

ENVIRONMENT AND LAND USE COMMITTEE
Department of Land Management

SPECIAL MEETING MINUTES
July 18th, 2011 4:00 PM
TREMPLO ROOM

Chairman Brandt called the meeting to order at 4:01 PM.

Committee members present: George Brandt, Tom Bice, Mark A. Smick, Dave Quarne, Roland Thompson, Hensel Vold, Michael E. Nelson, and Jeff Dregney.

Staff/Advisors present: Kevin Lien and Virginette Gamroth.

Others present – Ronald Tuschner-Town of Arcadia Chairman, David Suchla, Rodney Severson, Dick Miller, Wally Geske, David Appleyard and other members of the public.

Chairman Brandt stated that the Open Meeting Law requirements had been complied with through notifications and posting.

Approval of Agenda – Vold made a motion to approve the agenda as presented, Thompson seconded, motion carried unopposed.

Brandt noted the corrections to the June 8th meeting minutes were in the Committee's folders.

Non-Metallic Mining Hours of Operation – Brandt reminded the Committee that the mining hours of operation are part of the Standard Conditions in the Comprehensive Zoning Ordinance which had a revision to it in 2006. All applicants receive a copy of these conditions and have agreed to operate under those hours. Brandt called on Bice, who had requested the meeting, to inform Committee members of his concerns and what he would like to discuss. Bice stated, in his meeting with Lien the other day, Bice had a misunderstanding. Bice had thought at this meeting that the hours for Winn Bay specifically, could be adjusted. Bice stated Jamie Punt from Winn Bay had called him, approximately one month ago, and explained very calmly and politely a situation where, for lots of reasons, but one of them being, since the process took so long to go through, in giving them the elevation adjustment, that they weren't able to get started on time. So Punt had asked if there was any way that Winn Bay could work extended hours. Bice told Punt he would do what he could to make that happen. Bice thought his request was reasonable, it is private property, they are in business, they came into Trempealeau County and invested an incredible amount of money, doing things as much as possible well within the rules, so Bice felt we as a governing body of Trempealeau County owe to them, to work with them in order to be sure, first of all- that they can get up and running and second – that they can fill the contracts that they have, third- that they can get enough material set aside so that they can process through the winter in the \$20 million plant that they built. Bice thought he and a number of other members on the Committee expressed an understanding that they would like to see this happen. Bice stated, one way or another, we need to do whatever it takes to make this happen. Bice was hoping by putting this on an agenda he could make that happen. Bice had called Brandt and asked if this could be put on an agenda (keep in mind that it should have been on the agenda for the meeting before the last meeting which Brandt specifically took it off the agenda) and if that had happened, Bice stated we would have been in a situation to help Winn Bay whereas now we are hindering them in a big way. Bice stated we are supposed to work with people in the County and not against them. It was Bice's hope that Winn Bay could be given just two extra hours per day to help them meet the obligations that they set and that are financially very important to them. That is why Bice called this meeting and he would like to do whatever we can. Bice stated to Lien, that whatever we have to do or can do, Bice wants to convene whatever we have to, to give Winn Bay the ability. Bice personally thinks that since we are a unit of government, we should have the ability to say, that we certainly understand that this is a serious situation, and the Committee

should have the authority to be able to say, yes, Winn Bay can expand two hours a day. It is not much to ask, Bice added that Winn Bay is pretty much isolated, on land that they own, by sort of a natural barrier. It will affect very few people and there is not going to be any trucking involved. Bice stated he didn't see why this couldn't be done and that we owed it to the community, to business and people to make this happen.

Lien explained the process. Lien stated because this is a County Ordinance, this Committee could make recommended changes to the Ordinance; it would then have to go before full County Board. If approved by full County Board, then once it has been published, it becomes adopted. Lien added the last revision was adopted June, 2007. Lien further explained that for a change to happen, it would have to come out of this Standing Committee which has jurisdiction over this Ordinance, and then the recommended changes would go to full County Board, which would be a public hearing. After full County Board would vote on it and pass any changes, it would be published in the paper and after that has happened, then it is enforceable. Lien continued that after that, because Winn Bay Sand has a Conditional Use Permit (CUP) issued with a set of conditions applied to it, Winn Bay would need to make a formal request back to this Committee to have the CUP reflect any changes that took place in the Ordinance. Lien stated that is the legal way that changes to an Ordinance have to be made. Anyone that currently has a CUP is bound by those conditions. If they want to seek different conditions they have to make a formal request back to this Committee, which is an additional public hearing and at that hearing the Committee can amend the conditions.

Smick commented there are more issues than just the sand mining as he had heard that we had tied the hands of the agricultural community this past spring, especially with the spring being so wet, and the lime quarries didn't have adequate stockpiles. Smick felt the Committee needed to address this issue as well.

Thompson asked if there weren't emergency situations in the Ordinance where the hours of operation can be passed over for a period of time. Brandt responded, yes, and those are defined in the Ordinance as well. Lien read from the Ordinance, "unless the owner/operator of a non-metallic mine site notifies the Zoning Administrator within forty-eight hours of its operation on Sundays, Holidays or outside of stated hours of operation when a natural disaster has occurred necessitating the need for non-metallic mining materials for emergency repair work. On the second offense or abuse of this natural disaster repair clause for operations on Sundays, Holidays or outside of stated hours of operation, the Conditional Use Permit may be rescinded by the Zoning Administrator if the natural disasters have not occurred as stated in the notice to the county". Lien stated this is the one exemption from the hours in the Ordinance and Lien believed a natural disaster was defined as determined by the State of Wisconsin. Bice commented that he is stunned that the unit of government that controls us does not have the ability to help rectify a problem like this. It is simply outrageous in Bice's opinion, so something needs to be written into the Ordinance that gives, probably this Committee, the ability to override or put in place a 90 day moratorium or something like that. Bice stated he was very disappointed that we can't make this happen. Government has got to get out of the way of a law abiding private property owner trying to run a business within all the constraints of government. With one exception, hours of operation, they simply don't have the time to get things accomplished. Bice continued that government is going to crush this business if we can't do something quickly and it is simply outrageous.

Lien stated, speaking on behalf of Thompson and himself, that in the early '90's, they were two people that were part of the Non-metallic Mining Advisory Committee and that Committee was made up of elected officials, mining company representatives, lawyers, and public citizens. There were a series of long meetings that developed that Ordinance, it wasn't Lien or Thompson's pen, it was a group of people. At that time, there was a trade off/compromise between the mining industry (not just sand mining, but mining industry in general) and the citizens that live here regarding the hours of operation. There was a company that had issues with the stated "daylight" hours and no Sundays and Holidays, so they made a formal request that the hours of operation be revisited. In 2007, the Advisory Committee was brought back in and they stated the specific hours of operation that are in the Ordinance today which are 6:00 AM – 8:00 PM during Daylight Savings Time and 6:00 AM to 6:00 PM during Standard Time, Monday through Friday. Saturday hours of operation are limited to 7:00 AM to 3:00 PM, no Sundays and Holidays. Those hours of operation

were addressed in a public hearing and went to full County Board for approval. Lien understands that we are in changing times and suggested to the Committee to consider bringing in the Advisory Committee to revisit the Ordinance. Lien added time seems to be an issue, and Lien had suggested this a couple of months ago, but that wasn't the Committee's wish. Brandt commented that it wasn't necessarily a compromise, but what he has experienced, as being a board member since 1976, is how to deal with land use conflicts that exist within the County. Brandt added non-metallic mining has not been the only issue, but also chicken coops, large animal confinement operations and rural development and how that affects agriculture. Part of what we've been trying to do, at least as long as Brandt has been on the County Board, is to allow people (who choose to live here (emphasizing "choose", because there is a perceived quality of life/way of being) to gain value from property that they own. Brandt felt what they were looking for is a way to limit land use conflict, and to give each group an opportunity to do what it is they come here to do. Brandt pointed out to the Committee that what Bice was asking for was a change in hours specifically for Winn Bay and the conversation has gone to sort of a general change in hours. Brandt thought that if the Committee goes down the road of changing hours for a specific operation, especially when everyone who comes to the table requesting a conditional use permit, it is very clear (they are asked specifically, can they live with the hours of operation and they are made aware of what the hours of operation are, they all say "yes") any requests after that would seem disingenuous, especially if they have agreed to do it up front. Brandt acknowledged Bice's point and added if the Committee decides that they want to revisit this issue, there has to be consistency. Brandt received two phone calls today, one from Mathy Construction and one from SEH Engineering and both parties wanted to know what this meeting was about. If one recalls what the DOT representative said, he stated that when people come to the county or any municipality to do business, they want to know what the rules are and know that the rules are being complied consistently to everyone. Brandt added if we were to have the power to change hours for Winn Bay, what does that say to everyone else who comes here, especially those that have more restrictive hours. Bice responded this is a very unique application. Winn Bay had applied and done all their work over a year ago now. Government took too long to give them a permit for their elevation thing, which was very important because it was going to reflect how they designed their system. (Brandt clarified Bice was talking about the height of the processing facility building which for a non-agricultural application was limited to 35 feet and therefore a variance was required). All Bice was asking was that government work with Winn Bay a little as this is very simple and something needs to be done. Bice asked Lien how long the process would take. Lien responded it would take as long as the Committee wants it to take. Lien stated the Committee could take recommendations, make changes, publicize it and have it on the August agenda for County Board – if the Committee wanted to amend the Ordinance. Vold and Brandt both stated a public hearing would need to be held which could be at the next meeting. Lien added it could be on the next E & LU meeting agenda and then it would go to County Board right after that. Bice added, it still may not allow Winn Bay to have enough material set aside to operate through the winter. Bice inquired if anyone on the Committee was willing to make a motion that the Ordinance be opened and discuss those issues. Upon Brandt's correction of Bice, as being Chair of the Committee, Brandt inquired if anyone was willing to make a motion to open up the non-metallic mining - hours of operation section of the Ordinance specifically. Thompson made that motion, Smick seconded. Brandt reiterated that discussion can now take place, specifically regarding if the Committee wants to open up the Ordinance, specifically to deal with hours of operation. Bice asked Lien if that was going to be enough to resolve the issues that Bice has talked about. As far as hours of operation, Lien believed that Bice's issues were related to that, so he believed that it would be enough. Lien mentioned one complaint he has heard over the last several months is the 10 foot setback for mining from a property line as people are complaining that is not adequate. Lien stated if this Ordinance is revisited he felt that issue needs to be addressed. Lien stated the Committee still has the right to place conditions and in some cases, they have set a 50 foot setback condition. Brandt stated that is not on the agenda specifically. Lien commented if we are talking about opening up the Ordinance at the next meeting, then the "whole" Ordinance would be opened. Brandt explained he was trying to limit the discussion of the Ordinance to hours of operation, but felt that the Committee is seeing this as opening up the entire Ordinance. Thompson stated when these times were set, at the hearing, the Committee really fought hard to get these times because the public wanted mining to be done at times such as 4:00 and 5:00 and no Saturdays, but something should have been put in at that time for case

by case or emergency where the Committee could have had a little control over each operation. Bice commented that is what he wants to do. Thompson mentioned at that time all the County had was lime quarries or shale pits or somebody wanted to dig sand out of a bank for a local project. Smick hoped that the motion made would be inclusive for everything (sand mines, lime quarries, etc.) and not just Winn Bay. Smick also voiced disappointment in the language which stated the State would determine what a natural disaster is for our County. Thompson amended the motion to include Smick's suggestions. Quarne felt the mining hours should be extended two hours for all mines as he felt it was for the health, safety and welfare of the employees of the mines. Quarne added these guys are working fourteen hours a day which is too much. If there would be sixteen hours a day then there could be two shifts of eight hours. Brandt commented it is not the Committee's job to do labor law. Quarne responded the Committee has always considered health, safety and welfare. Brandt responded that is for the citizens of Trempealeau County. If Winn Bay has a problem, we don't owe it to them to fix their problem, as the Committee's responsibility is for the health, safety and residents of Trempealeau County. There are a 100 people who live within a half mile of that mine whose health, safety and welfare the Committee is responsible for and once again some very wise people, over the years, have spent many hours developing the very Ordinances which the Committee is charged with enforcing. It should be something that is respected. Vold commented that one might find that when the public hearing is held, the public may want to cut the hours. Vold felt 90% of the people that will be at the public hearing will want less hours so the purpose may be defeated. Thompson and Vold agreed that is what happened the last time. Brandt asked Lien if he had received any feedback from the public in the last couple of days. Lien responded he had a discussion with Bice on the issue. Also, in public hearings, hours of operation has been brought up repeatedly and the Committee has the ability to be more restrictive, not less and in the past, the Committee has set certain provisions for hauling during school bus activity and for staging. Lien added that the mine that is next to his residence has stricter hours than the Ordinance because the neighbors had come forward and wanted those conditions. Lien stated, to date, he has not received a formal request for extended mining hours. Brandt wanted to point that out and the fact that Trempealeau County is a zoned county and as such the Committee not only has the responsibility but the ability to set conditions for these sorts of permits/operations. Bice stated, his goal, if the rest of the Committee wouldn't mind, would be to simply give this Committee the opportunity/ability to look at a situation and then make temporary adjustments to it, that is all Bice wants. When Bice had a conversation with Brandt, he stated that if the Committee could just give them expanded hours until the ground freezes to let them catch up and then make them live by the rules that are in the Ordinance that they agreed to, but we have unusual circumstances. Bice wants Winn Bay to have the ability to survive as a business and Bice thinks we owe it to them. Bice continued that people have spoken and we do not want unlimited hours of operation and Bice didn't think the Ordinance needed to be opened, we just need the ability, that if in a situation like this, the Committee could just look at the information that has been presented and say "yes" we should make an adjustment. For example, the situation with Winn Bay is quite unique; they are quite isolated from the public, only a few people would notice the situation. Bice added we have some troublesome people out there that don't like mines and they continue to complain. Brandt pointed out that Bice should be very careful because now Bice just stated that he didn't want to open up the whole Ordinance and if what Bice wants is to be able to determine, on a case by case basis what the hours of operation are going to be, that means we have to open up the Ordinance, we have to give the public the ability to speak and Vold has made that point. Brandt stated folks live here not because they want to live next to an extractive industry or an extractive mineral operation; they live here mostly for the peace, quiet and the rural character, etc. They are willing to live next to an extractive operation if they know that the extractive operation is playing by the rules. The residents in Trempealeau County are, by in large, really reasonable when it comes to allowing their neighbors to do something. Bice commented that 100% of the people in this room know exactly where he is coming from and now Brandt understands, so that is Bice's only goal here. As far as opening the whole Ordinance, if there are Committee members that want to see that happen, then Bice can live with that, but Bice's simple goal was to untie the hands of business that is trying to survive in Trempealeau County, at least through this fall. Bice felt that was extremely important and he thought we owed it to them. Smick stated he had made a motion and how much of the Ordinance is actually changed remains to be seen, but it seems we are at least enabling ourselves to look at the whole thing. When the public hearing is held and all the pros and cons are

presented, then a twelve hour discussion can be held. Smick therefore called for a question on the motion. Bice inquired, if the Committee would convene the original committee that put this Ordinance together, does the Committee sit around and discuss this, or do they advise the Committee or what happens. Brandt explained, based on past experience that the Advisory Committee meets separately from the E & LU Committee, takes public input as well as input from the different advisory members. They then come to some kind of recommendation which then is forwarded on to this Committee. The E & LU Committee then holds a public hearing with the information from that Advisory Committee available. Lien reiterated they make a recommendation to the E & LU Committee. Brandt stated, if time is what this is about, then an Advisory Committee would take a considerable amount of time. Discussion followed on the Advisory Committee. Brandt called for a roll call vote and clarified this vote was to open up the Ordinance to deal with other issues in the Ordinance as well as hours of operation. The following was the vote to open up the Non-metallic mining ordinance for possible revision; Smick-yes, Vold – no, Dregney-no, Bice-yes, Brandt-no, Nelson-yes, Quarne-yes, Thompson-yes. Motion passed on a 5 -3 roll call vote. Brandt stated this process is going to start fairly soon so Brandt would like some discussion on how the Committee will go about that. Brandt asked if the Committee was going to hold a public hearing or call back the Advisory Committee. Bice suggested that the Ordinance in general is fine as there are two things we know that have to be looked at. Bice suggested that the Committee deal with those issues. Bice stated we can have a public meeting and let people have some input and Bice would like to have this as soon as possible within reason. Discussion followed on the length of time involved with calling the committee back and possible meeting dates. Smick commented once the public hearing is held that will give the Committee some idea of how much work needs to be done and perhaps the Advisory Committee will have to be brought back. Brandt stated he likes to open up the meetings as much as possible and obviously there will be a lot of public input when we have the public hearing. Brandt encouraged the public in attendance to come back at that time and give their opinions. Thompson inquired since the Committee is going to drag this out and there are some people “on the string” already, who’s to say that three or four townships aren’t going to withdraw from County zoning and “hook up” with the city (like Arcadia) and then County rules are completely gone. Thompson continued there are a bunch of people in the Town of Arcadia that are not happy with what is going on, Dodge is coming up next and Town of Preston. Thompson stated the Towns of Ettrick and Pigeon are going to have mines and somewhere along the line it is going click that “we don’t like this and we’re going to get out of this County zoning”. They will go to individual township zoning and all these rules are finished, or they are going to annex to the City of Arcadia. Thompson added Sokup is really close now and with the big well he could work really well with them and then the township has lost the revenue and the whole plan is gone. Thompson could see this happening and there is talk and the whole town up to Newcomb Valley could get to be City of Arcadia. Ron Tuschner stated Thompson just spoke about what was in Tuschner’s mind. Tuschner stated it is possible, what Thompson stated, and the Town of Arcadia revenue source, from that farmland plus the mining is going to be substantial and the Town of Arcadia board is going to have to answer to their constituency as to why taxes need to be raised, hold a public meeting to get above the limit (which is required by law) just to keep a status quo. Tuschner added now it becomes more cost effective for the Town of Arcadia to have their own zoning. The cost benefit of going with the County would be taken away. Brandt stated he wasn’t following what Tuschner was saying. Tuschner stated it is cost effective for Town of Arcadia to stay with the County because they don’t have a zoning committee, they don’t have to pay per diems, etc, but would it be expensive for them to go with their own township zoning or City zoning. Tuschner added there are a lot of things online that can be taken right off of it. It now becomes more cost effective for the Town of Arcadia to do it on their own. Brandt inquired, because the Town of Arcadia doesn’t have to call CUP hearings and pay per diems for those hearings, those are the factors that Tuschner used whether to stay in county zoning. Tuschner responded he didn’t say it was, it makes it more cost effective for them to do that. Tuschner added then there is a direct link from the citizens of the Town of Arcadia to come to the town board and not have to jump through another hoop and that time frame of decision has been cut down substantially and that is why Tuschner understands Bice’s point. Tuschner stated, we don’t want them to go somewhere else, we want them to be in a good, safe operating environment, we want to bring it in, we want to keep it and we want more jobs as that is what keeps the tax rates down. Thompson commented that we already drove part of the Town of Trempealeau into the Village. Brandt

commented, by enforcing state law. Thompson inquired why the County has to do something that the Village doesn't have to. Brandt responded, it does have to but it chooses not to at its own risk, so that is also something that should be kept in mind. Brandt added, the town is going to have to determine whether it is in the best interests of their citizens to continue county zoning and reminded this has been the case since 1972 and Brandt is fairly sure that anyone who wanted to come and mine in the County came to the town's door first. Brandt stated it isn't like we're driving people away because they want to come here; they want to come here because the stuff is here. Brandt reminded everyone that consistency in enforcement, knowing what the rules are and everyone playing by those rules is going to be better not only for the operators, but for the citizens of the County. Thompson commented, that right now there are enough citizens in the Town of Arcadia, that own land involved with this mining, that they could swing the vote. If the citizens decide, at their town board meeting to move away from county zoning, then that is the way it is going to be as now there are quite a few that could influence the whole township or the City and that is a lot of revenue for the town to lose and the City to gain. Discussion followed on the revenue that the town would lose. Brandt stated that Nick Gamroth, Real Property Lister, has been working with the Dept. of Revenue to find out how this land is assessed. Brandt stated all the information that Gamroth is getting back from the Dept. of Revenue, at this point, is stating that land stays in the use value assessment, it is still considered agricultural, it is not a huge amount of tax resource, and it doesn't convert to some other higher rate of taxation. Thompson added just take the land for what it is worth right now and that would be every farm and some of them are a lot bigger than what Sokup owns, so we are talking millions of dollars of assessed value that the Town would lose. Smick expressed frustration with the length of time with the process and Smick suggested Corporation Counsel look into the fact whether it is a result of State Statute or County Board rules. If it is a case of County Board rules, Smick is of the understanding that the County Board rules can be expended and things expedited. Smick wants to hear from Corporation Counsel and see the print which dictates these rules. Brandt recalled the previous Monday, when a meeting was held with three Committees and those committee's made a determination to hire an Environmental Specialist whose major focus would be on conditional use permits for mining operations. It was the will of those committees to make the ability of the staff (as much as possible) to advise the Committee, with as much information as possible) that this is a big deal and not a free ride. The Committee will look at every one of them with as much scrutiny as the one before and taking our response seriously. The Committee has a responsibility to enforce, not only the Ordinances, but the State Statutes that require, specifically, the reclamation of these sites. Brandt added so instead of looking at us as the problem, we have to look at it as, we are the equally, responsible party. Smick responded that he understood and remembered everything Brandt was saying, but Smick felt that this is a bigger, overriding issue than hiring a consultant and voiced that he would like Corporation Counsel to present something to the Committee in writing. Brandt called for a decision as to how this process is going to be done. Vold commented that he voted no because he believed the process is going to take too long. Vold agreed that two extra hours probably isn't going to make a big difference, but it is the process that it has to go through in order to get that. After discussion it was decided that a separate meeting would be held on Wednesday, August 17th. Brandt commented that the Committee may be making it impossible to issue a Conditional Use Permits because if the Ordinance is in the process of being changed, it would be unfair to issue any permits. Vold felt Corporation Counsel should be consulted because he thought those permits could be issued retroactive. Bice reiterated that his only goal is to give this Committee the discretion to make emergency adjustments to powers/conditions, etc. We have to give this Committee the ability to make decisions so that things aren't being dragged out like they are right now – we are abusing the public. Thompson inquired if that could be done without opening up the Ordinance. Brandt stated we have already agreed that the Ordinance would be opened up. After discussion it was decided that a regular E & LU Committee would be held on August 10th to reopen the CUP hearings from the previous month and a special E & LU Committee meeting to open up the Non-metallic Mining Ordinance would be held on August 17th.

Conditional Use Permit Application Acceptance & Review Process – Lien explained that part of the reason the process and meetings are currently taking so long is that, in the past, the DLM has allowed someone to come in and fill out the public hearing request, pay the fee, and that would get them on the next

meeting agenda, with the caveat that they have until next months meeting to get the information to the DLM. Sometimes the information comes to the DLM office the day of the meeting , the day before or a few days before the meeting, so no one has time to review it or give the Committee a good recommendation. Lien voiced that probably nowhere in the State could someone fill out an application and the same day move to step two, as everything needs to be complete. Lien stated, in example, the Livestock Siting application is completed by working with DLM staff to fill out the application and all information is complete. Once staff has verified that all conditions are met and the application complete, then the application is presented at public hearing before the Committee. Lien felt this change would reduce the length of meetings from seven hours to probably three because then everything has been reviewed and all conditions have been met other than specific conditions the Committee might address or those that arise from public input. The application would be certified complete before it comes to the Committee. Lien added that he is going to exercise language that is already in the Ordinance, which allows DLM staff to exercise outside, third party sources for review, environmental conditions or whatever may apply and the fees associated with that would be paid by the applicant. Lien reiterated that has been in the Ordinance, it just hasn't been done very often. Lien added it was used for reclamation bonding – a plan would be sent to Jackson County; they would review it and make a bond recommendation. Lien stated it will make it easier for the applicant and the Committee. Everyone will know what is required of them and when it is presented to the Committee, the application will be complete. Smick commented it doesn't seem like a completed application is a requirement right now. Lien responded Smick was correct as the DLM has been very lenient in the past as they would just accept the signed application only and a list of adjoining property owners, collect the fee and tell the applicant to get the letter from the town and the other information within the next 30 days, but that isn't working. Smick made a motion to accept staff's recommendation to have the applicant work with staff to complete the conditional use permit application and have it completed before it comes to the public hearing and copies provided to each Committee member prior to the public hearing, Vold seconded. Vold felt the Committee should have the information too so that they have some kind of idea of what is happening. Lien stated he was asked to get information regarding the cost of a third party review associated with these permit applications and also a timeline. Lien contacted four engineering firms and two responded to Lien (within the timeframe available). The two firms that responded stated a one week turnaround time and gave an estimated (based on a 200 page plan with more or less pages) cost of approximately \$1,500. Stephen Doerr commented that will shut down the farmer who wants to take a little sand out of their hill. Brandt called for any more discussion on the review process. There being none, the motion was passed with no one in opposition.

Conditional Use Permit Mining Application Fee Schedule - Lien provided the Committee with a handout of current mining application fees and proposed fees (A copy of this report is on file in the Department of Land Management). Lien stated that in talking to other engineers, they had stated that the \$225 that DLM currently charges for a public hearing doesn't even cover the cost of committee per diem much less staff time to review the plans. Lien reviewed the fee schedule with the Committee.

		<u>PH</u>	<u>CU</u>
Conditional Use Application (0 – 10 acres)	\$ 400	\$200	\$200
Conditional Use Application (11– 50 acres)	\$ 800	\$200	\$600
Conditional Use Application (51 – 100 acres)	\$ 1,200	\$200	\$1,000
Conditional Use Application (101 – 150 acres)	\$ 1,600	\$200	\$1,400
Conditional Use Application (151 + acres)	\$ 2,000	\$200	\$1,800
 All Processing Plants and Rail Load Out Applications ...	 \$ 2,000	 \$200	 \$1,800

Average review time is 60 days. Expedited review time is 30 days with fees doubled.

Lien stated DLM is bound by State Statute, Class II notification that the public hearing notices must be given two consecutive week ten days prior to the hearing taking place. Depending upon when someone applies the

expedited review might be difficult to get done, but it gives the applicant that option. Brandt inquired if these numbers reflect what Lien believes to be an engineers' review fee? Based on the two estimates that Lien has, because DLM hasn't utilized anyone recently in setting reclamation bond amounts, Lien wasn't sure but he did explain in detail what it was he was looking for such as environmental issues that the Committee addresses, not structural steel of the wash plant or how the rail load out is designed. Lien felt if the Committee wanted a review of the entire plan that would cost approximately \$5,000. Lien didn't feel it is of neither this Committees' concern nor Liens' how structural things/engineering, etc. relates to the project. Lien felt we need to be concerned with environmental issues and felt that is what the review service should cover. Lien stated this is open for discussion as Lien's opinion is based on what he heard from the engineering firms. Brandt called for a motion from the floor in order to continue discussion. Bice made a motion to approve the fee schedule as presented, Dregney seconded. Smick stated that if we use a contracted engineer and the application is approximately 200 pages it seemed to him that the engineering charge should be prorated perhaps based on number of pages also. Bice inquired what the 1-10 acre application with a \$400.00 fee would involve – would that include a farmer who wants to move soil on his land. Lien explained, typically, prior to this year, the majority of the mines that came before the Committee were mostly active acres under 10 acres for shale, sand, limestone, etc. and those were pretty minimal plans. With the onset of Winn Bay Sand, was the first time that the DLM had every reviewed anything of that magnitude with a lot of detailed information. These smaller sites are probably going to be little borrowing pits. Bice inquired, that if someone wants to open a small 15 acre pit it costs \$225 and what does someone have to do. Lien answered, to date the fee is \$225. Lien explained the hearing has to be publicized in the paper for two consecutive weeks, ten days prior to the hearing (which is mandated by State Statute), staff reviews the plan, and \$25 is for the CUP permit itself. Typically standard conditions apply with any additional conditions being typed up and added to the back of the application and then that information is tracked. Bice asked if someone on their little private five acre mining site is still covered by all these rules. Lien stated if someone wants to have a borrow pit on their own property for their own use they are exempt, but the minute that material leaves your site – then it is considered mining. Bice inquired how much of this is coming out of the taxpayer's pocket. Lien asked Bice how deep he wanted to get into that discussion, because all the Committee member sitting in this meeting and collecting a per diem are on the taxpayer's "dime", so in that case, \$2,000 probably still isn't enough. Lien added this same discussion took place in 2005 when the Uniform Dwelling Code program was being established. The State mandated that it had to be done, but the County Board didn't want everyone in the County to have to pay for it, so it was decided that the fee would be on a "use" basis, therefore all fees are paid by the applicant/the person pulling the permit. Bice commented, it seems like a lot, but if one looks at the big picture, those people applying are taxpayers too, so it works both ways, so Bice could live with those figures. Lien added if the Committee decides they want to change the schedule, once it has been implemented they can do so, it doesn't have to go to County Board. The Committee has the ability, just by putting on the meeting agenda, to change the fee schedule. Motion to approve the staff recommended fee schedule for non-metallic mining passed with no opposition.

Elk Creek Watershed – Brandt stated Dave Suchla had requested that this item be put on the agenda. Brandt reminded the Committee that one of their responsibilities is to water quality and soil erosion. The Elk Creek Watershed was a project that closed out in approximately 2004. Brandt read aloud the conclusion of a water testing report done by Amy Wallner, for the Health Department, back in September 2003, "that data collected from Bugle Lake, Elk Creek and Borse Valley Creek strongly verifies that these bodies of water are highly contaminated by fecal coli form bacteria and fecal strep bacteria. Brandt added this is eight years ago but that is still the issue today and the results prove much more than this, they also show that whatever improvements were made during the 70's to clean up the water had little long term impact and this water should once again be placed on a high priority project list. Suchla stated he had wanted the Committee to come over and see the place for themselves, because it really smells, it is not Elk Creek, it is shit creek. Suchla read from the minutes of a previous LCC meeting," the results of the water sampling indicated exceptionally high levels of fecal coli form up to 139 times the safe body contact level". Suchla wasn't sure if that was a misprint or if that is 139 times drinkable level and if that is really true, then what is supposed to be in contact with one's skin and if that is 139 times than it has to be a 1000 times drinkable. Suchla

questioned the Committee as to what happened with all the money that was spent – did we get any cows out of the creek. Brandt replied that the Committee does not have that information in front of them – however there is someone in the audience that was inadvertently involved in that project. Suchla stated that was kind of a pointed question, putting blame backward and he wants to look forward and asked how we get the cows out of the creek. Brandt called on David Appleyard for input. Appleyard suggested that if Suchla wanted to go into the Department of Land Management files there must be 100 copies of the Elk Creek Watershed project summary which identifies everything that was done, practices that were installed on the properties, which properties were involved, how much money was spent, what the reduction was of pollutants, it's all just right there. Suchla again asked how we get the cows out of the creek. Nelson commented there aren't that many farmers left. Suchla responded there aren't a lot of farmers, but the farmers that are there have a lot more cows. Nelson stated there are not a lot of cows in the creeks. Vold stated he was on the Health Committee when Wallner's report was done and most of that contamination was from failed septic systems or septic tanks that weren't even in existence. Suchla stated the report goes on to talk about fecal strep which is 7.5 times, but the 139 times was from the animals and the 7.5 times was for humans. Vold added he knew there were a couple of septic systems that were found that went straight into the creek. Brandt called on Rodney Severson who represents that district on County Board for input. Severson suggested going back and re-testing to try to isolate the area. Suchla responded that might not do any good as the area should be clean as the cows are gone. Lien, in talking about water testing, stated the Health Department tests every lake in the County, every summer, to allow swimming, etc. Lien suggested having Nicole Hunger from the Health Department come to the next meeting to give a brief summary of what her test results have been. Lien knows that the Elk Creek is not the only water that has been "shut down" for hazards as there are multiple lakes and streams that have issues in the County. Lien explained that years ago, the DLM had sent letters to every landowner in the Elk Creek Watershed asking them to come in for assistance and DLM would provide engineering, or whatever is needed and the DLM didn't receive one response back. The programs have always been volunteer and not regulatory from day one. Just because there are cattle in the stream, one day, doesn't mean that these cattle have unlimited access as there can be limited grazing plans which allows access during certain times for watering and still meet the state requirements. Lien stated the farmer that Suchla was referring to, at one time had unlimited access to the Elk Creek, and DLM assisted in putting in a crossing access, so there still is access but it is not unlimited. Lien mentioned there are pros and cons to having cattle in the stream. If cattle are not allowed near the stream, then there are noxious things that grow there and box elder trees that may grow and tip in and cause more erosion whereas a good limited grazing plan will keep the weeds, etc. down and some people believe that the grasses there would make an even more sustainable stream bank. Lien added that just because there are animals in the creek, so many hours a day, doesn't mean that is the pollutant source. Suchla questioned that 139.5 times doesn't come from an animal. Lien wasn't telling Suchla that, he was just saying that it probably doesn't come from an individual farm or perhaps today those tests would be the same as they were back then – even with the cattle gone. Brandt asked Lien to talk about what it would take to do studies/analysis on the Elk Creek watershed. Lien responded that he has had staff working with Dennis Frame-Discovery Farms to try and get the Elk Creek reclassified as impaired water. At Suchla's request, Lien defined "impaired water" as water above a certain threshold for pollutant, so it is more impaired so it "ranks" higher. The higher water ranks in the state classification, the more likely an area is to receive TRM (Targeted Runoff Management) money. DLM does and has applied for TRM grant money for individual landowners in the Elk Creek but because that is not considered impaired water the applications don't rank as high as an area with impaired water. Lien commented DLM did get some money so a barnyard was done on the lower farm site of Dejno's. Lien wasn't sure where that reclassification status was at right now, but if the creek were reclassified, the people that would apply would probably rank higher and some money could be forthcoming. Suchla stated he is just looking for a solution as where the creek dumps into the river, it really smells. Severson noted that in the spring, below the dam, there is foam approximately 15 - 20 feet high and everyone says it is a chemical reaction but Severson thinks otherwise. Suchla mentioned there is another issue that he would like Lien to address. Suchla received a complaint from someone living near Baker's Slough, that when it rains and the runoff water comes in – it comes in orange. Suchla verified that the location was in the City. Lien replied he has no zoning authority in the City, however if it is coming from a rural source within the town, then Lien

could take a look at it. Brandt asked Lien to explain to the Committee what authority he has and what the Committee has to make people do things. Lien displayed the book of Ordinances and stated he was not responsible for “penning” any one of those Ordinances. They are a result of Committee’s and public hearings and private citizens that have developed every Ordinance, however, Lien has the job of enforcing those Ordinances. Lien gets a bad rap for that sometimes, but if everyone liked him, he feels he wouldn’t be doing his job. Adoption of any Ordinance requires public input and full County Board approval. Historically, this Committee has been really good about not having Lien or the Committee draft an Ordinance. A citizen Advisory Committee is formed, and made up from a very wide gamut of people. These Advisory Committee people didn’t always see “eye to eye” because there were people who had to live in this County versus people who wanted to do a specific activity. The Advisory Committee then makes a recommendation to the E & LU Committee, who then forwards their decision on to the full County Board. Brandt asked Lien, if there is a hazardous material contaminating surface water, does Lien have the ability to shut them down. Lien stated the Department has citation authority. Staff cannot go on someone’s private property, shut a valve off, plug their septic, etc., but the Department can issue a citation for every day that the violation exists. That is how compliance is achieved is through citations. Lien stated the Department does have “trespass” authority. If the Department receives a complaint from someone, staff does have the authority to go onto that property to see if the complaint is valid. Smick felt the Elk Creek was an issue that the Committee/Department needed to keep an eye on. Brandt commented to Suchla that a lot of the government programs for this type of need have been defunded. The State has decided to approach surface water quality from a whole different angle. NRCS deals with it in a whole different way than the State and local municipalities do. We’re also talking about lack of staff. Brandt asked David Appleyard how many people were on staff when the watershed programs were going on. Appleyard responded that twenty seven people were on staff when the most watersheds were active. Brandt stated we used to have twenty seven people working on land conservation in this County and now we’re down to eight and the money has been severely reduced. Suchla responded money isn’t always the answer as a lot of money was spent and the issue still didn’t get cleaned up. Brandt responded the correct approach is the answer and that approach hasn’t been found yet. Suchla commented if there is a farmer that lives up on a hill and he doesn’t have a creek, he has to provide the water for his animals. So this farmer that lives by the creek can provide the water for his animals so he doesn’t have to have the animals in the creek. Quarne commented that the farmer also has to put up with the creek. Suchla acknowledged that but added that water doesn’t stop at the farmer’s property line it goes down to other property too. Discussion followed. Brandt stated the Committee really can’t take any action because at this point there is nothing the Committee can do. Brandt asked Lien to explain the Wisconsin Fund and how it works. Bice interjected to ask if violators were found with septic sewage running into the Elk Creek. Lien responded, that at that time, Laurie Clements from the Health Dept. had informed (Reed McRoberts - Zoning and Sanitation staff person at that time) that there were high levels of bacteria in the Elk Creek. McRoberts and Lien, on two different occasions, in the fall when things were cool and they would have expected to see some kind of steam or some conduit into the stream, canoed from the lake up to Dejno’s bridge three or four different times and they had walked the stream bank looking for a pipe or something, but they couldn’t find anything. Lien added that doesn’t mean that it doesn’t exist. Lien stated if one could find it that is a direct violation of state code. If someone’s septic is discharging to waters of the state or even to the surface, those septic are failed and the DLM can issue citations and make the landowner repair it. Lien commented that there was one septic that was replaced near or maybe even in the City, but it was served by a private septic, so the County had jurisdiction. Lien wasn’t sure where that septic outlet because one was never found. Lien explained that the septic doesn’t have to discharge directly into the lake. If the pipe is down into where it is saturating groundwater and the groundwater is coming into the lake, one would get the same kind of bacterial readings. Lien explained, if someone meets the income requirements, they can utilize the Wisconsin Fund program to replace their failing septic, otherwise the only authority the DLM has is to issue citations until the septic is replaced. Bice commented he has no problem with any of that as apparently, if the DLM suspects something, they have the legal right to inspect it. Bice has heard that sometimes colored tablets are flushed down the septic and then the creek is observed for any color. Bice stated he and Lien have been to a farm where there is a severe manure violation discharge into the creek and the farmer was told he couldn’t do that. Bice asked for Lien’s opinion on a solution, when there is a farm that

runs stuff off into a creek (and in a storm it is flooding off) can't some type of berm be built so that this barnyard runoff can't go into the creek. Lien stated, he wasn't the technician on that project, but it had been done in Tamarack in conjunction with a concrete barnyard system. A diversion or berm was put up along the streamside to keep sediment that would come off the yard out of the stream. Lien commented it is very hard to build a zero discharge system. The project was 70/30 cost shared, and it was site specific to that operation. Lien stated that the other operation that Bice referred to, probably had runoff today, as there was a significant rain event, and the potential is that the system overtopped again. The seriousness of the problem is still there, but Lien does not have the staff time to monitor all these sites. Lien added that farmer was advised that if he suspects there is going to be a huge rain event he should pump that system down. A lot of this comes down to management. Bice asked Lien if there was anything that Lien knew of that could be done to deal with Suchla's problem/requests. Lien stated all the flyers were sent out- perhaps they're not interested or they may not have the 30% cost share money needed to participate in some of the programs. The ag industry, in general, is not doing well. Severson asked what the cost was for the DLM to run a water sample. Lien replied, that typically, all water sampling is done through the Health Dept. The report that Suchla was referencing was done by a college student working in the Health Dept. through a summer internship. Suchla asked if Lien had regulations regarding how much manure can be spread, on what grade and how far from a stream. Lien responded "yes". Suchla asked if Lien had ever given out a citation. Lien wasn't sure about a citation but stated several warning letters have been sent. Lien commented that one can spread manure next to a stream if it is incorporated within 24 hours. Lien explained that typically what happens is, the farmer spreads manure on a field and before he can incorporate it in, there is a rain event so there is runoff. Usually the farmers that the DLM has worked with try to do a really good job of managing, but sometimes weather plays a part. Lien stated everyone has a farm plan that they follow. Suchla stated, knowing there is a problem with this getting into the creek water and groundwater, perhaps we need to re-look at how much is allowed to be spread and how close it can be to the creek. Lien responded that now we're getting into state requirements of which there are phosphorus standards, nitrogen standards and soil testing is required annually. Farm plans are also required. Lien doesn't agree with the new soil loss standards because it actually allows for more erosion than the old USLE program. Lien stated he and Carla Doelle had talked with the state about doing a pilot project for the Elk Creek, where everyone is made to comply with the old USLE soil loss erosion which is a different cropping practice than what the revised USLE is now. The State basically told them that if those landowners were made to adhere to the old USLE program, they would not be eligible for other state programs or lose money federally because they wouldn't be complying with those programs. Suchla commented there has to be something that can be done. Lien suggested, seriously, that Suchla go to Madison and lobby hard. Lien stated Trempealeau County had a very good feedlot ordinance and the ag industry lobbied very hard to get that taken away. Now we have something called livestock siting which basically "tied our hands". A public hearing is required to be held, but the County cannot attach one condition.

Confirm regular meeting date – Committee consensus was that the dates decided earlier in the meeting were good.

For clarification, Lien asked, if the motions that were made on Agenda items #5 and #6, gives Lien the ability to have the applicants that were on the last meeting agenda, pay that fee and get those plans immediately to an engineer so that he could get them back before the 10th meeting. Bice asked if it was going to be retroactive. Lien verified that the language was already in the Ordinance, it just hasn't been exercised recently and there was no fee schedule. Those plans were tabled for the purpose of a review. Lien explained what had happened in the past is, a plan was submitted to an engineer, it came back with the review and a bill and whatever the cost was associated with that plan, the applicant paid it, so that is why we asked for estimates now. Bice stated he has a hard time with changing how much we are going to charge the applicant now. Vold commented they paid the public hearing fee but not the engineering fee. Brandt reiterated that those CUP's were tabled pending a review by an engineer.

Brandt reminded the Committee that Martin Goettl, Land Records, had recommended, that as part of the Conditional Use Permit, to require whatever LIDAR information that they have so that can go into the County GIS layers.

Next Regular Meeting Date – The next regular meeting date of the Environment and Land Use Committee will be held on Wednesday, August 10th at 9:00 AM. There will be a special meeting held on August 17th at 9:00 AM for the purpose of holding a public hearing in order to discuss and possibly amend the Comprehensive Zoning Ordinance Standard Mining Hours of Operation.

At 5:45 PM, a motion was made by Vold to adjourn the meeting, Smick seconded, motion carried with no opposition.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michael E. Nelson, Secretary