

## Exploring Regional Economic Opportunities Conference

Three Bears Lodge Conference Center, Warrens, Wis.

February 23, 2012

Attorney Lee Turonie, Wisconsin Towns Association

“Mining in Wisconsin” Panel - 2:00 to 3:15 p.m.

\*All materials from January 2012 Frac Sand Workshops held in Eau Claire are available on the WTA website: [www.wisctowns.com](http://www.wisctowns.com)

\*Three regulatory tools are possibly available to local governments for the regulation of frac sand mining and its associated effects:

### 1. Highway Authorities, especially Weight Limits.

a. Wis. Stat. §§ 86.02 (triple damages), 349.10 (one-way), 349.15 (Class B), 349.16(1)(a) (special/seasonal), 349.16(1)(c) (permitting) & 349.17 (heavy routes).

### 2. “Police Power” authority of Cities, Villages and Towns with Village Powers.

a. Can regulate generally for the public health, safety and general welfare.

b. Licensing ordinance.

i. Regulates the nature of the activity and its associated effects, not directly where the activity takes place.

ii. Confirmed by recent court decision: Zwiefelhofer v. Town of Cooks Valley, 2012 WI 7.

c. Wis. Stat. §§ 60.10(2)(c) (towns), 61.34 (villages) & 62.11(5) (cities).

### 3. Zoning authority of Cities, Villages & Towns and/or Counties (towns under county zoning).

a. Also a “police power” authority, although a different type of it.

b. Can directly regulate where an activity may take place by creating different districts within a jurisdiction. Specific activities, such as non-metallic mining, may be allowed in some districts but not others. Hence, this is the strongest form of land use regulation.

c. Must have a comprehensive plan per § 66.1001(3).

d. Wis. Stat. §§ 59.69(5) (county); 60.61, 60.62 (town); 62.23 (town, city & village).

\*If frac sand mines are coming to your community, negotiate! However, keep in mind that leverage in negotiations often stems from available legal authorities.