 pp. 998- 1033 Part 5 pp. 1862-1864), DNR notified the Ledgeview Farms of a December 31, 2018 deadline for responding to problems with interim measures intended to control runoff from feed storage areas, manure stacking areas and feedlots and a calf barn. Based on the inspections conducted on September 21, 2018 and October 30, 2018 (Part 2 pp. 621-654), the DNR identified a number of ongoing concerns including:

- a. Changes in management or the installation of collection system to prevent discharges of process wastewater at the HQ calf barn.
- b. The need to monitor and remove contents of a collection system for the HQ feed storage to prevent discharges.
- c. Monitoring and removal of wastes to prevent overflow of the HS feed storage area collection system.
- d. Additional information to determine if the runoff control system for the HS feedlot adequately contained runoff.
- e. Practices to prevent manure discharges from area near the HQ waste storage structure.

8. On December 10, 2018, the Town notified representatives of Ledgeview Farms that it intended to conduct an inspection of the farm property the following day. On the same day, the Applicant's attorney refused permission for the inspection based on the lack of notice and an explanation for the inspection, and directed the town to seek inspection warrant under Wis. Stat. § 66.0119 or other authority if the town wished to proceed without permission. (Part 4 pp. 1046-1047)

9. On December 11, 2018, the Town amended Sec. 135-79 D. to insert specific findings of fact numbered (1)–(14) in support of its more stringent local standards for manure storage setbacks including a finding that “Researchers have found an association between the proximity of animal waste storage facilities such as manure lagoons and the presence of coliform bacteria (i.e. – E.coli) and nitrates in drinking water. There is a significant likelihood of high nitrates and coliforms within 2,500-feet of a waste storage facility or land spreading field.” (Part 6 pp. 1958-1960, 2106)

10. By email dated December 13, 2018, the Town responded to the Applicant's concerns regarding inspection by explaining its authority to proceed with its proposed inspection, outlining its reasons for the inspection which centered on the need to evaluate the information in the application to determine issues of completeness and credibility, and offering to reschedule the inspection to December 17, 2018. (Part 4 pp. 1048-1050)

11. The Town received a notification from Ledgeview Farms' attorney that the four-day notice provided in this correspondence was "fundamentally unreasonable," followed by another letter that stated that the Town still did not have permission to enter the farm for an inspection without the Town first obtaining an inspection warrant under Wis. Stat. § 66.0119. (Part 4 pp. 1048, 1057-1059)

12. By letter dated December 14, 2018, the Applicant's attorney advised the Town that his client would not consent to an inspection and directed the Town to obtain an inspection warrant if it wished to proceed. (Part 4 pp. 1058-1059)

13. On December 14, 2018, the Town obtained a special inspection warrant, pursuant to Wis. Stat. § 66.0119, in preparation for a planned December 17th inspection. That inspection warrant authorized "the performance of an on-site inspection of the [farm] to determine whether the Town has jurisdiction under the livestock siting law and to assist in its determination as to whether to approve, conditionally approve, or deny the livestock siting application under the state livestock siting law and local restrictions adopted under that law." (Part 4 pp. 1051-1056)

14. On December 17, 2018, the Town's zoning officials arrived at Ledgeview Farms at the time identified in the Town's December 13th correspondence. The Town was accompanied by a sheriff's deputy and served the inspection warrant on Ledgeview Farms' representatives. The representatives of Ledgeview Farms again refused to allow the Town zoning officials onto the farm property. (Part 4 p. 1112)

15. By letter dated January 4, 2019, the Town notified the Applicant that its livestock facility siting application was not complete, and identified deficiencies for which additional information was needed to complete the application. (Part 3 pp. 828-834, Part 4, pp. 1034-1040)

16. By email dated January 11, 2019, the Applicant through its consultant responded to the January 4, 2019 request with answers and additional documentation (Part 3 pp. 835-953) including the following:

- a. Regarding the Town's request for information on the current number of animal units at the livestock facility, the Applicant responded that it was only required to list the maximum number of animal units for which it sought a permit, and not the current number on livestock operation.
- b. A corrected Worksheet 1 signed by Pansier on January 1, 2019 indicates 3,408 as the maximum number of animal units to be housed at the livestock facility, composed of 1355 milking and dry cows, 450 heifers between 800-1200 pounds, 270 hieifers from 400 to 800 pounds and 270 dairy calves, 525 beef cattle over 600 pounds and 550 beef calves. (Part 3 pp. 840-41, 939)
- c. An updated design for the HQ animal lot to provide greater than 6 inches of freeboard and an updated plan for removal of manure on a daily basis and after rain events. (Part 3, p. 839-840, 854-860, 883)
- d. Regarding the collection system for feed storage system, a plan was provided for monitoring the HS detention basin, management to prevent overflows, and solid removal. (Part 3 pp. 854-872)
- e. Regarding management of discharges of leachate and polluted runoff, the Applicant asserted that Ledgeview Farms was only required to meet the significant discharge standard. (Part 3 p. 897)
- f. An amendment to the closure plan for HQ pits 1 and 2 and a clarification that the closure would occur in 2019. (Part 3 pp. 839-841, 882-896)
- g. A refusal to clarify the current number of an animal units by number and type, claiming it completed Worksheet 1 and identified the maximum number of animal units to be permitted. (Part 3, p. 840)
- h. A corrected to odor worksheet for Cluster A (HQ) to reflect change in lot size for Y1 at the HQ, but with no change in the passing odor score of 513 (Part 3 pp. 940-947)

17. On January 16, 2019, the Town notified the Applicant that it would continue to evaluate the completeness of the application submitted on November 5, 2018 and would not take up the Applicant's January 7, 2019 submission unless the Applicant rescinded its 2018 application. (Part 3 p. 955, Part 4 p. 1041)

18. On February 18, 2019, the Town notified the Applicant that it would proceed with the review of the Applicant's CUP application, treating the application as complete, despite the failure to provide information about the current number of animal units as required under § 93.90(3)(e) and Wis. Admin. Code 51.06(2)(b). (Part 3 pp. 959-960, Part 4, 1044-1045).

19. On March 4, 2019, the Town held a hearing on the Applicant's CUP application, receiving written and other evidence into the record (Part 4, pp. 961-1128)

20. In its final decision, approved and issued on March 4, 2019 (Part 4 pp. 1104-1128), the Town denied the Ledgeview Farm's application for local approval on the following grounds:
- a. By failing to cooperate with a lawful inspection of the livestock facility undertaken to verify the conditions on farm and Ledgeview Farm's credibility to honor commitments in its application, Ledgeview Farm's actions constituted a constructive withdrawal of its application or provided another basis for the denial of the permit. (Part 4 pp. 1111-1113)
 - b. Given Ledgeview Farms' extensive history of disregard for federal, state, and local laws as described in detail above, its willingness to ignore its own promises made to avoid prosecution when caught in violation of the law, along with material, false statements that it has made in its applications and to regulators, Ledgeview Farms has failed to present the necessary credible evidence as required under Wis. Admin. Code § ATCP 51.34(1)(b) that it meets and will meet the applicable state standards. (Part 4 pp. 1113-1115)
 - c. Ledgeview Farms made material misrepresentations in its siting permit in violation of Wis. Admin. Code § ATCP 51.34(4) based on claims related to its CAFO permit status. (Part 4 pp. 1111-1113)
 - d. Ledgeview Farms failed to meet siting standards related to (1) Worksheet 4 based on the structural failures or leakage of waste storage structures, and (2) Worksheet 5 based on discharges of manure and process wastewater and livestock access to streams. (Part 4 pp. 1116-1117)
 - e. The Town may deny a permit based on its authority to immediately withdrawal approval for violation of siting standards under Wis. Admin. Code § ATCP 51.34(1). (Part 4 pp. 1117-111)
 - f. The failure of Ledgeview Farms to meet a local standards requiring a 1,320 foot property line setback for waste storage facilities. (Part 4 p. 1118-1119)
 - g. The failure of the Ledgeview Farms to meet the following conditions generally applicable to CUPs under the Town's zoning ordinance (Part 4 p. 1119-1120):
 - i. The proposed use by Ledgeview Farms is not consistent with the purposes of the Farmland Zoning Preservation Zoning District.
 - ii. The proposed use and its location of the storage structure at Heifer Site is not reasonable and appropriate use given the neighbor residential neighbors.
 - iii. Ledgeview Farms failed to pursue reasonable alternatives to mitigate impacts.
 - iv. Ledgeview Farms failed to show that it will immunize and repair damage incurred during construction.
 - v. 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.
 - vi. 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.

CONCLUSIONS OF LAW

1. By failing to cooperate with a lawful inspection of the livestock facility undertaken to verify the conditions on farm and the credibility of the information related to commitments in the application, the Applicant did not constructively withdraw its application for local approval, and therefore, the Town had no basis to deny the application on this grounds. The Town determined the application to be complete on February 18, 2019, proceeded to hold a hearing on the application, and issued a decision on March 4, 2019. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.
2. The Town may not deny an application for local approval based on the Applicant's failure to establish existing animal units because the siting law only requires a commitment by the applicant not to exceed the maximum number of animal units identified in the application for local approval. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.
3. In determining compliance with siting standards, the Town was not required to consider the CAFO permit that the Applicant may have received. As part of its application for local approval, the Applicant did not certify an exemption in any of the relevant worksheets due to having a CAFO permit, and did not provide the required documentation to claim the exemption. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.
4. The Town did not have authority to deny the CUP application under Wis. Admin. Code §§ ATCP 51.34(1)(b) and (4), based on Ledgeview Farms' characterizations of its status as a CAFO. Any representations were not material and were not relevant to the application submitted by Ledgeview Farms for local approval. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.
5. The Town did not have authority to deny the CUP application under Wis. Admin. Code § ATCP 51.34(4) on the grounds that Ledgeview Farms has current violations that might warrant a revocation of a permit. The Applicant has submitted plans and made commitments for the livestock facility to achieve compliance with the siting standards. If Ledgeview Farms' application meets the conditions for approval, the application must be approved, and Ledgeview Farms must be allowed to honor its commitments. The Town may then proceed with actions based on any non-compliance with understanding that the Applicant's window for attaining compliance may vary. While Wis. Admin. Code § ATCP 51.08(2) provides a window for the construction of new or expanded livestock structures, it does not delay time for implementation of management practices including nutrient management plans, odor control practices or the prevention of significant discharges. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.
6. The Town did not have the authority to deny the local approval of the application based on structural failure or leakage from an existing waste storage facility, in violation of Wis. Admin. Code § ATCP 51.18, because Worksheet 4 of the application documented that the existing large manure storage meets standards, and provided a plan for closure of the two other storage structures at the headquarter facility. Therefore, the Applicant's challenge to this section of the Town's decision is upheld.

7. The Town did not have the authority to impose an increased property line setback of 1,320 feet for the manure storage structure planned for the heifer site for the following reasons:

- The public health and safety findings in effect on November 5, 2018, the date that Ledgeview Farms filed its initial application, were found to be inadequate in Ledgeview I.
- The Town was not entitled to rely on the new findings of fact incorporated into its ordinance on December 11, 2018, because these provisions were not enacted prior to the date the livestock operator filed its application for local approval, as required by Wis. Stats. § 93.90 (3) (ar), and Wis. Admin. Code § ATCP 51.10(3).

Therefore, the Applicant's challenge to this section of the Town's decision is upheld.

8. The Town did not have the authority to deny the siting application based on the findings in Sections 20-24 of the Town's June 18, 2018 decision, which is restated in Finding of Fact 29 of the Town's March 4th decision, since these standards were not adopted as more stringent local standards in accordance with Wis. Stats. § 93.90 (3) (ar), and Wis. Admin. Code § ATCP 51.10(3). Therefore, the Applicant's challenge to this section of the Town's decision is upheld.

9. The Town had the authority to deny the siting application, based upon a determination that the application was not credible, as it relates to the Applicant's commitments to rectify continuing discharges and maintain practices, due to the following:

- The Applicant's history of violations of state and federal law including the ongoing violations determined by DNR in its November 14, 2018 inspection report prepared nine days after Ledgeview Farms submitted its second siting permit application, which included representations about the installation of the interim measures required by DNR.
- The Applicant's refusal to provide the Town access to the farm after being served with an inspection warrant that was issued for purposes directly related to securing information relevant to the siting application.

Therefore, the Applicant's challenge to this section of the Town's decision is denied.

10. To the extent that the lack of credible information is an allowable factor in the Town's decision, the LFSRB restates the following point raised in its deliberations in Ledgeview I: the Applicant can rehabilitate the application's credibility by documenting efforts to install practices and make changes that resolve compliance concerns related to runoff and other requirements. While this evidence was missing from the record in this case, the Applicant had opportunities as part of the CAFO permitting process to make such a showing. For example, the Applicant could have provided information showing the completion of measures to resolve runoff and related issues described in the November 14, 2018 letter from DNR. Submitting documentation showing the installation of runoff control practices and changes in management practices may show the Applicant's commitment to honor the requirements in the siting application.

ORDER

NOW, THEREFORE, IT IS ORDERED pursuant to Wis. Stat. § 93.90(5) (d):

1. The Town of Ledgeview's March 4, 2019 denial of a conditional use permit to Ledgeview Farms, Inc., for expanding its operation to a 3,483 animal units is affirmed on the basis of Conclusion of Law Number 9.

2. With this affirmation, Ledgeview Farms, Inc. is required to re-apply for a conditional use permit in order to obtain a local approval of its livestock siting application from the Town of Ledgeview.

3. The Town, when making a decision to approve or deny a CUP for a new or expanding livestock facility, shall not deny local approval on any of the grounds identified in Conclusions of Law Numbers 1 through 8, unless there is a change in facts upon which the conclusion is based.

Dated this ____ day of July, 2019.

ON BEHALF OF THE STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD

Member of the Board