

October 17, 2020

Dear Chairman Pliml:

We are writing as elected county board supervisors to express our deep concern about a recent effort by outside parties to intimidate members of the Polk County board from exercising their legitimate role in protecting the well-being of their citizens. We are asking the Wisconsin Counties Association, our shared voice in matters of public affairs, to take a clear position in opposition to this attempt.

A letter drafted by Wisconsin Manufacturers and Commerce, Wisconsin Dairy Alliance, and Venture Dairy Cooperative was delivered to the Polk County Board of Supervisors on September 14, 2020 in response to the County's efforts to pass legislation to manage the risks posed by a 26,000 hog factory farm. The letter's threatening message is a heavy-handed attempt to stop county officials from using their statutory authority to protect public health and safety (Wis. Stats. §§ 59.54 and 254.51(5)).

In particular, WMC's, WI Dairy Alliance, and Venture Cooperative's assertion that, "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" is an alarming escalation of intimidation by industry lobbyists and warrants a response from the WCA.

The Wisconsin Counties Association, a strong advocate for local control, is an important resource for County Supervisors, especially when we are faced with complex policy issues. The September 14th letter, authored by industry insiders, which threatens felony charges against the Polk County Supervisors presents an opportunity for the WCA to take a position and stand with its members against corporate overreach.. Your Executive Director, Mark O'Connell, sums it up perfectly, "Simply put, WCA is an association of county governments assembled for the purpose of serving and representing counties."

We respectfully request that you issue a response to the September 14th letter to Polk County from WMC, WI Dairy Alliance, and Venture Dairy Cooperative.

An official response from a respected organization like the Wisconsin Counties Association would send an important signal to corporate lobbyists that attempting to bully Polk County into submission is an attack on fair and representative democracy. Your timely response will add confidence that WCA continues to be a long-time advocate for counties' issues and serves as a fair and transparent clearinghouse of reliable resources for elected officials.

Respectfully,

Ken Schmitt, Chippewa County
Amanda Chu, Brown County
Mary Dougherty, Bayfield County
Jen Schmitz, Monroe County
Hans Breitenmoser, Lincoln County
Donald Stirling, Crawford County
Bryce Luchterhand, Clark County
Amy Middleton, Polk County
Charly Ray, Bayfield County
Maureen Freedland, La Crosse County
Jeff Silbert, Bayfield County
Frances Duncanson, Polk County
Tom Quinn, Dunn County
Monica Kruse, La Crosse County
Doug Route, Polk County

Attachment: September 14 Letter to Polk County Supervisors

Attachment: September 15 Press Release from VDC



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.

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

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. 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,

Kim Bremmer- Venture Dairy Cooperative
Cindy Leitner- Wisconsin Dairy Alliance
Scott Manley- Wisconsin Manufactures & Commerce
cc: Polk County Board of Supervisors

Media Contact:

Kim Bremmer

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Farmers Ask Polk County Board to Obey the Law or Face Costly & Criminal Consequences

September 15, 2020: Venture Dairy Cooperative (VDC), Wisconsin Dairy Alliance (WDA), and Wisconsin Manufacturers & Commerce (WMC), and the thousands of farmers and businesses tied to Wisconsin agriculture they collectively represent, are speaking out against the proposed ordinances currently being considered in Polk County Wisconsin: Resolution No. 37-20 and Resolution No. 36-20. These resolutions unlawfully target specific livestock farmers based on the size of their businesses.

A recent [letter](#) sent to Polk County from the Department of Agriculture, Trade and Consumer Protection (DATCP) clearly states that the proposed Resolution No. 37-20 is "not consistent with Wisconsin state law and may present the grounds for a legal challenge." [1]. Furthermore, DATCP offered to work with Polk County to draft an ordinance that was compliant with state law, but it appears that offer was ignored as certain supervisors chose to work with a group of radical environmentalists from Madison instead. In addition, the County Board is also considering extending its Moratorium on Swine CAFOs, even though the Wisconsin Supreme Court has ruled that local units of government may only regulate the siting or expansion of a large livestock facility consistent with the siting statute and rules.

These proposed local regulations for Polk County farms unlawfully exceed what state law requires. CAFOs in Wisconsin meet some of the highest standards in the U.S. while adhering to strict regulations to protect the environment. Agriculture is a vital economic generator for our state, including Polk County. Like any business, farms choosing to expand should not be punished or barred from doing so if they follow the mandatory permitting requirements and the law. Moving forward with these proposals will also irresponsibly take up county staff time and resources at the expense of the taxpayers.

We are asking that the Polk County Board follow the law and work with farmers, the agricultural community and DATCP in the spirit of cooperation. If county supervisors enact the proposed ordinances, knowing they are unlawful, unenforceable, and in excess of the county board's authority, it is a felony in Wisconsin (Wis. Stat. 946.12(2)). Supervisors are sworn to serve the citizens of their county, taking an oath to uphold the laws of the State of Wisconsin. Farmers are part of the communities in which they serve. Rather than pandering to a vocal minority of activists, rooted in intolerance and absolute opposition to CAFOs, it is time we work together to find reasonable common ground for a successful future for all.

[View Full Letter To Polk County Supervisors Here:](#)

About the Venture Dairy Cooperative:

Venture Dairy Cooperative provides third party milk sample verification services for our members at proprietary processing plants. We support our dairy farmers of all sizes, including many CAFOs, through leadership and advocacy on their behalf. For more information please contact Executive Director, Kim Bremmer at 715-797-7796.

Venture Dairy Cooperative