

ENVIRONMENT AND LAND USE COMMITTEE
Department of Land Management

REGULAR MEETING MINUTES
April 13th, 2011 9:00 AM
COUNTY BOARD ROOM

Chairman Brandt called the meeting to order at 9:02 AM.

Committee members present: George Brandt, Hensel Vold, Tom Bice, Michael E. Nelson, Mark A. Smick, Dave Quarne, Roland Thompson and Jeff Dregney.

Staff/Advisors present: Kevin Lien and Virginette Gamroth, Kimarie Estenson, Vickie Stalheim and Emery Palmer were present for part of the meeting. DeWayne Snobl- USDA-APHIS, Kris Johansen, DNR Wildlife Biologist and Corporation Counsel – Rian Radke were present for part of the meeting

Others present – Dave Suchla, David Nelson and Ernest Vold.

Chairman Brandt stated that the Open Meeting Law had been complied with through notifications and posting.

Approval of Agenda – Vold made a motion to approve the agenda as presented, Nelson seconded, motion carried unopposed.

Approval of Minutes – The Committee was complimentary of the reporting of the meeting minutes. Bice made a motion to approve the March 9th, 2011 meeting minutes as presented, Nelson seconded, motion carried unopposed.

Wildlife Damage – DeWayne Snobl – Reconsideration of Harvest Exemption Permit for David Nelson. Brandt reminded the Committee that at last month’s meeting, the Committee had rejected a payment request for a Wildlife Damage Claim for David Nelson. D. Nelson is here today to appeal that decision. Snobl provided a handout to each Committee member. Snobl stated he would review what was discussed at the March meeting, what Snobl’s recommendation was and how we got to this point. Snobl explained there is basic administrative code which must be met that requires landowners to fulfill certain quotas when issued a shooting permit. In D. Nelson’s case it is a WM-40 permit and 10 tags are issued in which 80% must be harvested by September 15th. D. Nelson’s actual deer harvest was three. Snobl’s recommendation to the Committee, at the time, was based upon the NR code as Snobl had interpreted it. (a copy of this code was given to each Committee member as well as a copy of Nelson’s logbook page). Snobl’s interpretation of the code was that, first, a completed logbook must be present before the hunter letters as well as other information could be utilized to support an exemption. After last month’s E & LU Committee meeting, Snobl attended the statewide Damage Program meeting and Brad Koele - DNR Madison was present and Snobl asked him specifically to interpret the code and if in fact the completion of the other requirements were dependent upon the logbook being completed. Koele indicated that is not the case, so to that extent, Snobl felt the issue needed to be revisited because of the fact that the DNR’s logbook is not an absolute requirement and there are other things that can be provided that would suffice. Also, in 2005, that Committee stated that a landowner has to have a completed logbook before an exemption would be considered, so this Committee will need to keep that in mind. Lien verified that even though Snobl was told that the logbook wasn’t necessarily the item to put emphasis on, the Committee in 2005 had decided to do that, does the present Committee have the ability to be more restrictive in this case? Snobl responded “yes”. (Jackson County did provide logbooks to all participants and required they be maintained so if someone appealed they had something to go on.) Snobl added, that with regard to the DNR regulations, Snobl still reads the DNR regulations differently, but according to DNR, D. Nelson’s hunter letters should be given more consideration and past history can be brought in and considered. Lien didn’t recall how many

of the present Committee members were on the E & LU Committee when the denial of the last Harvest Exemption Permit took place, and Lien believed that was also appealed, but it was based on the log book and the logbook had not been kept up nor was it accurate. Lien felt that was why the past Committee put the emphasis on the log book. Brandt verified that what Snobl was stating was that with the clarification of how DNR interprets the rules, the logbook is to be considered along with the supporting documents therefore the present Committee can reconsider D. Nelson's request for an Harvest Exemption Permit. Snobl responded that was correct as that was the interpretation that Snobl had received from Brad Koele-DNR Madison that all these other items can be considered and give sufficient weight. Kris Johansen, DNR Wildlife Biologist, stationed in Alma, introduced himself. Johansen stated he and Snobl had both had the same interpretation of the rules. Johansen had also spoken with Brad Koele-DNR Madison-Statewide Coordinator for the Damage Program and Koele again stated that the logbook doesn't have to be considered as first priority and then the rest of the evidence follows, so it depends upon what stand the County takes. Johansen stated some counties are very strict on logbooks, nothing comes after, and others take into consideration other evidence including past harvest, etc. Johansen stated he had with him harvest records for D. Nelson for every year back to 2006 and D. Nelson has met the objectives and generally exceeding them every year. Brandt clarified that the Committee can have autonomy therefore having stricter standards. Snobl added counties can have certain restrictions as long as DNR code is not violated. D. Nelson stated he had not asked all hunters that hunted with crop damage tags to fill out the log book. D. Nelson added in the past year, as far as the number of deer available to shoot, it was like "shooting fish in a barrel". D. Nelson continued that the year before last, he was given ten tags and then another ten and a total of 18 deer were harvested as it had been no problem to shoot deer. Last year, D. Nelson stated the deer just didn't come out for harvesting and he's not sure why, but there was still crop damage. There were more hunters last year trying to hunt deer than there were this year. This year, D. Nelson was issued ten tags and all ten are filled already and there are deer running all over. D. Nelson stated other years the logbooks were filled out and weren't even asked for because all the other objectives had been met. D. Nelson admitted that because of that fact, he'll admit he was lax in filling out the log book last year. Brandt inquired if Snobl had certified the crop damage? Snobl responded he had. Brandt thanked everyone for all their information. Brandt verified the loss amount as \$3,841.61. Smick commented that he recently visited with a prominent local deer processor and learned that one of the reasons this person is no longer processing deer is because once the deer is processed, the distribution to the food pantries is poor and storage of the meat turns out to be very lengthy, so those two reasons are curtailing and eliminating a lot of the processors. Bice commented that he has made reference a couple of times that he didn't agree with this program and Bice has, since then, found out that this program is pretty much funded by hunter's licensing, it doesn't come from the taxpayers, so Bice was apologizing as he has done research and realized this was coming from the hunting program which Bice felt was fine. Bice apologized for his comments in the past that he didn't agree with the program, as it is funded in a different way than what Bice thought. Bice encouraged everyone to follow the rules in the future. D. Nelson commented that his log book, this year, is very complete. Smick made a motion to rescind the Committee's decision last month regarding the decision to deny D. Nelson's payment of his Deer Damage claim and authorize the payment, M. Nelson seconded, motion carried unopposed. Johansen reminded the Committee to watch the newspaper for news as to what is going to happen with next years deer season as it will be a different year with different administration. The new DNR secretary will have different ideas on deer management than what the past secretary had. Johansen felt it will probably be a less restrictive type season. The deer population will continue to rise unless there is a substantial harvest on antlerless deer.

Appearance-Dave Hesch-Clarification of Conditional Use Permit conditions – Lien stated that Hesch had called Kimarie Estenson and stated he wanted to be stricken from the agenda.

TRM/LWRM Cost Share Payments/Requests – No payments were presented.

Discussion on Additions/Changes to Standard Non-metallic Mining Conditions - Lien stated, currently, the County has Standard Conditions for Non-Metallic mining and noise levels and seismic activity are addressed, but there is no clear guidance for the Committee on those issues. In researching these issues,

there is Chapter Com 7, - Explosives and Fireworks, and Chapter Com 8, -Mines, Pits and Quarries. Lien added all blasters and miners are bound to these regulations and they have to meet those requirements. Lien and Estenson added to the applications, under “Noise levels” , “in compliance with Chapter Com 7 – Explosives and Fireworks, and Chapter Com 8 – Mines, Pits, Quarries, Wisconsin Department of Commerce” and the same language was added under “Seismic activity”. This information is available for contractors. Estenson designed a handout entitled “Trempealeau County Department of Land Management – Non-metallic Mining Blasting Form” and on the back it paraphrases the requirements that the contractor will have to go through, the type of calibration machine, where it needs to be located and the levels of what the readings need to meet. Contractors will be able to fill this out. Lien had consulted with Rian Radke, Corporation Counsel on this form. Lien stated these regulations in place would, in fact, replace the requirement of the 4000 linear feet, and the well and foundation inspection requirement. There would still be notification requirements, etc. that the contractor will need to do. Lien, after discussing it with Estenson, suggested “within 24 hours” for a timeframe in which the contractor would need to provide the DLM with their readings. Corporation Counsel suggested that since the two conditions were placed on two other mines that those applicants would need to come back to the Committee to get those conditions changed to reflect the changes currently being proposed. Lien added the Committee would only be clarifying the Standard Non-metallic Mining Conditions for everyone involved and not changing the Ordinance. This change would also provide DLM with documentation on blasting that takes place. Lien had mentioned it to one of the affected applicants and the applicant felt the changes would not matter as they would still do the foundation and well inspections. Discussion followed. Thompson made a motion to approve the changes to the Standard Non-metallic Mining Conditions and the Blasting Form, Bice seconded, motion carried with no opposition. Brandt clarified that, if the two applicants that are affected by this change want to come back to the Committee to change their conditions, that would require a new public hearing. Lien responded yes.

Discussion on mining wash plants and resin coating plants in Trempealeau County – Brandt stated this discussion has been going on for several months now and everyone is aware that there is a stratum of sedimentary rock in this County that is incredibly valuable to the oil and natural gas industry. Demand is high and because most of the natural gas is only accessible through the fracture process, the sand that is in Trempealeau County is in demand and contractors will do whatever it takes to get it out of the ground. Brandt stated Lien has assured him there are plenty of other supporting industries that are also willing to “set up shop” in the County. Brandt added when “the door was opened up” last June by agreeing to industrial mining in this County, some felt it was a good idea, and that decision cannot be taken back, but it means there is potential for the County there also. The discussion today will center on why can’t the County take advantage of some of these incredibly valuable resources and could the landowners benefit more from the extraction of the resources. Brandt and Lien have been contemplating this idea and have discussed it with Corporation Counsel. Lien stated about two years ago, when Winn Bay proposed their intentions to the County, the Committee discussed how this is a natural resource that is leaving the County forever and the first thought was how could this be made a benefit to all taxpayers. Lien had worked with then Corporation Counsel, LaVerne Michalak and Bice has worked with legislators, Vinehout and Danou, in trying to find a way to tax this material. Lien added the E & LU Committee was looking at how a depleting resource could be a benefit to the entire county, and that is in fact, how this whole discussion started. The end result was that it really can’t be done at this time. In exploring other options, Lien thought, that perhaps, with the hot mix plant being somewhat in the private sector, (anyone in this room could buy hot mix from the Highway Dept.) and there is the Health Care Center (houses people from everywhere, generates income and is in the private sector) so what if Trempealeau County were to find a way to build a wash plant and allow our landowners to sell the sand to the County. The County could, in turn, use the by-product of it for the hot mix process and also to mix with salt sand. Lien stated after he and Corporation Counsel had met, he contacted Jim Johnson-Highway Dept. Commissioner. Johnson told Lien that the Highway Dept. currently buys the majority of their sand from Kraemer Company, they use about 60,000 tons a year at an average of \$3.00 per ton, so they are paying \$180,000/year for sand to mix with salt for road sand and for the hot mix process. David Suchla and Mike Nelsen stopped by Lien’s office one day and discussed the issue and potential locations. The Highway Dept. was discussed as a possible location because the hot mix plant is located there and there is a

small sandpit in the back (Waldera property) and there is railroad access however there might not be enough land there but there is the potential since the County owns a lot of cropland in that area that perhaps a land swap or acquisition could take place. Lien stated the purpose for this discussion is that this issue could have a huge impact on all the residents of the County and there will be more mining activity upcoming. Currently there is no way in our County to get this material out of the County and process it without trucking it. The site in Town of Preston was chosen because of rail access and there will be minimal trucking there, however when that site is completed there is going to be a lot of trucking because there is no way a \$20 million operation is going to move back to Canada when that particular site runs out unless the entire world changes and oil/natural gas is not needed and the sand is not a wanted commodity. Lien felt, right now, there is going to be a lot of trucking and there will be a lot of road degradation and the County Highway budget has already been cut \$700,000. Lien expressed his opinion that this could be a revenue resource that could rebuild the roads and just that alone could be a huge impact to the entire county. Lien stated Corporation Counsel is here to give a legal opinion as we need to start somewhere, it definitely cash flows and there is money to be made. Lien, in talking with contractors, has found that the difference between this County and other counties sand is that this is very good material and it is very close to the surface so cost of extraction is cheap. This material is in the Dakota's but it is very deep and it is not cost effective to extract it. Brandt welcomed Rian Radke, Corporation Counsel and mentioned that Brandt would also like to discuss the option of designating "mining districts" in the County. Lien commented that a very lengthy land use planning process was done in the County which took ten years. The only town that adopted a mining district is the Town of Caledonia. The Town of Caledonia has a confined mining district so if mining is going to occur it needs to be in that district. In viewing the County's Standard Conditions, Lien stated one of them is aesthetics of the County, and Lien's opinion was that at any cost or benefit to the County does it need to be leveled. Lien continued there are lots of farm fields, which contain silica sand that serve no aesthetic purpose; they're an encumbrance for farming so to lower those fields through mining activity would be a benefit to the entire County. If mining districts were developed in each one of our towns, where the mining activity was controlled and it was not a detriment to the County, it could be done in a manner that benefited landowners, wouldn't take away from rural characteristics/aesthetics and still be a benefit. Lien felt mining is not going to go away, but we need to get a better handle on it and keep public safety as a number one concern. Bice commented the state legislature gave County's the ability to have county sales tax. Bice would like to bend that enough to allow Trempealeau County to create a sand tax. Corporation Counsel Radke stated the type of tax for metallic mining is an occupational tax. There is a formula in the State Statues which allows for a certain percentage of the net profit to come back to the county and the state. There is no such same, similar occupational tax for non-metallic mining for sand. Radke has been in contact with the director of the Division of Property Tax in the state and they would not see anything that could be done and amending our sales tax for a sand tax is not going to work. The only tool that would be available would be to use property taxes because it is a manufacturing site, the state is actually going to assess the property and establish the value so there will be some extra money coming to the county through property taxes. Baron and Chippewa County as well as other counties around are asking these same exact questions. Radke has been talking to John Reinman at the Wisconsin Counties Association (WCA) regarding what sort of lobbying efforts are available for counties. The same questions regarding infrastructure, gaining revenue to help with roads, police and fire, etc. are being asked statewide. WCA is considering it- it is on their platform to see if there is a way there could be some type of occupational tax for this sand. Radke added this is in the beginning stages and with the current economic climate he wasn't sure whether a tax would be favored. Radke mentioned there is training for the County Board this coming Tuesday on Open Meeting Law, but John Reinman – Counties Association and the Association's General Counsel will be present to give that presentation. Radke hoped to have those gentlemen comment on the taxing idea but also the ability for the County to own or operate a sand mine as well. Radke is "planting the seeds" at the next or higher level on these issues. Radke stated the specific issue is can the County operate a sand mine –should the county own and operate a wash plant. Radke commented there is authority for the County to do things for the health and welfare of the County, but it is limited to things that have a public purpose. The County can't just engage in business because it is profitable or because money will be added to the General Fund; that is not considered a public purpose. In Radke's discussion with Lien, he has stated there needs to be a public purpose and what

is the public purpose behind having a wash plant. It was Radke's opinion that we are getting to far from the actual purpose that there is a need for the people of this County to have this wash plant when there is talk of using the byproduct of it – rather than it actually being the product and the byproduct being the sand that is sold elsewhere. Radke stated the reality is; are we really creating a byproduct and calling it the product. Radke stated it needs to be a legitimate public purpose such as we need to have a sand mine because we have a need for sand. Lien had mentioned the Health Care Center, Radke stated there is a public purpose there as the residents of the County need a mental health facility. Radke is still in the process of researching where the line is as to what is public purpose and what isn't so that he can advise this Committee at some point how close we're getting to it with any sort of proposal for a plant. Radke will continue to research this issue. David Suchla inquired what the price of milk was. Quarne responded \$17.90. Suchla asked Quarne to imagine that he got 60 cents for milk because the big corporations were controlling the cost. The county would step in immediately and build a creamery to get the price up to \$17.00 and that's in the public interest because farmers are part of the economy here in the County. Suchla stated sand is selling for \$1.00 /ton and Reglin & Hesch are not making the money on it, they are only being contracted by a guy from Texas. Suchla was told Reglin & Hesch don't sell sand to him, they are mining it for him (those were his words). Billions of dollars are leaving this County and Winn Bay is the same thing. Suchla contended that the economic structure in this County, where we sit here as "poor farmers", and the rest of these guys get rich, that is in the public good that we are looking out for the public good. Radke questioned if it was for public good or public purpose. Suchla stated public good is public purpose. Radke replied not always and he felt there was a difference between public purpose and public good because Radke felt you can stretch public good further than you can stretch public purpose. Thompson commented the Highway Department cannot do any private work, the townships are not supposed to do any private work and there are laws that say it cannot be done. Thompson added if townships could do private work, the Town of Gale would have a lot of income. The towns have the equipment but they won't let you use it and the County Highway Dept. is the same way. Thompson stated private business would jump on this big time. Radke stated that is another potential issue as it puts the County in a bad spot of not only being a competitor, but also the party who is issuing the permits and controlling the conditions and making the rules for competitors. There is a lot of potential conflict there. Radke felt the rules are in place because if you were helping someone with their own personal property and not a public road way, those are private issues and not public. David Suchla inquired if there are private nursing homes then why is the County in the nursing home business. Radke responded all the nursing homes in the County are public. Nelson stated there are private nursing homes out there so who made the rules that the towns/counties cannot provide services for private individuals. Radke replied the State of Wisconsin has made those rules as they regulate nursing home. Radke reiterated that the County is making the rules but also competing against the people that the County is making the rules for and that is what is unique about this situation. In the case of a nursing home, the State makes the rules. Smick stated regarding the whole definition of public purpose/public good he couldn't see any better public good than lowering or keeping the same the tax rate for the taxpayers of Trempealeau County. Smick added looking out for our taxpayers is public good and public purpose as well. Brandt added that it was the suggestion of the Wisconsin Counties Association that work on legislation be done to allow a tax to be levied on non-metallic mining materials. Bice commented that with all the conflicts Radke had mentioned, Bice didn't see any reason in the world that the County couldn't lease out the facility for a percent of the profit or a certain amount each year. Bice felt the County should be able to lease out land. Radke responded the County certainly can lease out land, the question is – who is going to do it. There have been some proposals of investors in the County but Radke felt there were too many conflicts involved with the County putting money into a wash plant for someone else's use while leasing the property. The County would need to have a third party, independent of the County say "I like this lot of land and I would like to lease it for the purposes of operating a plant". Radke stated if that happens certainly there is nothing wrong with that, but the County will need to find someone who is going to want to do that. Radke questioned why would they want to come to the County to this particular site when they can go to any farmer to lease land. David Suchla commented that happens all the time- ORC in Arcadia, the County has a building which ORC occupies. Suchla added the County fixes roads like the County J project for businesses. Radke's opinion was that ORC was funded by State grant money and County J was funded by the State. Suchla responded it

is still government money and being controlled by the County. Suchla proposed to Radke, what if he put in a sand washing plant behind the hot mix plant and held 80% of the company and the County held 20% and in lieu of getting the 20% on a lease the County requirement would be to fix the infrastructure. Radke responded he would want to seriously look at and review any proposal before he would say it is ok. Suchla responded in the business world if you're going to "gobblygook" things like that they're not going to play with you. Thompson commented we would still be "monkeying" with the private sector. Lien questioned Radke, in talking about public purpose and public good, the general public in Trempealeau County is sitting on a resource but they don't have an avenue to develop it. If the County built a facility that would allow the public the avenue to utilize that resource-isn't that public purpose or good. Radke's opinion was that the County would be stretching public purpose. Radke added he is still in the process of researching and his goal is to find every single example where the Supreme Court has defined public purpose and to be able to identify where that line is and how close we can get up to it because any time one would get up to the other side of the line that is when the County would be opened up to liability where taxpayers can raise issues with spending taxpayer money for something that isn't a public purpose or a public purpose that is allowed under the law. The only thing that really matters; is we can do something for the health, safety and welfare of the County, but it has to have a public purpose and in saying public purpose, we all have different definitions of public purpose but what matters is what the Supreme Court has said public purpose means. Radke would like to finish his research to further define where that line is so that he could advise the Committee as to what they can and cannot do. Radke apologized for not having that done, but he is in the process. Nelson requested this item be put back on the agenda continuously until advised otherwise.

Private Water Systems Ordinance and Request for Action from District Attorney – Palmer informed the Committee that the County Private Water Systems Ordinance talks about referring things to the District Attorney for enforcement and not Corporation Counsel. Palmer stated this changes DLM directive and how DLM normally deals with things. According to the Ordinance, DLM can write administrative orders, directives to come into compliance with the orders, but at the point citations are to be issued, it needs to be forwarded on to the District Attorney's office. Palmer has a case that began, last April, in the floodway in Trempealeau where a well was constructed without any permits. Palmer stated in the floodway, no new wells are allowed. The well that was constructed was a sand point well and even in flood fringes, sand point wells are prohibited. Palmer and DNR staff have been onsite with this individual on numerous occasions and have had much correspondence with this individual but have not gotten anywhere. The individual has verbally stated that he would "see us in court". Palmer is trying to move forward and has referred this on to the District Attorney's office a number of times. The first contact with the DA's office was in the beginning of September 2010 and at that point in time Palmer was told to bring in the files. Palmer took the files up to the DA's office and then Palmer was told that he needed to provide the DA's office with a written letter of everything that needs to be done. Palmer provided the written letter and Palmer didn't hear anything. Palmer kept calling and leaving messages asking the status of this file and received no answer. On November 10th, Palmer sent another letter and got no response. On January 5th, Palmer sent another letter at which point the DA came and met with Palmer and talked about the issue. Since that January 5th meeting, Palmer has received no response from the DA's office as to what is going on. Palmer feels the fact that Palmer needs to be writing letters officially to the DA's office requesting action and Palmer is not getting anywhere that it is not a cost effective use of Palmers' time. Palmer feels there should be a lot more cooperation than this happening between departments. Palmer asked the Committee to issue a letter to the District Attorney's office asking them to cooperate and enforce their portion of the Ordinance. Brandt asked if the District Attorney's office was asked to attend this meeting. Palmer responded he had not asked them to come down. Palmer stated this approach had been taken in the past when there was not cooperation, and Palmer felt this was the quickest and most cost effective way to get the job done. Bice clarified that the reason Palmer was pushing this issue was because this well is on land that Federal Emergency Management Agency (FEMA) says cannot have any wells on it, so basically there is a violation of law. Palmer responded that was correct. Bice inquired if Palmer was at the liberty to share the name of the individual. Palmer responded the landowner is Walter Rose. Bice asked if Rose was ignoring us and thinks he is going to win in court. Palmer responded yes and Rose had stated to Palmer that he had been through this in Iowa County

and he had won there. Palmer's opinion was that Mr. Rose felt the County was being arbitrary in the enforcement of the law. It is Palmer's opinion, Rose feels there are other sand points in that area and Rose wanted to issue a complaint on those. Palmer stated to Rose, that was fine, but Palmer requested Rose submit to him in writing the names and addresses of where Rose has concerns and to date Palmer has received nothing. When Palmer met with Rose, Rose stated "every place here". Palmer responded to Rose that reasonably, Palmer could not audit every well in the entire town, that is not a reasonable request, but if Rose wanted to give Palmer some addresses of things that Rose believes are not in compliance, Palmer would be happy to look into them and enforce any violations that are found. Dregney inquired if Rose put the well in himself? Palmer responded, yes, Rose is a plumber from Arena, WI. Bice inquired if this was on County property. Palmer replied it was not county property, it is private property. Bice asked why Rose is restricted. Palmer responded this is actually floodway in Trempealeau below the railroad tracks. Any new development is prohibited in a floodway and the well code, NR812 prevents any new wells from being constructed in a floodway. Bice asked when the sand point was put in. Palmer replied that to the best of his knowledge it was put in April 2009. Palmer responded he cannot prove when the well showed up but according to the language specifically out of the state well code, burden of proof is on the owner of that well to show when it was constructed and the permits were obtained. Palmer continued that were it constructed legally, Rose would have been required to get a notification permit from the DNR, at the point he was constructing it, so there should be something on file with DNR and none of those documents exist. Bice asked if Rose had a well installer's license. Palmer responded he does not, however, a private individual may install their own well, on their own property, without a license as long as they comply with all the codes. Bice inquired if all the other people with sand points were "grandfathered" in. Palmer replied "essentially yes", there was a date, sometime in the late 1970's, Palmer thought it might be 1976, where the code changed, where sand points were no longer allowed. M. Nelson asked how Palmer found out about the sand point. Palmer replied there were complaints called in about it from one of the individuals that lives down in that area. Quarne inquired if this is where the other well is? Palmer responded yes, it is the same area of the county. Palmer added there were five wells that had been abandoned that were illegally installed in that area last year. Lien commented that wells could be legally abandoned and allows a replacement, but no new wells are allowed and the replacement must be code compliant. Bice inquired if the top of this well is above flood plain. Palmer responded, currently no. Bice commented so that is another violation. Palmer added there are a number of violations, but the big issue is that it was placed without permits in an area that is restricted, also even if it was allowed, it would have to have been a drilled well. The point is, it is there, it is not allowed to be there, if it is removed all the other violations go away. Brandt commented he felt Bice's questions may have to do with trying to determine whether or not the DA has a case and it sounded like it would be a "slam dunk". Palmer feels it is a "slam dunk" and Palmer's opinion was that the DA felt it wasn't worth the time based on comments that were made. Palmer's intent, in the long run, is to take this, change the Ordinance wording to be able to take it to Corporation Counsel instead since DLM works with Corporation Counsel on all other Ordinance enforcement. Palmer added that one of the DA's concerns is, in doing these cases, how does he bill his time, because Palmer believed this is coming out of a State fund versus County dollars. Vold commented that Human Services has had the same issues with the DA's office, so it is not just DLM having problems. M. Nelson asked if Palmer had stated there were a lot of other sand points in that area. Palmer replied that the only sand points he is aware of, in that area, are sand points that are serving residences and as far as Palmer knew nothing new had been constructed for homes there. Lien commented that in 20-30 years there has been no new activity in that area and a sanitary district had been put in there so no new septic were allowed and no water can be put into a dwelling without a code compliant septic. Palmer stated this is a vacant lot- campground facility, no septic or anything, just a well there. Rose has a number of sites that he is renting out to people for campers. Dregney commented that Rose is not even using the water himself. Palmer added other sites that have sand points on them in that area, Palmer has not pursued enforcement on them because he was waiting for the April 4th date when the new floodway maps would be officially adopted. Those new maps changed the exact boundary of where the floodway was, so the other sand points that Rose installed illegally in that area now they would be allowed to be there because they are flood fringe rather than floodway. Palmer felt he would try to get the one that is in the flood plain taken care of and then pursue the other two wells that Rose has installed without permits. David Suchla

inquired if Palmer were a quarterback on a team and he had the other teams game plan wouldn't he use it. David Suchla suggested to Palmer that he get on the internet and find out how Rose won his case in Iowa County. Palmer replied that, at the point the County would be going to court, if it was relevant, Palmer would share that information with the DA or whoever he would be working with at that point. Brandt reiterated that Palmer has asked the Committee to sign-off on a letter to the DA. Vold commented again that Human Services has been very disappointed with the actions of the DA's office. Quarne commented that in essence the DA's office isn't doing their job and how do we get them to do their job for the County. Brandt stated Palmer's suggestion is one more step in applying political pressure, perhaps to move forward and take care of this violation. Smick suggested, if this letter doesn't get any response, to invite them to a meeting and have them explain to the Committee why they aren't pursuing this. Discussion followed on that comment. David Suchla commented there might be a simple explanation such as Rose is telling the DA how he won in Iowa County and the DA thinks we're wasting our time and not going to do anything. Bice clarified that the County is in violation of FEMA's regulations if the County allows this to continue. Palmer responded, that in this particular case with Rose, it is not a FEMA violation it is the DNR well code that is being violated. Bice questioned why the DNR is not going after Rose. Palmer replied that the County has agent status with DNR for the wells program; therefore the County is responsible for the enforcement of the Code. Lien clarified for Bice that the County issues all new well permits everywhere in the County, we charge a fee, do inspection, make sure they're compliant, so when there is a landowner such as this, who put in his own well, (Lien visited the site the day before and the well was under water) anytime there is a direct conduit to groundwater it is jeopardizing all the public. Lien added if the County doesn't enforce its' ordinances there is no reason to have them and the Ordinance states very clearly that the DA is supposed to follow up with enforcement, so if this isn't going to work we need to find another way. Brandt stated the next step would be to rewrite the Ordinance naming Corporation Counsel as the responsible party for enforcement. Palmer replied that is correct but it seems like a lot of cost to the County, it shouldn't be necessary to go through that expense when the tool is already in place to get the job done. Brandt thanked Palmer for his information. Bice inquired if Rose wants to put in a case well with a submersible pump can he legally do that. Palmer stated on that lot the individual would not be allowed to simply because there was no existing well there. Bice stated Rose has a lot to lose if he can't keep his well there, so just stalling a year, two or three is probably to his advantage. Palmer agreed with Bice. M. Nelson reiterated there is no where on that property that Rose can put a well as there is no place high enough. Palmer replied this parcel is located on the south end of the peninsula near Round Lake down in Trempealeau, so he is definitely far into the flood plain. Palmer added Rose has a number of other lots, approximately 15 which were bought from the County in excess of 10 years ago. Vold made a motion that the Committee sign the request for action from the District Attorney's office, Dregney seconded, motion carried with no opposition.

POWTS (Private Onsite Waste Treatment System) Maintenance Program – Palmer wanted to update the Committee on where things stand with that program. Palmer stated he continues to move forward with that program and in the Ordinance revision, done last fall, a user fee was approved to help fund the unfunded, mandated program from the state. The proposal was approved to collect the fee through the tax role because fees could be kept lower, by not having to individually billing landowner. Palmer stated, when he had consulted with the County Treasurer about that billing, she had concerns about it so everything was stopped and it was decided that a double check would be done to make sure that what the County is proposing to do it legal and that the County is not violating any laws doing something the County doesn't have authority to do. Palmer discussed the issue with Corporation Counsel, LaVerne Michalak and there appeared to be a difference of opinion on how it could be done. Corporation Counsel changed to Rian Radke and Palmer discussed the issue with him. Palmer has since received new information therefore DLM is going to move forward putting it on the tax role, the process of how it will be done is changing as it will now be called a special charge, instead of a special assessment, and the posting requirements will be slightly different but it appears as though it is something DLM will continue to move forward with. Palmer will discuss the issue, once more, with Corporation Counsel as Radke has not reviewed the new information that Palmer received recently. Palmer will also discuss the charge with the County Treasurer to see what it will take on her part to get the charge implemented. Palmer reiterated this has all been approved in the past; he

just wanted to give the Committee an update, in the event there are any objections he wanted the Committee to be aware of what is going on. Lien commented the DLM has budgeted \$500/year for legal opinion. In the past DLM has consulted with Bill Thiele, Wiley, Weld, Prenn & Richey. Lien directed Palmer to contact Attorney Thiele and DLM received a six page response from him which basically states the County can assess the special charge. Lien stated if DLM would have to do a manual billing it will involve staff time as well as mailing supplies, therefore a special charge on the tax role would be less expensive. Palmer is proposing a special charge of \$3.50 for a conventional system and \$6.00 for a holding tank (requires monthly activity by DLM). Palmer stated Eau Claire County's fees are between \$6- \$15 annually, LaCrosse County is \$5.00 annually and some other counties are as high as \$15.00 annually. Palmer provided the Committee with a listing of other counties fees for comparison. Brandt verified that the Treasurer will collect the charge and appropriate the correct amount of money to DLM. Lien stated at the public hearing, Bice had voiced his opinion which was not in support of the charge, but this is another unfunded mandates so either DLM assesses a "user fee" or it becomes a levied item to administrate another state program. Lien understands Bice's viewpoint, however, we are required to do it and this seems to be the cheapest way to do it. Lien mentioned Corporation Counsel had a discussion with Eau Claire County and there is just a difference in opinion as to interpretation of the law; however Radke was consulting the language for special assessments instead of the language for a special charge. Bice inquired how Eau Claire County interprets the law. Lien responded Eau Claire County interprets the law exactly like Trempealeau County is going to do it. Lien added Corporation Counsel still needs to review this information received yesterday and perhaps there will be a change of opinion. Bice asked specifically what this assessment will pay for. Palmer responded it will pay for the mandated maintenance program which requires DLM to inventory all the systems in the county, track the inspections and maintenance of all those systems. At this point, Palmer felt the County was fortunate compared to some of the surrounding counties in that the majority of systems are on a three year maintenance cycle but the technologies are changing and the approvals at the state have changed where there are a lot of different options for people who in turn are getting into a lot more systems that are having maintenance cycles as short as three months are showing up in the marketplace and it is just a matter of time before those systems are installed in our county as well. This system will help track this maintenance and technically, at the point maintenance is not being done, they are failing systems that are contaminating the ground water. Based on the information Palmer had given, Bice stated there is no reason in the world, especially without money coming from the State to pay for this, that he would ever agree to this assessment. Bice felt it was simply outrageous and the County is violating private property rights which is not something that should be done. Bice added, to go out and "sneak" around the countryside looking at peoples' private systems on private property is simply wrong. Palmer clarified that the County is not going out onsite doing these inspections; the landowner hires private septic inspectors/pumpers to go out and inspect the systems. Brandt stated the landowners are required to maintain the septic system, have it pumped and inspected every three years. Lien stated the landowner hires a septic system installer/pumper to inspect the system and fill out a maintenance sheet, the DLM does not do the inspections. Lien added that as a landowner, Bice has the option to having the septic pumped or an inspection report filed that states the system is in compliance. Bice stated he has no problem with this moving forward, but to make retroactive every system in the county, he felt that was wrong. Bice didn't feel the County had the time and he didn't feel the County should be assessing people and putting money on the tax role to cover this as it is just one more thing that government doesn't need to do and Bice feels very strongly about that. Quarne suggested having a septic pumper come in and talk to the Committee about the issue. Bice inquired what Quarne wanted to know as he felt he and Palmer understood this issue completely. Bice stated septic pumping is important, it should be done before a system is damaged, and there are ways to test and determine that, but by the same token it is not government's place to be on private property. Brandt thanked Palmer for his report and asked Palmer to let the Committee know when the Treasurer starts assessing the special charge. Quarne questioned what happens if the landowner does not want to pay that special charge. Bice responded they are stuck, they have to pay it because once something is on the tax role, the property can be taken away if it isn't paid and that is a fact.

Select Committee member to present Soil Judging Contest awards - Lien informed the Committee that the Soil Judging Contest will be held May 4th, 2011 in Independence. After some discussion, George Brandt agreed to attend the contest to present awards. DLM is to remind Brandt of the date and time.

Appointments to Board of Adjustment – Lien stated that by State Statute, five board members are required on the Board of Adjustment and two alternates. Currently, Robert Tenneson, alternate and Gerry Hawkenson, regular board member are up for reappointment. These are three year terms. Gamroth talked to both Tenneson and Hawkenson and they have expressed an interest in being re-appointed. Nelson made a motion to approve and forward on to County Board, the recommendation that Robert Tenneson as alternate and Gerry Hawkenson as a regular board member be appointed to the Board of Adjustment for three year terms, Thompson seconded, motion carried unopposed.

Surveying Update – Lien presented a survey report for the remonumentation progress of T20N, R9W in Arcadia and a bill for approval. Lien stated Nelsen is currently working in some of the roughest terrain in the County. Lien added there are surveyors in the DLM office every week and they express how eager they are for the remonumentation to be completed countywide. Lien stated that the remonumentation is on schedule and should be completed by the end of 2012 and should free up at least 50% of what is currently budgeted for remonumentation. During the winter months and until there are leaves on the trees, Nelsen tries to get control points out there and then during summer months actually finds the monuments. Thompson made a motion to approve the report and payment as presented, Quarne seconded, motion carried with no opposition.

Director's Report – Lien stated he is on a Motorpool Study Committee with E & LU Committee members, Hensel Vold and Michael Nelson. This Committee is discussing as a whole, county vehicle needs, values, what makes the most sense and what is efficient. Lien felt the Motorpool Study Committee has come to the conclusion that a motor pool might not necessarily meet the needs, but interaction between departments in regard to vehicle usage needs to be open. Lien added that he and Jeff McIntyre have discussed getting vehicle values and Lien informed McIntyre of the car dealers within the County that the DLM has used. Lien stated McIntyre is probably going to get some prices “out of County” to see how they compare. Lien will be meeting with Osseo Ford sometime next week to discuss some options. Lien was told that there are not a lot of new cars selling right now, so the used car market is extremely high, therefore most of the DLM vehicles, at least those bought in the last year, are worth more than what was paid for them because of the government discount price. Lien added, DLM could, in theory, trade vehicles every year and make a profit or definitely have it be a “wash” while still keeping our inventory at its highest value.

Lien stated DLM staff has discussed how to be more efficient and has discussed the possibility of being open 50 hours a week, having a rotating schedule of four ten hour days therefore DLM is providing 50 hours of service at no additional cost. One of the huge advantages would be, quiet time in the morning where the phones are not ringing, giving much needed time to do paperwork. Lien stated he may come back to the Committee with this issue. No one would be working overtime and it would cost no extra money.

Visit Winn Bay Sand, LP and Eugene Soppa mining sites – Brandt stated his visit to the Winn Bay site, three weeks previous, was an eye opener because they are moving a whole lot more material than Brandt had anticipated. Brandt asked Estenson to review the site plan that was approved in order to give the Committee an idea of what they would be looking at. In sharing a site map of the Winn Bay site with the Committee, Estenson stated what the plan does not show is the amount of material that is being moved for Winn Bay to locate their facilities which is something that isn't on a site plan. Estenson added Winn Bay has provided elevations, etc., but one can clearly underestimate the size of the project by just getting a conceptual view. Brandt asked if Winn Bay was opening up areas that they hadn't planned to open up for years, in terms of the actual mining. Estenson replied everything they are opening up right now is to get to the elevations where they are placing all the facilities. Brandt verified there isn't any processing yet. Estenson responded there are byproducts of getting to the elevations that Winn Bay needed for the processing plant. Gary Stone, Winn Bay manager has stated to Estenson that they will probably not even mine new area for a couple of years.

Estenson got the impression that they themselves had underestimated the amount of material that they had to move to just get set up. Brandt asked what the Committee would see when they get to the rail construction area. Estenson responded the Committee would see a lot of over-excavated material and everything is in stockpiles so far and the plan is to make it more rolling, natural, and aesthetically appealing versus just leaving everything in berms as it is now. Lien questioned, after seeing the site, if the bond amount was correct because hypothetically, if Winn Bay left today, what would it cost to put things back to the way they were. Estenson commented the bond isn't for putting things back the way they were, it is for reclaiming and stabilizing at 3 to 1 and the bond amount is almost \$700,000. Bice commented he sensed a little discomfort and Bice's opinion was that when the Committee gets out there, we have people that are investing huge amounts of money and bringing jobs to Wisconsin, something that we agreed to and Bice felt that we need to very flexible and reasonable. Bice didn't feel we should "nitpick" on this project. Bice wasn't sure what the concerns were. Brandt stated his concerns are, that the Committee approved a site plan which showed they were putting a drying plant in one location and a crushing plant in another location and if it is not where the approved site plan shows, they may have broken the conditions of their permit. Brandt added there can't be flexibility if they say they're going to do something and then they don't do it. Dregney commented they are making million of dollars so they can comply. Estenson stated Winn Bay is well aware that they would have come to the Committee to amend any plan after the site plan has been approved. Gamroth voiced her opinion that she understood Brandt's concern because her family had driven past the site and she too was amazed at the amount of dirt that was moved and felt that all concerns were valid. The visit to the sites commenced.

Next Regular Meeting Date was confirmed for Wednesday, May 11th, 2011 at 9:00 AM in the County Board Room.

At 1:09 PM, a motion was made by Quarne to adjourn the meeting, Nelson seconded, motion carried with no opposition.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michael E. Nelson, Secretary