

**ENVIRONMENT AND LAND USE COMMITTEE**  
**Department of Land Management**

**REGULAR MEETING MINUTES**  
**October 12<sup>th</sup>, 2011, 9:00 AM**  
**TREMPLO ROOM**

Chairman Brandt called the meeting to order at 9:04 AM.

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

Staff/Advisors present: Kevin Lien, Virginette Gamroth, Emery Palmer, Tim Brueggen and Corporation Counsel –Rian Radtke.

Others present – Roger and Ann Wygel, Carol Bawek, Jeff Bawek, Ronald F. Tuschner-Chairman-Town of Arcadia, Ivan Pronschinske, Beth Killian, Richard Morris, Brian Johnson, Dave Hesch, Dan Marx, Kim R. Smith, Stephen J. Doerr, Darlene Rossa, Joe Slaby, Jeff Halvorsen, Deloras Vind, Richard Klonecki, Lorne Klonecki, Ben Quackenbush, Bill Lockington, Kathy Lockington, Gerald Duffy.

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

**Approval of Agenda** – Thompson made a motion to approve the agenda as presented, Quarne seconded, Brandt suggested moving agenda item #9 after agenda item #5 as Corporation Counsel, Rian Radtke has some specific items that he wants to address with regard to the Rossa/Doerr mining application and his time is limited this morning. Motion to approve the agenda with the suggested change carried unopposed.

**Adoption of Minutes** – Since the Committee received the minutes only twenty four hours prior and they were quite lengthy, Quarne made a motion to table any approval and put them on the October 17<sup>th</sup> special meeting agenda for action, Bice seconded, motion carried unopposed.

**Discuss Conditions related to Conditional Use Permit – Corporation Counsel – Rian Radtke.** Brandt stated at the last meeting the Committee had requested an opinion from Corporation Counsel for conditions specifically related to the Rossa property. There are also a number of other issues that the Committee had asked Radtke to look into. Radtke asked to be put on the agenda to discuss conditions specifically related to conditional use permits. Radtke wanted to go over briefly what the Ordinance requires the Committee to consider and what the scope of it's' authority is. Radtke will then speak to different types of conditions. Radtke stated the Ordinance requires the Committee to analyze a proposed mine in light of the County's interest in providing for the wise use of natural resources of the County, the aesthetic implications of the siting of such a mine at a given location, the impacts of such mining operation on the general health, safety and welfare of the public. Those are the items in our Ordinance that the Committee must analyze as part of granting or denying a permit. When considering an application for a non-metallic mining permit, the County shall consider among other factors, effect or impact of the proposed operation upon 1.) the public infrastructure including highways, streets, roads, present and proposed uses of land in the vicinity of the proposed operation, the surface water drainage or quality of the water supply, soil erosion, aesthetics, scenic beauty, conservation of natural resources of outstanding quality or uniqueness, market value of lands in the vicinity of the mine site, physical practicality of reclamation after operation conclusion, the public interest from the standpoint of dust, noise, vibration, blasting and the operation of heavy machinery and equipment. Radtke stated these are things that this Committee must consider the impact or effect of the proposed operation upon. Radtke continued that the Ordinance also requires that in order to grant a Conditional Use Permit, the County must find that the proposed operation is an appropriate land use at the site in question, based on such fact finding on (the way it is written these are not the only things the Committee can consider)

the existence of non-metallic minerals; 1.) there must be non-metallic minerals at the site, 2.) the site to transportation facilities and to markets (is the mine site a good fit in the sense that it is close to transportation and markets, etc.), 3.) the ability of the operator to avoid public harm to the health, safety and welfare and essentially to avoid great harm to legitimate interests of the properties in the vicinity of the proposed operation. That was just a brief overview of the Ordinance as Radtke felt it is always good for the Committee to be refreshed as to what the factors are that should be considered on each and every one of these permit applications considering that there are a large number of them right now. As to the Committee/County's power, the Committee has the right to deny a permit request upon the applications of the standards of this section or the zoning code, in general, or upon application of the facts or scenario of that mining site to the Ordinance. If the Committee were to deny a permit, the Committee must set forth the reasons for the denial. At a later time, the Committee can modify permit conditions at a future point. A public hearing would be required for that. Radtke had been specifically asked to speak to certain conditions that are being requested by the public with relation to a specific site. Radtke referred the public present to the overhead screen where a list of the conditions were being displayed.

Condition – Fair market value (FMV) of adjoining properties should be protected via financial assurance of \$100,000 per parcel. If an adjoining property has been listed for sale for twelve months and has not received a fair market value offer and owner still wishes to sell, the Conditional Use Permit holder and their operator shall a.) make-up the price difference between the standing purchase offer, purchase price and fair market value or purchase the property at fair market value. Radtke stated – specific to that issue – he wanted to draw the Committee's attention to that in drafting or imposing any conditions that when a condition is put in place, the Department of Land Management is the entity who will enforce and have to maintain that condition and make sure that it is being followed and complied with. In most cases that isn't too burdensome, in other cases it can be very burdensome. Things that can cause a concern are having to make a decision as to whether or not a certain condition is in fact being violated or not – a lot of times it can be a close call. Radtke added the idea would be to not put the Dept. in a position where they have to play "judge" and "mediator" for certain scenarios. Radtke saw a number of issues with having fair market values bonded, as part of a condition. Overall Radtke stated he thought it was a bad idea as he felt the Committee was going too far by requiring a sand mine operator to bond the neighboring property values. Essentially the term as written would require the sand mine company to purchase all surrounding parcels, at a fair market value which is established by the County. There are a couple issues with the County establishing fair market value. 1.) There are many sources to establish FMV so which source is the Committee going to use. If there are competing appraisals done, who is going to pay for that. Radtke felt the Committee was in a bad position to establish what is the actual fair market value. In some cases it may be "cut and dried" and other times it is going to be quite complex. 2.) If this provision were put in place, the buyer would never spend more than \$1.00 for the property. Why would one ever put up any more money than \$1.00 to purchase the property because this provision would be part of public record and they would know that if they didn't make an offer of fair market value then the sand mining company would have to pay the difference, so why would they ever offer more than \$1.00. The net result of that would be that the Committee would essentially be requiring the sand mine company/corporation to purchase all the neighboring parcels (that would be the net effect of having this sort of bonding provision as a condition). As Radtke had mentioned there is going to be difficulty and cost in establishing an accurate, fair and consistent fair market value. There is also the concern of setting precedence for all future mining operations (if we do it here, the Committee might have to impose this for every mining operation that is coming forward and the way things are headed that could be quite a few). Radtke continued there is no length of the bond, (it states that the property be listed for sale for twelve months) but that doesn't mean that the property must be listed for sale, this year, next year or fifteen years from now. How long does this bond continue, is there interest that is paid, and who gets the interest? There is a provision at the bottom of the conditions that asks for a 5% annual increase to the property value bonds to accrue annually. Radtke asked who was going to enforce that this is going to be paid. The County would have to make sure that this is being paid on an annual basis. Radtke inquired what the 5% inflation figure constituted as he didn't think inflation was anywhere near 5% right now – so is that fair. Radtke didn't believe that this was something the County should be involved in. The Ordinance says that the Committee is to consider "market value" of the properties

within the vicinity. It does not say “adjoining” properties. The condition listed says “adjoining”. If the Committee goes with this condition, the next question will be from the neighbor in the “vicinity” that wants his fair market value bonded as well. Radtke felt an argument could be made that the Committee needs to do this for neighbors in the “vicinity” and there is no definition of vicinity. Radtke was concerned that it could be argued that vicinity could be anything in the area where one could be affected by the activity but there is no definition of vicinity and where does one draw the line. Radtke believed that there should be some sort of legal agreement as to the payment/bonding terms in which it is forfeited, etc. Radtke questioned who was going to draft that document. Is that something that the Committee or County is going to require Corporation Counsel to draft, as legal counsel, which would outline the terms in which the bond would be forfeited or would this be done by a third party that would require Corporation Counsels’ review – that is a cost or burden that would be added to the County. Radtke assumed the landowner would want a document like this recorded in the Register of Deeds office - who is going to pay for the \$30.00 recording. It is a nominal fee, but which party is going to pay that fee to the County. As to any purchase offers made on any of these properties, Radtke asked the Committee to imagine if there are 15 or 20 sites with 5, 7 or 10 adjoining parcel owners who are bonded. Are we, as a County, going to have to be monitoring each and every purchase offer/agreement that is made between parties to make sure of the terms, is there collusion involved, does it meet the standard or not – that is something that is going to take time, money and energy from the County to do to be fair and accurate amongst all the parties. Radtke questioned who is going to hold the bond and where will the interest go. Is it something that is going to be deposited and held by the County and the County has the final authority to say when the requirements of the agreement or the conditions of the bond are forfeited or is there going to be a third party that holds the bond. Radtke stated these are just a few questions that initially came to mind in addressing these types of conditions and for those reasons Radtke recommended to the Committee that it not impose such conditions when granting the Conditional Use Permits. Radtke had mentioned previously what the Committee is to consider. Radtke explained his opinion may sound negative or not positive towards the neighboring landowners and he didn’t mean it to be. Radtke’s opinion is that this is not a wise condition that the Committee should put on these Conditional Use Permits. As Radtke had mentioned before, the County’s Ordinance does allow for the Committee to make an assessment/analysis that this proposed site, based on the number of property owners that are adjoining or are in the vicinity are upset that their market value is going to decrease and they some sort of tangible, legitimate or credible evidence that their property values are going to go down – and that is something that this Committee needs to consider – whether to grant or deny the permit. There may be scenarios where the Committee is looking at the site and hearing public outcry and reviewing their evidence (that the market value will go down). It may be that this Committee will say this is not a good site and will deny the request based on the facts and the potential market value issues which the Committee has to consider. Radtke stated he wasn’t saying that should or shouldn’t be done as that would be a case by case analysis and there are many factors that need to be put into that, but Radtke’s opinion here doesn’t foreclose the Committee’s ability to deny a permit based on that. Radtke recommended to the Committee, if there is a property/site/operation that the Committee believes may have an impact on market values and believes that to the point that denying the permit would be appropriate, that the Committee advise the applicant to work out these issues on their own with the sand mine company and the other property owners, to their own satisfaction and their own terms. That would not be a public record, they could work it out on their own and if those issues are resolved on their own then that is not a concern that the County or the Committee would have, in analyzing it. Instead of putting the burden on the County to establish these numbers and maintain and protect the property values, the burden would be put back on the sand mine company to work things out with their neighbor, if there are issues as to property values so that this is not an issue that is before this Committee that would potentially result in the denial of the permit. Radtke wasn’t sure how the Committee is going to communicate that because each case is unique and different.

Radtke then addressed, “a bond shall be provided for \$75,000 payable to the owner of the parcel identified, if found the mining operation caused reduced, intermittent or ceased flow of the spring or otherwise adversely affected the springs on said parcel. The Board or the Department of Land Management staff shall view the spring prior to commencement of mining activity to confirm its existence and at the owners request confirm the lack of flow or intermittent flow. Should lack of flow or intermittent flow be confirmed, the bond should

be paid in full in 30 days or less". Radtke echoed the concerns that he had mentioned regarding the fair market value of the property itself for this type of bonding. Radtke voiced this was even more extreme or a concern for him because it would be extremely difficult to establish that the mining operation caused the reduced or ceased flow of a spring or adversely affected springs on said parcel. Radtke felt it would be very difficult for the County to establish this on their own or on their own expertise. Radtke explained his position by stating he assumed the Committee would have to hire a third party expert to try and analyze this as to whether or not it was the sand mine operation that caused intermittent, reduced or ceased flow. This particular condition puts it on the County to determine that which is going to cost time and money. In addition, there is going to be a need for extra staff to handle the calls coming in that a person's water source is now reduced or intermittent or someone will need to go out and check what the issue is and this expands out to almost every landowner that is located near a sand mining operation. Radtke stated the compliance and enforcement of a condition like this, would add a large burden on the County to try to enforce something like this. The one item that was similar to the fair market value is the valuing of the water source. How does the County go about accurately, fairly and consistently valuing one's water source or spring, that to Radtke would be very difficult and one would almost need some sort of assessment otherwise one would be guessing, so that would be added cost. For the reasons stated, Radtke recommended that this type of provision not be included as a condition on a Conditional Use Permit. Radtke reiterated he is not saying this to diminish the neighboring property owners value, their concern or their outcry that this is a valid concern and it is going to have an impact on their water source and that this may result in an economic impact as well. Radtke meant to say that this is not a recommended or good condition for this Committee to be putting a CUP permit. As Radtke mentioned before, the Ordinance provides that this Committee is supposed to consider such things as whether there is credible evidence presented to this Committee that there is going to be an impact back to this water source or there is an aquifer that is going to be impacted which is going to affect a variety of property owners. If they are voicing this concern, that is something the Committee should consider and whether to deny the permit. Is this a good site and should we be allowing a sand mine in this place considering all of these factors. Radtke would say if there were any concerns like that, this is something that the sand mine operation and the neighboring property owners should work out amongst themselves and is something that the County should not get involved in - valuing that, enforcing that, making judgments, being the judge in determining whether or not who has causation because there is a lot of money, time and effort and potential liability that would result in the County playing that role. Radtke didn't believe, in reading the Ordinance, that this is the County's role. The County's role is to "screen" these mining operations and determine whether or not this is a good site or not and based on a variety of factors and conditions, to assure the health, safety and welfare. Radtke believed that this type of condition would be going too far and would extend the County beyond what it was made to do, what it should do and for those reasons Radtke recommended those types of conditions not be included, but they should be considered and addressed in other manners. In addressing the conditions, Radtke stated he felt those first three were the ones he was asked to give an opinion on; on the others the Committee probably has a grasp on those types of issues. Lien commented on one very similar scenario regarding a property that was adjacent to the mine and going to be adversely affected. When Winn Bay Sand came for their permit, the condition from the Town of Preston and also this Committee (all parties believed the Carlson property was going to be adversely affected) were that the two parties mitigate. Lien added those two parties mitigated and then came to the Board. Lien asked Radtke if that was what he was suggesting last month, when the Committee had two property owners come forward to the Committee with their requests, Lien asked if the Committee could have tabled it and recommended that mitigation take place between the property owners and the applicant and come back the next month. Radtke replied that would be a way to address that concern without having to impose these types of proposed conditions. Brandt called for any questions from the Committee. Brandt reiterated Radtke is basically saying that when it comes to issues of bonding property values and water resources that the Committee don't go "down that road" in the conditional use process and that we encourage the property owners to find a way to mitigate those concerns on their own or deny the permit for the reason that this is not appropriate because of those issues. Smick voiced his appreciation for Radtke's comments as it provided a different perspective on which to view things and tantamount to getting involved on a "slippery slope" and we could really be using a lot of traction. Smick didn't want to simplify the situation as the Committee has some responsibilities to look out for the health,

welfare, etc. Smick felt the best government intervention; at any level is the least amount of intervention. Smick agreed with what Radtke said as the Committee cannot continue to be the referee for all conflicts. Brandt stated Radtke had pointed out that the reason for his decision had to do with the cost to the county in terms of time and money, as well as questions about resources and expertise. Brandt added Radtke also suggested at one point the possibility of abuse of the system of conditioning on the bonding as Radtke had talked about the dollar value and possible collusion among property owners and developers as to the purchase of property. Sincere there were no further questions from the Committee or staff, Brandt brought agenda item #9 to the table to address at this time as Radtke was here for a limited time. Item #9 deals specifically with the Bawek and Killian requests to add these conditions to the Rossa property. Lien stated he had submitted the conditions to Radtke for his review as to whether or not the Committee could impose the conditions that were recommended from the public. Lien felt, based upon what Radtke presented, the Committee should give the parties an opportunity to mitigate those issues, if they're willing to do that. Lien asked Radtke, if the parties can't achieve mitigation, would that be a substantial reason to deny that permit. Radtke responded he was not going to give an opinion as to whether the Committee should grant or deny a permit as that would be conveying the province of this Committee. Radtke, once again, referenced the Ordinance, and if the Committee believes that the market value concerns that are being forwarded by the public are to such an extent that the Committee feels that this should be denied – that is a judgment call that is left entirely to the Committee. Lien commented this isn't the first time that County government has dealt with this issue as the wind turbines were highly controversial and it was perceived that wind turbines were banned in the County, which was never the case. The Ordinance stated that if there was a proposed wind turbine within a mile of a residence then mitigation had to take place with that resident and a permit could be granted. There were no limits or requirements as to what mitigation. It could have been a simple waiver stating they didn't have an issue. Lien felt the Committee could address this in a similar fashion where the onwess is put on the applicant and the landowners to work out the issues. Lien elaborated that a lot of this is stemming from the Town of Howard, Chippewa County and their mitigation with EOG. Brandt stated this was the condition that lead to the CUP being tabled last month. Brandt inquired if the other conditions discussed last month were available for review by the Committee. Following discussion, Lien stated the Rossa permit was preliminarily approved based on these conditions being reviewed by Corporation Counsel and the issues being resolved. Lien added the Standard conditions applied, the Town of Arcadia had attached conditions and those all applied, but the proposed conditions by the two landowners were the controversial issues. Brandt stated it is on the table now for Committee discussion and action. Smick stated this CUP was introduced at the Committee's September 14<sup>th</sup> meeting, and Smick didn't see the conditions in the minutes. Smick felt it would be nice if the Committee had some type of handout to refer to as it puts the Committee in an awkward spot when they are unable to view it in front of them. Brandt voiced that staff is recommending that the Committee follow precedence as well as Corporation Counsel's advice and don't take action until there is evidence of mitigation between property owners and the mining company. Brandt added Radtke has advised the Committee to not apply any conditions that relate to bonding of property or water resources. Discussion followed regarding these conditions. Lien inquired of Radtke what the word "vicinity" means or how does this Committee grasp onto what that word should mean. Radtke responded there is no definition in the Ordinance as to what specifically that means as to certain distance. Radtke stated there is the dictionary definition which he felt everyone has an understanding of what vicinity means. Radtke added he wasn't present when this Ordinance was drafted, but quite often terms are left to be loose ended and undefined so that the Committee has discretion to determine whether or not they feel a certain area is in the vicinity or if it is not. That leaves it more loose ended so that the Committee can determine what vicinity means. Lien felt the term was probably left that way so then one could take into account the scale and magnitude of the proposed operation and then equate that with "vicinity" and how it can affect. The reality is these operations can be as close as 20 feet from a residence because Trempealeau County only has a 10 foot setback from a property line for either. Lien's opinion was that things would be much greater affected at that setback than at two miles, so that discretion would be on the Committee's shoulders to determine what vicinity means based on the specific site/application. Brandt repeated the Committee can approve the conditions before them along with the standard conditions, approve these along with the Town of Arcadia conditions, approve with the conditions that are requested by the public – Bawek's and Killian, or the Committee can deny the request entirely or consider the recommendations of

staff and Radtke and not approve until there is evidence of some type of mitigation between the property owners and the mining company. Thompson commented he felt that would be the fairest to both parties. Thompson made a motion the Committee take staff's recommendation and not take action to approve it until there is evidence of mitigation between the property owners and the mining company, Vold seconded, motion carried with no opposition. Thompson made a motion that there be a time table of 30 days on the mitigation. Corporation Counsel Radtke's opinion was that the Committee should not set a timeline and let the parties do this at their own pace. By setting a timeline, it was Radtke's opinion that the Committee is getting involved in the negotiations by setting a date. Bice seconded the motion to put a 30 day time limit on the mitigation. Bice felt there simply needed to be a time limit because if there isn't one, this could be a stalling tactic for years. We need them to get together, come to whatever resolution they can with the understanding that the E & LU Committee is going to make a decision and that decision may favor one or the other (the parties are going to do their own arbitration and mediation), so we need some kind of a time limit otherwise it is very unfair to the people who own the land and have an investment in it. Bice felt is just wasn't reasonable for the Committee to allow this to go on with no limit. Bice asked for Radtke's comments. Radtke asked the Committee to remember that if they were going to set a time limit for this operation, then it is probably going to be 30 days for everyone, moving forward, if this, in effect, continues for other operations. Radtke added, setting a time limit, while it does help resolve, if the parties can't work it out on their own (i.e. the neighbor says I'm not going to ever give in, because I don't want the mine here) then it is up to the mine owner to "up the ante" as to where they are going to go with that. The sand mine operation is going to want to move quickly and if they can't get their agreement, then it doesn't matter if it is 30 days, 6 months or a year, they are not going to have their agreement. In setting a time frame of 30 days, then the Committee is going to have to make a decision to deny the permit, if so inclined. Radtke reiterated he felt the Committee should leave it up to the parties involved to work it out on their own time frame and putting a deadline on this, may be viewed as favoring one party over the other and he didn't think the Committee needed to be involved in that. Bice responded saying that is exactly what the Committee will be doing if there is no time limit put on- favoring one party over the other. Bice added the Committee is simply pushing them into a negotiation – neither party knows where this Committee is going to vote, so there is incentive out there from both parties to come to some type of agreement, but if they do not, then they are going to come back to the Committee and the Committee will make a decision. By not giving them a limit, Bice stated we are simply giving people, that don't want sand mining, the opportunity to carry this out forever and that is not fair to the people who want to have a sand mine. Quarne inquired if they don't agree, isn't this where a civil lawsuit would come into play. Radtke replied there is always the opportunity for a corporation or a landowner to sue each other and that is why Radtke was suggesting to leave it between the parties and leave the County out of it all together. Radtke added that he understood Bice's point that it might appear that the Committee is favoring the landowner by putting a time limit on it, but it could also appear that the sand mine is being favored by putting it there. Smick commented he didn't think the Committee should be intimidated or coerced into the belief that just because the Committee is making a decision now on some item that it sets a precedence. Absolutely not, Smick added the Committee is supposed to be looking at each and every case on an individual basis, so just because we did something one way last month, the circumstances might be different, that doesn't mean that the Committee can't change their mind next month. Making a decision once on something is absolutely not a precedent and we should not be influenced to think that way. Radtke spoke to the precedence issue – stating it comes down to treating each party fairly and equally as to the other parties. Radtke stated Smick was correct in the statement that parties are different, facts are different and the Committee can treat it different, but if the same exact fact is in front of the Committee, such as a time limit for a mitigation period what if there are ten landowners instead of two, that may vary the length of time. Applicants need to be treated the same, equally and fairly, and not treat them one way and another party a completely different way because that is not treating them fairly. Thompson commented we can't keep revisiting this every month, the Committee needs to get something finished. Dregney stated if they had some of this stuff resolved before they came to us, the Committee wouldn't have all these headaches anyway. Brandt stated he had a motion and a second to put a limit of 30 days on the requirement for mitigation between the property owners. Brandt called for a roll call vote; Smick – yes, Vold- no, Thompson – yes, Nelson – yes, Brandt – no, Bice – yes, Dregney – no, Quarne – yes. Motion carried on a 5-3 voice vote that the parties have 30 days in which to mitigate their differences.

**Public Hearing – Conditional Use Permit – Nonmetallic Mine – Amendment to Conditions – John Patzner, Landowner and Reglin & Hesch, Operator – Town of Arcadia.** Brandt opened the public hearing at 10:07 AM. Nelson read the public hearing notice aloud. Brandt acknowledged Dave Hesch’s presence. Brandt asked Lien to give the Committee an update. Lien stated a few months ago, Hesch came before the Committee to get a permit on the Patzner mine site. One of the conditions that was placed was a Department of Transportation (DOT) recommendation for a bypass and turn lane or acceleration lane on that proposed property. The Committee made that a condition with the owness being put on the applicant to work with the Town of Arcadia and the DOT to resolve and come into compliance with those issues. Lien continued that Hesch has the right to challenge those conditions through the Comprehensive Zoning Ordinance which states “the applicant or the zoning administrator, at any time, can request to come back before the Committee to amend, add or delete conditions”. Lien added Hesch is here, today, to talk about some options related to the DOT recommendations, and along with that, this is a public hearing, it is opened up to review conditions and Lien did receive letter from an adjoining property owner with some recommendations for the Committee which Lien will read. Lien also received a letter from the Town of Arcadia regarding this issue. Brandt asked for clarification that because is reopening the permit, are we discussing only the condition Hesch is concerned with, or can the Committee discuss all the conditions. Lien responded his understanding was because this is a new public hearing to review conditions, conditions can be added or deleted at the applicant’s, public, staff or board request. Hesch provided the Committee with an overview of what happened. Hesch applied on August 13<sup>th</sup>, at which time that application was postponed, due to the fact that there was some additional information that Lien wanted and with a DLM staff member leaving, Lien didn’t have enough time to review the information. Hesch was then asked to come back to the next hearing. Between that time, Lien asked for a traffic study from the DOT, which wasn’t requested on the first permit, but was on the second. Hesch didn’t receive a call from DOT, so he e-mailed Tammy at DOT on July 22<sup>nd</sup> to ask Tammy if she needed any information from him as he hadn’t heard from her. Hesch stated Tammy replied to him on the 27<sup>th</sup> with a request for information. Hesch gave Tammy that information the next day, the 28<sup>th</sup> of July. Hesch waited for Tammy’s response and her response came to Hesch at 3:55 PM on August 9<sup>th</sup> which was the day before the hearing. Hesch didn’t get the e-mail until he was on his way up to this hearing on the 10<sup>th</sup>, so Hesch had no time to respond or evaluate what her recommendation was. Hesch commented, unless Lien got the e-mail before Hesch, he basically got it the same day as Hesch did, which was the day of the hearing. From what Hesch has found out since, a traffic study is to determine what the requirements are coming onto a state highway. If Hesch had personal property and wanted to go onto a State highway, he would then contact the State for a permit as they are pretty much a permitting entity. If a county road comes onto a state highway then it is a county issue. If it is a town issue then it is the town that applies to the state. Hesch stated what happened here is, when she gave her recommendation it went straight to Lien and Hesch almost on the day of the hearing, so neither one of them had an opportunity to review it. Hesch continued that the proper procedure in this case as this is a town road coming onto a State highway, (Hesch’s application is private property coming onto the town road) which Hesch goes to the town for. The reason Hesch can’t go to the State is because the town road accesses the State highway, so the permit and the recommendations really should have went to the Town of Arcadia, not Hesch nor Lien. Hesch added the permitting issue is between the town and the State. What Hesch did after the hearing (the recommendation was thrown in as a condition of the permit which neither one of them had a chance to review so Hesch couldn’t agree or disagree) he analyzed the e-mail and set up a meeting with Tammy from DOT and the Town Board. They went out and analyzed the intersection. Her original requirement was thinking that Hesch had 53 foot trailers with sleepers, so that would be a 75 foot trailer. So the requirement for a big intersection isn’t the same as if you had a full blown 50 foot trailer with a sleeper truck. The other thing that had to be taken into consideration is that Hesch’s trucks are 7 minutes apart – at the closest – there are never two trucks at that intersection at any one time anyway. Hesch stages off the property so he can control that – so Hesch’s opinion was that a two-lane truck intersection was not needed. Hesch continued once this was explained to the town, Hesch then went to the town meeting (which should have been the process that was done originally). The town board was out there and reviewed what they had talked about and at that town board meeting approved that the intersection is fine the way it is, the acceleration lane would actually cause more problems than less.

Hesch also had approximately forty certificates with him, from all his drivers, saying that passing or acceleration lane will actually cause more accidents than save. Hesch stated these are all professionals as they drive everyday. Hesch was willing to give the Committee copies of those certificates if needed. Hesch stated, he agreed, originally, the month before that he would do a passing lane. Hesch's drivers agreed to that and that is something that he feels is a safety issue and the sand mine has agreed to pay for that. Hesch also understood that most of these changes are usually done by the State and they can be. Hesch referred to the meeting where Tom Beckman (DOT) made his presentation, he said the DOT is pretty much here for recommendations, there is not a requirement that any of this stuff has to be done on this intersection. It is just a recommendation to the town and the town then makes the decision whether it is going to happen or not. Hesch continued in this instance the town has agreed that the intersection is fine. We have two other sites going that have actually a smaller intersection that is not a problem. Also, Hesch has agreed to do the bypass lane. Brandt asked if Palmer could bring this intersection up on the overhead aerial so the Committee could get a visual of the area. Discussion took place regarding the map. Hesch stated when it comes to the property line, the road narrows down to a one lane road, and he had already agreed to go back from the right-of-way back to where he is going to access the property. So the two lane highway which was part of the conditions of the town will be paid for by Hesch, at no expense to the town. The other recommendation that Tammy from DOT had is that she was going to bring this way out figuring there was traffic coming from the east. All the traffic goes west because it is heading to Winona. Second of all, Hesch stated the acceleration lane would have come down and out and would have eliminated Patzner's driveway which he needs to get into the feed bins there. Tammy commented that Patzner basically doesn't need that driveway. Hesch added they put it in when they redid the highway and he does need it because he can't access these bins from the other way. Hesch continued that what he and the town have agreed to is that Hesch will widen the two lane road out from the right-of-way in, the intersection is sufficient. Hesch pointed out a site on the map where there was a time frame of 20 seconds and 23 seconds when one can see a vehicle coming and enters the highway. Hesch pointed out where the trucks will be staged and pointed out by doing that they can see all the way down the highway. They won't enter the intersection if there is another truck coming. One truck will come in and the other one goes out, so two trucks coming in and out of the driveway won't be needed. Hesch stated that planned intersection change costs \$150,000. Brandt inquired if that included a passing lane on the south side. Hesch responded yes and added that basically the recommendation from the town and the letter that the Committee received on what they've agreed on includes the passing lane with the traffic coming up behind the trailer. If the truck is turning in, the cars can go around and continue on. Hesch agreed with that, that is a safety issue and Hesch agreed to pay for that. Hesch added Tammy's other recommendations were based on other information, that we really don't need and the town has agreed. Tuschner commented that Hesch made a very good point on the acceleration lane, for the Committee to understand, that if the acceleration lane is put with the traffic heading west, by the time they may get up to normal speed, they are entering into the two lane again, there is a crest in the hill there where oncoming traffic going east or even from the west going west, are going to be passing and they can't see over the hill which really causes a significant amount of danger. Discussion followed on the intersection. Brandt called for public testimony at this time.

**Deloras Vind** – Registered to testify in opposition - In regard to the DOT, Vind felt that the Town of Arcadia understands their roadways and agreed with what they would have to say. Vind's big item was on property value protections. Vind knows that there are other communities and other counties that have done property value protection plans in their ordinances and Vind felt that should still be looked at by the Committee. Vind felt the 30 day limit that the Committee put on the Rossa property for mitigation was biased, mostly likely towards the mining company. Vind felt the property value protection would be a good thing to put on this property also if the conditions could be opened up to that.

**Bill Lockington** – Registered to appear and testify for information – Lockington stated he had registered to testify under the Sokup hearing, but since his comments are general, he would state them at this time. Lockington asked if the Committee could imagine a private party negotiating with the sand mine people. They obviously have lawyers on board that just work for them. For a private individual to hire an attorney to represent them would be an astronomical cost. Lockington was thinking, that these mining conditions that the

Committee mentioned earlier, if they were pre-existing condition, wouldn't that encourage companies to be better stewards of the land and generally more considerate neighbors.

**John Patzner** – Registered in favor but not testify.

**Ann Wygel** - Registered to appear and testify for information only. Wygel stated she is not for or against it as it seems Hesch knows what he is doing. Wygel added they do have the mine on Soppa Road that will be coming just a short distance down the road from the east (even though they aren't supposed to talk about things that are not happening yet, we do know that Alpine Mine will probably be coming and that is 2/10's of a mile west of this and Wygel is questioning whether all of State Highway 95 will need re-doing and is everybody going to be putting in passing lanes, etc. Wygel commented it was something to think about.

**Roger Wygel** – Registered to appear and testify for information only. Wygel commented he felt Hesch knew what he was doing and it sounded logical to him. Blaze Lane is only 2/10's of a mile to the east which is the road that Wygel's hobby farm is on, so it wouldn't affect them one way or the other.

**Ivan Pronschinske** – Registered to testify in favor. Upon Brandt's inquiry, Pronschinske responded he was testifying as an individual and as a town board member. They had sent up a recommendation for approval of the intersection out there and they had met with DOT out there. Pronschinske knew that the DOT had recommended a pass/acceleration lane also, but Pronschinske's thought is that an acceleration lane would be more dangerous than just having nothing, because as truck's pull out, they have their flashers on like they do on Highway 95 when they come out of the Soppa site and there is no lane there. Pronschinske reiterated he is in favor.

**Ronald Tuschner** – Registered to testify in favor. Tuschner was not going to say any more than what Pronschinske commented on, but when the town had met with Tammy from DOT; they were told by her that State Highway y 95 is under consideration for reconstruction, just so everyone knows that. DOT is aware of where all the mines will be located so in years to come Highway 95 east coming into Arcadia will be redone. The other thing that bothered Tuschner is that the town is trying to promote business within the Town of Arcadia to be a prosperous community and continue being prosperous in advance. Tuschner understood all the people that are here that are neighboring sand mines, in particular whether it is this one or any other one. From what the town has experienced in negotiation with sand mine companies, they have tried or at least, will try to be good neighbors. Hesch's company has given the town "fill" and that is not buying their vote either. This is fill for bridges, roads, washouts, etc. The Town of Arcadia has a huge pile of fill behind their shop which has cost them nothing and there are other things that the Town has been informed of which indicates they want to be good stewards, good community members. They have done whatever they can do, by donating to various organizations to become good neighbors. Tuschner wants the Committee to keep that in mind. Tuschner mentioned Ashley Furniture, stating like it or not, they have been a substantial contributor to the community which includes not only the City, but the town and surrounding towns. So, if these people are going to move in here for twenty years, and make substantial investments, some of them up to 20-25 million, they are not going to come in here to be nasty people because they know they have to survive here and they want to be able to walk down the street, hold their head up high and be part of the community. Being part of the community helps everyone's business. Tuschner is in favor of it.

Lien stated he didn't actually receive a letter from the Town on this, but Lien received a copy from DOT on which Lien was sent a copy. Lien read aloud the Town of Arcadia has been informed by the John Patzner sand mine that they have applied to the Wisconsin Department of Transportation for a conditional use permit. The Town of Arcadia board of Supervisors passed a motion at their September 29<sup>th</sup>, 2011 board meeting stating they have no objection to the Wisconsin Department of Transportation issuing a conditional use permit in which the John Patzner sand mine put a bypass lane on the south side of the Highway 95 and also which the cost of the bypass lane will be incurred by the John Patzner non-metallic sand mine. The Town of Arcadia Board of Supervisors passed a motion at their September 29<sup>th</sup>, 2011 board meeting saying they do not

recommend an acceleration lane on State Highway 95 be part of one of the conditions of their conditional use permit.

Lien read a letter aloud from Roger and Ann Wygel which read, we are presenting several new conditions to be added to the Patzner mine land use permit in Arcadia. Wygel's are asking for an agreement to set aside \$25,000 in an account to pay for damage done to our property's well. In addition, Wygel's asked for full reimbursement of all bottled water purchased by them during the time the well is out of service. Second, Wygel's asked for fair market value guarantee for homes that are adjacent to the sand mine. If Wygel's property can not be sold, on their own, within a year, then Reglin and Hesch will either buy the property at market value or will make up the difference if the property is sold below market value.

Lien stated Hesch is correct as Lien had also received an e-mail from Tammy at DOT at 3:55 PM on the 9<sup>th</sup>. Lien brought that information and read it into the minutes the day of the hearing and it is in there verbatim, everything that Tammy had said, so it was clear to Hesch and the Committee as to what was being requested at that time by DOT. Tammy had called Lien the previous afternoon and said she had met with the Town and Hesch out at the site. DOT recommendation is the bypass and the acceleration lane. Brandt verified that DOT recommended the bypass and the acceleration lane. Lien responded that was correct although during yesterday's conversation with Tammy she, kind of, started to "back off" saying the Town didn't support the acceleration lane and neither did Hesch. Tammy said, potentially, they could work with them on paving part of the shoulder and putting in curb and gutter. The reason for the curb and gutter being, if that isn't done, trucks always cut and the shoulder starts deteriorating and it works its way out into the road. Lien stated Tammy told him she would put that in writing to him but as of 8:30 AM he didn't have it yet. Lien had asked her to e-mail the information to him so that she could work with the Town Board and Hesch on that. Lien stated it sounded to him that Tammy was kind of backing off the acceleration lane and suggesting perhaps to widen the shoulder and curb and gutter, in lieu, of the acceleration lane. Lien reminded the Committee that Hesch had mentioned that Lien and the Committee shouldn't be involved only the town. Lien added our job here is always health, safety and welfare of the public. The DOT is a service to the County in relation to the public as far as road and traffic. Lien felt it was completely the County's job to deal with those issues related to public safety. The County will continue to work with the town but the DOT input is needed to know what the public safety issues are. Lien commented Tammy had stated to him that these intersections are going to be the norm when there are the proposed loads that people are talking about there will probably be a bypass and turn lane on every one. Lien added his office gets calls all the time that there area traffic issues and there are trucks coming and going into the mine at the same exact time and they don't always wait like their supposed to, so again the County's mission is the health, safety and welfare of the public.

Tuschner commented he felt the Town, the County and Tammy are "onboard" with this. Tuschner stated originally when he and the Town Board met out there; they did not know they had any input on traffic control coming in and out of the mine. The Town is here for the health, safety and welfare also, but Tammy had made the original recommendation from an aerial photo and had not seen the actual thing. Tuschner added Tammy stated before she left the site, that she was still going to leave her recommendation there. Tuschner strongly argues that there is a greater safety issue by putting the acceleration in. Upon Pronschinske's inquiry, Lien responded he assumed the curb and gutter would be on the northwest side. Lien added he probably had an e-mail in his office explaining that, but it sounded like Tammy was very willing to work with the Town and Hesch on doing that versus the acceleration lane. Pronschinske stated that Patzner had called him and was very adamant that he did not want to lose the driveway to the grain bins. Lien thought Tammy had said that she didn't feel that driveway should have ever been put there, but she was probably going to let it be. Brandt closed the public hearing at 10:35 AM.

Brandt reiterated that Dave Hesch, the operator is requesting the Committee change the previous DOT recommendation to eliminate the requirement for an acceleration lane and to allow for the change in the intersection. There has also been a suggestion to add conditions relating to bonding of water and property values. Staff has indicated that the DOT would be willing to eliminate the acceleration lane if there were a

curb and gutter applied to the northwest corner of the intersection. Lien stated the original condition states; they would comply with the DOT and work with the town". Lien thought that still stood. Quarne stated it can be changed. Lien acknowledged it could and felt both parties are in agreement about the bypass lane, so that is not an issue. Lien stated Tammy had said she still wanted the acceleration lane, but, yesterday, said she would work with them on just widening a portion of the shoulder.

Brandt felt what Lien was suggesting is that #5 doesn't need to be changed because the DOT recommendations have been received and the mine operators will work with the town on these recommendations and permits. Operator is to work with the town on the traffic impact analysis. Lien replied, unless it is the wish of the Committee to go against DOT's recommendation and say, we're not going to address the widening of the shoulder and the curb and gutter and just overlook the acceleration lane. That was the DOT's recommendation in writing. But when they were on site, Tammy verbally told Lien that she would "back off" from that because the town was not in support of it.

Hesch commented it is kind of ironic that Tammy always gets back to us the day before the hearings so we don't have time to discuss it. Hesch stated we were here a month ago and if she had that concern, an e-mail to Hesch or to the town could have had this all taken care of. To wait until the last minute again, is unfair to the Board and Hesch, to agree or disagree, and we don't even have it in writing, just verbal conversation. Hesch reminded the Committee these are only recommendations from the State, these are not requirements, there is nothing required that the Town had to do this. Hesch feels if the town sees there is a problem in the future, he will go ahead and add it, but until there is a problem why try and fix something that isn't broke. Hesch is also upset that she constantly gets backs to us, or doesn't get back to us until the day of the hearing and that is not fair to us.

Brandt clarified something Hesch had stated earlier. After the DOT representative made his presentation to the Committee, they decided to use the resources of the DOT in making determinations about the conditions that we put on mining operations, specifically having to do with intersections and traffic counts. In terms of permitting, Hesch was right in the fact that the Committee gives the permits and DOT is not the permitting entity, they are our resource. Given the information, DOT gives the recommendations, the Committee requires the operators to either do or not do that recommendation, the DOT will sign off on it in terms of the engineering, and that fulfills the condition of the permit. This is not a DOT permit that Hesch is getting; it is a conditional use permit. Lien reiterated that Tammy's recommendation is the bypass and the acceleration lane without any question, but because the Town was not in support of that she agreed to back off somewhat, but her recommendation is clear. Upon Vold's inquiry, Lien verified the road was a gravel road into the mine site. Bice made a motion to take the town recommendation and advice and move forward with it, with the exception of the acceleration lane. Hesch has made it clear that if it is a problem in the future, he will be happy to deal with it. Nelson seconded. Bice commented he is always going to work with the township and if the town feels that this is adequate, who are we to interfere. Motion carried with no opposition. Lien reminded the Committee that there were other conditions presented. Brandt inquired if any of the Committee members wanted to take up the other conditions which Wygel's presented which included fair market value of the property and the wells. No action was taken on the additional conditions as the Committee consensus was that they were just advised not to do so. Lien asked if they were asked not to or to let the two parties work it out and then bring it back. Brandt commented that is what was done in the last hearing. Not seeing any motion on the floor to this issue, Brandt called for the next hearing. Thompson verified that Hesch's permit was approved. Brandt responded that is the way it works. The Committee has changed the conditions slightly to make the recommendations of the town stand and as Brandt understood Hesch has also agreed to pave a two lane road to the entrance of the mine.

Hesch asked for one other consideration. This hearing cost Hesch \$1,200, not \$200. Hesch doesn't mind paying the \$200 but he felt the State not getting the information to us so that this could have been resolved ahead of time was an issue. Hesch has already been postponed another month that he hasn't been able to work out there. Hesch reiterated he didn't mind paying the \$200 but he did mind paying the \$1,200 to change a

condition that wasn't Hesch's fault. Brandt inquired where the \$1,200 came from. Lien responded from the new fee schedule that was adopted between the first time Hesch applied and the second. Hesch understood if this was a condition that he was adding, but Hesch really had no control over this condition because of the timeline from Tammy's recommendation until attending this hearing. Upon Brandt's inquiry, Lien stated the hearing fee is \$200 and the CUP fee (\$1,000) is based on the number of acres. Lien argued it is very clear in the minutes, Tammy's recommendation was read aloud and everyone in the room understood what the requirements were except Hesch as far as what the DOT was asking. Granted the e-mail came the day before the hearing, but Lien added it was read into the hearing minutes clearly and Hesch was in the room and everyone knew what DOT was asking. Brandt verified the new fee was \$1,200. Bice asked Hesch for comments on Lien's statements. Hesch didn't know how Lien could make a decision on that recommendation when he got the e-mail the same time Hesch did. The e-mail was sent out at 3:55 and Tammy goes home at 4:00 so Hesch didn't have a chance to talk to her. Hesch didn't get the e-mail until next morning on his phone as he headed up to the hearing at 8:00 and the hearing was at 9:00. Hesch asked how fair that was to him to make a decision or even talk to anyone about what the recommendation was. Hesch stated he read it, but Hesch had no idea what it was and he can't make a decision within an hour and he didn't think it was fair that the Committee force him to do that. At least give him a day. Smick made a motion to refund half or the entire second installment (asked for Committee discussion), Quarne seconded. Brandt commented that the Committee set a fee schedule and there are circumstances beyond our control. This had nothing to do with the responsibility of the staff or the Committee, so Brandt didn't think this would be a good idea. Lien commented Hesch had made a call to Lien, the day Lien had a meeting in Menomonie, and they spent 45 minutes on the phone. Lien stated the conversation was completely about this issue and Hesch had told Lien on the phone that he understood the conditions of the DOT; Hesch did not understand he was to pay for it. Hesch had stated the DOT or the public should pay for it. Hesch was going to apply to DOT for a grant. Tammy told Lien she was going to assist Hesch with applying for that grant. Lien asked Hesch if that was correct that they had that conversation. Hesch responded that was after the hearing. Hesch added he was being forced to make a decision on the day of the hearing and without any information, Hesch couldn't do it. Hesch stated he and Lien talked about it afterward because then he understood what DOT wanted, he didn't have it the day of the hearing. Lien stated the Committee is required to make a decision that day on things presented to them at each public hearing. It was very clear what the DOT was asking. The Committee makes it a condition to follow what the DOT recommendations are. In the minutes it states DOT was asking for a bypass and acceleration lane. Lien didn't feel there was a misunderstanding with what was being asked; the misunderstanding was who was going to pay for that. Discussion followed on the fee schedule. Thompson made a motion to refund \$1,000, Smick seconded. As a staff member, E. Palmer commented that he understood the concern here and there has been a lot of talk about delay in getting information. This is something that certainly affects them as operators; they could certainly wait to schedule their hearing until they have all the information. This is something that kind of works both ways, it is not necessarily that people aren't getting information back to them; they could also wait to schedule these hearings. This is a very time sensitive industry and a lot of money on the line, but basically he is coming forth without all the information and if he feels he has to reschedule this hearing because he doesn't like the condition, for the sake of staff and everyone else, Palmer didn't feel this was in the best interest to go down that road of saying, "we're not going to apply the standard fees that are in the schedule". Where does one draw the line?

Brandt stated he has an amendment to the motion, and a second, to include the refund amount of \$1,000. A voice vote was taken: Smick – yes, Vold – no, Thompson – yes, Nelson – yes, Brandt – no, Bice – yes, Dregney – no, Quarne – yes. Motion to amend passed on a 5-3 voice vote.

A voice vote was taken on the amended motion to refund \$1,000 of the permit fee to Hesch; Quarne – yes, Dregney – no, Bice – yes, Brandt – no, Nelson – yes, Thompson –yes, Vold – no, Smick – yes. Motion passed on a 5-3 voice vote.

**Public Hearing – Conditional Use Permit – Non-Metallic Mine – Doug Sokup and Mike Sokup Landowners/Applicant/Operator – Town of Arcadia.** Brandt called the public hearing to order at 11:07

AM. Nelson read the public hearing notice aloud. Brandt stated, this morning, staff received an e-mail from the Sokup properties requesting that it be pulled from the agenda. Corporation Counsel was asked to make a recommendation as to if that was something that the Committee should do outright. Staff and Corporation Counsel did not agree on this. Brandt was going to honor the agenda and the people who came here with the public hearing, but Brandt wanted the Committee to make a decision whether to move forward with taking testimony or how to deal with the request to pull it from the agenda. Radtke reiterated he received an e-mail from Attorney, John Sheffer, who Radtke believes is the attorney for Sokup's, requesting that this matter be pulled from the agenda. Radtke verified his belief that the applicants were here in person and questioned if perhaps they would like to convey this sentiment to the Committee that their request not be taken up. Doug Sokup stated they wanted the item pulled from the agenda. Radtke's opinion was if they want to pull it from the agenda then there is no need for the public hearing to continue. Radtke understood that inconveniences a lot of people, but Radtke didn't feel there was any other action the Committee could take. Lien commented this is the third time we have scheduled a hearing on this particular site. To get this item on the agenda, Lien had numerous conversations with Doug Sokup, Doug's attorney, Corporation Counsel and some of the Board members, all on Lien's day off. The deadline for the papers had expired, Gamroth made a special call to the paper to get it in and all this happened because Sokup had indicated that all legal issues had been resolved. Now we're here again, this month, with them being unresolved. The County has expended staff time and money, given public notice and people have taken time off of work to be here today. The notification to cancel was sent at 9:41 PM last evening, so how does one notify people from the public that this has been cancelled. If this is tabled, then what happens next month, are we going to re-advertise this again, how it is going to be dealt with. Lien stated all of that costs money and if we are going to continue to refund permit applications our budget is going to be upside down. Lien stated we have rules in place, the Dept. does not give refunds and that is very clear. There are also specific requirements that applications must be complete. Lien understood based on information from Doug Sokup that all legal issues had been resolved. Now we're here again asking for it to be tabled for another month. After some discussion, Lien stated that the request is to remove the item from the agenda and not to table it. Lien made it clear that Sokup would need to re-apply under the new fee schedule, after all their legal issues are resolved as this item is done. Radtke asked the applicants if the intent was to withdraw the application at this time as opposed to removing it from the agenda to be heard at a later time. Therefore, withdrawing the application for no further action would result in a new application and a new public hearing. Doug responded he wanted to withdraw the application. Brandt apologized to the public who came to speak at this hearing.

**Revisit – Conditional Use Permit – Nonmetallic Mining- Theodore Konkel and Roman Lilla, Landowners, Stephen J. Doerr – Operator – Town of Dodge and Town of Trempealeau.** Lien stated Doerr had requested that this be placed on the agenda assured that there would be a letter from the Town of Trempealeau and the Town of Dodge with their recommendations. Unless Doerr has it in his possession, Lien does not have letters from the Towns'. Brandt understood the Town of Trempealeau has a moratorium on granting permits while it looks at developing a set of standard conditions (like Town of Arcadia). Doerr asked Lien to correctly state that there was a letter sent from the Town of Trempealeau. Lien stated he did receive a letter, dated October 4<sup>th</sup>, from the Town stating they have a moratorium in place, but do not have conditions. They are not opposed to or for mining activity, but they need to address their conditions. Doerr wanted to focus on the fact that they did send a letter, they have the moratorium in place and they're not in favor of nor opposing the mine operation because one month ago, in Doerr's opinion, Lien had given a paragraph statement before the hearing and tilted the Committee towards the moratorium. Doerr passed out a letter, shared by an attorney who works with these type of operations, to the Committee stating a moratorium is not a legal device for a township in the State of Wisconsin. Doerr asked the Committee to move forward with the Towns' letter which indicates they are neither in favor nor opposed. Doerr added in 1972 the County absorbed that zoning for the Town, so the town does not have that legal monster. In 1996 a moratorium for mining was established for Trempealeau County which the townships didn't oppose. In 2006, the County adopted NR-135 which included reclamation. Doerr reiterated that the Town letter indicates that they are neither in favor nor opposition. Doerr has attended numerous meetings on mining. Doerr has visited with the Town of Dodge Chairman who Doerr says will do everything in his power to oppose the mine because it is

across from his farmstead. Because of these small town politics, Doerr felt that the County has the ability to make these decisions. Doerr explained his family situation if this mine site does not get into operation as well as some economic impact to the surrounding community. Brandt appreciated Doerr's faith in this Committee and their responsibility. Brandt added as Doerr knows this Committee works closely with the townships deferring to them on their decisions as well as their ability to make decisions for their townships. Brandt stated he couldn't remember when this Committee had made a decision without a letter/decision from the Town. Lien stated it is part of the Ordinance and application process that the Town is asked to "weigh in" when there are conditional uses and rezones. There have been occasions where the Town has opted out to see what the County will do and the County has tabled that issue and sent it back to the town saying we want your opinion first. Lien continued they have put a moratorium in place, whether it is legal or not, doesn't matter to Lien as that is the town's issue, what they are trying to do is establish a list of conditions like the Town of Arcadia has done. So to work through that process, they are using the moratorium to establish their conditions. Lien asked Radtke if there was a timeline that should be given to the Town, as this Committee is looking for a recommendation from them. Radtke did not have any information on the issue and didn't want to guess. Radtke offered to review the situation and would like more information as to how this all fits together. Lien commented, at one time, when the County was drafting an Ordinance, they put a moratorium in place for a year. The recommended Ordinance from that year was not palatable to the County Board, so they sent it back and an additional six month moratorium was put into place with an Advisory Committee and a new Ordinance was drafted. The moratorium stood for a year and six months and that was viewed by Corporation Counsel as the longest that a moratorium should be in place, without creating liability issues for the County. Because the County was showing progress and moving forward towards the end goal, it was not considered a stalling tactic. Lien stated the Town has been in contact with the DLM office and with Doerr and it sounds like they are moving forward with some recommendations, but they don't have them completed yet. Letters have not been received from either Trempealeau or Dodge. Thompson commented from what he has heard from the Board members, he didn't think Town of Trempealeau was going to do anything without Town of Dodge approval. Lien added because the mine falls on both sides of the town lines. Doerr commented that has been a stall tactic that they have been using for the last three months. One town says they're waiting to see what the other town is going to do and then when he goes to the other towns' meeting, they say the same thing. Doerr commented Smick had a wonderful idea on the Rossa site, where they were given thirty days to mitigate with the neighbors. Doerr felt if the County would put something like that on the Towns that Doerr would still be able to get to work and bridge the gap for this winter. Doerr stated they were at four months now in dealing with this application, and if the Committee were to be forward and give the town thirty days to "weigh in" on it. Doerr stated Lien had mentioned he didn't care if there was a moratorium or not but eventually it does come down to following the law. Doerr hired the attorney, not to play a game of going to court, he doesn't want to do that, but if the County doesn't move forward there is a legal process to work through with the townships called writ of mandamus. Doerr doesn't want to do that. He would prefer that the County go ahead and give the towns thirty days to respond. Brandt reiterated the Committee is revisiting this conditional use permit, the public hearing has been held, and a decision was put off until a decision from the township have been received. Brandt asked the Committee for a decision. Thompson commented he didn't feel the Committee could do anything until they have something on paper from the town. That is the way it has always been. Dregney commented if we don't have the blessing of the town, they are all going to bypass them to come to us. Doerr stated he wasn't asking for the Committee to bypass the town, he was just asking to give them thirty days. Dregney added he didn't see how the Committee could tell the town what to do. Vold agreed with Dregney and Thompson that the Committee couldn't override the townships and the Committee has never done anything without the blessing of the towns. Upon Vold's inquiry to Tuschner regarding the Committee's actions. Tuschner responded the Committee has always been very good at giving the towns consideration. Vold added if the Towns don't want to make a decision, they could always send the Committee a letter stating that and then it would be up to the Committee to either approve or deny it. Brandt stated he wasn't hearing anyone from the Committee saying they wanted to address this issue today; there was no motion to take it off the table, so the Committee moved on.

**Discussion on Conditional Use Permit – Non-metallic Mining – Suchla Family Farms – Duane and Renee Suchla – Landowners/Applicant, Reglin & Hesch, Inc. – Operator – Town of Arcadia.** Lien stated Bice had asked him to put this issue back on the agenda to review some of the conditions related to this site. Brandt commented this is not a request to change conditions, this is not a public hearing, this is just to review what is going on and this is at Bice's request. Bice stated he has received some calls on this issue and he did ask for it to be placed on the agenda. Brandt inquired what the calls were about. Bice had received calls about truck traffic through Dodge. It is a huge concern in Dodge. Upon Bice's inquiry, Lien stated he has not received any correspondence from the Town of Dodge. Lien asked Hesch to tell the Committee what the truck route currently is. Hesch responded the truck route currently is loaded through Arcadia and coming back empty through Dodge. The only call Hesch has received from Dodge, was last week, when they had their horse ride. Since they were having horses coming in, starting on Thursday, they had asked Hesch what he could do for them. Hesch responded he would send everything through Arcadia, so there were no trucks going through Dodge on Thursday, Friday or Saturday. The reason Hesch is going through Arcadia loaded is to take the heavy traffic off of Dodge. Nobody has called Hesch and this again is here say. Hesch stated a couple of people have talked to the Suchla's and were concerned about the heavy trucks coming through Dodge so he switched them. It is a longer route for them, but again they are trying to get along with the community. Hesch inquired if the concern was on loaded trucks or just trucks in general. Bice stated the first two calls he received said they were loaded trucks and after Bice followed up on it, he found out they were not loaded. Bice felt it was one of his responsibilities so he put it on the agenda. Since Bice is on the Highway Committee, he had inquired of the Highway Dept. if empty trucks were an issue and they said probably not. Lien asked how many loads a day Hesch was hauling. Hesch responded probably 60 loads a day and that will probably increase as they get farther into the hill. They are working with some wet material right now so the loads are down. Hesch thanked Bice for following up because all the trucks are tarped right now so Hesch wasn't sure how they could tell if they were loaded or empty. Hesch reiterated that he did that tarping on his own at an expense of \$3,000. Hesch stated the original route was to go through Dodge and use County Road J to County Road P. After some consideration on Hesch's part and the trucker's part, they felt it was a lot better to go through town, get on a State Highway and come back through Dodge empty. Hesch commented he has been in contact with the Arcadia Police Dept. and they set up radar two days last week and there were no issues and they aren't using any jake breaks. Hesch added he is very concerned about trying to keep everyone happy with these trucks. If there was a complaint, Hesch wished the people would call him so that he could explain to them what is going on rather than complaining to the Board members. Hesch can't solve anything if the Board doesn't call him so he encouraged them to call him. Lien stated the County requires TIA's (traffic impact analysis). Lien commented he didn't think Hesch had attended the public hearing for this site as Kerry Suchla was present. Hesch replied the owner had attended, he had not. The mining site was conditioned on the fact that all truck traffic would use County Road J to County Road G, Highway 35/54 into Winona and then potentially come back empty on County Road P in Buffalo County. The meeting minutes also reflect that the site would be similar to the Soppa site (which is approximately 70 trucks per day) as far as number of trucks. Lien added that information was submitted to the DOT. We don't have a recommendation back from them yet. Lien felt they were reviewing it because it is all County road. Lien added that is not what the conditional use information says. Lien stated they are going through the City of Arcadia, down on Highway 35 and coming back through County Roads G and J. Brandt asked if it was County road P and J. Hesch responded they are coming up County Road P, G & J. Hesch has them split up because the less trucks going by any one residence is helpful for everybody. As far as Hesch being made to take a certain route, next week County Road J outside of Arcadia is going to be blacktopped and Hesch won't have a choice. Everything is going to have to go through Dodge loaded. Hesch has talked to Highway Commissioner, Jim Johnson and that is what those two decided on. Hesch changed the route to please the public. Hesch didn't know if the Committee should put restrictions on what roads he uses as this is commerce and he pays taxes to use any road he wants and in this instance, he feels he is trying to favor the public rather than hinder it. Just because Hesch changes a road, does that mean he has to change the conditions of the permit? Lien added the reality is, we make the operator state what routes they are going to use so that the TIA is accurate. If we're going to say that the conditional use facts say County Road J, but one can drive anywhere he wants, how does that affect what the DOT, County Highway Dept. or Town of Arcadia does. More

specifically, Brandt stated the Committee does have the right to state which roads Hesch can haul on and they have done it in the past, specifically, when the potential temptation exists to take up a town road instead of a county road because it was shorter. The Committee can condition the route based on the ability of the road to handle the number of people who live there, traffic, etc. Lien didn't disagree that the issue of loaded trucks on J is an issue and the route that Hesch is using is probably better, but again there is a public hearing process where conditions are set that says this is where it is going to be, so that is what is sent into the DOT. Now without coming to the Board or checking with the DOT it just changes. Lien asked how often that was going to happen as to the conditions the Committee sets being null and void because something else is taking place. Discussion followed. Lien hasn't received anything back from the DOT but he is sure that there is no information given to them with the trucks going through the City of Arcadia. Brandt expressed an appreciation to Hesch for helping out the Town of Dodge, but Lien raises a bigger issue that the Committee must consider in what it is that the Committee does in terms of applying the conditions. One can see how flexible the Committee is and the fact that they want to mitigate with landowners, communities and operators. Unfortunately, if one wants to change the route and that was one of the conditions then that would require another public hearing. Brandt personally did not want to do that as Hesch obviously has the public in mind, but Brandt also did not want to set a precedent that the operators change the route without either communicating to the County or opening up the conditional use permit. Discussion followed on the truck routes and roads. Lien felt Hesch's changes were probably good ones. Lien added this is one of the first conditional use permits that were issued, it was very loose; there weren't a lot of conditions nor a lot of input from the public. Thompson and Bice agreed that if the Committee makes Hesch go through Dodge with all those loaded trucks, they are asking for trouble. Brandt didn't want to set a precedent of the operator determining, beyond what it is that the Committee has conditioned, where they are going to go. Quarne commented it is in the best interest. Vold added, at that time, it was probably the best or shortest route. Vold agreed with Hesch that it probably wasn't the best route. He is not familiar with the road and thought it was best. Vold felt to open up the CUP would not be in the best interest of all parties. Tuschner reiterated that when they met with Tammy, at the Patzner sand mine, the town board didn't even know they had a voice in determining truck routes, entrances, exits, etc. They know now and all mining permits going through the Town of Arcadia will have this before it ever gets to this Committee. The town could have probably worked out some of these issues with Hesch beforehand. Tuschner added, sometimes these decisions have to be made, rather than to hold up a number of trucks for days and it is costing money. It is not to circumvent what the County has done, but sometimes things happen. Lien stated he would talk to Tammy at DOT, and unless there are any problems Hesch could continue with the current routes. Brandt urged Lien to talk to DOT and encourage them "get on the stick". In their defense, Lien commented they are an area DOT and we are not the only county dealing with mining and transportation issues so they are very busy. Palmer stated he felt that everyone agreed that there was a better route than the one proposed and conditioned. Palmer added it is important to remember that the onus is on the holder of that conditional use permit to inform us when they want to make a change to those conditions and they are responsible for bringing forth those changes and the public hearing fees that are associated with it. Brandt summed up that basically what was being said is to leave the permit the way it is, but the issues has been raised and we are all learning as we go. Bice inquired how many days Hesch would be going through Dodge. Hesch responded however long it takes for the County to get the section of County Road J done.

**Board of Adjustment** - Bice had requested this item be put on the agenda. Bice wasn't sure how much to say on this. Bice stated that he thought we need to do a little work on how our Board of Adjustment approaches issues. Bice feels they need to be made very aware of the actual situations. In the near future, Bice felt the Committee needs to visit the legal ramifications of the Board of Adjustment. Lien presented Bice with a copy of the State Statutes that dictate how a Board of Adjustment is appointed, etc. Bice said he actually has read it. Lien added to change it, Bice would have to go above this Committee. Smick asked for a copy of the Statute.

**Property Values** – Brandt stated Nick Gamroth, Real Property Lister has been present for quite a while. Gamroth has been trying hard to get an opinion from the Dept. of Revenue (DOR) on what effect the mining is

going to have on taxes. Gamroth had sent out a survey to DOR to get answers to some questions that he had. Gamroth echoed the same sentiment that Lien and Hesch stated about state offices not returning responses back in a timely fashion. Gamroth had sent an e-mail out July 29<sup>th</sup>, 2011 to seven members from the Dept. of Revenue, which included ten questions that Gamroth had put together on mining that could affect different things from roads to property assessment, taxes and values. Gamroth stated these questions were put together by himself and several County Board members. Gamroth wasn't getting any response back. On September 23<sup>rd</sup> he sent the same e-mail out to the same group of people and copied it to members of the Committee of whom he had their e-mail addresses so that they would also be aware of what was going on. Gamroth still has not received a response from DOR regarding the specific questions that he had for them. The only thing Gamroth did receive back was a little bit of information on manufacturing assessing as far as mining, from the supervisor in the manufacturing unit in the Eau Claire office. Gamroth read the letter aloud (A copy is on file in the Dept. of Land Management office). Brandt inquired what Gamroth thought they were saying in the letter. Gamroth responded he thought what they were saying is that any activity that is going on right now, won't be on the tax role as manufacturing until the next January 1. So Winn Bay, because they started up this spring, that property won't be assessed as manufacturing/mining until January 1, 2012. Bice commented it has been that way for 50 years. Doerr commented the State reserves the assessment for things like Ashley Furniture, etc and the local assessor doesn't get involved. Gamroth agreed that when it meets the criteria of manufacturing then the State does the assessing and the local assessor is not involved at all. Referring to the questions that Gamroth has sent out via e-mail, Gamroth's feeling was that they are avoiding it because there is not evidence out there which they can use to give a reasonable answer. Gamroth is upset because there is just no response forthcoming. Nelson inquired if land sales that are at \$8,000 an acre won't hurt the township around that property and bring the property taxes way up? Gamroth responded one would think so but they are going to be assessing the property as use value. In example, if they purchase the property at that price, but don't mine the property for ten years, and instead rent it out for ag use for the next ten years, it will be assessed at it always has as ag use. Use value is what drives our property values right now Gamroth said. It is unfortunate but that is the way it is and that is Wisconsin law. Brandt thought Nelson's point is not what it is assessed at but what it does to fair market value because fair market value is done by what similar properties have been sold for in the immediate area and once that goes up, the assessment goes up unless it is ag use. Gamroth stated on this particular property we don't see what the fair market value is because of the ag use. Gamroth added the only fair market values that we see here are on residential properties or anything other than ag land, we don't see it on ag land because of the ag use. Doerr mentioned there are studies out there regarding fair market value of property near mining land. Brandt commented the Committee is always interested in that type of information. Gamroth added, based on what the Committee was talking about today in regards to vicinity, he wished that he would have asked how far the property values are being affected with regard to distance and density. If someone is a mile away from this mine how is that going to affect property value, but what happens if there are more mines going around. If there are three mines within a quarter of mile of a parcel of land is that different than somebody that is within a quarter of a mile of one mine. Gamroth felt the density also has to be looked at. Gamroth added he thought the DOR can't answer this question right now because isn't any evidence out there to support it either way. Smick asked for a copy of Gamroth's information to be distributed to all the Committee members. Smick wished the Committee could get some clear definition on what is going to be accessible for the County by way of property taxes. The County has the general knowledge that mining manufacturing equipment is exempt but Smick would like that clarified because he has heard that manufacturing equipment for mining is exempt. Radtke responded the Department of Revenue does those assessments, the County does not. The State is the local assessor and any machinery that is used that is part of the direct production of the product is exempt from assessment and that is in the discretion of the assessor who is the Department of Revenue. They will come out and say what is part of the direct production or not and then they value all that and that is similar to a personal property tax and it goes on in addition to the property tax bill. Gamroth added it is right in the correspondence that manufacturing property which includes any warehouse storage facilities and office structures where the predominant use of those warehouses are located within the mine get taxed, but the equipment is exempt. Gamroth wished one of the questions they would have been able to answer is could a mining district be set up (like Arcadia set up a

tax incremental district (TID) for Ashley Furniture) for the mining areas so that the property taxes in that district help pay for the infrastructure. Thompson commented a TID district does nothing for the township.

**TRM/LWRM Cost Share Payment Requests** – Lien presented one LWRM cost share payment for approval.

<b>LWRM</b>	<b>Type</b>	<b>Amount</b>	<b>New CSA Total</b>	<b>Reason for change</b>
Mavis Erickson	Contract	\$3,305.75	\$3,305.75	Critical area
Mavis Erickson	Pay Request	\$3,305.75		Critical area

Quarne made a motion to approve the LWRM payment as presented, Nelson seconded, motion carried with no opposition.

**Survey Report** – Lien referred the Committee to the report in their packets. Nelsen is working in Township 20 North, R8W (Arcadia southeast, Ettrick northwest and Gale north). Nelsen is making really good progress. This time of year is critical as leaves are falling off the trees so there is a better line of site. Now until freeze-up Nelsen will get a lot of work done because there is more visibility out there in the woods. Terrain is still difficult in this area because of the storm of 1998. Nelson made a motion to approve and pay the Surveyor’s bill as presented, Thompson seconded, motion carried with no opposition.

**Director’s Report** – Lien introduced Tim Brueggen who is now part of the DLM staff as an Zoning and Environmental Specialist. Lien stated Brueggen attended the Town of Albion meeting with Lien the previous evening.

Lien reminded the Committee that Monday, October 17<sup>th</sup>, 2011 there is a special E & LU Committee meeting to hold the public hearing for the Land and Water Resource Management Plan. Lien is scheduled to appear, for the LWRM plan, on the December 6<sup>th</sup> State LWCB agenda in Madison. Lien and Doelle are going to see if they will be able to do a Webinar so that he doesn’t have to drive down there. Lien handed out information that the Eleva- Strum school district distributed at the Town of Albion meeting last evening.

Bice stated the Committee needs to address a formal policy as to how they are going to deal with people who are clearly going to be in a mediation session with the mining company. We have some that requested that situation but did not receive it and the Committee needs to come up with a policy that resolves these issues before they get to the Committee. That needs to be on an agenda.

**Next Regular Meeting Date** – Next regular meeting date was set for Wednesday, November 9th, 2011 at 9:00 AM.

Rogel Wygel asked if his opportunity to mitigate with the Patzner Sand mine was approved. Brandt responded the Committee had that opportunity and did not take it. Discussion followed.

At 12:30 PM, a motion was made by Nelson to adjourn the meeting, Vold seconded, motion carried with no opposition.

Respectfully submitted,  
Virginette Gamroth, Recording Secretary

Michael E. Nelson, Secretary