

## editor's notes

Chris Rogers, editor, Winona Post

## How opponents helped the Daley Farm's case

"Quasi-judicial" is a word only a lawyer could love, but its meaning is simple enough: like a judge. After years of covering local government, I had observed enough training sessions for zoning officials and seen enough government lawyers cut off officials in mid-sentence to know that when they vote on a specific individual's permit application, zoning officials are supposed to act like a judge and not make a decision or blurt out their opinion until they have heard all of the evidence. The idea is, the government owes citizens the chance to apply for a permit from decision-makers who haven't already made up their minds. When, in late 2018, several Winona County Board of Adjustment and Planning Commission members strongly opposed the Daley Farm expansion in public comments to the Minnesota Pollution Control Agency, I knew this could be problematic, should they have to vote on permit requests from the farm.

"Variances" — another lawyerly term — are supposed to be modest. They are a slight bending of zoning rules to allow some flexibility in a unique situation, for example, letting someone with an unusually shaped property build a garage a few feet closer to their neighbors than normally allowed. One of the criteria for granting a variance asks whether the request is in keeping with the spirit and purpose of a given rule, even if it doesn't follow the letter of the rule to a T.

In the Daley Farm's case, the rule itself — the animal unit cap — is controversial, with many attempts to repeal it over the years being narrowly defeated and ongoing debate over whether large farms are inherently bad. Still, it is the law of the land. And as other writers point out on this page, the Daley Farm wants a variance to nearly quadruple the normal limit. That's not a modest bend-

ing of the rules, and the Winona County Board of Adjustment (BOA) would be well within its rights to deny the request.

However, in their zeal to ensure the Daley Farm expansion was stopped, County Board members Marie Kovacs, Chris Meyer, and Greg Olson, Land Stewardship Project (LSP) staff, and some of the former BOA members shot themselves in the foot in 2019. In addition to the public opposition the Post reported on, the Daley Farm's lawsuit revealed that Kovacs, Meyer, and Olson privately coordinated with LSP to stack the BOA with Daley Farm opponents, including two BOA members who seemed to be involved in planning LSP's campaign against the project. This all came shortly before the BOA members were supposed to act like judges and give the Daley Farm a fair hearing. That's a big quasi-judicial no-no, and it gave the Daleys a great legal case against the county and a better shot at winning a variance than they otherwise would have had. The responsibility, I think, falls partly on the County Attorney's Office for thinking BOA members "I swear to be impartial even though I previously decried this proposal" pledges would be legally sufficient, as well as the County Board and BOA members themselves for neglecting to mention the full extent of their activity opposing the proposal.

Now legal concerns weigh on Thursday's meeting like a ton of bricks, with both sides knowing that Court of Appeals judges are likely to look at this decision in the near future. The pressure is on county officials to make sure the decision passes legal muster this time around and they don't hand the Daley Farm more ammunition for a court victory.



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## letters

## A tribute to MDH's Jan Malcolm

From: Jean M. Gunderson

As a retired Winona County public health nurse working in the areas of adult health services and maternal child health services, as well as supporting primary care in the development of community health worker infrastructure and a Health Care Home certification, Commissioner Jan Malcolm's work cannot be underestimated.

As Minnesota's lead public health agency, communities receive funding, resources and programming promoting health, wellness and the care of chronic conditions for all persons. The impacts of the social determinants of health have been integrated in all areas of service delivery and policy. Equitable opportunities in health, inclusion and care remain at the forefront in the alignment of teams, resources and systems.

Care of the environment, infection control, emergency preparedness and maternal child health outcomes are just some of the areas impacted by Jan Malcolm since 2018. It has been an honor to work with many of her teams, as well as receive ongoing training for caring for multicultural communities and practice.

## Daley variance would obliterate animal unit cap

Bonnie Wochinski  
Winona

Daley Farm was grandfathered in at approximately 500 animal units over the 1,500 herd limit when the ordinance began in the late 1990s. With this first exception to the rule, their herd of 2,000 gave them a headstart over all future area farmers. Figuratively speaking, they were legally given an inch, but now they want to take a mile.

The huge increase in herd size which they are seeking would, in effect, totally obliterate or overturn the ordinance. The overwhelming increase they have requested would place their herd size four times the legal limit for other farmers.

The ordinance is a proactive measure aimed in part at protecting water quality. There is growing concern about the water at this time particularly because a large percentage of wells tested are already over the legal limit for nitrate from manure.

Let's cut the manure, Mr. Daley.

## An end run around the animal unit cap

From: Tessa Schweitzer  
St. Charles

We're lucky in Minnesota to have been granted by the state the right to do our own planning and zoning at the local level. There are forces on the right, left, and middle who would be happy to take that from us whether it be corporate agriculture or Rochester/DMC and their potential desire to turn surrounding counties into massive housing developments. If we have local ordinances, it is best to enforce them now — use it or lose it.

Daley Farm and their Big Ag lawyer are back before the Winona County Board of Adjustment (BOA) on December 2, 2021. Another blatant attempt to blow through the county's feedlot animal unit cap by abusing the variance process. Their lawyer has successfully quashed any further public comment, but the record hasn't changed. The request does not meet all criteria for a variance, and litigation challenging the animal unit cap was always the end game.

The BOA's responsibility is to follow the intent of county ordinances, as well as the goals outlined in the Winona County Comprehensive Plan, and follow the eight criteria for granting a variance. Despite the bias smokescreen kicked up by Daleys, their corporate ag lawyer, and two members of the County Board about the first BOA hearing, the decision was the correct one. There were no unique specific circumstances not created by the Daleys necessitating request for a variance. Economics alone — their stated desire to employ more family members — is the reason for their request to exceed the Winona County animal unit cap of 1,500.

In Southeast Minnesota we're losing small-town elevators, milk processing, and feed stores. Well, winter isn't safe to drink. These are all consequences of the consolidation encouraged and abetted by groups promoting "go big or go home." The Daley expansion is simply an avenue for them to intimidate local governments into giving them what they want. Cold comfort that in 10, 20 years, the big fish in the small pond of Winona County may rue the day they battered local control or refused to defend it. Bigger sharks are always circling.

## letters

## Protect democracy, support community

From: Tim Ahrens and Sam Streukens

As Winona County members of the Land Stewardship Project, it is a critical moment for our organization to make a statement on Daley Farm's evasion of the law and assert the interests of the community. Not only does Daley Farm want to shatter Winona County's 1,500 animal unit cap (proposing to expand their dairy to 5,900 animal units) that gravely endangers our drinking water, but they are represented by a well-financed legal team that challenges this community's values.

On Thursday, December 2, Winona County taxpayers will, once again, host Daley Farm before the Board of Adjustment, in what would typically be a hearing. However, as a result of pressure from their attorneys, representatives of Daley Farm will be allowed to speak while the public will go unheard. We view this as not only an attack on our rights, but also as a

play to create imbalance in the proceedings that day. Daley's representation argues that a record has already been made, and in such creates an opportunity where they, and only they, may add to that record. This flies in the face of democracy.

In 2019 Daley Farm's petition to exceed the county animal unit cap ordinance clearly failed to meet the legal criteria necessary to be granted a variance. This likely hasn't changed. While they have a right to appeal a Board of Adjustment ruling, we will not allow them to change the outcome of their initial application by putting their interests over that of the people's. On Sunday, nearly 60 Winona County residents showed up to protect the water, embody democratic participation, and support a local food economy that benefits the farmer, the land, and the community. Nearly 200 signatories from St. Charles to Winona oppose the Daley's expansion.

Now, the Daley's want Board of Adjustment (BOA) chairman Robert Redig to recuse himself from the December 2 hearing, and to step down from the board, because he testified against their proposal months

before he was appointed to the Board of Adjustment. Daley's call for Redig to step down, combined with their unjust but successful call for no public comment, represents the type of total control they're attempting to take over Winona County governance. Make no mistake, Daley's don't seek fairness. They seek advantage. They've made no call for BOA Member Jordan Potter's recusal, even though he spoke against the very animal unit ordinance that Daley Farm seeks to shatter with their expansion.

There may be some that support the Daleys; however, we assert that there is wide opposition to this factory farm and its implications for local water quality, the survival of small and mid-size farms, and our rural communities.

Everyone must be heard by the public officials that represent us. We know that rural folks are interested in stewardship and that factory farms threaten our water and people. We must continue to protect our community by supporting a just food and farming system in Winona County and opposing this expansion.

## Electric vehicles are like sausage

From: Gene Thiele  
Winona

A battery powered vehicle (EV) cruising down the road is quiet and produces no greenhouse gases ... while it's cruising down the road. As consumers we don't always understand or investigate the products and services we use. So before we mandate the production and use of EVs, let's take a look behind the curtain.

In the U.S. about 60 percent of our electricity comes from burning fossil fuels (gas, coal, petroleum). The byproducts of this process include carbon dioxide, carbon monoxide, sulphur dioxide, and heavy metals such as mercury. Only about 20 percent of our electricity comes from nuclear plants.

Using these processes we generate approximately the same amount of electricity as we use. Sometimes we export and import electricity to and from Canada and

Mexico (they share our grid). By adding 500,000 charging stations and plugging in 1 million EVs at home (currently, projected 1.4 million by 2025) we could be faced with two scenarios.

We could buy electricity from Canada and Mexico. Or to avoid energy dependence on our neighbors, we build more coal or nuclear electric power stations. The U.S. currently has the world's largest coal reserves. Maybe Winona could get its own Prairie Island Nuclear Generating Plant.

Added electrical usage may not be the most egregious impact of transitioning to EVs. EV batteries are composed of plastic (petroleum based PVC/PET) and metals such as steel, copper, and aluminum. These materials are plentiful. But some of the rarer metals that make up an EV battery cell (like lithium and cobalt) are not as easy to source.

At a rare earth mine in Jiangxi, China, workers use ammonium sulfate poured into large holes to dissolve the clay. The residue is extracted and run through multiple acid baths to dissolve unwanted compounds. The remaining material is baked

in a kiln revealing the rare metals required in EV batteries. Just 0.2 percent of the resulting material is the rare metal; the other 99.8 percent is waste. This waste soil (now contaminated with toxic material) is dumped back into the original holes. And many rare earth mining processes release plumes of sulphur dioxide into the atmosphere.

In addition 50-60 percent of cobalt used in EV batteries comes from the Congo, which has a poor human rights record with 40,000 children working in cobalt mines for \$1-2 per day. An EV can have hundreds or even thousands of battery cells inside one or more battery packs. And EV batteries only last between 4 and 8 years.

Anything increasing our consumption of electricity has an environmental, financial and ecological impact. So let's "pump the brakes" a little on the EV mandates. I have been to a hog butchering. I have seen how sausage is made. I don't eat sausage anymore.

Note: Sources include U.S. Environmental Protection Agency and U.S. Energy Information Administration.

## Daley variance: Clean water should come first

From: Karen and Richard Ahrens  
Lewiston

My husband Richard and I are retired farmers living about a mile east of the Daley factory farm. We have heightened concern as the Daleys will once again come before the Board of Adjustment seeking a variance to the ordinance that restricts the number of animal units to 1,500 animals per feedlot. They apparently deem themselves worthy to be an exception to the

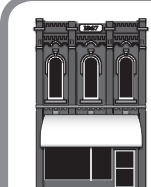
rule, proposing a massive expansion while having a history of non-compliance to existing regulations.

We are frustrated that the factory farm will consume the lion's share of our natural resources, particularly clean water and air. Our farm well tested 13.33 parts per million when screened for nitrate levels in 2019. (Water is only considered safe for drinking if it is under 10 ppm.) We haven't raised cattle here for 30 years, and our land is certified organic. The city of Lewiston's municipal water supply has often exceeded safe drinking water standards for nitrates and radium as established by the MPCA. The odor created by the existing number of Daley's animal's manure can leave you gasping and hurrying indoors on the most

beautiful summer's evening.

The Daley's weren't happy with the composite of the former BOA, the opposition, or their failure to meet the criteria for a variance. That was an outcome tough for them to swallow, so they will try again.

Has anything changed? The board has several new people, and the opposition will not be heard at the December 2 hearing, but we believe the Daleys, even with their "Fancy Dan" legal assistance, will again fail the litmus test. Their only reason for seeking a variance is to amass wealth and with no regard for others.



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