

August 12, 2020

**COMMUNICABLE DISEASES IN CERVIDS STUDY COMMITTEE**  
**Thursday, August 20, 2020, 4:00 p.m., Government Center, Boardroom 201**  
**1316 N. 14<sup>th</sup> Street, Superior, Wisconsin**

**OR JOIN BY**

**PHONE: (US) +1 314-649-9159 PIN: 999 880 206#**

**OR VIDEO: <https://meet.google.com/sic-qfea-fee>**

Please call the County Clerk's Office (715-395-1569) if you are unable to attend.

**MEMBERS:** Mary Lou Bergman, Chair                      Peter Clark  
                  Keith Allen    Joseph Moen  
                  Scott Luostari

**A G E N D A**

(Committee to maintain a two-hour meeting limit *or* take action to continue meeting beyond that time.)


1. Roll call.
2. Approval of minutes from the October 24, 2019, meeting (attached).
3. Welcome back.
4. Brief review.
5. Corporation Counsel legal opinion (attached).
6. Next steps.
7. Adjournment.

*A quorum of the Land and Development Committee will be present at this meeting due to membership of this committee's members on that committee.*

Cc: Shelley Nelson (Telegram)    Ann Doucette            Al Horvath            Zach DeVoe  
     Carolyn Pierce                Susan Sandvick        Quinn Musch  
     Douglas County Website      Tessah Behlings      Mary Brill

NOTE: Attachments to agenda are available in County Clerk's Office for review or copying. Action may be taken on any item listed on the agenda. The County of Douglas complies with the Americans with Disabilities Act of 1990. If you are in need of an accommodation to participate in the public meeting process, please contact the Douglas County Clerk's Office at (715) 395-1341 by 4:00 p.m. on the day prior to the scheduled meeting. Douglas County will attempt to accommodate any request, depending on the amount of notice we receive.

Posted: Courthouse, Government Center, Telegram Copied

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Name    Date

**COMMUNICABLE DISEASES IN CERVIDS STUDY COMMITTEE**  
**Thursday, October 24, 2019, 4:00 p.m., Courthouse, Room 207C**  
**1313 Belknap Street, Superior, Wisconsin**

Meeting called to order by Chair Mary Lou Bergman.

**ROLL CALL:** Present – Mary Lou Bergman, Peter Clark, Joseph Moen, Scott Luostari, Keith Allen. Others present – Al Horvath, Pat Ryan, Keith Wiley, Shelley Nelson, Cade Musch, Quinn Musch, Ray Hanson, Marjorie Hanson, Laurie Seale, Kaci Lundgren, Committee Clerk.

**APPROVAL OF MINUTES:** Motion by Luostari, second Clark, to approve the minutes from the September 25, 2019, meeting. Motion carried.

**LAURIE SEALE, GUEST SPEAKER (DEER FARMER AND OFFICER IN WHITETAILED OF WISCONSIN ORGANIZATION):** Laurie Seale, presented on the history of Chronic Wasting Disease and its effects.

**EXISTING GAME FARM/HUNTING PRESERVE OUTER PERIMETER:** Photos distributed. Tinsel wire fencing allows flexibility for weather and objects falling; it will not break/crack, but instead flex and return to its original state.

**DATE AND TIME OF NEXT MEETING:** November meeting cancelled. Next meeting will be Thursday, December 19, 2019, at 4 p.m.

**FUTURE AGENDA ITEMS:** Updates and legal opinion for conditional-use permits related to A-1 and A-2 zoning districts.

**ADJOURNMENT:** Motion by Moen, second Luostari, to adjourn. Motion carried. Meeting adjourned at 5:28 p.m.

Submitted by,

Kaci Jo Lundgren, Committee Clerk

## XXX CAPTIVE CERVIDS ORDINANCE

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF DOUGLAS DOES ORDAIN AS FOLLOWS:

### SECTION I. INTENT

The purpose of this ordinance is to protect the natural deer herd of Douglas County from the spread of chronic wasting disease through regulation of captive cervids farms and hunting ranches in Douglas County. This ordinance has been created pursuant to County Board authority under Wis. Statutes Chapter 59 and 90.

Authority for County to regulate is limited to such powers as are expressly granted or necessarily implied from statutes.

Bayfield seems to have relied on police powers authority for the county to be able to regulate captive cervid operations – Wis. Stat. 59.54(6) Peace and Order.

I have some concern about the County's ability to regulate cervid operations based on Wis. Stat. 59.54(6) due to an Attorney General opinion regarding a County's ability to prohibit deer shining. Wood County had passed an ordinance prohibiting deer shining based upon Wis. Stat 59.54(6) - peace and order authority. The Legislature had provided in Wis. Stat. 29.99, that the DNR could regulate such activity as part of its administrative code. The Attorney General concluded that because the legislature had provided authority to restrict shining to the DNR that a County Board did not have the authority to pass such an ordinance .

Deer farms are heavily regulated by the State of Wisconsin under Wis. Statute Chapter 90 which grants enforcement authority to the department of natural resources (DNR) to regulate operations and licensing authority to the department of agriculture trade and consumer protection (DATCP). The grant of authority to these department coupled with the fact that there is no express grant of authority by the legislature to counties to regulate deer farms creates a serious question as to whether County has the authority to enact an ordinance regulating fencing and/ or importation so deer.

The risk of enacting an ordinance:

1) Risk of litigation – Bayfield has not been sued but the possibility exist and even if the County were to prevail - litigation is VERY expensive.

2) Potential Increase in Liability – by enacting local regulation the County assumes some form a responsibility and thus could be sued by anyone injured as a result of the spread of CWD spreads to Douglas County.

3) Cost of Enforcement – staffing cost increases/ risk of liability increases if the county does not provide adequate funding to enforce an ordinance.

4) Realistic Impact of Ordinance – County has no authority to quarantine or depopulate farms/ranches – increased liability if become aware of issue.

### SECTION II. DEFINITIONS

- A. Cervid – members of the Cervidae deer family (such as elk, moose and white-tailed deer)
- B. Chronic Wasting Disease (CWD) - a progressive, fatal prion disease of deer, elk, and moose that is characterized by weight loss, tremors, lack of coordination, drooling, excessive thirst, and listlessness.
- C. Deer Farm – a parcel of land in which the activity of breeding, raising, importing or exporting captive deer, elk or moose takes place.
- D. Hunting Ranch – an enclosed area consisting of at least 80 contiguous, unimpeded acres of land in which deer, elk or moose are hunted.

### SECTION III. FENCING STANDARDS

- A. Adoption of Fencing Standards. Wisconsin Statutes Sections 90.20 and 90.21 are adopted by reference and made a part of this ordinance as is NR 16.45, Wis. Adm. Code.
- B. Compliance.
  - 4 Farm Raised Deer
    - i. White-tailed deer –
      - 1. Owner must hold a valid fence inspection certificate issued by the Department of Natural Resources.
      - 2. Fencing of captive white-tailed deer must comply with Wis. Statute 90.21 and NR 16.45, Wis. Adm. Code.
      - 3. Owner must register with the Department of Natural Resources to keep farm raised deer.
    - ii. Non White-tailed deer –
      - 1. Fencing of captive deer must comply with fencing requirements of Wis. Statute 90.20.
      - 2. Owner must register with the Department of Natural Resources to keep farm raised deer.
- C. Enforcement
  - 4 Inspections
    - i. Annual Inspections - The Douglas County Planning and Zoning Department shall perform inspections of all captive cervid operations on an annual basis to determine compliance with applicable fencing standards.
    - ii. Compliance Inspections - The Douglas County Planning and Zoning Department may perform an inspection of the fencing of any captive cervid operations anytime there is cause to believe that fencing within

- the operation is not in compliance with state standards.
2. Violations - Any captive cervid operation that is found to not be in compliance with applicable fencing standards shall be in violation of this ordinance and may be subject to a forfeiture of not more than \$200.00.

### SECTION III. IMPORTATION OF LIVE CERVIDS

- A. Adoption of Importation of Live Cervids Standards. Wisconsin Statutes Chapter 95 is adopted by reference and made part of this ordinance as is ATCP 10.53 and ATCP 10.56.
- B. Compliance. Importing into Douglas County by any means a live cervid that is to be housed therein is prohibited unless the following provisions are complied with:
  - a. The cervid originates from a herd that is enrolled and is in good standing with the Herd Status Program as specified in ATCP 10.53.
  - b. The cervid has a Certificate of Veterinary Inspection and Chronic Wasting Disease Certification as specified in ATCP 10.56.
  - c. *An affidavit Certifying Cervid Origin is submitted demonstrating the animal comes from a location that is not within 10 miles of where there is a documented case of a communicable disease in a wild or captive cervid recorded within five years prior to the animal being moved. [liability issue for DC]*

C Enforcement. Any captive cervid operation that is found to not be in compliance with applicable state standards shall be in violation of this ordinance and may be subject to a forfeiture of not more than \$200.00. *Limited authority – only state has authority to quarantine or destroy.*

### SECTION VIII. SEVERABILITY

Should any sub-section, clause, or provision of this ordinance be declared by the Court to be invalid, the same shall not affect the validity of the section as a whole or any part thereof, other than the part so declared to be invalid.

### SECTION X. EFFECTIVE DATE

This ordinance becomes effective immediately upon passage by the County Board of Supervisors and publication.

NOT INCLUDED:

Escaped cervids from a deer farm or hunting ranch

- In the event a captive cervid escapes from a deer farm or hunting ranch the following shall occur
  - The farm owner or operator shall notify the Douglas County Zoning office within 24 hours of the discovery.

NR.16.50(7) states that reports of fence failure and escapes must be reported to the DNR through the local conservation office. Requiring to report to Zoning creates liability for douglas county – what happens when reported on Saturday and office not staffed? County has no authority to quarantine or kill escaped deer.

CWD positive deer

- In the event a captive cervid tests positive for CWD in Douglas County the following shall occur
  - The farm owner or operator shall notify the Douglas County Zoning office within 24 hours of the positive test results or observation of signs or symptoms of CWD
  - The herd is to be immediately placed in quarantine while test results are being verified.
  - If upon verifying the test results it's confirmed the deer(s) have CWD the owner or operator shall depopulate the herd within 3 months.
  - Carcass disposal shall be either onsite incineration or onsite burial.
  - No cervid shall be moved onto the facility for 5 years from the date the last cervid was removed.

County has no authority to order quarantine or destruction of herd or individual deer – reserved for Wisconsin department of agriculture, trade and consumer protection. DATCP in ATCP10.52(7) and 10.89 – statutorily provided department authority in wis stat 95.23

(1m) and 95.31. County also does not have resources to identify owners of animals killed.

### Zoning – Conditional Use Permit??

This taken directly from 8.9 nonmetallic mining reclamation ordinance – no statutory authority to impose this in regards to deer farms == where as it is mandated by state statute 295.12 and NR 135 Wis. Adm. Code for nonmetallic mining.

### Financial Assurance

- All owners or operators of deer farms or hunting ranches in Douglas County shall prepare and submit a proof of financial assurance that meets the following requirements:
- (1) NOTIFICATION The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under sub. (3).
- (2) FILING Following approval of the deer farm or hunting ranch by conditional use permit, and as a condition of the permit, the operator shall file a financial assurance with Douglas County. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter. Financial assurance shall be payable exclusively to Douglas County. In cases where one or more other regulatory authorities regulate a deer farm or hunting ranch, all financial assurance shall be made payable to Douglas County Zoning only if it currently has primary regulatory responsibility.
- (3) AMOUNT AND DURATION OF FINANCIAL ASSURANCE. The amount of financial assurance shall equal as closely as possible the cost to Douglas County of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by Douglas County Zoning to assure it equals outstanding reclamation costs. Any financial assurance filed with Douglas County Zoning shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. Douglas County Zoning may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of **Chapter 8.9, Page 171** financial assurance until it is adequate to affect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular

payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post deer farm or hunting ranch land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.

- (4) **FORM AND MANAGEMENT** Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to Douglas County and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of Douglas County Zoning, a blend of different options for financial assurance including a lien on the property on which the deer farm or hunting ranch occurs or a combination of financial assurance methods.
- (5) **MULTIPLE PROJECTS** Any operator who obtains a permit from Douglas County Zoning for 2 or more deer farms or hunting ranches may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each farm or ranch site, no financial assurances previously posted on farm or ranch sites shall be released until the new financial assurance has been accepted by Douglas County Zoning.
- (6) **MULTIPLE JURISDICTIONS** In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same deer farm or hunting ranch.