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Of Counsel

September 15, 2020

Polk County Board of Supervisors
Division of Environmental Services
100 Polk County Plaza Suite 300,
Balsam Lake, WI 54810

To the Polk County Board of Supervisors and the Polk County Environmental Services Committee:

Midwest Environmental Advocates, Inc. (MEA) sends this letter to reiterate its support for Polk County's CAFO moratorium. As such, MEA supports Resolution No. 36-20, which proposes a moratorium extension on hog CAFOs. MEA is a non-profit environmental law center with a 20-year history of providing legal and technical assistance to Wisconsin communities and families working for clean air, water, land, and government.

Generally, a temporary moratorium is a planning tool that can be used to suspend new developments while studies are completed and local plans or ordinances are prepared. Livestock moratoria are not novel phenomena. Many local governments, including towns, villages, and counties have identified the need to regulate CAFOs. Those efforts often begin by passing a temporary moratorium to give the government time to understand environmental characteristics that may justify more stringent standards. In turn, those more stringent standards protect the public's health, safety, and welfare.

A temporary moratorium need not fall within the category of a local farm regulation subject to the requirements of Wis. Stat. § 93.90 et seq., nor is Wis. Stat. § 66.1002 applicable in this instance. Furthermore, while Wis. Stat. § 59.69(4) precludes the ability of counties to enact certain statutorily defined "development moratoria," counties have the power to enact non-development moratoria. Enacting such a moratorium does not require a local government to interpret their authority as limitless. Rather, a reasonable temporary moratorium is within Polk County's longstanding and logical authority to protect its residents.

Certainly, the Wisconsin Supreme Court has upheld the Livestock Facility Siting Law which addresses a town or county's authority to regulate CAFOs.

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Adams v. State Livestock Facilities Siting Review Bd., 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404. However, as my previous letter stated, *Adams* is often misrepresented by opponents of CAFO regulations in an effort to suppress local action, particularly as it relates to moratoria. The case plainly addresses conditions imposed on a permit rather than temporary restrictions on permissible land uses. Simply put, the *Adams* neither implies nor indicates that the Livestock Facility Siting Law preempts a local government's authority to impose a moratorium on CAFOs.

Reliance on Wis. Stat. § 93.90(3)(a) to preclude a temporary moratorium is likewise inapplicable. The statute mandates that a political subdivision may not disapprove a livestock facility siting, yet is silent on actions that fall short of disapproval. A moratorium is not a disapproval or permanent prohibition, it is a temporary hold. A local government need not deny an application submitted during a moratorium and instead may make a decision following the conclusion of the moratorium. Indeed Wis. Admin. Code § ATCP 51.31 provides flexibility for a local government's livestock siting application decision deadline.

While these statutes, regulations, and cases are technical, the overarching point is that none of the previously cited authority rescinds Polk County's ability to enact or extend its temporary moratorium. MEA encourages the Polk County Board not to act upon overbroad, conclusory statements restricting the authority of the County. The state-level livestock siting and environmental protection schemes do not and cannot take away the ability of local government to protect the health and safety of Wisconsinites.

MEA disputes recent threats of criminal, felony liability flowing from County Board members' CAFO regulation votes. This allegation is outrageous and is best viewed as an attempt to bully local representatives who are seeking to serve their communities. The legality of a local ordinance is not decided by a criminal trial. The fact is the authors of the September 14 letter to Chairman Nelson do not and cannot point to any precedent for a local official being charged in a similar situation because their mention of criminal statutes is a hollow gesture meant to intimidate you. In truth, it is within your authority and responsibility as a local government official to consider whether existing state and county regulations adequately protect your constituents in light of the unique environmental, topographic, and related conditions in Polk County.

Sincerely,

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