



Issue: #60  
Date: January 23, 2016

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**“I represent many people who will be irreparably harmed if this rail trans-load facility goes forward at this location. The whole county will be harmed. Our wetlands and the beautiful Halls Creek will be harmed,”** said attorney Tom Lister, who spoke

against the permits Monday and who filed the civil suits against the two companies on behalf of his clients. “I wonder if any member of this committee has actually seen a frac sand mine or affiliated rail load-out facility.

“They are ugly, noisy and endanger the health and welfare of property owners located more than a mile from these locations ...” Thomas E.

Lister, Attorney

**FRAC SAND MINE OPPOSITION HEATING UP**

[http://lacrossetribune.com/jacksoncochronicle/news/local/frac-sand-mine-opposition-heating-up/article\\_a6321699-7414-5d3c-96c0-51c92c76c901.html](http://lacrossetribune.com/jacksoncochronicle/news/local/frac-sand-mine-opposition-heating-up/article_a6321699-7414-5d3c-96c0-51c92c76c901.html)

**STATEMENT TO THE JACKSON COUNTY ZONING COMMITTEE  
BY ATTORNEY THOMAS E. LISTER- JANUARY 18, 2016**

Today is a sad day for me and a sad day for Jackson County. Sad, for me, as a citizen of our county for 42 years, as your former district attorney, corporation counsel and circuit court judge; and, a sad day for our county for reasons I am about to explain.

I feel no pleasure, nor satisfaction in disclosing the facts and circumstances which led us here, or in criticizing the conduct or misconduct of those I may name. This day should not have come. I did everything I could to avoid it.

I will limit my comments to why this committee should deny this application for a Conditional Use Permit; (CUP) but, that requires a bit of history as to how we got here.

Between 2011 and early 2014 supervisors John Curran and John Bahnub served at various times on the Land Conservation Committee (LCC). Supervisor Curran had been engaged in a personal effort to establish a frac-sand mine on his property in Albion, Adams and Hixton Townships; and, prior to John Bahnub leaving the County Board in April of 2014 his

mother and father were engaged in negotiations with TERRACOR which was seeking their land in the Town of Adams which we are talking about today.

I want to make it clear that our investigation of these matters have not disclosed any wrongdoing by Claire or Lois Bahnub, whom I know personally and respect.

During the same period, Jackson County Corporation Counsel was Paul Millis and his firm Weld Riley Prens & Ricci (Weld Riley). That office and Attorney Millis also represented the Town of Adams, the Town of Albion, and the Town and Village of Hixton. Weld, Riley also represented TERRACOR, and Attorney Millis represented Bahnubs as well.

Initial efforts by TERRACOR targeted Alma, an un-zoned township, where one member of the town board had previously engaged in self-dealings with two frac-sand projects while serving in his official capacity and nevertheless continued to vote in favor of those and other frac-sand projects including TERRACOR. This is illegal.

TERRACOR faced a dilemma. How could they avoid the provisions of the County's Reclamation Ordinance which would apply in the zoned townships impacted by the proposed frac-sand operations? The ordinance stated: "If proposed nonmetallic mine is proposed in an area which is regulated under the Jackson County Zoning Ordinance, the approval can only be granted if the proposed use is consistent with the Counties land use plan and also meets all zoning requirements." and also stated: "The ALCAC will be considered the enforcing committee for the public hearing process."

Despite the latter provision, the "Public Hearings" for Reclamation Plans were conducted solely by the Land Conservation Administrator, Gaylord Olson II. No member of the general "public" was permitted to speak at these "Public Hearings" unless they owned property adjoining or within a few hundred feet of the proposed mining project. This is a violation of free speech- one of our most important Constitutional rights, as well as a possible violation of Wisconsin's Open Meeting Law. The LLC made no findings as to how or why the Reclamation Plans it approved met or complied with the standards or principles or purposes of zoning or the County's Comprehensive Plan.

As Supv. Curran was a sitting member of the committee and given his own interest in a mine project, his participation in voting on a reclamation plan was challenged at a meeting by a citizen, as a direct conflict of interest.

Claiming that he saw no conflict, Supv. Curran joined the rest of the committee in voting. By participating in the votes, I believe, Mr. Curran may have acted illegally.

However, it was the first provision, requiring that Reclamation Plans comply with the purpose and principles of zoning and the County's Comprehensive Plan, which constituted the greater hurdle to reclamation plan approvals. So, with the advice of Corporation Counsel and input from Gaylord Olson II and Terry Schmidt, the committee voted to simply delete the problematic language from the County's reclamation ordinance. Supv. Bahnub was conspicuously absent from the room when the vote to delete the language was taken, with the minutes reflecting that he entered the room right after the vote. The County Land Conservationist and County Zoning Administrator claimed that the deleted language was redundant, and that the responsibility for the application of the County's zoning principles and Comprehensive Plan belonged to the Zoning Committee. The problem is: when the Zoning Committee later considered the Bahnub zoning change, the committee failed to apply or even address these standards. If one accepts the explanation that the duty to impose zoning principles was merely shifted from the LCC to the Zoning Committee, it nevertheless removed an important consideration and standard of protection regarding future mine reclamation plans.

Soon after these Reclamation Ordinance standards were eliminated, Bahnub and Curran retired from the Board of Supervisors. The proposed language deletions which gutted the purpose and intent of the Reclamation Ordinance with respect to sand mines, were sent to the first meeting of a new and uninformed Board of Supervisors in April of 2014. New members could not possibly grasp the consequences nor the effects of what appeared as an innocuous and inconsequential change in the reclamation plan approval process. The language deletions passed, of course; and Atty. Millis and his firm finally suggested they should no longer represent Jackson County in frac-sand mining matters, but wished to continue as Corporation Counsel for all other purposes.

With no future "road blocks" anticipated regarding a future reclamation plan approval, TERRACOR, had Mr. and Mrs. Bahnub petition through Atty. Millis for a zoning change. The zoning office forwarded a Notice of the request to the Town of Adams Board, but did not provide a copy of the application itself.

For months prior to this notice from County Zoning, concerned citizens in the Town of Adams had been attending Adams Town Board meetings, asking about proposed frac-sand related projects which were rumored to be coming to the Town. The Town Board repeatedly assured these citizens that nothing was happening; and, if something did they would immediately notify them; although, Town Board member, John McNulty, once told the citizens group that if they weren't born and raised in Jackson County, he didn't care about their opinions nor their concerns.

Prior to the Town of Adams meeting to consider the Bahnub application, Atty. Millis, still serving as the attorney for the Bahnubs, TERRACOR and the Town of Adams, met privately with the members of the Town Board about the mine project and the need for a zoning change. When such meetings are held, concerning an issue to be addressed by the Board, even though they are conducted individually, there is a violation of the Wisconsin Open Meeting Law, known as a "Walking Quorum". Both Atty. Millis and the Town of Adams Chairman admitted publicly that such meetings occurred. Attorneys are prohibited, by the Rules of Professional Responsibility, from engaging in dual-representation and potentially conflicting roles; serving as legal advisor to one, while at the same time advocating for another.

The Open Meeting Law was again violated when the notice of the Town of Adams Board meeting, which was required to be published, failed to include mention of the Board's intention to address this extraordinary zoning change application, seeking to change the Bahnub property from Agriculture and Forestry to Mining. Detailed notice of such agenda items must be published.

When the date came for the meeting, 27 citizens of the Town, virtually all of whom owned properties and homes which would be adversely affected by the proposed TERRACOR rail load-out, appeared to voice their strong opposition. The Town of Adams Chairman opened the meeting and then turned the conduct of the meeting over to the Town's Atty. Paul Millis who appeared with his clients, the Bahnubs, TERRACOR and their consulting engineer from S.E.H. Atty. Millis conducted a presentation by TERRACOR and the engineer. Questions were posed by those in opposition. Among the questions were those of retired DNR Water and Fisheries Supervisor, Peter Segerson, who pointed out that the proposal was subject to Shoreland Zoning provisions. Both Atty. Millis and the S.E.H. consultant denied that Shoreland Zoning had any application; but here we are, and as you will see, Pete was correct. Nevertheless, without discussion nor explanation as to their findings or their reasoning, the Adams Board unanimously recommended the zoning change.

Another misrepresentation visited upon your Committee by TERRACOR and its' lawyer and its' engineer was a statement that the proposed site for the rail load-out was "preferred" by the DNR and the Army Corp of Engineers as having the least impact on the high quality wetlands in the proposed rail load-out site. This is untrue; and again, Peter Segerson will tell you why.

Following the recommendation of the Town of Adams, this Zoning Committee failed in its' duty to conduct due diligence regarding the Bahnub zoning change. It failed to apply County zoning and

Comprehensive Plan principles which were shifted from the LLC to this Committee. There is no record of this committee giving consideration to the mission, purpose and or philosophy of zoning nor the Comprehensive Plan. This committee made no findings as to how or why such an unheard-of change met Zoning and Comprehensive Plan standards, or how the change to such an offensive land-use could be justified.

I represent many people who will be irreparably harmed if this rail trans-load facility goes forward at this location. The whole County will be harmed. Our wetlands and the beautiful Halls Creek will be harmed. I wonder if any member of this committee has actually seen a frac-sand mine or affiliated rail load-out facility. They are ugly, noisy and endanger the health and welfare of property owners located more than a mile from these locations. These facilities are private and public nuisances and cause toxic-air pollution, water pollution, noise pollution, light pollution, ground disruption and damaging vibrations due to blasting, destruction of agricultural and forested lands and landscapes and wetlands, adverse impact on endangered species (including but not limited to the Karner Blue butterfly), depletion of ground water and aquifers, traffic congestion, road damages and loss of property values.

There is no need for any more sand mines. Wisconsin has 77 and most are inactive.

You should deny this application and require that TERRACOR comply with the DNR and ACOE directives regarding alternatives, and require TERRACOR to find a proposed site that does not damage acres of high quality wetlands.

As I have described, many of the above-referenced actions have been illegal, unprofessional, unethical or negligent. Will you build on this foundation of misrepresentations, deceit, failed duty and conflicts of interest? Don't add your vote to the wrong-doings of others. Instead, this Committee should recommend to the County Board of Supervisors that the Bahnub zoning change be rescinded.

Respectfully submitted, this 18<sup>th</sup> day of January, 2016

Thomas E. Lister



**Photos by Ted Auch, FracTracker**



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***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.***

***The content of this newsletter is for informational purposes only. The editor of the Frac Sand Sentinel does not accept any responsibility or liability for the use or misuse of the content of this newsletter or reliance by any persons on the newsletters contents.***

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## Heading

Frac Sand Mining in Wisconsin and the Midwest