

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

**REGULAR MEETING MINUTES**  
**January 11th, 2012 9:00 AM**  
**COUNTY BOARD ROOM**

Chairman Brandt called the meeting to order at 9:10 AM.

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

Committee members present: George Brandt, Tom Bice, Mark A. Smick, Dave Quarne, Hensel Vold, Michael E. Nelson, and Rick Geske. Roland Thompson was absent due to a prior commitment.

Staff/Advisors present: Kevin Lien, Tim Brueggen and Virginette Gamroth. Rian Radtke-Corporation Counsel was present for part of the meeting.

Others present –Ernie Vold –County Board Chair, Kyle Slaby, Joseph A. Slaby, Cindy Slaby, Roger and Ann Wygel, Gerard Sonsalla, Jeff Bawek, Stephen Doerr, Donna Brogan, Dennis Rossa, Mark & Denise Palmer, Ron Tuschner –Town of Arcadia Chairman, Deloras Vind.

**Approval of Agenda** – Lien, upon Bice’s request, asked that Agenda Item #6 be deleted. Vold made a motion to approve the modified agenda as presented, Bice seconded, motion carried unopposed.

**Adoption of Minutes** – Nelson made a motion to approve the December 14th, 2011 regular meeting minutes as presented, Bice seconded, motion carried unopposed.

**Public Hearing – Conditional Use Permit –Non-Metallic Mine-Joseph A. Slaby, Landowners/Applicant – Arcadia, WI – Kyle Slaby, Operator, Arcadia, WI – Town of Arcadia.** Chairman Brandt opened the public hearing at 9:11 AM. Nelson read the public hearing notice aloud. Brandt turned the meeting over to Tim Brueggen. Brueggen stated the applicant is Slaby Non-metallic Mine. The landowner is Joseph A. Slaby and the operator is Kyle Slaby. The mine site is located in the southwest quarter of the northeast quarter of Section 30, Township 21 North, and Range 8 West. The application is for a 10 acre, extraction only, site where blasting will be used. Materials will be shipped offsite for further processing. Brueggen pointed out the site on the overhead aerial photo. Brueggen turned the meeting over to Kyle Slaby to give more information on the operation. K.Slaby introduced Attorney Matt Duffy from the law firm of Monroe, Moxness, Berg, PA as his general counsel and Randy Palmer- Duffeck Sand and Gravel who will be taking care of the processing. Slaby stated his proposed operation for Slaby Non-Metallic Mining site includes processing equipment along with an office/shop to be constructed on the site subject to the appropriate approvals. Plans are to begin construction with earth work commencing in February 2012. Land including office/shop construction will begin in March 2012 or as soon as weather conditions will allow with anticipated completion of all facilities by May 2012. A Storm water Pollution Prevention Plan will be developed as required by the State of Wisconsin general permit to Discharge under Wisconsin Pollutant Discharge Elimination System for non-metallic mining operations prior to the commencement of any earthwork on site. An Air Construction Permit application will also be developed and submitted to the State of Wisconsin for approval prior to the construction as required by law. The operation will include excavation activity, including but not limited to stripping and stockpiling of topsoil and other materials not suitable for the production of sand. The topsoil will be stockpiled and seeded to prevent erosion to preserve for future reclamation activities. Overburden materials not suitable for sand production will be stockpiled initially in berms perpendicular to Paul Sonsalla Lane to construct and create a visual barrier along the town roadway. The berms will be constructed with a core consisting of the overburden material or a lane with a minimum 6 inch layer of topsoil that will then be seeded and protected from erosion until full vegetation is in place. Mining will begin in the southwest,

northeast quarter of Section 30, T21N, R8W offset from Paul Sonsalla Lane right-of-way with a fifty foot berm constructed at load elevation for visual shielding of the activities. Berms will be sloped at a 3 to 1 - covered with topsoil upon completion, seeded and will be protected from erosion with hay and mulch. Erosion mats and silt fences will be provided as require. It is anticipated that this sandstone will require the use of explosives for the effect of and efficient mining. A company licensed for blasting and in good standing with the State of Wisconsin will be contracted to design blast patterns as well as to oversee blasting. Blasts will be designed so as not to exceed established standards. Monitoring equipment will be deployed as required by the State and County regulations in the Ordinance (please see the attached explosive and blasting plan for Slaby Non-metallic Mining). Once the blasting is complete, the mining will be accomplished utilizing wheel loaders and articulated trucks. Wheel loaders will load the trucks to haul to processing equipment where it will be stockpiled or fed directly into crushers. Once the sandstone is processed it will be stockpiled via radial stackers. As the mining progresses away from the plant, unsold sand, fine sand, clay and silt will be placed in the mine area for future reclamation. It is anticipated that between six and seven acres will be mined each year of the operation. Reclamation will begin as the mine phase progresses and it is anticipated that beginning in the third year and each year thereafter, that between six and seven acres will be fully reclaimed while the same amount of acres is being mined. The newly stripped overburden and topsoil will be utilized to support the continuous reclamation process and will not be stockpiled. The attached map of the mining phases indicates the mining will begin in the southeast of the northeast quarter of Section 30, T21N, R8W and progress west. The proposed site for the entire processing (including sand stockpiles) will be in the southwest quarter of the northeast quarter in Section 30, T21N, R8W approximately 300 feet north of Paul Sonsalla Lane. The roadway entrance into the site will be constructed as approved by the State of Wisconsin Department of Transportation which meets all applicable entrance standards- safe access including site distance and highway improvements as required by the Wisconsin Dept. of Transportation (WISDOT) will be implemented. The entrance road will be maintained by watering and sweeping with a power broom as required to insure that no material is tracked on to the roadway (please see that attached dust control plan for Slaby Non-metallic mine). A sand stockpile will be created near the processing equipment by stacking the sand with a radial stacker so that natural dewatering by gravity can occur while the sand is stacked. The product will be shipped via truck to a trans-loading facility in Winona, MN or Eau Claire, WI for further processing and trans-loaded onto rail car. Only covered trailers will be utilized to eliminate any material from becoming airborne during transportation and to be courteous to other drivers. All external lights in the facility will be shielded or downward pointing lights to minimize the effect on surrounding properties. Modified MSHA (Mine Safety and Health Association) approved back-up alarms will be deployed on mobile equipment to eliminate the standard "beeping" back-up alarms. Strobes will be utilized where possible for night time operation. The project will provide many economic benefits to the community created by the company and use of local businesses. Thirty full time jobs will be created offering competitive salaries and benefit packages including paid vacation, healthcare insurance, company matching 401K. Local contractors and vendors will be utilized where possible providing additional economic benefit to the community. Slaby Non-metallic Mine estimates over 2 million dollars will be spent annually through local and regional vendors to provide parts, equipment, fuel and other services. This does not include the additional economic impact of customers of upper company management visiting the plant and staying in local hotels.

Lien stated because this site is raw extraction and doesn't involve a high-capacity well or full blown processing, it did not require the third party engineer review. Upon Geske's inquiry, Lien responded that if this mine progresses/changes to the above mentioned items then a third party review would be required. Brueggen added this permit is only for the ten acre, extraction only site, so if there are going to be additional mining operations in the future, the DLM would require a new permit application and we would do the whole process over.

Brandt called for public testimony.

**Deloras Vind** – Registered to testify in opposition. Vind wanted to remind the Committee of their duty which is to protect public health, safety, convenience and welfare and protect the property values and the property tax

base. Last month, Vind mentioned about the property values that are devalued around mines and as Mr. Tuschner said there are no studies that say so. Vind thought common sense would tell one that when people move into an area for the peace and quiet and then an industry goes up that their property value from living in their homes has decreased. Vind would like the Committee to give property value protection to the neighbors and Vind felt that would fulfill their duties as a Board.

**Bert Hodous** - Donna Brogan read a letter from her husband who couldn't attend the meeting.

Dear Trempealeau County board members and residents. In both town and county meetings I've attended recently, we seem to be in a continual reactive mode as these sand mine permit applications are considered one at a time, in isolation. How many sand mines do we want? How many sand mines can we carry? We're not spending a lot of time tallying up the cumulative cost to our community. A parade of citizens stand up and object to these mines on the basis of aesthetics, health, fear about declining property values and diminished quality of life. But their objections seem to be unanswerable and irrelevant. What is the goal of this industry for us? What's the gain for our towns and our county? In Arcadia township where I live, I can think of a lot of ways that the operation of sand mines could actually benefit us. But I haven't heard of any efforts to capitalize on this industry. Can the operation of sand mines directly finance projects of benefit to us? In Arcadia, we need a new school. We need a modern library. We need adequate housing for the workers that are here. The downtown could use a good hard look. With the closure of the hospital, we desperately need paramedic-level ambulance service. These are projects that are fighting tooth and nail for money. These are projects that we need. If sand mines are expected to generate money for our towns and county (not just enrich shareholders), then let's direct the revenue to projects we need. Let's be smart. Let's link these projects to these mining operations. By the ton. I keep hearing that the sand mines create jobs. If these jobs are not held by our residents, they don't contribute to our county tax base. I like that we're creating jobs in general. But I don't like that we're creating jobs for people outside the county -- outside the state -- as we impoverish our landscape and abuse our established citizens by running them from their properties. When are we going to address our shared vision of what we want this county to look like in five years? When will this be an item on the agenda?

**Donna Brogan** – Registered to testify in opposition. Brogan learned that the Tomah City Council was being asked yesterday to approve two high capacity wells for a plant that went in 22 miles from Tomah. Brogan thought it was Unimen that started up a processing plant in Tunnel City. When they got permitted for this plant, they told the people in Tunnel City that they wouldn't need a high capacity well. They have just broken ground, they are starting to get things up and running and now they need two high capacity wells and now they are asking the City of Tomah to put these wells in for them and run water pipe 22 miles from Tomah to Tunnel City. What bothers Brogan about some of the process and, in particular, this process today is that Brogan feels like we have “the camel's nose under the tent”. We're permitting something when we all know the process will get much bigger, much more controversial and it seems like we're allowing people to get in permit applications for a small endeavor when we all know it is going to get much bigger. Brogan would feel much better about today's process, if the permit was denied and then these gentlemen were asked to come back and get a permit for the entire scope of their eventual project. Brogan wouldn't feel like we are putting ourselves “out on a limb” somehow.

**Lee J. Fehr – Fehr Law Office** - Registered to testify in opposition. Fehr distributed a handout, which was submitted on behalf of Paul Winey, to all the Committee members and at Brandt's inquiry acknowledged that he would be referring to the handout during his presentation. Fehr stated that one of the important/crucial parts of this project is, in fact, the access road from the mine to Highway 95. There are people that live on that road and use that road, and that have been in that area for many decades and generations. Fehr didn't think anyone here wants prosperity of one group of people, who trample over the public and private rights of another. That is just not what the law envisions. Fehr continued that on Paul Sonsalla Lane, the mine wants to run two to three hundred trucks, in and out, per day. That is important because of the minimum requirements for the road under Section 82.50 (In packet as Exhibit A). If one looks at that it can be seen that the average

daily count from 100 to 250, per day, requires a four rod right-of-way with a 22 foot surface. For counts over 251, requires a 22 foot surface. Fehr stated that is important because the capacity is set by the state and these minimum requirements set by the state are determined to be for the public safety and protection of all concerned. When we run many more vehicles on smaller roads, we, in fact, endanger the rights of the general public and especially the private rights of those who use that road. Fehr continued, when we look at the actual length of Paul Sonsalla Road, the town in Exhibit B has expressed an opinion, this is a four rod road all the way from Highway 95 all the way through to the Slaby mine area. Fehr stated the town has provided him with a certain plat map (referred to the document in Exhibit B). In looking at that first plat map, and locating Paul Sonsalla Lane, one will notice that Paul Sonsalla Lane runs from Highway 95, halfway through the Joseph Slaby property. One will also notice that there is another road going off to the west or left. This road can easily be broken down into three components: 1) From Highway 95 up to what is now called Christine Lane (goes to the west), 2) That part of the land that goes to the Gerard Sonsalla property, 3) That part of the road that enters into the Joseph Slaby property. The first part of the road is not an unrecorded road – as assumed by the township. It is, in fact, a recorded road (that can be seen in Exhibit C). For the sake of clarity, Fehr had his secretary type up the document, but the handwritten document dated August 29<sup>th</sup>, 1927 is present. In that document, recorded on Volume 3, Page 251 of Arcadia town road, one can see that the town set out is a three rod road; it is not a four rod road. Fehr stated the reason that becomes important is many factors, mainly safety and engineering. Fehr referred to a picture that Brueggen had shown where Highway 95 and Paul Sonsalla road meet. Fehr continued, if one looks at that road, the plan there is to move that road fifteen feet to the east. Fehr stated, if this is, in fact, a three rod road, as this document states, that road cannot possibly be moved fifteen feet to the east because it is going to infringe on the private lands of Mr. and Mrs. Winey. Also, one will notice that the right-of-way, at this point in the road, is quite wide – it has a large sloping bank down to the field and it goes the other way, there is the sign on the road off up to the utility poles. In the event, this is a three rod road, it is not a four rod road, at this point, and it does not have the capacity to handle the vehicles that this mine wants to run. Fehr stated, it can never have that capacity to run the vehicles that this mine wants to run, unless the town, in fact, condemns more right-of-way, which they cannot do for a private use. Fehr explained, the next part of the land is the land that goes to the Gerard Sonsalla property (Exhibit D); Exhibit D is a warranty deed from Gary Sonsalla to Gerard Sonsalla and Winifred Sonsalla, husband and wife. The first couple of lines into that deed describe that they are taking this land “subject to a described right-of-way” in Volume 82, Page 204. Fehr stated that is an easement and it has been an easement since July, 1927. Fehr explained if one remembers the dates of the road, being constructed in from Paul Sonsalla Lane that was in that same time period, this is still an easement- a twenty foot easement that goes through there. Mr. Sonsalla bought that property with a twenty foot easement as recorded in the public documents in this county. It is not a four rod road, it is not a three rod road, it is a twenty foot easement and right-of-way. Why the township is maintaining a twenty foot easement and for how long and when, are all questions that Fehr needed answers to before one can really proceed on this. Fehr claimed he didn't have those answers. The next couple of pages of Fehr's handout were pictures of Paul Sonsalla Lane. Fehr explained, if one looks at that road, the first picture is of a road with fences coming right up to the hard surface. These historical fences are an indication of how wide the right-of-way is. One can see that it is a very narrow right-of-way – it is not a four rod right-of-way. Fehr pointed out on the overhead photo the narrow fence and the other side of the right-of-way and stated it is only about twenty feet. Fehr pointed out, that up the road near the Gerard Sonsalla property is the utility pole for his telephone, etc. which is also very near the hard surface of the road. Further down one sees a gate crossing the road and one will notice that the fence posts, again, are right up to the road surface. Upon Geske's inquiry, Fehr pointed out the boundary line between the Gerard Sonsalla property and the Slaby property. Fehr noted, incidentally, if one looks at the easement, the easement requires a gate and that is not in the typed part but it is in the handwritten part. The easement requires a gate, just like they are doing. When one considers the fact that Gerard Sonsalla bought this property with a twenty foot easement, the fences show a very narrow lane, there is a gate at the end of the easement as is required, the most the town could have is the public use of twenty foot easement. Fehr stated easements do not change their shape and characteristics. In example, Fehr explained the DNR can have an easement to a hunting area or a trout stream; they might put in a parking lot. The parking lot never becomes theirs, it is always an easement and it remains an easement even though a public entity takes care of that

easement. Fehr explained Exhibit E, is in fact, case law that supports exactly what Fehr is saying in regard to challenging road width and that is where it is saying that these old fences can, in fact, determine the road width especially when there is other documentation to go along. Fehr added that the nature of the public use of this part of the road on the Gerard Sonsalla property is certainly in question; it is not a given fact that it is in fact a four rod road as there is nothing that supports that it is a four rod road. The public can use an easement, if allowed by the people who own that easement, it does not change. If one looks back, at the plat map provided by the township, to Fehr, one will notice again that the lane on the plat map goes half way through the Joseph Slaby property. The point being here, that if the plat map is a road, as the town is saying, then Joseph Slaby's property is a road and if it is a road, then that part of it is a four rod road because there is no documentation of easement, there is no documentation that it is a three rod road, etc., so when there is an unimproved road (as Mr. Kostner states in his letter to the town) then it is a four rod road. If it is, in fact, a public road of four rods, the mine cannot disturb that land. They can't take sand away from it, they have to keep it up, they can't change the elevations, they can't do anything with that road, it is a public road. Fehr questioned when it became a road? Fehr responded that he didn't know – it is on the plat, but we know it is not an easement, we know it is an unrecorded road according to the plat, so we don't know what it is. Fehr stated there are so many issues with this road, from beginning at Highway 95, with the engineering plans that they have, to the end of the road in the Slaby property that Fehr didn't see how a permit could be granted without involving the County, the township, the Slaby's and all the neighbors in extensive and expensive litigation as these rights have to be figured out. Nobody wants the rights of private individuals, including the Slaby's, Winey's or Sonsalla's, the rights of the town or the County trampled on and if this is unclear in the documents that we have, it is going to be unclear and it is going to take litigation to resolve it unless they find an alternate route. Fehr questioned if they could have an alternate route? Fehr stated he didn't know what that route was, but he did know that the property going into the Slaby's is not landlocked. Fehr stated they can go out the other road to the North – they do not have to go out this particular road and safety and general public concern should mitigate against it. Fehr added he also has with him today (one saw the plat book and the road going to the west) the documentation that is also a three rod road established in 1951, so Fehr finds it odd that if the town established two roads here, by application of laying out a road, that there is none for Gerard Sonsalla's property. They were relying on the twenty foot easement otherwise they would have had one of these for a three rod road.

**Ann Wygel** – Registered to testify in opposition. I stand before you today, asking for your full attention. As I see the Land Use Committee sitting before me, maybe listening, maybe tired of listening, however I beg of you please hear me today. After attending meetings for months, it is evident that most members on this committee believe it is impossible to say No for a silica sand mine permit. Perhaps – it is the fear of lawsuits Perhaps – it is the temptation of tax dollars. Perhaps – it is because you have friends, or family wanting to obtain a permit. Perhaps – it is truly the need for jobs. Whatever your reasons are, the day is coming when you will have to say NO. My question as in the past remains “How many mines are enough? (especially in one area) How many in one county? in one town? How many within Newcomb Valley? In Newcomb Valley, within 1 & 4/10<sup>th</sup> miles, we will have 4 mines entering and exiting off of Hwy 95, East of Arcadia. That is a lot in one short distance. I am not here to stop any one of these mines - I am pointing out the obvious, that if two or five more mines move into this same area, in this same 1 & 4/10ths of a mile, that will be a disaster waiting to happen. Newcomb Valley is being turned into a mining town all by itself. Do the math, 4 mines at 120 trucks per day, per mine, equals 480. Two additional mines, six mines in this 1 & 4/10<sup>th</sup> mile equals 720 trucks per day. And worse yet, as the number of mines increase. Have you as a board, or even the Dept. of Transportation, even thought of the congestion to here as well as the intersection (Hwy 95/Paul Sonsalla Ln/and Soppa Road) and at the intersection of Highways 95 and 93?, where 8 mines that I know of so far, will pass, a total close to one thousand trucks per day. I have to ask, “Are we getting greedy in how many mines we allow?” Again --How many mines are enough? (in one area) Yes, the day is coming, when you will have to say No to someone. Lawsuits or not, tax dollars or acquaintances wanting to sell sand, or the prospect of more jobs. Do you have to permit all these sand mines in one area, let the horses out of the barn as my husband says, and then try to close the barn door when it's too late? The solution: is to add a regulation to the ordinances, one that places a common sense distance between these mines. The ordinances that were drawn up

15 years ago, although very well designed for the most part, are not complete for the today's amount of this industry. Those ordinances were not written for this many mines in one area. Although these ordinances are highly regulated, and Thank God they are, one more cannot hurt. (???) Is it not – Common Sense – to put some practical distance between these mines? Change is inevitable; it is a part of real life. But it is hard when it disrupts your path of travel, when it disrupts your peace. Every business has its place in society, and sand mining is basically a legitimate business. I am not here to stop sand mining, just here to get you to recognize that they are getting too close to one another, especially in Newcomb Valley. With so many mines being in close proximity, if our well should go bad, which one in this area will step up and claim responsibility? Who will say "I did it!" They will point the blame one to another and the buck will end up on us. Do you, as a committee, have a solution to this situation? These are serious things to think about. These are things to be heard, and addressed, not just passed over. Neighbors are now pitted one against another. In Arcadia we have been told several times, to sue our neighbors if we don't like what they are doing. We know some who want to sell their sand, have also made threats to sue. Gentleman, it is ugly. I suspect it will continue. Yes, commerce has a place in society. Yet, neighbors to these mines have rights as well, to not only be listened do and then dismissed, but to be truly heard. To us who are not selling sand, it seems like the sand mines are all winning. Won't you give consideration to one additional regulation – one that will help protect us and our way of life, as well as help yourselves when that day arrives that you will have to say NO to a permit or will want to say no but will have no recourse. You, as a committee, must have the power to put this regulation in place. Let's determine a sensible distance between these mines, and finally answer the question "HOW MANY MINES ARE ENOUGH?" Thank you for listening and I hope you heard me.

**Nancy Winey** - Members of the Environment and Land Use Committee, and fellow residents, thank you for hearing me today. My name is Nancyanne Winey. I am a Registered Nurse, currently practicing full time, as a wife, and mother of 3 small children, on Paul Sonsalla Lane (PSL). I've been told that you probably won't be able to receive my concerns about water, air, or quality of life. For the moment, that is okay, because environment" implies more than just trees and streams and sky. I am sure that, as members of this committee, a priority for each of you is to maintain an "environment of safety" for our county. With that assumption, I need you to know that there is a major threat to our county's environment of safety within this mine's proposal. I am speaking specifically of traffic safety today. Due to limited visibility for the sand mine trucks, at the intersection of Paul Sonsalla Lane and State Highway 95, the Wisconsin DOT has recommended improvements to the intersection for long-term use of Paul Sonsalla Lane by the mine. In the interim, WisDOT has approved the "temporary use" of a "spotter" to signal the sand truck drivers when it is "safe" to enter the highway (from PSL). Although WisDOT would find it reasonable to use this method until June 1, 2012, I believe we should choose a higher standard of safety. Yes, it IS a state highway, but it is IN our county. While we cannot do less than the State requires, we can certainly do more, if we believe it is in the best interest of safety for our county. To date, no Traffic Impact Analysis has been completed on this intersection. However, some basic math reveals the significant dangers that I am referring to. The mine company plans for a minimum of 120 trucks/day leaving the mine, fully loaded. If the mine is in operation by Feb 1, 2012, this would equate to approximately 12,500 semi-trucks entering the highway, from Paul Sonsalla Lane, under the direction of a "spotter" in just that first 4 months and that is only part of the picture. Add an equivalent number of trucks entering the same highway intersection, from the proposed mine on Soppa Rd (directly opposite Paul Sonsalla Lane), and you're looking at 25,000 trucks in that same period. Now, double that number, for the amount of sand trucks entering AND exiting that one intersection: 50,000 trucks will be using that uncontrolled intersection in a 4 month period, just for sand mines. This does not even begin to include local traffic, of which our neighbors and our own 3 children are part of. The numbers alone are staggering. Count in the variable of a "spotter," and these are traffic fatalities in the making. My grandfather taught me never to let someone else wave me past them, because it is MY responsibility to see that the path is clear before proceeding. As a county, it is our responsibility to keep our roadways as safe as possible for our residents and guests. As a concerned citizen, my part is to bring the issue to your attention. As a committee, your part is to consider the issue and act to ensure the environment of safety. The wiser plan would be to improve the intersection before mine operations begin. These truck drivers have the right, and responsibility, to see that the path is clear before entering the highway. Other drivers in our county should have the

reassurance of a safe intersection for that large volume of heavy truck traffic. If the temporary “spotter” method is not of an acceptable safety level beyond June 1<sup>st</sup>, then it should not be acceptable for the 1<sup>st</sup> 50,000 trucks. I request that you deny the Conditional Use Permit for Slaby Nonmetallic Mine today. At the very least, I urge you to obtain a Traffic Impact Analysis by the Wisconsin DOT, and to insist on a completed intersection before mine operations begin. Even if mine operations are delayed, this is a reasonable request. After all, the sand is not perishable...but the people are.

**Paul Winey** – Registered to testify in opposition. Good morning and thank you for allowing me to speak on this issue. I am Paul Winey, Physician Assistant at the clinic in Arcadia. My Wife, Nancy and three children (9 months, 3 years and 5 years) have lived at N28690 Paul Sonsalla Lane in the Town of Arcadia for nearly 10 years. Our home is on the northeast corner of Highway 95 and Paul Sonsalla Lane and we overlook that intersection. (A picture of the Winey home was displayed on the overhead). I am here to speak against the conditional use permit for the Slaby Nonmetallic sand mine. It is my intention to show that Paul Sonsalla Lane is not a suitable road for access due to several unique problems. Because of this no permit should be issued. Three key issues are: 1) The legal description of Paul Sonsalla Lane; 2) Road capacity and 3) Safety. First, the legal description of the lane. Paul Sonsalla Lane is not a 4 rod right-of-way road nor 1 mile long. I appreciate the explanation by Mr. Fehr and hope the Committee will take that into consideration. Suffice to say, further action on the permit with the assumption of a 4 rod right-of-way would result in the taking of private property against the will of the land owners. A situation no one wants to see happen. The second problem is the capacity of the lane. A request for 240 –280 trips does not conform to the DOT capacity of a 3 rod road. Thus, access should be denied. Denying access via Paul Sonsalla Lane is not a hardship for the mine, as stated, they are not land-locked, and denying access would also not set precedent as other mines have been limited in access routes as well. The third issue is the safety issue- the need to improve the Highway 95 intersection. Visibility from the lane onto the highway is not adequate for the truck volumes being considered. WisDOT has stated in a letter to the township, “This intersection should be rebuilt to a WisDOT Type A intersection”. “This would require moving the centerline of Paul Sonsalla Lane 12 – 15 feet to the east”, toward my property. If the reconstruction of Paul Sonsalla Lane, however, cannot be coordinated with Soppa Lane going to the south, then Paul Sonsalla Lane would need to be moved “much further to the east to avoid conflicts with Soppa Road”. Given a 3 rod road, not 4, this would further encroach on my property. I would like to know how much of my property others are intending to use but no one can show me this clearly. Final, approved engineering plans should also be in place before a permit is issued. Until completion, a temporary solution was proposed. A “spotter” is to be located near the Soppa Road intersection to watch for traffic traveling west on Hwy 95. Two-way radios with the trucks would advise them when it is safe to enter the highway. Intersection completion deadline is June 1, 2012. Given problems of plan approval, coordination of agencies, weather and construction, I fear that this construction could be extended and a temporary fix could become permanent solution for this intersection. This safety issue would be multiplied if and when the mine on Soppa Road comes on line. It is not unreasonable to think that nearly 50,000 trucks in a four month time frame could be competing at an uncontrolled, limited visibility intersection. We have all seen before where the DOT has said we need plans in place, their deadlines have been set; we know that is construction language. As a 30 year provider of emergency medicine, as a paramedic and PA, I shudder to think of the injuries this uncontrolled intersection could cause. Caution and forethought are necessary, as a prime responsibility of this committee is to preserve the health and safety of the public. This doesn’t even touch on the other issues connected with the mines. I will forgo discussion of these at this time. Suffice to say, I share the typical concerns of others regarding quality of life, health and preservation of property values. I also wish to go on record as questioning whether proper open meeting laws were followed when a special town meeting was called on short notice. As a county, tax-paying resident, I should not feel forced into any negotiation of my property when this will result in a loss of safety and security for my family and community, and a loss of property value for my home. Gentlemen, your own Corporate Counsel, Mr. Radtke stated in the minutes of October 12, 2011 E&LU committee that, “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.” The three issues presented - inaccurate road descriptions, capacity problems and traffic safety all compromise these ideals. Because of this, I ask that you give adequate time to solve these

issues so that you can protect our health, safety and welfare. If this protection cannot be assured, I ask that you deny the permit. Thank you for allowing me the opportunity to speak. I would also welcome any questions you may have.

**Mark Palmer** – Registered to appear and testify for information. Palmer stated he had no comments at this point in time.

**Cindy Slaby** – Registered in favor but not testify. Lien read aloud a letter that Cindy Slaby had submitted to him. My name is Cindy Slaby. My occupation is farming. I am a land owner and a steward of the land. I have listened to all the oppositions of mining and sat in silence and let you speak your peace. Now it's my turn! I have been a land owner since 1979 (33 years). My husband Joe and I purchased the Rhude farm in 1980, long before there were any homes on Paul Sonsalla lane. We have farmed this property since then. It's a rough farm, full of washouts, steep terrain and gullies. We have had to make several improvements to repair these issues and spent much money doing it. Many nights I stayed awake while Joe was working late disking, plowing or harvesting our crops. I would worry about him tipping over on the tractor or loosing a wagon. And still today we have to deal with Mother Nature. Our ditches are getting bigger and we're loosing more land every year. In fact, the storm that went through 2 years ago when we received several inches of rainfall, our roads which lead from our farm in North Creek to our cropland on the hill, was completely washed out leaving it impossible to get to our land. Now we have to drive through North Creek and Newcomb Valley just to get to it. You insinuate that because I want to mine our property, that I'm a bad steward! Not so! Thru-out the 33 years Joe and I have done everything to enhance our land. Everything from strip cropping, forest harvesting, planting trees, putting in ponds, cleaning out old ditches full of garbage placed there by the old homesteaders, planting food crops for the wildlife etc. As a matter of fact there were dams that were constructed by Joe and myself. One which is located on the Vince and Christie Wozney property (which we sold to them) and another was constructed on the Rhude farm. Before these dams were put in heavy rainfalls would threaten the creek and the Newcomb Valley tavern. I remember when twice within 1 month when the bar had 4-5 inches of water going right through it. Both of these projects were paid for by us and that problem has now been alleviated. I love our land! By mining and extracting our sand and after all the reclamation has been completed we will have level crop land, ponds, trees for the wildlife, filled in ditches and erosion control. A much more useful piece of property. Our sand company and road engineers are from highly reputable companies. Their number 1 concern is the safety and well being for everyone and they all have strict standards to follow. Paul Sonsalla Lane will be a safer roadway for all of us to use. Thank you.

**Gerard Sonsalla** – Registered to testify in opposition. Sonsalla stated, being a landowner on this road that Mr. Winey and Mr. Fehr talked about, Sonsalla feels, as being the person that has this easement, that this is an infringement upon his property. When the maps were being shown, the maps showed Christine Lane and the half mile that is Paul Sonsalla Lane. The township will probably tell you that they took care of this. G. Sonsalla stated he has never denied anyone access to this road. The Slaby family goes through, they have to maintain the gate that is there. They showed the fence lines that have been there, forever. People pasture their cattle. Sonsalla reiterated that Slaby's are not landlocked; they can go out a different direction. It is not beyond the realm of belief to this Committee or anyone in this room – they can go a different direction. Sonsalla thought that he and the other people here have demonstrated that there is purpose for this permit to be denied. G. Sonsalla has the same concerns that everyone else does – his property values, the intersection and G. Sonsalla's biggest concern is giving up his property. When G. Sonsalla bought this property he gave them twenty feet. In referring to the map, it will show that Christine Lane goes left and there is a ½ mile which goes a little bit past Christine Lane (which is a three rod road) and not a four rod road, as in the town records. G. Sonsalla stated the township probably didn't want to back up so they just went through. Going back to 1951 when they created or made a town road, a three rod road of Christine Lane, they could have said, "what about the rest of this". To Sonsalla, that was neglect on their part, for not going in their records and looking and now they are telling G. Sonsalla that he has to give up his property to make a four rod road, so that this can benefit one party but the next party loses. Lastly, G. Sonsalla stated it is much easier to say no today, on ten acres, then when they have five acres of it mined and all of a sudden a high capacity well is needed, etc.

and they come back and at that point the Committee would have to say no. It will be hard for the Committee to say no then and Sonsalla felt everyone here could agree with that. G. Sonsalla added, people in Trempealeau County, community of Arcadia, in the little valley out there, don't know/realize the power/money that the mining company possesses. This falls upon this Committee and the town boards shoulders. When Sonsalla is asked by one of his neighbors why he didn't fight harder when this was happening, his answer will be, it was out of his control – and you (the Committee) have that control.

**Stephen Doerr** – Registered to testify in favor. Brandt informed Doerr, up front, that the Committee has heard his arguments before on certain points. Brandt asked Doerr, last month, to not make the point that this Committee has a larger right than townships. As Brandt reviewed last months' minutes, twice Doerr cast dispersions on Dan Lilla's objectivity in relationship to Dodge. Brandt realized this was not being spoken about today, but Brandt suggested that Doerr not bring up his personal experiences with the Town of Dodge, anymore here, especially in relation to an elected official. Brandt asked Doerr to proceed. Doerr introduced himself. Doerr has been to countless meetings in the Township of Arcadia where many neighbors and concerned people in the area came in and testified against the Slaby's and their request to do a legal use of their property. They brought up very legitimate concerns and Doerr observed that the township board took several meetings to continue to allow them to keep bringing forward their concerns to "hash them out", so to speak, so that everyone had a fair chance to speak and they were heard. Doerr continued, the reality is, that a lot of these concerns are then twisted up in this big story and today we even had an attorney come in with a "dog and pony show" to try and stop someone's legal use of their property in Trempealeau County – township of Arcadia. A conditional use for non-metallic mining is a legal use as was approved by the application that they turned into the Department of Land Management's office some time ago. With that being stated, Doerr would like this board to realize that he spoke about a month ago, and he mentioned this mine sites application on the day that he spoke and he specifically stated that they were denied access to the December 14<sup>th</sup> meeting, because of their lack of having a DOT impact analysis approved regarding the transportation of their product. Interestingly enough, the Singapore (known to be communist) government investment group that bought out Frac Tech Services. They sent Ron Jordan up here for Proppant Specialists to control some sand for them. This Board chose, along with the screening outfit, to not require any type of transportation of their product, prior to approving that last month. The thing Doerr sees here today and the reason they weren't allowed on the December 14<sup>th</sup> agenda is because of transportation of the product. Doerr asked the Committee if they would be as fair as possible, just like they were to the Singapore government sand outfit, to the local family farm operation that is being proposed. It is a ten acre site and Doerr has heard some people almost demanding that the Committee deny this request based on the future, possible sites' that might be applied for and that it would be easier to say, no, today than it would be years down the road. Doerr respects the fact that the Committee knows their role, but at the same time, since they have asked you to deny this today because of possible a possible mine site application in the future, Doerr reminded the Committee that they take today's information into account and not deny this because of some possibility in the future as that would be inappropriate. Doerr has heard repeatedly today from different people in opposition about this fear factor of all the numbers (adding and multiplying trucks). Doerr has personally been to Texas and has worked with the company's on a contract basis that are actually using the sand that is coming out of this area. Doerr is familiar with the processing of the material. There are only two companies moving material out of Minnesota and Wisconsin in the raw format. One is run through Dave Hesch and the other one is a different outfit. The reality is that even though there are all these mines being approved – they are not moving sand. If one doesn't have a route to move the sand, you won't be moving sand. This fear factor that these people want to testify about (50,000 trucks on the road) is not true because the port in Winona, which is where the material is moved out of, can only handle so much material. The people that are buying it only have so much money which they are willing to invest in these people's settings. Alpine Materials came in and they followed a legal format for the Rumpel's and just because they have it doesn't mean they are ever going to move any sand out of there. Doerr finds it to be extremely difficult to believe, if not impossible, that all of them would be working at the same time. Each of them has a legal right to do what they are doing on their property. Doerr elaborated on his own mine site and the fees he had to pay. Doerr mentioned that Winona County just put a moratorium in place so that they can't even use the ports that they have in Winona County for sand. If Winona does lift that

moratorium in three months and put their sand in the port it is possible that the sand here won't be able to move as it is a contract thing. As stated in a letter from Jim Koenig, WI DOT, Slaby's have a legal route of travel for their product. Doerr heard some of the people come in and testify that the Committee should oppose and say no to this CUP based on the fact that this Committee should be able to make decisions better than the WI DOT on the safety in using the road. The reality is, WI DOT has engineers and they take the responsibility for our safety on State highways and they made a legal and safe decision based on the safety of the people. We need to respect that decision and not try to second guess our authorities that are in charge. Someone wanted to know where we will get the gain from this and couldn't some of this money be attached to the schools, etc. Instead of congratulating a neighbor in being successful and putting legal use/plan of their land together, we want to get our fingers in their money. Doerr didn't feel that was appropriate. We do have a legal system via income taxes, and should the Slaby's be successful in getting a mining permit, they will be paying their fair share, so that money does come back to the community via taxes. The biggest thing Doerr wanted to stress is that this is a legal use of the property and these people actually have a legal, approved WI DOT travel route for their product. Doerr couldn't see why this permit should be denied on the basis that these people are coming forward with. Doerr stated Attorney Fehr wanted the Committee to deny Slaby's use based on a township road. As was stated in past meetings, the township is here and is invited to give a presentation based on what they know. Doerr added we have someone who has been farming this land for 33 years under a legal use and then someone else moves in ten years ago and now all of a sudden wants to limit Slaby's use of their private property because they are not getting any money from it and the fear of that the township might make use of their legal right-of-way. Doerr stated the neighbor testified that he came in and built a new home and this is going to change his life. Doerr explained the reality is that this person came in, after the fact, gets a twenty foot easement to get back to his home, and now he wants to abuse the person beyond his easement and limit their right to use their property according to the legal right of use of property. Doerr elaborated on property he owned in Texas. Doerr felt it was inappropriate for the neighbor to ask the Committee to deny the legal use of property because it is inconvenient for their new movement out into the country. Doerr stated the Committee is deciding if this is a legal use of the Slaby property. Doerr believed by the application process, it is already proven that it is a legal use. The Committee also has to look at safety and welfare.

**Matt Duffy** – Registered to testify in favor. Duffy declined the offer to testify.

**Andy Peterson E-mail – President of North Dakota Greater Chamber of Commerce.** Kevin – I spoke briefly with Cindy Slaby on January 9, 2012. This was in regards to developing a frac sand operation in your county. North Dakota's last survey suggests we have 4.5 billion barrels of recoverable oil in the Bakken Formation. Senator John Hoeven, however, is currently asking the US Geological Survey to reassess the potential as investors report we may have as much as 24 billion barrels of recoverable oil in our formation. Please know that we would encourage the responsible development of any resource that helps develop domestic oil production. As such, I can assure you that North Dakota has the potential of absorbing as much sand as Mr. & Ms. Slaby could produce. If I can be of further assistance in this matter please do not hesitate to contact me.

Lien mentioned to the Committee that at some point he would like to address the legal use and some of the factors that are in the Ordinance regarding Conditional Use Permits.

Brueggen had two additional letters to read into the record.

**Mike Wenzholz E-mail – Wisconsin Department of Natural Resources.** My comments are intended to assure all shore land-related setbacks and requirements are met. There is a section of stream running through much of the SW 1/4 of the NE 1/4 of Section 30, Town 21 North, Range 8 West - the parcel of the proposed non-metallic mining quarry. If the stream is navigable, the applicable setback for buildings and structures is 75 feet from the ordinary high water mark (s. 5.1 of the Trempealeau County Shoreland Zoning Ordinance). This applies to any structures, including those associated with sand extraction or sand mining processing and

operation. Additionally, the provisions of s. 6.2 should be applied to preserve vegetative buffer corridors along navigable streams on the property from any mining activity. If either the setback or the vegetative buffer corridor requirements cannot be met on the property the department suggests denying the conditional use permit request. The applicant should work with the County and/or the department's Dan Helsel (715-284-1431) to determine if any waterway permits are required, if they have not already done so. Please note that these comments are in regard to shoreland zoning only, and do not reflect applicable erosion control, waterway permitting or other department regulations

**Rebecca A. Larson letter – Arcadia.** The following are several points to ponder: 1) Is it possible that County and township boards can be intimidated by big city attorney's representing sand mining companies as conditions are toughened up. Perhaps this is result of increased concerns, knowledge and information gathered by all of us and not because of being unfair to a specific landowner or mining company. 2) Is it true that the governor of Ohio shut down all of the sand mines there due to a recent earthquake. After millions of years of creation how terribly sad it would be if the unglaciated beauty of Trempealeau County would be destroyed due to greed. We are not put on this earth to own it but to attend to it with vigilance to protect it with passion and to cherish it.

Brueggen read a letter from the Town of Arcadia dated December 15<sup>th</sup>, 2011 which stated the Town of Arcadia Board of Supervisors have been informed that the Slaby Non-metallic Sand Mine has applied to the Trempealeau County Dept. of Land Management for a conditional use permit for a non-metallic mine and operations to be located on a ten acre portion of land located in Section 30, T21N, R8W in the Town of Arcadia approximately three miles east of Arcadia, Wisconsin. The Town of Arcadia Board of Supervisors have passed a motion at their December 13<sup>th</sup>, 2011 board meeting stating that they have no objection to the issuance of a CUP for a non-metallic mine to Slaby Non-metallic sand mine as long as all listed conditions are met.

Brandt closed the public hearing at 10:35 AM.

Lien stated Trempealeau County has been zoned since 1972 and there is a Comprehensive Zoning Ordinance that applies countywide. There is a table of uses in this Ordinance that dictates what are permitted uses, conditional uses and what are uses that are not allowed. Non-metallic mining is not what was referenced as a legal use, it is a conditional use only allowed in certain ag districts which means they must meet all conditions prior to that being a conditional use. Lien wasn't referencing this only for the Slaby mine, but as general information for all mining activity in the County. Lien read from the Ordinance in Chapter 13, Section 13.03(3)(a) Terms of Conditional Use Permit (3), "Factors for the Committee to Consider in adopting conditions: when considering an application for a non-metallic mineral mining permit, the County shall consider among other factors, the effect or impact to the proposed operation upon; 1) public infrastructure, including but not limited to streets, highways, schools and other public facilities, 2) present and proposed uses of land in the vicinity of the proposed operation, 3) surface water drainage, water quality and supply, 4) soil erosion, 5) aesthetics, included but not limited to the scenic beauty and the conservation of natural resources of outstanding quality or uniqueness, 6) the market value of lands in the vicinity of the proposed operation, 7) the physical practicality of reclamation of the site after the operation has been concluded, 8) the public interest from the standpoints of smoke, dust, noxious or toxic gases, odors, noise, vibration, blasting and the operation of heavy machinery and equipment.

Section 13.03(3)(b) In order to grant a conditional use permit for non-metallic mineral mining, the County shall find that the proposed operation is an appropriate land use at the site in question, based upon consideration of such factors as existence of non-metallic mineral deposits; proximity of site to transportation facilities and to markets; and the ability of the operator to avoid harm to the public, health, safety and welfare and to the legitimate interests in properties in the vicinity of the proposed operation.

Section 13.03(4) County Empowered to Reject Permit Application. The county reserves the right to deny an application for conditional use permit to engage in non-metallic mineral mining upon application of the standards of this section or of this zoning code in general. In the event that the County decides to deny a permit application it shall do so only in writing, setting forth the reasons for such denial.

Lien recapped this is a conditional use with all these conditions/factors that the Committee takes into consideration on a case by case scenario. There is no "cookie cutter" scenario, no one mine site is exactly like the next.

Geske made a motion to deny the CUP request; Vold seconded the motion for discussion purposes. Bice wanted to make a motion to table the CUP. After discussion, the Committee determined that another motion could be not be acted upon unless the earlier motion was withdrawn or acted upon. Geske explained after he read the information, he came to the meeting with the intent to make a motion to table it until the road work was figured out because Geske feels if they meet everything else, he didn't know how the Committee could stop them, however with the road access issue, Geske wasn't sure how the Committee would ever approve it. After hearing what Geske heard today, he changed his motion to a denial. Geske had asked earlier about Slaby's future plans. Geske doesn't like the idea that we start with ten acres and then go from there. Geske would like to see everything and what the big plan is, because if one doesn't know, all of a sudden we're in it and then it is hard to say no. Geske would really like to see total plans. After reading in the deed, if one goes down further, in Exhibit B, Page 2, after the gate, it states that there is to be a gate on both ends of the easement, not just one, so that tells Geske that there is limited use. The town should have never been going back there, if there was a gate there, they couldn't go back there without opening a gate. That was Geske's position on the issue, he has nothing against Slaby's mine, he just wants things done right. Geske agreed with some of the things that have been brought up about number of mines in areas, etc. and he felt those were issues that need to be addressed. Geske wasn't sure if this Committee should address it or the County Board, but it needs to be addressed. Bice stated if the Committee votes to deny it, then Slaby wouldn't be given the opportunity to work on an alternative route without paying another public hearing fee. Discussion followed on the cost of another public hearing, etc. Geske felt there were too many questions. Vold expressed his concern on the road issue and which plat was, in fact, correct. Nelson inquired about the alternative route and what road that would be coming from. Kyle Slaby stated he believed they were referencing an alternative route to be off of Thomas Lane to the north. In regard to Nelson's inquiry, Joe Slaby responded it is a very residential area with a very narrow road. It is a lot more difficult to use that road just for an access point, plus it would be six or seven miles to get to the State Highway going down North Creek Road. Joe Slaby addressed the gate issue by stating the gate is on a dead end of Paul Sonsalla Lane. Joe Slaby is the last person on Paul Sonsalla Lane and the gate is across that road because there are cattle on that property, so that gate is fenced off. Slaby has proceeded on Paul Sonsalla Lane as long as he can remember. The town has maintained, plowed and graveled the road. When State Highway 95 was designed, Paul Sonsalla Lane was made a 66 foot road and it goes all the way back to Joe Slaby's property (Harry Rhude farm) and that is where the gate is. Geske added that was a document that Joe Slaby would have to bring to the Committee. Joe Slaby added the reason it is a town road is because Slaby is adjoining different peoples' property to get to Slaby's road. Gerard Sonsalla stated the reason the gate was supposed to be on the lower end of Sonsalla's property is because that is what his easement states. Joe Slaby added there was never a gate on Sonsalla's property. G. Sonsalla reiterated that there is supposed to be. Discussion followed again on the motions on the table. Smick commented he hoped the road issue could be resolved in some reasonable time frame and hoped the Committee could give him time to do that. Smick felt the property owner should be able to do what he wants, within reason, with his own property. Smick felt the motion to deny should be defeated so that a motion to table could be entertained with a time frame to get the issue resolved. Nelson asked Ronald Tuschner if the town road goes up to the gate or where does the town road end? Tuschner stated, by the official mileage, that the Town gets reimbursed from the State of Wisconsin for road aide, it is up to the gate. After last months town board meeting, Tuschner found some of the documents. Geske inquired if the town received aide on dead end roads? Tuschner responded yes on dead end roads or thru roads and that is why there is a document from the State Department of Transportation-Wisconsin Information System for local roads. Tuschner read

that Paul Sonsalla Lane has gross miles of 0.99 municipal miles and 0.99 under municipal jurisdictions. Tuschner stated the town's attorney, Kostner, is using State Statute 82.31(2) and 82.18 which states public use. It basically says that if it has been there and been used and maintained by the township, of which the town receives state aide for a period of ten (10) years, if that road would move either direction, then it would have to be into that direction again for ten years where it would be presumed to be a four rod road wide, but that ten year history has to be there. Nelson inquired if the road goes from three rods to four, does it take ten years before the state pays for the extra. Tuschner responded no because it is a municipal for public use road, which is the deciding factor. Public use, maintained by the Town of Arcadia for a period of ten years is considered a public road, thus giving the town state aide per mile. Brandt stated that Mr. Kostner's point is that most town roads are not created by a deed, but rather by use and any unrecorded highway that has been worked as a public highway for ten years or more is a public highway and presumed to be 66 feet wide (four rod road). Brandt continued, the point that Mr. Fehr was making is that certain sections of that road have been recorded. For clarification, Tuschner stated even if it was a three rod road, if one goes back into conditions that the town presented to the Committee for their approval, there is a 24 foot hard top ( 2 and 2) which still would fit in a three rod road. The town specifically states that they would have to put it into a what they consider a heavy vehicular use highway with those conditions, with the sub-base, base and stop at 4 ½ inches of suppressed blacktop. Smick asked if there was additional aid that the town might get such as gas or fuel tax. Tuschner responded yes and that he thought they were getting approximately \$2,000 per mile. Discussion followed. At this point, Bice made a motion to table the CUP until the next Committee meeting, Brandt seconded. Bice encouraged all parties involved to work together to resolve the issues here. Geske clarified that the motion is tabled and when the Committee reconvenes that his motion will still be on the table. A roll call vote was taken with "yes" being to table the motion; Bice –yes, Geske-yes, Brandt-yes, Nelson – yes, Vold-yes, (Upon Quarne's inquiry – Lien advised Quarne to vote, until an opinion is received from Corporation Counsel. Brandt advised Quarne not to vote.) Quarne – abstain, Smick – yes. Motion to table until next meeting passed 6-0 with one abstention. Paul Winey stated, as one of the parties of concern, that he needed a little bit better instruction from the Committee on what it is he is supposed to do. It is Winey's contention that it is a three rod road by legal description and this sets what potential property Winey has to negotiate along the edge, because the State has said that the centerline of Paul Sonsalla Lane will need to be moved (that it not a question). The question is how much and that question cannot be answered until approved engineering plans are put into place. Winey felt neither he nor Slaby's can be expected to come up with a State approved DOT plan for the improvement on that intersection in 30 days. Winey felt he is being pressed to negotiate his property. Geske commented the Committee doesn't know that either, but that the parties should figure that out and come back to this Committee. Fehr added that, as far as timing, he does have an open records request to the Town of Arcadia to produce all documents related to this road. Fehr wasn't sure if he has received everything or if there are more documents to be produced. Fehr wasn't sure if the town could get that information to him in that time frame. Tuschner stated, what the town has given to their attorney, Kostner, is what the town can find. If Fehr wants to come and look through the town records for himself, just give the town a call as there records are wide open. Fehr questioned, if this information was given to Attorney Kostner, why didn't he look at Volume 3, Page 251. Tuschner stated he couldn't answer that for him. Joe Slaby asked how this can be determined as a three rod road, when the State surveyed/implemented Highway 95 and they state on the State document that it is a four rod road and the attorney for the town is saying it is a four rod road. Paul Sonsalla Lane goes from State Highway 95 all the way back to Joe Slaby's property. Quarne stated around 1970-71 or around that period, there was state law passed that all three rod roads were made four rod roads. Slaby's attorney, Matt Duffy commented that they have nothing to disagree with the townships attorney and they are the ones that get paid to determine that. Duffy continued, as Mr. Tuschner said, the contemplated road even with the shoulder would fit, even under a proposed three rod road. It is a 24 foot road with a two foot apron, so we now have 28 feet, 3 rods is 49 ½ feet, so Duffy is saying the plan is in place and he understands the concern about the engineering plan. Costs are mounting and approving the CUP is imperative to help move forward these engineering plans, etc, so without the County approval it pushes out a little further Duffy's clients' ability to get that moving. Mr. Slaby has presented his plan and it is preliminary until people have input into the final plan that everybody can live with (as soon as engineers come up with their plan) to develop the road. Brandt added he could tell it was the

will of the Committee to see some movement on the part of the parties towards each other in relationship to that intersection. The issues that were dealt with, in the discussion about denial, focused on that intersection and until the next meeting that is what the Committee would like to see. Smick stated, procedure wise, he suspected the Committee would receive relevant information from all the parties involved, but as part of that, it will not be turned into another public hearing. Brandt responded it would be a discussion, not a public hearing. Smick suggested that the developers look for another option.

**Noise Ordinance discussion** – Smick stated there has been previous discussion about what can be done about noise concerns and it never seems to get resolved. Smick has been asking what we need to do. How do other government entities (cities or villages) deal with noise issues? Smick asked why the County's hands are tied in doing anything with it when other entities seemingly do. Lien replied that we don't have a noise ordinance in the County. Repeatedly, month after month, Lien hears there is too much government involvement, too many restrictions/regulations so this is in direct conflict to everything that has been talked about in the last year. If Smick wants a noise ordinance that is how it needs to be regulated. The County has to adopt a noise ordinance and then it needs to be enforced, which means regulation, not people friendly, not community friendly, it means regulations, restrictive, countywide. Lien met with the Sherriff last week. Disturbing of the Peace involves anything after 10:00 PM or prior to 5:00AM and Law Enforcement takes care of that countywide. This Committee has not wanted to address this for years because; most of these activities take place in the evening hours and none of the DLM staff is working in the evening hours. The cities have noise ordinances and they have a decibel meter. The County has two ordinances which regulate noise outside of the Sherriff's Dept.; the Non-metallic Mining Ordinance in which they can run a generator below 45 dba in the off hours, the second thing we have is the Wind Ordinance. When that was adopted it stated noise cannot exceed 45 dba when measured at the property line. For the County to put something in place, a Noise Ordinance would have to be adopted and then a mechanism for enforcement would have to be figured out. Without enforcement there is no use in adopting an ordinance. Lien referenced two neighbors down in Trempealeau which have noise issues regarding a gas cannon. Smick asked to see the document which references the Disturbance of the Peace times. In reference to the staff not enforcing ordinance, Smick stated the Sherriff's Department can also enforce the DLM ordinances or any ordinances that they want to, so let's stop "passing the buck" all the time. Lien asked Corporation Counsel, Rian Radtke, if the Sherriff's Department could legally enforce DLM's ordinances. Radtke responded there would need to be some type of enabling document or ordinance from the County Board authorizing who enforces which ordinances. Law Enforcement basically enforces the state laws and any countywide ordinances. Geske suggested Smick would be better off directing an ordinance towards restricting gas cannons and they're usage. Geske stated that has been an issue down in Trempealeau for as long as Geske can remember. Discussion followed. Lien mentioned this isn't the first time that an ordinance of this type has been brought up and each time the Committee has decided to let Law Enforcement take care of it. Quarne agreed. Mark Palmer who was present from the public commented that if someone wants a noise ordinance or any other ordinance or an amendment to an ordinance there is a procedure whereby they can petition the Committee to look into adopting that ordinance. There are procedures in place. Brandt reiterated that if Smick wants to make a motion to start the process of creating a noise ordinance, then do so and it will be turned over to the staff to come up with a sample noise ordinance, etc. Smick made a motion and subsequently withdrew it after Bice suggested that the Committee let Corporation Counsel Radtke research the issue of the use of gas cannons and making their use illegal. Smick agreed that he would wait to hear information from Radtke.

At this point, Joe Slaby approached Brandt regarding the issue of the width of Paul Sonsalla Lane. A small discussion took place at which Slaby was advised to come back to the February meeting with his findings.

**Appointed Livestock Member** – Corporation Counsel Rian Radtke was present for this discussion. Brandt stated the issue is that Mr. Quarne was asked by Lien to resign from the Committee because of his dealings with a developer of a rail load out. Quarne has suggested, because of the distance he has put between that actual operation and himself that Quarne's decision making ability on this Committee would not be affected. Quarne stated he has no other interest in any other mine in Trempealeau County and he doesn't have an

interest in a mine. What he has an interest in is a rail yard, where they want to load out sand. Basically, the only thing that can't be loaded 24/7 in that rail load out is sand; anything else can be loaded at any time. Lien stated Quarne had asked him, if that parcel was zoned industrial, would they be able to load multiple items and industrial zoning would apply (In industrial zoning, hours of operation would not apply). Quarne had also asked Lien if the parcel was annexed to the City, would the County have jurisdiction. Lien stated the County would not if it was annexed to the City. Brandt stated he has talked to Lien, Corporation Counsel Radtke and County Board Chair, Ernie Vold about this issue. The reason Vold is involved is because as the County Board Chair, he appoints the Livestock Producer member but the County Board has to approve that appointment. Brandt explained the question before this Committee is: Should a recommendation be made to the County Board Chair that Quarne be removed from the Committee and then recommend the appointment of another member to this Committee, so that the County Board Chair may make that recommendation and then take that information to the County Board for their approval. Brandt stated Radtke has been asked to "weigh in" as to whether or not Quarne's interpretation of his distance from the mining sector would allow him to act as a sitting member of the E & LU Committee. The point being again, that if Quarne needs to abstain, on the issues related to mining, then he is not representing the constituency which he has been called upon to represent. Brandt turned the meeting over to Radtke. Radtke asked Quarne to describe in detail what Quarne's connection is and how do they make money for Quarne. Quarne stated he has not sold the property (as reported by someone in the room) and Quarne has not signed anything as of yet. Quarne stated he is renting land for a rail load out for fifty years, it is strictly a rental agreement, for a flat fee, no percentages are involved. Quarne emphasized it is not a sale, it is just a rental agreement and they're responsible for the building of it and the maintenance. After fifty years, Quarne explained the property either has to be reclaimed or whatever. Lien stated Quarne had come forward and told him about his interests. Quarne has abstained from voting in previous meetings on his own. Afterwards, Lien had talked to Radtke and Vold. Lien explained there are five elected members of the Committee, Geske is appointed by being FSA Chairman, and there are two appointed members; Thompson is the towns' representative and Quarne represents the livestock producers of the County. Lien continued that all of the mining permits are in ag/rural area. If Quarne cannot participate in conversations and he cannot vote, then he is not meeting the Departments, his constituents, nor his own obligations. Lien stated that was his basis for talking to Quarne about it. Lien and Quarne agreed on that point. Lien added Quarne has been a huge asset to this Committee for years and it is nothing personal. Lien stated the Committee most definitely needs livestock or agricultural representation. Discussion followed on conflicts of interest that could arise based on the contract. Lien stated if a permit before the Committee has financial benefit or loss to Quarne that could be a problem. Quarne stated it was like growing corn where they are just renting land. Lien reminded Quarne that he had abstained from voting on Winn Bay because he rented land from them. Quarne clarified that he had abstained from the vote because he had rented the land before Winn Bay purchased it. Quarne still rents from Jim Frei and not Winn Bay because Frei has ten years of rights to that land and Frei can rent to whomever he wants and Winn Bay has no say. Lien stated we don't want more bad publicity in the papers nor any perceived conflicts regarding the Committee. Bice stated if Quarne owns a piece of property that he is leasing out for fifty years with no input on what the people do with the land, he didn't see that there was an issue. Bice didn't feel we could lose one of our best members of this Committee simply because he happens to be the renter of a piece of property. Bice added Quarne has very wisely, carefully and considerately waived any ability to have any input on anything related to sand mines and this Committee does a lot of things related to other issues. To force Quarne off the Committee just because he happens to own a piece of land that is being rented, with no further input, Bice didn't feel the Committee should interfere nor cave to public perception of what they think might be happening. Bice didn't feel that was fair to Quarne nor did he think it was fair to the people. Bice and Nelson agreed Quarne has been one of the finest members of this Committee for years. Discussion followed on different business relationships. Geske commented he had talked to Lien about this issue and if Quarne was going to abstain that perhaps Quarne should resign because people are needed that can vote, however Geske didn't think that was a problem nor did he see an issue. Radtke didn't think Quarne had any duty to disclose the information. Radtke noted that under State Statute, if Quarne were a state official he would have to make a financial disclosure and disclose all associations, etc. Radtke felt to address any Committee or public concern properly, a copy of the completed, signed agreement should be forwarded to him for review. Radtke reminded Quarne that just

because there isn't a deal in place doesn't mean that there isn't a conflict. Radtke stated one could be working towards a deal and on the other side be working things in one's favor until the deal is in place and that is still a conflict and an ethics concern. Quarne agreed and stated that is why he has abstained up to this point. Quarne also mentioned that Lien supposedly knew about this issue six months before the operator even contacted Quarne. Lien explained that he was at a meeting where hauling sand into Trempealeau County was discussed and Quarne's name and the City of Blair was mentioned as being the two load outs, but until proof is presented, it is just heresay. Radtke stated a concern is that if there are clauses in that contract that would allow them (for instance allow another entity to haul in sand) to operate in Trempealeau County that would somehow keep the tenant in business or paying rent to Quarne, so that there is some sort of incentive for Quarne to vote favorably for a sand mine company so that there is enough sand out there so that the tenant keeps paying Quarne money, that is a concern of this Committee. Radtke felt that is also what the public wants to know. Lien reiterated it was not personal against Quarne, but until it is known what is in the contract, no one knows whether it is a conflict. This Committee needs representation and to make sure that it is not a conflict. Radtke stated he didn't feel comfortable about reviewing a proposed document for a couple of reasons; 1) Radtke has seen a lot of proposed agreements and by the time they get signed, they are completely different, so Radtke doesn't want to mislead the Committee and 2) Radtke doesn't want to be in a position where he knows information about Quarne's private dealings/negotiations and then be subject to an allegation that Radtke somehow leaked/lost or misplaced that information. Radtke preferred to review a contract that is signed so that he can advise this Committee as to what business Quarne is in. Radtke also felt the private negotiations and what is going on is on Quarne to disclose to this Committee as to what Quarne is working towards. Radtke reminded Quarne that as an individual, he could be subject to an ethics complaint if someone were to find out that Quarne was working behind the scenes unethically. Radtke stated the Statute that most closely applies here is that "no public official (that would include appointed members to this Committee) may use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, or the official one or more members of the official's immediate family, either separately or together, or an organization with which the official is associated". Radtke stated it is written loosely enough that if it is shown that if anyone used the office, to influence the Committee or a decision, make a decision or vote, that it is shown that there is going to be substantial benefit, even through indirect means (such as controlling competitors or lining up future business people, that could be subject to an ethics complaint. Radtke wanted to make everyone aware of that and that it applies to any public official. After discussion, Quarne agreed that as soon as he had one, he would provide the final, signed document to only Radtke and County Board Chair Ernie Vold for review. Vold suggested the three parties meet together to review the contract. Smick agreed that Quarne has given a lot to Trempealeau County and has a lot more to offer and this Committee does deal with issues other than sand mines. Smick asked Lien to provide him with verification of the elements that require particular committee membership and the requirement to operate and staff. Lien elaborated that State Statute dictates Geske's position. Prior to this Committee there was a Zoning Committee and a Land Conservation Committee, when the merger took place the E & LU Committee was created and the Advisory Committee set forth that there would be five elected members, the FSA Chair, a representative from the Towns' Association and a representative from the livestock community. The latter two members are appointing in alternating terms so that there would be some continuity in the Committee so as not to lose all Committee members after an election. Discussion took place on how the various appointments take place. Vold mentioned that the Towns' Association usually selects the person(s) to be forwarded to the County Board Chair for appointment. E. Vold commented that it has been a long standing tradition that there were two appointed members to the E & LU Committee.

**TRM/LWRM Cost Share Payment Requests** – Lien presented the following payments for approval.

<b>TRM</b>	<b>Type</b>	<b>Amount</b>	<b>New CSA</b>	<b>Total</b>	<b>Reason for change</b>
Frederick Schaffner	Pay Request	\$7,000			Certify remainder of barnyard

Quarne made a motion to approve the payment as presented, Vold seconded, motion carried unopposed.

**Survey Report** – Lien presented a survey report and bill for T20N, R9W which is Arcadia township. In talking with Nelsen this morning, Lien stated he had mentioned it was an excellent time to be out because it is clear and the day before Nelsen was able to pick up twelve satellites for global positioning. Nelson made a motion to approve the bill and report as presented, Bice seconded, motion carried with no opposition.

**Director's Report** – Lien stated the \$50 petty cash card needs to be refilled and also a check for \$24.16 (for meeting items) needs to be approved. Geske made a motion to approve the payments, Vold seconded, motion carried with no opposition.

Lien stated the 2011 budget will be finalized shortly and there should be a overrun. Lien stated last year the overrun was around the same. At that time it was decided by the Committee that half of that money would be put into a non-lapsing account for a future purchase of LIDAR and the other half went back to the General Fund. Lien stated DLM turns money back to the General Fund almost every year, depending upon budget. Upon Brandt's inquiry, Lien explained that LIDAR has not been purchased, however this is a "nest egg" should the County decide to purchase it in the future.

Lien informed the Committee that the DLM has received several complaints stemming from the weekend about mining after hours. Brueggen has sent a letter to the Guza mine site as they were allegedly mining at 7:00 PM on Saturday evening and had some activity on Sunday also. Brueggen sent them a pretty strict letter stating they need to abide by the mining hours of operation. Dave Hesch had also forwarded a request for the Department to clear his name as he was not running that mine, however that is not DLM's responsibility.

Lien provided information to the Committee regarding the acquisition of Winn Bay Sand by Preferred Sands. According to Businesswire.com, Preferred Sands is the largest frac sand producer in Canada and one of the top three in the U.S.

Discussion followed on meeting with the mining companies on an individual basis. Geske informed the Committee that he had met with Jamie Punt and toured Winn Bay's operation as he was the only current Committee member who had not had an opportunity to tour their facility. Quarne noted one can talk to anyone regarding mining, individually, because it does not affect the Committee. Brandt referenced public perception and stated if the mining companies have something to share they can present it to the committee as a whole.

Lien gave the Committee information in regard to property sales that have recently taken place and are potential mine sites.

Quarne commented, in regard to the tons of sand being hauled in and out of the mines, he was at an AMPI meeting recently and what is coming in and out of Blair is over 500,000,000 ton of cheese and milk per year. There are 827,000,000 lbs of milk, as of the first of December, coming into Blair from all over.

**Next Regular Meeting Date** – Next regular meeting date was set for Wednesday, February 8th, 2012 at 9:00 AM.

At: 12:20 PM, a motion was made by Bice to adjourn the meeting, Nelson seconded. Motion carried unopposed.

Respectfully submitted,  
Virginette Gamroth, Recording Secretary

Michael E. Nelson, Secretary