



April 17, 2014 – Walworth County Board Meeting

**Report of the County Clerk Regarding  
Communications Received After the Agenda Mailing**

The following items were placed on Supervisors' desks and are attached to this cover sheet:

County Clerk

**Kimberly S. Bushey**  
County Clerk

- Correspondence from County Administrator requesting the Walworth County Board to approve a resolution authorizing staff to apply for a Juvenile Justice System Improvement grant in an amount not to exceed \$25,000.00. (Please note, it is anticipated that the County Board will move pursuant to Section 2-65 (b)(3) of the Walworth County Code of Ordinances to take action on the resolution at this meeting.) **[Pgs. 1-6]**
- Res. No. 03-04/14 – Nominating Members to the Various Committees of the County Board – *Vote Required: Majority* (Recommended by the Nominating Committee 3-0) **[Pgs. 7-10]**
- Summons and Complaint – Pounder Bros., Inc., Plaintiff, vs. Jeffrey S. Fuller, Town of Darien, and Walworth County, Defendants – To be referred to the Executive Committee **[Pgs. 11-20]**
- Correspondence from State of Wisconsin Department of Natural Resources in regard to the proposed state sale of approximately 70 acres of land located in the Town of Troy – To be referred to the Park Committee **[Pgs. 21-23]**
- *Walworth County Aging & Disability Resource Center News*, April 2014 – To be placed on file

*These items were received after the agenda mailing before the meeting. Other items that were placed on the Supervisors' desks at the meeting are not included on this report. Please contact the County Clerk's office for information regarding those items.*



April 16, 2014

**Administration**

**David A. Bretl**  
County Administrator

Re: Grant Opportunity – Juvenile Justice System Improvement

**Suzanne Harrington**  
Administrative Assistant

Dear County Board Supervisors:

**Vicki L. Price**  
Administrative Clerk

My apologies for this last minute item, however, the above-stated grant opportunity has just recently come to our attention. Our Criminal Justice Coordinating Committee met on April 11, 2014 and endorsed an application for a grant in the amount up to \$25,000.00. The grant requires a ten percent local match.

I've attached two memos and a resolution to this letter. The memos provide an overview how the grant funds would be used. Given the relatively low local match (ten percent) and the success of this program in the East Troy municipal court, I would urge your support. The deadline to apply for the grant is May 1<sup>st</sup>, which necessitated this last minute request.

I would request your favorable action in this matter.

Very truly yours,

David A. Bretl  
County Administrator

cc: Linda Seemeyer, HHS Director  
Michael Cotter, Corporation Counsel

DAB/vlp  
Enclosure

100 W. Walworth  
P.O. Box 1001  
Elkhorn, WI 53121  
262.741.4357 Tel  
262.741.4390 Fax

**WALWORTH COUNTY**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
W4051 County Road NN  
P.O. Box 1005  
Elkhorn, WI 53121-1005  
262-741-3200 800-365-1587 TTY 262-741-3255 FAX 262-741-3217

**MEMORANDUM**

**TO:** Administrator Bretl  
**FROM:** Carlo Nevicosi, WCDHHS  
**DATE:** April 14, 2014  
**SUBJECT:** Juvenile Justice System Improvement Grant

**RECEIVED**

APR 14 2014

WALWORTH COUNTY ADMINISTRATION

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Following the CJCC's support of the WCDHHS/Village of East Troy Municipal Court Pilot, we've added the Juvenile Justice System Improvement Grant to the agenda of the next Health and Human Services Committee meeting. At that meeting, we'll seek approval to apply for the grant.

This State of Wisconsin grant offers between \$10,000 and \$25,000 to improve service delivery to at-risk youth. We believe that our pilot program is a groundbreaking partnership that fits nicely with the goals of the grant. We plan on using grant funds to expand to second municipal court. This larger sample size will allow us to better grasp the impact of our intervention. Funds will be spent on data analysis, staff training, and mileage staff overtime. The grant is for one-year only and requires a 10% cash match. We plan to use a portion of program-allocated staff salary for the required match.

# Memorandum

To: Walworth County Board of Supervisors

From: Michael P. Cotter, Village of East Troy Municipal Judge

Date: April 17, 2014

Re: Juvenile Justice Initiative Grant Application

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Thank you for allowing me to appear before you to discuss the juvenile program I have in place in the Village of East Troy municipal court. I write this memorandum requesting your support to allow Health and Human Services to apply for the Juvenile Justice Initiative Grant.

I began serving as the municipal judge for the Village of East Troy in January of 2000. I had a very simple goal in 2000 and I maintain that goal to this day; impact one juvenile a year. Every year I send a letter to all middle school and high school students discussing the penalties associated with drug and alcohol use. In 2012, I became increasingly frustrated with my juvenile docket.

From January 2000 until January of 2012 I referred only four juveniles to the Walworth County Department of Health of Human Services. All four of those juveniles eventually committed crimes as adults that sent them to jail with two receiving prison time. I saw hundreds of juveniles over those 12 years.

From January 2012 until May of 2012, I referred 5 juveniles to Health and Human Services. I needed help as I felt like I was not making any impact with the juveniles.

I appeared before the Walworth County Circuit Court Judges and they agreed to receive letters from municipal court judges when a municipal court "frequent flier" is referred to juvenile intake. This helps to give the Circuit Court judge a better idea of the juvenile that is appear before them. A municipal court might see a kid multiple times before they "graduate" to circuit court. I call this issue the continuum of concern but I will not try to explain that in this summary. In short, kids that appear multiple times in municipal court may get a deferred prosecution in circuit court because that court is seeing them for the first time. This is a big problem.

I then met with HHS and requested help dealing with my juvenile issues. I truly believe that juvenile court is the best place to impact the strain on the court system. Drug courts, alcohol courts, and veteran courts are great things but I believe that if we can impact young adults when they first hit the "system" we may just deter them from getting into further trouble. However, we needed to implement something measurable and not just a "feel good solution."

HHS agreed to help. The State of Wisconsin Department of Families sent an individual to help implement the Screening, Brief Intervention, and Referral to Treatment "SBIRT" program for HHS to administer in municipal court. In January of 2013, HHS began sending one or two social workers to my court to administer "SBIRT" screening to all individuals who appear in my court. This screening focuses on alcohol and drug issues. HHS agreed to do this at no cost to the Village of East Troy.

Numbers after 1 year:

- 39 juveniles
- 81 citations
- 28 kids were screened (approximately 5 juveniles or parents refused, 6 had a trial)
- 3 reported alcohol and drug issues.
- 5 kids received brief interventions
- 2 kids were already on supervision when they received the municipal citation.
- 2 families agreed to participate in Functional Family Therapy
- 1 parent requested human services assistance for other issues
- 3 kids were adjudicated delinquent after the screening for non AODA-related issues.

In January of 2014, Walworth County Health and Human Services agreed to continue with this program for another year. We are adding a "GAIN screen" to assist juveniles who may have anger, psychological or other behavioral issues. The GAIN screen will be in addition to the SBIRT screening. The screen takes approximately 15 minutes.

On January 22, 2014 I spoke with Theresa Owens, Executive Assistant to the Wisconsin Supreme Court Chief Justice Abrahamson. The Chief Justice discussed the importance of community outreach at a recent Walworth County Bar Association meeting. I discussed my juvenile court program with Ms. Owens after the meeting. Ms. Owens was extremely interested in this program and I have exchanged e-mails with her since that time.

Ultimately, I hope to convince the State of Wisconsin that this is a good idea so they fund a pilot project and expand this idea. I am using the Functional Family Therapy project that is currently going on in Milwaukee County as a model. Walworth County Health and Human Services started their Functional Family Therapy project a few years ago. The Joint Finance Committee discussed the Walworth County Functional Family Therapy project and budgeted over a million dollars to pilot a similar project in Milwaukee County.

On Friday April 11, 2014, I appeared before the Walworth County Criminal Justice Coordinating Committee ("CJCC") to request permission to apply for a Juvenile Justice Initiative Grant to help offset the staffing costs of the social workers appearing in my court and, hopefully, to expand the program to other communities in the county. We need to increase the sample size to see if this program is working. The CJCC voted to support applying for the grant.

I will answer any questions you may have about this program. I thank you for your time.



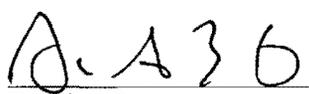
**Policy and Fiscal Note**  
**Resolution No. 05-04/14**

- I. **Title:** Authorizing Appropriate County Staff to Apply for a Juvenile Justice System Improvement Grant.
  
- II. **Purpose and Policy Impact Statement:** The purpose of the resolution is to authorize staff to apply for a Juvenile Justice System Improvement Grant.
  
- III. **Budget and Fiscal Impact:** If awarded, the county will be required to expend funds equal to ten percent of the grant. Health and Human Services plans on using the labor of an existing employee as the local match. Therefore, the County's required local share can be accomplished within the approved 2014 budget.
  
- IV. **Referred to the following standing committees for consideration and date of referral:**

Committee: Criminal Justice Coordinating Committee      Meeting Date: April 11, 2014

Vote: unanimous

County Board Meeting Date: April 17, 2014

Policy and fiscal note has been reviewed and approved as an accurate statement of the probable policy and fiscal impacts associated with passage of the attached resolution.			
		4/16/14	4/16/14
David A. Bretl County Administrator/Corporation Counsel	Nicole Andersen Deputy County Administrator – Finance	Date	Date
If unsigned, exceptions shall be so noted by the County Administrator.			

**Resolution No. 03-04/14**  
**Nominating Members to the Various Committees of the County Board**

1 Moved/Sponsored by: Nominating Committee

2  
3 **WHEREAS**, Walworth County Code of Ordinances Sec. 2-138 sets forth the procedure for  
4 nominating and appointing members to the various committees of the county board; and,

5  
6 **WHEREAS**, said Ordinance requires the nominating committee to nominate members for  
7 appointment and election by the full board; and,

8  
9 **WHEREAS**, the nominating committee convened on April 16, 2014 and carefully considered  
10 the matter of committee appointments, taking into account the interest and background of the  
11 nominees and the best interest of Walworth County:

12  
13 **NOW, THEREFORE, BE IT RESOLVED** that the Walworth County Board of Supervisors  
14 does hereby approve the nominations of the nominating committee and does appoint the below-  
15 listed individuals to the committees, for the terms and in the positions listed as follows, and upon  
16 passage of this resolution the nominating committee officially dissolves.

17  
18 **Unless otherwise specified, all terms will expire on the third Tuesday in April 2016**

19  
20 Committee: **Executive**

21 # of Members: 5

- 22 1. Weber
- 23 2. Russell
- 24 3. Brandl
- 25 4. Kilkenny
- 26 5. Staples

27  
28 Committee: **Finance**

29 # of Members: 5

- 30 1. Russell
- 31 2. Schaefer
- 32 3. Yvarra
- 33 4. Ingersoll
- 34 5. Kilkenny

35  
36 Committee: **Human Resources**

37 # of Members: 5

- 38 1. Monroe
- 39 2. Brandl
- 40 3. Stacey
- 41 4. Brellenthin
- 42 5. Ingersoll

43

1 Committee: **Public Works**

2 # of Members: 5

- 3 1. Russell
- 4 2. Schaefer
- 5 3. Monroe
- 6 4. Yvarra
- 7 5. Stacey

8

9 Committee: **Agriculture and Extension Education Committee (A&EE)**

10 # of Members: 8 including 3 County Board Supervisors who also serve on the Land Conservation  
11 Committee and Parks Committee and 5 citizen members

- 12 1. Russell
- 13 2. Kilkenny
- 14 3. Staples

15

16 Committee: **County Zoning Agency**

17 # of Members: 7 including 5 County Board Supervisors and 2 citizen members

- 18 1. Weber
- 19 2. Yvarra
- 20 3. Brandl
- 21 4. Stacey
- 22 5. Brellenthin

23

24 Committee: **Health and Human Services Board**

25 # of Members: 9 including 5 County Board Supervisors and 4 citizen members

26 Fixed Term: 3 years

Term Ending	Board Member	Term Ending	Board Member
1/5/15	VACANT	1/5/15	Ingersoll
1/5/15	Monroe	1/5/15	Monroe
1/7/13	Brellenthin	1/4/16	Brellenthin
1/7/13	Schaefer	1/4/16	Schaefer
1/6/14	VACANT	1/2/17	Staples

27

28 Committee: **Land Conservation**

29 # of Members: 5 including 3 Board Supervisors who also serve on the A&EE Committee and  
30 Parks Committee and 2 citizen members

- 31 1. Russell
- 32 2. Kilkenny
- 33 3. Staples

34

35 Committee: **Park Committee**

36 # of Members: 5 including 3 Board Supervisors who also serve on the A&EE Committee and  
37 Land Conservation Committee and 2 citizen members

- 38 1. Russell
- 39 2. Kilkenny
- 40 3. Staples

1 Committee: **Lakeland Health Care Center Board of Trustees**  
 2 # of Members: 5 County Board Supervisors  
 3 Fixed Term: 3 years  
 4 **Elected by Board:**

Term Ending	Board Member	Term Ending	Board Member
1/5/15	VACANT	1/5/15	Ingersoll
1/6/14	VACANT	1/2/17	Staples
1/7/13	Brellenthin	1/4/16	Brellenthin
1/5/15	Monroe	1/5/15	Monroe
1/7/13	Schaefer	1/4/16	Schaefer

5  
 6 Committee: **Children with Disabilities Education Board**  
 7 # of Members: 5  
 8 Fixed Term: 3 years  
 9 **Elected by Board:**

Term Ending	Board Member	Term Ending	Board Member
4/19/14	Weber	4/17/17	Weber
4/21/15	Monroe	4/21/15	Monroe
4/16/13	Schaefer	4/19/16	Schaefer
4/16/13	VACANT	4/19/16	Ingersoll
4/21/15	VACANT	4/21/15	Staples

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\_\_\_\_\_  
 Nancy Russell  
 County Board Chair

\_\_\_\_\_  
 Kimberly S. Bushey  
 County Clerk

Action Required: Majority Vote  X  Two-thirds Vote \_\_\_\_\_ Other \_\_\_\_\_

County Board Meeting Date: April 17, 2014

Policy and Fiscal Note is attached.  
 Reviewed and approved pursuant to Section 2-91 of the Walworth County Code of Ordinances:

David A. Bretl 4/16/14 Date  
 County Administrator/Corporation Counsel

N. Andersen 4/16/14 Date  
 Deputy County Administrator - Finance

If unsigned, exceptions shall be so noted by the County Administrator.

**Policy and Fiscal Note**  
**Resolution No. 03-04/14**

- I. **Title:** Nominating Members to the Various Committees of the County Board
- II. **Purpose and Policy Impact Statement:** The purpose of this resolution is to recommend and nominate county board supervisors to the various committees of the county board.
- III. **Is this a budgeted item and what is its fiscal impact:** Passage of this resolution has no fiscal impact on the 2014 county board budget.
- IV. **Referred to the following standing committees for consideration and date of referral:**

Committee: Nominating Committee

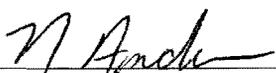
Meeting Date: April 16, 2014

Vote: 3-0

County Board Meeting Date: April 17, 2014

Policy and fiscal note has been reviewed and approved as an accurate statement of the probable policy and fiscal impacts associated with passage of the attached resolution.

 4/16/14  
\_\_\_\_\_  
Date  
David A. Bretl  
County Administrator/Corporation Counsel

 4/16/14  
\_\_\_\_\_  
Date  
Nicole Andersen  
Deputy County Administrator - Finance

RECEIVED  
WALWORTH COUNTY CLERK

STATE OF WISCONSIN 2014 APR 14 4:45 PM  
CIRCUIT COURT  
BRANCH \_\_\_\_\_

WALWORTH COUNTY

**POUNDER BROS., INC.,**  
A Wisconsin corporation  
N4734 County Road M  
Delavan, Wisconsin 53115,

Plaintiff,

14 CV 00292

Case No. 14 CV \_\_\_\_\_

vs.

Case Code: 30106

HON. PHILLIP A. KOSS

**JEFFREY S. FULLER**  
N4830 County Road M  
Delevan, Wisconsin 53115

**TOWN OF DARIEN**  
N2826 Foundry Road  
Darien, Wisconsin 53114

and

**WALWORTH COUNTY**  
Walworth County Government Center  
100 W. Walworth Street  
Elkhorn, Wisconsin 53121

Defendants.

**FILED**

**APR 01 2014**

WALWORTH COUNTY  
CLERK OF CIRCUIT COURT  
BETHANY FIEGEL

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**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

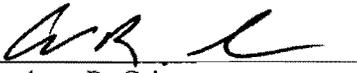
Within (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 1800 County Trunk NN, Elkhorn, Wisconsin 53121 and to Andrew R. Griggs, Neuberger,

Wakeman, Lorenz, Griggs & Sweet, plaintiff's attorney, whose address is 136 Hospital Drive, Watertown, Wisconsin 53098. You may have an attorney help or represent you.

If you do not provide a proper answer within (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 28<sup>th</sup> day of March, 2014.

NEUBERGER, WAKEMAN, LORENZ,  
GRIGGS & SWEET  
Attorneys for Plaintiff Pounder Brothers, Inc.

  
\_\_\_\_\_  
Andrew R. Griggs  
State Bar No. 1008913

136 Hospital Drive  
Watertown, Wisconsin 53098  
(920) 261-1630  
(920)261-0339 (Fax)

**POUNDER BROS., INC.,**  
A Wisconsin corporation  
N4734 County Road M  
Delavan, Wisconsin 53115,

Plaintiff,

vs.

**JEFFREY S. FULLER**  
N4830 County Road M  
Delavan, Wisconsin 53115,

**TOWN OF DARIEN**  
N2826 Foundry Road  
Darien, Wisconsin 53114,

and

**WALWORTH COUNTY**  
Walworth County Government Center  
100 W. Walworth Street  
Elkhorn, Wisconsin 53121

Defendants.

Case No. 14 CV-

**14 CV-00292**

Case Code: 30106

HON. PHILLIP A. KOSS

**FILED**

**APR 01 2014**

WALWORTH COUNTY  
CLERK OF CIRCUIT COURT  
BETHANY FIEGEL

**COMPLAINT**

Pounder Brothers, Inc. (hereinafter "Plaintiff"), by his attorneys Neuberger, Wakeman, Lorenz, Griggs & Sweet, by attorney Andrew R. Griggs, allege as follows:

1. Plaintiff is a Wisconsin corporation located in Walworth County, Wisconsin, with its principal office at N4735 County Road M, Delavan, Wisconsin 53115 (hereinafter "Plaintiff's Property").
2. Jeffrey S. Fuller (hereinafter "Fuller") is an adult resident of Walworth County, Wisconsin, residing at N4830 County Road M, Delavan, Wisconsin 53115 (hereinafter "Fuller's Property").

3. Town of Darien (hereinafter “Darien”) is a Town located in Walworth County, Wisconsin, with principal office located at N2826 Foundry Road, Darien, Wisconsin 53114.

4. Walworth County (hereinafter “Walworth”) is a county located in the State of Wisconsin, with principal office located at Walworth County Government Center, 100 W. Walworth Street, Elkhorn, Wisconsin 53121.

5. Plaintiff owns and operates a USDA Certified Organic Farm at Plaintiff’s Property and has operated said farm since before 2008.

6. Since purchasing Fuller’s Property, Fuller has constructed, erected, and installed outbuildings, driveways, berms, diversions and piping on Fuller’s property.

7. Fuller has also maintained several ponds of surface water on Fuller’s Property.

8. Fuller maintains said ponds at maximum surface water height throughout the summer months, therefore reducing the ability of the swamp to absorb rainfall.

9. The aforementioned construction, improvements, and pumping result in diversion of significant amounts of surface water onto the Plaintiff’s Property.

10. In 2008, Darien and Walworth performed maintenance work on the right of way known as County Road M.

11. The maintenance performed by Darien and Walworth included the removal of barriers in the ditch immediately next to County Road M which had been in place for approximately 69 years.

12. The maintenance performed by Darien and Walworth further included digging the ditch deeper at the property line between the Plaintiff’s property and Fuller’s property; as well as south of said property line resulting in surface water flowage onto Plaintiff’s property in excess of historical and contrary to natural surface water flowage.

13. In 2008, Fuller intentionally diverted surface water from Fuller’s Property onto Plaintiff’s Property by the use of water pumps.

14. As a result of Fuller’s intentional diversion of surface water onto Plaintiff’s Property, Plaintiff was unable to utilize approximately 14.93 acres of Plaintiff’s Property to produce USDA Certified Organic products from 2008 through 2010.

15. In May 2013 and June 2013, Fuller again intentionally diverted surface water from Fuller’s Property onto Plaintiff’s Property by the use of water pumps.

16. As a result of Fuller’s intentional diversion and pumping of surface water onto Plaintiff’s Property, Plaintiff is unable to utilize approximately 18.65 acres of Plaintiff’s Property to produce USDA Certified Organic products from 2013 through 2015.

17. When confronted by Plaintiff, Fuller has indicated to Plaintiff that he will not rectify existing construction and improvements on Fuller's Property to reduce the amount of surface water diverted onto Plaintiff's Property.

18. When confronted by Plaintiff, Fuller has further indicated that Fuller will continue to engage in intentional activities to divert surface water onto Plaintiff's Property when Fuller deems appropriate.

**FIRST CAUSE OF ACTION  
(Intentional Private Nuisance)**

19. Plaintiff hereby incorporates Paragraphs 1 through 18 as if fully set forth herein.

20. An invasion of one's interest in the use and enjoyment of land (i.e., a private nuisance) resulting from another's interference with the flow of surface water may constitute a nuisance under the rules stated in Restatement (Second) of Torts §§ 821A-831. Restatement (Second) of Torts § 833.

21. One is subject to liability for an intentional private nuisance if his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is intentional and unreasonable. *Id.* at § 822(a).

22. The "reasonable use doctrine" of § 833 has been adopted by the Supreme Court of Wisconsin for intentional nuisances. *See State v. Deetz*, 66 Wis.2d 1, 18-19, 224 N.W.2d 407 (1974).

23. Under the reasonable use rule, each possessor is legally privileged to make a reasonable use of his land, even though the flow of surface waters is altered thereby and causes some harm to others, but incurs liability when his harmful interference with the flow of surface waters is unreasonable. *Id.* at 14.

24. Accordingly, the Court in *Deetz* relied upon provisions in the Restatement (Second) of Torts falling within §§ 826-831, which relates to the reasonableness of an intentional invasion of another's interest in the use or enjoyment of land. *See Id.* at 19-20; *See also Restatement (Second) of Torts* § 833 cmt. b; *See also Crest Chevrolet-Oldsmobile-Cadillac, Inc. v. Willemsen*, 129 Wis.2d 129, 138384 N.W.2d 692 (1986).

25. An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if (a) the gravity of the harm outweighs the utility of the actor's conduct or (b) the harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct not feasible. *Restatement (Second) of Torts* § 826.

26. The gravity of the harm to Plaintiff outweighs the utility of Fuller's intentional diversion of surface water onto Plaintiff's Property.

27. Alternatively, the harm caused by Fuller's intentional diversion of surface water onto Plaintiff's Property is serious and the financial burden of Fuller compensating for this and similar harm to others would not make the continuation of Fuller's conduct not feasible.

**SECOND CAUSE OF ACTION  
(Negligent Private Nuisance)**

28. Plaintiff hereby incorporates Paragraphs 1 through 27 as if fully set forth herein.

29. Wisconsin courts have engaged a four-element analysis to determine whether an actionable claim for negligence has been stated." *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 23, 291 Wis.2d 283, 717 N.W.2d 17. The four elements are as follows: (1) the existence of a duty of care on the part of the defendant, (2) a breach of that duty of care, (3) a causal connection between the defendant's breach of the duty of care and the plaintiff's injury, and (4) actual loss or damage resulting from the breach. *Id.* (citing *Gritzner v. Michael R.*, 2000 WI 68, ¶ 19, 235 Wis.2d 781, 611 N.W.2d 906).

30. The general rule governing negligent liability for a private nuisance is that one is subject to liability for a private nuisance if his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities. *Restatement (Second) of Torts* § 822(b).

31. A Court should look to § 824 of the Restatement (Second) of Torts for the standard used to determine the type of conduct necessary to determine liability under the rule stated in § 822. *Id.* § 822 cmt. b.; *See also CEW Mgmt. Corp. v. First Fed. Sav. & Loan Ass'n*, 88 Wis.2d 631, 635, 277 N.W.2d 766 (1979) (stating that § 824 is controlling in the determination of conduct that comes within the purview of § 822).

32. The conduct necessary to make an actor liable for either a public or a private nuisance may consist of (a) an act or (b) a failure to act under circumstances in which the actor is under a duty to take positive action to prevent or abate the interference with the public interest or the invasion of the private interest. *Id.* at § 824.

27. Sections 838-840 of the Restatement (Second) set forth the circumstances under which the law imposes a duty on a person to take positive action for the protection of another and subjects him to liability if he fails to meet the standard of action required in the particular case. *Id.* at § 824 cmt. e.

33. A possessor of land is subject to liability for a nuisance caused while he is in possession by an abatable artificial condition on the land, if the nuisance is otherwise actionable, and (a) the possessor knows or should know of the condition and the nuisance or unreasonable risk of nuisance involved, and (b) he knows or should know that it exists without the consent of those affected by it, and (c) he has failed after a reasonable opportunity to take reasonable steps to abate the condition or to protect the affected persons against it. *Id.* at § 839.

34. Liability under § 839 for the failure to abate an artificial condition on land causing nuisance to another is not based upon responsibility for the creation of the harmful condition. *Id.* at § 839 cmt. d.

35. Fuller knows or should know that the conditions on Fuller's Property, namely the construction, erection, installation and maintenance of several ponds of surface water, outbuildings, driveways, berms, diversions and piping on Fuller's property and the resulting diversion of surface water onto Plaintiff's property

36. Fuller knows or should know that the conditions on Fuller's Property exist without the consent of Plaintiff.

37. Fuller has failed after a reasonable opportunity to take reasonable steps to abate the conditions on Fuller's Property causing diversion of surface water onto Plaintiff's Property and has failed to protect Plaintiff against the same.

### **THIRD CAUSE OF ACTION (Trespass)**

38. Plaintiff hereby incorporates Paragraphs 1 through 37 as if fully set forth herein.

39. One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally enters land in the possession of the other, or causes a thing or a third person to do so. *Id.* at § 158(a); *See also Prah v. Brosamle*, 98 Wis. 2d 130, 146, 295 N.W.2d 768 (Ct. App. 1980).

40. Trespass can be established if one intentionally causes or allows surface water to cross the boundary of another's premises. *See Steiger v. Nowakowski*, 67 Wis. 2d 355, 359, 277 N.W.2d 104 (1975).

41. Defendant intentionally caused surface water to cross onto Plaintiff's Property.

### **FOURTH CAUSE OF ACTION (Violation of Wis. Stat. § 88.87(2))**

42. Plaintiff hereby incorporates Paragraphs 1 through 41 as if fully set forth herein.

43. All such highways and railroad grades shall be constructed with adequate ditches, culverts, and other facilities as may be feasible, consonant with sound engineering practices, to the end of maintaining as far as practicable the original flow lines of drainage. Wis. Stat. § 88.87(2)(a).

44. Darien and Walworth have failed to construct ditches adjacent to County Road M in a manner consistent with sound engineering practices which maintain the historical flow lines of drainage.

45. As a result of Darien and Walworth's failure construct ditches adjacent to County Road M in a manner consistent with sound engineering practices which maintain the historical flow lines of drainage, surface water flowage onto Plaintiff's Property in excess of historical surface water flowage has occurred and resulted in damage to Plaintiff.

**FIFTH CAUSE OF ACTION  
(Injury Resulting from Improvement to Real Property)**

46. Plaintiff hereby incorporates Paragraphs 1 through 45 as if fully set forth herein.

47. Wisconsin courts have engaged a four-element analysis to determine whether an actionable claim for negligence has been stated." *Hoida*, 2006 WI at ¶ 23. The four elements are as follows: (1) the existence of a duty of care on the part of the defendant, (2) a breach of that duty of care, (3) a causal connection between the defendant's breach of the duty of care and the plaintiff's injury, and (4) actual loss or damage resulting from the breach. *Id.* (citing *Gritzner*, 2000 WI at ¶ 19, 611 N.W.2d 906).

48. Darien and Walworth owe Plaintiff a duty to construct and maintain ditches in accordance with sound engineering practices.

49. Darien and Walworth breached that duty to construct and maintain ditches in accordance with sound engineering practices when it constructed ditches adjacent to County Road M which altered the historical flow lines of drainage and resulted in surface water flowage onto Plaintiff's Property in excess of historical surface water flowage.

50. As a direct result of the aforementioned breach of duty, Plaintiff has been damaged.

51. Plaintiff has sustained an actual loss or damage from the aforementioned breach of duty.

**WHEREFORE**, Plaintiff prays for relief from the Court as follows:

A. For compensatory damages sustained by Plaintiff in favor of Plaintiff and against Fuller, Darien, and Walworth;

B. For punitive damages in favor of Plaintiff and against Fuller for Fuller's intentional conduct;

C. For permanent injunctive relief enjoining Fuller from intentionally and negligently creating and maintaining a private nuisance against Plaintiff;

D. For Plaintiff's costs of this action, including reasonable attorneys' fees; and

E. Such further relief as the Court may deem just and equitable.

Dated this 28<sup>th</sup> day of March, 2014.

NEUBERGER, WAKEMAN, LORENZ  
GRIGGS & SWEET  
Attorney for Plaintiff

By:



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Andrew R. Griggs  
State Bar No. 1008913

136 Hospital Drive  
Watertown, Wisconsin 53098  
(920) 261-1630  
(920) 261-0339 (Fax)

SOUTHERN LAKES INVESTIGATIONS L.L.C.

DATE: 4-14-14 TIME: 11:45AM.

LOCATION: 100 W. WALWORTH ST  
ELKHORN WY.

WHO SERVED: Nicole Hill, Dep. Clerk.

SERVED BY: A. Dennis Wismarski



April 3, 2014

G 2711

Sender's Direct Line: 608-266-2136

**NANCY RUSSELL**  
County Chairman  
1720 FAIRVIEW DR  
LAKE GENEVA, WI 53147

Dear Chairperson:

2013 Wisconsin Act 20 directs the Natural Resources Board to make at least 10,000 acres of land available for sale by June 30, 2017. The law stipulates that land being offered for sale shall be under the jurisdiction of the Department and located outside of project boundaries that were established as of May 1, 2013.

The Department would like to inform you of the proposed state sale of approximately 70 acres of land located in the Town of Troy, Walworth County. The land was originally acquired on February 16, 1971 as part of the Extensive Wildlife Habitat Area.

Department staff have conducted a thorough review of the land being proposed for sale based on the following criteria:

- parcels of land outside of a project boundary with difficult or no access for the department for management purposes;
- parcels of land outside of a project boundary with limited or no public access;
- parcels of land outside of a project boundary that have limited public recreational or natural resources value;
- parcels of land that have been identified for sale as a result of a NRB action; and
- parcels of land recommended for sale as a result of a master planning process or other department action.

In addition to the criteria above the Department is conducting a field review which will examine the parcel for its biological, recreational, cultural and archeological values.

We are notifying you of this potential sale so that you have an opportunity to review the parcel and comment on the proposed sale. We also ask that you review the recreational trail network in your area for any trails that may cross this parcel. If you have comments on this parcel, please notify the Department within 45 days of receipt of this letter. The deadline for sending comments for consideration is May 20, 2014.

As a unit of government or sovereign tribal nation, you will be given priority for the purchase of this land. We ask that you notify us if you have any interest in purchasing this parcel. Knowles Nelson Stewardship Grant funds are not available to be used for these land purchases.

Your comments and/or interest in this parcel will be reviewed by the Department and forwarded to the Natural Resources Board for their final consideration.

Please direct any comments, concerns or interest to:

JIM JACKLEY, 414-263-8616  
2300 N. MARTIN LUTHER KING JR. DRIVE  
MILWAUKEE, WI 53212  
James.jackley@wisconsin.gov

Or please feel free to contact me at the phone number or email below. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas J. Haag". The signature is fluid and cursive, with the first name "Douglas" being the most prominent part.

Douglas J. Haag  
Deputy Facilities and Lands Bureau Director  
Direct phone: 608-266-2136  
Email: DouglasJ.Haag@Wisconsin.gov

Attach

# Parcel Evaluation - Wildlife Management

File Number G 2711 \*  
 Pre Approved for Sale by NRB: No  
 70.37 GIS Acres  
 Walworth County



 Phase I Parcels  
 NRCS - WRP (Wetland Reserve Program - Closed to public access)  
 DNR Fee Title Land  
 Public Hunting Grounds\ Voluntary Public Access

  
  
 Jan 17, 2014 kmh  
 Real Estate Section  
 Bureau of Facilities and Lands

The data shown on this map have been obtained from various sources, and are of varying age, reliability and resolution. This map is not intended to be used for navigation, nor is this map an authoritative source of information about legal land ownership or public access. Users of this map should confirm the ownership of land through other means in order to avoid trespassing. No warranty, expressed or implied is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map.