

FILED
11-18-2022
Clerk of Circuit Court
Polk County, Wisconsin
2022CV000274

STATE OF WISCONSIN

CIRCUIT COURT

POLK COUNTY

MICHAEL BYL AND JOYCE BYL
2322 County Road B
Grantsburg, Wisconsin 54840,

Court File No.:
Case Type: Declaratory Judgment
Classification Code: 30701

SARA BYL
2896 230th Street
Cushing, Wisconsin 54006,

MERLE SPOELSTRA
AND JANICE SPOELSTRA
2837 230th Street
Cushing, Wisconsin 54006,

Plaintiffs,

vs.

TOWN OF LAKETOWN
Laketown Town Hall
2153 275th Avenue
Cushing, Wisconsin 54006,

Defendant.

ANSWER

Defendant Town of Laketown ("Laketown"), for its answer to Plaintiffs' Complaint, states and alleges as follows:

1. Defendant denies each and every matter, allegation and thing contained in Plaintiffs' Complaint except as hereinafter admitted, qualified or alleged.
2. Defendant denies the allegations contained in paragraph 1 of Plaintiffs' Complaint to the extent that Plaintiffs' are alleging that the Wisconsin Legislature has "greatly limited" the

authority of political subdivisions, including towns, to impose regulations on the **operations** of new or expanded livestock facilities.

3. Defendant denies the allegations contained in paragraph 2 of Plaintiffs' Complaint to the extent that Plaintiffs allege that "Wisconsin's Livestock Facility Citing Law (Wis. Stat. § 93.90) preempts local control over the operations of livestock facilities.

4. Defendant admits the allegations contained in paragraph 3 of Plaintiffs' Complaint.

5. Defendant denies the allegations contained in paragraphs 4 through 6 of Plaintiffs' Complaint.

6. Defendant lacks sufficient information to admit or deny the allegations contained in paragraphs 7 through 9 of Plaintiffs' Complaint.

7. With respect to paragraph 10 of Plaintiffs' Complaint, Defendant admits that it is responsible for the adoption of the Ordinance challenged in Plaintiff's Complaint and may be responsible for some aspects of enforcement.

8. With respect to paragraph 11 of Plaintiffs' Complaint, Defendant admits that Plaintiff seeks a declaration that certain provisions of the Ordinance are unlawful but denies the remainder of the allegations contained in paragraph 11.

9. Defendant denies the allegations contained in paragraphs 12 through 16 of Plaintiffs' Complaint.

10. Defendant admits the allegations contained in paragraphs 17 through 19 of Plaintiffs' Complaint.

11. Defendant lacks sufficient information to admit or deny the allegations contained in paragraph 20 of Plaintiffs' Complaint.

12. Defendant admits that venue in Polk County is proper.

13. Defendant admits the allegations contained in paragraph 22 of Plaintiffs' Complaint.

14. Paragraphs 23 through 31 of Plaintiffs' Complaint merely purport to quote provisions from the Ordinance and accordingly, do not require a response. The text of the Ordinance speaks for itself.

15. Defendant denies the allegations contained in paragraph 32 of Plaintiffs' Complaint.

16. Paragraph 33 of Plaintiffs' Complaint merely purports to quote a provision from the Ordinance and accordingly, does not require a response. The text of the Ordinance speaks for itself.

17. Defendant denies the allegations contained in paragraph 34 of Plaintiffs' Complaint.

18. Paragraph 35 of Plaintiffs' Complaint merely purports to quote a provision from the Ordinance and accordingly, does not require a response. The text of the Ordinance speaks for itself.

19. Defendant denies the allegations contained in paragraphs 36 through 38 of Plaintiffs' Complaint

20. Paragraph 39 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

21. Defendant denies the allegations contained in paragraphs 40 through 42 of Plaintiffs' Complaint. *See generally Adams v. State Livestock Facilities Siting Rev. Bd.*, 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404, which provides that local political subdivisions **may** regulate the **siting** of certain new or expanded livestock facilities and that in doing so they must comply with the procedural requirements found in Wis. Stat. § 93.90 when doing so. Defendant

further affirmatively alleges that the Ordinance regulates operations of livestock facilities, not the siting of those facilities, and, therefore, Wis. Stat. § 93.90 does not preempt or otherwise limit the operational provisions contained in the Ordinance.

22. Defendant admits that, pursuant to Wis. Stat. § 93.90, the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) promulgated state standards, relating solely to the siting of livestock facilities, that are codified at Wis. Admin. Code Ch. ATCP 51 (“ATCP 51”). Defendant asserts that, to the extent that any regulations contained in ATCP 51 purport to pertain to matters other than siting, those regulations are not properly authorized by Wis. Stat. § 93.90.

23. Paragraph 44 of Plaintiffs’ Complaint merely purports to quote an excerpt from *Law Enf’t Standards Bd. v. Vill. of Lyndon Station*, 101 Wis. 2d 472, 489, 305 N.W.2d 89 (1981). Defendant asserts that the text of the case speaks for itself.

24. To the extent that the allegations contained in paragraph 45 of Plaintiffs’ Complaint purport to allege that ATCP 51 may preempt a local ordinance regarding operations, as opposed to siting, those allegations are denied by Defendant.

25. Defendant denies the allegations contained in paragraphs 46 through 50 of Plaintiffs’ Complaint.

26. Paragraph 51 of Plaintiffs’ Complaint merely realleges preceding paragraphs and requires no separate response.

27. Defendant admits the allegations contained in paragraph 52 of Plaintiffs’ Complaint.

28. Defendant denies the allegations contained in paragraphs 53 through 56 of Plaintiffs’ Complaint.

29. Paragraph 57 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

30. Paragraph 58 merely purports to quote excerpts from the Ordinance and, therefore, requires no response.

31. Defendant denies the allegations contained in paragraph 59 of Plaintiffs' Complaint.

32. Paragraph 60 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

33. Paragraph 61 of Plaintiffs' Complaint merely purports to quote excerpts from the Ordinance and, therefore, requires no response.

34. Defendant denies the allegations contained in paragraph 62 of Plaintiffs' Complaint.

35. Paragraph 63 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

36. Paragraph 64 of Plaintiffs' Complaint merely purports to quote excerpts from the Ordinance and, therefore, requires no response.

37. Defendant denies the allegations contained in paragraph 65 of Plaintiffs' Complaint.

38. Paragraph 66 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

39. Defendant denies the allegations contained in paragraph 67 of Plaintiffs' Complaint.

40. Paragraph 68 of Plaintiffs' Complaint merely purports to quote an excerpt from *Adams v. State Livestock Facilities Siting Rev. Bd.*, 2010 WI App 88, ¶ 33 n.14, 327 Wis. 2d 676,

787 N.W.2d 941, *aff'd*, 2012 WI 85, and thus requires no response. To the extent that paragraph 68 is intended to allege that the Ordinance is a livestock siting permit, that allegation is denied.

41. Defendant denies the allegations contained in paragraph 69 of Plaintiffs' Complaint.

42. Paragraph 70 of Plaintiffs' Complaint merely purports to quote an excerpt from Wis. Stat. § 93.90(3)(a) and thus requires no response. To the extent that paragraph 70 is intended to allege that § 93.90 preempts operational livestock ordinances, that allegation is denied.

43. To the extent that paragraph 71 of Plaintiffs' Complaint alleges that § 93.90 or the *Adams* case preempts operational livestock ordinances, that allegation is denied.

44. Paragraphs 72 and 73 of Plaintiffs' Complaint merely purport to quote excerpts from *Adams v. State Livestock Facilities Siting Rev. Bd.*, 2010 WI App 88, ¶ 33 n.14, 327 Wis. 2d 676, 787 N.W.2d 941, *aff'd*, 2012 WI 85, and thus require no response. To the extent that paragraphs 72 and 73 are intended to allege that the Ordinance constitutes a livestock siting permit or that that § 93.90 or the *Adams* case preempts the Ordinance, those allegations are denied.

45. Paragraph 74 of Plaintiffs' Complaint merely purports to quote excerpts from the Ordinance and, therefore, requires no response.

46. Defendant admits that § 2 of the Ordinance notes that it is "based upon reasonable and scientifically defensible findings, as adopted by the Town Board, clearly showing these requirements are actually necessary to protect public health and safety" and that some language similar to that is contained in Wis. Stat. §93.90, as alleged in paragraphs 74 and 75 of Plaintiffs' Complaint. Defendant further affirmatively alleges that representatives of Laketown performed detailed research regarding the critical harms to public health and safety, the environment (air,

water, and land) and the economic harm caused by CAFOs and found overwhelming reasonable and scientifically defensible information, some of which Laketown adopted as findings of fact to support the Ordinance. While the Ordinance is not a siting statute subject to Wis. Stat. §93.90 or the rules and regulations promulgated pursuant to that statute, the reasonable and scientifically defensible findings adopted by Laketown would likely also have been sufficient to support additional regulations regarding the siting process.

47. Paragraph 76 of Plaintiffs' Complaint merely purports to quote language from Wis. Stat. §93.90 and, therefore, requires no response. To the extent that the allegations in paragraph 76 of Plaintiffs' Complaint are intended to allege that quoted language contained in Wis. Stat. §93.90 applies to an ordinance governing operations, rather than siting, and specifically to the Ordinance, those allegations are denied.

48. Defendant admits that ATPC 51 contains standards authorized under Wis. Stat. §93.90 to regulate the siting of CAFOs, as referenced in paragraph 77 of Plaintiffs' Complaint, but denies that ATPC 51 applies to an ordinance governing operations, rather than siting, and specifically to the Ordinance

49. Defendant denies the allegations contained in paragraphs 77 through 80 of Plaintiffs' Complaint, and specifically denies that the statutes, regulations, and state standards referenced in those paragraphs apply to the Ordinance.

50. Defendant admits the allegations contained in paragraph 81 of Plaintiffs' Complaint.

51. Defendant denies the allegations contained in paragraphs 82 through 84 of Plaintiffs' Complaint.

52. Paragraph 85 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

53. Paragraphs 86 and 87 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

54. Defendant denies the allegations contained in paragraphs 88 through 90 of Plaintiffs' Complaint.

55. Paragraph 85 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

56. Paragraphs 86 and 87 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

57. Defendant denies the allegations contained in paragraphs 88 through 90 of Plaintiffs' Complaint.

58. Paragraph 91 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

59. Paragraphs 92 and 93 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

60. Defendant denies the allegations contained in paragraphs 94 through 96 of Plaintiffs' Complaint.

61. Paragraph 97 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

62. Paragraphs 98 and 99 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

63. Defendant denies the allegations contained in paragraphs 100 through 102 of Plaintiffs' Complaint.

64. Paragraph 103 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

65. Paragraphs 104 and 105 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

66. Defendant denies the allegations contained in paragraphs 106 through 108 of Plaintiffs' Complaint.

67. Paragraph 109 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

68. Paragraphs 110 and 111 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

69. Defendant denies the allegations contained in paragraphs 112 through 114 of Plaintiffs' Complaint.

70. Paragraph 115 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

71. Paragraphs 116 and 117 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

72. Defendant denies the allegations contained in paragraphs 118 through 120 of Plaintiffs' Complaint.

73. Paragraph 121 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

74. Paragraphs 122 and 123 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

75. Defendant denies the allegations contained in paragraphs 124 through 126 of Plaintiffs' Complaint.

76. Paragraph 127 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

77. Paragraphs 128 and 129 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

78. Defendant denies the allegations contained in paragraphs 130 through 132 of Plaintiffs' Complaint.

79. Paragraph 133 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

80. Paragraphs 134 and 135 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

81. Defendant denies the allegations contained in paragraphs 136 through 138 of Plaintiffs' Complaint.

82. Paragraph 139 of Plaintiffs' Complaint merely realleges preceding paragraphs and requires no separate response.

83. Paragraphs 140 and 141 merely purport to quote excerpts from the Ordinance and, therefore, require no response.

84. Defendant denies the allegations contained in paragraphs 142 through 144 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

85. As a threshold matter, Plaintiffs' Complaint conflates the concept of siting (whether a CAFO can be located on a particular piece of property) with operations (which pertains to the conduct of the CAFO once it starts to function). The Town of Laketown Ordinance challenged in Plaintiff's Complaint relates solely to operations, not siting. Conversely, Wis. Stat. § 93.90 and Wis. Admin. Code Ch. ATPC 51 ("ATPC 51") relate to siting, not operations, and therefore, have no relevance to the claims asserted in Plaintiffs' Complaint.

86. Section 1 of the Ordinance, entitled “Authority” explicitly provides that the ordinance is not based upon Wis. Stat. §93.90:

This ordinance is adopted pursuant to the powers granted under Wisconsin Constitution, and Wisconsin statutes including but not limited to Section 92.15. This ordinance is further adopted pursuant to the powers granted to the Town Board under the grant of village powers pursuant to Sec. 60.22 of Wis. Statutes for the protection of public health, safety and general welfare.

87. Section 2 of the Ordinance, entitled “Purpose” explicitly provides that it does not relate to the issue of siting:

The purpose of this Ordinance is to effectively, efficiently and comprehensively regulate the operation of Large-Scale Concentrated Animal Feeding Operations of 700 animal units or greater ("CAFO") in the Town of Laketown, without respect to siting, to protect public health (including human and animal health), safety, and general welfare, to prevent pollution and the creation of private nuisances and public nuisances, and to preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the Town of Laketown and to achieve water quality standards within the Town of Laketown.

88. As of the date of the filing of this answer, no person or entity has filed an application under the Ordinance, and, consequently, no action has been taken by the Town of Laketown pursuant to the terms of the Ordinance.

89. Defendant affirmatively alleges that Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.

90. Defendant affirmatively alleges that Plaintiffs lack standing to assert the claims contained in Plaintiffs’ Complaint.

91. Defendant affirmatively alleges that the Claims asserted in Plaintiffs’ Complaint are not ripe.

92. Defendant affirmatively alleges Plaintiffs cannot show that they will sustain any damages by virtue of enforcement of the ordinance.

93. Defendant affirmatively alleges that some or all of the claims in Plaintiffs' Complaint constitute requests for advisory opinions.

94. Defendant affirmatively alleges that Plaintiffs have failed to exhaust their administrative remedies.

JURY DEMAND

95. Defendant hereby demands a trial by jury.

WHEREFORE, Defendant the Town of Laketown respectfully requests the following relief:

1. That Plaintiffs' Complaint be dismissed with prejudice;
2. That Defendant be awarded its costs and disbursements incurred herein; and
3. That the Court award Defendant such other relief as the Court deems just and equitable.

BASSFORD REMELE
A Professional Association

Date: November 18, 2022

Electronically signed by Andrew L. Marshall
Andrew L. Marshall (WI #1031028)
100 South 5th Street, Suite 1500
Minneapolis, Minnesota 55402-1254
Telephone: (612) 333-3000
Facsimile: (612) 333-8829
Email: amarshall@bassford.com

Bakke Norman, S.C.

Date: November 18, 2022

Electronically signed by Paul Mahler

Paul H. Mahler (WI #1011870)

1200 Heritage Dr,

New Richmond, Wisconsin 54017

Telephone: (715) 246-3800

Email: pMahler@bakkenorman.com