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February 13, 2017

Goodhue County Planning Commission & County Board
Government Center - Board Room
509 West 5th St
Red Wing MN 55066

***Re: County Planning Commission Public Hearing - February 13, 2017
Circle K Family Farms App. for Conditional Use Permit ("CUP")***

Ladies and Gentlemen:

This law firm represents neighboring property owners within Zumbrota Township and Goodhue County in proximity to the proposed Circle K Family Farms project ("Project"). Please provide this letter to the Planning Commission ("PC") for review and consideration, as well as the County Board. Please also include this letter in the record on the February 13, 2017, public hearing on the CUP Application for the Project.

On behalf of the citizens represented in Goodhue County, it is respectfully requested that the County must deny the CUP application at this time or must continue the hearing. Among other things, the Application is incomplete and missing important information required by the Goodhue County Zoning Ordinance ("Ordinance"), including all of the land application agreements required by Article 13, Section 6. In summary:

- 1) The Application for a Conditional Use Permit for the Project is incomplete in violation of Article 13, Section 6. The County and the public cannot fully evaluate this Project based on this information. Land application agreements are required for good reasons. The County must continue the public hearing until the Project provides a complete application with all agreements.
- 2) This proposal does not meet the standards for a CUP for a Confined Feeding Operation as outlined in the requirements for a Confined Feedlot in Article 13 of the Ordinance. If the public hearing goes forward, the County must recommend a denial of the application.

- 3) Unfortunately, County staff have been unable or unwilling to provide citizens with the opportunity to review the CUP application file on the Project. Citizens have been denied access to a copy of the CUP application prior to hearing.

ANALYSIS

Incomplete Application. While the Application for the CUP does contain considerable information about the building and includes the EAW, essential information about manure application is missing in violation of the Ordinance.

The Project will generate the manure equivalent to a city of about 14,500 people and will land apply the untreated manure on about 570 acres of spreading fields. Because the Project only owns about 130 acres, the Ordinance requires the Project to provide land spreading agreements for over 400+ additional acres and an analysis of the nutrient management plans for those additional 400+ acres. The Ordinance requires this information as part of the Application because the County can't meaningfully evaluate the Project without the missing information.

Minnesota Courts will affirm the denial of an incomplete application for failure to provide adequate information about the proposal. *Application of Q Petroleum*, 498 N.W.2d 772 (Minn.App. 1993). An incomplete application fails to constitute a lawful request for approval under Minnesota law. Minn. Stat. 15.99; *Calm Waters, LLC v. Kanabec County Board of Commissioners*, 756 N.W.2d 716 (Minn. 2008).

Article 13, Section 6 of the Ordinance is entitled "Information Required for a Conditional Use Permit". Section 6 provides: "The permit application shall include the following items ... land spreading agreements shall be provided if the applicant does not own the minimum acreage as required in the nutrient management plan and that minimum must be under agreement throughout the lifetime of the permitted feedlot."

The Project owns less than 1/3 of the number of minimum acres required and has not provided copies of the land spreading agreements for the agreements for the lifetime of the Project, as required by Section 6.. The EAW for the Project provides that the project will generate about 1,543,950 gallons of manure annually. Each 1,000 gallons is estimated to contain about 58 pounds of Nitrogen. *Jose A Fernandez & Michael A Schmitt*, *Manure Management in Minnesota* - ww 03553 (revised 2012). The Project will generate about 89,549.1 pounds of N each year (1,543,950 x 58 / 1,000). Using the absolute maximum amount of N per acre for a repeated corn on corn crop rotation, the project will require at least 497.495 acres to take the manure at agronomic rates (89,549.1 / 180 = 497.495). *Jose A Fernandez & Michael A Schmitt*, *Manure Management in Minnesota* - ww 03553 (revised 2012).

Accordingly, the EAW estimates that the Project will require at least 579 acres per year to spread approximately 1.5 million gallons of liquid hog manure. The Project owns 128.9 acres of land in Zumbrota Township. Thus, the Project does not own even 1/3 of the “minimum acreage as required in the nutrient management plan”.

County staff has not provided any land spreading agreements for review by the public. MPCA Staff, Mark Gernes, has told my clients that a new manure management plan has been submitted since the EAW and that the fields in the EAW were not accurate. We have not had the opportunity to review or evaluate any spreading agreements. It appears that the County has not received these agreements in violation of the Ordinance.

Section 6 of the Ordinance requires that the Project submit and analyze land spreading agreements for the lifetime of the Project as part of a complete CUP application. Section 6 of the Ordinance also requires a nutrient management plan based on the soils and land available, which is also missing here. Minn. R. 7020.2225 requires a the nutrient management plan and the Ordinance at Article 13, Section 6, requires the Application to contain the plan for the public hearing. See, MPCA, *Livestock and the environment*.

The County must continue the hearing on the Application or deny the Application. The determination of how much of the Project's nutrients will runoff into impaired surface waters is complicated and depends upon weather, method of application, crop rotations and expected yield. Minn.R. 7020.2225 requires application rates in line with current recommendations from the U of M Extension. Given the missing information, the County is unable to determine whether the Project will comply with manure management requirements of the feedlot program rules.

More than half of southern Minnesota waters are already impaired. MPCA, *Minnesota's Impaired Waters List* (available online at www.pca.state.mn.us/water/minnesotas-impaired-waters-list); MPCA, *Swimmable, Fishable, Fixable?* (April 28, 2015)

The Ordinance also requires - at Article 3, Section 2, entitled “Application for Conditional/Interim Use Permit,” - “In all cases, the application shall include ... a site plan ... showing all pertinent dimensions, buildings and significant natural features having an influence on the request.” The Project has not submitted a complete site plan.

There are no land spreading agreements or site plans in the packet that Goodhue County staff posted on the website for the public hearing.
(<http://co.goodhue.mn.us/AgendaCenter/ViewFile/Agenda/02132017-1001?html=true>)

Moreover, on February 9, 2017, at least one citizen, Kristi Rosenquist, went to the Goodhue County Zoning office to review and obtain a copy of the CUP Application and the County file on this Project. I understand that the County had no land spreading agreements and had no complete site maps in the file. When Rosenquist requested a copy of the CUP Application, County staff unfortunately refused to provide any.

In the circumstances, it would be contrary to the Ordinance and the purposes of the public hearing for the Goodhue County Planning Commission to hear, consider and act on this Application. We respectfully request that the County remove the Application from the February 13 public hearing agenda and reschedule for at such a time as there is a complete Application made available to the public in advance of the hearing.

In continuing the matter, the County should comply with Minn.Stat. 15.99.

Property Value Threat. The County should also deny the Application because the Project poses a threat to property values in the vicinity, which is a violation of the Ordinance. Article 4, Section 2, of the Ordinance, entitled “Application for Conditional/Interim Use Permit,” provides in part as follows: “No Conditional/Interim Use Permit shall be recommended by the County Planning Commission unless ... the conditional/interim use will not ... substantially diminish and impair property values within the immediate vicinity.”

Minnesota Courts have affirmed the denial of a conditional use permit (“CUP”) for a proposed project based on concerns for property values. Our Minnesota Courts have upheld in at least two cases a County Board’s decision to deny a CUP application for a project that threatened property values. *Anderson v. Winona County Bd. of Com’rs*, 2000 WL 1780321 (Minn.App. 2000); *Carlson v. Blue Earth County Bd. of Com’rs*, 2000 WL 1239734 (Minn.App. 2000) (Court of appeals affirmed Board’s denial of CUP application, noting that local governments are entitled to great deference for land-use decisions). The South Dakota courts have also upheld County Board’s decisions to deny a CUP application for a confinement operation. See, *Coyote Flats, L.L.C. v. Sanborn County Com’n*, 596 N.W.2d 347 (S.D. 1999); *In re Conditional Use Permit Denied to Meier*, 645 N.W.2d 579 (S.D. 2002). In both of these decisions, the South Dakota Supreme Court affirmed the denial of permits to hog confinements.

Citizens may testify to conditions that impair their property values and to the nature and extent of the damage. *Citizens for a Safe Grant v. Lone Oak Sportsmen’s Club, Inc.*, 624 N.W.2d 796 (Minn.App. 2001); *Northern States Power Supply v. Franklin*, 265 Minn. 391, 122 N.W.2d 26 (Minn. 1963); *Satren v. Hader Co-Operative Cheese Factory*, 202 Minn. 553, 279 N.W. 361 (Minn. 1938).

Numerous relevant studies have shown conclusively that hog facilities of this size substantially decrease property values to neighboring residential properties. A 2008 study from the University of Northern Iowa found “large adverse impacts suffered by houses that are within 3 miles and directly downwind from a CAFO,” and a 2015 study in *The Appraisal Journal* found the same.

The Appraisal Journal found that: “Properties immediately abutting an AO [Animal Operation] can be diminished as much as 88%.” Attached is a copy of the article in *The Appraisal Journal*.

Pollution Threat in Karst. The Project poses a major pollution threat due to the karst features in the area. Article 13, Section 4, of the Ordinance is entitled “General Requirements” and states that: “No animal feedlot or manure storage area shall be constructed, located, or operated so as to create or maintain a pollution hazard.” Industrial-scale hog feedlots create air and water pollution hazards in karst.

The Project plans to build a 3.5-million-gallon liquid manure pit in a karst region, which is highly susceptible to groundwater pollution and sink hole formation. In 1992, the wastewater treatment lagoon in nearby Bellechester collapsed due to six newly formed sinkholes. A manure pit breach would be catastrophic to the groundwater, creating a “pollution hazard.”

We respectfully submit that the EAW work on the karst features is inadequate given the local knowledge and information about the karst in the area.

Lack of Access to Complete Application and File for Public Hearing. In addition, the County should continue the public hearing as my clients have been denied a copy of the CUP Application for this Project. In their attempt to prepare for tonight's public hearing, Zumbrota Township residents Kristi Rosenquist and Leslie Luhman on two separate days attempted to obtain a copy of the Application.

On February 9, 2017, Ms. Rosenquist attempted to get a copy of the Conditional Use Permit Application, but was denied a copy by county Planner/Zoning Administrator Michael Wozniak. On Friday, February 10, 2017, Ms. Luhman attempted to get a copy of the Conditional Use Permit application. Instead of providing the information, Mr. Wozniak asked her why she needed to see the information and initially declined. After Ms. Luhman said she would call a reporter, Mr. Wozniak provided her with only two pages of the Application file containing very little information.

Conclusion. Please provide these comments to the County Planning Commission and include these comments in the record for the February 13, 2017, public hearing.

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The record and proceedings herein before the County supports denial of the Application for the proposed Project. Please deny the Application.

Alternatively, the County must continue the public hearing until such time as the public and the County have the information that the Ordinance requires. We stand ready to do all things necessary here so that the County does the right thing.

Sincerely,

/s/ James P Peters

c: Stephen N Betcher
Michael Wozniak
Lisa M. Hanni, L.S. Director
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