

**FINDINGS, CONCLUSIONS, AND DECISION
OF THE ZONING BOARD OF ADJUSTMENT
ST. CROIX COUNTY, WISCONSIN**

File Number:	CUP-2018-003
Applicant:	Bruce Moll
Agent:	Raymond Davy
Complete Application Received:	November 30, 2018
Hearing Notice Publication:	January 10 and 17, 2018
Hearing Date:	January 24, April 25 & August 22 2019

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard all the testimony, considered the entire record herein, and visited the site, the Board of Adjustment makes the following Findings of Fact and Conclusions of Law pertinent to the applicant's Conditional Use requests:

1. The applicant and property owner is Bruce Moll. The agent is Raymond Davy.
2. The site is located at 1768 County Road Z in part of SW ¼ SE ¼, SE ¼ SE ¼, Sec. 4 T28N R17W, Town of Pleasant Valley.
3. The site is zoned as AG-2 Agricultural District.
4. The Conditional Use request is to operate a Manure Processing Facility, as an Agricultural Related Use, pursuant to Section 17.145 C.3.g. of the St. Croix Zoning Ordinance.
5. Conditional uses shall only be granted subject to the following provisions, pursuant to Section 17.70 (7)(a):
 - a. No grant of a conditional use shall violate the spirit or general intent of this chapter. *Wis. Stat. 59.69 Purpose. It is the purpose of this section to promote the public health, safety and convenience and general welfare...To encourage uses of land and other natural resources which are in accordance with their character and adaptability...to encourage the protection of groundwater resources...to conserve soil water and forest resources.*
 - b. No conditional use shall be allowed which would be contrary to the public health, safety, or general welfare or which would be substantially adverse to property values in the neighborhood affected.
 - c. No use shall be permitted by conditional use that would constitute a nuisance by reasons of noise dust, smoke, odor or other similar factors.
 - d. The board shall also apply standards set forth in other sections of this chapter which apply to particular classes of conditional uses.
6. Granting this Conditional Use will be contrary to the public health, safety, or general welfare for the following reasons:
 - a. The WWBNR facility will import approximately 100,000 tons of turkey litter (bird droppings and bedding) into St. Croix County from surrounding counties. The imported litter will contain close to 4.2 million pounds nitrogen (N) and 3.0 million pounds phosphorus (P) annually. This will equate to 70% of the nutrients in the by-

products to be produced. These two plant essential nutrients can cause surface and groundwater quality problems (Exhibit 63).

- b. The proposed importation of turkey litter is equivalent to a 22% increase in St. Croix County animal units, 10,000 additional AU based on 2017 USDA Statistics (Exhibit 63).
 - c. St. Croix County groundwater nitrate exceeds drinking water standards in 9% of rural domestic wells. Thirteen surface water impairments in St. Croix County are linked to elevated phosphorus. (Exhibit 63)
 - d. Groundwater supplies the majority of potable water for St. Croix County. The drinking water standard for nitrate nitrogen is 10 ppm. This concentration is exceeded in 9% of County wells. There are numerous groundwater wells that already exceed state health standards within 10 miles of the proposed bio-gas facility. WWBNR facility by-products will contain six million pounds of N per year. (Exhibit 63)
 - e. The water resources needing protection in St. Croix County are significant. There are 74 miles of streams and rivers and three lakes that are considered Outstanding and Exceptional (O&E) waters. The Kinnickinnic River is one such O&E water it is a world class trout stream. The proposed WWBNR facility is proposed to be located adjacent to the Rush River which is a Class II trout stream. Modeling using STEPL (Spreadsheet Tool for Estimating Pollution Load) attributes 82% of P loading into the Rush River is from cropland runoff which is a target for WWBNR by-product application. (Exhibit 63)
 - f. Phosphorus levels in surface water are directly related to algae growth and eutrophication. Eighty percent of St. Croix County is covered by a Federal EPA approved Total Maximum Daily Load (TMDL) reduction goal for phosphorus with an established reduction goal of 36,000 pounds of phosphorus per year for the St. Croix watershed to meet the phosphorus reduction TMDL. (Exhibit 63)
 - g. Cropland acres required to spread the three by-products from WWBNR was calculated using USDA Ag Statistics five-year average (2014-2018) for St. Croix County and was based on total P uptake of corn grain – a primary target for by-product application in the WWBNR proposal. All three by-products would require 66,517 acres of corn grain to spread the by-products on a P basis. This is 82% of all corn-grain acres in the county. (Exhibit 63)
 - h. By-products will not displace existing fertilizer nutrients therefore they represent a significant increase in N and P from out of-county manure that will accumulate in St. Croix County soils and increase nutrient loading in runoff into streams and groundwater. The cumulative effect would make it unrealistic for St. Croix County to meet TMDL goals. (Exhibit 63)
 - i. Therefore, the proposed facility will negatively impact surface and groundwater quality in St. Croix County. (Exhibit 63)
7. Granting of the Conditional Use will be substantially adverse to property values in the neighborhood affected for the following reasons:

- a. According to an experienced local real estate agent the proposed site in his professional opinion would create concern for prospective home buyer that would both negatively affect a home seller's marketability and a buyer's perceived value of a home ultimately resulting in a lower sale price (Exhibit 53).
 - b. A resident who purchased their neighboring home in 2017, describing the review process they went through to purchase, stated they would not have bought the home if the bio digester had been constructed at that time (August 22, 2019 testimony).
 - c. A resident who built their home in 2018 with the intent to stay in it after retirement stated they would not have built the home if the bio digester had been constructed at that time (April 25 and August 22, 2019).
 - d. A resident was informed by his realtor that if the digester was in his back yard, it would be harder to sell his property and it would be worth less money (August 22, 2019).
 - e. Real estate professionals located in Le Seur, MN, site of a similar bio digester, indicated that the siting of a manure digester would most likely negatively affect property values.
 - f. Real estate professionals located in St. Croix County, WI, indicated that the siting of a manure digester would most likely negatively affect property values.
 - g. Based upon experiences with manure processing facilities in Weld County, CO, Le Seur, MN, and Waunakee, WI, it is likely that the surrounding properties will lose substantial value given the nature of the proposed facility and the high likelihood that it will generate significant noise, odor and traffic, all of which will reduce property values.
 - h. The Steigerwaldt appraisal report Method 1, recognized that viewshed, odor, noise, traffic and safety are factors that can impact property value; and the actions of buyers and sellers ultimately determine value. The report found that odor is a primary impact driver and that poultry (turkey) contains the highest smell factor. Therefore with turkey litter being approximately 70% of the manure sent to the digester in covered, not sealed, trucks averaging between 11 to 15 trucks per day, there is likely a negative impact range from 0 to 13 percent from odor.
 - i. Lots near an existing turkey farm in a New Richmond, WI, residential subdivision sell for \$5,000 to \$10,000 less than lots further away from the existing turkey farm.
8. Pursuant to Chapter 17.145 D., in addition to the requirements of §17.70(7), the Board of Adjustment must find that the standards in 17.145 D. 1-15 are met before approving any conditional use permit for land in the AG-2 District. The requirements of Chapter 17.145 D. 4 and 15 have not been met.
 - a. The proposed conditional use does substantially impair the future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural uses. Contrary to 17.145 D. 4., the by-products do contain concentrated levels of nitrogen and phosphorus, and if applied repeatedly at high levels could result in elevated soil levels that will not allow manure or phosphorus fertilizer application

in the future. This would negatively impact continued operation of animal agriculture. (Exhibit 63)

- b. The proposed conditional use would not realistically be able to comply with nutrient management plan requirements and therefore would not be in compliance with state and local approvals as required by 17.145 D. 15. St. Croix County Chapter 11 and Chapter 17 ordinance sections referenced in Exhibit 63 clearly indicate that nutrients produced by the proposed bio-gas facility must be applied in accordance with nutrient management plans prepared to USDA-NRCS 590 standards. Given the introduction of the manure equivalent of a 22% increase in animal units or approximately 10,000 animal units, it is unrealistic that the conditional use could comply with the nutrient management plan requirements. (Exhibit 63)

DECISION

On the basis of the above Findings of Fact, Conclusions of Law, and the record herein, the Board denied the applicant's Conditional Use request.

The following vote was taken to deny the request: Chairperson Malick, (); Vice Chairman Peterson, (); Nelson, (); Niccum, (); Miller (). All in favor, motion carries.

APPEAL RIGHTS

Any person aggrieved by this decision may file an appeal in St. Croix County circuit court within 30 days after the filing date shown below, pursuant to Sec. 59.694(10), Wisconsin Statutes. St. Croix County assumes no responsibility for action taken in reliance on this decision prior to the expiration of the appeal period. St. Croix County does not certify that the identity of all persons legally entitled to notice of the Board of Adjustment proceedings, which resulted in this decision, was provided to the County.

If an appeal is taken of this decision, it is the responsibility of the appellant to submit at his/her expense a transcript of the Board of Adjustment proceedings to the circuit court. The Community Development Department can be contacted for information on how to obtain a transcript. It is the responsibility of the Board of Adjustment to submit its record (file) of this matter to the circuit court.

ZONING BOARD OF ADJUSTMENT

Signed: _____

Clarence W. Malick, Chairperson

Date Filed: September 26, 2019