

# Board of Adjustment

## MINUTES

May 20, 2020

**Meeting Called To Order** at 8:30 a.m. by Chairman, Ron Carney.

**Members Present:** Ron Carney, Chuck Jensen, Larry Blaken, Tom Clark and Alternate – John Higgins.

**Others Present:** Terry Schmidt, Zoning Administrator; Beth Storlie, Zoning Assistant; Gaylord Olson II, Land Conservationist.

### **Qualifying Questions:**

Are you an immediate family member of the petitioner?

**No response.**

Do you have any business activity or financial interests with the petitioner?

**No response.**

Have you prejudged the case or do you have a bias in favor or against the petition?

**No response.**

**A Motion by Chuck Jensen, to approve the January 30, 2020 minutes as presented, seconded by John Higgins. Motion carried.**

### **OLD BUSINESS:**

### **NEW BUSINESS:**

**VARIANCE REQUEST # 2020-25** as requested by Jerome J. Laufenberg on property located in the NE1/4-SW1/4, Section 11, T23N, R6W, Town of Northfield, Jackson County, WI. The request is to allow for an existing feedlot/barnyard to be located within 300 feet from a navigable creek. The existing structure and barnyard are approximately 186 feet from the creek. This is contrary to Section 16.13 (c) 2 and 16.15 (4) & (5) of the Jackson County Shoreland Zoning Ordinance, which requires a setback of 300 feet from a navigable stream for an animal shelter and feedlot. It is also contrary to Section 23.07 (3) (f) of the Jackson County Livestock and Animal Facility Licensing Ordinance, which requires a setback of 300 feet from a navigable stream for any animal confinement structure and feedlot.

The petitioner will meet the Board of Adjustment as the site due to COVID-19 social distancing concerns.

Terry Schmidt, Zoning Administrator, stated that he and Gaylord Olson II met with Jerome and Dan Laufenberg on February 27, 2020 at the site and viewed the structure that had been built over an existing small concrete pad with water hydrant. The structure was built in 2019 without meeting the setbacks requirements of the Shoreland Zoning Ordinance and the

Livestock and Animal Facility Licensing Ordinances. The Laufenberg's did not apply for the required Land Use Permit, which is required for any construction that occurs within a shoreland area even in unzoned townships. Following the site visit, Terry sent a letter stating that the only option for the Laufenberg's was to apply for a variance. In this letter, Terry stressed the three criteria that must be proven to grant a variance and that burden is the Laufenberg's to provide.

He added that the entire area where the structure, feeding bunkers, paddocks, water hydrants, etc. all slopes directly to a wetland and on to a creek. Additionally, when at the site, Gaylord asked how many animals were located at the site and got no response.

Terry questioned from the time that they met on February 27<sup>th</sup> to today how much the conditions at the site have changed and that it will be very interesting to see how much improvement work has been done.

He explained the three criteria required to be met in order to grant a variance, they are as follows:

1. The petitioner must prove unnecessary hardship. Convenience or self-created situations are not unnecessary hardship.
2. Uniqueness of the property.
3. Is it in the best interest of the public interest?

Gaylord Olson II said that he has several questions for the Laufenberg's when conducting the onsite, they are:

- What type, numbers and size of the cattle have been present at the entire farm site?
- What type, numbers and size of the cattle that use the building next to the new feedlot?
- What type, numbers and size of the cattle that use the new feedlot?
- What length of time will the cattle use the new feedlot?

He explained a brief history of the property. **In 2008**, the property was purchased from Jeff Emerson. Mr. Emerson had some horses and cattle using the site. There was no significant manure or sediment runoff problems. The manure management standards were discussed with the Laufenberg's.

**In 2009**, a Livestock and Animal Facility License application was completed by Laufenberg's, initially requesting 80 beef cows and 80 beef calves at the site. That was increased to 110 beef cows and 110 beef calves. The manure runoff management standards and site compliance were discussed again. A new shed was going to be constructed on the property.

**In April 2013**, Mike Goehring, LCD employee and I visited the site with the Laufenberg's. There were significant manure and sediment pollutants leaving the site towards the creek. The animal numbers had been increased to at least 150 beef cows and 150 beef calves, with more beef heifers being raised to increase the herd. A DNR grant for \$150,000 was available to help fund a resolution for the pollution

issues. A cost-share agreement was signed with the Land Conservation Department to allocate the funds and provide design and construction inspection assistance. Barnyard runoff management systems and a manure storage structure was constructed in 2013. The confined feeding operations and concrete lot improvements were calculated to handle up to 175 beef cows and 175 calves. The LCD issued a license and compliance letter to the Laufenberg's.

**On January 27, 2020**, I contacted the Laufenberg's regarding the new livestock structure was built within 300 feet of the stream. Terry and I requested to look at the site with Laufenberg's.

**On February 27, 2020** Terry and I met with Jerome and Dan Laufenberg at the site. We talked about the new structure and the fencing modifications that were made to the area below the structure to pen 4 bulls. The Laufenberg's decided to apply for a variance.

Gaylord shared some issues to consider as the Board deliberates on the variance request. He provided the following handouts to the Board for consideration:

1. **AIRPHOTO** - Explaining why manure can be a pollutant.
2. **Handout** - Cindy Koperski's DNR manure pollutant summary.
3. **Handout** - Manure and nutrient calculation from 2004 Midwest Plan Service document. Manure includes both the solids and liquids. Also, manure's consistency can change to a slurry when cattle are frequently congregated in an area. That can occur without the addition of snow melt and/or rain. These calculations don't account for possible pollution sources from feed waste, bedding and any sediment generated from the cattle being on part of the earthen areas near the structure.
  - a. The amount of manure from beef cattle would be the equivalent of several hundred humans generating manure uphill from the creek with no type of septic system.
  - b. He added that Brooks Creek is downhill approximately 180 feet from the structure site. Brooks Creek is a tributary to Pigeon Creek which is a Class II Trout Stream which is one mile downstream. There is US Government Conservation Easement that is adjacent to the stream on the property. The Government Conservation Easement extends on both sides of the stream the entire length of the property.
4. **Handout** - November 20, 2013 LCD compliance letter. There is a significant potential for direct discharge to the stream. There becomes more potential for unconfined stacking of manure within 300 feet of the creek since the site is already within 300 feet of Brooks Creek. These are both county and state standards for manure pollution prevention.

Gaylord added that this is part of the responsibility of the Land Conservation Department and possibly the Zoning Department with sites that are in the Shoreland Zoning area.

The following questions and potential situations are relevant to this site regardless of who owns and operates the site:

- What limits are there, if any, to the amount of cattle that can be added to using the site now or in the future? Can the area accommodate more cattle and expanded feeding area?
- If you believe that pollution is not going to leave the site and reach the US Government's Conservation Easement and Brooks Creek based on today's testimony and viewing the site, what happens if and when it does?
- If the site is producing pollution, how long would the site produce pollution that impacts the stream corridor and the creek before the site happens to be monitored for compliance?
- If the site is polluting how is it going to be stopped? How long will it take before it is stopped and how will the source of pollution be prevented from resuming?
- What happens if the operator is unwilling or unable to stop the discharge of pollutants?

He commented that based on his experiences with sites throughout the county, compliance with pollution producing sites can be very difficult, time consuming and sometimes costly to resolve. During the time trying to resolve the issue the pollution may continue to impact adjacent property and/or water.

There are two ordinances that are involved with this variance. The Shoreland Zoning Ordinance and the Livestock and Animal Facility Licensing Ordinance. The Shoreland Zoning Ordinance's state's it's purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters and wetlands. The Livestock and Animal Facility Licensing Ordinance purpose states in part: ..... to establish standards and authority to protect the health and safety of people in Jackson County.

Gaylord concluded that our goal is to prevent pollution sources from beginning, this site does not meet these standards to grant a variance.

The committee departed at 9:15 a.m. to complete the site visit. They returned to the courthouse at approximately 10:35 a.m. Deliberations occurred.

Board of Adjustment member, John Higgins questioned if any of the three criteria for granting a variance were proven or could be met at this site. He does not feel that they are met.

Board of Adjustment member, Larry Blaken questioned what would need to be done with the structure if the variance is denied.

Terry Schmidt added that the water hydrants were there already, not the concrete pads, feed bunkers, paddocks or shelter structure. He stated that the shelter was built without obtaining permits. Even if they had submitted a Land Use Permit application for the proposed shelter structure, he would not have been able to issue it for an animal confinement structure because it does not meet the 300-foot setback from a navigable water. He would be able to issue a permit for the structure if it is used for hay storage or equipment storage as it does meet the setback for that type of use, but not for animals. He added that the structure would need to be removed or moved to meet the minimum setback standards.

Gaylord Olson II asked if the structure is considered for any movement that all Land Conservation Department standards and requirements are met as variance remain with the land so any future landowner would be subject to these standards.

**A Motion by John Higgins, to deny variance request # 2020-25 for Jerome J. Laufenberg with the stipulation that the shelter structure is to be removed or relocated to meet all Land Conservation Department standards, seconded by Larry Blaken. Motion carried unanimously 5 - 0.**

**Motion by Larry Blaken, to adjourn, seconded by John Higgins. Meeting adjourned at 10:45 a.m.**

Minutes respectfully submitted by Beth Storlie.