

**ADJOURNED SESSION  
COUNTY BOARD MEETING  
TUESDAY, JUNE 19, 2001**

Chairman Joseph Maehl called the meeting to order at 6:00 p.m. in the County Board Room, Fourth Floor, Courthouse, 415 Jackson Street, Oshkosh, Wisconsin.

The meeting was opened with the Pledge of Allegiance and an invocation by Supervisor Rankin.

The following Supervisors were present: Kollath, Barker, Griesbach, O'Brien, Savas, Maehl, Koziczkowski, Klitzke, Widener, Lauson, Pech, Leschke, Green, Madison, Zamzow, Sundquist, Wingren, King, Norton, Hert, Robl, Eichman, Kline, Kramer, Schaidler, Spanbauer, Sievert, Arne, Brennand, Egan, Rankin, Rengstorf and Metzsig. Excused: 2 – Albrecht & Nielsen. Absent: Crowley, Finch and Diakoff.

Motion by Supervisor Robl and seconded to adopt the agenda with the following change: Resolution Nos. 248-62001 and 260-62001 will be acted on before Resolution No. 245-62001. CARRIED BY VOICE VOTE.

**COMMUNICATIONS, PETITIONS, ETC.**

The following resolutions were received and forwarded to the Legislative Committee and other pertinent committees:

- Buffalo County – No. 01-05-01, "Request Complete Funding of Probation and Parole Violation Inmates
- Douglas County – No. 63-01, "Unfunded Mandates Impacting County Courts"
- LaCrosse County – No. 37-5/01, "Request Wisconsin Legislation to Exempt Employee Health Care Cost Increases From the Operating Levy Rate Calculation"
- Sauk County – No. 26-01, "Opposition To Eliminating the Emergency Health Care Payment Benefit From the Wisconsin Department of Veterans Affairs Health Care Aid Grant Program" and No. 27-01, "Opposition to the Funding of Expenses for the Wisconsin Veterans Museum and Veterans Education Center from the Veterans Trust Fund"
- Washburn County – No. 2-01, "Request Complete Funding of Probation and Parole Violation Inmates

Petition for Zoning Amendment from John M. Jones, Town of Nekimi, for zoning change from A-1 to B-3 for commercial use was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Ronald L. Jones, Town of Algoma, for zoning change from A-2 to R-2 for a subdivision development was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Jack Mark, Town of Algoma, for zoning change from A-2 to R-2 and R-5 for residential purposes was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Virginia Weich, Town of Algoma, for zoning change from M-2 and A-2 to R-1 for residential purposes was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Donald & Margaret Johnson, Town of Winchester, for zoning change from A-1 (Lots 1 & 2, unrecorded; CSM approval accompanies Part of 0280431) to B-3 for Lot 1 and M-2 for Lot 2 was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Joanne M. Sievert, Clerk, Town of Clayton, for zoning change from R-2 to P-1 for an addition to a present town park was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Cletus C. Schroeder, Town of Black Wolf, for zoning change from A-2 to R-1 for rural residential use was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Andrew P. Knurowski, Town of Winconne, for zoning change from R-3 to R-4 for a rental unit was referred to the Planning & Zoning Committee.

Petition for Zoning Amendment from Robert Hellman, Town of Neenah, for zoning change from A-2 to R-2 for residential use was referred to the Planning & Zoning Committee.

## **COUNTY EXECUTIVE'S REPORT**

Executive Van De Hey commended the county's staff who worked so hard on getting the county up and running after last week's devastating storm. She individually recognized Leonard Lee of the Maintenance Department and Gary Demler & Joel Rasmussen of the Highway Department for their outstanding efforts.

Executive Van De Hey reported that the Federal Emergency Management Agency (FEMA), the Wisconsin National Guard, as well as prison inmates, have all been assisting Winnebago County in our recovery efforts after the storm.

Executive Van De Hey asked for the Board's approval of the following resolutions:

- No. 248-62001, "Authorize Request for Proposal and Lease of Land for Development of Campus Housing Facility of UW Fox Valley"
- No. 250-62001, "Direct County Executive to Explore Options with Regard to Location of Wireless Communication Towers Upon County Property"
- No. 252-62001, "Oppose Split of the Wisconsin Department of Natural Resources"
- No. 256-62001, "Authorize Transfer of \$18,500 from Repairs Account to Capital Equipment Account-- Winnebago County Sheriff's Department (Fiber Optic Cable Hook-Up)."

## **COUNTY EXECUTIVE'S APPOINTMENTS**

### **Affirmative Action Commission**

Executive Van De Hey asked for the Board's approval of her appointment of Supervisor Nancy Barker, Linda M. Mingus and Joaquin Lira to the Affirmative Action Commission. These are three-year terms that expire on April 18, 2004.

Motion by Supervisor Spanbauer and seconded to approve. CARRIED BY VOICE VOTE.

### **Menasha Library Board**

Executive Van De Hey asked for the Board's approval of her appointment of Colleen O'Brien to the Menasha Library Board. This is a three-year term that expires on April 18, 2004.

Motion by Supervisor Barker and seconded to approve. CARRIED BY VOICE VOTE.

### **Winnebago County Housing Authority**

Executive Van De Hey asked for the Board's approval of her appointment of Patti Maehl to the Winnebago County Housing Authority. This is a five-year term that expires on April 17, 2006.

Motion by Supervisor Eichman and seconded to approve. CARRIED BY VOICE VOTE.

### **Human Services Board**

Executive Van De Hey asked for the Board's approval of her appointment of Ronald Kuehl to the Human Services Board. He will complete the unexpired term of David Webster who moved out of the district. Mr. Kuehl's term will expire December 31, 2001.

Motion by Supervisor Spanbauer and seconded to approve. CARRIED BY VOICE VOTE.

### **Solid Waste Management Board**

Executive Van De Hey asked for the Board's approval of her appointment of Patrick O'Brien to the Solid Waste Management Board. Mr. O'Brien's term will begin on June 21, 2001. Mr. O'Brien has resigned from the Winnebago County Board of Supervisors effective June 20, 2001, so this is a citizen appointment to the Solid Waste Management Board. Mr. O'Brien is filling the unexpired citizen term of Bill Castle, who resigned from the Solid Waste Management Board. This term will expire on April 20, 2002.

Motion by Supervisor Lauson and seconded to approve. CARRIED BY VOICE VOTE.

## **Park View Health Center Director**

Executive Van De Hey asked for the Board's approval of her appointment of Margie Rankin to the position of Park View Health Center Director. She will replace Charlene Lowe, who has retired from that position.

Motion by Supervisor Sundquist and seconded to approve. CARRIED BY VOICE VOTE.

## **COMMITTEE REPORTS**

Supervisor Widener reported that Park View Health Center has received a national nursing home rating of 5 stars. He congratulated the staff for the fine job that they are doing at Park View Health Center.

Supervisor Widener then extended congratulations to Charlene Lowe and commended her on her many years of excellent service to Park View Health Center and Winnebago County. He then congratulated Margie Rankin on her appointment to the position of Park View Health Center Director.

Supervisor Barker asked that the Board note the two handouts that she placed on their desks. The first handout is a schedule for "Artrain USA" that will be visiting Menasha from June 21 to 24. Supervisor Barker reported that of all the stops made by "Artrain USA" last year, the City of Menasha had the largest number of visitors to the exhibit. She encouraged the Board to make arrangements to tour "Artrain USA." The second handout, "Abby & AAL", tells about the service dog her daughter Kathy Barker is training for the Helping Paws organization.

Supervisor Leschke announced that the Exploration Committee meeting scheduled for June 20 has been cancelled. It will be re-scheduled at a later date.

Supervisor Rankin reported that on May 15-17, Winnebago County held their 22<sup>nd</sup> annual Conservation Days. This event gives 6<sup>th</sup> graders from all across the county the opportunity to learn about the environment. Supervisor Rankin reported that this year 562 students attended Conservation Days.

Supervisor Rengstorf reported that he met with Governor Scott McCallum on Friday to view the damage caused by last week's storm. During this meeting, Governor McCallum signed the disaster proclamation, which will qualify Winnebago County for emergency funding.

## **COUNTY BOARD CHAIRMAN'S APPOINTMENTS**

### **Winnebago County Awards Committee**

Chairman Maehl asked for the Board's approval of his appointment of Supervisor Gregory Zamzow to the Winnebago County Awards Committee. Supervisor Zamzow's term would begin immediately.

Motion by Supervisor Lauson and seconded to approve. CARRIED BY VOICE VOTE.

### **Resolution No. 246-62001: Appoint Parents to School Truancy Committee**

WHEREAS, Section 118.162, Wisconsin Statutes requires that at least once every four (4) years in each county, the school district administrator of the school district which contains the County seat shall convene a committee to review and make recommendations for the school boards of all the school districts in the county on revisions to the school districts' truancy plans under that statute; and

WHEREAS, that same statute provides that the committee shall include:

A parent or pupil enrolled in a private school who resides in a school district in the county, designated by the County Board; a parent or pupil enrolled in a public school, who resides in a school district in the County, designated by the County Board; and a parent or pupil enrolled in a home-based private educational program, who resides in a school district in this County, designated by the County Board; and

WHEREAS, Robert R. Geigle, Director of Pupil Services for the Oshkosh Area School District has recommended to your undersigned supervisor, as Board Chairman, that those persons indicated below are capable and willing to serve upon said truancy committee.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that

pursuant to Section 118.162(1)(j), it hereby designates Lynn Kleman, 2664 Oakwood Circle, Oshkosh, Wisconsin, 54901, to serve on the Winnebago County Truancy Committee as the private school representative pursuant to said statute.

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that pursuant to Section 118.162(1)(k), it hereby designates Fran Price, 1609 Covington Drive, Oshkosh, Wisconsin, 54904, to serve on the Winnebago County Truancy Committee, to serve as the public school representative upon said Committee.

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that it hereby designates Cathy Dominowski, 2596 Oakridge Road, Neenah, Wisconsin, 54956, pursuant to Section 118.162(1)(l), Wisconsin Statutes as a member of the Winnebago County Truancy Committee to serve upon said Committee as the home-based private educational program representative.

Submitted by:  
JOSEPH N. MAEHL, DIST. #6  
COUNTY BOARD SUPERVISOR

Motion by Supervisor Maehl and seconded to adopt. CARRIED BY VOICE VOTE.

### **CHAIRMAN'S REPORT**

Chairman Maehl extended "happy birthday" wishes to Supervisors Norton and Metzsig. He also thanked Supervisor Metzsig for his donation to the Winnebago County scholarship fund.

### **PRESENTATION TO ETHEL & JOHN KELLER**

Chairman Maehl introduced Ethel and John Keller to the Board. Chairman Maehl thanked them for the many generous gifts they have given to Park View Health Center. Chairman Maehl presented them with a plaque thanking them for the \$167,000 in gifts and money that they have donated to Park View Health Center over the years.

The Board of Supervisors recognized them with a round of applause.

Charlene Lowe, former Park View Health Center Director, also extended her thanks to the Keller's.

Ms. Lowe then thanked the Board of Supervisors for the support they gave her during her tenure as Park View Health Center's Director and for all that they have done for the Park View Health Center facility.

### **PRESENTATION TO SUPERVISOR PATRICK O'BRIEN**

Chairman Maehl presented a plaque to Supervisor O'Brien commending him on his 19 years of service on the Winnebago County Board. Supervisor O'Brien has resigned from the County Board effective June 20, 2001.

The Board of Supervisor recognized him with a round of applause.

### **PUBLIC HEARING**

Donald Lillibridge, Oshkosh, spoke in opposition to the Emergency Government Director's proposal to reduce the number of sirens and replace them with larger, super sirens.

John Allen, Neenah, spoke in support of Resolution No. 248-62001, "Authorize Request for Proposal and Lease of Land for Development of Campus Housing Facility of UW-Fox Valley."

Bob Lace, Neenah, asked that the County Board review their policy regarding emergency sirens. He felt that the emergency sirens should have been activated during last week's severe storms.

Pat Briley, representing the Vertical Partners Co., started to make a presentation to the Board regarding Resolution No. 250-62001, "Direct County Executive to Explore Options with Regard to Location of Wireless Communication Towers Upon County Property". Chairman Maehl ruled that her

presentation tonight is premature, but that once this project has been approved, she would be welcome to make her presentation to the appropriate committee.

## **DON WILMOT – EMERGENCY GOVERNMENT DIRECTOR**

Don Wilmot, Emergency Government Director, gave a report on the storm that hit Winnebago County on June 11, his decisions regarding the emergency sirens, and the clean up and restoration efforts after the storm.

Mr. Wilmot explained that the storm on June 11<sup>th</sup> was unique because of its microburst of 50-71 mph winds and 10+ minutes of sustained winds between 45 and 55 mph. The water-saturated ground and high winds caused trees to fall and take down power, telephone and cable lines and cause so much damage to property. Mr. Wilmot said that the rumor that there were winds exceeding 90 mph and sustained winds at 80 mph were not true.

Mr. Wilmot reported that Governor Scott McCallum has designated Winnebago County as a disaster area, and that the Federal Emergency Management Agency (FEMA) is completing their damage assessment to determine if Winnebago County will be designated a national disaster area. Designations as disaster areas will make Winnebago County eligible for disaster relief funds and help cover the estimated \$24 million in damages.

Mr. Wilmot reported that he only activated four of the county's emergency sirens. Those sirens are located in the Towns of Winchester & Winneconne and the Village of Winneconne. These sirens were activated because of an emergency call to the 911 center from a motorist in that area who reported that his car was being pushed down the highway and he was witnessing flying debris. Mr. Wilmot said that tornado spotters in that area did not see a tornado, but based on the citizens report, it was decided to activate the sirens.

Addressing the issue of why he did not activate the sirens across the county, Mr. Wilmot explained that the county's written policy is that:

- warning sirens are activated only if a tornado warning has been issued by the National Weather Service, or
- there has been a confirmed sighting of a funnel cloud, or
- winds approach 90 mph or more - Mr. Wilmot explained that the 90 mph designation is based on information provided by the National Weather Service and FEMA that states that winds exceeding 90 mph will cause roofs to blow off and building walls to collapse. Mr. Wilmot stated that under those conditions, people are not safe in the upper floors of buildings or mobile homes and they should seek shelter elsewhere.

Mr. Wilmot answered those that criticized his actions by stating that the National Weather Service did not issue a tornado warning on June 11<sup>th</sup> and no funnel clouds were sighted. Mr. Wilmot also explained that to people living in mobile homes, warning sirens mean they should leave their homes and go to a place of safety; but in this case, because of the falling trees and downed electrical wires, they were safer staying in their mobile homes.

Mr. Wilmot explained that consistency with the use of the sirens must be maintained by the county, otherwise its citizens won't trust the system.

Mr. Wilmot took numerous questions from the Board.

Supervisor Pech requested that the Board be provided with a copy of the county's policy on activating the warning sirens.

Motion by Supervisor Hert and seconded that the county's current warning siren policy be reviewed by the County Executive, Don Wilmot and the Emergency Management Committee and brought back to the full county board at their August meeting. After Supervisor Griesbach stated that the Emergency Management Committee will be reviewing the siren activation policy, no vote was needed on this motion.

Mr. Wilmot also discussed National Oceanic and Atmospheric Association (NOAA) radios. He explained that a NOAA radio is an excellent way for individuals to monitor weather conditions. They are battery operated and the broadcast weather bulletins directly issued by the national weather association.

Numerous supervisors commended Mr. Wilmot, Winnebago County employees and Winnebago County citizens for their efforts during and after the June 11<sup>th</sup> storm.

Supervisor Pech asked for the Board's unanimous consent of his motion to commend all Winnebago County staff for their efforts during the past week in connection with this storm. CARRIED BY VOICE VOTE.

Mr. Wilmot introduced Tom Seifert, National Sales Representative for American Signal. They have completed their assessment of Winnebago County's warning siren system. In their assessment, they studied and determined the following:

- the distance of coverage per site
- present condition of the sites/sirens – currently there are three 45-year old mechanical sirens, 17 electronic sirens (most expensive to buy & maintain and most susceptible to damage, not dependable; range from 14-20 years old)
- operating costs are high – a lot of money is going into old sirens – mechanical sirens are preferable because they are more dependable and less expensive
- budgeting for the current sirens is difficult because of their high maintenance costs

Mr. Wilmot stated that their goal is to replace the 17 electronic sirens with either three larger mechanical sirens or a comparable number of smaller mechanical sirens. He explained the advantage would be:

- mechanical sirens have a 30-year life cycle
- very good warranty
- ease in budgeting for their maintenance
- greater warning area per siren – current system has a lot of overlap
- upgrade to current technology
- effective notification range
- reduction in noise pollution
- 95% reliability
- county's liability is covered

Mr. Wilmot stated that the county's current electronic sirens have an effective range of 4000 radial feet and the current mechanical T128 sirens have an effective range of 1.2 radial miles at 68 decibel (db.). He explained that although FEMA's standard for siren noise levels is 70 db., his plan to get a 68 db. noise level out to the majority of Winnebago County will be adequate.

Mr. Seifert explained that FEMA guidelines were used to determine the best design for the proposed warning siren system.

Mr. Wilmot and Mr. Seifert displayed transparencies indicating the present and proposed siren coverage areas. Mr. Wilmot and Mr. Seifert explained that the proposal to replace 17 of the electrical sirens with fewer super mechanical sirens will be more effective and reliable.

Projected costs for this project, including installation, service & maintenance and system obsolescence is:

	<u>20 Year Comparison</u>	<u>30 Year Comparison</u>
Three (3) T-135 sirens	\$150,305.00	\$181, 595.00
Seventeen (17) T-128 sirens	523,515.00	711,705. 00
Seventeen (17) Electronic Sirens	624,835.00	919,275. 00

At approximately 8:10 p.m., Chairman Maehl called for a 15 minutes recess. At approximately 8:25 the Board reconvened.

## ZONING REPORTS & ORDINANCES

REPORT NO. 001. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant Warren Uttecht, Martenson & Eisele, and property owners Charles & Cheryl Ulrich, Ty & Becky Shippee and Matt & Jennifer Dubie, Town of Wolf River, for zoning change to R-5. Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-01-01. A request for zoning change from MH-1 (Mobile Home District) to R-5 (Planned Residential District). Motion by Supervisor Schaidler and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 002. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner Richard Naslund, Town of Algoma, for zoning change to R-5. Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-02-01. A request for zoning change from B-3 (General Business) to R-5 (Planned Residential District). Motion by Supervisor Schaidler and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 003. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner John Pfeiffer, Town of Black Wolf, for zoning change to R-1 (Single Family non-subdivided). Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-03-01. A request for zoning change from P-1 (Institutional & Recreational Park) to R-1 (Single Family non-subdivided). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 004. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant Reinhard Roehlig and property owner Gerald Sipple, Town of Omro, for zoning change to A-2 (General Farming). Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-04-01. A request for zoning change from A-2/R-1 (General Farming/Single family non-subdivided) to A-2 (General Farming). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 005. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner Nathan & Nick Potratz, Town of Omro, for zoning change to A-2/B-3 (HB) (General Farming/General Business-Highway Business). Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 05-05-01. A request for zoning change from B-2/A-2 (Community Business District/General Farming) to A-2/B-3(HB) (General Farming/General Business-Highway Business). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 006. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner James & Gwendolyn Bleuer, Town of Omro, for zoning change to M-1. Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-06-01. A request for zoning change from B-2 (Community Business) to M-1 (Light Industrial). Motion by Supervisor Schaidler and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 007. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner David Scherer, Town of Omro, for zoning change to A-2. Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-07-01. A request for zoning change from R-1/A-2/B-2/B-3 (Single family non-subdivided/General Farming/Community Business/General Business) to A-2 (General Farming). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 008. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant Winnebago County Planning & Zoning Committee for a text amendment

to Section 17.19 (Mineral Extraction) of the Winnebago County Town/County Zoning Ordinance. Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-08-01. A request for text amendment to the Winnebago County Town/County Zoning Ordinance, Section 17.19 (Mineral Extraction). Amendment is as follows: Section 17.19 (3)(b) – amend to add (5) as follows:

- (5) The Planning & Zoning Committee may authorize a reduction in the 200', or 50', setback requirement where the extraction will not go below either the grade of the adjacent road, or the adjoining property line, and where no blasting is required. In applying the provisions of this section, the Committee may reduce the setbacks as deemed appropriate, and may apply other operational requirements necessary to offset any effect of the reduced setback.

Explanation – amendment will allow extraction within 200' of right-of-way line only when the extraction is “at the grade of the adjacent road”, or to allow extraction within 50' of an adjacent property line when the extraction is “at the adjoining grade” AND in either case, where no blasting is allowed. The intent is to allow removal of hills, etc., without digging a hole.

Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE.  
(Effective date – June 25, 2001)

REPORT NO. 009. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner Douglas Fink and Marie Neuber, Town of Winchester, for zoning change to R-1/B-3 (Single family non-subdivided/General Business). Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-09-01. A request for zoning change from A-2/A-1 (General Farming/Agri-Business) to R-1/B-3 (Single family non-subdivided/General Business). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

REPORT NO. 010. A report from the Planning & Zoning Committee regarding a requested zoning change from applicant and property owner Lee Fischer, Town of Winchester, for zoning change to M-1 (Light Industrial). Motion by Supervisor Schaidler and seconded to accept. CARRIED BY VOICE VOTE.

AMENDATORY ORDINANCE NO. 06-10-01. A request for zoning change from A-2 (General Farming) to M-1 (Light Industrial). Motion by Supervisor Schaidler and seconded to ADOPT. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

AMENDATORY ORDINANCE NO. 11. A request from the Town of Rushford on behalf of Kenneth & Steven Helmuth for zoning change from A-1 to A-3. Motion by Supervisor Egan and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

AMENDATORY ORDINANCE NO. 12. A request from the Town of Rushford on behalf of Jerome and Phyllis Draws for zoning change from A-1 to A-2. Motion by Supervisor Egan and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

AMENDATORY ORDINANCE NO. 13. A request from the Town of Utica on behalf of Payne Sod, Inc. for zoning change from A-2/C-1 to A-3. Motion by Supervisor Egan and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

AMENDATORY ORDINANCE NO. 14. A request from the Town of Utica on behalf of Christian Family Trust for zoning change from A-1 to R-1. Motion by Supervisor Egan and seconded to adopt. CARRIED BY VOICE VOTE. (Effective date – June 25, 2001)

## **RESOLUTIONS & ORDINANCES**

**RESOLUTION NO. 248-62001: Authorize Request for Proposal and Lease of Land for Development of Campus Housing Facility at UW-Fox Valley**

WHEREAS, the University of Wisconsin-Fox Valley has determined there is a high level of

interest in on-campus student housing; and

WHEREAS, the Trustees of the University of Wisconsin-Fox Valley do endorse the lease of certain County-owned land to a private developer or developers for the purpose of constructing student housing on land now leased to the University of Wisconsin, and

WHEREAS, models for private-public partnerships for providing student housing exist in Wisconsin and other states; and

WHEREAS, the provision of campus housing will be acquired through a public process to allow for competitive proposals;

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that, subject to review by the Corporation Counsel of each county, the Counties of Outagamie and Winnebago conduct a Request for Proposal and Award process to effect the construction and operation of campus housing by a private owner on property now owned by the counties and leased to the university; and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that the parcel of property to be utilized for campus housing be no more than approximately 2 acres of otherwise unimproved university property; and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that the construction and operation of said campus housing shall be without cost to the Counties and that all improvements to the property shall become, at the option of the Counties, property of the Counties at the end of the lease period, and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that ownership of the land will continue to be with the counties, and use of the land shall be solely for the purpose of providing and supporting campus housing; and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that any proposal to use the land for other than campus housing purposes be subject to approval by the university and counties; and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that any final lease agreement shall be subject to approval by the Winnebago County Board of Supervisors and the Outagamie County Board of Supervisors.

Submitted by:

UW FOX VALLEY BOARD OF TRUSTEES

Dean James Perry and Chancellor William Messner addressed the Board regarding the proposed campus housing. They explained that there is a need for housing for those students who are not from the immediate area. Dean Perry stated that the 25-unit building would be built in the northwest corner of the campus and house 100 students. He explained that the developer would bear the costs for construction and maintenance of the building. After the 30 year lease, the county would have the option of either retaining the building or having the developer return the site to its original condition.

Motion by Supervisor Maehl and seconded to adopt. Ayes: 24. Nays: 8 – Widener, Pech, Leschke, Wingren, King, Norton, Hert and Kline. Excused: 2. Absent: 4. CARRIED.

#### **AMENDED**

**RESOLUTION NO. 260-62001: Appropriate \$128,000 to the UWFV Classroom Upgrade Project and Transfer Savings from HVAC Project to Cover Part of Cost with Bond Proceeds being Used for the Balance.**

WHEREAS, UW Fox Valley is currently involved in the addition of an Earth Science Museum and Classroom Addition, both being funded entirely by donations, and

WHEREAS, at the same time, an upgrade to the heating, ventilating and air conditioning system (HVAC) in the 1962 classroom wing is being funded by Winnebago and Outagamie County's, and

WHEREAS, each County will realize savings from the HVAC project, and

WHEREAS, the 1962 classroom wing is in need of upgrading, and  
 WHEREAS, there will be efficiencies and savings if the classroom wing can be upgraded at the same time as these other projects, and  
 WHEREAS, the total estimated cost of upgrading the 1962 wing is \$128,000, and  
 WHEREAS, Outagamie County has already appropriated its share of funding for the classroom upgrade project.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby appropriates \$128,000 to Winnebago County's ½ share of the classroom upgrade project.

BE IT FURTHER RESOLVED that savings of \$58,000 will be transferred from the HVAC capital project fund to cover part of this project's cost.

BE IT FURTHER RESOLVED that the remaining funds needed to pay for said improvements, \$70,000, be transferred from the General Fund of Winnebago County to the 1962 Classroom Upgrade Capital Project fund with the General Fund being reimbursed from a subsequent bond issue.

BE IT FURTHER RESOLVED that participation of Winnebago County in this project is contingent upon Outagamie County's participation in the project.

Submitted by:  
 UW FOX VALLEY BOARD OF TRUSTEES

Motion by Supervisor Maehl and seconded to adopt. Ayes: 21. Nays: 12 – Klitzke, Widener, Pech, Leschke, King, Norton, Hert, Eichman, Kline, Kramer, Spanbauer and Arne. Excused: 2. Absent: 3. LOST (¾ vote required)

**RESOLUTION NO. 245-62001: Authorize County Aid for Culvert Replacement**

WHEREAS, Section 81.38, Wisconsin Statutes, allows a town to petition the County for funds to offset the costs of constructing or repairing culverts or bridges within the town; and

WHEREAS, pursuant to Section 81.38(2), Statutes, the County shall pay the cost of such repair or construction in excess of \$750 up to \$1500 and the town and county shall each pay 1/2 of the cost of construction or repair above \$1500 ; and

WHEREAS, the Town of Neenah has petitioned the Winnebago County Highway Committee for replacement of a culvert pursuant to Section 81.38, Wisconsin Statutes.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes County aid to the Town of Neenah for the following project the total amount of said project not to exceed that amount listed with the amount contributed by the County to be controlled pursuant to Section 81.38(2), Statutes:

<u>TOWN</u>	<u>LOCATION</u>	<u>TOTAL AMOUNT OF PROJECT</u>
Town of Neenah	Irish Road and County Trunk "O"	\$2000.00

Submitted by:  
 HIGHWAY COMMITTEE

Motion by Supervisor Robl and seconded to adopt. Ayes: 32. Nays: 0. Excused: 2. Absent: 4. CARRIED.

**RESOLUTION NO. 247-62001: Support State Budgeting for Wisconsin Immunization Program**

WHEREAS, the Department of Health and Family Services began statewide implementation of the Wisconsin Immunization Registry (WIR) in June 2000 to assist public and private health care

providers in determining a child's immunization status regardless of where the child received previous immunizations; and

WHEREAS, the WIR is crucial to assisting the health care providers in keeping the child on schedule for recommended immunizations; and

WHEREAS, 140 public and private organizations are currently using WIR for 1.4 million clients with documentation of 6.8 million associated immunizations, averaging over 3,000 new immunizations per day; and

WHEREAS, the current proposed state budget demonstrates the removal of General Public Revenue (GPR) funding for the WIR, from the Division of Public Health budget; and

WHEREAS, the Health Care Finance Administration (HCFA) is making funds available to Wisconsin to assist in immunization registry development, implementation and ongoing support as it pertains to individuals that are eligible for Medicaid, as long as Wisconsin designates GPR funds as a state match to the HCFA funds and provides funding for registry development, implementation and ongoing support for the non-Medicaid population in the registry; and

WHEREAS, your undersigned County Board Supervisors believe that the Wisconsin Immunization Registry is essential to the provision of immunization services to Winnebago County residents.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it supports the reinstatement of General Public Revenue dollars into the Governor's 2002-2003 budget for the Wisconsin Immunization Registry (WIR) program.

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes and directs the Winnebago County Clerk to transmit a copy of this resolution to all state legislators representing constituents within Winnebago County; to the offices of Congressman Thomas Petri and Senators Herbert Kohl and Russell Feingold; to the Wisconsin Counties Association, to all Wisconsin Counties and to the office of Governor McCallum.

Submitted by:  
STEPHEN RANKIN, DIST. #36  
NANCY BARKER, DIST. #2  
THOMAS PECH JR., DIST. #12  
COUNTY BOARD SUPERVISORS

Motion by Supervisor Rankin and seconded to adopt. Ayes: 33. Nays: 0. Excused: 2.  
Absent: 3. CARRIED.

**RESOLUTION NO. 249-62001: Support Reinstatement of Funding within State Budget for Tobacco Control Board**

WHEREAS, the state of Wisconsin will receive an estimated \$5.9 billion dollars over the next 25 years as part of a settlement reached in 1998 between 45 states and the tobacco companies; and

WHEREAS, current law directs a portion of these funds into a Tobacco Control Fund to facilitate anti-smoking programs; and

WHEREAS, The Wisconsin Tobacco Control Board has identified its mission to aggressively pursue the elimination of tobacco use by partnering with communities to prevent tobacco use among youth, promote cessation, and eliminate second-hand smoke; and

WHEREAS, the mission will be achieved through comprehensive state and local efforts that utilize best practices and address the needs of diverse populations most adversely impacted by tobacco use; and

WHEREAS, the proposed 2002 – 2003 state budget contains a 36% or 12 million dollar decrease, over the next two years, in funding for the Tobacco Control Board, as a means of balancing the proposed budget; and

WHEREAS, with the Tobacco Control Board funding, prevention efforts of community and public health organizations have just recently been developed, coordinated, and implemented in a concerted

effort to reduce and eventually eliminate tobacco related illnesses; and

WHEREAS, your undersigned County Board Supervisors believe that the continued prevention efforts of the Tobacco Control Board programs are essential to (1) the health promotion of Winnebago County residents and all other Wisconsin residents and (2) the Wisconsin Tobacco Control Board's continued efforts to accomplish its vision, "Wisconsin residents living tobacco free."

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it supports the reinstatement of the 12 million dollars into the 2002-2003 state budget for the Wisconsin Tobacco Control Board's continued prevention efforts and opposes the use of tobacco prevention dollars to balance the state budget; and

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes and directs the Winnebago County Clerk to transmit a copy of this resolution to all state legislators representing constituents within Winnebago County; to the offices of Congressman Thomas Petri and Senators Herbert Kohl and Russell Feingold; to the Wisconsin Counties Association, to all Wisconsin Counties and to the office of Governor McCallum.

Submitted by:  
LEGISLATIVE COMMITTEE

Motion by Supervisor Barker and seconded to adopt. Ayes: 21. Nays: 12 – Widener, Leschke, Green, Madison, Sundquist, King, Hert, Kline, Schaidler, Spanbauer, Arne and Metzsig. Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 250-62001: Direct County Executive to Explore Options with Regard to Location of Wireless Communication Towers Upon County Property**

WHEREAS, a firm has approached Winnebago County with regard to the idea of leasing space upon County properties or County buildings for the construction and operation of wireless communication towers; and

WHEREAS, Winnebago County does not presently have an existing policy or practice with regard to the leasing of its property for the location and operation of such communication towers; and

WHEREAS, your undersigned Committee believes that the Winnebago County Executive and appropriate departments should explore and make a recommendation to your undersigned Committee with regard to the possibility of locating wireless communication towers upon County buildings and property, taking into consideration the concerns of neighbors and citizens with regard to the location of said towers upon County property; local zoning ordinances; the possible liability and contractual issues in relationship to said location; and the establishment of a policy that would provide a fair and equitable system for allowing all companies interested in locating such a tower upon County property to formulate a proposal to the County in relationship to doing so and providing the County with the greatest remuneration possible pursuant to any governing policy adopted.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby directs the Winnebago County Executive and appropriate Winnebago County Departments to meet and develop a recommendation and a policy, if necessary, with regard to the leasing of County property for the purpose of locating wireless communication towers upon said property.

Submitted by:  
FACILITIES & PROPERTY MANAGEMENT COMMITTEE

Motion by Supervisor Egan and seconded to adopt. CARRIED BY VOICE VOTE.

**RESOLUTION NO. 251-62001: Disallow Claim of Harleysville (Minnesota Fire & Casualty) Insurance Company for Leonard Palmeri**

WHEREAS, your Personnel and Finance Committee has had the claim of Harleysville (Minnesota Fire & Casualty) Insurance Company for Leonard Palmeri referred to it for attention; and

WHEREAS, your Committee has investigated the claim and recommends disallowance of same by Winnebago County.

NOW, THEREFORE, BE IT RESOLVED, by the Winnebago County Board of Supervisors, that the claim of Harleysville (Minnesota Fire & Casualty) Insurance Company for Leonard Palmeri dated May 21, 2001, be and the same is hereby disallowed for the reason that there is no basis for liability on the part of Winnebago County.

Submitted by:  
PERSONNEL AND FINANCE COMMITTEE

Motion by Supervisor Lauson and seconded to adopt. CARRIED BY VOICE VOTE.

**RESOLUTION NO. 252-62001: Oppose Split of the Wisconsin Department of Natural Resources**

WHEREAS, individual legislators continue to advance a proposal in the Wisconsin Legislature to split the Department of Natural Resources into two separate agencies; and

WHEREAS, the proposal fails to substantiate claims for the need to split DNR; and

WHEREAS, your Land Conservation Committee and a majority of the members of your Legislative Committee believe such a proposal would be detrimental to the protection of the natural resources and to the safety and well being of the citizens of Winnebago County.

NOW, THEREFORE, BE IT RESOLVED: That the Winnebago County Board of Supervisors does hereby go on record in opposition to any actions by the Wisconsin Legislature that would result in a split of the Wisconsin Department of Natural Resources.

BE IT FURTHER RESOLVED: That a copy of this resolution be forwarded to the State Representatives and State Senators representing Winnebago County, Governor McCallum, and DNR Secretary Bazzell.

Submitted by:  
LEGISLATIVE COMMITTEE  
AND  
LAND CONSERVATION COMMITTEE

Motion by Supervisor Barker and seconded to adopt. Motion by Supervisor Pech and seconded to amend the fifth paragraph after the words "Governor McCallum", by adding "Majority and Minority legislative leaders". CARRIED BY VOICE VOTE.

Vote on Resolution as amended: Ayes: 24. Nays: 9 – Widener, Leschke, Green, Zamzow, King, Hert, Kline, Kramer and Schaidler. Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 253-62001: Resolution to Amend the Winnebago County Farmland Preservation Plan**

WHEREAS, Winnebago County Board adopted a Farmland Preservation Plan in February 1982; and

WHEREAS, the purpose of the Farmland Preservation Plan was to protect the County's agricultural lands and to allow people farming the land to participate in a state program to receive tax credits; and

WHEREAS, the Farmland Preservation Plan has not been amended since its adoption in 1982; and

WHEREAS, the Town of Clayton has requested that the County amend the Farmland Preservation Plan to reflect the land use changes that have taken place in the Town over the last 20 years; and

WHEREAS, the Town of Clayton has worked with Winnebago County to amend the Plan; and  
WHEREAS, Winnebago County conducted a hearing on May 30, 2001 and received no adverse comments.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Supervisors due hereby approve the amended Town of Clayton Farmland Preservation Map as attached and forward said map to the State of Wisconsin Land Conservation Board for their approval.

Submitted by:  
PLANNING & ZONING COMMITTEE

Motion by Supervisor Schaidler, and seconded to adopt. Ayes: 33. Nays: 0. Excused: 2  
Absent: 3. CARRIED.

**ORDINANCE NO. 254-62001: Adopt Chapter 20, Non-Metallic Mining Ordinance**

WHEREAS, Chapter NR 135, Wisconsin Administrative Code and Chapter 295, Wisconsin Statutes, require counties to establish a local program to ensure the effective reclamation of non-metallic mining sites on which non-metallic mining takes place; and

WHEREAS, pursuant to said statutes and administrative regulations, it is necessary for Winnebago County to adopt an Ordinance to regulate said activities.

NOW, THEREFORE, the County Board of Supervisors of the County of Winnebago does ordain as follows:

The adoption of Chapter 20 of the General Code of Winnebago County, which is hereby entitled "Non-Metallic Mining Ordinance", which is attached hereto.

BE IT FURTHER ORDAINED by the County Board of Supervisors of the County of Winnebago that said Ordinance shall take effect on July 1, 2001 or on that date following the date of publication if the date of publication is later than July 1, 2001.

Submitted by:  
PLANNING & ZONING COMMITTEE

Motion by Supervisor Schaidler and seconded to adopt. Ayes: 32. Nays: 1 - Rengstorf.  
Excused: 2. Absent: 3. CARRIED.

**WINNEBAGO COUNTY  
NON-METALLIC MINING RECLAMATION ORDINANCE  
CHAPTER 20, WINNEBAGO COUNTY GENERAL CODE**

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#### PART I - GENERAL

- 20.01 Title.** Nonmetallic mining reclamation ordinance for the County of Winnebago, Wisconsin.
- 20.02 Purpose.** The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Winnebago County after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.
- 20.03 Statutory Authority.** This chapter is adopted under authority of Section 295.13(1), Wisconsin Statutes, Section NR 135.32, Wisconsin Administrative Code, and Section 59.51, Wisconsin Statutes.

**20.04 Restrictions Adopted Under Other Authority.** The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by Section 295.12(1)(a), Stats. and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

**20.05 Interpretation.** In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

**20.06 Severability.** Should any portion of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

**20.07 Applicability.**

**20.07(1) Overall Applicability.** The requirements of this chapter apply to all operators of nonmetallic mining sites within Winnebago County operating on or commencing to operate after August 1<sup>st</sup>, 2001 except as exempted in **Section 20.07(2)** and for nonmetallic mining sites located in a city, village or town within Winnebago County that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code. This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This chapter applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance Sec. 20.14(4).

**20.07(2) Exemptions.** This chapter does not apply to the following activities:

(1) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under secs. 20.30(19) or 20.30(195) or 20.30(20) Stats., and complies with Chapter NR 340, Wisconsin Administrative Code.

(2) Excavations subject to the permit and reclamation requirements of secs. 20.30.30 or 20.30.31, Stats.

- (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (4) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- (5) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- (6) Excavations for building construction purposes conducted on the building site.
- (7) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total area over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under ch. 293, Stats.
- (9) Any activities required to prepare, operate or close a solid waste disposal facility under ch. 289, Stats., or a hazardous waste disposal facility under ch. 291, Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (10) Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
  - (a) This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
  - (b) If a nonmetallic mining site covered under **pars. (a) and (b)** is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
- (11) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

- (12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 20.30(21) Stats.
- (13) The excavation of ponds, regardless of size, if all excavated materials remain on the site during its construction and after its completion.
- (14) The excavation of ponds, regardless of size, if contained within designated wetland or shoreland areas which do not permit the stockpiling, or use, of the excavated materials on the site.

**20.08(1) Administration.** The provisions of this chapter shall be administered by the Winnebago County Planning and Zoning Committee, its staff, and/or its designated Administering Agency.

**20.08(2) Statutory Authority.** This chapter is adopted under authority of Section 295.13(1), Wisconsin Statutes, Section NR 135.32, Wisconsin Administrative Code, and Section 59.51, Wisconsin Statutes.

**20.09 Effective Date.** The provisions of this chapter shall take effect on July 1, 2001 and shall be based on the language contained in Chapter NR-135, Wisconsin Administrative Code as of that date. All provisions of Chapter NR-135 shall apply until amended and then shall apply as amended.

**20.10 Definitions.** In this chapter:

(1) "Administering Agency" means a public or private entity which oversees the provisions and requirements of the Non-Metallic Mining Reclamation Ordinance through a contractual agreement, approved by Winnebago County, which spells out certain authorities, activities, and responsibilities of the contracted entity.

(2) "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by Winnebago County, and subsequently, its Administering Agency pursuant to **s. 20.18**.

(3) "Applicable reclamation ordinance" means a nonmetallic mining reclamation ordinance, including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and subchapter I of ch. 295, Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in **sub. (20) (b)** . If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Chapter NR 135, Wisconsin Administrative Code.

(4) "Borrow site" means an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site. This term does not include areas which provide materials for any commercial sales or uses other than those related to the transportation project.

(5) "Contemporaneous reclamation" means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which

may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.

(6) "Department" means the Wisconsin Department of Natural Resources.

(7) "Environmental pollution" has the meaning in s. 295.11(2), Stats.

(8) "Existing mine" means a nonmetallic mine where nonmetallic mining takes place before August 1, 2001.

(9) "Financial assurance" means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in **s. 20.14** and is sufficient to pay for reclamation activities required by this chapter.

(10) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.

(11) "Municipality" means Winnebago County or any of its cities, towns, or villages.

(12) "Nonmetallic mineral" means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

(13) "Nonmetallic mining" or "mining" means all of following:

(a) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as topsoil removal, excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, christmas trees or plant nursery stock.

(b) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the same nonmetallic mining site. These processes include, but are not limited to stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping, pulverizing, and dewatering.

(14) "Nonmetallic mining reclamation" or "reclamation" means the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this chapter, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil

conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.

(15) "Nonmetallic mining refuse" means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.

(16) "Nonmetallic mining site" or "site" means all contiguous areas of present or proposed mining described in **par. (a)**, subject to the qualifications in **par. (b)**.

(a) Nonmetallic mining site means the following:

1. The location where nonmetallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
3. Areas where nonmetallic mining refuse is deposited.
4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
5. Areas where grading or re-grading is necessary.
6. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, re-vegetation test plots, or channels for surface water diversion, are located.

(b) "Nonmetallic mine site" does not include any of the following areas:

1. Those portions of sites listed in **par. (a)** not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.
2. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.
3. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.
4. Areas no longer being actively mined after August 1, 2001 but are still carrying out related non-metallic mining process as cited in **sub. (13) (b)**, and uses materials mined from a different site.

(17) "Operator" means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

(18) "Registered geologist" means a person who is registered as a professional geologist pursuant to ss. 443.037 and 443.09, Stats.

(19) "Registered professional engineer" means a person who is registered as a professional engineer pursuant to ss. 443.04 and 443.09, Stats.

(20) "Regulatory authority" means the following:

(a) Winnebago County or its authorized Administering Agency for nonmetallic mine sites located within Winnebago County's jurisdiction, or

(b) A municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance,

(21) "Replacement of topsoil" means the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining reclamation for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this chapter.

(22) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under chi 283, Stats., or source material, special nuclear material or by-product material, as defined in s. 254.31 (1), Stats.

(23) "Topsoil" means the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.

(24) "Topsoil substitute material" means soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.

(25) "Un-reclaimed acre" or "Un-reclaimed acres" means those un-reclaimed areas in which nonmetallic mining has occurred after August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under **sub. 20.29(3)**. "Un-reclaimed acre" or "un-reclaimed acres" does not include:

- (a) Those areas where reclamation has been completed and certified as reclaimed under **sub. 20.29(3)**.
- (b) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
- (c) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
- (d) Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
- (e) For purposes of fees under **s. 20.27**, those areas within a nonmetallic mining site which Winnebago County or its Administering Agency has determined to have been successfully reclaimed on an interim basis in accordance with **sub.20.29(3)**.

## **PART II – STANDARDS**

**20.11 Standards.** All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained below.

- (1) GENERAL STANDARDS for non-metallic mining site reclamation shall be as follows:
  - (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 chs. 289 and 291, Stats.
  - (b) AREA DISTURBED AND CONTEMPORANEOUS RECLAMATION. Nonmetallic mining reclamation shall be conducted in phases, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.
  - (c) PUBLIC HEALTH, SAFETY AND WELFARE. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.
  - (d) HABITAT RESTORATION. When the land use required by the reclamation plan approved pursuant to this chapter requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition equivalent to, or better than, that which existed before the lands were affected by nonmetallic mining operations.
  - (e) COMPLIANCE WITH ENVIRONMENTAL REGULATIONS. Reclamation of nonmetallic mining sites shall comply with any other

applicable federal, state and local laws including those related to environmental protection, zoning and land use control.

(2) SURFACE WATER AND WETLANDS PROTECTION. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR 102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for erosion control, diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties. Standards for the review of this section may be based on methods contained in the WDNR publication entitled "Wisconsin Construction Site Best Management Practice Handbook"

(3) GROUNDWATER PROTECTION standards shall be as follows:

(a) GROUNDWATER QUANTITY. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.

(b) GROUNDWATER QUALITY. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Chapter NR 140, Wisconsin Administrative Code to be exceeded at a point of standards application defined in that chapter.

(4) TOPSOIL MANAGEMENT standards shall be as follows:

(a) REMOVAL. Topsoil and topsoil substitute material shall be removed, protected and redistributed to support reclamation and site stabilization. Topsoil shall be managed as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation to the approved post-mining land use. Topsoil and topsoil substitute material removal shall be performed, as required by the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.

(b) VOLUME. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.

(c) STORAGE. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

(5) FINAL GRADING AND SLOPE standards shall be as follows:

(a) All areas affected by mining shall be graded in accordance with the reclamation plan approved pursuant to this chapter to achieve a stable and safe condition consistent with the post mining land use. The reclamation plan may designate areas such as stable slopes and rock faces which do not require final grading.

(b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless alternative requirements are approved under **s. 26.18**, and stable slopes can be demonstrated based on site-specific engineering analysis. The engineering analysis shall show that a minimum acceptable slope stability factor is attainable at a steeper slope and that the post-mining land use specified in the reclamation plan is not adversely affected. When the slope occurs at the edge of a body of water, this approved slope shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

(c) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(6) TOPSOIL REDISTRIBUTION FOR RECLAMATION. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this chapter in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

(7) REVEGETATION AND SITE STABILIZATION. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this chapter, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by re-vegetation or other means. Re-vegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

(8) ASSESSING COMPLETION OF SUCCESSFUL RECLAMATION shall be complete using the following standards:

(a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be quantifiable.

(b) Compliance with the re-vegetation success standards in the approved reclamation plan shall be determined by:

1. On-site inspections by Winnebago County or its Administering Agency;

2. Reports presenting results obtained during reclamation evaluations including summarized data on re-vegetation, photo-documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or

3. A combination of inspections and reports.

(c) In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

(d) Re-vegetation success may be determined by:

1. Comparison to an appropriate reference area;

2. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or

3. Comparison to an approved alternate technical standard.

4. The re-vegetated area must be in a viable growing condition for at least one growing season in order to be considered as reclaimed.

(e) Re-vegetation using a variety of plants indigenous to the area is favored.

(9) INTERMITTENT MINING. Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to **s. 14** is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

(10) MAINTENANCE. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this chapter.

### **PART III - PERMITTING**

#### **20.12.1 Nonmetallic Mining Reclamation Permit Application.**

**20.12(1) Required Submittal.** All operators of nonmetallic mining sites that operate on or after August 1, 2001 shall apply for a reclamation permit from the Administering Agency. All applications for reclamation permits under this section shall include, but is not limited to, the following information:

(1) A brief description of the general location and nature of the nonmetallic mine.

(2) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.

- (3) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
- (4) The name, address and telephone number of the person or organization who is the operator.
- (5) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by **Part II**.
- (6) Other information as deemed necessary by the Administering Agency to adequately assess the current site ownership, location, or conditions.

**20.12(2) Existing Mines.** The operator of any existing nonmetallic mining site in operation on August 1, 2001 may apply for an automatic reclamation permit from the Administering Agency by providing the information set forth below no later than on August 1, 2001 to :

East Central Wisconsin Regional Planning Commission  
c/o NR-135 Coordinator  
132 Main Street  
Menasha, WI 54952

- (1) The information required by **sub. 20.12(1)**
- (2) The first year's annual fee, as required by **s. 20.27**
- (3) A certification signed by the operator that he or she will provide the Administering Agency with a complete reclamation plan required by **s. 20.13** and financial assurance required by **s. 20.14** within 3 years after the date of submittal of the automatic reclamation permit application, .

**20.12(3) New Mines.** The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1<sup>st</sup>, 2001 or which has not applied for an automatic reclamation permit pursuant to **sub. 20.12(2)** shall submit an application that meets the requirements specified below to:

East Central Wisconsin Regional Planning Commission  
c/o NR-135 Coordinator  
132 Main Street  
Menasha, WI 54952

prior to beginning operations. This application shall be accompanied by a plan review fee as specified in **s. 20.26**.

- (1) The information required by **sub. 20.12(1)**
- (2) The plan review and annual fees required by **secs. 20.26 and 20.27**.
- (3) A reclamation plan conforming to **s. 20.13**.
- (4) A certification that the operator will provide, as a condition of the reclamation permit, provide financial assurance as required by **s. 20. 14** upon granting of the

reclamation permit and before mining begins.

(5) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

## **20.13 Reclamation Plan.**

**20.13(1) Reclamation Plan Requirements.** All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the following requirements.

(1) **PLAN REQUIRED.** An operator who conducts or plans to conduct nonmetallic mining on or after August 1<sup>st</sup>, 2001 shall submit to the Administering Agency a reclamation plan that meets the requirements of this section and complies with the standards of **Part II**. To avoid duplication, the reclamation plan may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

(2) **SITE INFORMATION.** The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:

(a) Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the approximate elevation of ground water, the location of surface waters and the existing drainage patterns.

(b) Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine sites.

(c) Existing topography as shown on contour maps of the site at two foot intervals and are based on U.S.G.S. elevations.

(d) Location of manmade features on or near the site.

(e) Other suitable benchmarks locations as required to determine areal extent of site activities or uses.

(f) For existing mines, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.

(g) Other information as deemed necessary by the Administering Agency to adequately assess the current site ownership, location, or conditions.

(3) **POST-MINING LAND USE.**

(a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed and approved. The proposed post-mining land use shall also be consistent with all applicable

local, state, or federal laws in effect at the time the plan is submitted.

(b) Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to s. 91.75, Stats., shall be restored to agricultural use.

(4) RECLAMATION MEASURES. The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:

(a) A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures.

(b) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.

(c) A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.

(d) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.

(e) The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.

(f) A re-vegetation plan which shall include timing and methods of seed bed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.

(g) Quantifiable standards for re-vegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for re-vegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.

(h) A plan and, if necessary, a narrative showing erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface and groundwater.

(i) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to **subs. 20.29(2) and 20.29(4)** and release of financial assurance pursuant to **sub. 20.29(3)**, and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in **Part II** and timing of interim and final reclamation.

(5) The reclamation plan shall contain criteria for assuring successful reclamation in accordance **s. 20.11(8)**.

(6) CERTIFICATION OF RECLAMATION PLAN.

(a) The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. The landowner and lessee, if different from the operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation, except as provided in **par. (b)**.

(b) For the following situations, the landowner and lessee, if different from the mine operator, are not required to submit a written certification in accordance with **par. (a)**. The operator shall provide written evidence that the landowner and lessee, if different from the operator, have been provided with a written copy of the reclamation plan, and that:

1. The mine operator has submitted a reclamation plan for an existing mine in accordance with **sub. 20.12(2)**, or

2. The operator has submitted a reclamation plan for a new or reopened mine in accordance **sub. 20.12(3)** which is located on land for which a lease agreement or memorandum of lease between the landowner and applicant was recorded prior August 1<sup>st</sup>, 2001.

(7) APPROVAL. The operator shall keep a copy of the reclamation plan required by this section, once approved by the Administering Agency under this chapter, at the mine site or, if not practicable, at the operator's nearest office or place of business.

**20.13(2) Existing Mines.** The operator of any nonmetallic mining site that submits an automatic permit application in conformance with **sub. 20.12(2)** shall submit the reclamation plan required by **sub. 20.13(1)** within 3 years after the submittal of the automatic permit application. The exact date for reclamation plan submittal shall be determined by the Administering Agency at the time of automatic permit issuance.

**20.13(3) New Mines.** The operator of any nonmetallic mining site not in operation prior to August 1, 2001 that applies for a permit in conformance with **sub. 20.12(3)** shall submit the reclamation plan required by **sub. 20.13(1)** with its application for a reclamation permit.

**20.13(4) Existing Plans and Approvals.** To avoid duplication of effort, the reclamation plan required by **sub. 20.13(1)** may, by reference, incorporate existing plans or materials that meet the requirements of this chapter. Previous approvals for nonmetallic mining sites in operation on August 1<sup>st</sup>, 2001 shall satisfy the requirements of **sub. 20.13(1)** if they meet the following requirements:

(1) The document has been approved by a county or municipality; and

(2) The Administering Agency finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.

**20.13(5) Approval of Reclamation Plan.** The Administering Agency shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with **sub. 20.16(3)(3)** for existing mines and **sub. 20.16(4)** for mines that apply for a reclamation permit in conformance with **sub. 20.16(3)**. Conditional approvals of reclamation plans shall be made according to **sub. 20.16(7)** and denials of reclamation plans shall be made pursuant to **s. 20.17**. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

## **20.14 Financial Assurance.**

**20.14(1) Financial Assurance Requirements.** All operators of nonmetallic mining sites in Winnebago County shall prepare and submit a proof of financial assurance that meets the following requirements:

(1) NOTIFICATION. The Administering Agency shall provide written notification to the operator of the amount of financial assurance required under **sub. (3)**.

(2) FILING. Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance within Winnebago County and payable exclusively to the Administering Agency. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, an applicable reclamation ordinance and the reclamation plan.. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the Administering Agency only if it currently has primary regulatory responsibility.

(3) AMOUNT AND DURATION OF FINANCIAL ASSURANCE. The amount of financial assurance shall equal as closely as possible the cost to the Administering Agency of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the Administering Agency to assure it equals outstanding reclamation costs. Any financial assurance filed with the Administering Agency shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The Administering Agency may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.

(4) FORM AND MANAGEMENT. Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the Administering Agency and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established

escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the Administering Agency, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.

(5) MULTIPLE PROJECTS. Any operator who obtains a permit from the Administering Agency for 2 or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the Administering Agency.

(6) MULTIPLE JURISDICTIONS. In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

(7) CERTIFICATION OF COMPLETION AND RELEASE. (a) The operator shall notify the Administering Agency, by filing a notice of completion, at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. The Administering Agency shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. Administering Agency may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete the Administering Agency shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.

(b) The Administering Agency shall make a determination of whether or not the certification in par. (a) can be made within 60 days that the request is received.

(c) The Administering Agency may make a determination under this subsection that:

1. Reclamation is not yet complete;
2. It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;
3. Reclamation is complete in a part of the mine; or

4. Reclamation is fully complete.

(8) FORFEITURE. Financial assurance shall be forfeited if any of the following occur:

(a) A permit is revoked under **s. 20.24** and the appeals process has been completed.

(b) An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

(9) CANCELLATION. Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90 day notice to the Administering Agency in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the Administering Agency a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

(10) CHANGING METHODS OF FINANCIAL ASSURANCE. The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to **sub. (12)**. The operator shall give the Administering Agency at least 60 days notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the Administering Agency.

(11) BANKRUPTCY NOTIFICATION. The operator of a nonmetallic mining site shall notify the Administering Agency by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.

(12) ADJUSTMENT OF FINANCIAL ASSURANCE. Financial assurance may be adjusted when required by the Administering Agency. The Administering Agency may notify the operator in writing that adjustment is necessary and the reasons for it. The Administering Agency may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.

(13) NET WORTH TEST.

(a) Only an operator that meets the definition of "company" in s. 289.41 (1) (b), Stats., may use the net worth method of providing financial assurance.

(b) The operator shall submit information to the Administering Agency in satisfaction of the net worth test requirements of s. 289.41 (4), Stats. The criteria in secs. 289.41 (6) (b), (d), (e), (f), (g), (h) and (i), Stats., shall apply.

(c) An operator using the net worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with s. 289.41 (6), Stats.

(d) Determinations under the net worth test shall be done in accordance with s. 289.41 (5), Stats.

(e) In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this chapter.

**20.14(2) Existing Mines.** The operator of any nonmetallic mining site that submits an automatic permit application in conformance with **sub. 20.12(2)** shall submit the financial assurance required by **sub. 20.14(1)** no less than 15 days prior to reclamation plan consideration by the Administering Agency.

**20.14(3) New Mines.** The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with **s. 20.12(3)** shall submit the proof of financial assurance required by **sub. 20.14(1)** as specified in the reclamation permit issued to it under this chapter.

**20.14(4) Public Nonmetallic Mining.** The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

#### **20.15 Public Notice and Right of Hearing.**

**20.15(1) New Mines.** The Administering Agency shall, except as provided in **sub 20.15(2)**, provide public notice and the opportunity for a public informational hearing as set forth below:

(1) PUBLIC NOTICE. Except as provided in **sub. (3)** for existing mines, when the Administering Agency receives a complete application that satisfies **sub. 20.15(3)** to issue a reclamation permit, it shall publish a public notice of the application no later than 30 days after receipt of the application.

(a) The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a class 2 notice pursuant to s. 985.07(2), Stats., in the official newspaper of Winnebago County. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.

(b) Copies of the notice shall be forwarded by the Administering Agency to the county or applicable local zoning board, the county and applicable local planning organization, the county land conservation officer, the clerk of the municipality, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

(2) HEARING. Except as provided in **sub. (3)** for existing mines, and for exempted activities under **Section 20.07(2)** the Administering Agency shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows.

(a) If Winnebago County, or other municipality, conducts a zoning-related hearing on the nonmetallic mine site it shall provide the opportunity at this

hearing to present testimony on reclamation-related matters. This hearing will be noticed and conducted in a manner consistent with provisions already established by the municipality. This testimony will be forwarded to the Administering Agency for their consideration prior to the issuance of a non-metallic mining reclamation permit. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The Administering Agency shall consider the reclamation-related testimony in the County's zoning-related hearing in deciding on a permit application pursuant to this chapter.

(b) If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in **par. (a)**, opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The Administering Agency shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under **sub. (1)**. This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. The hearings shall be conducted according to the following procedures:

1. The Administering Agency's Program Coordinator or other designee will be the Presiding Officer.
2. The Presiding Officer will open the public informational hearing and make a concise statement of its scope and purpose.
3. Any affected person will be given an opportunity to appear and present their view on the subject matter of the informational hearing.
4. Any person desiring to participate, whether on his or her own behalf or in a representative capacity, shall give his or her name and address, the name and address of any person being represented, and the capacity in which he or she is representing such person.
5. Statements should be kept concise and may be submitted in written form (prior to the start of the hearing) or oral form.
6. The Presiding Officer shall determine the order in which people may make statements, the length of statements, and impose other limitations deemed prudent if the statements are unduly repetitious. Clarifying questions of those who speak may be allowed by the Presiding Officer; however, cross-examination of those who speak is not permitted.
7. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

**20.15(2) Existing Mines** (1) No public notice or informational hearing is required for

a nonmetallic mining reclamation permit issued pursuant to **sub. 20.16(2)** for an existing mine, except as provided in **sub. (3)**.

(2) If the Administering Agency accepts a previously approved reclamation plan for that mine as provided in **sub. 20.16(3)(3)(a)**, no further public notice or informational hearing is required.

(3) If the Administering Agency requires the submittal of a new reclamation plan, public notice and the opportunity for public informational hearing shall be provided following the receipt of the reclamation plan in accordance **sub. 20.15(1)**. In this case, the subject matter and testimony at that hearing, if held, shall be limited to the new reclamation plan.

**20.15(3) Local Transportation-Related Mines.** No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to **sub. 20.16(5)**.

### **20.16 Issuance of a Nonmetallic Mining Reclamation Permit.**

**20.16(1) Permit Required.** Every operator of a nonmetallic mining site in Winnebago County who engages in or plans to engage in nonmetallic mining after September 1<sup>st</sup>, 2001 shall obtain a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this chapter under **sub. 20.07(2)**. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1<sup>st</sup>, 2001 without a reclamation permit issued pursuant to this chapter.

**20.16(2) Automatic Permit for Existing Mines.** The Administering Agency shall issue an automatic reclamation permit to the operator of a nonmetallic mining site that submits an application meeting the requirements of **sub. 20.13(2)**, according to the following provisions:

(1) The permit shall be issued within 30 days of such application..

(2) Existing mines that are granted a reclamation permit pursuant to this subsection shall, within three years from the date of automatic reclamation permit issuance (date to be specified by Administering Agency at time of permit issuance), submit to the Administering Agency the following:

(a) A reclamation plan that meets the requirements of **s. 20.13**; and

(b) Financial assurance required pursuant to **s. 20.14**.

(3) The Administering Agency may grant a reasonable extension to the deadline in **sub. (2)** when it finds extenuating circumstances exist.

**20.16(3) Evaluation of Follow-Up Submittals for Existing Mines.** Follow-up submittals required by **sub. 20.16(2)(2)** shall be evaluated as set forth below:

(1) The reclamation plan and financial assurance shall meet the requirements of **sub. 20.16(2)(2)**.

(2) The Administering Agency shall accept, as satisfaction of the requirement for

submittal of a reclamation plan pursuant to **sub. 20.16(2)(2)(a)**., submittal of a previously-completed document that includes plans for reclamation so long as:

- (a) The document has been approved by a county or municipality; and
- (b) The Administering Agency finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.
- (c) If the Administering Agency determines that a document with reclamation plans previously approved meets some, but not all of, the requirements of this chapter, it shall request the supplemental information needed to satisfy the reclamation plan requirements of this section. In that case, the Administering Agency shall determine whether or not to provide public notice and opportunity for public hearing pursuant to **sub. 20.15(3)**, depending on the nature and extent of the supplemental information.

(3) Within 45 days of receipt of the reclamation plan and evidence of financial assurance as required under **sub. 20.16(2)(2)(a)**, the Administering Agency shall affirm in writing its decision whether to approve these submittals and continue the nonmetallic mining reclamation permit issued pursuant to **sub. 20.16(2)**. A reclamation permit with this written affirmation shall satisfy the requirements of this chapter without further action, submittal or approval.

**20.16(4) Permit Issuance for New Mines.** Applications for reclamation permits for nonmetallic mining sites not in operation on August 1<sup>st</sup>, 2001 that satisfy **s. 20.12(3)** shall be issued a reclamation permit or otherwise acted on as provided below.

- (1) Unless denied pursuant to **s. 20.17**, the Administering Agency shall approve in writing a request that satisfies the requirements of **sub. 20.12(3)** to issue a nonmetallic mining reclamation permit for a nonmetallic mine where mining has not yet taken place before August 1<sup>st</sup>, 2001 or an existing nonmetallic mine where mining is not taking place on or after August 1, 2001.
- (2) The Administering Agency may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of **s. 20.13**. The Administering Agency may issue a reclamation permit subject to conditions in **sub. 20.16(7)** if appropriate. The permit decision shall be made no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application and reclamation plan pursuant to this subchapter, unless a public hearing is held pursuant to **s. 20.15**. If a public hearing is held, the Administering Agency shall issue the reclamation permit, subject to conditions pursuant to **sub. 20.16(7)** if appropriate, or shall deny the permit as provided in **s. 20.17**, no later than 60 days after completing the public hearing.
- (3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of **s. 20.13** and provision by the applicant of financial assurance required under **s. 20.14** and payable to The Administering Agency prior to beginning mining.

**20.16(5) Automatic Permit for Local Transportation-Related Mines**

- (1) The Administering Agency shall automatically issue an expedited permit under

this subsection to any borrow site that:

- (a) Will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
- (b) Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the municipality;
- (c) Is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;
- (d) Is not a commercial source;
- (e) Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any and;
- (f) Is not otherwise exempt from the requirements of this chapter under **sub. 20.07(2)(10)**.

(2) In this subsection, "municipality" has the meaning defined in s. 299.01(8), Stats.

(3) Automatic permits shall be issued under this subsection in accordance with the following provisions:

- (a) The applicant shall notify The Administering Agency of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.
- (b) The applicant shall provide evidence to The Administering Agency to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.
- (c) The Administering Agency shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under **s. 20.13**.
- (d) The Administering Agency shall accept the contractual provisions in lieu of the financial assurance requirements in **s. 20.14**.
- (e) The public notice and hearing provisions of **s. 20.15** do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.
- (f) Mines permitted under this subsection shall pay an annual fee to the Administering Agency as provided in **s. 20.27**, but shall not be subject to the plan review fee provided in **s. 20.26**.
- (g) The Administering Agency shall issue the automatic permit within 7 days of the receipt of a complete application.

(h) If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with the Wisconsin Department of Transportation requirements.

(i). Notwithstanding **s. 20.25**, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

**20.16(6) Expedited Review.** Any operator of a nonmetallic mining site as described in **s. 20.16(5) sub (1)** may request expedited review of a reclamation permit application under **sub. (1)** or **sub. (2)** as follows:

(1) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in **s. 20.16(2)**. This request shall state the need for such expedited review and the date by which such expedited review is requested.

(2) This request for expedited review shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.

(3) Following receipt of a request under this subsection The Administering Agency shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under **sub. (1)** shall be returned.

(4) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to **s. 20.15**. This subsection does not impose an obligation upon the Administering Agency to act upon a permit application under this subsection by a specific date.

**20.16(7) Permit Conditions.** Any decision under this section may include conditions as provided below:

(1) The Administering Agency may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this chapter.

(2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to **s. 20.14** prior to beginning mining.

**20.17 Permit Denial.** An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in **s. 20.16**, if the Administering Agency finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections,

failed to provide to the Administering Agency an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter.

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this chapter, Chapter NR 135, Wisconsin Administrative Code or subch. I. of ch. 295, Stats.

1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.

2. The following may be considered in making this determination of a pattern of serious violations:

a. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.

b. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Chapter NR 135, Wisconsin Administrative Code.

c. Forfeitures of financial assurance.

(c) A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under **s. 20.22**.

## **20.18 Alternative Requirements.**

**20.18(1) Scope of Alternative Requirements Approvable.** An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in **s. 20.11**. The Administering Agency may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates, and the Winnebago County Planning and Zoning Committee finds, that all of the following criteria are met:

(1) The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.

(2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved. Financial considerations, matters of convenience or preference, and self-imposed hardships shall not be deemed or considered to be "unnecessary hardships".

(3) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.

**20.18(2) Procedures.** The operator of a nonmetallic mining site requesting an alternate requirement in **sub. 20.18(1)** shall demonstrate all the criteria in **sub. 20.18(1)**. This shall be submitted in writing to the Administering Agency at the address below:

East Central Wisconsin Regional Planning Commission  
c/o: NR-135 Coordinator  
132 Main Street  
Menasha, WI 54952

- (1) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.
- (2) A public hearing shall be required for any alternative requirement request.
- (3) Additional costs for third-party, independent engineering, or other reviews if deemed necessary for an alternative requirement, shall be the responsibility of the applicant.

**20.18(3) Review Authority.** The decision on a request for alternate reclamation requirements shall be addressed by the Winnebago County Planning and Zoning Committee at a regularly scheduled meeting within 60 days of the request.

**20.18(4) Public Notice and Right of Hearing.** The Administering Agency shall provide public notice and the opportunity for a public informational hearing as set forth below:

(1) PUBLIC NOTICE. When the Administering Agency receives an application for an alternative requirement, it shall publish a public notice of the application no later than 30 days after receipt of a complete application that satisfies **sub. 20.18(2)**.

(a) The notice shall briefly describe the alternative requirement requested and its relationship to the standards contained in **s. 20.11**. The notice shall be published as a class 2 notice pursuant to s. 985.07(2), Stats., in the official newspaper of Winnebago County. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.

(b) Copies of the notice shall be forwarded by the Administering Agency to the county or applicable local zoning board, the county and applicable local planning organization, the county land conservation officer, the clerk of the municipality, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

(2) HEARING. Except as provided in **sub. (3)** for existing mines the Administering Agency shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows.

(a) Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public

informational hearing. The Administering Agency shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under **sub. (1)**. This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. The hearings shall be conducted according to the following procedures:

1. The Administering Agency's Program Coordinator or other designee will be the Presiding Officer.
2. The Presiding Officer will open the public informational hearing and make a concise statement of its scope and purpose.
3. Any affected person will be given an opportunity to appear and present their view on the subject matter of the informational hearing.
4. Any person desiring to participate, whether on his or her own behalf or in a representative capacity, shall give his or her name and address, the name and address of any person being represented, and the capacity in which he or she is representing such person.
5. Statements should be kept concise and may be submitted in written form (prior to the start of the hearing) or oral form.
6. The Presiding Officer shall determine the order in which people may make statements, the length of statements, and impose other limitations deemed prudent if the statements are unduly repetitious. Clarifying questions of those who speak may be allowed by the Presiding Officer; however, cross-examination of those who speak is not permitted.
7. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

**20.18(5) Transmittal of Decision on Request for Alternative Requirement.** The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

**20.18(6) Notice to Wisconsin Department of Natural Resources.** The Administering Agency shall provide notice to the Wisconsin Department of Natural Resources as set forth in this subsection. Written notice shall be given to the Wisconsin Department of Natural Resources at least 10 days prior to any public hearing held under **s. 20.18(4)(2)** on a request for an alternate requirement under this section. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within 10 days of issuance.

#### **20.19 Permit Duration.**

- (1) A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to **sub. 32.20**.

(2) If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to **s.20. 20**.

## SECTION 20

**20.20 Permit Transfer.** A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the following conditions:

- (1) A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the Administering Agency adequate proof of site ownership, financial assurance, and a certification in writing by the new permit holder that all conditions of the permit will be complied with;
- (2) Submission of the appropriate fee per Schedule A of this Ordinance.
- (3) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by Administering Agency and the Administering Agency makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.

**20.21 Previously Permitted Sites.** For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Chapter NR 135, Wisconsin Administrative Code that becomes subject to reclamation permitting authority of Winnebago County and/or its Administering Agency, the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by Winnebago County or its Administering Agency **sub. 20.23(1)**.

**20.22 Review.** Any permitting decision or action made by Winnebago County or its Administering Agency under this chapter may be reviewed as set forth in this section. Notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on Winnebago County's or the Administering Agency's decision to issue, deny or modify a nonmetallic mining reclamation permit.

## **PART IV - ADMINISTRATION**

### **20.23 Permit Modification.**

**20.23(1) By the Administering Agency.** A nonmetallic mining reclamation permit issued under this chapter may be modified by the Administering Agency if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter. Such modification shall be by an order modifying the permit in accordance with **s. 20.32**. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter.

- (1) The operator shall not pay a separate fee for modifications initiated or required by Winnebago County or its Administering Agency.

**20.23(2) At the Operator's Option.** If operator of any nonmetallic mine that holds a

reclamation permit issued under this chapter desires to modify such permit or reclamation plan approved under this chapter, it may request such modification by submitting a written application for such modification to the Administering Agency. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter in effect at the time of the request.

- (1) The operator shall pay the fee as outlined in Schedule A for any requested permit modifications at the time of the request.

**20.23(3) Required by the Operator.** The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the reclamation plan approved pursuant to this chapter. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

- (1) The operator shall pay the fee as outlined in Schedule A for any requested permit modifications at the time of the request.

#### **20.23(4) Public Notice Hearing Requirements**

- (1) A public hearing shall be required for any substantial permit modification which is requested by the operator.

- (2) PUBLIC NOTICE. When the Administering Agency receives an application for an alternative requirement, it shall publish a public notice of the application no later than 30 days after receipt of a complete application that satisfies **sub. 20.18(2)**.

- (a) The notice shall briefly describe the permit modification requested and its relationship to the standards contained in **s. 20.11**. The notice shall be published as a class 2 notice pursuant to s. 985.07(2), Stats., in the official newspaper of Winnebago County. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.

- (b) Copies of the notice shall be forwarded by the Administering Agency to the county or applicable local zoning board, the county and applicable local planning organization, the county land conservation officer, the clerk of the municipality, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

- (3) HEARING. The Administering Agency shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows.

- (a) Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The Administering Agency shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under **sub. (1)**. This public informational hearing shall be held no

sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. The hearings shall be conducted according to the following procedures:

1. The Administering Agency's Program Coordinator or other designee will be the Presiding Officer.
2. The Presiding Officer will open the public informational hearing and make a concise statement of its scope and purpose.
3. Any affected person will be given an opportunity to appear and present their view on the subject matter of the informational hearing.
4. Any person desiring to participate, whether on his or her own behalf or in a representative capacity, shall give his or her name and address, the name and address of any person being represented, and the capacity in which he or she is representing such person.
5. Statements should be kept concise and may be submitted in written form (prior to the start of the hearing) or oral form.
6. The Presiding Officer shall determine the order in which people may make statements, the length of statements, and impose other limitations deemed prudent if the statements are unduly repetitious. Clarifying questions of those who speak may be allowed by the Presiding Officer; however, cross-examination of those who speak is not permitted.
7. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

**20.23(5) Review.** All actions by Winnebago County or its Administering Agency on permit modifications requested or initiated under this section are subject to review under **s. 20.2222**.

#### **20.24 Permit Suspension and Revocation**

**20.24(1) Grounds.** The Administering Agency may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds the operator has done any of the following:

- (1) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
- (2) Failed to submit or maintain financial assurance as required by this chapter.
- (3) Failed on a repetitive and significant basis to follow the approved reclamation plan.

**20.24(2) Procedures.** If the Administering Agency finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in **sub. 20.24(1)**, it may

issue a special order suspending or revoking such permit as set forth in **sub. 20.32(2)**.

**20.24(3) Consequences.** (1) If the Administering Agency makes any of the findings in **sub. 24.10**, it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to **s. 20.32**.

(2) If the Administering Agency makes any of the findings in **sub. 24.10**, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to the Administering Agency. The Administering Agency shall use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

### **20.25 Annual Contents and Deadline.**

**20.25(1) Contents and Deadlines.** Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites.

- (1) CONTENTS. The annual report required by this section shall include all of the following:
  - (a) The name and mailing address of the operator.
  - (b) The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number if available.
  - (c) The identification number of the applicable nonmetallic mining permit, if assigned by Winnebago County or the local unit of government. If no number exists, the Administering Agency will supply one at the time of submittal.
  - (d) The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
  - (e) The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
  - (f) A plan, map or diagram accurately showing the acreage described in pars. (d) and (e).
  - (g) The following certification, signed by the operator:

"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Chapter NR 135, Wisconsin Administrative Code."
  - (h) Any other information deemed necessary by Winnebago County or its Administering Agency to adequately assess the current site conditions of the non-metallic mining site.

(2) **DEADLINE.** The annual report shall cover activities for a calendar year and be submitted within 60 days following the end of the year.

(3) **WHEN REPORTING MAY END.** Annual reports shall be submitted by an operator for all active and intermittent mining sites to the Administering Agency for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to **sub. 20.29(3)** or at the time of release of financial assurance pursuant to **sub. 20.14(1)(7)**.

**20.25(2) Inspection in Lieu of Report.** The Administering Agency may, at its discretion, obtain the information required in **sub. 20.25(1)** for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the Administering Agency obtains and documents the required information, the annual report need not be submitted by the operator. If the Administering Agency determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the Administering Agency shall require the operator to submit the certification required in **sub. 20.25(1)(1)(g)**.

**20.25(3) Retention of Annual Reports.** Annual reports submitted under **sub. 20.25(1)** or inspection records that replace them under **sub.20.25(2)** shall be retained by the Administering Agency at 132 Main Street, Menasha, Wisconsin, for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

## **20.26 Plan Review Fees.**

**20.26(1) Amount and Applicability.** A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **sub. 20.12(3)** shall submit a non-refundable plan review fee as listed in Schedule A of this ordinance to the Administering Agency at the address below:

East Central Wisconsin Regional Planning Commission  
c/o: NR-135 Coordinator  
132 Main Street, Menasha, Wisconsin, 54952

No plan review fee may be assessed under this section for any existing nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of **sub. 20.12(2)** or for any local transportation-related mining receiving an automatic permit under **sub. 20.16(5)**. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to **s. 20.23**.

**20.26(2) Expedited Plan Review Fee.** A person who intends to operate a nonmetallic mining site for which an expedited permit application has been submitted under **sub. 20.16(5)** may obtain expedited reclamation plan review by paying a fee as indicated in Schedule A of this ordinance.

**20.26(3) Relation to Annual Fee.** Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and

collected as part of the first annual fee collected under **s. 20.27**.

**20.27 Annual Fees.**

**20.27(1) Areas Subject to Fees, Procedures and Deadline.** (1) Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees as listed in Schedule A of this ordinance to the Administering Agency at the address below:

East Central Wisconsin Regional Planning Commission  
c/o: NR-135 Coordinator  
132 Main Street, Menasha, Wisconsin, 54952

(1) Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under **sub. 20.27(2)** and a share for the Administering Agency under **sub. 20.27(2)** that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

(2) Fees paid under this section shall be calculated based on the un-reclaimed acres of a nonmetallic mining site, as defined below:

(a) "Un-reclaimed acre" or "un-reclaimed acres" means those un-reclaimed areas in which nonmetallic mining has occurred after August 1<sup>st</sup>, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under **sub. 14.10(7)**. However the term does not include any areas described in par. (b).

(b) "Un-reclaimed acre" or "un-reclaimed acres" does not include:

1. Those areas where reclamation has been completed and certified as reclaimed under **sub. 20.14(1)(7)**.

2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1<sup>st</sup>, 2001.

3. Those portions of nonmetallic mining sites which are included in an approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining.

4. Areas previously mined but used after August 1<sup>st</sup>, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

5. Those areas within a nonmetallic mining site which the Administering Agency has determined to have been successfully reclaimed on an interim basis in accordance with **subs. 20.29(2) and 20.29(3)**.

6. Those areas defined as not included in a nonmetallic mining site under **sub. 20.10(16)(6)**.

(3) Fees assessed pursuant to this section shall be based on un-reclaimed acres at the end of the year. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under **s. 29**. Fees shall be paid no later than December 31 for the subsequent year .

(a) The first year's annual fee for existing mines shall be pro-rated based on the number of months left in the year at the time of application submittal.

(4) For new or reopened mines that submit a reclamation permit application under **sub. 20.12(3)**, the first year's annual fee shall be based upon the un-reclaimed acres which are anticipated at the end of that calendar year.

(b) The first year's annual fee for new or re-opened mines shall be pro-rated

based on the number of months left in the year at the time of application submittal.

(5) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the Administering Agency pending certification of completed reclamation pursuant to **sub. 20.14(10)(7)**. Upon such certification the Administering Agency shall refund that portion of the annual fee that applies to the reclaimed areas. If the Administering Agency fails to make a determination under **sub.20.14(10)(7)** within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.

#### **20.27(2) Wisconsin Department of Natural Resources Share of Fee.**

(1) Fees paid under this section shall, except where provided in **sub. (2)**, include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Schedule A.

(2) Winnebago County or its Administering Agency shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31<sup>st</sup> of the year for which they were collected.

**20.27(3) Administering Agency's Share of Fee.** Fees paid under this section shall also include an annual fee, based on un-reclaimed acreage, due to the Administering Agency and are illustrated in Schedule A but shall not exceed those fees listed in NR-135 for such sites

**20.27(4) Documentation of Administering Agency's Share of Fee.** The County, or its Administering Agency, shall document in writing its estimated program costs and the need for fee established in **sub. 20.27(3)** on or before the effective date of this ordinance. This documentation shall be available for public inspection at:

East Central Wisconsin Regional Planning Commission  
c/o: NR-135 Coordinator  
132 Main Street, Menasha, Wisconsin, 54952

#### **20.28 Regulatory Reporting and Documentation.**

**20.28(1) Reporting.** The Administering Agency shall send an annual report to the Wisconsin Department of Natural Resources by March 31<sup>st</sup> of each calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program within Winnebago County:

- (1) The total number of nonmetallic mining reclamation permits in effect .
- (2) The number of new permits issued within the jurisdiction of Winnebago County.
- (3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.
- (4) The number of acres being mined.

(5) The number of acres that have been reclaimed and have had financial assurance released pursuant to **sub. 20.14((1)(7))**.

(6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this subchapter pursuant to **subs. 20.29(1) and 20.29(2)**.

(7) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.

**20.28(2) Documentation.** The Administering Agency shall, to the best of its ability, maintain the information set forth below, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of Winnebago County's reclamation program pursuant to Chapter NR 135, Wisconsin Administrative Code:

(1) Documentation of compliance with Chapter NR 135, Wisconsin Administrative Code and this chapter.

(2) The procedures employed by the Administering Agency regarding reclamation plan review, and the issuance and modification of permits.

(3) The methods for review of annual reports received from operators.

(4) The method and effectiveness of fee collection.

(5) Procedures to accurately forward the Wisconsin Department of Natural Resources' portion of collected fees in a timely fashion.

(6) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.

(7) Responses to citizen complaints.

(8) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.

(9) The maintenance and availability of records.

(10) The number and type of approvals for alternative requirements issued pursuant to **s. 18**.

(11) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to **sub. 20.14(1)(7)**.

(12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of Winnebago County or its Administering Agency to implement its nonmetallic mining reclamation program under this chapter.

(13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.

- (14) Any other performance criterion necessary to ascertain compliance with Chapter NR 135, Wisconsin Administrative Code.

### **20.29 Completed Reclamation - Reporting, Certification and Effect**

**20.29(1) Reporting.** The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code.

- (1) The operator shall submit a written request along with the fee as specified in Schedule A, for certification of a portion or all of the non-metallic mining site. This request shall be filed with the Administering Agency at

East Central Wisconsin Regional Planning Commission  
c/o: NR-135 Coordinator  
132 Main Street, Menasha, Wisconsin, 54952

- (2) The Administering Agency shall notify the operator of the scheduled date of inspection within one week of the submittal of the request.

**20.29(2) Reporting of Interim Reclamation.** The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in **sub. 20.29(1)**.

**20.29(3) Certification of Completed Reclamation.** The Administering Agency shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with **sub. 20.14(11)(7)(c)**. If it is determined that interim or final reclamation is complete, including re-vegetation as specified in a reclamation plan that conforms with **s. 20.13**, the Administering Agency shall issue the mine operator a written certificate of completion.

**20.29(4) Effect of Completed Reclamation.** If reclamation is certified by the Administering Agency as complete under **sub. 20.29(3)** for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under **s. 20.27** for the area so certified.

(2) The financial assurance required by **s. 20.14** shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.

**20.29(5) Effect of Inaction Following Report of Completed Reclamation.** If no written response as required by **sub. 20.29(3)** for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the Administering Agency for it under **s. 20.27** shall be refunded.

**20.30 Permit Termination.** When all final reclamation required by a reclamation plan conforming to **s. 20.13** and required by this chapter is certified as complete pursuant to **subs. 20.14((1)(7) and 20.29(3)**, the Administering Agency shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

## **PART V - ENFORCEMENT**

**20.31 Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of Winnebago County or its authorized Administering Agency may inspect any nonmetallic mining site subject to this chapter as provided below:

(1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of Winnebago County or its authorized Administering Agency or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this chapter, Chapter NR 135, Wisconsin Administrative Code or subchapter I of ch. 295, Stats.

(2) Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

### **20.32 Orders and Citations.**

**20.32(1) Enforcement Orders.** Winnebago County, upon recommendation by the Administering Agency, may issue orders as set forth in Section 295.19(1)(a), Stats., to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this ordinance, a permit issued pursuant to this ordinance or a reclamation plan required by **s. 20.13** and a permit issued under this ordinance. A violation of this ordinance, an order or permit issued pursuant to this ordinance or a reclamation plan required by **s. 20.13** and a permit issued under this ordinance shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.

**20.32(2) Special Orders.** Winnebago County, upon recommendation by the Administering Agency, may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to **s. 20.24**, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.

**20.32(3) Review of Orders.** A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under s. 68.11, Stats., notwithstanding the provisions of ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats.

**20.32(4) Citations.** Winnebago County, upon recommendation by the Administering

Agency, may issue a citation under s. 66.0113, Stats., or summons and complaint to collect forfeitures to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this ordinance, a permit issued pursuant to this ordinance or a reclamation plan required by s. 20.13 and a permit issued under this ordinance. The issuance of a citation or complaint under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation or complaint under this subsection.

**20.32(5) Enforcement.** Winnebago County, upon recommendation by the Administering Agency, may submit any order issued under s. 20.32 to abate violations of this chapter to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders through appropriate court action.

**20.33 Penalties.** Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this ordinance, a permit issued pursuant to this ordinance or a reclamation plan required by s. 20.13 and a permit issued under this ordinance may result in forfeitures as provided in Section 295.19(3), Wisconsin Statutes, as follows:

(1) Any person who violates Chapter NR 135, Wisconsin Administrative Code or an order issued under s. 20.32 may be required to forfeit not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under s. 20.32 is suspended, stayed or enjoined, this penalty does not accrue.

(2) Except for the violations referred to in sub. (1), , any person who violates subchapter I of ch. 295, Stats., Chapter NR 135, Wisconsin Administrative Code, any reclamation plan approved pursuant to this ordinance or an order issued pursuant to s. 20.32 shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of violation is a separate offense. While an order issued under s. 20.32 is suspended, stayed or enjoined, this penalty does not accrue.

**20.34 Ordinance Conflicts.** Where existing county ordinances conflict with these provisions, the provisions of this ordinance shall be controlling.

**SCHEDULE "A"**

**WINNEBAGO COUNTY NON-METALLIC MINING RECLAMATION ORDINANCE FEES**

The following fee schedule will be in effect on July 1, 2001 and will apply to all applications received by the County or its Administering Agency on or after July 1, 2001

Description	Fee
Annual Fee (per un-reclaimed acre)*	\$19.85
Annual Fee for Sites on which no Nonmetallic Mining has Taken Place During the Calendar Year	\$15.00
WDNR Annual Fee (per NR-135 Admin. Code) (per un-reclaimed acre)* 1 to 5 Acres	\$30.00

6 to 10 Acres	\$60.00
11 to 15 Acres	\$90.00
16 to 25 Acres	\$120.00
26 to 50 Acres	\$140.00
51 + Acres	\$150.00
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"Automatic" Permits (existing mines only) **	\$510.00
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"Regular" (New mine) Permits*	\$705.00
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Alternative Requirement Review Fee	\$370.00
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Annual Fee for Transportation Related Sites***	
1 to 5 acres	\$150.00
6 to 10 acres	\$300.00
11 to 15 acres	\$450.00
16 to 25 acres	\$600.00
26 to 50 acres	\$700.00
51 acres or larger	\$750.00
<b>Expedited Review for any Transportation Related Site</b>	Double the Annual Fee
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Permit Transfer Fee	\$105.00
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Permit Modification Fee	\$400.00
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Final Reclamation Completion/Inspection Fee	\$220.00
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Interim Reclamation Inspection Fee	None
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\*The first year's annual fee (pro-rated) will be required at the time the initial automatic or regular permit application submittal.

\*\* Includes costs of future reclamation plan review / certification.

\*\*\* Portion of fee waived based on 12-month time period pro-ration.

*NOTE: The Winnebago County Planning and Zoning Committee may, from time to time, modify this fee schedule based upon justified program administration costs. Such modifications will not require that a public hearing be held; however, proposed changes will be public noticed prior to Committee action.*

**NOTE: The per acre fee for active site areas may be increased prior to the effective date of the ordinance to reflect actual costs for the provision of adequate levels of liability insurance to the East Central Wisconsin Regional Planning Commission**

**RESOLUTION NO. 255-62001: Authorize Agreement Between Winnebago County and East Central Wisconsin Regional Planning Commission: Administration of Non-Metallic Mining Ordinance**

WHEREAS, the East Central Wisconsin Regional Planning Commission is comprised of 10 counties, of which 8 are "member counties"; and

WHEREAS, counties have the statutory authority to allow Regional Planning Commissions to implement and administer county ordinances; and

WHEREAS, the State of Wisconsin has required counties to develop and implement a Non-Metallic Reclamation Program based on Wisconsin Administrative Code Chapter NR 135 by July, 2001; and

WHEREAS, Calumet, Outagamie, Shawano, Waupaca and Winnebago Counties have requested the East Central Wisconsin Regional Planning Commission to consider a regional program

approach in response to said administrative regulations.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby approves the attached agreement authorizing the East Central Wisconsin Regional Planning Commission to develop, implement and administer a regional program for the administration of a Non-Metallic Mining Reclamation Ordinance for Winnebago County as well as those four other counties mentioned above.

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes the East Central Wisconsin Regional Planning Commission to administer Chapter 20 of the General Code of Winnebago County, "Non-Metallic Mining Reclamation Ordinance"..

Submitted by:  
PLANNING & ZONING COMMITTEE

Motion by Supervisor Schaidler and seconded to adopt. Ayes: 32. Nays: 1 – Rengstorf.  
Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 256-62001: Authorize Transfer of \$18,500 from Repairs Account to Capital Equipment Account - Winnebago County Sheriff's Department (Fiber Optical Cable Hook-Up)**

WHEREAS, transfer is required from the Repairs Account to the Capital Equipment Account of the Winnebago County Sheriff's Department for the purchase and installation of the electronic equipment for the Winnebago County Sheriff's Department's Fiber Optic Cable Hook-Up for the Enhanced 911 System from the Menasha Police Department to the County Safety Building/Courthouse Complex; and

WHEREAS, your undersigned Committee believes that said transfer is in the best interest of the citizens of Winnebago County and specifically those citizens residing in the Menasha area.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes the transfer of \$18,500 from the Repairs Account to the Capital Equipment Account of the Winnebago County Sheriff's Department to allow installation of the electronic equipment for a fiber optic cable hook-up for its Enhanced 911 System from the Menasha Police Department to the County Safety Building/Courthouse Complex.

Submitted by:  
JUDICIARY & PUBLIC COMMITTEE  
AND  
PERSONNEL & FINANCE COMMITTEE

Motion by Supervisor Rengstorf and seconded to adopt. Ayes: 32. Nays: 1 – Madison.  
Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 257-62001: Authorize County Executive and County Clerk to Enter into Multi-Year Copy Machine Leases Where it is More Beneficial to Lease Instead of Purchase Machines that Were Included in the Annual Operating Budget.**

WHEREAS, In most cases, it has become more cost effective to lease rather than purchase copy machines, and

WHEREAS, departments currently budget copy machines as capital outlay in the annual budget, and

WHEREAS, the County Board in adopting the annual budget has already approved the addition or replacement of the equipment, and

WHEREAS, authorizing the County Executive and County Clerk to enter into leases for these

machines would eliminate taking up County Board time to review equipment they have already approved, and

WHEREAS, said leases will only be entered after review and the determination is made by the Finance Department that leasing is more cost effective than purchasing the machines, and

WHEREAS, the excess of funds budgeted to purchase the machine over the capital cost of the machine will be transferred back to the General Fund, undesignated fund balance (or Solid Waste Fund balance) in the month the lease is made.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby authorized the County Executive and County Clerk to enter into multi-year copy machine leases when it has been determined by the Finance Department that it is more cost effective to lease rather than purchase copy machines approved by the County Board in the annual budget.

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors hat all said leases contain a provision allowing termination of the lease in the absence of a sufficient appropriation of funds by this Board.

BE IT FURTHER RESOLVED that the excess of the capital cost over the lease cost will be transferred back to the appropriate fund balance during the period the County entered the lease.

Submitted by:  
PERSONNEL & FINANCE COMMITTEE

Motion by Supervisor Lauson and seconded to adopt. Ayes: 33. Nays: 0. Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 258-62001:      Increase Winnebago County Fixed Asset Capitalization limit from \$1,500 to \$5,000.**

WHEREAS, the Government Finance Officers Association of the United States and Canada issues a Recommended Practices book, and

WHEREAS, the recommended practice for capitalization and depreciation of fixed assets has been changed to \$5,000, and

WHEREAS, increasing the capitalization limit for fixed assets has a minimal impact on the total amount the County's annual financial statements reports for total cost of capital assets, and

WHEREAS, increasing the capitalization limit decreases the amount of detailed record keeping and minimizes the time spent in determining the total capital cost of relatively small items.

WHEREAS,

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby approves of raising the capitalization limit to \$5,000.

BE IT FURTHER RESOLVED departments will still be required to list out items ranging from \$1,500 to \$5,000 in the budget book in order for said items to be purchased.

Submitted by:  
PERSONNEL & FINANCE COMMITTEE

Motion by Supervisor Lauson and seconded to adopt. Ayes: 33. Nays: 0. Excused: 2. Absent: 3. CARRIED.

**RESOLUTION NO. 259-62001:      Authorize the Transfer of \$5,500 from the Capital Outlay Account of the Parks Department to the Professional Services Account of the Parks Department to Hire a Consultant to do a Valuation Study at the Racetrack Facility.**

WHEREAS, the Parks Department wishes to sell naming rights for the Winnebago County Racetrack and the Parks Department also wishes to enter into exclusivity contracts with vendors for

selling food and beverages at the facility, and

WHEREAS, a consultant needs to be hired to determine the value of those rights and contracts, and

WHEREAS, Winnebago County could realize additional revenues from these potential sources, and

WHEREAS, the Parks Department has savings from the purchase of a front deck mower that could help cover the cost of this study.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby approves of the transfer of \$5,500 from the Capital Outlay account of the Parks Department to the Professional Services account of the Parks Department for the purpose of contracting for this study.

Submitted by:  
PARKS & RECREATION COMMITTEE  
AND  
PERSONNEL & FINANCE COMMITTEE

Motion by Supervisor Lauson and seconded to adopt. Ayes: 23. Nays: 10 – Griesbach, Klitzke, Leschke, Wingren, King, Hert, Kline, Kramer, Egan and Metzsig. Excused: 2. Absent: 3. LOST. (2/3's vote required)

**RESOLUTION NO. 261-62001:      Authorize Winnebago County Highway Commissioner and Winnebago County Highway Committee to Explore the Possibility of the Installation of a Pedestrian Lane on County Trunk Highway "A"**

WHEREAS, the Winnebago County Highway Department recently reconstructed Winnebago County Highway "A" so as to widen the highway to four lanes from Harrison Street to County Trunk Highway "Y"; and

WHEREAS, because of pedestrian bike traffic along such highway, especially to the Winnebago County Community Park, your undersigned Supervisor believes that it would be in the best interest of the citizens of Winnebago County that a pedestrian lane be installed along Winnebago County Highway "A" from Harrison Street to County Trunk Highway "Y"; and

WHEREAS, the installation of a 3-foot wide pedestrian lane on each side of the roadway would encourage use of the Winnebago County Community Park by allowing safe bicycle and pedestrian traffic by adults and children to and from that park and would also allow pedestrian traffic to walk to the park for events such as Country USA.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it hereby authorizes the Winnebago County Highway Commissioner and the Winnebago County Highway Committee to explore the possibility of installing a 3-foot wide pedestrian lane on each side of County Trunk Highway "A" from Harrison Street to its intersection with County Trunk Highway "Y".

BE IT FURTHER RESOLVED by the Winnebago County Board of Supervisors that a report as to the feasibility of said project and the cost of said project be provided to the Winnebago County Board of Supervisors prior to the October, 2001 budget session.

Submitted by:  
MARK MADISON, DIST. #15  
COUNTY BOARD SUPERVISOR

Motion by Supervisor Madison and seconded to adopt. Ayes: 7 – Kollath, Barker, Maehl, Widener, Madison, Spanbauer and Rankin. Nays: 25. Excused: 2. Absent: 4. LOST.

Motion by Supervisor Robl and seconded to adjourn until 6:00 p.m. on Tuesday, July 31, 2001.

The meeting was adjourned at 10:40 p.m.

Respectfully submitted,  
Susan T. Ertmer  
Winnebago County Clerk

State of Wisconsin)  
County of Winnebago) ss

I, Susan T. Ertmer, do hereby certify that the foregoing is a true and correct copy of the Journal of the Winnebago County Board of Supervisors for their regular meeting held June 19, 2001

Susan T. Ertmer  
Winnebago County Clerk