

STATE OF WISCONSIN LAND CONSERVATION COMMITTEE WINNEBAGO COUNTY

DAVID & MICHELLE STONE
8409 Meyer Lane
Larsen, WI 54947
Applicants,

and

WINNEBAGO COUNTY LAND AND WATER CONSERVATION DEPARTMENT
625 E County Road Y
Oshkosh, WI 54901
Respondent.

DECISION

On March 14, 2024, the Land Conservation Committee (hereinafter "LCC") met to consider the applicants January 30, 2024 Administrative Appeal. After considering the testimony of the Applicant David Stone, the Respondent Chad Casper, Director of the Winnebago County Land and Water Conservation Department, and Matt Olson, Chair of the Winchester Town Board, the LCC **AFFIRMS** the decision of the Winnebago County Land and Water Conservation Department to **DENY** the applicants request to waive a \$300 late fee for an after the fact permit application for a horse barn and a livestock lot at 8409 Meyer Lane in Larsen, Wisconsin.

BACKGROUND

On October 12, 2023, the Winnebago County Land and Water Conservation Department sent a letter to David and Michelle Stone notifying them they were not in compliance with Chapter 13 of the Winnebago County Code, specifically the Livestock Waste Management ordinance. The Stones had not obtained a livestock waste management permit for a livestock facility constructed on their premises. A request was made for them to reach out to the department (Exhibit 1). An appointment was scheduled but the applicants cancelled the appointment. On November 27, 2023, the Winnebago County Land and Water Conservation Department sent a follow up letter to David and Michelle Stone. The Stones were notified they were in violation of sections 13.08(1), 13.09(1), and 13.10(1) of the Winnebago County Livestock Waste Management ordinance. The Department expressed its willingness to work with the Stones to address the violation (Exhibit 2). No response was received. In January 2024, the Winnebago County Office of Corporation Counsel reached out to the Stones in yet another attempt to resolve the situation and have the Stones comply with the requirements of Chapter 13 of the Winnebago County General Code (Exhibit 3). On January 30, 2024, the Stones wrote to the LCC asking it to waive the \$300 late fee associated with the Livestock Waste Permit for their horse barn and livestock lot (Exhibit 4).

On March 14, 2024, the LCC held a hearing on the Stone's appeal. Mr. Stone testified as did Mr. Casper and Mr. Olson. Mr. Stone addressed the fact that he was contacted in October 2023, more than 8 years after he and his wife had a horse barn and a livestock lot built and installed on their property. He alleged that representatives of the Land and Water Conservation Department admitted that the requirement to obtain a livestock waste management permit was poorly publicized. Mr. Stone stated he was willing to pay the \$300 permit fee but not the additional \$300 late permit fee. Mr. Olson testified that there was no agreement between the Town of Winchester and Winnebago County to advertise the required Livestock Waste Management Permit. Mr. Casper testified that the Stones failure to obtain the required permit was discovered through aerial image photography. He noted that aside from the lack of a permit and additional details on the manure application, the Stones were in compliance with Chapter 13 of the Winnebago County General Code.

APPLICABLE LAW

Section 13.08 of the Winnebago County General Code "Activities Subject to Regulation".

(1) APPLICABILITY. Any person or their agent who acquires ownership of, leases, or constructs, reconstructs, enlarges, abandons/closes, or

substantially alters any livestock waste storage facility, livestock waste transfer system, or livestock facility, or applies livestock waste on land subject to this Ordinance, shall be subject to the provisions of the Chapter of the Code.

- (2) COMPLIANCE. A person is in compliance with this Chapter of the Code if the procedures of this Chapter have been followed, a permit from the Department has been issued prior to commencing construction activities subject to regulation under this section, and there is full compliance with the requirement of the permit.

Section 13.09 of the Winnebago County General Code "Standards and Specifications" provides in pertinent part:

- (1) LIVESTOCK FACILITIES. The standards and specifications for design, construction, operation, and maintenance of livestock facilities are those identified in the USDA-NRCS Field Office Technical Guide, and §NR812, Wis Admin Code.

Section 13.10 of the Winnebago County General Code "Application and Issuance of Permits" provides in pertinent part:

- (1) PERMIT REQUIRED. Except as hereinafter provided, no person or their agent may construct, reconstruct, enlarge, abandon/close, or substantially alter

any livestock waste storage facility, livestock waste transfer system, or livestock facility without first obtaining a **Livestock Waste Management Permit** from the Department.

Section 13.11 of the Winnebago County General Code "Permit Fee" provides in pertinent part:

(1) Fees for permits shall be as established by the Land Conservation Committee and subsequent approval by the Winnebago County Board of Supervisors and may, from time to time, be modified by resolution. Upon adoption by the County Board, the approved fees shall be maintained on a current fee schedule in the Land and Water Conservation Department Office.

(2) Fees for all after-the-fact permit application shall be doubled.

CONCLUSION

After considering the law, the Winnebago County General Code, and the arguments and testimony submitted by the parties in support of and in opposition to the Stone appeal, the LCC affirms the decision of the Winnebago County Land and Water Conservation Department to deny the Applicants request to waive the \$300 after-the-fact permit application fee.

Given under my hand this 20 day of March, 2024.

Chuck Farrey

By Chairman Chuck Farrey, Winnebago County Land Conservation Committee

625 E. COUNTY ROAD Y, SUITE 100
OSHKOSH, WI 54901-9731
WEBSITE: <https://www.co.winnebago.wi.us/lwcd>

Exhibit 1



(920) 232-1950
(920) 727-8642
FAX (920) 424-1277

Winnebago County

Land & Water Conservation Department

October 12th, 2023

David & Michelle Stone
8409 Meyer Ln
Larsen, WI 54947

Dear David & Michelle,

I am contacting you in regard to the livestock facility located on your property. The Winnebago County Livestock Waste Management Ordinance states that no person or their agent may construct, reconstruct, enlarge, or substantially alter any livestock facility without first obtaining a livestock waste management permit from the Winnebago County Land and Water Conservation Department.

As we begin to review all Winnebago County landowners for compliance with the Livestock Waste Management Ordinance (LWMO), we are reviewing all rural areas within Winnebago County. After looking at different years of aerial photography, it appears that you have constructed a livestock facility. A livestock facility is a lot or building intended for the confined feeding, breeding, raising, or holding of livestock in which waste may accumulate and vegetation is not able to be maintained within the enclosure.

I am including a fact sheet on the LWMO for you to review. **Please contact me to set up an appointment.** Please reach out to me at (920) 232-1957 to discuss any questions you may have.

Sincerely,

Emily Dufek
Watershed Specialist
(920) 232-1957
edufek@winnebagoountywi.gov

Exhibit 2

WINNEBAGO COUNTY ROAD & STREET DEPT.
ONE E. OSHKOSH, WI 54901-4731
WEBSITE: <http://www.winnebago.gov>

(920) 232-1950
(920) 727-8642
FAX (920) 426-1777



Winnebago County Land & Water Conservation Department

November 27, 2023

David & Michelle Stone
8409 Meyer Ln
Larsen, WI 54947

Dear David & Michelle,

As spoken about previously, Winnebago County Land & Water Conservation Department (LWCD) has begun to review all Winnebago County livestock owners for compliance with the Livestock Waste Management Ordinance (LWMO), we are reviewing all areas within Winnebago County. After looking at different years of aerial photography, it appears that you have created a livestock facility between the years of 2015-2017 which has not been permitted. A livestock facility is a lot or building intended for the confined feeding, breeding, raising, or holding of livestock in which waste may accumulate and vegetation is not able to be maintained within the enclosure.

Please be advised you are in violation of sections 13.08(1), 13.09 (1), and 13.10(1) of the Winnebago County Livestock Waste Management Ordinance.

In order to work with you to address this, please contact me at (920) 232-1957 to set up an appointment by December 14, 2023 and avoid any potential penalties.

Sincerely,

Emily Dufek
Watershed Specialist
(920) 232-1957
edufek@winnebago.wi.gov

CC: Chad Casper, LWCD Director

Exhibit 3

MARY ANNE MUELLER
Corporation Counsel
CATHERINE B. SCHERER
Assistant Corporation Counsel
HANNAH E. KOTTKE
Assistant Corporation Counsel



MELANIE A. BOELTER
Paralegal
ANDREW D. KASPAR
Paralegal
TORI M. KINDERMAN
Paralegal

The Wave of the Future
Winnebago County
Office of Corporation Counsel

mmueller@winnebago-county.wi.gov * mboelter@winnebago-county.wi.gov
cscherer@winnebago-county.wi.gov * akaspar@winnebago-county.wi.gov
hkottke@winnebago-county.wi.gov * tkinderman@winnebago-county.wi.gov

David & Michelle Stone
8409 Meyer Lane
Larsen WI 54947

RE: Compliance with Livestock Waste Management Ordinance (LWMO) Permitting

Dear Mr. & Mrs. Stone:

The Winnebago County Office of Corporation Counsel represents the Winnebago County Land & Water Conservation Department. We are reaching out to you in the hope that you will become compliant with the requirements of Ch 13 of the Winnebago County Livestock Waste Management Code.

It has come to our attention that you have created a livestock facility that is not permitted in accordance with the requirements of Ch 13 of the Code. Our Land & Water Conservation Department has been in contact with you on two separate occasions by letter. Once on October 12, 2023, and again on November 27, 2023. These letters are enclosed for your review.

Be advised that each day you are not in compliance constitutes a separate violation. Pursuant to 13.13(6), "Any person who violates any of the provisions of [Chapter 13], upon conviction of such violation, shall be subject to a penalty as provided in Section 25.04 of the General Code for Winnebago County." The penalty for failure to obtain a permit is \$500.00 and each day constitutes a separate offense.

Please contact the Department to resolve these daily violations. If you do not remedy this violation by paying the permit fee and being in contact with the Department, we will be forced to take further legal action.

Please be advised that the County is implementing this Livestock Waste Management Ordinance pursuant to Wis. Stat. § 92.15 and ATCP 50.56. Moreover, Winnebago County General Code Section 13.10(1) provides:

"PERMIT REQUIRED. Except as hereinafter provided, no person or their agent may construct, reconstruct, enlarge, abandon/close, or substantially alter any livestock waste storage facility, livestock waste transfer system, or livestock facility without first obtaining a Livestock Waste Management Permit from the Department."

Winnebago County General Code Section 13.14 provides:

"Any person aggrieved by a decision of the Department, concerning the enforcement of this Chapter, may file a written appeal of the decision with the Winnebago County Land Conservation Committee within 30 days of the Department's decision. A hearing upon the appeal shall be commenced within 60 days of the date of the appeal. The hearing decision may be appealed to the Circuit Court pursuant to Chapter 68, Wis Stats."

Please contact the Winnebago County's Land & Water Conservation Department upon receipt of this letter. If we do not receive a response within 30 days, legal action will be pursued.

Sincerely,


Mary Anne Mueller
Winnebago County Corporation Counsel
112 Otter Ave.
Oshkosh, WI 54903
(920) 236-4754

CC: Chad Casper, Director of Winnebago County Land and Water Conservation
Hannah Kottke, Assistant Corporation Counsel for Winnebago County

Exhibit 4

David & Michelle Stone
8409 Meyer Lane
Larsen, WI 54947
920.836.9964

January 30, 2024

Winnebago County Land & Water Committee
625 E County Rd Y, Suite 100
Oshkosh, WI 54901

Members of the Committee,

We are writing this letter to ask the Winnebago County Land & Water Committee to waive the late fee associated with the livestock waste permit for our horse barn.

In the spring of 2015, we built a small horse barn and two small horse pastures on our property. The barn is used to stable our two horses; we do not board any animals, nor do we gain any profit from the barn.

Prior to beginning construction, we obtained (to our knowledge) all required permits.

In October of 2023—more than eight years after construction was completed—we received a letter from the Land & Water Department telling us we had failed to obtain a livestock waste permit for our barn. We immediately contacted the department to find out how to obtain the permit. They informed us of the permit fee and \$300 penalty for not obtaining the permit prior to construction.


During several conversations, both Emily Dufeck and Chad Casper repeatedly admitted to us that the requirement for the permit was very poorly publicized and there are many people unaware of the required permit. The lack of public awareness was so substantial that on October 27, 2023, Jodi Bezio sent an e-mail to all town clerks asking them to help increase awareness of the permit requirement. The letter attached to her e-mail, emphasized that the department does not want to charge the late fee. Moreover, Chad told us the wide-spread lack of knowledge and failure to obtain permits is the reason the department had begun a review of aerial imagery in effort to identify properties, dating back to 2015, without permit.

In our conversations with Chad Casper, he told us the building inspector should have told us about the required livestock waste permit when we obtained our building permit; the inspector did not. It is significant that although the Land & Water department expects the inspector to tell people of the requirement, the inspector is contracted by the town of Winchester and there is no agreement or mandate between the county and the inspector for him to do so. This creates a severe disconnect in the process to make the livestock permit requirement known.

Chad Casper admitted that our barn and pastures are constructed in full compliance with the requirements for livestock waste and there are no concerns with the construction. Additionally, we have a long-standing agreement with Olson Farms of Larsen to dispose of our livestock waste on their farm fields.

We have always been --and remain-- fully willing to pay for the required permit for our facility. Based on the Department's admission that the requirement for the permit was very poorly communicated, the fact we are fully in compliance with the intent of the livestock waste management guidelines, and the amount of time since construction of our barn, we feel it is unfair for us to be assessed the additional late fee.

We respectfully request the Committee waive the late fee for our permit, with the full understanding we will immediately pay the normal fee and obtain the permit.



David Stone



Michelle Stone