

ENVIRONMENT AND LAND USE COMMITTEE
Department of Land Management

REGULAR MEETING MINUTES
November 13th, 2013 9:00 AM
COUNTY BOARD ROOM

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

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

Committee members present: George Brandt, Tom Bice, Michael Nelson, Ed Patzner Kathy Zeglin and Jeff Bawek. Hensel Vold and Jay Low were absent.

Staff/Advisors present: Kevin Lien, Virginette Gamroth, Jake Budish and Corporation Counsel Rian Radtke.

Others present: Gary Bixby, Dan Gelet, Mary Anne Bixby, Robin Jones, Jeanne Nutter, Rich Budinger, Ron Jordan, Beth Killian, Linda Mossman, Gerald Hawkenson, Tim Zeglin, Ron Tuschner, Susan Faber, Jayne Benedict and Donna Brogan.

Adoption of Agenda – Brandt made a motion to adopt the agenda as presented, Nelson seconded. Motion to approve the agenda carried unopposed.

Adoption of Minutes – Brandt and Bawek indicated three changes to the October 21st, 2013 meeting minutes. Nelson made a motion to approve the minutes as amended, Zeglin seconded, motion carried unopposed.

Public Hearing – Rezone/Land Use Change – Residential 8 (R-8) to Commercial (C) Terry K. and Patricia R. Holliday, Applicant/Landowner – Town of Hale At 9:07 AM Chairman Bice opened the public hearing. Bice instructed the public present that anyone who wanted to testify at this public hearing should fill out the registration form and bring it to him. Nelson read the public hearing notice aloud. Lien referred the Committee to the overhead aerial photo. Lien pointed out the Holliday property. Lien stated the current zoning on the property is Residential 8-(R-8) and the request is to go to Commercial (C) to construct a public storage building on one acre of land. The building is to be approximately 30 X 100 in size. Lien has not received any calls for or against this proposal. Bice acknowledged Terry Holliday who was present and asked him if he had any further comments and if that was pretty much Holliday’s situation. Holliday responded that was all he was looking for. Bice called for any public testimony three times. There being no public testimony, Bice then asked for comments from the town. Lien read a letter from the Town of Hale which stated they made a motion to allow the zoning change from R-8 to Commercial which would allow the building of a storage unit. This was passed at the regular board meeting on Tuesday, September 10th, 2013. For the benefit of the Committee, Lien noted that Section 2.05 of the Comprehensive Zoning Ordinance shows a General Table of Uses, and under that table, storage units for commercial use have to be in a commercial zoning district therefore the need for the rezone. Bice once again called for any comments on this application. Bice closed the public hearing at 9:11 AM. Nelson made a motion to approve the rezone/land use change, Brandt seconded the motion. There was some discussion about where customers would come from as this is “off the beaten path”. Holliday commented that location might kill him but there is a demand for it and he is just several miles out of town and it is a small unit (approximately 23 units). Brandt asked if there was any water needed or plenty of parking or a need for a septic system. Holliday responded there is no water, plumbing or heating. It is just a storage shed. Brandt asked if there were lighting requirements. Lien responded the general Zoning Ordinance requires any

commercial use to have lighting that would not obstruct view of traffic or be a nuisance. There are certain sign lighting requirements. Lien added that because it is a commercial rezone, the Committee does have the right, if needed at a future date or there are issues, to require plantings or screenings. Because there is no one in close proximity on this site, staff didn't really see a need for that. Brandt clarified that the amount being rezoned is approximately one acre. Bawek asked if there were any site line issues for entrance or exit or has that been addressed. Lien didn't know exactly where the driveway is planned but stated (and pointed out on the aerial photo) the one acre lot is down in the corner, kind of on the forty line. Lien added the town has to issue the driveway approval and our Ordinance requires 400 feet of sight distance either way. Lien didn't think it will be an issue. Holliday agreed that it shouldn't be and added there is a small bend there but one can see both directions for a long ways. Motion to approve the land use change/rezone carried unopposed. Lien stated this rezone does have to go to full County Board for final approval.

Public Hearing – Trempealeau County Comprehensive Zoning Ordinance Revisions

Chapter 10 –Procedures - Chairman Bice opened the public hearing at 9:15 AM. Nelson read the public hearing notice aloud. Bice announced that anyone who cares to testify needs to register and submit it to him and there will also be a three minute limit for anyone who wishes testify on the issue. Lien noted there were copies of the ordinance changes on the back table and Budish has it on the overhead projector for all to view. Lien stated that in Chapter 10 under Procedures there were just minor changes and clarifications. Lien referred the Committee to Page 74, 10.04 Conditional Use Permit. Under 2(b), Lien thought this was more of a clarification. Lien read aloud the new language, “a letter from the town board regarding it's' position and response to the Conditional Use Permit application. If the town board elects to not submit its' position after an applicant makes such a request. The County will deem the town board to have no position in regard to the Conditional Use Permit application”. Lien then referred the Committee to page 76, #7 and read the new language “except as otherwise stated in the zoning code all Conditional Use Permits shall expire 12 months from the date of issuance where no action has commenced to establish an authorized use or 24 months from issuance if the authorized use is not substantially completed or in operation. If a time limit has been imposed as a condition for the permit, the permit shall expire at the end of the time limit”. Lien suggested taking public comment from the public for each chapter and approving the changes after each chapter has been reviewed. Bice announced those were the proposed changes to Chapter 10 and that he had one person who wished to comment.

Linda Mossman – Registered to testify in opposition – I reside in the City of Whitehall. I want to register in opposition but I also have a question. In regard to the portion that says the town not needing to give a letter, Mossman believes that a town should give a letter in regards to their denial or their support of a mine. Mossman didn't think they should be allowed to take a pass on this. Mossman questioned, for the permits that have already been issued, that have not been executed, what is the time frame for their twelve months if this is adopted today.

Bice commented that the Committee is not in a position at this point to answer questions. We may get to that later, but at this point the Committee wouldn't be answering questions. Bice stated he had some registrations before him but he wasn't sure what they wanted to comment on as they were not specific. Bice called for anyone who wished to comment on Chapter 10. Radtke wanted to comment on Mossman's question. Radtke stated the idea for the revision, for the letter from the town and Mossmans' concern about making the town give some position, is that the County cannot compel the town to take a position. The reason it is written that way is because the situation has happened where the town did not want to give a letter and then what? The Ordinance requires a letter from the town – does the absence of a letter or the decision not to give a letter – what does that mean, does it mean to block an application or it is because there is no position or the town can't make up their mind, etc. Radtke added that is why the provision was put in there the way it is so that the County is asking the town to provide a position/response just to clarify what the letter is for and then saying, if they decide not to give a letter that doesn't act as a road block, but the County will just treat that as there is no position one way or

another. Radtke asked Mossman if that makes sense. Mossman responded it makes sense as long as it applied that there is no position, it is a neutral position. They don't want to come out and say yes and that their position isn't to block or progress something without having to state it. Radtke agreed and he thought that was the intent and that is conveyed in the revised language by stating, "They have no position". Radtke went on to say that in the other change where it says, "except as otherwise stated in the zoning code", that provision was put in there because there are some changes made in Chapter 13 regarding whether it is an aggregate constructions site and the expiration or length of those permits versus industrial sand. Radtke explained if we didn't make this change, Chapter 10 would be in conflict/contradictory to Chapter 13. Bice called for any other comments. Brandt made a motion that the Committee adopt the changes to Chapter 10 and forward those on to County Board, Nelson seconded. Brandt stated that, after reading the minutes from the last meeting, the issue of a time line for the town boards came up in relationship to the change as far as the letter, (an issue that Bawek had raised) One of the reasons for the request for the letter is so that we know that the town board is aware of the issue and Brandt is certain that the town boards will be aware of the issue and be aware of the applications. Brandt is not concerned about the town board somehow being skipped over and again from his point of view this is a way of including the townships in the decision making process because they know best what is in their land use plan and what it is their citizens are looking for. Bice called for any other questions or comments. Motion to approve the changes to Chapter 10 passed with no opposition.

Chapter 13 - Nonmetallic Mining- Hours of Operation and general review of ordinance.

Lien announced that Budish has Chapter 13 up on the overhead for viewing by anyone who does not have a paper copy. Lien stated Chapter 13-Nonmetallic Mining Ordinance was originally adopted in 1997 after a long lengthy Citizen Advisory Committee established this Ordinance. It was revised again in 2006 and Lien thought it has been two years ago now that the Committee was brought back together and several revisions were made. The Towns' Association had input on it and made some revisions as well. This final draft shows the changes that came from the Advisory Committee, Towns and this Committee. Lien wanted to start with the changes highlighted in red. Lien referred the Committee to 13.01- Nonmetallic Mining and read the change aloud, "mining site may be permitted for industrial sand or construction aggregate or both. If a mining site is permitted for both then two separate conditional use permits shall be obtained and shall be enforced separately". Lien noted we do have that case on two sites already. Lien directed the Committee to Page 90. Lien stated this change relates to the application form (which staff has already done) and it basically says, "a statement whether the permit application is for industrial sand mining or construction aggregate mining", so we have modified our application so that there is a box that the applicant can check so that it is very apparent as to which permit they are asking for". Lien moved forward to 13.02 – Standard Conditional Use Permit requirements:

"1) Hours of operation of nonmetallic mining shall be limited based upon the defined activities; extraction and processing.

a) Extraction – Extraction shall be allowed Monday thru Friday between 6:00AM and 8:00PM during daylight savings time and between 6:00 AM and 6:00 PM during standard time. Extraction shall be allowed Saturday between 7:00 AM and 3:00 PM. No extraction shall be allowed on Sunday or Holidays as defined in Section 13.05 of this Ordinance.

b) Processing: processing may be allowed between Monday 6:00 AM thru Saturday 3:00 PM, no processing shall be allowed between Saturday 3:00 PM and Monday 6:00 AM. No processing shall be allowed on holidays as defined in Section 13.05 of this Ordinance.

c) Emergency Extraction If a nonmetallic mine operator conducts nonmetallic mining extraction outside of the stated hours of operation due to an emergency and at the request of the governor of the State of Wisconsin, Sherriff of Trempealeau County, Emergency Management Director of Trempealeau County, Zoning Administrator of Trempealeau County, Highway Commissioner of Trempealeau County or any Chair person of a town in Trempealeau County on behalf of their respective town than such operators shall give notice to the Zoning Administrator within 48 hours of the emergency extraction. If the Zoning Administrator is unable to verify the emergency requiring the extraction outside of the stated hours of operation, the operator shall be

deemed to have violated the Conditional Use Permit. If after a second occurrence the Zoning Administrator is unable to verify the emergency then the Conditional Use Permit may be revoked by the Zoning Administrator.

2) Noise – Audible noise emitted during any nonmetallic mining is limited to the standards set forth in this provision

a) Processing During Extraction Hours - noise due to processing during extraction hours of operation is not limited by this Ordinance,

b) Processing During Nonextraction Hours – noise due to processing during nonextraction hours of operation shall not exceed 45 dba measured at the outside of any building or structure used for human habitation or for the housing of farm animals including but not limited to cattle, horses and poultry unless the owner operator of the nonmetallic mine obtains a written waiver from the affected property owner – affected property owners shall be defined as the fee owners of real estate where noise at such building or structure is measured exceeding 45 db and the nonmetallic mine processing contributes to the measured noise.

c) Phase 1 – Noise Survey – If the owner/operator of a nonmetallic mine or applicant thereof desires to conduct processing at the nonmetallic site during nonextraction hours of operation then a Phase 1 Noise Survey shall be conducted. Processing during nonextraction hours shall not commence until a Phase 1 Noise Survey is completed and the survey indicates that the proposed processing during nonextraction hours will be compliant with the noise limitations in section 2(b) above.

1) Phase 1 Noise Survey shall be conducted by an independent noise consultant contractor at the expense of the owner/operator of a nonmetallic mine or applicant thereof.

2) Phase 1 – Noise Survey shall duplicate the level of noise that will be produced by the processing during nonextraction hours of operation. While the duplicated processing noise is being produced, the Phase 1 Noise Survey shall measure the noise levels and decibels at the outside of any building or structure used for human habitation, housing of farm animals including but not limited to cattle, horses, poultry on all properties that may be affected by the duplicated processing noise. The party conducting the noise survey shall obtain consent from each property owner to enter the property to measure the noise. The Phase I Noise Survey shall also determine whether duplicated processing noise contributes to the measured noise levels at any such building or structure.

3) The purpose of the Phase I Noise Survey is to identify any potentially affected property owners and to afford the owner/operator of the nonmetallic mine or applicant thereof the opportunity to mitigate the measured noise levels to achieve compliance with the noise limitations in Section 2(b) above.

d) Phase II Noise Survey – Within 24 hours after commencing of actual processing during nonextraction hours of operation, a Phase II Noise Survey shall be completed. Processing during nonextraction hours shall not continue until a Phase II Noise Survey is completed and the survey indicates that the actual processing during nonextraction hours will be compliant with the noise limitations in Section 2(b) above.

1) Phase II Noise Survey shall be conducted by an independent noise consultant contractor at the expense of the owner/operator of the nonmetallic mine.

2) The Phase II Noise Survey shall measure the noise levels and the decibels at the outside of any building or structure used for human habitation or the housing of farm animals including but not limited to cattle, horses, poultry on all properties that may be affected by the actual processing noise. The party conducting the noise survey shall obtain consent from each property owner to enter property to measure noise. Phase II Noise Survey shall also determine whether the actual processing noise contributes to the measured noise levels at any such building or structures.

3) Purpose of the Phase II Noise Survey is to measure the actual processing noise and determine whether the actual processing noise exceeds the limits in Section 2(b) above. The Phase II Noise Survey shall identify any affected property owners.

e) Waivers. The owner/operator of the non-metallic mine may obtain a waiver from an Affected Property Owner(s). Such waiver shall be in writing and shall be signed by all fee owners of the affected real estate. Such waiver shall state that the Affected Property Owner(s) is aware of the noise limitations

imposed by this ordinance and that consent is granted to allow noise levels to exceed the maximum noise limits in section (2)(b) above.

(f) Noise Complaints. Any complaint of excessive noise due to Processing during Non-Extraction hours shall be made in writing and shall state the name and address of the party complaining. Any complaint shall be forwarded to the Zoning Administrator. The Zoning Administrator shall immediately forward any such complaint to the owner/operator of the non-metallic mine. Within 72-hours of the owner/operator of the non-metallic mine receiving the noise complaint, the owner/operator of the non-metallic mine shall install a decibel meter at the building or structure on the property of the complaining party at the sole expense of the owner/operator of the non-metallic mine.

1. If the measured noise at the building or structure of the complaining party exceeds the limits stated in section (2)(b) above, then all Processing during Non-Extraction hours of operation shall immediately cease. The owner/operator shall conduct a phase-one and phase-two noise survey prior to re-commencing any Processing during Non-Extraction hours of operation.

2. If the measured noise does not exceed the limits stated in section (2)(b) above, then the installed meter shall continue to measure and record noise levels for a period of forty-five (45) days. If after forty-five (45) days no noise violations occur, the meter may be removed.

Lien then turned to Page 95 to continue reading the changes.

g) Extraction. Noise due to Extraction is not limited by this section, but may be regulated through the conditions of the conditional use permit.

Lien read at the bottom of Page 95

6) A 50- foot setback from the mining site boundary shall be maintained where no mining activity shall be allowed. In the event (2) two adjoining property owners are permitted for non-metallic mining activity, the Zoning Administrator may review the mining reclamation plans of the two sites and may authorize a setback less than 50-feet.

Lien referred the Committee to Page 96, 13.03 (1)

“Nonmetallic mining operation shall be inspected as needed but at a minimum annually by the Zoning Administrator to ensure compliance with the requirements of the Conditional Use Permit. An inspection fee is required to be paid by the operator. To determine the amount of the inspection fee refer to 13.06 of this Ordinance”.

Lien read aloud from Page 97

(5) Lapsing of Permits: Conditions Causing and Effect Of.

(a) The County may preliminarily approve a conditional use permit if the County requires certain actions to take place prior to actual issuance of the conditional use permit. Any preliminarily approved conditional use permit shall expressly identify that the conditional use permit is only preliminarily approved and shall state that the issuance of the conditional use permit is dependant upon the satisfaction of all identified preliminary conditions.

(1) The applicant shall be allowed twelve (12) months from the date when the conditional use permit was preliminarily approved to satisfy all preliminary conditions. The preliminarily approved conditional use permit shall lapse as a matter of law upon the failure to satisfy all of the preliminary conditions prior to the expiration of the twelve (12) month period.

(2) The County may allow one extension of time to the twelve (12) month period to satisfy the preliminary conditions, upon the applicant showing just cause. The length of any extension shall be for a fixed period of time at the discretion of the County. In order to seek such an extension, the applicant must submit a written request to the Department of Land Management prior to the expiration of the 12-month period.

(b) After a conditional use permit has been issued and if no activity has taken place at a Industrial Sand mining site, or rail load out facility under the permit whatsoever or, alternatively, where activity was originally

commenced but then has been terminated and such condition of non-activity, exclusive of required, ongoing reclamation under such a permit, has continued for a period of twelve (12) months in succession, the permit shall lapse as a matter of law and no further or other activities in operating the site other than reclamation will be allowed. Conditional Use Permits for Construction Aggregate mining sites shall not lapse regardless of whether activity is taking place or not. The County shall identify at the time of permitting whether a site is Industrial Sand or Construction Aggregate.

(1) The Zoning Administrator shall determine whether activity or non-activity has taken place at a mining site. Activity shall include, but is not limited to: Blasting, Construction, Crushing, Drying, Extraction, Hauling (truck/rail load out), Washing, Screening, Stripping, Non-metallic Mining, Operation, and Processing, all as defined in this chapter. Upon the premise that the ultimate goal of non-metallic mining is to sell and/or remove non-metallic minerals from a given mining site, the Zoning Administrator shall consider whether progress is being made at a mining site to produce a finished product intended to leave the site in determining whether a mining site is active.

(2) The legislative purpose of separating Construction Aggregate Mining from Industrial Sand Mining is based upon the type, volume of product, and the scale of the mining operations. Construction Aggregate sites are primarily used for infrastructure projects in a given area to reduce hauling from sites that are not in the vicinity. The foot print of a Construction Aggregate mining site is historically much smaller in scale and correspondingly runoff and erosion issues concerns are significantly reduced. Industrial Sand mine sites are rarely if ever used for local infrastructure projects; footprints are very large in nature. The separated sand particles from an Industrial Sand mining site are prone to both wind and runoff erosion at a much higher rate than Construction Aggregate.

Lien referred the Committee to Page 102 and read aloud the additions/changes.

13.05 Definitions.

(2) “Blasting” is the act of using a set charge of dynamite or other explosives at one firing to free up, loosen, or dislodge a desired product at the permitted mine site.

(3) “Construction” shall mean the process involved in preparing a site for non-metallic mineral extraction activities, including but not limited to the stripping of topsoil and overburden, the destruction of tree cover and other vegetation, the building of access roads and the construction of accessory structures and buildings to be used in the course of mining activities.

(4) “County” shall mean the standing committee of the County Board of Supervisors that is assigned the responsibility for the implementation of the County Non-metallic Mining Ordinance.

(5) “Crushing” is the act of breaking down, squeezing, pressing and pounding an object or material so that the action destroys or deforms the object into a usable or desired form.

(6) “Drying” is the action to remove moisture from the intended marketable material.

(7) “Extraction” shall mean obtaining the raw material from the permitted site following the permitted conditions. This also includes the acts of “Blasting,” “Stripping,” “Hauling,” and “Construction.”.

(8) “Hauling” is the action of carting or transporting of any material on public roadways, either raw or processed, from the original location of the raw or processed material to another location not on the permitted grounds.

(9) “Holiday” shall mean those legal holidays recognized by the State of Wisconsin on which no work is performed by employees of the State. These shall include; New Years Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve Day, Christmas Day, and New Year’s Eve Day.

(10) “Non -Metallic Mineral -Mining” or “Non Metallic Mining” shall mean all or any part of the process involved in the mining of non-metallic minerals including but not limited to the commercial extraction, agglomeration, beneficiation, removal of overburden and the production of refuse. It does not mean exploration, or prospecting, or mining of non-metallic minerals for a property-owner’s sole use on the property-owner’s property.

(a) “Industrial Sand” is a high purity silica sand product sold for any of the following uses: glassmaking, metal casting, metal production, chemical production, paint and coatings, ceramics and refractory, and oil and gas recovery (i.e. “frac sand”). This sand is classified as 212322 Industrial Sand Mining according to the NAICS (North American Industry Classification System) Standard Industrial Classification (SIC) System.

(b) “Construction Aggregate” is either sand and gravel or crushed stone (stone crushed from bedrock) that is predominately produced and used for local construction purposes (i.e., asphalt or concrete roads, concrete, asphalt, building or dimension stone, railroad ballast, decorate stone, retaining walls, revetment stone, roofing granules, and other similar uses) or used for agricultural uses such as ag lime and bedding sand for livestock operations. Small amounts of sand and gravel or crushed stone may be produced and used for other purposes such as salt and sand for icy roads, water filtration systems in septic systems, landfills, mortar sand, and sand for sand blasting.

Lien read aloud from Page 104.

(11) “Operation” shall mean the conducting of all activities associated with the mining of non-metallic minerals from the site, their removal from the ground and their processing on site.

(12) “Permit Holder” shall mean that person to whom a permit has been issued under this section.

(13) “Processing” shall mean to convert raw material into a marketable form, on site, by a special process that includes the actions of “crushing”, “washing”, “screening”, “drying” and “rail-load out”. Processing shall also include moving material by way of conveyor system or other forms of transportation, but shall not include moving material on public roadways.

(14) “Rail-load out” means to load the marketable material at a rail site and transport the material to the necessary location by train.

(15) “Reclamation” shall mean those restoration efforts required to be engaged in by a permit holder pursuant to the conditional use permit to restore the site of the non-metallic mining operation to as close to its original condition as possible after mining operations have ceased or, in the case of a phased scope of operations, during the course of operations.

(16) “Screening” is sorting or sizing of material into a marketable product size.

(17) “Site” shall mean the entire legally described location of a non-metallic mining operation including but not limited to the actual sites of land disturbing activities, non-metallic mineral extraction, storage, access roadways and associated structures, buildings and other facilities.

(18) “Stripping” is to take away or remove soil, rock, or other overburden materials from nonmetallic minerals and use that material in the reclamation process, where applicable.

(19) “Washing” is the action that involves water or some other liquid for the purpose of cleansing by removing impurities or undesirables from the intended product.

Lien noted at the bottom of Page 106 the items have been renumbered to put everything in the proper sequence. That concluded the reading of all of the draft changes to Chapter 13. Lien thought that answered Mossman’s earlier question. Lien stated he and Bawek had an earlier conversation on setbacks. Lien inquired if Bawek had noticed that information on the bottom of Page 95. Upon Bawek’s inquiry as to if that takes away the 10 foot setback, Lien replied that it does. Bice asked Radtke to look at definition number 15 – Reclamation and stated it says, “should be reclaimed as close as possible”. Bice asked for Radtke’s opinion as to it if that was acceptable wording. Bice thought there was a lot of interpretation there and it is a massive undertaking. While Bice thought that reclamation was extremely important, there is a lot of interpretation there so Bice was curious on Radtke’s position. Lien thought it probably should say, “in accordance with the reclamation plan”, because plans do vary. Some of them do have the intention of reclaiming close to the same topography and other natural features but Lien reiterated he thought it would be better language to say, “in accordance with the reclamation plan”. At this point Brandt inquired about procedures, as to if the Committee should take comments from the public and then make a motion to make that change. Bice stated the Committee would now receive public comment.

Tim Zeglin – Register to testify in favor. Zeglin stated he is a forty year resident and landowner in the Town of Chimney Rock. Zeglin wanted to urge the Committee to adopt Chapter 13 as written with the changes that have been suggested. Even a quick glance at all the red shows how much effort and how much haggling really has gone into making these changes. These changes represent a compromised position. To recap, Zeglin reminded those present that one of the most severe bones of contention was the noise level and both the number at 45 decibels and the use of the receptor based measuring and Phase II numbers and that requirement do represent a compromise. Zeglin thought it was the best compromise, so without “monkeying around” anymore with this Ordinance, Zeglin urged the Committee to adopt it as written.

Gary Bixby – Register in opposition but not testify. Gary Bixby who was present stated he was in opposition to 24-7 operation not necessarily in opposition to Chapter 13 as revised.

Mary Anne Bixby - Register in opposition but not testify. Bice read the written comments on the sheet which stated opposition to operation of mining 24-7, noise decibels and inadequate violations.

Ron Tuschner – Register to testify in opposition. In going through this, some of the things that Tuschner heard just today (Tuschner referenced Page 91, 92 and 98) as far as a DBA down to 45 DBA, but there is nothing in this Ordinance that specifies the distance from the mining site and/or where those DBA’s are going to be taken from other than at specific animal shelters, structures or houses where people dwell. Tuschner thought there has to be more specificity in there because Tuschner can hear from his place (seven miles as the crow flies) the sirens in Arcadia going off, so we have to have some limitation as to where one can measure the DBA’s. Tuschner isn’t again it he is just saying it should be more specific. The other issue Tuschner had in regard to the Ordinance is, in general, annexation. Part of the reason for the revision was to hopefully stop some of this annexation. As you all know we now have two cities that have complied with it. Whether you are for or against makes no difference. It is hurting the towns and Tuschner is a member of a town board. He is not here speaking on behalf of the Towns’ Association, he is speaking on behalf of the Arcadia Town Board, basically. Tuschner stated they have another annexation coming up in their township that could be 2000 acres plus. Tuschner hopes everyone realizes what that is going to do for their valuation and the taxes that we can’t raise in our township, not for the County, but for our township. The taxes we can’t raise for our school district for our vocational education units, etc. That is a definite concern or should be of any public official. It has to be. When you take 20-30 million dollars out of a valuation there is a lot of tax dollars there whether it goes to the County, the city or the towns, there are a lot of dollars there. We, in the Town of Arcadia, are going to be going for a tax override because we need more money – extra valuation really helps us out. Jobs, health - Tuschner has heard a lot about health and he has read some on health. The people that are stressed are the ones that have health problems and those people are maybe the ones that don’t have jobs, don’t have sufficient money to make payments, don’t have sufficient money to put food on the table and they can go to other sites for that, but that is stress and stress leads to a lot of health issues – major issues including heart attacks. Like it or not that is a big, big issue. Town participation – the Towns’ Association, Tuschner stated Lien had said that all of it has been put in. Tuschner thanked the Committee and added it is very, very much appreciated. Tuschner wanted the Committee to also know that we and the City of Arcadia (he uses it as a community, not a city or a town) have an industry that started 20-30 years ago with the same complaints and restraints that were put on those people. The name of the industry is Ashley. Tuschner is not saying that everyone is like that. We have GNP (Gold N’ Plump), Nelson Muffler plus other ones. These people were given a chance to go and start out in our community and take a look at what they have done for our County, what they have done for cities and the townships. Remember that - there is millions poured back into the community, above and beyond tax dollars that they turn around, and the jobs that they produce. So for those reasons we have not come to a compromise sufficient enough to be able to keep our land in the towns versus the cities that are on their own zoning. We need to look at that. We need to come to a greater compromise. We’re the only ones that are losing – don’t put our towns in that position so we have to fight “tooth and nail” or go to some other legal action.

Jayne Benedict – Register to testify in opposition. There is a lot that Mr. Tuschner said that Benedict agrees with as far as stress, heart attacks and what this does to your life. Benedict agrees with what is happening with the townships. It seems to me, that as a person talking (as the crow flies) we just inherited another 1000 acres in my backyard. I have fourteen, fifteen, Benedict didn't even know, but now you're talking about taking away the night. The night – when you have all that noise during the day and everything goes on between farming and all the trucks. Granted, Benedict understood that this was business but there has to be a limit when a person can sit there and have the quiet and take in the night so that they can get their bearings back together to go through another day. There are a lot of people that have health problems around here. There are a lot of people that are stressed for a lot of different reasons. This is causing Benedict problems - that she won't be chased out of her home at an age where she thought she would be able to retire and die there. Benedict is a night person and when you take away the night, when you take away that peace and that serenity where a person can get their bearings back together to face another day of sand mining and noise. Some of you people don't have mines by you, some of you have some. Some of us have a lot of them. You just have to start sticking up for the people in this community because it is on the verge of ruination. It is going to be so separated. There are going to be so many problems with people's health, people's families. We are at a point right now that this community will never regroup from what has happened and that is another whole issue. Benedict is asking the Committee to please think about the night. We live in the country for a reason. People in town – you have lights, you have noise, you have that all the time. We live in the country for a reason and where Benedict lives she can hear Blair, Arcadia and so much because they are up in the hills. Square Bluff is being sacrificed. If you don't want to sacrifice all those people, you need to start thinking about them. You talk about the people over where the mines are, what about the people that are surrounded and their lives are being ruined – for what, for what? You are chasing me out of my home.

Susan Faber – Register to testify in opposition. Faber asked to speak in regard to Chapter 20.

Donna Brogan – Register to testify in opposition. Brogan served on the Citizen's Advisory Committee that came up with this new Ordinance and she wanted to commend Lien for the changes as she stated he has done a lot of work since they handed it over to him. In general Brogan likes what's been done. Brogan would like to revisit this expanded hours of operation. When our Committee did this work, we were told that we needed to come to some kind of compromise so that the mines wouldn't leave the towns and go to the cities and so we greatly expanded the hours of operation in hoping that would preclude annexations. But in the year and a half that the mines have known that the hours have been expanded, we have seen all of these annexations happen anyway. Brogan didn't think there was anyway to accommodate the mines short of telling them there are no rules at all. So at this point, Brogan thinks it might be better that we keep our restricted hours of operation and force the mines to locate closer to the cities, force our city officials to really come to terms with what they are doing with these annexations. Brogan meant that so far, all it has been is promises of tax dollars from the mines with no understanding of what the obligations of the cities are, when they have miles and miles more to control. Brogan thought if we keep our limited hours of operation we might in fact, get a defacto overlay district – a mining overlay district which some people have been calling for, for awhile. Where you sort of rationalize the locations of these mines and protect the people in the County in general. Make most places of the County out of business for the mines and allow them to locate where they are best able to locate. Brogan reiterated that she liked the Ordinance in general. Brogan felt a lot of work was done, but she thought if we went back to the simple hours of operation that we used to have this might actually be beneficial and help protect some of our neighbors.

Linda Mossman – Register to testify in favor, Testify in opposition, Appear and testify for information only. Mossman stated she couldn't figure out which one she wanted to testify under so she chose all of them and she didn't know what the position particularly is. Mossman stated Brogan just summed things up. Mossman resides in the City of Whitehall, home of the future Hi-Crush 800 acre mine that was recently annexed into our city and last night the City of Whitehall found a way to circumvent an agreement that was in place with the Town of Lincoln in regards to property well guarantees. Mossman has been an advocate of town rights and the

County Ordinance since the beginning. I have stood up, I have spoken at town meetings in defense of both of those. As a resident of the City, I also understand, that unless this Committee is willing to adopt a less restrictive Ordinance, these sand mining companies will find the path of least resistance and that is what they will utilize, so that is where I am somewhat opposed to the Ordinance that is being developed today. I could argue that now is the time (like Brogan) to make a more restrictive Ordinance. You have an opportunity to apply less hours of operation. You have an opportunity to apply a more restrictive noise ordinance which is counterintuitive to what Mr. Tuschner said. I have attended all of the City of Whitehall meetings. I have attended all of the City of Independence meetings and each of the council members, each time they represent their position, they always state that the County ordinances are not restrictive enough and that these cities can better regulate and better protect their residents. If that is true, if the ordinances or the operating agreement that is going to be drafted to protect me, is not restrictive enough, why is it restrictive enough for the people in the towns. Mossman believes that now is the time, as Brogan is saying, that we need to look at this and say, “What do we really want” opposed to “how do we get them to stop annexing”.

Jeanne Nutter – Register in opposition but not testify.

Bice asked for any other comments from the public on this Chapter.

Bice stated he would like to go back to reclamation wording with the Committee. Bice asked Radtke to comment and give the Committee clarification on that wording. Radtke stated he came up with the following language, “reclamation shall mean those restoration efforts required to be engaged in to restore the nonmetallic mining site pursuant to Wisconsin Statute Chapter 295, Wisconsin Administrative Code NR-135 Trempealeau County Ordinance Chapter 20, Reclamation permit and approved reclamation plan. Brandt made the motion to adopt the language under #15 on Page 104, Zeglin seconded the motion. Bice called for Committee discussion. Brandt stated the significant change to the landscape especially industrial sand mining operations makes it nearly impossible to restore anything/the land to what it was. The State has specific requirements in terms of slope and erosion control. Our Reclamation Ordinance mirrors those State requirements and the reclamation plans that we approve enforce those requirements. With the understanding that there are going to be big holes in the ground that don’t look anything like it did before that may or may not have agricultural significance or wildlife significance that is the nature of this kind of business. The State standards are put in place without this stuff in mind but it certainly makes it possible to oversee or at the very least controlling erosion after the reclamation. Bice stated Brandt has commented that we are destined to have big holes in the ground but Brandt has been out to Badger Mining with Bice where there is some reclamation and our reclamation should be much better than that. Bice asked if Brandt would describe that area as big holes in the ground. Brandt stated that was a good point. Brandt explained if there was a hill and the hill is now gone, it isn’t exactly a big hole in the ground but there is a hill missing that was there. Brandt stated he has been to Badger Mine recently and there was a big hole in the ground. They will fill it in to the best of their ability when they are done with it, but each reclamation plan is a little different. Brandt has a recollection of just a couple of them where it is just one of the reclamation plan maps and the area afterward is just a blank page. Everything is the same elevation where they may have been significant elevation differences and texture to the landscape so it significantly changes the existing landscape. Bice commented no doubt about that. Brandt added there will be holes; there will also be slopes that will look significantly different. We can go back and look at those reclamation plans and see how different it is, but Brandt agreed that Bice made a very good point and the vagueness in the language should be tightened up. Bice asked if the Committee was ready to vote on the rewording for #15. Motion to approve Radtke’s wording for #15 carried unopposed. Bice asked if the Committee was ready to move forward with a motion on the rest of the items. Bawek stated he had asked Lien to come up with some wording on Page 95 in the area of setbacks. Bawek alluded to it at the last meeting to try and increase the distance from a house and potable well supply and asked if this might be an appropriate time to introduce that. Bawek asked if it was something that could be included in the Ordinance in that same paragraph. Lien responded right now there isn’t anything that is a separation from the well. It would just be as stated at the bottom of Page 95 which states, “a fifty foot setback from the mining site boundary”. Lien explained whatever comes in through the permit, area

there would have to be a minimum of 50 foot setback of undisturbed area there. Prior we only had a ten foot separation but as a standard, every town in the County that has dealt with mining permits has recommended a fifty foot setback which this Committee has adopted but there was never language that addressed that. Lien thought fifty was a starting point because that seemed to be what was consistently coming from the towns. Lien added the Committee could make amendments to that if they want a greater distance or wanted to address wells. Lien wasn't sure what a good setback would be in relation to wells and added we do well inspections and that's become kind of a standard whenever we have blasting but only when there is blasting. If there is a raw extraction site then well and foundation inspections are not done. Bawek stated he understood the fifty feet but what he is asking, regarding a specific house site and a specific potable well supply for that house, if we could increase the distance on those two specific items to 250 feet, such as has been proposed in the Chippewa County revision dated September, 2013. Bawek thought we may give that some thought. Lien said the Committee could add language that says the fifty foot is a minimum when one has wells and structures. Lien inquired if Bawek was asking if the mine border should be a minimum 250 feet from a well or structure by the nonparticipating or non owning applicant. Lien didn't think it would apply if it is the applicant. Bawek explained he is trying to protect a person's house, next to a mine site to give them a further distance than 50 feet from the mine site for their well supply and their house and that would be in addition to a road right-of-way if a road is involved. Bawek felt that a home across the road from a mine should be given 250 feet plus the road right-of-way distance that is already there. Bawek thought that was a fair way to do it. Both sides have to deal with the road anyway. That would allow us to add language, i.e. for a house and if there is a road involved. Lien explained how this would read today is, if the road is the boundary, they would have to stay 50 feet back from the right-of-way so they would be asking for an additional 200 feet basically. Bawek responded not an addition to the 50 but a total of 250. Lien agreed and added right now, if this is adopted today, they will have to stay back 50 feet from the road right of way, and Bawek is asking for an additional 200 feet in those cases where the road is involved. Bawek thought this was the appropriate time to discuss that and he made a motion to that affect. Brandt seconded the motion for purposes of discussion. Brandt stated his house sits less than 200 feet from the property line. It doesn't sit right on the property line it is about 150 feet from the line fence and Brandt thought there was a couple of things that we need to clarify in relationship to the current language. The mine site, as it is defined, is the place for active mining. That is to say, not just the property that's owned, but where the actual mine is. Lien stated how the staff usually enforces it is at the permitted boundary. So if a site is permitted for 200 acres, and they are only going to actively mine fifty in the middle of it, the boundary is what is permitted. That is the mining area. Brandt suggested that the fence line to fence line image that we have of the mine itself might not be practical to begin with so there is going to be something more than the fifty feet. Brandt also suggested that during the conditional use permitting process, for those situations where there is a house like Brandt's that is close to the boundary line, then this Committee can look at that and say, "now that's only 200 feet from the mine lets condition another 100 feet on that side, etc." Brandt added the concern is legitimate yet he didn't see that there was a real rural situation that it is going to be an issue. Bice asked Radtke if we, as a unit of government, have the right (it would appear in Bice's opinion to be a violation of the property owners rights as first we take a 10 foot setback and then we go to 50 and to 250) or the authority to do that. Radtke responded yes. Zeglin stated she did think that Bawek's suggestion that we do a 250 setback for a residence and wells is a good idea. In Zeglin's own situation at home, they're home is very close to a property line and the well is even closer. Zeglin thought this would be another guarantee for the safety and well being of adjoining landowners and seemed like a great idea to her. Zeglin would like to see this done. Bice stated even though the Ordinance very clearly indicates that if they cause your well a problem, they have to cover the repair and the cost of that well. Bice clarified he wasn't sure if that was in the Ordinance but he knew that was in the conditions. Zeglin didn't think it was in the Ordinance but stated it would just be another guarantee to the property owner and would actually give the mining company a more clear idea of what they can and can't do and would actually aid in assisting their ability not to violate those wells. It was Bawek's understanding that a well or a foundation problem then becomes a civil issue so that again is another burden on the injured party. This may just prevent some of that. Bice acknowledged that he knew where Bawek was going and asked i.e. Bawek has his well within 250 feet of somebody else's property, if he was in any sense encroaching on their

rights? Zeglin asked their right to what? Bice responded let's say they want to put in a sand mine or hog operation, etc. You are trying to defend the property owner's rights where the well is. Bice commented that one of the things that we are dealing with is the state stepping in and it is because we continue to enforce more and more rules. The State is saying, "Well, wait a minute, there is a limit here". Bice added if you are comfortable with that he understands the logic and he also thinks it is a very good idea. Bice hoped that in general, they would be 250 feet away from the well. Bawek commented that with the 250 feet versus the 50 feet, i.e. the mine trying to be a nice neighbor, puts up a berm 50 feet away which may give the homeowner the feeling of being surrounded. With 250 feet and then a berm put in place it gives one more of a sense of being in the country. That was another thought process for Bawek. Lien added right now there is State language already that the County has adopted, related to Ag – we have setbacks from wells. Lien has been out of the Ag engineering for awhile but he thought a manure storage structure has to be a minimum of 250 feet from someone's well – his point being that there are setbacks already that do affect people. If one builds a new house and puts the well 10 feet from the property line, it is affecting 90 feet of the neighbor's property as far as being able to spread manure. Zeglin added this would be consistent with those requirements and we cannot, not act, for our public's health, safety, and well being simply because of what the state may or may not do. In thinking about all the permits that have been issued, Lien could only think of one property that would have been affected and they actually came to an agreement. Bice commented the majority of these mines don't want to fight too much but Bice understood that we should have something in writing. In going back, Bice believed that we have permitted some mines that can operate up to 10 feet from the property line. Lien responded that was correct and we have one in the Town of Caledonia where it is two mining sites together where they have a zero property line setback because the reclamation plan made no sense to mine each area with a three to one slope coming up to a small pyramid in the middle, so they made the agreement that there is a zero property line setback and they are actually mining out the center. Bawek inquired if there was any place in any Ordinance where we still have this 10 foot setback. Lien responded 10 foot setback is consistent in the Comprehensive Zoning Ordinance for structures of any kind. Lien explained these different setbacks. Lien added when it came to nonmetallic mining, the towns had started recommending a 50 foot, greater separation and this Committee has adopted that as a standard. Bawek asked if we need to put wording in the Ordinance to separate industrial and aggregate mine for that to be consistent with everything else that we are doing. Lien replied the change here doesn't separate from construction aggregate or industrial so the change in this paragraph would apply to both. Bice commented we have been getting that larger setback just by conditioning it. Lien added that you still can as this doesn't negate that issue and on a case by case basis, the Committee can make larger setbacks – this is just a minimum. Radtke stated there was use of the term "structure", "residence, kind of interchangeably and questioned what type of structure Bawek was intending by this amendment and suggesting using what is in the proposed language, "any building or structure used for human habitation, housing of farm animals including but not limited to cattle, horses, poultry, etc.". Radtke didn't want to add that language to what Bawek's request is but stated that is the language that we have in the noise boundaries. Radtke was just asking for clarification as to what type of structure – any structure or any building or just those that are residential. Bawek's concern was residential, but the wording (if it is acceptable to the rest of the Committee) that we have would be just fine. Upon Radtke asking if it was the language regarding human habitation, etc., Bawek responded if it was acceptable to the rest of the Committee. Lien stated at this point, Bawek is amended his motion which Brandt had seconded. Radtke clarified there is a motion to add a provision but there is no specific language in the motion – it is just a provision that would allow for a minimum 250 foot setback from any structure or potable water source from a mining boundary. Radtke was just trying to come up with that wording to know what the Committee is going to be voting on. That is why Radtke asked that question. Radtke asked what was meant by structure. Zeglin commented the language should be consistent with the other subparagraph. Dairy, cattle and poultry are definitely affected by noise and dust just like we are, so Zeglin thought it would be good. The other question Radtke had is, about a waiver clause, the way it was worded is a non-applicant structure, potable water source owned by someone other than the applicant. Radtke elaborated that sometimes there are sites where the applicant has either contracts or purchase contracts/option agreements with neighbors. Radtke asked if the Committee would want to put in a provision that says, "Unless waived by the owner of the structure or potable

water source”. Bawek responded “yes”. Radtke voiced that if the Committee was in principal agreeing to this, he could perhaps come up with some language now, that he could read back and then the Committee could take action on it. Bice asked if Radtke was suggesting that, if you’re up against the farm and the guy pastures animals, we’re going to force him to be farther away from pastured animals? Bawek responded no it would be structures. Lien stated the language that exists already apply’s to a poultry barn or livestock barn but it has to be a facility not just general grazing area. At this time the Committee took a five minute recess to give Radtke time to draft some language.

Bice called the meeting back to order and asked Radtke to present his draft wording. Radtke stated the language that he came up with, and we would create another subparagraph in 5 or 6 and add the language, “the mining site boundaries shall be set back at least 250 feet from any building or structure used for human habitation or the housing of farm animals and from any potable water source unless such setback is waived in writing by the fee owner(s) of the applicable building/structure or potable water source”. Committee consensus was that the language was perfect. Bice called for any discussion/comments. Radtke suggested, making sure that procedurally, since the original motion was just an added provision that kind of described what it would sound like to either withdraw the original motion and then create a new motion that would adopt this language or amend the original motion to this language and then it would have to be passed twice, essentially. Bawek retracted his original motion and Brandt retracted his second to Bawek’s original motion. Bawek made a motion to accept Radtke’s verbiage, Brandt seconded the motion. Upon Zeglin’s request, Radtke read the suggested wording again. Bice asked Bawek if he was certain that he needed those 250 feet for animal housing also. Bawek responded yes. Bice called for any more discussion. Motion to approve carried with no opposition. Zeglin commented that several of the speakers brought up the problem of annexation in the towns and cities. Zeglin stated it was talked about at length at various meetings. Zeglin asked Lien or Radtke to correct her if she was wrong but she stated there is really nothing that the County can do to restrict villages or cities. She wanted to address those questions, they have been talked about before but she wanted the public to know that we haven’t ignored that. Lien responded that the Advisory Committee and he thought this Committee as a whole really struggled with that. Lien knows annexation is a really big issue and the Advisory Committee was all about trade-off and finding that medium where no side (whether represented by the industrial sand or the general public) left completely happy with the end result, so typically that is a pretty good ordinance. Lien thought, as many from the public have said, the mindset of amending this to stop annexation isn’t a good reason. Lien felt annexations will still happen. The one thing Lien noted during public comment is (and it is very true), he has tried for three years to get the Committee to look at a mining overlay district for planning purposes. By default, Lien stated it is happening. We are seeing cities growing due to mining and that is becoming our mining district. Areas that have access to rail road are another mining district. Lien isn’t 100 percent sure that the draft Ordinance changes as proposed today are going to fix or change anything. Bice’s observation is that 100 percent of annexations are driven by our attempt to regulate. Bice continued that they are annexing to avoid regulation and they are legally allowed to do that and we are going to discuss that in awhile. Bice added we basically have the “Catch 22” here. Brandt stated in other circumstances people are not allowed to annex to avoid regulation. There are other land uses, besides nonmetallic mining, that are unregulated in relationship to that. There are a number of land uses that state law prohibits from attempting to annex to a place that has less regulation or for that reason. Brandt agreed that currently, legally, they can do that but it is not a standard that is applied to all activities. Bice replied he was well aware of that. Bice called for any other testimony/comments. Brandt made motion to adopt the changes to Chapter 13, Zeglin seconded the motion. There being no more discussion, the motion was passed with no opposition.

Chapter 19 - Erosion Control and Storm Water Management Ordinance - Lien referred the Committee to Chapter 19, Page 159. Under item “(b) Exempt from Erosion Control Requirements Only. The following land disturbing activities shall be exempt from the erosion control provisions of sub. (1) above:

- (1) Construction Aggregate Nonmetallic mining activities (as defined in Chapter 13.05(10)(b) that are covered under a nonmetallic mining reclamation permit under NR 135 Wis. Admin. Code.

Lien explained that the Stormwater Erosion Control Ordinance would not apply to construction aggregate. Lien stated that is the only change to this part of the Ordinance. Bice called for any public testimony/comment. Zeglin made a motion to approve the change, Nelson seconded the motion. Motion to approve passed with no opposition.

Chapter 20 - Reclamation – Inactivity on mine sites and general review of ordinance. Lien informed the Committee that there were only two changes in this chapter. Lien referred the Committee to Page 218, 20.26 – Plan Review Fees. Lien read aloud, “A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under sub. 20.12 may obtain expedited reclamation plan review by paying a double fee. This expedited plan review process shall be completed within 30 days instead of the normal 60 days”. Lien stated the other change is on Page 219, 20.27 (4) Reduced Fee for Inactive Construction Aggregate Mines. “Any site on which no nonmetallic Construction Aggregate mining activity has taken place in a calendar year, and where no activity is planned for the following calendar year, shall be assessed at a reduced fee as specified in the permit fee schedule”. Lien explained there were a lot of sites, where there were no road projects in that area, and they could pay an activity fee for that year because there was no activity at that site. The permit was still kept open for future use of that site. Bice called for any public testimony/comments.

Susan Faber-Register to testify in opposition. Faber stated she is from the Town of Preston. Faber wanted to bring up a matter not mentioned in Chapters 10, 13, 20 or anything. Faber wanted to talk about hazardous waste or as they call it “contaminated soils”. Chemicals used in the processing of industrial sand are kept secret from the public and because of that reason we can’t have a real discussion here about public health or public safety or what it is in the public’s best interest without knowing what toxins are polluting our air, land and water. The basis for approval for each conditional use permit is through determination that a mine or its’ operations will or will not be “contrary to the public interest and will not be detrimental or injurious to the public health, public safety or character of the surrounding area” quoted from Chapter 10 (5)(a). How can this determination be made without the public’s knowledge of toxic chemicals being used in the process in the frac sand. What happens to the contaminated soils from the mine site, the settling ponds and the wastewater that can’t be recycled or evaporated? Is this called substitute material? What happens to all the chemicals used to wash and produce frac sand and proppants? In Chapter 20.11 we have General Standards; a) REFUSE AND OTHER SOLID WASTES. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to chapters. 289 and 291, Stats. Faber stated, first of all, she thinks we really need to have less ambiguous language here. What is refuse? What are the solid wastes we are talking about? In Wisconsin State Statute (Subchapter One) 295.11 Definitions – (3) Nonmetallic mining reclamation means: “the rehabilitation of a nonmetallic mining site to achieve the land use specified in a approved nonmetallic mining reclamation plan including removal or reuse of nonmetallic mining refuse, grading the mine site, removal, storage and replacement of topsoil, stabilization of soil conditions, re-establishment of vegetative cover, control of surface and groundwater, prevention of environmental pollution and practical restoration of fish and wildlife habitation. Nonmetallic mining refuse means waste rock, material and other natural material resulting from nonmetallic mining”. Faber stated this does not mention chemicals, contaminated soils from silica or diesel fuels or toxic spills onto the mine floor or sludge from the settling ponds. Are we talking about putting those materials back on the land as part of our reclamation? Faber has not read that stated anywhere except that they are allowed to use mining refuse? Faber asked for more of a clarification of what “refuse” is? Are we talking about these chemicals that we can’t talk about? The mining people know very well what they are and the public is starting to find out. Faber thought we should have an honest conversation about that before we continue to use reclamation as a base of approval for these mining permits.

Bice called for any other public testimony/comments. Brandt made a motion to approve the changes to Chapter 20, Nelson seconded. Brandt asked Lien about Faber’s comments. Bice stated we have a definition on the overhead screen of what refuse is. Bice reiterated that one of the questions we had was, “What is refuse?” Budish read the definition of refuse aloud, “refuse – items or materials discarded or rejected as useless or worthless, trash or rubbish”. Brandt commented that obviously there is a definition within our Ordinance but questioned if there was a more specific DNR definition? Lien didn’t think there was a definition in NR-135. Lien stated staff does ask for a

materials list so they know what types of polyacrylamides are used. They are supposed to be notifying us or the DNR of any oil spills or diesel fuel leaks. Typically they have a fueling station that is protected from those areas. We require separation of A and B soil horizons to be put back but there are cases where we may not know everything that goes back in, so Faber has made a good point, we're calling it reclamation material whether it is refuse or overburden, etc. It all goes back into reclamation. Radtke commented that under Chapter 20, Standards 20.11(1)(a) he read aloud, "nonmetallic mining refuse shall be used in accordance with a reclamation plan". Radtke interpreted that means there is ability to regulate that on a case by case basis through a plan. For the record, Bice stated if everyone is following the rules he didn't believe we have secret chemicals. Upon Bice asking if Lien agreed with that, Lien responded not to his knowledge as the applicant is supposed to give the County a list of the types and brands of polyacrylamides used on site, otherwise Lien didn't personally know of other materials out there besides oil and diesel fuels. Bice commented that wording is somewhere so basically we can figure that we are working with that definition. Lien clarified that we reference that Statute authority of this chapter adopted under the authority of Section 295. Bawek asked if there was anywhere in the Ordinance that talked about refuse or products brought in that could be contaminated and anything that protects us from that. Lien didn't believe it was in the Ordinance, but as a condition on some sites, we have made it a condition that outside product cannot be brought in to the site. Lien added that we do have some sites that might be mining in one area and processed in another. In that case, there is stuff brought in but the Committee has conditioned it that you can't take outside material from another site. Lien thought that was on a case by case basis and stated there isn't language here that would specifically stop someone from doing that. Bice called for any other public comments on Chapter 20. Bawek asked if we needed to protect ourselves in that matter. Lien voiced historically we probably have through conditional use but he did know that there were a couple of sites that were permitted early on that have mined to a point where they do not have reclamation materials so they are bringing reclamation materials in. Lien stated staff has been watching that because there is potential of bringing in contaminated material and we do have the ability, through the Ordinance, that the Zoning Administrator can require or the applicant can request to be brought back in to review those conditions. Lien thought if we saw contaminated fill or regulated material being brought in to a site for reclamation purposes, we could bring them back in. Lien thought the Committee has addressed that on most of those sites and he didn't see it as a problem today. Upon Bawek inquiring if during the permitting process the Committee should take this into consideration, Lien responded typically during the applicant's presentation they will discuss if they are taking material from outside and this Committee can condition that the material either is or is not allowed from outside. Faber asked what an infiltration pond is and asked if there was anything that allowed these settling ponds to be uncoated or unprotected so that the material can just seep into the mine floor. Faber asked if that changed in 2011 to not allow it. Bice answered that the Committee has been conditioning them to not allow that to seep through the settling ponds. Brandt commented that Faber used two different terms which are, in fact, different things. An infiltration pond is a device used for storm water management that collects storm water and then that goes into the ground. A settling pond is something that is part of the cycle of the wash plant, for instance, in which water that is filled with the silt or polyacrylamides/sludge is allowed to settle out with the clean water on the top and then recirculated into the wash plant. The problems we have had, on a couple of occasions, is where the storm water management system isn't robust enough to handle actual storm water in a major rain event so what happens is the water from the settling ponds ends up being washed through the site or into the infiltration ponds. Jayne Benedict has read a lot of Comprehensive Plans for the towns and County and asked what all this really has to do with protecting our agriculture, water, forests, wildlife and citizens? Bice commented that life is full of give and take, we can't regulate everything and so we just do the best that we can. Benedict asked why the Comprehensive Plans? Bice responded the car that Benedict came in today polluted the air a little bit and asked if that should be allowed? Benedict stated she was talking about the Comprehensive Plan that you people made up and she was wondering how this protects the Comprehensive Plans that we all wrote up. Bice replied we are going to move on from here. Bice called for any more discussion from the Committee. Brandt assumed these would go on to the County Board next month and there would be potential for more action and discussion. Motion to adopt the changes to Chapter 20 passed with no opposition. Bice asked three times if anyone wanted to comment on the full public hearing or changes in Chapters 10, 13, 19 and 20 that were discussed. Bice closed the public hearing at 11:12 AM.

Nonmetallic Mining Permit - Transfer of Operator from FTS International to Fairmount Minerals, Ltd, FML Sand, LLC – Dan Gelet, Ron Jordan and Rich Budinger - Town of Arcadia

Lien stated the Committee had established the process that when there was change in ownership of a nonmetallic mine, that we would invite the applicant/new owner in and go through the list of conditions and answer any questions or clarify any issues. Lien referred the Committee to the overhead aerial photo which showed the site location just outside of Arcadia, east on Highway 95. Budish stated these are the conditions that were adopted for this site according to the December 14th, 2011, E & LU Committee meeting minutes. Upon Lien inquiry as to if Budinger had seen these conditions before; Budinger replied he had seen the conditions from the County but not from the town. Lien asked if the new owners had any specific questions. Dan Gelet, (Director of new mine development) Fairmont Minerals introduced himself and thanked the Committee for inviting them here. He also introduced Ron Jordan, VP of mining for Fairmont Minerals and Rich Budinger, Director of mine operations for Fairmont Minerals. Budish began reading all the conditions aloud. Budinger clarified that they are familiar with the conditions they just didn't receive an e-mail. Budinger thanked the Committee for going through them. Budish offered to e-mail the conditions to the new owners and stated he has the meeting minutes also. Bice noted that where Proppant Specialists is listed in the conditions that will now refer to the new owners and their entity. Budinger responded they understood that. Upon Bice asking if they were all in agreement with that, the new owners responded, "yes". Lien reminded the Committee that this was one of the early permitted mines. Lien invited the applicant at any time to come in to discuss any amendments they might want as this was one of the first couple of mines permitted.

Discussion on Acceptance of Written Testimony During Public Hearings – Lien stated Bice had asked that this be put on the agenda today as it was discussed last month, as to how or in what form to accept public comment, but time ran short. Bice stated it is one of those situations where it is very difficult to win. The Committee has discussed, to some extent, abuse of that system. It is Bice's opinion that there is not much the Committee can do but asked for suggestions. Bawek stated at the last meeting it was discussed to have staff sort the forms out and post the results on the overhead screen. Bawek suggested making changes to the current public hearing form and presented those changes. Bawek suggested only reading those forms that are "in the State" unless present and require that the registrants be 18 years of age or older, a full time resident of Trempealeau County or live within 5 miles of the proposed mine/spur siting. Bawek felt that would give the Committee the best information to make decisions for the affected people in the area. Lien felt that was a really good idea for our public hearing form but added that most of the large stacks of forms that the Committee is getting are not our form. It is some other form that has been plagiarized from our form. Lien stated there was a discussion last time about putting a deadline as to when the public comments would have to be in the DLM office, prior to the meeting, which would give staff the time to make the required charts/spreadsheets which could then be posted in the room or shown on the overhead screen. The public would still be able to see the results/comments but it would save the Committee time in having to read all of the public comments on these form letters. Lien thought these letters would have to be in the DLM office at least a week in advance in order to give staff enough time to sort the letters and compile the information. Zeglin voiced that the main problem has been the use of these form letters that are coming from everywhere. She felt it would be good not to accept these "form letter" registration forms. She thought it would also be good to restrict public comments to residents and landowners of the County. Zeglin's opinion was someone from the County does not know the local issues, the conditions. Unless they have a stake in the County, Zeglin didn't think their opinion is valid. Lien inquired as to what about the case where an applicant is right on the border of either Jackson or Buffalo County, where people from either of those two counties' might be affected. Lien felt those people should still have a right to speak out even though they're not in Trempealeau County and paying taxes, it is going to affect them. Bawek suggested limiting it to those persons living within 5 miles of a proposed mine site. Upon Bice inquiring to Radtke as to if the Committee can do that, Radtke stated the Committee can set reasonable parameters as to what is required during a public hearing. The law just requires there be a public hearing to allow the public to have some input and there is nothing wrong with putting some sort of parameters that are not really regulating the content of people's statements but rather how and when they can make them. Brandt stated the ability of this Committee to understand the nature of the comment, the source of the comments and where they come from and how they got to us is fairly strong. We can figure out what people are saying. Brandt

voiced that he did not favor any kind of restrictions on anybody from communicating with this Committee. What effect it has on the Committee is up to the Committee. We signed up for this. If we have to sit for 45 minutes and listen to names and addresses that is what we do. Someone went through a lot of effort to circulate those form letters. Good or bad. Brandt felt the last time it was less public comment and more like a petition. Another issue would be what is the role a petition and signatures on that petition when it comes to the decision making process. Brandt suggested there are people who might be considered even experts or someone who has other experiences who live a fair distance from us. The experience Brandt remembers is the couple from Connecticut who were interested in buying land up by Strum, and were close to signing a purchase agreement, but after finding out that there might be a silica sand mine there, pulled back and said "no" and because she was a cancer nurse, gave reasons why she wouldn't want to live there based on her experience as a cancer nurse. Brandt didn't know what effect that had on the Committee's decision but he considered that to be a significant contribution to the discussion that day. Brandt understood everything Bawek was saying and he could see Bawek put a lot of effort into this, yet Brandt didn't think restricting any kind of access to the Committee by anybody, considering the importance of the decisions we are making, is ok. Bice wasn't sure where he stood on the issue but he did agree with what Brandt said. Bice added what we have here is, to some extent, a huge lobby. Sometimes for the mining industry and sometimes against this industry. Bice was unsure of what direction the Committee should take. Bice is willing to work with Bawek on this. It has only been a few months since the Committee limited the comments one can submit to 250 words, but Bice suggested limiting that further to 100 words as clearly they can make their points in 100 words. Zeglin didn't feel the words should be limited any further, but she would like to see a limit on the use of a "form" letter where someone just signs their name. Zeglin stated if they have a legitimate opinion they should write it out. Zeglin added if and when we do get in a battery of "form" letters it is a waste of time at the Committee level and she felt the staff had better things to do than compiling the statistics of those letters for a couple of days. Zeglin suggested keeping it open to legitimate comments and restrict the use of "form" letters. Brandt commented then one has to define "legitimate" and "form" letter. Brandt questioned, why is it if someone says something that one disagrees with is that not legitimate and if they say something one agrees with then it is legitimate. Personally, it took a lot of years for Brandt to be able to express himself at all and there are people that just don't communicate well either written or verbally and the ability to say yes or no is a great boon to them. Brandt knows what the issue is as Bice clarified it. Brandt thinks it is temporary; sooner or later people are going to figure out this isn't helping their cause or it might even be detrimental to their cause but before we go making rules that keep people from getting to the table, Brandt thought we should just move on. Bice commented he admired Brandt for that as he felt Brandt said people have a right to speak and be heard and we should not tamper with that and Bice agreed with that although he also agreed with Bawek and Zeglin. Brandt commented that after the big public hearing in the Whitehall City Center gym and after hours of testimony, this Committee affirmed their willingness to have people access the Committee with their opinions and open up the forum. The Committee is already on record saying that. Bice promised several people in this room that he would always allow anyone to weigh in on an issue no matter what. Bice asked staff for their opinion. Gamroth commented she didn't necessarily like the abuse of the "form" letter but in listening to the Committee's comments she wasn't sure how one could fix that. Bice thought limiting peoples' ability here would be far more convenient for the Committee but would probably be inappropriate. Zeglin stated Lien did mention a cut off time a couple days prior to the hearing and asked if that was something that the Department would prefer doing. Lien replied we would if we were going to receive a huge stack of "form" letters with just a box check because then something could be displayed with the results for the Committee to view. Lien felt when there are written comments those all definitely need to be read. What Lien felt was a problem is that the "form" letters don't get mailed in, they are usually brought in the day of the hearing and there are people who actually come to the meetings in the morning and wish to testify in person but because the day gets so long, they have to leave and end up handing their written comments to the Committee and we read their comments for them. Lien didn't want to stop those people from having a voice because those people can't afford to take off work all day to attend a public hearing that started at 9:00 AM and we're still sitting here at 5:30 PM. Lien added this is kind of at a stale mate as far as a good resolution, he just hopes there isn't an abuse of the system in the future and if

there is we'll just spend a few more hours of everyone's time reading those "form" letters. Lien commented, in reality, they sometimes hurt more than they help the situation and the Committee will just have to make that determination.

Discussion of Senate Bill 349

Lien stated Bice had wanted this item put on the Committee. Lien wasn't sure if anyone in this room attended the Senate hearing. Lien was unable to attend but he did send written comment down. Lien had included a copy of his comments/letter in the Committee's packet so that the Committee could read it. Bice stated he has some concern that Lien, and he wants to know for in the future, does this Committee feel that we should give the authority to voice an opinion at public hearings like that or should we direct our Land Management Director with our opinions, in other words, is it important that this Committee publicly come up with a policy or public testimony or do you feel that our Manager/Director should be able to take whatever opinion he feels comfortable with. Lien responded that he looks at his job description and our goals in the Department of Land Management. Brandt wanted to clarify that he agrees with Bice, he doesn't think Lien should just say whatever he wants and say he is represented us, on the other hand if we are talking specifically about this (Brandt has read Kevin's comments) there was nothing in Lien's comments that weren't related to whatever his responsibility is or the goals of this Department or the responsibility of this Committee. Brandt continued that if Lien had said anything else above and beyond what he did, which is basically this is our experience in the County and it is working really well and we want to keep doing it, then there would be some issue, but Brandt didn't see that in his responsibility as the Director to illustrate what the County is doing is in any way a problem. Bice asked if Brandt would agree with him that before our Director approaches a State hearing, he should have input from us as to where we stand on the issue. Brandt responded that was Bice's question and Brandt was just clarifying the characterization of whether or not he should come to us for clarification on what our decision is or if he should go off "half-cocked" and say whatever he wants and Brandt was just saying that Lien's comments only reflect the reality and the history of our experience here, with the exception of him saying, "Please don't take our ability to regulate away from us", it is just the reality. Bice stated he really didn't mean to make this about Lien's comments, what Bice wants to do is establish a policy because he is not aware of what Lien or the Director's legal position should be. Bice's understanding is that we are the elected people and we make the policy and Lien is to report the policy, so to speak. It is Bice's goal to make sure that this Committee directs the Director rather than have the Director just submit what he has assumed to be his position rather than our position. Bice thinks when something like this comes up, we should discuss it as a Committee and then Lien will know our position on that. Brandt asked to hear from Lien as to what his perspective was. Lien stated that he is president of our district and has sat on the State board and never once has he thought that he would need to ask the Committee's permission to uphold his job duties for Trempealeau County. Lien has attended a lot of meetings and has a lot of opinions but stated that he always keeps the County's best interest in mind. Lien looks at our Department of Land Management goals and plans, he looks at his job duties and he makes sure when he writes a letter like this that he is not trying to speak for the Committee, but as he stated in his letter, he is the Director of the Department of Land Management. Lien has on the agenda the Committee's position and response to Senate Bill 349 because other County's have drafted resolutions (that Lien will talk about next) so the Committee can then voice their opinion. Lien's opinion, as Director, is stated in Lien's letter. Lien believes everything in his letter to be factual scenario's of Trempealeau County, not necessarily his personal opinion, but factual information. In addressing the timeliness of it, Lien stated the Committee could not have met. Bice commented that the Committee actually did have a meeting a night or two before Lien replied to that. Lien responded the public hearing was sort of on the fast track and we didn't know exactly the date and time of it, so when that came out (in a very short term) Lien drafted the e-mail (it wasn't even in letter form) and sent it to Senator Kathleen Vinehout, Representative Chris Danou, the Director of the WLWCA (Wisconsin Land and Water Conservation Association) and they all responded back that they had received it. Chris Danou actually read it. Brandt clarified that Lien's letter was not addressed to the Hearing Committee itself. Lien stated it was not, it was to our representatives and not to Tom Tiffany or the Committee. Upon Brandt's inquiry as to if Lien had asked Danou to read the letter, Lien replied that he sent it to him and said,

“Please read”. Lien meant for Danou, etc. to read it so they could comment on it. Lien believes Danou actually read Lien’s e-mail during the hearing. Upon Patzner inquiring if Bice had sent a letter out, Bice responded he definitely did, yes, on his own behalf, not as a representative of this Committee but he did give the information that he was the Chair of this Committee. Bice added the Committee will get to that in a minute. Bice asked Radtke if Lien is supposed to basically take a position and voice that position without discussing it with his Committee first. Radtke’s opinion was that this is political; a form of political speech and Radtke doesn’t give political opinions. Radtke added that whether a Department Head can speak on behalf of the Committee or the Department is something that certainly shouldn’t be contradictory to the County. In this case, Radtke hasn’t read Lien’s letter so he didn’t have a comment whether or not this violates anything. Radtke stated there are no rules, no policies in place in this regard to serve as kind of a “peace maker” here. Radtke felt he was being thrust into the middle of this. Radtke’s recommendation would be that if one wants to state their title, then you represent the County or the Committee whether it is Director of the Department, etc. If you want to state your title in any public statement you should be sure, to make sure, that you have either Committee or the Department or whatever entity you are mentioning (whether you are mentioning you are president of a group or association) that you have their approval, however that is done, whether it is done by a motion or done by written policy. If that was the case, there would be no need for this discussion right now. This discussion is being had because of the intense politics of this industry. Perhaps that is not Radtke’s advice but more of an observation. The reason Bice put this on the agenda is because Bice believes that this Committee develops the policy of this Department and not Lien. Bice’s question for the Committee was do we want to form an official position the next time that something comes up where we are going to send testimony to the State asking the State to please listen to our concerns or are we going to have that submitted by our Director without our input. Brandt said it was interesting knowing that Lien didn’t send this to the Committee that was hearing the public hearing but rather communicating it to our elected officials without knowledge that it was going to be read at the public hearing. The only place that Brandt felt that what Bice was concerned about would apply was to the letter that Bice sent which Bice had asked to be read at the public hearing. Brandt understood where Bice was going and Brandt felt the answer to Bice’s question was, in the question. Brandt stated yes, we develop the policy, we hire somebody to make sure that the policy is put in place and developed and maintained, etc. and they take it and go. If that person is going off in a different direction than the Committee wants to go then we either tell the person to stop doing what they’re doing or if the decision changes on what the policy is we redirect the Director. Brandt’s point was is that the Committee already does that. Bice felt Brandt was saying this Committee comes up with policy and relays it on to the Director. Brandt added and then the Director develops goals and objectives, which the Committee approves and then moves ahead and implements them. Zeglin stated Bice is essentially asking for himself and this Committee to be allowed to micro-manage Lien and his position as Director. Zeglin continued that through this Committee’s development of Ordinances, previous Committee’s development of Ordinances, he has a clear guide line for himself, through his job description, of what is required by this Committee and our predecessors. Zeglin added that Lien through the goals of the Land Management Department which are clearly published on the website has all the guidelines he needs to create letters, such as he did and deliver to our state legislators, senators, etc. There is no need for us to interfere in his position in this manner. Bice’s take on it was considerably different than that. Bice continued that the majority of us are elected people and the elected people are the people in charge of making policy not the people that we hire. Bice stated when we hire people in Trempealeau County (and Lien is a hired individual), we do not give them the authority to make policy. Zeglin responded saying he is not making policy. We make policy and he acts on the policy at his management level. Bice stated what he and Brandt just discussed and agreed upon is that this Committee comes up with policy and Lien can relay it. Zeglin voiced which he did. Bice’s opinion was that this Committee should say, “Kevin, here is our position please move forward with that to our elected representatives. Bice reiterated that to himself it is very important that the elected people run the County rather than the people who are hired by the County. Zeglin commented that Bice intends to micromanage. Bice said he intends to do the job he is elected to do. Zeglin’s opinion was that Bice is overstepping. Bice disagreed. Brandt felt there is a point to be made there because Radtke has harangued us on numerous occasions either personally or brought in experts as to what the role of the County Board is. Brandt’s

understanding is significantly different than Bice's as Brandt's understanding is that we set policy, create a budget, hire people to make sure the policy and the budget is implemented and let them do their job. That is what the Committee's job is. We have added responsibilities based on the Committee's that we sit on, but as a County Board that is pretty much it. Brandt understands Bice has an issue with what it is that Lien said. As part of clarifying and getting to the point that Bice wants the Committee to do besides just sort of speaking in generalities, let's talk about what the Committee's position is and then we can communicate specifically to this Bill which is currently on the "back burner". Let's talk about it and see if what Lien has to say and what Bice had to say is what the Committee thinks and then we can say to you, "when you are representing us in public, please say this" and say to Lien if you represent us to somebody please say this. Brandt said lets get on with the discussion and if Bice has concerns with what Lien's characterizations are Brandt is willing to listen. Bice reiterated that what Lien said is not the issue here right now. The reason Bice brought this up is because Bice believes we should develop a policy for this Committee and this Department and that we should relay that to Lien. Brandt asked if Bice meant specifically related to this bill or generally. Nelson commented the Committee would then be moving on to agenda item #10. Lien has worked in the past with Kathleen Vinehout and Chris Danou and Vinehout drafted a bill. Vinehout and Lien, through e-mails and phone conversations, discussed "balloon on a string" annexation to prohibit annexations that were just a narrow little tail that went out to a large land mass. Vinehout's proposed bill actually stated that the majority/50% or more of the land mass had to be within a quarter mile of the city that would be annexed to. Lien worked with Vinehout on that issue and never once did he think he would need the Committee's approval to work on something like that because he thought that was in the best interest of the County. Lien could probably come up with a list of items, over the years that he feels are within his job duty that involves people outside of Trempealeau County that he never once thought he would first need to ask the Committee as long as he was upholding his job duties. Bice believes that Lien needs to ask the Committee before establishing a policy. Lien replied it is not a policy; it is giving information when asked and having rapport with people outside of Trempealeau County like Vinehout and Danou. Lien didn't think it was a policy but a professional comment based upon what Lien has done here for 21 years. Lien added Radtke just read it and if Bice has something specific about Lien's letter we can talk about that but Lien thought everything in there was factual information about the Ordinance, how we deal with the sand mining issue and local control. Lien wasn't sure of anything in the letter that was his opinion but more Liens' experiences. Bice didn't think discussing Lien's comments to the State or that hearing is on the agenda. Lien thought it was, as we are talking about Senate Bill 349 and the Committee's position or response to the bill so it could be agenda item #9, #10 and #11. Upon Bice asking Radtke if he was comfortable discussing Lien's letter, Radtke stated he believed it is on the agenda. Bice continued saying Lien made a comment in the letter, "there is not enough DNR staff available to conduct an adequate job to protect the unique environment issues that are present in each of our counties". Bice asked if Lien knew that for a fact. Lien responded absolutely as DNR staff relies on this County staff constantly for field inspections. Budish commented that every single stormwater violation, this year, was reported by County staff first and then relayed to the State. Bice's response to that was that he talked to DNR and they don't really like the idea that you feel that they are not staff adequately as that is basically a criticism of the DNR and that is open for interpretation and they just got two new people. Bice thought Lien could have that opinion but he just knew that Lien basically stated they don't have enough staff available and if one were to drive to Madison and ask them that they are a little bit "gun shy" to say, "yes we don't have enough staff". Lien said they might be in Madison but Lien talks to DNR staff if not daily then weekly from Black River Falls and LaCrosse and they have admitted they don't have enough people on the ground to do the job that they need to do. Bice continued that when you involve government which is quite often the case we can't do everything for everybody and neither can the Department and the DNR. Bice stated that Lien also says, "We need additional studies and much needed information to answer unknowns". Bice's answer to that was we do know a great deal and nobody in here knows the unknowns. There are a lot of things that we have done in society, we have gone to the moon, and there are a lot of things we didn't know. We can't not move forward based on what we don't know, so your comments there about lots of unknowns, you can make a list and we can talk about polyacrylamides, we can talk about lots of things but we have to move forward. We are talking about working against peoples' rights here, rights to use their

personal private property as they see fit as they are guaranteed by the Constitution. In addition to that, Bice stated your overall philosophy here, if we go back six months on this Committee, its different than that Committee was. We do have a different Committee now but the prior Committee which we used to have would not have agreed with a lot of your comments here. Bice assumed a majority of this Committee may agree with your comments. Bice does think, as he has said before, that you should get input from this Committee before you make the statements for this Department. Patzner stated he thought Bice shouldn't worry about sand, he should worry about agriculture as it is going to take an awful lot of land out of agriculture and a lot of good land too. Bice replied he didn't see that. Patzner commented the Haines' have some of the best agricultural land one has ever seen and they have 10-12 feet of topsoil. There isn't any other farm around that has that much topsoil and they have never had a crop failure yet and if you take land like that out of agriculture, it is a sin. Bice responded saying that Patzner is assuming that land will be turned into wasteland. Patzner commented it is pretty level there and not very hilly, there is a little slope but pretty level land if you're going to take that out it isn't going to be level, it will be a hole in the ground. Brandt responded to what Bice was saying. He picked out two points that could potentially be discussed as having two views, one that the DNR has inadequate staff and also that there needs to be more studies and the interesting thing about those two points is that, depending on who you are and where you are, you could agree with what Bice says or what Lien says. Out in the field Lien's point is absolutely valid. In Madison where the DNR is a political entity which is directed by a Secretary that is appointed by a Governor, their goals are set at an upper level and they are told what to do and what not to do and what position to take and what position not to take and that is very much a political position at this point. Just to review, Brandt ran through briefly that there is nothing in the first paragraph of Lien's letter that is not factual. Brandt stated we have had County zoning since 1972, we have had the Nonmetallic Ordinance since 1997, we have had 30 industrial sand Conditional Use Permit applications, 28 which were issued, the town has input, the town board attaches conditions, conditions are site specific, health and safety issues and road use agreements are part of our considerations as is the unique environment and the industry is working through the local processing receiving operating permits and actively mining in multiple locations. Brandt said that is all a statement of fact. We have six operating mines and it is also a statement of fact that they have all been shut down by the DNR for discharge issues. The characterization that there is something personal or opinionated in terms of that is very hard for Brandt to get his mind around. Brandt commented you are right, discussion on the DNR staff characterization and the need for studies could be argued but that becomes a political issue. Brandt is, now that Vold is gone, the only person that has been here long enough to remember that when we had Land Conservation Committee meetings, we had a DNR Forester, a DNR Water Specialist, a DATCP person, a NRCS Soil Specialist all sitting against the wall to advise our Committee and within just a number of years, since 1996, all that staff has changed, they just disappeared. They no longer came to our meetings because they didn't have time to do it and there wasn't any staff that could do it. That becomes, like Brandt said, a political issue for discussion. Brandt didn't see that Lien's letter to our elected officials is in any way out of line or misrepresentative of the reality of our situation. In general, Bice didn't have any problem with Lien's letter but what he did have a problem with was that it is basically saying that we do not need any oversight, we have sufficient and he named all the reasons that we are doing a very good job and we have been doing a very good job because these people came to us looking for a legal use of their property and so we did what we needed to do to make sure it was done properly and we were doing a fine job of that. All of a sudden we had a great application that we shot down because this Committee didn't feel that they met enough goals. Zeglin commented that we are getting off the agenda. Radtke recommended Bice not discuss anything regarding the previously denied permit because the County has received a notice of legal action and it is not on the agenda so it should not be discussed. Generally speaking Brandt thought the Committee should speak specifically to the item on the agenda which is the Senate Bill. Brandt had a resolution from LaCrosse County In regard to their opposition to SB 349 and the various "whereas" related to the prohibitions to the bill on County's and townships. Brandt is wondering from Lien if there are other counties who have taken positions on this and what their reasoning was. Lien responded Dunn County has a similar one and he knew throughout the State several of Lien's counterparts are meeting with their Committee's to get similar resolutions. Lien instructed the Committee to refer to their packets as there should be a copy of the resolution in there. Lien thought it would

be a starting point for the Committee if the Committee wanted to draft something of a similar nature or take some kind of action. Lien wouldn't mind a resolution to go before full County Board if he had County Board support one way or the other. Brandt asked what the position was of the WLWCA (Wisconsin Land and Water Conservation Association) or the Wisconsin Town's Association (WTA). Lien stated WCCA (Wisconsin County Code Administrators) greatly opposed it. In regard to the WLWCA, Lien said Jim Vandebrook testified in Madison greatly opposing the bill. Zeglin commented that right now the County's Association has no opinion listed on their website but Zeglin, as the Towns' representative as a member of this Committee, feels compelled to bring the Bill once again before the Committee for us to establish some guide lines for the County. We talked briefly about this at our October 21st special meeting but since time was limited, no action was taken, we were merely to respond on an individual and personal basis which Zeglin did. Zeglin signed a letter without any title whatsoever. Some person actually used a title and we can discuss that later, but this particular Bill, the Wisconsin Towns' Association has taken a firm stance opposing it. Zeglin had copies of their resolution that she offered to pass out to everyone. On the township level Zeglin stated this Bill is very detrimental to township local government and home rule. It extends also out to County government and has no redeeming qualities at all for local government at any level taking away village powers and police powers. The bill is an attempt to eliminate the permitting process for nonmetallic mining and it has the ability and probability of seriously limiting the permitting process to other industries. Townships and counties wouldn't be able to defend themselves against exploitation by irresponsible mine developers and industry developers. Upon Brandt's inquiry, Zeglin stated these were notes that she has made that she is reading from. Zeglin continued that the Bill essentially would nullify both towns' and county's ability to regulate or restrict use in many ways. We'd have no control over the use of our roads; town or county level. No ability to take action against the destruction of those roads. Blasting both for industrial frac sand mines and the aggregate mines there would be no local control neither at the town or county level. We would have no ability to control air quality at all. We wouldn't have the ability to set standards for water quality both surface water and ground water. Surface water in regard to storm water ponds, runoff from farm fields, manure fields, and feedlots. It has far reaching probabilities here. It wouldn't allow the town or the County to coordinate issuance of reclamation permits, set financial standards for bonds and we need that for the reclamation process. It would severely limit local authority to protect the health, safety and welfare of our County residents and landowners. It is a very dangerous Bill. It has no redeeming qualities for local government. It would take away village powers leaving local government close to useless in many, many areas and it gives great power to central government in Madison. Zeglin added if you are proponent of big government, SB 349 is the Bill for you. If you want to retain local control you have to oppose this Bill and there is no other way about it. Zeglin would really like to see this Committee put forward a resolution opposing this Bill either as a Committee or to forward something on to our County to really urge them to take note of this and take some action; send something on to the Mining Committee, to our Senators and legislators, Senator Vinehout, Senator Molten, Representative Danou. We can't sit idly by while our local control is being taken away. Bice commented that when Zeglin talks about local control, local control should begin as local as it gets and that is with the property owner. Bice continued that this country has succeeded to the point, way beyond any other country in history, because we have a great Constitution. We have a great Bill of Rights in that Constitution and the Bill of Rights was given to us because they wanted to ratify the Constitution and several people said they weren't going to do it unless individual rights were put in to protect individuals and that is how we got the first ten amendments and that comes down to private property rights, so when you talk about local control, the first level of local control is the property owner and what you're trying to do is protect the people around that. Your interpretation is that you feel strongly that people around the first level of local control are more important than local control, but our Constitution guarantees individual rights. Zeglin asked where in the Constitution it guarantees property rights and stated you are pitting one person against the other person. What is your right to do what you want to do with your property is counter to what I would like to do with my property. Bice replied but you do what you want with your property. Zeglin responded to a certain extent and that is why this Committee exists. Bice commented that people should not be able to control other people's property as long as it is a legal function and mining is legal when you take what we do to you, which is a Conditional Use Permit and say that is acceptable. Follow the

rules and then you can use your property. Bice continued that part of what we are doing here today is trying to figure out (and the goal here because everybody here is pretty much trying to look out for the things we're supposed to be doing) and the responsibility of this Committee is to look out for health, welfare and safety. That alone, when added up, comes down to individuals rights. As we move forward, at one time we were down to 10 feet from the property line for mining then it was 50 feet, now in some cases we are going to 250 feet, these are probably not bad ideas, but the problem is that we get more and more – we're up to forty conditions on our applications. We get more and more restriction and the people sit out there and say this is a pretty heavy violation of these peoples' property rights and so this Committee now has done a great job. We've got these mines permitted. We've got what many people would say is acceptable regulation and we've come this far but now we keep getting more and more regulations which makes it very difficult for these people to do what they should probably be legally allowed to do on their property. Zeglin commented that is a matter of interpretation, which is your opinion. Zeglin continued that property rights have been debated philosophically and legally since the 17th Century. In regard to property rights, there is a bundle of rights, essentially if you look at our Bill of Rights; free speech – there are limits. You cannot commit liable or slander, essentially the rule there is do no harm. The Right to Bear Arms – you cannot use your arms forcefully to commit crimes. Bice stated he wasn't going to allow Zeglin to go on. He understood where Zeglin was going with that. Zeglin added it is essentially do no harm – any right – do no harm. Zeglin added we have to look at property rights as doing no harm to your neighbor or the community. No one can do anything they want with their property. That is why we have laws, regulations and zoning. Bice replied he was going to completely disagree with Zeglin on a bunch of that. In order to move this along, Brandt stated he was looking at the resolution from La Crosse County and we have done this in the past where staff brings us options from which to work. Bice asked if Brandt would like to see the Committee pass this on? Brandt stated with the exception of, "Be it further resolved that a copy of this resolution be sent to" (obviously we are not represented by Doyle, Billings or Shilling) and change it to the local representatives. It is what Brandt considers to be a good summary of the issues at hand related to local governments (both County's and townships). All of the "whereas" with the exception of the last one are all just restatements from the legislative analysis. Brandt made a motion to send a copy of the LaCrosse County resolution opposing SB 349 on to the County Board with the changes to the representatives at the end of it, Zeglin seconded the motion. Motion carried with Bice voting in opposition. Bice asked if that pretty much covers the Committee's response to Senate Bill 349. Lien wanted to address or hear comments from the comment on whether or not the Committee members should be sending letters with their comments as well as he, the Director. Bice agreed to the Committee addressing that. Bice asked if the Committee had an opinion on stifling a member of this Committee's personal First Amendment rights. Brandt stated he felt the issue is that Zeglin had sent a letter and Bice had sent a letter. Zeglin did not indicate that she was a member of any Committee and Bice indicated that he was the Chairman of this Committee. Brandt felt Radtke had addressed that in his comments to be sure to avoid that the next time. Brandt continued that Bice was circumspect in the sense that Bice identified his letter as being from himself, and speaking personally. To that end, Brandt certainly respects that but on the other hand the content after that could be understood to be personal opinion. Even though part of that opinion is that Bice expressed a lack of faith in our ability to make reasonable decisions, which is just your opinion. Brandt suggested that we accept Radtke's suggestion that if Committee members make any kind of comments, be sure , unless discussed with the Committee first, that it is understood to be our personal opinion. Bice requested that Gamroth read the letter that he submitted to the State public hearing. Bice also told the Committee that not one second of his life is Radtke or anyone else going to tell him what he can say on his own behalf, ever. Bice stated that he also kind of felt that he should get Radtke's approval to submit that. Bice submitted this letter because (and he has to be real careful because there is some litigation going on) we, as a Committee, have continued to regulate and regulate and regulate against private property rights and while Bice thinks it is fine that we have a level of regulation, Bice doesn't believe that we as a Committee have the ability to take away landowners rights and that is what we have kind of come to on this Committee. Bice requested Gamroth read the letter aloud. Bice prefaced that reading by stating this was the letter he submitted to the public hearing on Senate Bill 349.

I am the Chair of the Environment and Land Use Committee in Trempealeau County, Wisconsin. I am sending this letter on my own behalf and not Trempealeau County's. I have been part of the Committee for every frac sand mine in Trempealeau County. I have listened to the testimony of hundreds of people for and against sand mining. I have researched every claim of health concerns and asked people making claims to please send me the source of factual information on what they stated. I have researched every piece of information I have received, although very few of those testifying against sand mines have sent me information. We have a frac sand mine next to Trempealeau County owned by Badger Mining that has been operating for over forty years. I have repeatedly asked for even one individual who developed a lung disorder and have not received even one name. There are no significant health concerns with silica frac sand mining, none. Silicosis is a very real and miserable disease along with a few other diseases associated with sand dust but none come from mining sand. Silicosis comes from industrially manipulated sand like sand blasting, grinding of concrete and other functions that break it into small particles. The negative press is wrongfully promoting the bad effects of sand mining. This is promoted by people who don't like the sand industry, who don't like what a property owner wants to do with their own land and have jumped on the anti frac sand mining band wagon out of misguided fear. Many of these people are selfishly promoting their own interests over a neighboring property owner. Unfortunately they are succeeding at turning the public against mining by lies and misinformation. The hysteria surrounding the negative press has been very successful in making the public think that this vitally needed industry is bad but it is not. This industry is supplying a benign product that is leading America to an economic bonanza like this country has not seen in many, many years. This new energy innovation will bring back manufacturing to this country and limit the wars over oil. We need state regulation over the mining industry because the small committee's like I chair are influenced by emotional people with a selfish or naïve agenda. Committee's struggle to make rational decisions when approached by people with tears in their eyes. I will add that all of the people that testified against the sand mines drove to the hearings, thereby using oil. Sincerely, Tom Bice.

Bice called for comments. Upon Brandt stating Bice sort of insulted the citizens of the County, Bice asked how he did that. Brandt responded by suggesting that they were naïve or misguided, liars and selfish. Bice stated he heard lots of people stand up and give misleading information, but of course Bice never commented. Bice continued that he submitted this to the State because Bice believes that this is accurate information and Bice believes that somebody has to tell it like it is and while we had a great thing going in Trempealeau County (we had good regulation) Bice is afraid that we have lost our ability to take a rational approach to this. Brandt questioned if Bice was suggesting now that the Committee is incapable of approaching each issue rationally and should therefore have their authority taken away from them? Bice responded no and he didn't say that. He was saying there is enough misinformation out there it is difficult for us to decipher it. Brandt replied so we are incapable of making a competent decision because we can't decipher the good information from the bad information? Bice stated it is difficult. Brandt asked if it was difficult for Bice. Bice replied that he basically takes facts and deals with facts, so if people present facts here, when Bice gets home he researches them and he does the best that he can. Bice inquired if this answered Lien's question. Lien responded it didn't really because Lien's concern was, immediately after Tom Tiffany read Bice's letter, he received two e-mails, one from the Director of the WLWCA saying "my Chairman was just noted as commenting for the Bill". Lien continued that it was very clear (in Bice's letter is says, "I am the Chair of the Environment and Land Use Committee) that Bice was representing my Land Use Committee as Chair. Immediately thereafter, Kelly Jacobs, the Eau Claire County Conservationist e-mailed Lien saying the exact same thing – that the Chairman of the Environment and Land Use Committee supports the Bill. Lien thought if Bice had written the letter and said, "I am Tom Bice, citizen of Trempealeau County, absolutely perfect, as you are 100 percent entitled to your opinion, but when you stated you are the Chair of the Environment and Land Use Committee and then down below in the letter is says, "because of small committee's like I chair", made you a representative of the Committee that oversees my Department. Lien's opinion was that before Bice had sent the letter, he should have had total Committee approval because everyone in that room took your letter, even though you stated, "I

am sending this letter on my own behalf”, as though you were representing the Chair of the Environment and Land Use Committee for the Department of Land Management of Trempealeau County. Bice responded saying he could understand how they may have interpreted that. Bice added that in there very carefully that he was Chair of this Committee because Bice felt very strongly about what he said and he also felt it was important that if you’re going to supply testimony, it is a good idea for them to understand that you have some experience with it and so Bice put that information in there. He made it very clear that he wasn’t speaking on behalf of this Committee. Brandt commented there is something that really isn’t necessarily related to what we are talking about right now specifically, but it struck Brandt, as he has been to these public hearings, and he heard there were a lot of people there, and there were a lot of people that were lobbying and spoke, etc. and were brought by buses, etc. and it is very, very difficult for an individual to get time at the podium. Generally when somebody writes something, they just put it in a folder and the Committee deals with it later. For the Chairman of that Committee to read your letter means that there was some kind of communication either from their staff or between you and him or that somehow he felt it was important enough to pull an e-mail out of a folder where there were other things that were not read. Brandt didn’t know how that happened but it struck Brandt as very odd that the chairman of that committee (who shares many of your opinions as he has stated in public) would choose your letter, as a citizen, to read as opposed to others. That being said, Brandt commented it wasn’t surprising but it certainly was unusual. Zeglin pointed out that the only thing in Bice’s letter that Bice stated that was not reflective of this Committee is that you were sending this letter on your own behalf. That is the only thing – otherwise the lead, “I am the Chairman of the Environment and Land Use Committee in Trempealeau County, Wisconsin”, you could definitely wipeout that you were sending this letter on your own behalf. After that first statement, that does not matter, you are speaking as a representative of this Committee. Zeglin added that her letter wasn’t read and no attention was paid to it whatsoever. Zeglin’s opinion was that Bice’s letter was paid attention to because Bice is the Chair of this Committee. Zeglin stated Bice’s letter uses rhetorical language and it is loaded with unsupported claims. If you have done research on all of these matters you certainly haven’t brought it to the attention of this Committee to help us in our decision making. Zeglin continued, “Hysteria surrounding the negative press” is very insulting to our County. Zeglin stated if anyone has done something inappropriate Mr. Chairman it is you. Bice responded that would be your opinion and you are welcome to that. Bice replied that he said what he said, he would say it again, and he completely believes that his comments were needed for fairness and for what is right. In Bice’s opinion we make decisions in violation of people’s rights and that should stop. Bice added that government is supposed to represent the people and you were never sworn to uphold the Constitution, he was and he takes that very seriously and the reason he takes it so seriously is. Zeglin interjected saying she takes it seriously also so she asked Bice not to sit there and insult her, please. Upon Bice being about to comment on Zeglin’s interpretation of private property rights, Zeglin commented they are better than Bice’s. Bice recommended that everyone read the federalist papers as to why we got property rights. Bice suggested starting with why we got the Bill of Rights because that protects individuals. Zeglin commented that Bice is not the only student of history here and she didn’t think we really want to go there; the question is that you have overstepped your chairmanship abilities or you spoke for the Committee and you shouldn’t have. Bice responded that when Zeglin says that, he did not speak for this Committee, he made it very clear. Zeglin replied you did not make it very clear at all and your letter would not have been read if you were speaking as an individual, you were speaking as the chairman. Bice responded he made it clear why he is the Chair of this Committee and then he said he was talking on his own behalf, not representing this Committee. Zeglin stated that Bice sites everything in this letter is from your experience as Chairman on the Committee. Bice verified that was correct. Zeglin stated Bice is speaking for the Committee. Bice disagreed with that. Jayne Benedict interjected saying “Bice condemns her tears and the tears of this County when you have ruined her quality of life. She has thousands of acres of mining around her and if she doesn’t die before she is kicked out of here, and Bice says she is a cry baby and a whiner”. She yelled “Kiss my *** Tom Bice, Kiss my ***. She added that Bice has ruined her life and sits there with rights while he has taken all of hers and yelled, “Kiss my ***”. Benedict said “I’m done with you people and shame on you for calling all of these people who lives are in jeopardy, whiners”. She then left the room. To respond to Lien, Bice stated that he didn’t think Lien felt it was appropriate that he sent that letter. According to Lien that isn’t what

he said. Lien added that Bice's letter was appropriate; Lien just didn't think Bice should have said in there, anywhere, that Bice was the Chair of the Environment and Land Use Committee. Bice reiterated that he put that in there because he felt it very important that it was necessary for them to understand that he has seen and watched every single mine that has been approved and disapproved in this County and felt that was important. Bice added that he has a lot of things that he could say but he is trying to be just a little bit careful. In regard to property rights, Bawek asked if what the Committee is doing if that wasn't all under conditional uses for these landowners. Bice responded Bawek was right and that he has no problem with that and as Bice started to say before, we had a good thing going here, but if our goal is to regulate and oversee, we've blown it now, we have completely blown it. Bawek asked why? Bice responded that all the major mines are annexing and we have lost 100 percent of regulation. We don't even shut them down on the weekends, we don't keep them off the roads, so we have to look at this from a point of view that if we regulate them to the point of where they can't function, they are going to annex and they've done that. Bice understood a lot of that was probably going to happen anyhow. Zeglin responded saying they had a seat at the table for Chapter 13 and that Chapter 13 was a compromise. The mining industry was there, they had a voice, there was a compromise, and they said they could work with those rules. The only way to stop them annexing is to give them no rules whatsoever. No matter what one comes up with they aren't going to like it, so that is a nonstarter. Bice said to some extent Zeglin was right and added there is a little incentive for them not to annex but probably not enough. Bice will agree that is probably going to happen. Bice thought we had a great thing going. Zeglin commented Bice is speaking in the past – we still do – we aren't regulated by the State yet. Bice's point was, when we make these rules we have to be willing to work back and forth just a little bit and as Bice sees it we continue to be more and more restrictive and so they are working against us. To answer the question Bice agrees we had a good system. Bawek commented that he felt the Committee's restrictions are an effect of us learning how to make this work for both sides which is what this attempt at what we are doing is and the same thing with the attempt at Chapter 13. Like Zeglin had said, the mining representatives sat at the table and the public and so far this is our best attempt at coming to a compromise so it works for everyone. Bawek stated the annexation is a completely different issue. It is human nature, if one can get away with something, to take the easier route and that is what is being done. That doesn't make it right. Bawek thinks what the Committee is doing is invaluable for the citizens. It might not be enough, maybe too much but that is a matter of opinion, but we still have to keep trying to do the best that we can. Bawek thought that everyone who sits on this Committee tries to do that. Bawek felt Lien should be commended for his efforts as he and his staff are in the trenches everyday and they see and hear a lot of things that we don't. To Bawek, Lien 's letter was a great summary, maybe it was some personal opinion which we all carry to all issues, the same with Bice's comments. Bawek reiterated this is just our attempt to do the best that we can and that was Bawek's summary. It is an effort. Patzner wanted to comment on how bad the sand mines are. Patzner continued that there is a family in Thompson Valley that was supposed to pay for the house, they found some excuse and the seller never got paid. Patzner stated the farmers have debt and these guys come and give these guys a bunch of money and are buying the whole farm. Patzner added we are losing a lot of agriculture here. Bice interjected saying he was being advised that we are off the subject. Brandt commented that Patzner represents agricultural issues on this Committee. Brandt felt his comments were appropriate in the sense that he represents the FSA (Farm Service Agency) and the agricultural interests in this County.

Computer Upgrades/Purchases - Lien stated the Department has realized over the last year that staff computers are outdated. Lien explained some of the computer problems the Department experienced. Lien had Vickie Stalheim contact the Information Systems Department (ISD) and according to Cindy Currier, ISD, the way the purchasing policy works, is since each computer is considered an individual purchase, the Committee can make that approval as each one is under \$5,000. Lien went through the computer costs with the Committee. It was recommended, and Lien was asking for, the Department get up to six computers with software upgrades for six staff for a grand total of \$6,738.96. Lien does have the money in the budget but he needs Committee approval. Brandt made a motion to approve the \$6,738.96 in computer purchases/software upgrades within the Department, Nelson seconded, motion carried unopposed.

Surveying Update and Payment Approval – Lien instructed the Committee to look at the reports and bills in their folders. County Surveyor Joe Nelsen has been working in Arcadia in Township 20 North, Range 9 West and also in Township 20 North Range 10 West. Zeglin made a motion to approve the reports and pay the bills as presented, Brandt seconded the motion, motion carried unopposed.

Set Next Regular Meeting Date as December 11th, 2013– Lien went over tentative agenda items for the December meeting. The next meeting was confirmed for December 11th, 2013 at 9:00 AM in the County Board Room.

Chairman Bice adjourned the meeting at 12:45 PM.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michael Nelson, Secretary