

September 14, 2020

Polk County Board of Supervisors
Polk County Government Center
100 Polk County Plaza
Balsam Lake, WI 54180

Delivered via electronic mail:
Christopher.nelson@copolk.wi.us

Dear Chairman Nelson:

I am writing on behalf of the Venture Dairy Cooperative, Wisconsin Dairy Alliance, and Wisconsin Manufacturers & Commerce regarding Resolution No. 37-20 “Amendment to Polk County Comprehensive Land Use Ordinance related to Swine CAFO’s in the Agricultural 20 Zoning District” and Resolution No. 36-20 “Resolution Extending Moratorium on Swine CAFO’s.” Collectively, our organizations represent thousands of farmers and businesses tied to Wisconsin agriculture including in Polk County (the County). It is deeply concerning to Wisconsin’s business community, especially Wisconsin’s agricultural sector, that the County continues to recklessly move forward with these unlawful proposals.

Farmers comprise a vital and necessary part of Wisconsin’s economy, including in Polk County. The County’s unlawful actions will harm local farmers and likely lead to costly and reputation-damaging litigation, for which your taxpayers (the very farmers you are harming) will have to foot the bill.

The County has been told on multiple occasions by the state government and stakeholders that Resolution No. 37-20 “Amendment to Polk County Comprehensive Land Use Ordinance related to Swine CAFO’s in the Agricultural 20 Zoning District” (Proposed Ordinance) is fundamentally flawed and needs revision. The Department of Agriculture, Trade, and Consumer Protection (DATCP) previously commented¹ on the Proposed Ordinance listing several violations of state law including, “the law does not grant the authority to political subdivisions to disapprove a permit based on species...” that, “the proposed ordinance does not incorporate all the standards from ATCP 51...” and finally, “the proposed ordinance requires compliance with several more stringent local standards...[and the county must] base those standards on reasonable and scientifically defensible findings of fact.” The County has not done so.

DATCP concluded, “Polk County’s proposed swine CAFO ordinance is not consistent with Chapter 93.90 Wis. Stats. and ATCP 51. If the county adopts the ordinance as is, it may present the grounds for a legal challenge.” DATCP offered to work with the County to draft an ordinance in compliance with state law. Rather than take DATCP up on this offer, the County supervisors – working in tandem with radical environmentalist groups from Madison – moved forward with the legally suspect Proposed Ordinance. Instead of passing the Proposed Ordinance, the County should work with the state and local agricultural community to come to a legal and mutually beneficial way to address local community concerns.

Resolution No. 36-20 Resolution Extending Moratorium on Swine CAFO’s (Proposed Moratorium) is also unlawful. Wis. Stat. § 59.69 defines the zoning powers of counties. Wis.

¹ DATCP Letter from Mr. Timothy Jackson to Jason Kjeseth and Malia Malone.

Stat. § 59.69(4) explicitly lays out the extent of county power to impose moratoriums. The relevant part of the citation reads,

The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium.

This statute gives counties some power to enact moratoriums, other than development moratoriums. However, the Wisconsin Supreme Court and State Legislature have made clear that this language does not give counties the ability to enact a moratorium on livestock siting. Specifically, Wis. Stat. §93.90(3)(a) states “notwithstanding ss.... 59.69... a political subdivision may not disapprove or prohibit a livestock facility siting or expansion...” The statute has eight exceptions, none of which apply here.

The Wisconsin Supreme Court interpreted § 93.90 in the case *Adams v. Wis. Livestock Facilities Siting Review Bd.* In its decision, the Court found that the Legislature expressly withdrew the authority political subdivisions previously had to disapprove livestock facility siting permits. 2012 WI 85 ¶46, 342 Wis. 2d 444, 820 N.W.2d 404. That is, the Wisconsin Supreme Court held that any authority counties have under § 59.69 is rendered inoperative as it relates to regulating the siting or expansion of a large livestock facility. Therefore, the County’s authority to extend the Proposed Moratorium on the creation or expansion of livestock facilities has been preempted by state law.

If supervisors enacted the Proposed Ordinance and Proposed Moratorium, they would be unlawful, unenforceable, and be in excess of the county board’s authority to enact, which is a felony in Wisconsin. Wis. Stat. § 946.12(2). When you were sworn in to serve, you took an oath to uphold the laws of the State of Wisconsin and the Wisconsin Constitution. We ask that you honor that oath, and reject these proposals that are clearly at odds with state law.

Respectfully and Sincerely,

cc: Polk County Board of Supervisors