

ENVIRONMENT AND LAND USE COMMITTEE
Department of Land Management

REGULAR MEETING MINUTES
April 11th, 2012 9:00 AM
TREMPLO ROOM

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

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, Roland Thompson and Rick Geske.

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

Others present – Mark Palmer, Ron Benrud, Ben Quackenbush, Pat Kriesel, Ray Weltzien, Bob Steenlage, Bobbie Steenlage, Ron Tuschner, Gordon M. Gibbons, Margaret Olson, James P. Woychik, Stephen Doerr, Dennis Bortle, Dave Prondzinski, Wayne Wilbur, Ted Konkel.

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

Adoption of Minutes – Vold made a motion to approve the meeting minutes as presented, Nelson seconded, motion carried unopposed.

Public Hearing – Land Use Change/Rezone-Rural Residential (RR) to Exclusive Agriculture 2 (EA2)-Gordon Gibbons, Landowner – Town of Dodge Brandt called the public hearing to order at 9:07 AM. Nelson read the public hearing notice aloud. Brandt explained the public hearing procedures for the benefit of the public present. Brueggen explained the rezone was for 88 acres (4 parcels) in the Town of Dodge. Gibbons has requested the rezone in order to apply for a Conditional Use Permit for a non-metallic sand mine. Brueggen referred the Committee to an overhead aerial photo of the property. Brueggen stated the rezone would match what the zoning is in the surrounding area. Gibbons explained he applied for the rezone in order to be able to apply for a non-metallic mine. Brueggen read a letter from the Town of Dodge, dated March 13th, 2012, which stated the board supports Gibbons' request for a change in land use/zoning on approximately 88 acres in the Town of Dodge so that Gibbon's can pursue a non-metallic sand mine permit. Brandt called for public testimony. Brandt closed the public hearing at 9:12 AM. Quarne made a motion to approve the rezone from Rural Residential to Exclusive Ag 2, Geske seconded. Discussion took place regarding the land use change and the effects of that change to the density of homes allowed on a parcel. Motion carried unopposed. Brandt reminded Gibbons that the rezone would have to go to the County Board for final approval.

Public Hearing – Conditional Use Permit and Reclamation Permit – Nonmetallic Mine – Ray Weltzien, Land Owner/Applicant, Galesville, WI and Brannt Valley Excavating, Operator, Winona, MN - Town of Arcadia . Brandt called the public hearing to order at 9:15 AM. Mark Palmer was present to represent Ray Weltzien. Nelson read the public hearing notice aloud. Brueggen stated the request is for a Conditional Use Permit for a sand mine. Total acreage is 43 acres and is zoned Exclusive Agriculture 2 which follows the zoning requirements and the land use. The request is for a sand mine and washing operation and there will be excavating and sand washing equipment on site. Brueggen stated they have met all the requirements for their application. A third party engineer review was completed. The only request resulting from that reviews were for a cultural resource site review, which has been completed. Also, if there is ever an addition of a high

capacity well on the site for a wash plant then a drawdown analysis would have to be completed for the area and all DNR permits obtained. The proposal currently contains no high cap wells so that is not an issue at this time. Brueggen did have a letter of support from the Town of Arcadia as well as conditions. Brueggen turned the meeting over to Mark Palmer to explain the operation. Palmer stated Weltzien is a farmer in Holcomb Coulee. Palmer explained that near Weltzien's residence there are two large hills on each side. The proposal is to take out sand from these two hills and to reclaim it back to an agricultural use upon completion. Trucks that would be coming into Holcomb Coulee would have a staging area on the north side of the road. In the event someone would be coming out of Weltzien's driveway (it is narrow and pretty hard to widen it) there would be a staging area on the north side of Holcomb Coulee road where the trucks could drive off and wait until they could go down the driveway. Traffic control is certainly one of Palmer's concerns, but feels it is adequately addressed. When the mining begins, there will be berms erected and the mine site will be internally drained and should be able to handle a 25 year storm event. A hydrosizer is being proposed on this site. The value of the hydrosizer (sand washer) is that it will allow separation of sand grains by particle size so that they are not hauling product out of the back valley that doesn't need to be hauled out. It is also material that can be used in the reclamation therefore it can be left onsite. The hydrosizer being set up is one that will recycle the water. There will be a lined basin so that it will hold the water and after the water is utilized to wash the sand it will drain out of the sand pile and back into the basin. There will be some water loss being hauled away with the sand plus some evaporation, but generally speaking the intent is to keep all water on the site. There should be no discharges to the adjacent wetlands or towards the stream. Palmer stated they had met with the Town of Arcadia; there were a number of conditions that Town of Arcadia put on with their approval. Palmer added they have no problems going along with any of the conditions that were set by the Town of Arcadia as Palmer felt they were very reasonable. Lien inquired, since there would be no high cap well, if Palmer would be able to operate with a residential CFM well for the hydrosizer. Palmer responded that was correct and the reason that could be done is because they will have a big storage basin that they can fill up. Lien stated there was no mention of polyacrylamides or flocculants. Palmer responded that no flocculants will be used. Upon Lien's inquiry, Palmer responded they have not decided what type of liner will be in the basin, but he didn't think it would be a concrete bottom. It would probably be some type of poly liner similar to what is in manure pits, but they will keep the Dept. informed on that decision. Brandt called for public testimony.

Ronald Tuschner –Town of Arcadia Chairman - Tuschner stated as far as the prospective of the town, the applicant is very willing to meet the conditions that the town set. Tuschner added they are watching out for the groundwater and the town was satisfied with that as it is a low lying area going into that farm. Tuschner stated they have done a good job on taking the traffic problem off of the driveway and locating it on the north side of Holcomb Coulee Road for ingress and egress to the sand mine area. Tuschner closed by saying the Town was satisfied.

Mark Palmer – Registered to testify in favor.

Ron Benrud – Registered to testify in opposition. Benrud stated he is quite concerned about the groundwater as there are springs which he uses to water his nine bear dogs daily that run out of the Weltzien property. Benrud felt with Weltzien's chicken operation he was probably using 12,000 gallons a day and in a dry year there would probably be trouble with the springs. Benrud is worried about the well at his residence as he has a shallow water well. Benrud added that nothing has been mentioned about Highway 93 and the traffic. Benrud has timed the line of site on the Highway and it is approximately 7 seconds when one sees a car coming from the north to the south and if there happens to be a slow moving truck there isn't time enough to see to avoid an accident. Benrud felt there would probably be some devaluation of his property and he is concerned about that. Where the mine is proposed, Benrud thought the government paid the landowner to have ponds put in and now those will be disrupted and there was a lot of money involved. Benrud added that his son has sent a letter that Brueggen will read into the minutes later.

Bob Steenlage – Registered to testify in opposition. Steenlage stated the Weltzien's have been good friends of theirs for years and all of sudden this situation as been "dropped" on Steenlage and his wife. The net result is that Steenlage's wife has some serious health issues as a result of it. Steenlage is a Vietnam vet with Post Traumatic Syndrome Disorder under which he is supposed to stay away from stress and right now they are both under great stress. The Steenlages moved to their present home in 1977 and hope to retire there. Our children and grandchildren will come to visit, however they are hesitant to send the grandchildren now because one can hear both sides of how safe it is, and there will be at least 50 trucks coming in a day and 50 trucks going out which causes additional stress. Steenlages live approximately 2500 feet from the mine site and so they are either in the zone or out of the zone. Assuming this thing is going to pass, the Steenlages would like some assurance regarding their house foundation and their well. As an observation, there are both sides to the question (Steenlage referenced a book that he and his children have read). Steenlage stated that his children are emotionally involved because this farm will be turned over to their eight children who are well educated, well read. Steenlage stated there are cases where something like this starts and the end results are not all good. In observing this whole, Steenlage feels cheated that they were not notified early in the process that this thing was going to start. Steenlage gets the feeling that the land mine purposely, for whatever reason, waited until they were far enough, before they let the neighbors know, so that the neighbors didn't have a chance to fight it. Steenlage understood the Weltzien's wanting to have a mine and the Steenlages are not against that, per se, but the whole system and the way the whole thing evolved puts individuals under great stress. Steenlage asked what anyone was going to do about it. Just the other day it was on the news that a couple up in Pepin County or Buffalo County, the husband died, a victim. Steenlage's suggested that, in the future, somebody evaluates how this whole thing comes about. If someone is going to have a mine, the neighbors should be notified and they should talk about it at the beginning, rather than all of a sudden it is just sprung on them and then they are being pushed one way or the other. Steenlage doesn't know if it is safe or not. There are people that are for the wetlands (Steenlage was for the wetlands). Steenlage added it is hard to put into words how much this has affected the relationship between the Steenlages and Weltzien's. It affects the Steenlage's relationship with their children because some of them are very passionately against it because they believe in nature. Steenlage questioned what is going to happen with mine after mine in the County as there has been no long term evaluation of it done. Steenlage felt what is driving it is money. There is nothing wrong with that as this is the American free enterprise system, but when money gets involved, there are steps that things happen and maybe shouldn't happen in consideration of the public involved. Steenlage stated he could go on for hours and hours and talk about this. Steenlage elaborated on he and his wife's health issues and how stress is not good. Steenlage added that the way this thing came about is not proper and it needs to be evaluated so someone else doesn't have the same thing happen. Upon Brandt's inquiry regarding the title of the book Steenlage held up, Steenlage responded the title was "Night Comes to the Cumberlands". Steenlage left a copy for the Committee. Steenlage added that he used to own the farm where the "staging" area is going to be. Steenlage's son who is a doctor now, found spearheads in the area a few years back. Steenlage explained they are not just ordinary arrowheads and spearheads, they are estimated to be 15-2500 years old. Steenlage felt there was a very good possibility, that where that road is going to be dug up that spearheads could be dug up. Steenlage noted that the north side of the road is where the springs were and the south side of the road is where the stream was and there is a good possibility that there may be burial mounds there. Steenlage had shared a copy of the article regarding his sons' find with Brandt, but he would leave a copy of it for the rest of the Committee to review.

Stephen Doerr – Registered to testify in favor. Doerr stated he is in favor of the permitting of this site in that it has a natural resource that is desperately needed by our neighbors in North Dakota, Oklahoma, Texas and even out east in the Pennsylvania area wherein we in Wisconsin rely upon the natural resources from these areas for natural gas, propane and all the other biofuels and lubricants that we use here. At this same time, Doerr shared that he was at the Town of Arcadia meeting, which preceded this public hearing. Doerr watched and was disgusted, that as Mr. Benrud tried to bring forth his concerns, a joke was made and there was laughter about some piece of machinery that would be taken off the hillside. Doerr met with Benrud after two town meetings and Doerr stated Benrud didn't feel that they gave him any credibility or time in that township. In Doerr's opinion, this site was similar to the Slaby site as far as distance on a township road to the State

Highway. A difference would be that one site is quite a bit larger. Doerr was disgusted by how Benrud was treated so differently. Doerr felt the sites were similar however the neighbors were treated so differently at the different meetings.

Donna Brogan – Registered to testify in opposition. Brogan stated her concern was regarding the treatment of the neighbors in this process. Brogan was at one of the town meetings where, some of the neighbors had just found out about this, and that was heartbreaking. Brogan used to live in the City of Minneapolis and in that City if you wanted to do something in your backyard, the City would only give written permission after one had contacted all of the nearby neighbors. The reason for that is because, what you do on your own property sometimes, not always, adversely affects the neighbors. Brogan wished Trempealeau County would take that model to heart, here, from now on and really give the neighbors as much consideration as we give the landowner. Brogan stated it is heartbreaking to see what is going on in this County. We could do much better than this. We could allow the sand mines to operate and get full permission, agreement, buy off the neighbors, but there is some way that we could do it so that we are not just leaving people bitterly opposed and bitterly divided. Brogan knows we can do better than this.

Brandt called for any other public testimony.

Brueggen read aloud an e-mail from Dr. Sarah and Noah Slaby.

We are writing this statement in opposition to the proposed Ray Weltzien sand mine. Morally, we are against sand mining, in general, due to the fact of what the sand is being used for, methane gas drilling. At the sand's destination, it has horrible adverse effects on the environment where it is being mixed with carcinogenic chemicals and pumped into the ground for the extraction of natural gas. It has polluted water sources such as streams and personal wells, where owners can actually light their wells on fire. Is it ok, as a community to support an industry that is so devastatingly negative to the communities and people where the sand is being used? That being said, the good Lord has given us natural resources such as wetlands, springs and streams and the general geology of the land to filter and purify our water. It is our most sacred resource and should be considered for our children and grandchildren. The Ray Weltzien mine has a possibility of compromising these resources in Holcomb Coulee. There is a Holcomb Valley creek, several springs and wetlands in close proximity to the proposed mine. As a veterinarian, I do consulting and testing of the area water quality, not only in Wisconsin, but across the country. I have seen the negative health effects on people and animals that do not have good quality water and the costs associated with trying to correct these issues. It has been said, by sand mining advocates, that sand mining does not affect water quality and quantity, but that has not been proven with long term studies. Obviously, there are existing mines in operation, unfortunately, more all the time. We currently have a sand mine only a few miles from our property. It is on a county road, has good visibility from traffic, from both directions, and is not near any water source or wetland. If there must be mines in this County, they should be very carefully evaluated to determine the best location with the smallest environmental and safety impact. The proposed mine in Holcomb Coulee is a prime example of where not to put a mine, on a narrow town road surrounded on all sides by precious natural resources. Resources that will hopefully protect our water quality for decades to come.

Brueggen read aloud an e-mail from Greg Benrud and also shared photographs that Benrud had sent, of the area. Benrud was writing to express his opposition to the Conditional Use and Reclamation Permit for the non-metallic mine requested by Ray Weltzien, owner and Brant Valley Excavating, operator and ask that this letter be read and included in the minutes of the public hearing. Benrud grew up on the adjacent property owned by Ron Benrud and visits many times each year. While I am a believer in private property rights, I also believe that actions taken on private property must not negatively impact the surrounding environment, public safety or adjacent private property. The picture below shows a portion of the proposed mine adjacent to the Benrud property. The mine is approximately 100 feet from DNR designated wetlands and 300 feet from Holcomb Coulee creek. There is an active spring within ten feet of the property line which may have some historical and archaeological significance. In addition, this well is a contributing source of water for the Holcomb Coulee creek and DNR designated wetlands. Mining activities will surely have a negative impact on

both of these natural resources. On a recent visit, Benrud learned that, in the horse and buggy days, Holcomb Coulee road was located along the south hillside and the Benrud spring was used as a place of social gathering and a watering place for the horses. I have also been told that former residents of the Weltzien property recall a cemetery in the proposed mine area. For this reason, I believe it to be of interest to the local historical society. Also recently, I have learned that spearheads as old as 2500 years have been found near the other natural springs in the area. For this reason, I believe this site to be of interest to state archaeological societies. Regarding public safety, the picture below shows the intersection of Holcomb Coulee road and Highway 93 looking north. This is the intersection where very slow moving dump trucks will be pulling out into traffic. Because there is no right hand bypass southbound lane, I believe this creates a public safety hazard. Near the curve, an oncoming driver will not see a slow moving dump truck pulling out until they are approximately 650 feet or 7 seconds from the intersection. While it can be argued that this danger exists today with milk trucks and other slow moving vehicles, it is certain that the frequency will increase many times with the operation of the sand mine. I believe one of the stipulations for the Conditional Use Permit should be construction of a right hand bypass lane to be financed by the operator. This will help to diffuse a dangerous situation that could result in serious injury or death of one or more innocent citizens. The immediately adjacent Benrud property is used primarily for recreation, specifically for bow and gun deer hunting. Activity from the proposed mine will significantly impact the ability to utilize the property for these purposes. Noise and lighting from normal operations and periodic blasting will undoubtedly scare game from the area. While our preference is that the permit be denied, if allowable, our family requests that blasting be prohibited during the month of November to protect the personal safety of family members, typically hunting within 50 feet of the property line. We understand and insist that if approved that the one condition specified will be that no mining activity will be allowed within 50 feet of the Benrud property line. We also demand that the owner/operator be required to move rocks or debris deposited on the Benrud property from blasting. In addition, due to the elevation of the property line, we request that beginning 50 feet from the property line be reclaimed to a slope no steeper than 3 to 1. Regarding reclamation, we also request that financial assurance be required to insure that the property is restored as outlined in the conditions of the reclamation permit. I am sorry I couldn't be there today to personally present this information. I want to thank each and everyone of you for considering the items outlined above and ask you to listen to arguments offered by other people present in opposition and reject the sand mine proposed on the Weltzien property.

Brueggen read a letter from the Town of Arcadia, dated March 16th, 2012 which included conditions for the Weltzien farms nonmetallic sand mine. The Town of Arcadia Supervisors passed a motion at their March 14th, 2012 board meeting to submit the proposed conditions for a non-metallic mining operation to the Trempealeau County Environment and Land Use Committee for the Weltzien farms nonmetallic sand mine.

Brueggen had a letter from the Wisconsin Department of Transportation which included recommendations for the intersection of Holcomb Coulee Road and State Highway 93. The letter was dated March 6th, 2012 and stated the following: this letter is a follow-up to recommendations on the intersection of Holcomb Coulee road and State Highway 93. Wisconsin DOT's recommendation's for the improvements to Holcomb Coulee Road intersection with State Highway 93 are based on the trucks turning to go south on Highway 93 when leaving the mine. The trucks would make a left turn from Holcomb Coulee to State Highway 93 when leaving the mine and a right turn from State Highway 93 back to the mine. Existing connection exists as a Wisconsin DOT type B2 intersection. Wisconsin DOT would recommend having the mine upgrade the Holcomb Coulee Road connection from a Type B2 to a Type B1 intersection. This will basically require extending the right turn lane to a length of 200 feet but to the other geometric requirements of a Type B1 should be verified on the plan set provided to Wisconsin DOT. There was concern expressed at the Town of Arcadia meeting that this intersection has low sight distance looking north onto State Highway 93. Wisconsin DOT staff took sight timings and they came back between 8 and 9 seconds. While this is on the low side of acceptable, it is not low enough for Wisconsin DOT to recommend that it be corrected. If you have further questions, please free to contact me, Brett Pickert, Urban and Regional Planner, by phone or e-mail.

Brueggen commented that the sight already has a right turn lane onto Holcomb Coulee. DOT's recommendations are to make the turn large enough to accommodate a semi-truck.

Steenlage added he has lived there since 1977 and they always look to the right when they pull out and they have had many close calls with a car. Steenlage did get hit while riding a tractor, one time, as he tried to get across there fast but still got hit. Steenlage recommended that it be re-evaluated because it is extremely dangerous plus there is a bar there now. Steenlage felt the DOT needs to take another look at that. Brandt closed the public hearing at 10:05 AM.

Bice made a motion to approve the Conditional Use Permit, Thompson seconded. Brandt stated Palmer had mentioned there would be no high capacity well. It was brought up in the public hearing that there is already a chicken barn in the area using the current well. Brandt asked Palmer what the capacity of the current well is. Palmer responded, at this time there is no chicken barn at this set of buildings and the turkey barn that Weltzien has is up the valley. The only well that is on the mine site is the one that serves Weltzien's residence. Brandt commented that Greg Benrud stated blasting could affect wildlife. Upon Brandt's inquiry about blasting, Palmer stated that is an option that the plan had, they don't know, at this time, if it will become necessary. Brueggen confirmed that they do know about the blasting requirements. Upon Brandt's inquiry, Brueggen confirmed that there was a cultural resource inventory done. Brueggen stated the issue of the spearheads had just been brought to his attention the day before, so Brueggen would have to look into the issue more to see if another cultural resource review would need to be done. The Cultural Resource report that Brueggen has didn't show anything. Brandt inquired about the storm water and air quality permits. Brueggen responded the Notice of Intent has been sent in. Brueggen added, typically, we require that they get it sent in and condition the permit upon them getting the DOT permits before they start any mining activity. Brandt asked if there was a dust control plan. Brueggen believed there was and stated that also goes along with the air permitting. In regard to the Cultural Resource site review, Palmer had contacted Jean Dowiasch, who is a research archaeologist with the Mississippi River Archaeological Center. Dowiasch entered the Wisconsin Historic Preservation data base and determined that there are no reported sites at this location. Brueggen stated if the Committee wanted him to submit another Cultural Resource request, since learning about the spearheads, he could do so, perhaps through the DNR as well. Bice stated nothing has shown up so far, so we would basically be looking for things that would stifle the property owner rights. Geske commented it would be new evidence if found, but if it is not there, it is not there. Geske added, if people want another study done, what is the big deal. Thompson added he felt everybody in Trempealeau County has found arrowheads on their property. Geske responded, he knew that, but one can't build anything without having studies done and people bring things up and it is to make sure things are done right and that there is nothing there and if it isn't there then that's ok. Bice inquired what if there is something there. Geske responded then it has to be dealt with and that is why one does it. Upon Brandt's inquiry about the third party engineer review, Brueggen stated the only thing that they came up with was the Cultural Site resource review, which was in the process of getting done at the time Brueggen submitted the plan to the third party engineer. The third party engineer review also had questions on the high capacity well. Brandt stated one of the issues that were raised had to do with bonding for the reclamation. Brandt added staff will determine what is necessary to reclaim the site and require the operator to bond for it. As far as the inspections for wells and foundations, Brandt stated he saw it in the plan. Lien commented that it has been a standard that if they are going to do blasting, or something that would adversely affect foundations, then it is required that investigations be done of all foundations within a 2500 foot perimeter. Lien stated he knew Palmer was aware of that as well. If they are going to do blasting, that would automatically "kick" in. Brandt commented that an issue that was brought up by the Town of Trempealeau, last month, is the moving of the topsoil which can affect the flow of water, etc., so the Town required, even in a non-blasting situation to evaluate the wells.

Benrud stated at the Town of Arcadia meeting it was stated that mining would be 50 feet from the property line. Benrud asked that the distance of mining from the property line be increased to 100 feet and also questioned the sloping. Brueggen did have, as a Committee condition recommendation, that no mining take place within 100 feet of the property boundaries. As far as sloping, it is a state requirement that they meet a 3

to 1 slope, unless they apply for something different (whereas if they wanted some type of vertical wall it would have to be an engineer reviewed report that says the wall would be stable enough to be safe and not erode). Brueggen added there haven't been any reclamation plans passed for sand mining which contain a vertical wall, so most of the reclamation has been approved at a 3 to 1 slope or 4 to 1 slope. Steenlage inquired what happens if one is concerned about their well and foundation and lives outside the 2500 feet. Brandt responded there will be a discussion that will answer that question as well as Brogan's concerns later on as the Corporation Counsel has asked the Committee to review the process in which Conditional Use Permits are granted for non-metallic mining and where the responsibility lies for making those sorts of decisions. Bice stated the comment was made about government funded ponds. Bice would like clarification as to what those ponds are and if this is actually going to affect the function of those government structures. Palmer didn't know about the funding of the ponds, but the ponds that are there will remain there. Weltzien stated those ponds were privately built by him as Weltzien was in conservation construction for 10 plus years and during that time he kept building a few more ponds on the property. Two are next to the site but they are not going to be incorporated into the plan. One is just below the spring and all that area is going to be untouched. Down by the barn there is a pond and that may be incorporated into some of the runoff and used as a holding area or whatever the contractor wants to do. Bice wanted clarification as to what type of notification was given to the neighbors on this issue. Brueggen presented the notice which was dated March 21st, 2012 and stated it was the same notice that is submitted to the paper and to the Committee. Lien commented that the Department is required by State Statute to publish a Class II notification which means it needs to be published in the County newspaper for two consecutive weeks with the last publication at least 10 days prior to the meeting. As a courtesy, Lien stated the Department asks the applicant to submit a list of adjoining landowners and then they are notified. If the applicant omits someone, it is unfortunate but the County does that as a courtesy only. Lien stated the Committee might want to take some kind of action like Buffalo County did (to allow more public input and more time for the Committee to make decisions) where they have a first public hearing and take information and then they wait for a period (Lien thought 180 days) before they take action. Lien isn't suggesting that, but if we're hearing from the public that they aren't being given enough time to deal with these issues, then the Committee might want to look at that. Bice asked, if the County decides that trucks are an issue for school buses, would the applicant be willing to keep the trucks off the road during school bus times. Lien responded the Committee has the right to make that a condition if it affects the health, safety and welfare of the public. Since the statement was made that no flocculants would be used, Bice inquired how they intended to settle out the ponds with no flocculants. Palmer responded it was just going to be suspended particles such as silts that will naturally settle out into the pond. If some of that is in the water that they are washing and recycling, it will not create a problem. If it becomes so dirty in the basin, Palmer felt it might be necessary for them to clean some of the material out of there, but they don't anticipate that flocculants are going to be necessary. Brandt added the hydrosizer is a different system which is used instead of settling ponds. In regard to an acceleration lane, Bice stated it was mentioned about trucks coming out on the highway and heading towards Centerville and Bice felt that should be revisited by the DOT. Discussion took place on the area involved for acceleration and the roadway itself and reducing the speed limit. Brueggen read DLM staff condition recommendations.

1. Duration of the Conditional Use Permit is 10 years from the time of issuance. After the 10 year time period the applicant may apply for an extension in accordance with Section 13.03 of the Trempealeau County Comprehensive Zoning Ordinance.
2. The applicant shall work with the Town Board and/or the County Highway Commissioner to develop a road use agreement.
3. No mining activity shall take place within 100 feet of the neighboring property boundaries unless the adjacent parcels are under common ownership with the applicant and the land is within the permitted mine boundary. Property owners may sign a waiver to allow mining within 10 feet of the property line.

4. All structures and cased wells located on the properties within 2500 linear feet of the proposed mining area/site shall be inspected and the conditions of each shall be recorded prior to the commencement of any work at the site. These wells and structures should thereafter be periodically inspected to determine to the extent practical whether or not damage has occurred as a result of the mining operation. A third party independent inspector shall be used and costs associated should be borne by the owner/operator of the mine site. Landowners may sign a waiver declining the inspection of structures and cased wells located on their property.
5. A & B soil horizons must be kept separate for use in later reclamation.
6. A 24 hour blasting notice shall be submitted to the Department of Land Management. All neighboring properties within 2500 feet of the mine site and the Town of Arcadia.
7. All truck, trailers, dump boxes leaving the mine site shall be covered or enclosed. Maximum number of loads per day is 50.
8. All required permits or permit exemptions from the Department of Natural Resources or Trempealeau County shall be acquired prior to any mining activity.
9. Financial assurance for reclamation shall be established and filed with the Department of Land Management prior to any mining activity.
10. The Department of Land Management will notify the owner/operator of the mine site when all conditions have been met and mining activity may start. Until notification from the Department of Land Management no unauthorized land disturbance may take place at the mine site.
11. If a high capacity well is needed for the wash process on this site, groundwater drawdown modeling must be completed and approved. All high capacity well permits from the Wisconsin DNR and other applicable agencies must be acquired.
12. Recommendations for improvements from the Wisconsin Department of Transportation for the intersection of Holcomb Coulee Road and State Road 93 must be completed at the mine owner/operator's expense prior to any mining activity. Plans must be approved by the Wisconsin Department of Transportation and the Town of Arcadia and the appropriate right-of-way work permits must be acquired.

Conditions forwarded from the Town of Arcadia in addition to standard and staff recommended conditions for the Weltzien Mine Site.

1. Weltzien Farms Non-metallic mine shall assume, all costs associated with improvement, maintenance and repair of Holcomb Coulee road and culverts used by Weltzien Farms non-metallic sand mine commencing prior to any work on the Conditional Use Permit site and continuing until all mining activity has permanently ceased. The culvert shall be inspected annually at a cost to Weltzien Farms Non-metallic sand mine with a copy submitted to the Town of Arcadia. In addition, all existing driveway entrances shall be constructed to include culvert, if necessary, to the minimum size (diameter and length) per the Town of Arcadia minimum road design policy. If the current driveways need to be changed, must work it out with the private land owners.
2. All structures and wells on the properties immediately adjoining the Conditional Use Permit site shall be inspected and the condition of each shall be recorded prior to the commencement of any work at the site. These wells and structures should thereafter be periodically inspected to determine, to the extent practicable, whether or not damage has occurred as a result of the mining operations. Inspection and damage cost shall be borne by Weltzien Farms non-metallic sand mine.

3. The opening of the mining pits, depletion of those pits and reclamation of those areas shall occur in the order presented to the Town of Arcadia by Weltzien Farms non-metallic sand mine. Reclamation of the mine site shall begin no greater than 1 (one) years time with a 3 (three) month period for reclamation to be completed.
4. Existing perimeter tree canopy (at highest point of elevation) must remain to keep the visual appearance, aesthetics and reduce dust from leaving the proposed mining area.
5. If the Wisconsin Department of Natural Resources changes permitted air quality standards as they relate to silica and/or silica related compounds, the Conditional Use Permit shall be modified accordingly so that Weltzien Farms Non-metallic sand mine activities must always comply with the most recent DNR standards.
6. The Town of Arcadia Board of Supervisors, review and approve final site plan and equipment list when available and prior to issuance of Conditional Use Permit.
7. A notice shall be given to adjacent landowners within 2500 linear feet of mine site, 24 hours prior to blasting. A notification shall also be given to the Town of Arcadia office. Weltzien Farms Non-metallic sand mine will provide blasting signage at the beginning of the valley.
8. Blasting plan submitted and approved by the Department of Land Management prior to any continual blasting.
9. Financial assurance amount will be established after final site plan approval and prior to any excavation activity.
10. The Town of Arcadia Board should meet with Weltzien Farms non-metallic sand mine a minimum of every 6 months for the first two years and then if mutually agreed annually after the second full year of mining activity.
11. The Town of Arcadia shall be responsible for the signage of Holcomb Coulee Road.
12. The Town of Arcadia Board of Supervisors shall review the conditions, compliance, and complaints of the Weltzien Farms non-metallic sand mine mining permit with the owner/operators on an annual basis.
13. A 50 foot setback adjacent to the property line must be reclaimed to a 3 to 1 slope.
14. No truck or equipment staging on Holcomb Coulee Road.
15. Weltzien Farms non-metallic sand mine shall be responsible for picking up rocks and/or debris from blasting on adjoining land owner's request.
16. Weltzien Farms non-metallic sand mine shall provide an initial training and site visit to Emergency Responders for site specific dangers and chemicals that may require additional precautions during emergency response situations.
17. The back up alarms used on all the mining trucks must be the new style low tone alarm.
18. All mining trucks leaving will be tarped.
19. Only products excavated from the Weltzien Farms non-metallic sand mine may be processed on the site. No transporting in of sand products or by-products.
20. All mine lighting must have full cut-off shrouds so that no light is directed upward or at structures not on the property. Portable lighting shall be used only as necessary to illuminate work areas.
21. If a driveway location must be changed, Weltzien Farms non-metallic sand mine shall be responsible for all costs of relocation of the driveway, and all native grass plantings.
22. Extend driveway entrance to Holcomb Coulee Road at the Weltzien Farms non-metallic sand mine expense.
23. An Irrevocable letter of credit from a lending institution at \$0.40 per ton made to the Town of Arcadia.
24. All of the above conditions are to be in perpetuity to any future owners/operators of the Weltzien non-metallic sand mine.

Brandt stated the Committee would now begin a discussion that Corporation Counsel, Rian Radtke has wanted to have for some time with the Committee, having to do with responsibility, oversight, legal ramifications because of the County taking on legal responsibilities that should otherwise more likely be held by the township. This Committee has been in a process of watching the way we develop the conditioning of these sites. In the past the Committee has incorporated the township recommendations into our conditions. Often

they are repetitive or the County really doesn't have jurisdiction, ie. Road Use Agreements. Brandt added Radtke wants to talk about where the Committee authority lies, where the Town's authority lies and what the responsibility of the operator is in relationship to the neighbors. Specifically, Radtke wanted to discuss the Town of Arcadia conditions. Radtke stated what is before this Committee currently, is this permit and he wanted to discuss some of the issues regarding the Town of Arcadia's request. Radtke reminded the Committee that there is nothing in the County Ordinance or any law that requires this Committee to adopt whatever the town submits. The Town is recommending these conditions, there is nothing in our ordinance that requires them to submit conditions as recommendations, as the Department of Land Management provides recommendations for conditions as well. It is the Committee's role to make this decision based upon the factors in the Ordinance such as public infrastructure, affecting neighboring property values, etc. In the past, the Committee has kind of taken the attitude that what the town has put forward should be adopted. Radtke wants to correct that. It depends on certain circumstances and should be on a case by case basis. Radtke felt the town might bring forward some good ideas and the Committee may feel that those are important to protect the conditions relating to the mine site to protect the health, safety and welfare of the public. In addressing "duplicate" conditions, Radtke recommended to the Committee reconciling the two, because one wouldn't want inconsistencies that would result in difficulties in enforcement. The Committee needs to examine if the condition is a duplicate and if so, is one more or less restrictive than the other, thus creating confusion as to what the actual conditions are.

In address condition #6,"the Town of Arcadia Board of Supervisors, review and approve final site plan and equipment list when available and prior to issuance of conditional use permit". Radtke questioned why the Town needs to review and approve the final site plan. This condition gives authority to the town to what, disapprove? Radtke stated the Town does not have authority to do that. There is authority that lies within this Committee and if one were to delegate that authority to another body, then the Committee is acting outside the scope of what they can do. It is this Committee's decision to make the decision as to plans and approvals and it cannot "hand it off" to another entity. Bice responded, that his take on this issue is that the town should have total decision on what they submit to this Committee and what they want. Bice thought it wasn't this Committee's place to interfere. Bice questioned why this Committee should care if the town wanted to do that. Bice asked if Radtke was saying that the County shouldn't be enforcing what the town wants. Radtke responded, not necessarily, he was saying that the town proposes conditions (as is the case here) and they should be scrutinized by this Committee as to whether they are relevant, necessary, or whether they will cause confusion. The Committee needs to look at each one of these conditions and ask if this is something that we need to do or have in place or what would the end product be. What would be achieved by allowing this to happen. It looked to Radtke that the Committee would be delegating authority that should not be delegated and ultimately would result in an open ended permit application or condition. Radtke's opinion is that this Committee is going to grant the permit with these conditions and one of the conditions is, that it is subject to final approval by another body – it leaves it open ended. The Committee needs to make a decision, here, as to yes or no. If yes, then it has to have conditions that can be followed, enforced and have certainty so that the landowners, neighbors, zoning department know what the conditions are.

Radtke addressed condition #9. "Financial Assurance amount will be established after final site plan approval and prior to any excavation activity", Radtke stated if that is for reclamation then that is duplicate of what the County has already requested. Otherwise, Radtke has the question of financial assurance for whom or for what. There are a variety of financial assurances, and if the condition doesn't specify, then it leaves us to guess what they were or what did we mean at the time. Tuschner clarified that for the town, it was financial assurance for the Town of Arcadia for road work. Radtke stated this Committee cannot compel a party to enter into a Road Use Agreement. Agreements and contracts are entered into voluntarily by two or more parties. To compel one side to enter into it would certainly make any contract subject to being voided. What Radtke had recommended back in December was, if there are road/ public infrastructure issues that those be addressed ahead of time through a Road Use Agreement. If it is a town road, the operator and the town should sit down and enter into a Road Use Agreement that addresses all of the town concerns before it is granted, rather than on the back end of it and then making a condition that everyone work together. We all know that

when large sums of money are involved, it is hard to get everybody to work together. Radtke's recommendation is that if there are concerns about roads or road improvements and who is going to pay for that, that should be done ahead of time and should be done in a road use agreement and it should be something that this Committee will consider in deciding to either grant a permit or deny a permit. If one has an applicant that is looking to use county or town roads, but has no financial assurances in place and then roads need to be improved and they are going to be significantly damaged, how is this Committee going to get money to pay for those, on the back end, if it is just listed as a condition. If the agreements are entered into ahead of time, (while public infrastructure is something to consider, that problem is resolved for this Committee is those Road Use Agreements are in place already. Brandt stated that Radtke's point was that prior to the Conditional Use Permit being granted, it would benefit the operator and the town / county/state to enter into an agreement letting those parties determine (because it is beyond the scope of our ability) what the requirements would be for road maintenance, etc. Geske asked if this Committee could require a road agreement before it is approved? Vold added perhaps before it is accepted? Upon Geske's inquiry, Radtke responded he felt in some other County's that had been done, but Radtke felt there was a variety of questions/issues with that; 1) then it is the County's job to enforce this. Geske and Radtke agreed that the Committee should have knowledge that there is an agreement in place before the Committee acts on it or addresses it. Radtke continued that all this Committee should be addressing are the factors of does it affect public infrastructure and are there assurances in place that the Committee can grant the permit. If there is an agreement in place it makes that question easy. If there isn't anything in place it makes it difficult because now the Committee is being asked to dictate the terms of liability and how much, etc. It turns into a lot of uncertainty.

Radtke addressed condition #10, "The Town of Arcadia Board should meet with Weltzien Farms non-metallic sand mine a minimum of every 6 months for the first two years and then if mutually agreed annually after the second full year of mining activity". Radtke questioned why this Committee would care whether the sand mine operator meets with the town. It is no different than requiring them to meet with all the neighbors or anyone else for that matter. What benefit is coming from that. If they want to meet on their own time, they certainly can, but why does this Committee say that the mine has to meet with the Town, there has to be some reason for that. Tuschner responded the reason is; 1) so that the town can make sure that the mine is complying with what the town wanted in the Conditional Use, once it is passed here and 2.) if there are any complaints (the mine is required to keep a copy of any or all complaints) they can be addressed openly and in somewhat of a timely fashion and if they are not being addressed, the Town felt it was their option to say to the Dept. of Land Management that the mine is in violation. Tuschner added the County has enforcement, the Town does not. It was Tuschner's understanding that the only way the Town would have any enforcement is if they move from a Conditional Use Permit to a Licensing Permit as that is how the town has been advised. Tuschner continued the town is not here for duplication, but if some of this is going to go through the town, why is the town's time being wasted, when it could be done here. Radtke commented he thought he agreed with that. Radtke felt Tuschner was saying that the town is concerned with enforcement of conditions and that is what the Dept. of Land Management does. Radtke continued we actually have two entities working on enforcement, but the Town doesn't have enforcement authority, under this type of CUP. All the town can do is collect information and forward it on to the Dept. of Land Management. Radtke questioned why require as part of the conditions that the operator meet with a third party, so that the information is forwarded to the County for enforcement, when the County can do that themselves. Tuschner's whole point was that the efficiency of this operation has vastly improved, letigically it is vastly improved (the town has talked about that and had questions about that before) as to why the Town is spending all this time with meetings, preparing conditions, etc. when they don't have the authority unless they put Ordinances in place for the township to do that. Brandt stated this has been a concern of Radtke's for some time, that as we have developed this process, we have created inefficiencies and duplication where we need to be laying out who is responsible for certain aspects of the process. Tuschner thought it came down to two things; 1) either the townships require and wish to stay with County, 2) or the townships go with a Licensing permit on their own. Then they have to create their own zoning, and their own rules and legal. To be quite honest, Tuschner stated their enforcement of their conditions is nice because (as Tuschner understood a long time ago) they don't have to hire the attorney to enforce them. It is very simplistic in Tuschner's mind, so let's "cut to the chase", if the town's disagree with it

great or else maybe there is no use for this Committee if the town should do it and vice versa and that's the reality of it. Brandt stated the town advises the Committee on issues that aren't part of our standard conditions. The Committee can create them, themselves, but the town is closer to the situation and the concerns of the citizens. The items that aren't part of the standard conditions (low tone alarms, shielded lighting, tree cover, etc.), is a valuable part of what the town contributes. Radtke added he doesn't mean to dilute that relationship at all, but Radtke's purpose here is are we duplicating effort, are we doing things that the County shouldn't be doing because they really don't have authority so let's look at these in detail as to what should be done. Radtke is skipping over a number of the conditions, because he feels they are great ideas. Radtke is asking the Committee to look at each of the conditions and ask themselves should it be changed or modified. Vold commented it has been discussed to bring back the Non-metallic Advisory Committee to discuss some of the issues and these are some of the concerns that they probably should be looking at. The townships would get a chance to come in with that Advisory Committee as well as the mining people. Tuschner mentioned there is a meeting of the Trempealeau County Town's Association on April 17th and that issue is on the agenda. Vold commented that way everyone, the town's and the mines could be involved. Vold suggested getting the Advisory Committee started again because there are some issues. Benrud was at the last Town of Arcadia meeting and he felt the reason this came about, is because the Town of Arcadia has three members on it who decide for everybody and make decisions on these sand mines. At the last meeting there were only two members there and two people decided what was going to be done at the town level on something this important. Benrud suggested having more people involved on something as important as this, as in his opinion, it is just not right to have only two people making the decisions. Brandt commented this Committee has a greater advantage as there are eight members, therefore a wider perspective.

Radtke addressed condition #23, "An Irrevocable letter of credit from a lending institution at \$0.40 per ton made to the Town of Arcadia". Radtke again questioned, why or for what purpose? How is it related to the mining activity? How is it protecting the health, safety and welfare of the community? What is the forty cents and how did we get to that? It is arbitrary and capricious and Radtke felt there needed to be some idea of why certain dollar sums are being required. Without further information, Radtke recommended not adopting a condition such as this. Brandt asked Tuschner if he wanted to speak to this issue. Tuschner responded they have entered into a voluntary agreement between the town board and the operator on a couple different mines. The town had met with them and asked what they wanted to do as far as repair of the road, how we can work this out. It was a mutual agreement. Tuschner stated the condition, as typed, is incorrect. What it is, is an irrevocable letter of credit and a certain dollar amount with, over and above that, so much per ton of product being removed, that mutual a agreement was given for repair of said road that they are using. As Tuschner understood, as a town road, that is the sole responsibility of the town,(not the County, State or federal government), if it can be mutually agreed upon.

The town cannot force anyone to do it. Brandt responded what Tuschner was saying is, we can't tell you to require them to repair the road, but the town should bring to the County the information that there is a mutually agreed upon condition/agreement for road use. Brandt added what Radtke would like the Committee to do is to take that information in and consider that when a decision is being made as to approve the condition. By making it a condition, it implies that the Committee has the power to make something happen, which the Committee does not in some cases. Tuschner reiterated they thought the Committee had the power to enforce conditions so that was one of the towns' conditions – if it is not being followed the town can say "hey, we didn't receive payment from this concern this month". Tuschner's point was that it is a private contract between the town and the operator and the County should have no say in approving that condition or not approving it. Geske added the Committee cannot enforce the condition but they could enforce that it is in place and taken care of between the town and the operator. Brueggen stated the County has been conditioning the CUP's that the mine company works with the County. Number 2 on the staff recommended condition, "The applicant shall work with the Town Board and/or the County Highway Commissioner to develop a Road Use Agreement". Brueggen added that would cover the County, as far as, we let the town negotiate their own road use agreement, we don't have to condition anything beyond that, a dollar amount, bonding amount, etc. but before a CUP is signed the Committee would make sure that the Road Use Agreement is in place between the town and the mine company or the County Highway Commissioner and the mine company. Tuschner

added basically the County needs a simple letter stating the town has an agreement. Radtke stated, to clean things up, if the Committee knows there is an agreement, reference it as a condition saying “the agreement entered into on such date remains in effect” so that one party doesn’t breach it. If the condition is not being followed then the Committee should probably be re-looking at the site and asking if this is a problem. Brandt commented that the Committee should look more favorably on applicants who have already done “the leg work”. We have required a number of things over the years, before they come to the public hearing and Radtke is suggesting that the list of things should include Road Use Agreements. Radtke added Road Use Agreements, and anything beyond that such as third party agreements with neighbors who have property value issues or concerns, etc. If everything has been worked out, this Committee doesn’t need to worry about it, or enforce it. The more that can be done outside this Committee, the easier it is going to be to make a decision and the less the County is going to have to dictate things, which they shouldn’t be doing. Tuschner asked what happens when an agreement can’t be made. Radtke responded then the question back to the Committee is, is this site appropriate for a mine and to be permitted. Radtke added, in the event one party will not agree because they are dead set against an issue, then that is something this Committee needs to consider also. Vold added, we have had that scenario, and the Committee sent it back for the parties to come up with their own agreement, which they did. Bice asked if the Committee could take the Town of Arcadia’s recommendations, say those are the towns’ recommendations (they have no enforcement) and table the discussion on this mine because Bice didn’t feel the Committee was going anywhere on this issue. Brandt stated Radtke is making a couple of recommendations, 1) to not repeat conditions in such a way that doubt could be raised about what is being meant by a condition, 2) to not enforce or appear to be the enforcement agent for a Road Use Agreement, 3) to continue to modify or refine the Committee’s process so that the operator, neighbors, townships and our staff know what is coming, before it comes to the Committee. The Committee has already spent two years moving in that direction and just needs to spend a little more time. Smick expressed concern that the Committee would be moving backwards. Smick heard Radtke’s concerns of duplication and thought “so what”. Additionally, we probably want to add a few more things onto the towns’ conditions that they might have forgotten, oversights or at least it didn’t come up in discussion at the time. As far as duplication, Smick thought it was a concurrence and asked what is wrong with that. In addressing the word, “enforcement”, Smick stated it was mentioned that the town basically has no enforcement that may be true from a legal standpoint, it certainly is from a practical standpoint as they have no staff. We, the County, the DLM, is in fact the staff. We are supposed to be enforcing things and now all of a sudden we want to wash our hands of this and say we shouldn’t be enforcing it. Smick’s analogy was that it was a pant amount to stepping back and saying, “if we are not going to enforce it, maybe the DLM will have a need for less staff because they are not going to be enforcing it. Smick elaborated on the towns taking on more enforcement, thus saving the County money by needing less staff which would be nonsense and a step backward. Smick felt this Committee has been super responsible amongst localities; townships, cities, villages and now all of a sudden we are saying, no, we want to give it all back to them which is a step backward. Lien voiced his opinion that the meeting was getting off track. Lien stated it was always intended, from the inception of the Ordinance, that the town weigh in very heavily with an opinion and they have done this. This Committee has done a really good job of listening to that and deciphering it. What has happened is that we are trying to appease everyone whether it is at the town level or at this Committee level and we are crossing jurisdictional lines. The County wants to know that there is a road use agreement at the town level. The towns have and are the only ones that have that authority, so we don’t want to make it a condition that we enforce their agreement. They need to do that. Lien added we are not trying to “pass the buck”, legally, the County cannot it. The towns’ can lower the weight limits, they can negotiate whatever agreements are necessary. This Committee and the public are concerned that there is an agreement made. Lien stated it is ok that the town is listing that as a condition, but the County shouldn’t adopt it because the County can’t enforce it. Lien elaborated on conflicting conditions and what is enforceable at the county level.

In addressing condition #11, “The Town of Arcadia shall be responsible for the signage of Holcomb Coulee Road”. Radtke felt that is an already existing condition as the town has that authority so the County doesn’t really need to make that a condition.

In addressing condition #24, “All of the above conditions are to be in perpetuity to any future owners/operators of the Weltzien non-metallic sand mine”. Radtke stated the County Ordinance already dictates how long the life is and change of owners, etc. so Radtke didn’t feel the County needed to adopt that condition and to the extent that it would be contrary to the Ordinance could be a problem.

Lien stated one thing the Committee seems to be forgetting each month is that the Ordinance lists things the County needs to look at; aesthetics, property values, roads, infrastructure, etc. We heard about about a bridge that would hinder a bypass lane. If the bypass lane is necessary for public health and safety, it is ok to say, “no”. We don’t always have to say yes. There are reasons, through the Ordinance that allows this Committee to say no if there are things that can’t be met. The issue is then turned back over to the applicant to resolve that issue. Once they resolve that issue, they can come back to the table. Brueggen had a list of conditions that were either duplication or should be excluded as determined by himself and Radtke. Brueggen read those town conditions as being #2(duplicate), #5(erroneous because they have to have proper air permit, etc. anyway), #6 (DLM already does that), #7(duplicate), #8(duplicate), #9 (DLM requires for reclamation), #13 (duplicate), #15 (duplicate-part of state regulations), #16 (duplicate), #23 (talked about with road use agreements), #24 (standard condition). Brueggen felt these were the conditions that could be eliminated from the list. Tuschner added the reason some of those conditions are in there is because the town has used them as a normal set of conditions. The conditions kept on getting more and more and some of the towns’ conditions were implemented into the County’s. Tuschner has not seen a list of the County’s specific conditions whereas the town could sit down and do a comparison. Brueggen added the reason he didn’t eliminate what he felt was redundant was because he felt it was the Committee’s place to do so. Brandt added this has been the opportunity to deliberate which has been unavailable up until now. Brandt felt the conditions that would be remaining from the town would be #4, #16, #17, #19 and #20 – things that are not covered in the County conditions but are in the town conditions. At this time the Committee could add or suggest conditions based on the information provided. Vold felt the lighting issue was something that needed to be addressed, not only for mines, but for everyone. Lien responded that language addressing lighting is in the Comprehensive Zoning Ordinance and the Mining Ordinance. Tuschner commented if these are conditions for sand mining, there are other operations within the County that do work. In regard to such things as tarping loads, light, noise, dust, Tuschner asked if other quarries have to put up and do the same things or is it just the sand mines. Lien responded with the upcoming review of the Non-metallic Mining Ordinance there will probably be a discussion about different mining classifications such as aggregate, industrial, etc. because what DLM staff and the Committee have felt is that this industry is not the same as the other types of mining issues that have been dealt with in the County. The number of loads, the repetitiveness and the product itself is different, so we need to break that out in the ordinance. Even though this Ordinance has worked well since 1996, it doesn’t cover this type of industry. Tuschner stated the County hauls sand without tarps. Tuschner has been asked why certain businesses are required to have tarps. Lien responded anyone applying for a Conditional Use Permit is subject to the conditions set by the County. Brandt stated the public has brought up issues regarding water and road safety. The Trempealeau Town Board has been weighing in heavily with their opinion on the road safety. Brandt inquired if the Committee felt the road issue needed to be addressed beyond what the DOT recommends. Thompson commented that at all the other meetings this Committee relied on DOT approval and this mine has DOT approval. The Trempealeau Town Board commented that the right turn lane is no problem, but a left turn lane/ acceleration lane is needed from Holcomb Coulee Road going to Centerville. Discussion followed on the intersection itself. Tuschner felt there was no reason that the hill near the cemetery couldn’t be cut off to allow for greater sight distance. Someone also suggested the hill being mowed off for greater visibility. Brandt commented he was not hearing a desire from Committee members to send this back to the DOT for more recommendations/study. Vold questioned how the applicant was going to clean the sediment out of storage ponds having a poly liner. Palmer replied that if it gets deep enough and is taking away the storage capacity that is needed, it would probably have to be carefully removed with an excavator or some type of equipment that is not going to break the liner. The advantage of the liner is that it is saving the water needed to wash the sand, added Palmer. Bob Hempker, Brannt Valley Excavated explained they would probably use a small dredge, like a manure pump and just float the barge in there. That system is done a lot at Badger Mining as Hempker stated he does their pond cleaning. Quarne inquired about the

cemetery or Indian burial mounds in the area. Brandt stated the correspondence he has seen from the Mississippi River Archaeological Center indicates that it was looked into, but if it hasn't come up in a cultural search, it may not have been registered. Brandt elaborated that contractors are required to do a search of sites that have been registered with the state and the federal government. Roberta Steenlage stated it had been noted on the archaeological site, but they had never explored it beyond that. Roberta Steenlage also provided an aerial photo of the intersection. Steenlage challenged the Committee members to send their loved ones out to the intersection and have them drive in and out of that intersection ten times and then review what they think. Steenlage asked if we have to wait for someone to get killed. Why not go back and revisit the situation right now. Upon Benrud's inquiry about blasting, Tuschner responded that if blasting was not in their original permit application and they want to blast, they would need to come back to the township, etc. to change that condition. Palmer stated he didn't know if they would need to blast or not, but they included it in the permit if it would be necessary and then they would have to comply with State blasting rules. Brueggen added that is why the foundation and well inspections for everything within 2500 linear feet has been made a condition. Discussion followed on how the conditions should be presented or reviewed from the Town, etc. Brogan asked if this Committee had to accept the town conditions as a whole, or perhaps could add them as an appendix. The Committee wouldn't need to read or think about them, but they would be included as an appendix. The County would only have to review the conditions that the County could enforce. Brandt responded the reason for the discussion today, is because that is what has been done in the past and it is problematic. This issue then becomes who exactly is enforcing this and what exactly is meant. Brandt added the issue that is easily missed is that the County, with countywide zoning, is the enforcement agency. The township cannot have enforcement of conditions on a permit. After some discussion, Brandt responded to Brogan's question with a "no". The Town of Arcadia agreed to the list of conditions that the County excluded. It was a consensus between Tuschner and the Committee that the following conditions would be eliminated. 2,5,6,7,8,9,13,15,18,23, and 24. Brandt stated the standard conditions, those remaining from the town plus the twelve staff recommendations would all apply. Tuschner commented that we all want local control that is the premise of our whole democracy. Tuschner agrees with some of the duplication and made a point for the Committee to consider in that we get to the point that if we are not careful, the control then goes to the next highest government entity or the entity beyond that and then local control is totally lost. Brandt stated the motion on the table is to approve the Conditional Use Permit request and asked for Corporation Counsel advice on adding conditions. Radtke understood that the main motion is just to approve it. To add something to a condition would be just a simple amendment such as a motion to add the conditions (whatever it would end up being) and then discussion could proceed from there. Thompson made a motion to amend the original motion to include the addition of conditions recommended by staff and town, Brandt seconded. Bice commented that he will allow the lack of an acceleration lane to stand simply because DOT has weighed in and suggested that under this circumstance it is not necessary. A voice vote was taken on the motion to amend, Bice – yes, Geske-yes, Brandt – yes, Nelson – yes, Thompson – yes, Vold – yes, Smick- yes, Quarne- abstained, motion carried 7-0 with one abstention. A voice vote was taken on the main motion to approve the CUP with the conditions as just approved, Quarne – abstain, Smick – yes, Vold – yes, Thompson – yes, Nelson – yes, Brandt – yes, Geske- yes, Geske – yes, motion carried 7-0 with one abstention. Brandt reminded Palmer that no mining activity can take place until all conditions are met.

Public Hearing – Conditional Use Permit and Reclamation Permit – Nonmetallic Mine – James Guza, Landowner/Applicant, Arcadia, WI and Brannt Valley Excavating, Operator, Winona, MN –Town of Arcadia Brandt stated this application is a little different because a permit to mine has been issued but the operation is changing significantly enough to reopen the permit process. Nelson read the public hearing notice aloud. Brueggen stated this area currently has a CUP to mine on 16 acres. The area is zoning Exclusive Ag 2 (EA2). The purpose for the amendment to the CUP is to include processing and add 5.6 acres to the mine operation. The amendment is required because of the expansion of land and also the addition of a wash plant for the hydrosizer, similar to the one used at the site that was just discussed. At that point it is considered a processing facility because it does use an amount of water and is further processing than just crushing and screening. A third party engineer review was then required. Brueggen didn't see any concerns with the third party review except that if they were to do a high capacity well (which isn't proposed) they would have to go

through the steps (flow modeling) and get the proper permits from the DNR for that well. Brueggen reiterated the operation is going to change. Brueggen provided an aerial photo of the proposed mine site. Brueggen stated the hydrosizer will allow them to keep more material onsite which could reduce truck traffic by as much as 25%. Palmer stated when the original proposal was turned into the DLM, the extent of the mine boundaries were shown and it really wasn't very workable. When working on the reclamation, the whole field area couldn't be reclaimed and tied into the other land because there is a hill that goes near Guza's home, so they want to be able to operate on that site so that when they are done it will be a better agricultural area. They can control their stormwater better by having that within the mine boundaries. Palmer added they aren't proposing much of a change they just felt they could do a better job reclaiming the land and operating the mine. Brandt called for public testimony.

James Woychik – Registered to appear and testify for information. Woychik stated he lives just over the hill and is here wondering what is happening as Guza has told him there will be wash plant. Guza intervened stating that Hempker could elaborate on how much water is going to be used. Woychik added that was his main concern as he just spend a quite a bit of money on a new water system and he doesn't want his water well messed up as he now has fantastic water. Woychik wanted reassurances that everything would be alright and if something does happen who is going to get stuck with the bill for it.

Ronald Tuschner- Town of Arcadia Chairman - Tuschner added that it is a positive for the town. When some of the mining is done which is near Mr. Guza's driveway, and prior to reclamation, the Town of Arcadia wants to straighten that hill out and some of the curvature of River Valley Road to take the blind corners out of it and make it straighter. Tuschner noted that Guza has agreed to that. In general, Tuschner stated the town has no problem with it.

Mark Palmer – Registered to testify in favor. Palmer stated he had already given most of his testimony. Palmer added there is no sense in hauling a bunch of material out of the valley if they can leave it in the valley. They just want this to be a better farm field and the reclamation will work out better by including that additional acreage. Palmer stated they don't need a high capacity well. It is a little unclear how many gallons a day is lost to the process, maybe 10,000 gallons, because there are variables on how wet the sand is, what the weather is, and how many loads are coming out of there. A regular well should adequately supply them with water to their lined basin so they can recirculate and reuse the water. It is not advantageous to them to pull a lot of water out of the earth if they don't need it.

Brueggen read a letter from the Town of Arcadia dated February 28th, 2012 which addressed the amendment to the Guza Non-metallic sand mine. The letter stated the Town of Arcadia Board of Supervisors have passed a motion at their February 23rd, 2012 board meeting stating they have no objection to the E & LU Committee issuing a permit to include an additional 5.6 acres which is attached to the previous site and also to include a wash plant and well. Brandt questioned the well mentioned in the letter. Palmer assured Brandt there will be no well as it is not necessary. Brandt called three times for any other public testimony. Brandt closed the public hearing at 11:45 AM. Nelson made a motion to approve the amendment to the CUP, Geske seconded. Brandt asked staff if there were any other concerns that have arisen at this site that need to be dealt with at this time. Lien responded his only concern is what groundwater formation the well will be drawing from. Lien asked this because he was aware of people in the area who have shallow wells that he thought were in the Eau Claire formation. With some of the cones of depression that Lien has seen, there can be adverse effects where if it is drawn out of. In the Mount Simon (deeper aquifer) there are virtually no effects. Lien suggested to the Committee to make it a condition that the water be drawn from that formation instead of the shallower formation where most of the potable wells are. Lien inquired if Palmer had a plan on that. Palmer stated at this time he did not know what those depths would be. Brandt asked Guza how deep his well was. Guza responded 50 feet and he has water. Guza added he has the most shallow well of everyone and in a drought year like 1988, he had a dairy parlor and he did not run short of water. Woychik shared that his well is around 200 feet. Discussion followed on the depth of poultry wells in the area. Brandt asked about the proposed permit life of the mine. Guza responded the permit is for three years and they have to be done. Upon Brandt's

inquiry about additional conditions, Brueggen replied there were none from the town and the staff didn't have any additional because they were already established. Brandt reiterated the only change to this permit is the addition of the 5.6 acres and the designation as a process facility. Brueggen clarified the usage of a hydrosizer for the wash plant. A voice vote was taken to approve the permit additions and all voted in favor with Quarne abstaining.

At this point the Committee took a short recess.

Revisit - Conditional Use Permit – Nonmetallic Mining – Theodore Konkkel and Roman Lilla – Landowners, Stephen J. Doerr – Operator – Town of Trempealeau. Radtke stated some of the conditions of the Konkkel/Lilla permit, for the same reasons/arguments that were made in the Weltzien permit, had a variety of conditions that were incomplete or needed further explanation and in certain cases, Radtke felt were something beyond the scope of what the Committee could impose as a condition. Radtke felt it would be appropriate for the Committee to revisit those conditions to address the concerns. Instead of getting into each specific one, today, as there is no action that can be taken because it would require a public hearing which was not noticed this would have to be on the next agenda. Wilbur stated the Town of Trempealeau brought conditions here last month and the Committee voted for it and now the Committee is saying it is something that the Town of Trempealeau cannot do. Wilbur added they sat down with their attorney to draw these conditions up. Lien explained that back when the Committee made what was “preliminary” approval (back in Dec.) it was based upon receiving conditions from the Town of Trempealeau. Last month when the conditions came to the Committee, it was an item on the agenda, but it wasn't a public hearing, so the Committee was not allowed (through the Ordinance a public hearing must be held to revisit (which includes adding, deleting or modifying) conditions) to take any other action but to adopt what the Town had presented. Lien has now talked to the operator of the mine about placing that on the May E & LU Committee meeting agenda where those conditions will be opened back up to modify, add or delete. That has to be done through a public hearing process. Brandt thought what would assist the town board in approaching the owner and operator is for Radtke and Brueggen to send a list of the concerns on those conditions that we have. Wilbur asked what the difference was if the condition is in there or not? Radtke didn't feel comfortable writing a list for the town (not because he wants to keep his opinion away from them) as these are currently adopted and they have legal impact. If there are legal concerns with these, providing a list of what is wrong with them and why is Radtke providing a legal opinion to a third party as to what is legally wrong with the action that was taken, which could be grounds for possible legal action for the County to undo these. Radtke didn't feel it would be appropriate for him to give a list to the town for those reasons. There is a variety that Radtke has concerns with and he would provide a recommendation to this Committee as he is the County's legal counsel, but in order to protect the County from any lawsuit, he doesn't feel it is appropriate to give that same opinion/counsel to the town or a third party. Upon Wilbur's inquiry as to why the Town of Arcadia's conditions were scrutinized at a meeting, Brandt responded that was in the course of a public hearing which we are not in today. Attorney Ben Quackenbush was present. Quackenbush stated he has been hired by Ted Konkkel based on the conditions. Quackenbush voiced his opinion that his present is probably why Radtke is hesitant to give that information out., of which Quackenbush agreed with Radtke. Quackenbush stated his client came to him because there are conditions from the Town of Trempealeau that are difficult to work with and could put the County in litigation. As Quackenbush discussed with both Radtke and Lien, they would prefer to work that out and come back in front of a public hearing and have them changed in a month or two and get things resolved, as opposed to filing suit. Quackenbush expressed that he is willing to work with Radtke on something that is workable, or go before the Town of Trempealeau board. Brandt felt the issue to keep in mind is, it is not what Quackenbush or his client finds objectionable, but what it is that is in the County's power to enforce as it is unclear between the Town's conditions and the County's. Bortle questioned why Radtke would talk to the attorney for the landowner, but not to them about which conditions there were problems with. Radtke stated he did receive a phone call from the attorney, but they didn't discuss in detail the conditions and he will explain to the Committee, when it is back before them in a public hearing as to what Radtke's recommendation's/concerns are and then they can do what they want with that information. Geske stated we have basic conditions that we go by every month and suggested there would be nothing wrong with

the Town having and seeing them and then not duplicating them. Geske thought the Town wasn't sure where they should start. Lien felt Quackenbush and his client would meet with the Town, so they would know which conditions need to be modified or those that have legal implications. Discussion followed on different attorney opinions. Doerr stated if the Town Board, who is here today, legally having a town hall meeting, physically here per legal notices, wanted to go ahead and modify their 25 item list, if they modified it, then the conditions set December 14th, would be based on their set conditions and therefore done today (if the Town Board chose to modify those 25). Brandt stated the issue here today is what is on the agenda and the agenda doesn't allow this Committee today to open up that issue. Doerr was referring to December 14th, there was a Conditional Use Permit approved here, with one condition, in addition to Chapter 13 and Chapter 20 of the County Ordinance and that was the condition list from the Town of Trempealeau. Doerr's opinion was that was open ended and the Committee shouldn't do that in the future, however, they did it to generate this townships list, and it worked in the fact that they came forward with a list. Geske responded that is not true, this Committee did not take that action to put the Town of Trempealeau "under the gun". Geske added there was no way he was going to sit and let Doerr talk like that because that is not why it was done. At this point, Quackenbush advised Doerr to stop talking. Radtke stated, in him bringing this to the Committee's attention, he is not saying that the Town cannot present the same exact conditions that are currently adopted. Radtke is saying they need to be considered, one by one by the E & LU Committee. Radtke has an opinion as to whether they are enforceable or there are issues with them. The Town may have another issue or simply an explanation as to why a condition was put in there. Radtke was not saying that the conditions that are presented, cannot be presented and the town should start all over, he is saying this Committee needs to take a look at them and make sure that this is, in fact, is what this Committee wants to do, considering there was a limited opportunity to have that kind of public hearing discussion on them.

Surveyor's Report – Lien referred the Committee to a copy of the Surveyor's report and bill in their packet. Nelson is working in Town 20 North, Range 9 West which has probably the most difficult terrain plus has some storm damage from 1998 which is making it very difficult to get in and find these sites. Nelson made a motion to approve the report and bill as presented, Vold seconded, motion carried with no opposition.

Discussion on Property Clean up in Town of Trempealeau – Lien stated several months ago the Committee met with Cecil and Paul Wier regarding their property clean-up. They are present again today. Lien continued that, at that time, the Committee instructed Wier's to take a more assertive approach in getting things cleaned up. Lien produced a series of receipts that Wier's have sent him periodically. The last receipt was dated April 9th, 2012, prior to that March 14th and 26th. Lien stated every couple of weeks he gets a few receipts for what has been sold. Unfortunately, the DLM has still been getting complaints from neighbors saying, at this rate, clean up is never going to be completed. Lien talked to Paul Wier the day before and Paul assured Lien that they are working with Northern Investment Company on having an auction at the site. Lien recommended to the Committee that as long as the Wier's get Lien a signed contract stating they are going to have an auction, that would ensure compliance with the Ordinance requirements and no other action should be needed, provided they have an auction to clean everything up. Paul Wier stated it would probably be more than one auction and they would be spaced a week apart. The first auction would probably be vehicle related items and the second one would probably be more agricultural related items. Lien was asked to put the item on the agenda. This information was to update the Committee on what is happening. Lien will probably write the Wier's a letter stating as long as they are having an auction there would be no need for the Committee to take any further action. Wier's agreed with that plan of action.

Issues regarding Agricultural Gas Cannons – Brandt stated Bice had requested this item be put on the agenda. Corporation Counsel, Rian Radtke is present to advise what, as a County Committee, can be done. Radtke stated he was asked to look into the agricultural gas cannon issue and what the County can do about it. In Radtke's research, Chapter 167 of Wisconsin State Statutes provides regulation of fireworks. The cannon would be considered a firework and those are regulated by the town's, cities, and villages and not by the County, by Statute. Radtke continued that it would require a town to issue a permit and a person who can be issued a permit is an agricultural producer for the protection of crops from predatory birds or animals. There

is a variety of regulations that go with it such as warning signs that would need to be put up if it is for crop protection. There is a permit and the permit requires certain information. Once a permit is granted law enforcement and the fire department needs to be given at least two days notice. Radtke stated there is a provision in place for the town, currently, to deal with this. It is Radtke's understanding that there is only one issue with a cannon in the whole county, which raised the question in Radtke's mind, if this is really of countywide concern. If this is an isolated incident and there is already State Statute regulation that the town can do to take care of this problem, Radtke's opinion was that this isn't a county issue. If the town elects not to do anything or use the enforcement that they have in the State Statute then that is up to the town. Radtke added there is an opportunity for the County to adopt an ordinance dealing with regulation of the use of fireworks but again Radtke questioned does the County really want to do that since this is an isolated incident – it is not a countywide concern. Radtke didn't feel that would be appropriate under these circumstances. Radtke had extra copies of the Statutes for the town's reference. Radtke couldn't give any legal advice to the town as to what they should do, but he didn't think there was any harm in sharing with them the Chapter he referenced. Brandt stated the Committee has struggled with this for sometime. Town of Trempealeau representatives questioned whether these cannons fall under the definition of "fireworks". Radtke believed they would (that was not legal advice) in referencing the definition as it is a very broad definition. The Town representatives asked Radtke to read the definition, as they had read it and could not connect the gas cannon with fireworks. Radtke read aloud, "Chapter 167.10 – Regulation of Fireworks (1) Definition- Sub 1. In this section "fireworks" means anything manufactured, processed or packaged for exploding, omitting sparks or combustion which does not have another common use, but does not include the following: fuel or a lubricant, firearm cartridge, flair, match, cap, toy snake, model rocket engine, tobacco, sparkler. Dave Prondzinski felt the problem was fuel because it is LP gas. Radtke responded the question he would ask is, is it something that is manufactured, processed or packaged for exploding. Radtke added fuel in itself is not a firework even though it is combustible. Radtke admitted never seeing one of the cannons, so he couldn't tell the town whether or not it was, in fact, a firework per se, but the definition of a firework is very broad. Radtke added that in Chapter 167.10 (3) (c) talks about use. Radtke read aloud, " a permit under this subsection may be issued only to the following person; public authority, fair association, amusement park, park board, civic organization, any individual or group of individuals, an agricultural producer for the protection of crops from predatory birds or animals". Radtke stated it sounds like it applies. Stephen Doerr interjected those are exceptions to the first part, but it is not manufactured to explode. Bice stated this device is very clearly designed to explode. Brandt explained what the Committee is doing is handing it back to the Town. The County Corporation Counsel has indicated that there is not a countywide concern. The Sherriff has indicated, a number of times, that there are noise ordinances that this doesn't apply to. Bortle stated the problem is that the cannon is put right on the property line, about 35 feet off of Highway 35 and pointed toward's Kriesel's house. Radtke referred the Town of Trempealeau officials to State Statute 167.10(8) Enforcement (a) which gives the town significant enforcement ability – it says "the town may petition the circuit court for an order enjoining violations", meaning the town could get an injunction/court order saying that those explosions cannot take place and if that is violated the penalty for that is a fine not more than \$10,000 or imprisoned not more than 9 months or both. Radtke felt that was a significant penalty. If someone is out there playing games, this is a significant penalty that the town can use to enforce it. Bortle asked if the town would need an ordinance for that. Radtke responded he couldn't give them legal advice but he referred them, once again, to the State Statutes.

Director's Report – Lien stated the Towns' Association is meeting on April 17th in the Town of Trempealeau. Both Lien and Brueggen are planning to attend that meeting.

The Committee instructed Lien to re-convene the Non-Metallic Mining Advisory Committee and start the process of possibly making some amendments to that Ordinance. Lien has contacted everyone that is still around and available that sat on the Committee. They have all agreed to come back and continue that process. Some new members were also added which are involved in the current sand mining industry. The first meeting is planned for April 26th at 6:00 PM here in the County Board Room. Lien added in making these calls, each member has their opinion and is wondering why this is necessary. Lien explained to them about the

annexations and the reality that we are being “strong armed” to either amend the ordinance hours of operation or more annexation is going to take place. Lien explained some of the changes to the Ordinance that he foresaw. Quarne mentioned he might be leaving the Committee as he has applied for a permit in Jackson County for a mining permit therefore he cannot vote on any CUP involving mining because it could be a potential conflict of interest.

Brandt thanked Smick for his two years of service and for pressing to bring new technology into the meetings.

Bice obtained photos of the agricultural gas cannon and shared it with the Committee. Discussion followed on the use of the cannon.

Next Regular Meeting Date – The next regular meeting date was set for Wednesday, May 9th, 2012 at 9:00 AM.

At 1:50 PM, a motion was made by Quarne to adjourn the meeting, Nelson seconded. Motion carried unopposed.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michael E. Nelson, Secretary