

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

Cary and Laurie Glenner, v. Walworth County, AND Adam & Jennifer Friemoth, v. Walworth County,	Aggrieved Persons Political Subdivision Applicants Political Subdivision	DOCKET NO. 17-LFSRB-02 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

Cary and Laurie Glenner, collectively referred to in this decision as “Aggrieved Persons”, filed a Request for Review, against the political subdivision Walworth County (“Walworth County”), with the Wisconsin Livestock Facility Siting Board (“LFSRB”) on October 18, 2017, through their attorney, Jonathan Meulemans concerning the granting of a Conditional Use Permit (“CUP”) to Adam and Jennifer Friemoth (“Applicant”) for an expansion of the Applicant’s livestock facility. In the Request for Review, the Aggrieved Persons alleged that Walworth County exceeded its authority under s. 93.90(3), Stats., in granting the CUP because the CUP application was inaccurate, incomplete, not credible, and inconsistent, and Walworth County failed to include written findings of fact in its decision, a violation of Wis. Stat. § 93.90(4) (c) and Wis. Admin. Code. § ATCP 51.34(3) (a).

On October 20, 2017, the Applicants also filed a Request for Review against Walworth County, specifically challenging Conditions # 2, 7 and 12, as violations of Wis. Stat. § 93.90 (3).

On November 1, 2017, pursuant to authority of the LFSRB and its bylaws, LFSRB Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making

Record, to the Aggrieved Persons, Walworth County and the Friemoths, attaching the Requests for Review and Statement of Positions. These documents set December 1, 2017, as the date for the certified copy of the record and all position statements to be e-mailed or postmarked to the LFSRB.

On November 3, 2017, the LFSRB Attorney authorized the sending of a news release to news 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 December 8, 2017, the LFSRB received the County's Certified Decision-Making Record. By December 1, 2017, the LFSRB received Statements of Position from the original Aggrieved Persons, the Applicant, the County, and several e-mails from other aggrieved persons: Tom Jankowski, Robert Gey, Gregory Hunt, Mark and Gayle Bong, and Jim Fleury.

On January 5, 2018, the LFSRB held a meeting, properly noticed under the Wisconsin Open Meetings Law, to review the appeal in this matter. The LFSRB considered the certified record submitted by the County, the submitted statements of position, the discussion by the LFSRB at the meeting, and the vote of the LFSRB on the decision, the LFSRB directed the LFSRB's attorney to write a proposed decision, consistent with these votes.

On January 18, 2018, the LFSRB's attorney sent a proposed decision to the parties of record, the Aggrieved Persons, the Applicant, and Walworth County. On January 22, 2018, the Aggrieved Persons, through their attorney, submitted a redlined version of the proposed decision to the LFSRB with proposed amendments to the decision, which was distributed to the other parties and the LFSRB and placed on the agenda for the upcoming LFSRB meeting.

On January 25, 2018, the LFSRB held a telephone meeting, properly noticed under the Wisconsin Open Meetings Law, to review the proposed decision. As an order of business, the LFSRB voted not to consider the Aggrieved Persons' submission, as not allowed under the LFSRB bylaws, and directed LFSRB staff to reject any submissions by any party in a future case that does not comport with the LFSRB bylaws.

Based upon all of the evidence in the record, including the certified record submitted by the County, the submitted statements of position, the discussion by the LFSRB at the January 5, 2018, meeting, the vote of the LFSRB on the decision, the proposed decision, the edits made and voted on by the LFSRB at the January 25, 2018, meeting, the LFSRB issues the following Decision of the Board.

ISSUES FOR DECISION

1. Following a finding of completeness, pursuant to Wis. Stat. § 93.90(4) (a), did Walworth County, by allowing the Applicant to correct errors in the application through the hearing process and amendments, violate the requirements of Wis. Stat. § 93.90(4)?
2. By not including Findings of Fact in its decision, did Walworth County violate Wis. Stat. § 93.90(4) (c) and Wis. Admin. Code § ATCP 51.34(3) (a)?
3. By waiting for the Town of Lafayette to weigh in on the granting of a CUP to Applicant before making its decision, did Walworth County violate Wis. Stat. § 93.90 (4) (d)?
4. Pursuant to Wis. Stat. § 93.90(4) (d) and Wis. Admin. Code § ATCP 51.34, is there sufficient evidence in the record, including the amended siting application, to find, by clear and convincing information or documentation, that the applicant cannot meet the odor management standard in Wis. Admin. Code § ATCP 51.14, and therefore the county's issuance of the CUP cannot be sustained by the LFSRB?
5. Pursuant to Wis. Stat. § 93.90(4) (d) and Wis. Admin. Code § ATCP 51.34, is there sufficient evidence in the record, including the amended siting application, to find, by clear and convincing information or documentation, that the applicant cannot meet the runoff management standard in Wis. Admin. Code § ATCP 51.20, and therefore the county's issuance of the CUP cannot be sustained by the LFSRB?
6. Are Conditions #2, 7, and 12, in the CUP, limited to ensuring compliance with state standards and authorized by Wis. Stat. § 93.90(3) and Wis. Admin. Code § ATCP 51.34(4)?
7. Do each of the conditions, placed on the Applicant's CUP by Walworth County, meet the state standards, pursuant to Wis. Stat. § 93.90(2) (a), and are authorized by Wis. Stat. § 93.90(3)?

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.

(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.

(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 51.14 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.

Note: The spreadsheet equivalent of *Appendix A, worksheet 2* is available on the department's website at <http://livestocksiting.wi.gov/>.

Odor score is based on *predicted odor generation* (based on size and type of livestock facility), odor practices, and the proximity and density of "affected neighbors." See *Appendix A, worksheet 2*.

An *odor score* is a predictive estimate. The standard in sub. (1) applies only for purposes of local livestock facility siting decisions under this chapter. Failure to comply with the standard in sub. (1) does not constitute evidence of a public or private nuisance, negligence, or a taking of property. Odor control practices may also control air pollution emissions. The department will work to coordinate odor and air emissions field research with DNR, the Wisconsin agricultural stewardship initiative (WASI), and the University of Wisconsin. The department will consider research results when it reviews this chapter at least once every 4 years (see s. 93.90 (2) (c), Stats.). As part of its review, the department will consult with an advisory committee that includes representatives of livestock producers, local government and environmental interests. The department will consider amendments to this rule, as appropriate, based on research findings.

(2) EXEMPTIONS. The odor standard in sub. (1) does not apply to any of the following livestock facilities unless the facility operator voluntarily completes and submits *worksheet 2* or the equivalent spreadsheet output with the operator's application for local approval:

(b) An expanded livestock facility with fewer than 1,000 animal units.

ATCP 51.20 Runoff management. (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.

Note: See ss. NR 151.08 (4) and ATCP 50.04 (1). A direct conduit to groundwater may include, for example, a sinkhole.

(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.

Note: Feed leachate is a potentially serious water pollutant. Paved areas include paved feed storage bunkers and handling areas. Collected leachate may, for example, be transferred to waste storage and applied to land at agronomic rates.

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.

(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. Walworth County has a zoning ordinance that includes, since 2006, section 74-60 involving the siting of new or expanded large livestock facilities. **(Certified Supplement Record pgs. 7-601)**
2. On June 7, 2017, the Applicant filed an application for local approval for an expansion of its livestock facility to a 944 animal unit facility. **(Certified Record pgs. 7-10)**
3. Although there does not appear to be a specific document on this issue, a staff planning report from the Walworth County Zoning Agency (“Agency”) committee meeting, on July 20, 2017, indicated Walworth County determined the Applicant’s application was complete.. **(Certified Record pg. 17)**
4. On July 20, 2017, the Walworth County Land Use and Resource Management Department (“Department”) sent a memo to the Applicant, informing them that the Agency had tabled the Applicant’s petition for a CUP because it had not received the Town of Lafayette’s decision on the petition. **(Certified Record pg. 21)**
5. On August 17, 2017, the Aggrieved Persons received a report from Carl T. Chenoweth, P.E. of Resource Engineering Associates which was a review of the Applicant’s application. **(Certified Record pgs. 36-40)**
6. On August 17, 2017, Chenoweth and Attorney Rebecca Roeker spoke at the Agency meeting against the proposal to grant Applicant’s CUP and presented the report, which was received in the record. **(Certified Record pg. 42)**
7. At this Agency meeting, the Applicant gave oral testimony, included in the county’s record, calling into question the Applicant’s commitment to implement the odor control practice included on Worksheet 2 of the Applicant’s plan of operation. **(Certified Record August 17, 2017 Audio File of Agency Public Hearing)**
8. At this meeting on August 17, 2017, the Agency again tabled the Applicant’s petition for a CUP, asking that it receive at its September meeting information regarding odor control, water run-off to prevent contamination, what happens if leased land is no longer available for spreading, monitoring to ensure animal units exceed the approved number, how to protect neighbors wells if expansion is approved, and clarification of engineering report regarding accuracy of information. **(Certified Record pg. 42)**
9. On September 21, 2017, the Agency again considered Applicant’s petition and some specific issues, addressed by Department staff, including:
 - a. Updated maps were included in the Final Package given to County Zoning Agency. It is possible the engineer did not have a copy of the updated map submitted with the final package when their review was conducted prior to the hearing. Staff has concluded the maps in the final package are complete. Specifically, there are no high use buildings within 2500 ft. of the facility. Alpine Valley Hotel is approximately 3900 feet away. The music theatre is within 2500 ft. radius but does not meet the definition of a high use building. There are no known karst features within Walworth County.

The Section 11 portion of the application does not require locating the structures, property lines and setbacks but requires the applicant to certify that the existing and proposed structures are in compliance with the distance requirements. Staff has reviewed the maps and information provided with the application package. Staff has determined the application contains all of the information required in ATCP 51 Appendix A and the worksheets. Staff has determined the application to be credible and internally consistent as per ATCP 51.30(1).

- b. Staff reviewed the odor worksheet tables and determined the secondary Production Facility #1 would cause the odor index to fall below 500 to 478. The applicant's consultant has revised the worksheet #2 table and reduced the secondary Production Facility #1 in area to 16,200 sq. ft. from 66,784 sq. ft. thereby keeping the odor index score above 500 at 524. The area removed from Secondary Production Facility #1 shall be converted to cropland or pasture.

The Friemoth expansion to 944 animal units has an overall odor score of 524. As part of the Worksheet 2, the Friemoths have indicated that chemical and or biological additives shall be incorporated into the manure storage facility. This practice added 21 points to the total 524 odor score. Failure to implement the use of additives would be a violation of the livestock siting approval based on the application submittal if approved, however, the Worksheet could be amended and the total score would still be at least 500 at 503. Therefore, for all practical purposes the use of chemical and or biological additives in the manure storage facility is voluntary.

- c. The current runoff concerns are from both over grazing of pastures and runoff from the eastern heifer lot. Once the new barn is completed, the animals on the pasture will be moved into the barn, and the pasture will either return to grass or will be cropped. The eastern heifer lot will have a vegetated buffer strip constructed to filter out runoff from the lot. Proper maintenance and inspection will be needed.

The engineer who conducted the runoff management for the applicant has certified the feed storage facility is under an acre in size and that no resource concerns were noted for the feed storage area. All requirements of Worksheet #5 Feed Storage have been addressed in the application. There is no requirement for an evaluation of the "quality or quality (sic) of stormwater runoff" generated from the feed storage area. **(Certified Record pgs. 64-66)**

10. At this meeting, the Agency voted 5-2 to grant Applicant's CUP. **(Certified Record pg. 90)**

11. The Agency did condition its approval of the Applicant's permit on the following. Condition #1 was amended, on November 10, 2017, to reflect the same number of animal units as recited in the first paragraph:

General: For a dairy operation for up to 944 animal units.

- "1. Approved as per plan submitted as a dairy feedlot with a limit of ~~944~~ 994 animal units subject to all additional conditions.
- 2. Hours shall be 24 hours per day. No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m.
- 3. The site must meet all applicable Federal, State, County and local regulations including any State well or water supply requirements.
- 4. The applicant must obtain the required zoning permit prior to construction.

5. Applicant must obtain approval of a nutrient management plan from the County Land Conservation Office. The plan must meet with all requirements of the County and the Wisconsin Dept. of Natural Resources. The applicant must comply with all recommendations of the approved nutrient management plan.
 6. The applicant must install and maintain safety fencing mound the manure storage facility if required by the manure storage ordinance.
 7. The applicant must provide adequate manure storage. Storage shall be available for at least 4 months on site in order to allow storage during the winter months when manure will not be able to be incorporated to reduce odor. All manure spreading, except for manure dewatering, from County approved storage facilities must be incorporated in the ground within 24 hours of spreading in order to limit odor from the farm operations. Exception for incorporation shall be allowed for spreading on hay ground. The storage facilities must be emptied within two weeks of any time that spreading begins. The applicant shall keep a record of the date that spreading begins and the date on which the storage facility has been emptied. If the applicant cannot empty the manure storage facility in the required time frame using existing equipment and farmland then the applicant may need to make arrangements with a commercial manure disposal company.
 8. All structures shown on the approved conditional use plan shall fit within the footprint shown or a separate required zoning permit review fees shall be charged prior to zoning permit review.
 9. Failure to begin construction on structures shown on the approved conditional use plan within two years of the conditional use approval shall result in the need for a separate zoning permit, fee and permit review.
 10. All development on site shall be conducted in compliance with State Statute Chapter 51 and Appendix A application and worksheets.
 11. All outside lighting must be shielded and directed on site.
 12. The applicant will be responsible for cleaning tracked soil or manure resulting from the farm operations off the Township or County Roadways on a daily basis.
 13. If the Land Management Department determines that changes in either the character of the use or the intensity of the use are not consistent with this approval, then those changes must be brought before the County Zoning Agency for approval.
 14. Failure to actively exercise this conditional use within three years of the approval date shall result in automatic dismissal without prejudice. The property owner may request a time extension for actively exercising the conditional use. A time extension for actively exercising the conditional use must be requested in writing during the original three year period. Any extension requested during the three year active exercise period greater than one year beyond the original three year period shall require additional Town and County committee approvals.
- Specific:
15. An animal waste storage permit must be applied for and the manure structure must be designed and approved by a licensed engineer according to NRCS Technical standard 313. **(Certified Record pgs. 92-95)**

CONCLUSIONS OF LAW

1. The request for review challenged the procedures followed by Walworth County, the decision-making authority, in determining the completeness of the livestock siting application submitted by Friemoth. The LFSRB concludes that, while a report by the Aggrieved Persons' engineer that claims that the application was incomplete because the maps submitted as part of the application omitted required details, the Applicant submitted revised maps, including more information, as part of the application amendment process and the Department report, prepared prior to the public hearing in August, indicated that the application was determined to be complete. Following the completeness determination, Walworth County had 90 days to grant or deny the application. In this regard, the county adhered to the application requirements in Wis. Admin. Code § ATCP 51.30, in addition to the county's public hearing requirements. The public hearing process highlighted errors in

the application, resulting in an amended application, and the LFSRB concludes that amendments to a complete application are allowed during the process.

2. There was nothing in the county's record to show Walworth County made findings of fact related to its final decision. The LFSRB notes that Wis. Stat. § 93.90(4) (c) and Walworth County's ordinance require the issuance of findings of fact in its final decision. In addition, the findings of fact are critical to the Board's review of the record and the determination of issues presented on appeal. By not including Findings of Fact in its decision, Walworth County violated Wis. Stat. § 93.90(4) (c) and Wis. Admin. Code § ATCP 51.34(3) (a).
3. By waiting for the Town of Lafayette to weigh in on the granting of a CUP to Applicant before making its decision, Walworth County may have violated Wis. Stat. § 93.90 (4) (d), particularly when read with the CUP's Condition #14 that refers to "Town . . . approval." As the LFSRB has recently concluded, a county's use of a procedure, to gain another political subdivision's recommendation on whether the County should issue the CUP to the Applicant, does not violate the provisions of Wis. Stat. § 93.90(2) and (4), only if the other political subdivision's role is advisory only, does not delay the decision-making process, and the other political subdivision does not request any conditions that are then attached to the CUP. Walworth County may not condition approval of the application upon prior approval by another political subdivision.
4. As to the odor score, the public hearing process highlighted errors in Worksheet 2 of the application, resulting in an amended Worksheet 2, which accounted for an existing animal lot and reflected changes made to the proposed size of the lot in the amended application. Although the completion of the odor score in application Worksheet 2 was voluntary, the Applicant did choose to submit Worksheet 2 to Walworth County. Oral testimony, given by the Applicant and included in the county's record, called into question the Applicant's commitment to implement the odor control practice included on Worksheet 2. Walworth County took into account the oral testimony and issued the permit, with the Department's assumption that the control practices were voluntary. However, absent Findings of Fact, the LFSRB does not know how Walworth County accounted for this particular issue in its final decision. In any case, however, when the Applicant chose to submit Worksheet 2, the Applicant assumed an enforceable commitment to comply with the odor standard in Wis. Admin. Code ch. ATCP 51, including implementing the odor control practices related to the facility's manure storage structure.
5. There was evidence in the record, including the amended siting application, to support a determination that the facility did not comply with the runoff management standard, pursuant to Wis. Admin. Code § 51.20(2). During the decision-making process, the Applicant changed the size of one animal lot triggering a need to reanalyze the lot using the BARNY model, as defined in Wis. Admin. Code § ATCP 51.01(5). However, no amended BARNY output was included in the record to reflect the change in the animal lot size. The record included different maps of the facility indicating both a buffer and no buffer would be built at the end of the animal lot. Walworth County approved an application that did not meet the requirements in ATCP 51.20 (2), by not requiring the Applicant to have, in the record, an amended BARNY model output to reflect changes made to the proposed size of an existing animal lot in the amended application.
6. As to the Aggrieved Persons' claim that an existing feed storage structure was not evaluated for compliance with the runoff management standard in ATCP 51.20 (3) (b), the particular standard in question applies only to feed storage structures that hold high moisture feed (70% or greater) and are one acre or more in size. The Applicant's engineer noted the paved bunker area covers less than one acre, and there was no evidence in the record to contradict the size description or that the storage was for high moisture feed. The Applicant's engineer certified on Worksheet 5 of the application that the standard in ATCP 51.20 was met.

7. Pursuant to *Adams v. State of Wisconsin Livestock Facilities Siting Review Board*, 2012 WI 85, the Wisconsin Supreme Court affirmed that the LFSRB has the authority to review the individual conditions the County attached to the CUP granted to the Applicant and the LFSRB does so here.
8. The siting permit cannot be conditioned on the timing of transporting animal waste on roadways in Condition #2. Applying a local standard that restricts the hours of transporting animal waste on roadways may be valid to protect public health and safety, but Walworth County has not adopted more stringent local standards as part of its livestock facility siting ordinance, in accordance with the required criteria in Wis. Admin. Code § ATCP 51.10(3). In attaching Condition #2 stating “Hours shall be 24 hours per day. No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m.”, Walworth County did not comply with requirements in Wis. Stat. § 93.90(3) (ar), to impose the condition in the second session.
9. The siting permit cannot be conditioned upon requiring manure storage or restricting when a manure storage structure is emptied in Condition #7, as Walworth County has not adopted more stringent local standards as part of its livestock facility siting ordinance, in accordance with the required criteria in Wis. Admin. Code § ATCP 51.10(3), and, therefore, did not comply with requirements in Wis. Stat. § 93.90(3) (ar), to impose this condition.
10. The siting permit cannot be conditioned on requiring a livestock facility operator to clean tracked soil or manure off of Town or County roadways (Condition #12). Evidence in the record indicated that Walworth County and the Applicant may have voluntarily agreed to an alternate wording of Condition #12. While voluntary conditions are acceptable and should be encouraged, Wis. Stat. § 93.90 does not provide authority to include a voluntary agreement as a siting condition. A political subdivision and applicant may secure compliance of a voluntary agreement through means other than the CUP.
11. While the Applicant did not challenge the other conditions in the CUP and the LFSRB has already found other violations of Wis. Stat. § 93.90 to reverse Walworth County’s decision to grant the CUP, Walworth County should review other conditions in the permit (including requirements for the livestock facility to be in compliance with all applicable permits) to determine if these requirements are related to state standards authorized by Wis. Admin. Code ch. ATCP 51 or local standards adopted in Walworth County’s ordinance, in accordance with Wis. Admin. Code § ATCP 51.10 (3).

ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to s. 93.90(5) (d), Stats.

1. Walworth County’s September 21, 2017, grant of a conditional use permit to Adam and Jennifer Friemoth, for expanding its operation to a 944 animal unit livestock facility, is reversed for the reasons stated in the decision, and the application is remanded to Walworth County for further proceedings and a decision consistent with this decision and order.
2. Amending an application that was determined complete, to address issues that arose during the public process, is proper and Walworth County, by allowing the Applicant to correct errors in the application through the hearing process and amendments, did not violate the requirements of Wis. Stat. § 93.90(4).
3. Walworth County shall include Findings of Fact in making any decision on granting a CUP, pursuant to Wis. Stat. § 93.90.

4. Without Findings of Fact, there is not enough information to conclude that Walworth County violated Wis. Stat. § 93.90 (4) (d), by waiting for the Town of Lafayette to weigh in on the granting of a CUP to Applicant before making its decision. However, Walworth County shall follow the LFSRB's previous ruling (*Bonneville et al. v. Shawano County*, No. 17-LFSRB, <https://datcp.wi.gov/Documents/LFSRBMatscheFinalDecision.pdf>) on this issue when gaining advice from another municipality about granting this or any other CUP, pursuant to Wis. Stat. § 93.90. To the extent that Condition #14 refers to a town "approval" for any future CUP, Walworth County may not enforce this condition.

5. Pursuant to Wis. Stat. § 93.90(4) (d), all worksheets in the siting application need to reflect what the Applicant commits to implement at the facility. Since the record is inconsistent as to whether the Applicant is willing or able to honor the commitment made in the application, in Worksheet 2, to implement an odor reduction practice, Walworth County needs to resolve questions about commitments given by the Applicant, in order to assure all parties that the Applicant's plan, approved by Walworth County for the CUP, is adhered to in all respects.

6. Pursuant to Wis. Stat. § 93.90(4) (d), Walworth County shall insure that the Applicant has all required documentation, in the record, in any original or amended application. The application upon which the county bases its decision shall be complete and reflect the proposed facility that will be permitted. The BARNY outputs should reflect the actual size of animal lots proposed in the application for local approval including any buffers adjacent to the lot.

7. As to the question regarding the feed storage structure, the LFSRB finds no evidence in the record to demonstrate that the structure failed to comply with requirements in Wis. Admin. Code § ATCP 51.20 and, accordingly, the challenge on this issue fails.

8. Condition #2, is reversed with respect to the following sentence: "No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m."

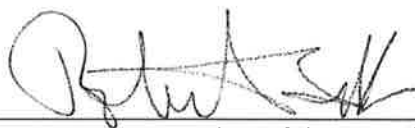
9. Condition #7 is reversed.

10. Condition # 12 is reversed. The applicant and the county are free to enter a voluntary agreement for cleaning up road debris, but this cannot enforced as a condition through the CUP.

11. Walworth County shall review the validity of the other permit conditions to establish whether they may be attached to the CUP, consistent with Wis. Stat. § 93.90, or may be applied through other means, such as zoning permits.

Dated this 29 day of January, 2018.

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



Member of the Board

ROBERT SELK