

Frac Sand Sentinel

...keeping watch on the industry

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AN OPINION FROM DAVID STEELE

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There is a saying that "Those who like sausage and respect the law should never watch either being made."

A few nights ago, I witnessed the most disturbing exhibition of legislative ineptitude imaginable when I attended a Town of Bridge Creek Board meeting. The main item being covered involved the approval of a "frac" sand mine in the Bridge Creek area just off State Highway 27. Frac sand mining is new in the state of Wisconsin. It involves an awesome number of complex issues ranging from a private right to own and use property in any manner the owner sees fit in opposition to the right of the public to control the owner's use of that property. . In many ways, the frac sand issue is a lot more complex. The Wisconsin Legislature has failed to pass mining laws in the past, and, if it manages to pass a law this year, it will probably do so along party lines without regard to anything, which makes sense. Anyway most state legislation has dealt with metallic mining, not non-metallic frac sand mining, something most of us had never heard of.

The Bridge Creek Town Board is composed of five men, all good people, dedicated, sincere and almost totally unequipped to handle the complexities of the issues before them. Most of them are friends of mine and I hope they remain so. Their actions are probably not much different from those of many other town boards in the state, not much different from some County boards and other legislative bodies. Everyone is facing something new.

The growth of frac sand mining in the state of Wisconsin is a result of the oil – gas rush of North Dakota [and some 33 or more other states], somewhat driven by a national goal of energy independence. Apparently, we are more secure as a nation if we have the ability to waste our own resources, instead of those of some other country. It seems energy independence through conservation and development of renewable resources is not an option. Possibly, because it will not satisfy our immediate need for cheap fuel we can all burn up in our beautiful automobiles. The frac sand issue is a difficult and complex issue, something the Bridge Creek Board is not

equipped to deal with. They have no expertise. That is okay. It is no sin. Legislators deal every day with issues they do not know anything about. They do so successfully because, although they may not know anything about a particular subject, like frac sand, they do know about something else. They know how to pass laws. At least, they are supposed to know how to pass laws.

Every reasonable person knows that, when faced with a problem involving something you do not know anything about, it helps to find someone who does know something about the subject, an expert. Get information from people who do know. Get help. Listen to and learn from others. Then evaluate what you learn. Then, act. It is important that you do this in just that order. You will get a horrible result when you act first, then learn.

This particular night the town hall was filled. Seated in the audience were members of the concerned citizens group, scattered about in the room amongst some other citizens from another mining project. The first two rows of seats in the room were filled with the mine applicants, including their attorney and a traffic expert hired by the company. They were an imposing group facing the town board seated at a table about eight feet in front of them.

The town board was not so imposing. These powerful protectors of the people were all jammed together side-by-side, shoulder to shoulder, so tightly they could hardly move, huddled together as though seeking the protection of each other's presence.

What is wrong with this picture? This group represents the people of Bridge Creek. Whether they know it or not, they are some of the most important, powerful people in the whole wide community. They have the power to govern. They are the guardians of the Township with the sworn duty to protect the health, safety, and welfare of all of the people. People put them there, trusting them to act in a wise and reasonable manner on the public's behalf. It would seem that they could at least look as though they were in a position to carry out their duty. They could spread out, get some arm space, get some comfortable chairs. They should create an atmosphere that speaks of authority, a willingness to listen, to learn; then to evaluate, ask questions, discuss and deliberate; an atmosphere that says they will not be rushed, that says, "You may be in a hurry to dig a hole in the ground, but we will not be hurried into letting you do it until we are satisfied that it is in the best interest of the people whom we represent.

Earlier in this meeting, the board discussed changing its meeting night so that their attorney could be present at their meetings. Not more than half an hour later they entered into a contract, one of two presented to them, without the benefit of counsel. The only question asked was, "How much will this cost?" From my observation, no one at the table had read both contracts, no one discussed, debated or asked a question about the content of the documents. The one expert the board had retained on a regular basis, an attorney, trained and practiced in the evaluation of contracts was not consulted. The board, jammed together, facing a determined applicant with an agenda, ended up making a decision based on the cost of a contract. Good decision? Was this decision based on the public health, safety, and welfare? Yes, you say, taking the lowest bid saves the people money and that's good. Well, would you reach the same conclusion when I tell you that cost was not a factor? Why? Because, in this case, the applicant is required to pay the cost of the study. The only criteria that should not have been a factor in the decision the board made was cost. In its haste, the board retained an "expert" who was already

retained by the mining company. Had they chosen the other contract, the other "expert", they would have had the benefit of two experts, the independent one they hired and the mining company's expert. They would have been served by two opinions, either in agreement with or in opposition to each other, which the board could question and evaluate. Then, act upon. Why did they do this?

Possibly, they were intimidated, possibly, they were unprepared, possibly because they thought that an immediate decision made them look in control or possibly they forgot for the moment that they represented people who without them are unprotected. I do not know what their reason or reasons were. It is very likely they had more than one reason pushing them to their action. I do know that it appeared to me that the board reached a conclusion that was questionable at best, otherwise negligent. In their defense, I wonder if any one of us, in the same situation, would not have done the same thing.

The real point is that the role of the Town Board in approval and control of frac sand mines is critical. The power they wield to protect the public health, safety and welfare is critical. The board is the only group that holds this power; it is uniquely theirs. If they do not act wisely, responsibly, fearlessly and deliberately we, the people, stand naked without defense. Yes, in some frac sand issues, the County has power; in others, the State, but the Town stands closest to the people who will be affected by these mines. It should hear, see, seek and understand the feelings of the people. It must judge what is best for the public interest, now and in the future. The economic, environmental, and evolutionary existence of our area will be determined by those who represent and defend us or it will be determined by those who have descended upon us, those who when the sand and the profit is gone will retreat to where they came from or move on to another target. We will remain to face the scars they left behind.

Each year, David Steele shares the commandments below with BOARD members. They could easily be applied to a "Code" for any governmental group or citizen group for that matter.

TEN COMMANDMENTS OF BOARD OPERATION

1. BE COMFORTABLE
2. BE CONFIDENT
3. BE ORGANIZED
4. BE PREPARED
5. BE DELIBERATE
6. "MOTION TO TABLE:"

UNTIL _____ (DATE)

UNTIL WE HAVE HAD TIME TO CONSIDER

UNTIL WE CAN CONSULT...

UNTIL X (some event) OCCURS

UNTIL (YOU NAME IT)

INDEFINITELY

7. GET IT IN WRITING
8. STOP, LOOK, LISTEN
9. ASK/ ASK AGAIN!
10. GET IT “RIGHT”, NOT “RIGHT AWAY”

Welcome to the Frac Sand Sentinel, a newsletter highlighting resource links, news media accounts, blog posts, correspondence, observations and opinions gathered regarding local actions on, and impacts of, the developing frac sand mining and processing industries.

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