

# LARGE LIVESTOCK SITING – WHERE DO WE GO FROM HERE?

---

2020 WCA ANNUAL CONFERENCE VIRTUAL WORKSHOP

## THE PANELISTS

---

- **Larry Konopacki**, Partner, Stafford Rosenbaum LLP
- **John Holevoet**, Director of Government Affairs, Dairy Business Association
- **Cindy Leitner**, President, Wisconsin Dairy Alliance
- **Bobbi Wilson**, Policy and Special Projects Coordinator, Wisconsin Farmers Union

# AGENDA

---

- Overview of Livestock Siting Law
- Questions for the Panel
- Questions from Workshop Attendees

# WHAT IS THE LIVESTOCK SITING LAW?

---

- Wis. Stat. § 93.90
  - State statute that limits local government (county, city, village, town) ability to regulate siting and expansion of large livestock facilities
  - Statute is framed in the “negative” – a local government may not prohibit siting or expansion unless one of the noted conditions exists
  - Local government is not required to regulate livestock siting or expansion, but if it does, it cannot be more stringent than the state standards.

## SO WHAT ARE THE CONDITIONS?

---

1. The site is located in a zoning district that is not an agricultural zoning district;
2. The site is located in an agricultural zoning district in which the proposed new or expanded livestock facility is prohibited;
3. The proposed new or expanded livestock facility violates a county shoreland zoning ordinance under Wis. Stat. § 59.692 or construction site erosion control and storm water management zoning under Wis. Stat. § 59.693;
4. The proposed new or expanded livestock facility violates a building, electrical, or plumbing code applicable to the type of facility proposed;

## CONDITIONS (CONT.)

---

5. The proposed new or expanded livestock facility will have 500 or more animal units and violates a state standard under Wis. Admin. Code Ch. ATCP 50;
6. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a state standard;
7. The proposed new or expanded livestock facility will have 500 or more animal units and violates a requirement that is more stringent than the state standards; or
8. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision's ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a requirement that is more stringent than the state standards.

# WHEN CAN A COUNTY BE MORE STRINGENT THAN STATE STANDARDS?

---

- Two Step Process

1. Local government must have adopted the more stringent requirement in ordinance (and the ordinance has received DNR and DATCP approval) prior to an application being submitted; and
2. Local government must base 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."

# CH. ATCP 51 (PROMULGATED UNDER AUTHORITY OF WIS. STAT. § 93.90) – THE “STATE STANDARDS”

---

- In developing the rules/standards, DATCP is required to consider whether the rules/standards are:
  - Protective of public health or safety.
  - Practical and workable.
  - Cost-effective.
  - Objective.
  - Based on available scientific information that has been subjected to peer review.
  - Designed to promote the growth and viability of animal agriculture in this state.
  - Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
  - Usable by officials of political subdivisions.



# THE APPROVAL PROCESS

---

- Wis. Stat. § 93.90(4)(d):

If an applicant complies with the rules promulgated by DATCP 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.

## WITHDRAWING APPROVAL

---

- A political subdivision may monitor compliance and may withdraw an approval, or seek other legal remedies if the operator materially misrepresented relevant information in the siting application, fails to honor relevant commitments made in the application, or fails to maintain compliance with the standards.

# LIVESTOCK FACILITY SITING REVIEW BOARD

---

- Seven-member quasi-judicial body associated with DATCP
- Appeals to Review Board brought only by “aggrieved persons.”
- NOT the exclusive remedy for a challenge to a local decision on a siting application.
- Grounds for a challenge to the Siting Board – the political subdivision incorrectly applied state standards or the political subdivision violated the requirements associated with exercising local regulatory authority.
- Siting Board process – the Board “shall determine whether the challenge is valid” and shall make its decision without deference to the decision of the political subdivision and based only on the evidence in the record.
- The decision of the board is binding on the political subdivision, unless successfully appealed.
- Appeals of Siting Board decisions are to the circuit court. Review is on the record.

# QUESTIONS FOR THE PANEL

---

## QUESTION 1

---

- In your opinion, what is working and what is not working in the Large Livestock Siting Law?

## QUESTION 2

---

- What concerns do you have with the current statutes and administrative code provisions related to the regulation of large livestock siting?

## QUESTION 3

---

- From a case law and/or legislative perspective, where do you see the law going?

# QUESTIONS FROM WORKSHOP ATTENDEES

---

