

VANCE CREEK ADOPTS MINING ORDINANCES by David K. Williams

Race cars are judged on their ability to get from 0 to 60 mph in the shortest time possible. If the Vance Creek Town Board were a race car, they'd be a Ferrari or Corvette.

The board, after months of no official action on frac sand mining ordinances, ran head on into a concerned group of township residents at their January meeting. Those residents were reacting to a mine drilling evaluation on land owned by town board member Mike Stafne. At that meeting, the board asked newly-hired attorney Adam Jarchow to develop draft ordinances related to frac sand mine issues.

Jarchow made those draft ordinances public in late January, and the board took them up for consideration at their February 12 meeting. They listened without comment to a half hour of residents' comments, concerns and questions. They had Jarchow review the four draft ordinances. He also responded to some of the questions residents had submitted. And then with minimal discussion, they voted to adopt a nonmetallic mining ordinance, a blasting ordinance and a citation ordinance exactly as they had been drafted by Jarchow.

Most of the residents' comments focused on requests to adopt a moratorium ordinance so that the board and residents could engage in dialogue about the other ordinances. Chief concerns with the nonmetallic mining ordinance Jarchow had proposed were that the water and air protections were less than adequate, that there was no protection of nearby residents' property values, that roads would be damaged and traffic excessive, and that no set amount of financial escrow accounts was determined.

But the board was not to be dissuaded from adopting the ordinances as proposed. By three successive votes of 2-0 the board put the pedal to the metal. Town board member Mike Stafne, on whose land the prospective mine exploration had occurred, recused himself as he had done at the January meeting.

In counseling the board against adoption of a moratorium ordinance, attorney Jarchow focused on the question of legal precedent. Although a number of surrounding townships had adopted moratorium ordinances to give their boards and citizens time to study sand mine issues, Jarchow argued that there is no legal ruling from the State Supreme Court upholding such moratoria.

"Is a moratorium enforceable? I'm not sure," said Jarchow. He said he has 100% confidence that a licensing ordinance would be enforceable, since the Supreme Court had already ruled in favor of such a license at another Wisconsin township, the Town of Cooks Valley in Chippewa County. But absent a similar ruling on a moratorium, he suggested the board would be on safer legal ground to avoid a moratorium. No other township moratorium ordinances have yet been legally challenged.

Jarchow then marched through the list of submitted questions from concerned townspeople, responding to some of those questions. His prime argument remained that while the ordinances provide some protection for town residents and property owners, the way to gain most protection is through well-negotiated developers agreements with any mine company proposing to start a mine.

Jarchow said most mine companies will seek changes to the nonmetallic mining ordinances, such as longer operation hours, or different light, noise or water monitoring requirements, or a longer term of agreement, in exchange for other financial considerations for the town. "I like to spell these out in very detailed form in a mining agreement," he said. He suggested that most mine companies would not find the agreement financially viable as approved, and would seek changes from the Town.

In the end Jarchow recommended the board consider the ordinances he had drafted, as written. Town supervisor Tim Prusak questioned Jarchow if these ordinances were within the ballpark of other towns' efforts, and if they could be amended at subsequent town meetings. Jarchow replied that the ordinances are similar to other towns, and could indeed be amended at a later date. He again referred the board to the idea that in developers agreements, the town would have negotiated stipulations that the mine company would agree to, and would be contractually obligated to live up to those agreements. He said those could include a specified escrow account amount for road repair as well as royalty payments or property value price guarantees for mine neighbors. Neither the board nor Jarchow addressed the question of who would be doing any negotiation with potential mine companies.

The three approved ordinances can be viewed on the town's new website: www.townofvancecreek.com. Also posted there is the town board's letter of engagement with attorney Adam Jarchow, spelling out the financial terms of his work for the Town of Vance Creek.

In remaining business the board heard the Town's financial report from Treasurer Paul Streif, who noted that February would be a month of significant cash outflow. The board approved voucher payments to send tax receipts to a number of other entities, including: Barron County, \$88,186; Clear Lake Schools, \$78,848; Clayton Schools, \$54,105; Barron County for blacktop costs, \$30,000; Prairie Farm Schools, \$26,096; and Indianhead Technical College, \$18,017.