

**ENVIRONMENT AND LAND USE COMMITTEE  
Department of Land Management**

**SPECIAL MEETING MINUTES  
January 15, 2013 9:00 AM  
COUNTY BOARD ROOM**

Chairman Bice called the meeting to order at 9:07 AM.

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

Committee members present: George Brandt, Tom Bice, Michael Nelson, Roland Thompson, Dave Quarne, and Ed Patzner. Jay Low and Hensel Vold were absent.

Staff/Advisors present: Kevin Lien, Virginette Gamroth, Jake Budish, Keith VerKuilen and Corporation Counsel Rian Radtke.

Others present: Eric Haas, Mike Blaha, Dan Sobotta, Cristeen Custer, Ronald F. Tuschner, Robert Tenneson, Ben Quackenbush, Paul Winey, John Behling, Chad McEver, Mark Skolis, Margaret Olson, Donna Brogan, Stephen J. Doerr.

**Adoption of Agenda** – Thompson made a motion to adopt the agenda, Nelson seconded, motion carried unopposed. Brandt inquired if the statement on the agenda “possible action” meant that this Committee is creating the final draft that will go to public hearing. Lien responded that was correct.

**Discussion of and possible action on proposed changes to Chapter 13 Non-metallic Mining –Trempealeau County Comprehensive Zoning Ordinance as submitted by Nonmetallic Mining AC Committee** Lien stated we started this process back in April with a meeting of the original Nonmetallic Mining Advisory Committee. Lien continued that several “players” were added for representation from the industrial sand industry. That Advisory Committee (AC) met from 6-8:00 PM, once a month and they ended up the last night staying there until approximately 9:30 PM to “hammer out” a final product. Lien explained it wasn’t a one sided issue at all. Both parties gave and took along the whole process to get an end result. Some of the things we are going to talk about today need some clarification and some changes. Without any question the most debated issue was whether or not to flex the existing mining hours of operation. Those mining hours are currently 6:00 AM- 6:00 PM Monday thru Friday, 7 AM - 3:00 PM on Saturdays, all during daylight savings time with no Sundays or holidays. Industry was very adamant, in order to be more viable and competitive, they need to process (not necessarily extract or mine) more because the processing machinery is “the bottle neck”. The AC looked at how they could accommodate that industry and yet still keep in account the public interest of people living next to these mines. Ultimately one can look through Section 2.05 and nonmetallic mining is considered an industrial use that is a conditional use only in agriculture zoning districts so it is an industrial use in an agriculture setting. The AC came up with (after a lot of study and research) allowing a 45 dBA noise level measured at property lines which would allow processing 24/7. If one couldn’t meet that 45 dBA there was a waiver form that could be signed with that landowner and the waiver was unlimited (whatever it took to get the landowner to sign). Perhaps some people don’t care about noise levels higher than 45. Whatever it is to get that waiver signed, the applicant could exceed that noise level at that property. Lien explained it kind of gave the industry a bunch of tools and yet gave people living around there some say or quality of life as well so they are not inundated by noises or nuisance 24/7. Historically the County has not had a noise ordinance and we all know multiple reasons why. We have been asked to address noise and it is kind of the same reason that has come up year after year. Noise has always been handled by the Sherriff’s Department as a nuisance complaint. Anything after 10:00 PM or prior to 5:00 AM the Sherriff’s Department has handled and the DLM has stayed out of that realm with zoning and that was Lien’s preference. In this case, because of what the industry is

asking for and because of the uniqueness of topography and the residence locations out in the rural area, we had to find this trade-off. Lien stated this was a very long and debated process; it wasn't something that was quickly thrown together. There was a lot of discussion and debate. Lien explained at the last vote on noise, there was one person in opposition (Kyle Slaby) otherwise the rest of the Committee voted in favor. Lien reiterated the AC was very well represented by both sides so again no one was completely happy, but everyone had to give up things and trade-off. Lien stated the result is this end product. Lien acknowledged there are some language clarifications that need to be addressed. The document has been give to Corporation Counsel Rian Radtke for review. There have been some e-mails sent to Radtke for clarification. Lien introduced three members from the AC that were present: Cristeen Custer, Paul Winey and Donna Brogan. Roland Thompson who is on the E & LU Committee was also involved in the AC. Upon Lien's inquiry, Thompson acknowledged that is pretty much what happened. Bice clarified that Lien had stated that on the sound portion all but one person agreed. Lien responded, on the last vote that was correct. Lien explained that he thought, in the end, Slaby was pretty disgruntled with the whole process and that was understandable but everyone else supported the final changes. It was a roll call vote and even the sand companies agreed. Lien stated he and Radtke have discussed and agree that there are many things that need clarification. A lot of the things the AC talked about pertain to industrial sand. The first night of the AC meeting they went over definitions (some provided by Ron Garrison from Mathy Construction) and were agreed upon by all that there was industrial sand versus construction aggregate. All agreed (there are approximately 50 active mines in Trempealeau County that have been around forever) that those mines had little to no issue with the existing Ordinance so they didn't want additional restrictions or additional changes to the Ordinance to reflect that industry so they broke out by definition what is typical construction aggregate versus industrial sand. Along the process, Kramer Company has said they have had issues with crushing lime because lime is a very slow process; they have one lime mill so they would like the ability to run 24/7. Through this Ordinance, if Kramer's met the 45 dBA or had waivers signed they would also have that ability. Even though the AC was talking about industrial sand, construction aggregate could crush and process if they met that same level. It made that caveat for them as well which they were very much in favor of (It mainly only pertained to the pulverized lime). Lien reiterated there were a lot of trade offs. This Ordinance has been in effect since 1997. It was challenged one time for clarification of the hours of operation and Lien felt the hours became more restrictive because the prior ordinance said "daylight hours" and now it is spelled out as to what the hours are specifically. Lien noted that change occurred in 2006 and the Ordinance has basically been unquestioned since that time. Lien stated there were a lot of town people stating annexations are going to occur if we don't change this Ordinance. This process was started to prevent annexation and Preferred Sands went ahead and annexed to the City of Blair anyway. Lien felt by changing this Ordinance or making amendments, annexation will not be stopped. Not one of us has a say in that nor do the town representatives. If someone is going to annex they are going to do it and we can't stop that. Lien added the AC wanted to make it very clear that we are not making these changes just to stop annexation because we have no control over that. By amending this Ordinance there is no guarantee that other mines won't annex to cities (that will go away from this Ordinance) who will have to draft a new one. Lien asked the E & LU Committee members to keep in mind, while going through the Ordinance that this isn't going to prevent annexation because the County has no control over that. Lien stated this was a trade-off for the industrial industry, the typical aggregate industry and all the people around to find a way to welcome this industry into the County but make is livable for all parties involved. Lien asked if everyone had a copy and noted it was also up on the overhead screen for all to view. The original language has been left in the Ordinance and is lined through and the new language proposals are in red.

Radtke started with reviewing the definitions of industrial sand and construction aggregate on Page 99. The question Radtke had while reviewing those proposed changes, is that nowhere in the Ordinance does it reference that industrial sand and construction aggregate are treated differently and if they are not being treated differently then there is no reason to have the definitions in there as they will be misleading or confusing to the public. Radtke asked if industrial sand is treated differently than construction aggregate, at all, under the Ordinance or is that the intent of the Committee to treat the two differently because Radtke didn't see that it is being done. Lien responded, that on the first night, the AC decided they did not want any rules changes to affect the individual construction aggregate industry that already exists. They were talking about changes for

industrial and when they got to the end of the night they were back at, if they are relaxing things for industrial sand, why not allow it for the construction aggregate industry as well. At that point maybe the definitions became useless. No one went backward, at that point because it was more for clarification of what we are talking about – what is considered industrial sand and what is considered other sand mines, but none of those other sand mines have asked to run or process 24/7. Lien thought, when the AC finished up the last night, if they met the criteria put forward in the Ordinance there isn't a reason why they couldn't. In a round about way Lien thought perhaps those definitions aren't so important anymore. Lien asked if Winey and Custer agreed. Winey responded that is exactly what happened. The AC worked on the definitions and that was the direction it headed to see if the two could be split out. They had found a couple of other items, where there were references but no definitions, so they worked forward on those and got them clarified. Winey thought this was one that wasn't taken out but very easily could have been. For clarification Lien explained how this situation happened. Kraemer Company had stated to Lien that, over a period 30 years, the best year they ever had in Trempealeau County was one in which they had removed 1800 tons of material out of one quarry. Lien has seen applications for 500,000 to one million tons annually so the AC quickly knew they were not comparing "apples to apples". When we start talking at these public hearings about Transportation Impact Analysis (TIA), and road use agreements we didn't want to have to make those things apply to them because they don't have the volume of repetitive loads or activity. That is why the AC separated it out. If someone is going to come and get a permit for a small borrow pit for construction sand, topsoil, or limestone – that is sporadically used, do they really need to have a road use agreement, a TIA and all these other things. They still have to meet and implement the NR-135 requirements; once they exceed one acre in size they need a bond, a storm water plan and all those other things apply. There were some clear differences but when the Committee got to the last night they kind of meshed those differences back together. Radtke reiterated he didn't think the definitions were necessary and should be taken out because they are going to confuse someone into thinking that they should somehow be treated separately. Lien asked Radtke if there is something that should be an internal policy or in the Ordinance as to when the County would look at the requirement of a TIA or road use agreements. Lien questioned if we are talking about annual extraction or are we talking about trucks per day because right now that wouldn't be addressed or it would be required for everyone. Lien explained the County has small, personal mines/borrow sites which are sometimes used for building on the farm, etc. and we don't want them to have to do all these other requirements. That was this Committee and the AC's intention and perhaps this revision doesn't represent that today and it should. Radtke didn't feel there has to be a hard and fast rule on when those do apply or not. The Ordinance requires the Committee to consider impact on infrastructure, etc. and conditions can be crafted on a case by case basis if the Committee feels a site is small enough and will not impact infrastructure in such a way that the public needs to be concerned about it. If they are concerned about it, then they can treat that site differently than other sites. Bice commented, one of the policies was, that one could do a certain amount on their own property as long as the product was not sold. Lien responded that is still true today. If a farmer wants to open a pit for bedding sand on his own property, he doesn't need a permit or anything, but if the material leaves the site then a permit is required and it is not tied to a dollar amount. Bice wanted to preserve that option. Lien replied that is an administrative rule, not necessarily by the Committee, but by staff. Staff that administers things makes those kinds of calls. It would be a staff call as to whether a TIA is required and if it is then it would be the Committee role to decide what they want to enforce pertaining to the TIA. We encourage the applicant to work with the County or the town on a road use agreement. If the County or town says they don't need a road use agreement then that is fine. This Committee isn't dictating that, they are saying go work with that party to have that agreement. Radtke commented if the concern was to preserve that language could be added as to what is nonmetallic mineral mining or nonmetallic mining under #6 on Page 99 so that it applies only to mining sites where product is leaving the mining site or something to that effect, if that is what the Committee wants to do or recommend here, that it only applies to sites where product is leaving the site. Nonmetallic mineral mining could be defined because it is that activity that requires a conditional use permit. Bice asked if we want to address this as a Committee and do it right now rather than try to come back and revisit it. Lien thought it was a good idea to try and move forward. As Brandt understood it, Radtke is suggesting that the E & LU Committee eliminate the distinctions of nonmetallic minerals/ the difference between aggregate and industrial sand. Discussion took place as to whether there was one or an alternative definition was needed. Radtke felt they are not being treated differently so they need not

be defined. Thompson commented that we don't want the person, using their own product to get hung up by having to get a big permit for it and that is possibly where these two definitions separate that. Brandt didn't want to tie this to the issue of the individual borrow pit, but rather the definitions under #6 on Page 9. Upon Brandt's clarification that Radtke was suggesting eliminating A and B, Radtke responded that was correct. Thompson inquired if something needed to be added. Brandt inquired if, in fact, there was an older definition. Lien responded not of the two, but right above under #6 is nonmetallic mineral mining and that was the original language which the AC left in there. As staff, Lien thought we would amend our permit application so one represents an industrial sand application and one would represent construction aggregate, not that it would change much except where it talks about tons and loads, etc. Lien didn't think the definitions being in there were hurting anything other than they don't serve a purpose since we aren't separating the mines out in the Ordinance. Radtke responded that was correct. If there were a reason either by application or implementation to separate them out, Lien thought one could be a construction aggregate permit that would be exempt from industrial sand and an industrial sand permit which could also include construction aggregate. Radtke confirmed that they will not be treated differently other than having a separate application for each. Lien responded different rules would apply because of the "nature of the beast" as industrial sand has a much higher volume of extraction. Radtke inquired what rules were different? Lien acknowledged they really are not different however that is where the conditions would apply. Radtke and Lien agreed that the conditions apply differently to each and every mine site. Radtke again, thought it would be better to just take the two definitions out and if the wish is to add something to the nonmetallic mining definition to make it clear that it does not include nonmetallic minerals that do not leave the property site – that could be added as well and that would preserve the ability for anyone to produce sand on their own property for their own use, as long as it is not being removed from their property. Winey asked if that was covered by the original paragraph in #6 which reads "not limited to the commercial extraction". If you are keeping it on your own property, you can't sell it, you're not giving it away. Radtke's concern there was that it says's, "including but limited to commercial extraction" so that doesn't really mean it is only commercial extraction. Discussion followed on a landowners own use of sand on his own property. Quarne had a question and asked if he should participate in the discussion. Radtke responded that he probably should not. Ben Quackenbush stated he has dealt with this in another county however that isn't why he is here, but suggested it might help to clarify that it is the owner, in case he has land that is not contiguous and he is mining on his own land and transporting it to his own land. Lien stated it doesn't have to be contiguous as long as it is owned by that landowner. Lien added he couldn't give it to his sons land, etc. Brandt stated Bice's concern is legitimate and a sentence would be appropriate. In the time that Brandt has been on this Committee, it has been the understanding of this Committee and staff that use of your own material from your own property is alright. Nelson questioned Lien's statement about a landowner taking sand to his son's farm. Lien stated it needs to be titled as one entity and he can take it from one of his farms to one of his other farms. Lien elaborated that there is a fine line and it is so much easier if staff can say if it is your property owned and titled by you, no permit is needed to use those minerals. Nelson confirmed that a permit would be needed to move nonmetallic minerals from a father to a son's place. Lien responded that was correct. Nelson voiced disagreement with that. Ron Tuschner stated, along these same lines, they have had people/sand mines( not just one but several) in the Town of Arcadia that have donated rock and shale in times of flood, etc., but didn't charge the town anything. Tuschner asked if this would apply to those people who are donating product to a municipality to get things back into shape. Tuschner thought we were just jumping through some hoops that can happen in the immediacy of making a decision now. Lien explained how this has been administrated, i.e. If a basement is dug or it is a large construction site and there is a pile of aggregates there (topsoil, limestone or whatever), it could be given to anyone (be it the town, one of the neighbors, etc.) as long as it goes to its final resting place. A permit has never been required for that because the material is a byproduct of what the initial intent was, that landowner is not trying to mine. Anybody else that is donating material to the town should have a mining permit and the fee doesn't matter. Upon Bice's inquiry as to whether that was in the Ordinance somewhere, Lien responded it is not, it is an administrative call and staff doesn't consider that mining. Lien added that a byproduct is not mining. If your original intent was to build a waterway, dam or dig a basement, the end result is excess material – that is not mining that material can be given away. Bice questioned Radtke about the legalities involved with "administer" versus "ordinance". Radtke was unsure of what Bice was asking? In example, Bice stated Lien says "that is fine/good" and then ten

years from now we have a different person doing Lien's job and they so "no, you can't do that". Bice questioned if the Ordinance was written so that could be continued. Lien responded if one looks at the Comprehensive Zoning Ordinance, there are a lot of things in there that are judgment/administrative calls. Those calls can be challenged at any given time by anybody from the public. Lien continued there is also a variance process in which some interpretation that can be challenged. Lien and his predecessor have always interpreted it that way. Lien couldn't guarantee that in the future someone else will, but when it becomes a problem it will be brought to this Committee and the Committee can dictate how staff administers certain things. Lien thought, and as Radtke has stated, sometimes it is alright if things aren't necessarily documented so that there is some flexibility. There are some things that must be documented for the purpose of consistency. To put things back on track, Radtke stated he has some proposed language to add to the definition of nonmetallic mining that may take care of this concern of sand on ones' own property. Radtke stated it could be added at the end of the sentence in Sub 6 on page 99 where it says, "it does not mean exploration or prospecting" just add to that "or any mining of nonmetallic minerals for the property owners sole use on the property owners property". Radtke added by saying "on the property owner's property" it would apply to any property whether it was contiguous or not. Brandt made a motion to remove the definitions of industrial sand and construction aggregate and replace it with the sentence that Radtke had suggested, Thompson seconded the motion. Gamroth clarified that it was 6A and 6B on Page 99 that are being eliminated. Brandt expressed his respect for the effort that went into crafting those definitions and he hesitated to do this but in order to move the process along he made his motion. Upon Bice's inquiry, Gamroth restated the motion to remove 6A and 6B which are the definitions on Page 99 and adding Radtke's language, "after the last line of #6, "it does not mean exploration of prospecting or any mining of the nonmetallic minerals for the property owner's sole use on the property owner's property". Bice called for any discussion. A voice vote was taken and the motion passed with Quarne abstaining.

Brandt stated Radtke had expressed some concern in terms of the emergency rule about mining and how the two are enforced. Radtke referred everyone to Page 90 where the first changes are. Radtke stated the numbering is somewhat off so he is starting at 13.02(1); underneath the line where it says "1. Hours of operation for nonmetallic mining operations shall be limited based upon the defined activities of extraction, processing and/or transportation – see definition section". Radtke stated, it appears to him in reading this, that the hours of operation really only impact extraction and do not affect processing or transportation. Lien responded it affects both and if it is not clear we will elaborate on that, but it was intended to. Radtke stated that under (i)(1) it states "extraction activities shall be" and it goes on "with no extraction activities on Sunday, holidays" and it doesn't specifically say anything about limiting time for processing. Processing then appears to be limited by noise rather than by hours. Lien stated that was correct. Radtke continued that transportation is not actually referenced, so when the Ordinance says that operations are limited based upon those activities of extraction, processing and transportation it doesn't necessarily say anything about transportation. Donna Brogan responded it actually does under Number I. Brogan expressed a problem with that also. She thought that what is now the last part of I on the top of Page 91 and the bottom of the first paragraph, "processing can be allowed starting Monday at 6:00 AM through Saturday 3:00 PM with no Sundays or holidays, should have been moved to the first section where hours are talked about. Upon Brandt's inquiry, Brogan stated there wasn't anything about transportation. Lien stated transportation was to be left as during the extraction hours. Radtke stated the definition of extraction includes acts of blasting, stripping, hauling - which is transportation. Thompson commented it was not intended to allow trucking 24 hours. Radtke thought a better way to say it would be, "The hours of operation should apply to extraction" as defined which would include blasting, stripping, hauling and construction. Radtke noted construction is in quotes however, there is no definition of what construction is. Construction right above is lined out and there is a definition of "constructing" but not "construction". The definition of "constructing" is "an action involved in preparing a site for nonmetallic mine activity that include actions of "construction". Radtke stated that was something that needs to be addressed as well as to what is "constructing" and what is "construction" because it is used twice and there is no definition of it. It is all interrelated to the hours of operation and what is extraction, so it is clear what extraction is so we know what activities are limited by the hours of operation. Brandt stated he understood how Radtke was differentiating this as the hours of operation relate to two different things; one is the activity involved and hours of operation limit

extraction and hauling but sound, in terms of processing, is what limits the hours of operation which is different than the other things. Brandt inquired if the issue of transportation has been adequately answered with the hauling definition on page 98. Radtke stated to deal with that one issue of transportation, Radtke thought if one crosses out “transportation” in the hours of operation because it is already dealt with in the definition of extraction by the definition of hauling – “the action of carting or transporting of any material, either raw or processed, from the original location of the raw or processed material to another location not on the permitted grounds”, so Radtke thought that was covered in the definition of extraction. Brandt clarified that on Page 90 it would be “Hours of Operation for Nonmetallic Mining Operations shall be limited based upon the defined activities of extraction and processing”. Radtke questioned that because processing is limited to noise and not necessarily hours. Brogan commented it is limited to hours- processing is limited, it can be started and go 6:00 AM Monday through Saturday at 3:00PM, so processing unlike extraction can happen overnight, but it is limited – no Sundays or holidays if they meet other criteria. Lien explained they wanted the language to encompass if they don’t meet that criteria, then those are the hours one is limited to, but if they can meet the decibel level they could run 24/5 ½. Robert Tenneson questioned in #3 where it say’s “rail load out”, one can load but cannot haul to it, i.e. if they have onsite or conveyed – they could load out. Lien responded that was correct. Tenneson continued that one couldn’t haul to it? Lien responded not during non haul hours. Tenneson and Lien agreed if the facility has a rail site, conveyor, slurry pump, etc. that would be allowed. Winey commented just as concern was expressed about the definitions of industrial sand and aggregate because it didn’t reference anything with the body, in the original Ordinance there was a definition for construction but there was nothing referencing that before, so the AC did that early on saying it is not defining any action therefore it needs to be taken out. Winey explained that is why that particular paragraph (2) got struck. It was then realized that if one is losing hours for extraction and processing and transportation there would not have been any limits on construction. One could go in and prepare the site, 24 hours a day, 7 days a week, so that also was not the intent, so that is why finally the construction got “tacked in” under extraction so that it means all site preparation. Brandt stated construction is site preparation for the processing of the material, whether it be making the ponds or building the washplant/dryplants or whatever. Anytime a permit comes before us, the first phase is always construction of the processing/load out stuff and it doesn’t seem to Brandt that the definition of constructing comes close to describing that, in fact it doesn’t describe that at all. Brandt suggested what needs to be done is turn that “constructing” into “construction” and describe it for what it is which is the preparation of the site for processing/extraction. Brogan noted that was the paragraph (2) that was crossed out on that same page and that would be adequate. Brandt responded yes. Brandt made a motion to replace (on Page 98 under (2) definition of “constructing”) to strike that and replace it with the previously struck (2) above it on the page with the definition of “construction”. Thompson added that it get included into the extraction hours. Thompson then seconded Brandt’s motion. Brandt reiterated his point that again the definition under constructing is repetitive of other things, that the construction isn’t and there is no description of the time allowed for the construction of the site. Bice asked that anyone who has comments speak loudly so everyone can hear what they have to say. Cristeen Custer reiterated the process, that construction was crossed out early on in the AC process, somebody else came back with the definition and used the word “constructing” as opposed to “construction” and that is where the language just wasn’t reconciled with the earlier wording. Cristeen stated Brandt’s point is well made and they understand what the construction part is so if the word constructing is the problem then let’s move the definition of construction back into the document. Custer added that was not a concern of the AC, it was eliminated because it didn’t appear in the initial Ordinance. It was the same sort of thing that Radtke was doing with these words. We thought, we’re not referencing construction anyway why do we have the definition for it, well now we are referencing it. Ben Quackenbush asked if the construction has always been limited on the processing facility to the hours of operation of the mine. Brandt responded that Lien talks about administrative flexibility. When the Preferred Sands/Winn Bay was developing its sites, they had a fairly substantial concrete pour which required more than 24 hours of pouring. They came to Lien and asked if they could do that. Lien gave them permission to do that, so there are certainly situations where it is necessary to go more than the standard hours of operation. That becomes the administrator’s option to allow that. Quackenbush questioned if someone gets a building permit for an industrial building does the County limit the hours of operation for them to build their factory, etc. and if so, why. Lien responded those type of permits are not conditional use permits. If someone is getting a permit to construct

something that is not a CUP so there would be no restrictions. Stephen Doerr stated he has been through a lot of these meeting for two years. Winn Bay actually came forward because they needed to run 24 hours per day otherwise their water would start to freeze inside the pipe and it would shut them down to where they wouldn't be able to operate any further, so if one makes them shut down on Sunday, you might shut them down for good, for the season( when a freeze comes in) and then it will warm back up where they could've worked into the winter (perhaps another 3-8 weeks ) and provided those people with jobs. Doerr related his own work experience. Doerr continued stating Winn Bay came to the Board of Adjustment (it was Doerr's opinion that the Board didn't have an understanding of the need for water to continue to run through a pipe in order to prevent it from freezing up solid). Doerr felt the hours of operation will literally force people into unemployment possibly eight weeks earlier than they ought to in the winter months and it will be a loss for industry as well as the people. John Behling stated he sat down with Lien yesterday to talk about an issue: that being his fear in including "construction" in the Ordinance is that there is an attended consequence. Typically when an industrial facility or frac sand facility is built, there are natural synergies that come with working 24/7. There is also a benefit to the neighborhood in that instead of being under construction for eight months they are under construction for half of that time, significantly shorter. Behling thinks that is ultimately better for the neighborhood so the recommendation to Lien, yesterday, was to pull construction out because really it results in less impact. Behling also noted that with 45 dBA being a limit, construction is loud and can be noisy and that is the way construction is in western Wisconsin. For those reasons Behling hoped the Committee would consider pulling the issue of construction out, allowing construction 24/7 because they believe it actually results in less impact versus more. Lien responded with an example; when Winn Bay built they had to do the 24 hour pour, because they didn't want a seam in the work, it was a continual pour, so they asked if they could run trucks, repetitively, during the night. Lien explained that was allowed because it made sense and it wasn't that loud. A couple weeks later, Lien stated they were driving pilings which was extremely loud and intrusive to all the neighbors. In that instance, Lien had limited Winn Bay to the hours of operation because driving pilings is a lot different than bringing in a concrete truck. That was a judgment call by Lien which worked for Winn Bay and for the neighbors. In Lien's opinion, driving piling 24/7 in a rural setting doesn't fit. Because it was a very short period, Lien didn't think anyone would mind running concrete trucks all night long. Lien added it is hard to write an ordinance that would address each and every one of those things. Lien stated there was a misunderstanding with the Kraemer Company, apparently for years. Kraemer's didn't think they could be rebuilding an engine in the middle of the night. Lien responded a company can do all the maintenance they want but don't exceed 45 dBA and that is permissible. Kraemer's understood they couldn't be in the quarry, so some of it is just communication and a judgment call. Lien didn't know if all that could be encompassed in any ordinance. Upon Bice's inquiry as to how long the driving of piling took, Lien responded weeks. It is no secret, in Bice's opinion that we should not stifle business. Bice questioned if they are coming in and they're building something, can't we have an initial period of time where construction could move at whatever is efficient. They have to pay their people extra, etc., but isn't it reasonable that we should allow them to come in and do their construction. Upon Lien's inquiry if Bice was talking about industrial parks, Bice responded yes. Lien stated if it is in an industrial park he was ok with them running 24/7. Bice asked if anyone on the Committee thought if there is a major construction project going that they should be allowed to get it moving and move along at the most cost effective manor possible. Brandt stated it was important to remember the point Behling made which had to do with the benefit to the neighbors. Brandt commented Bice pushed that to cost-effective for the business and although Behling may be right that it is beneficial to the neighbors to have a shorter period, Brandt also understands that the business is actually more interested in being cost effective. Brandt repeated that it is the job of this Committee to guarantee the health, safety and welfare of the people of the community. We have, in each of our land use plans, as well as in our zoning ordinance, an entrenched commitment to a rural character for this area. We favor agriculture in almost all of our ordinances, no place does it say that it is the role of this Committee to either encourage or facilitate industrial activities in rural areas. That is why we have the CUP process which we are going through because this is an intrusive activity in an area where people can expect to have either a rural character or an agricultural character. Brandt added your question is to your point which Bice makes consistently and Brandt appreciates that. Brandt's point, which he will continue to make consistently, has been charged with something different which is to oversee our ordinances as well as our land use plans as well as the responsibilities of the Land Conservation Committee.

Bice stated Brandt said, “health, safety and welfare”; health a slight compromise because someone’s sleep may be interrupted and we’re talking 1/10 of 1% of the people because very few people are actually going to be close to one of these facilities, so Bice is taking health out. In regard to safety, Bice doesn’t see a safety issue here. In addressing welfare, Bice stated welfare is a position that is very important but that includes jobs, that includes industry and the ability for the people to have jobs, the ability to have some revenue so that we can fund the functions that we provide. Bice stated Brandt has made his point well and he appreciates that, but Bice is saying that for some industry to come into Trempealeau County and want to set up some kind of a facility, we shouldn’t stifle their ability to be able to get this off the ground, because people aren’t coming into Trempealeau County to be friendly and helpful, they are coming in because they are creating jobs and they are trying to turn a profit. In Bice’s opinion, a government should not stand in the middle of some kind of progress that is good for the economy, and good for the people and good for the health, safety and welfare of the people. Brandt responded the economists have changed their definition of full employment. Back when Brandt was a kid it was 4%. Full employment means if you want a job you can get a job. The current unemployment rate is around 7%, economists say that we will never see 4% again, 6% is considered full employment. The unemployment rate in Trempealeau County is 4.5%. We are not only considerably lower than the national average and the state average, we are at full employment in Trempealeau County. Brandt stated Bice just made a very important statement that “people don’t come to Trempealeau County to be nice and friendly, they come because they want jobs”. Brandt stated this Committee helps define what it is that is going to attract people to the County. In the past, people were attracted to the County because of our commitment to agriculture in a rural landscape/lifestyle. If this Committee begins to change that (and they have already begun to change that definition) this County is going to be a place where industrial activity is consistently permitted in the very rural areas where people are attracted to for something else, people won’t be coming here to be nice and friendly, they will be coming here for those kinds of jobs in an industrial setting. We will have changed the commitment of this Committee to what this county looks like, following your prescription. Brandt reiterated this County is at full employment – if anyone wants a job they can get a job. They come here from 50-60 miles away to work here. Brandt didn’t think that was a very good argument for allowing people to do activities that impinge on the commitment of this Committee to the quality of life of its’ citizens. Stephen Doerr interjected wanting to speak personally to the welfare. Doerr stated he was gainfully employed for one and a half years in the sand industry and able to pay all his bills. In Doerr’s opinion, because of this Committee and some of their very strict regulations on the industry, Doerr lost his job. Yes, he got unemployment but has been unsuccessful in securing employment. Doerr continued to explain his personal situation. Doerr is now employed, but he couldn’t find employment in this county, in the industry that he studied for a year and a half and was very good at. Doerr’s point being that it does affect welfare. Brandt stated he has a motion on the floor to take out “constructing” and include “construction” in the definitions under 13.05, which Thompson seconded. Bice called for any other discussion. Motion carried unopposed with Quarne abstaining.

Radtke referred the group back to Page 90, Sub (1) – The Hours of Operation are limited based upon definitions or defined activities of extraction, processing (crossing out transportation) and processing was mentioned that it does apply. Radtke is trying to figure out how or where processing does apply. Radtke referenced (i) on Page 91 where it talks about “processing below 45 decibels (dBA) measured at the property line can be allowed starting Monday at 6:00 a.m. through Saturday at 3:00 p.m. with no Sundays or Holidays being allowed”. Above that Radtke read “Audible Noise due to Non-Metallic Mining operations during Non-Extraction Hours shall not exceed forty five(45) decibels (dBA) measured at the Property Boundary. Radtke inquired if that includes processing as he believed it did. Brogan responded the non-extraction, one could also think of those as processing hours but then they are also extra hours during which one can not do extraction or processing. Radtke inquired which hours those were. Brogan responded those are after 3:00PM on Saturday, Sunday and holidays (3:00 PM until Monday morning there is not processing, etc.) On Monday morning everything starts up again. There are extraction hours, and over night there are processing hours. Processing happens during the day as well but night time only processing , no extraction. Brogan was wondering whether we should actually put that second half of the paragraph under #1a, “Extraction activities shall be such and such, and then processing hours should be such and such. Radtke agreed with Brogan’s suggestion if that is how it is going to be defined out. Radtke continued if we are going to be applying hours of operation either to extraction or

processing, it makes sense to have, how extraction is affected, how processing is affected, right underneath that rather than have to look for it elsewhere. Radtke suggested including under (i) under number 1, Extraction activities shall be 6 AM to 8PM, adding another little section and bring in the sentence from “the processing below 45 dBA measured at the property line can be allowed starting Monday at 6:00 AM through Saturday at 3:00 PM, no Sundays or holidays being allowed” - to move that and give it its’ own space. (Discussion followed on where this should be inserted). Radtke noted the numbering will be change as it is not consistent. Upon Brandt’s inquiry as to if a motion is required for the renumbering, Radtke thought we should just get through it for today and then when the revisions are completed they will renumber it. In referencing the “Sundays or holidays”, Bice inquired if there is a list of holidays? Lien responded there was. Radtke read from the Ordinance, “holiday means any legal holidays recognized by the State of Wisconsin on which no work is performed by employees of the State. These shall include New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve Day”. Upon Radtke’s inquiry as to if it made sense to move that section, it was agreed to move processing over between extraction (i) and notification (ii). Brandt made a motion to the sentence which is currently under (b) on Page 91 which begins, “processing below 45 dBA measured at the property line can be allowed, etc.” to move that sentence to below small (i) on Page 90 as a separate number, Nelson seconded the motion. Gamroth reread Brandt’s motion to move from Page 91 small (i), first paragraph, “processing below 45 decibels (dBA) measured at the property line can be allowed starting Monday 6:00 AM through Saturday at 3:00 PM with no Sundays or Holidays being allowed” to page 90, 13.02 1(i) under the paragraph of “extraction activities shall be 6 AM to 8 PM, etc.”. Brandt noted that it would be a separate paragraph. Ronald Tuschner questioned if moving what Brandt said from one point to another, includes the contents within that move or will discussion be allowed on changing the contents? Brandt responded the point that Radtke was making was that this whole business of processing (dBA, etc) need not be hidden or separated, it needs to be right up front where people can see it, so we are just making that easier, so contents are not being discussed. Motion carried unopposed with Quarne abstaining.

Radtke had mentioned this at the last meeting under 2 ii, “notification must be given to the Zoning Administrator within 48 hours of it’s’ operation on Sundays or Holidays or outside of stated hours of operation when a natural disaster has occurred necessitation the need, etc.” Radtke concern was what is a natural disaster and when has it occurred so that we are not having someone say, “there is a hailstorm (no one else got hail) but we did so that is a natural disaster, because one called it that”. Radtke stated that is an example of someone abusing what is a natural disaster and when it has occurred. What was discussed at the last meeting is do we want to require some sort of state declaration of an emergency in the area (of course they don’t always do that immediately) what is an emergency, what is appropriate to authorize this. Radtke wanted it clearer as to who declares this or when it has occurred. Radtke knew that Ron Jordan’s draft had some recommendations of changing the word “necessitation” which is not a good word there, to “creating”. Thompson stated each county has their own Emergency Management Director, but when they had the last big flood and the railroad tracks washed out south of LaCrosse, they came into our town and wanted to get rock. Thompson commented they had a disaster there but we didn’t have it here. Bice was a believer that if we have an emergency we deal with it and suggested having a list including, Sherriff, Emergency Management Director, Governor, Highway Commissioner, and any single one of those can declare that so that work can be done. Brandt asked Lien how this had been defined in the past. Lien had thought the Ordinance referred to a natural disaster declared in Wisconsin, but he didn’t find that. Lien stated as an example, if there is a shortage of gas in Texas we don’t want unlimited extraction to meet their needs. Lien explained this clause was intended, i.e. flood event and we need to make a million sand bags, or a bridge washout and a large amount of riprap is needed to stabilize the site, that was the intention, so one doesn’t need to get permission to immediately fulfill a need for an emergency response. Lien stated again that some of it is discretionary but he could see where someone might try to abuse that situation. Lien didn’t feel it needed to be over thought as it isn’t that difficult of a situation, but he understood that in ordinance writing we need to be specific. Bice made a motion to give that discretion to the Sherriff, Emergency Management Director of Trempealeau County, the Governor of the State of Wisconsin, the Highway Commissioner and the Zoning Director. In Bice’s opinion any one of those people should have the authority to declare an emergency so that we can deal with whatever we have to deal with. Bice added all those

people are respected, intelligent people and we cannot afford to sit around and wait. Lien clarified that it would be amending the lower part of that paragraph where it states, “ the natural disasters have not occurred as stated in the notice to the county” which would be eliminated and it would state, “natural disasters per ... and list those people. Bice responded that was correct. Brandt asked about town board as they do a lot of construction and they will have needs that the County Highway Commissioner is not aware of because they are too busy trying to get the culvert fixed, etc. Doerr asked if Brandt meant the town board or town chair. Brandt meant the town chair. Upon Lien’s request Bice stated his list as Sherriff of Tresp. Co., Emergency Management Director of Tresp. Co., State of Wisconsin Governor, Department of Land Management Director, Trempealeau County Highway Commissioner and Township Chairman in his particular township. Doerr stated that town chairman is an excellent addition because Doerr was helping Dodge doing sand bagging and everyone was busy in Arcadia and they forgot about Dodge. Tuschner was very kind to them in the Town of Dodge and shared the towns’ equipment to move sand in. Quackenbush stated he was present on behalf of Ron Jordan and his company. Quackenbush continued that the comment Radtke had made about changing “necessitation” to “creating” and for “use in emergency repair” is important because otherwise he read it as the mine itself was flooding and they can do whatever they need to operate as long as they want to protect it and he wasn’t sure if that was the purpose of this or not. Quackenbush stated they changed it because, the understanding from his company was, that this paragraph is only for the purpose of providing sand to help the town and county when they need sand. If adding “creating” and “use” to that sentence so that it reads, “holidays or outside stated hours of operation when a natural disaster has occurred creating the need for nonmetallic mining minerals for use in emergency repair work” the paragraph could be read to believe that the mine can operate whenever they want if there is a natural disaster that has affected their mine and they need it to protect their mine. Lien responded that is not the intention of the paragraph. Lien thought Bice had made a point that the DLM Director could be contacted at that point if that was a need. Lien stated a couple of years back, Badger Mine had a potential “blowout” that was definitely an emergency and a lot of people were called in. If something like that were to happen, Lien thought Emergency Management, probably the Sherriff and the DLM Director would be involved to make that call. Quackenbush stated he was fine with it - he just thought the purpose of this paragraph was for other natural disasters when a natural disaster has been declared. Gamroth restated the motion made by Bice to read, “to give the authority to declare an emergency to the Sherriff of Tresp. Co., Emergency Management Director of Tresp. Co., State of Wisconsin Governor, Department of Land Management Director, Trempealeau County Highway Commissioner and Township Chairman in his/her particular township when a natural disaster has occurred creating the need for nonmetallic mining minerals for use in emergency repair work”. Doerr questioned, regarding the language being written now (referring the mudslide Winn Bay had into the Amish home) would that prevent them from going out if that happened on a Sunday or a holiday? Bice responded someone can call and get permission if they have a problem and Bice felt that permission would be granted, so the answer is no. Doerr verified that they could call anyone on that list. Radtke stated this paragraph is not asking for permission, it is stating that if an emergency happens, as declared by one of those parties, then notice has to be given. Lien agreed if one reads it that is what it says and they have to notify DLM within 24 hours. Radtke added we don’t want to tie up people in an emergency so that they need to seek permission from someone who might not be answering their phone, etc. Lien clarified with Quackenbush that someone can do the work but they must notify DLM within 24 hours. Bice noted that he has been instructed to get clarification on the motion, therefore he asked Gamroth to re-read the motion. Gamroth read that Bice made the motion to give the authority to declare an emergency to the Sherriff, Emergency Management Director, Highway Commissioner, Governor of the State, Town Chairman in his/her own township, and the DLM Director when a natural disaster has occurred creating the need for nonmetallic mining minerals for use in emergency repair work. Brandt seconded Bice’s motion. Bice called for any other discussion. Brandt noted it will be important to inform these people that they have that particular authority. A voice vote carried the motion unopposed with Quarne abstaining.

Radtke referred the group to the bottom of Page 90 which dealt with noise. Radtke read aloud (b) “Noise: Audible Sound (Audible Noise) emitted during the operation of any Nonmetallic Mining facility is limited to the standards set forth in this provision”. Radtke inquired what the use of the term “Nonmetallic Mining Facility” means. Radtke stated it is capitalized like it is a defined term which it is not and does “facility” mean

the wet plant, dry plant, etc. Lien stated the intent was because it pertained to processing only. It doesn't really apply to the extraction during mining hours – this is an exemption to that during those non-extraction hours that would allow that flexibility, so perhaps “flexibility” isn't the right term. Brogan suggested simplifying the sentence by stating “audible sound emitted by any nonmetallic mining operation”. Consensus in the room was that it should be processing, not just operations because we are not talking about extraction. Lien suggested taking out “facility” and leave it as “nonmetallic mining”. Radtke thought that if this section just applies to processing, we were talking about construction – do the decibels have to be under 45 or whatever is agreed to, is that going to be allowed during non-extraction hours? Lien responded we have allowed them on an individual basis, like the continual concrete pour. Radtke verified this would only be done on a case by case basis and only to processing. Quackenbush suggested changing the line to “nonmetallic mining processing”. Custer explained that was the intent. It wasn't intended to eliminate case by case situations. Brandt stated so it would read “audible noise during nonmetallic mining processing during nonextraction hours shall not exceed 45 dBA measured at the property line”. Quackenbush commented one wouldn't need the non-extraction hours just during nonmetallic mining processing. Brogan commented there are no noise limits during the day now. Lien stated the processing can exceed 45 dBA during the day, it is only after 8:00 at night. Eric Haas questioned the way the wording read and asked if loading chickens wouldn't be non-metallic mining? Haas asked if it was written so that it is still assumed to be a mining facility or could everything be grouped into that. Brandt responded the point is that there is a type of mining known has metallic mining, sulfide mining and the nonmetallic includes all those things that aren't metallic. Haas understood but felt someone else could try to interpret that as something completely different. Lien responded “nonmetallic” by definition is mineral mining it is not everything else. Quackenbush stated the difference is that the “non” is before metallic and not before mining. Lien asked if the group was talking about dropping the word “facility” and adding “processing” or just dropping the word “facility” in general. Radtke suggested it read Noise: Audible Sound (Audible Noise)emitted (cross out “the operation of”) during any nonmetallic mining (cross out “facility”) Processing is limited to the standards set forth in this provision. Upon Quackenbush's inquiry, Radtke noted the capital “P” on processing because it is a defined term.

Radtke referred all to the top of Page 91. Radtke asked Behling for input as he knew there were comments that Behling had provided to Lien and himself relating to how this is measured – whether at the property boundary and the 45 decibels. Behling stated they do have some specific points they would like to make to the issue and asked for the Chair's permission to proceed. Bice responded that would be fine and mentioned to everyone that he was encouraged to have somewhat of an open discussion here with everyone that was here today for a couple reasons. Bice added we are going to do that and hopefully it will help get us a little further along in this process because there will eventually be a public hearing, so we might as well resolve issues today if possible. Behling stated in consultation with Mr. Gonzalez Sanchez, who the Committee had an opportunity to briefly listen to, Sanchez brought forward to them a couple of thoughts which they felt were very good suggestions. In Sanchez's analysis of and working in the acoustical noise industry, Sanchez says when one looks at other ordinances across the United States, whether it be Minnesota, Oregon or New Jersey, their ordinances are always drafted to be receptor based versus boundary based. Behling felt that made good sense, especially when you consider your ordinance and the way the DLM will apply it. Lien is not going to be taking readings of property boundaries in every industrial area. Rather, it will be complaint based. So when there is a complaint, that is when Lien or staff members will get in the car, investigate and take readings to determine whether or not the Ordinance is in violation. Behling thinks, since it is complaint based, you're much better doing (instead of taking the reading at the property boundary) the reading where the complaint is raised. That is referred to as “receptors” – where that noise is heard. If there is a complaint, then that is where you should have the enforcement. Right now you have it on the property boundary. Where they think that is dangerous is, you could have two employees who currently stand on the property boundary having a normal tone discussion (like the one Behling is having now) which probably reads in the 50 dBA level. Behling thinks that is just simply too strict. Behling is encouraging the Committee to go along with what other states have done and, in conjunction with the fact that this is a complaint based ordinance, have the issue of property boundaries go away and make it the receptors; the churches, schools, structures, etc. That is what Behling thinks makes sense. Behling also understands (Lien had made the point when he is sitting in his tree stand I don't want to hear that noise) that

when one looks at the time parameters set in the ordinance, at 8:00 PM, his sense is that Lien is not in the tree stand anymore either. With those reasons in mind, Behling thinks it makes sense to have Trempealeau County more consistent with what other states are doing. Get rid of the property boundary and instead put in there for it to be receptor based. This is their advice to the Committee based on what their acoustical expert has recommended. They know there will be a public hearing here shortly, in the future, and they will bring their acoustical expert to that meeting as well, in case the Committee has other questions, so that the Committee can hear directly from him. Jack Speerstra commented (in the discussion he had with Lien) that the decibel level could be mitigated for each circumstance. If it is receptor based one could mitigate that receptor instead of trying to mitigate at the property line which makes more sense to Speerstra. Lien responded when the AC went through that, the problem was that, receptor based works consistently well if there is consistent flat topography and we do not have that. Trempealeau County is very unique that way. Lien continued that time after time, they have demonstrated that because of our topography that noise is not consistent and it can travel farther at different elevations. That is where the property line came in. That waiver still applies and gives the industry the ability to mitigate. In regard to the conversation at the property line, Lien stated we are talking about 8:00 PM. Lien stated right now his voice is around 70 dBA and in meetings he is consistently around 65 – 70 dBA which is fine for this room, but if someone is trying to sleep at night with Lien talking at 70 or 45 dBA next to your bed that would be unacceptable. Lien noted one has to look at the times of those conversation and/or noise. We are talking about after 8:00 PM, and to be at 45 dBA in a rural, agriculture setting, we have demonstrated multiple times with staff, right now there are only two mines that are doing full blown processing; one, at their property line, maintains 45 dBA (has done no adjustments for noise), the other one, their average was at 40 dBA in the study that Budish and VerKuilen did. So, it is not unreasonable and that was without any planning. Had the company been aware of this, they could have tucked the plant around the hill a little and Winey would have little or no noise at his property. Because of our unawareness of this and the megaphone effect that Winey experiences he does have higher noise there. Lien stated Winey has talked to the company and there are ways that perhaps the noise can be mitigated someday in the future, if the company is willing to do so. Lien explained the whole idea behind the AC was for all to do really good planning and give the industry tools and still not take away the individual property rights of the people around there. Lien added discussion was at great length about looking at residences, churches, structures versus property lines. There are a lot of people in this County that pay a lot of taxes and utilize their property for a lot of recreation and other activities. Lien isn't bow hunting out there at 8:00 PM but maybe he is camping, or doing other things on that property that happen after that time where people should not have to listen to noise levels that would exceed that 45 dBA. Lien stated it wasn't just a number that was arbitrarily thrown out there.

Attorney Mark Skolis – Hi Crush Proppants introduced himself. Skolis had talked with Lien about this issue yesterday and he makes several good points. Skolis stated the topography of Trempealeau County is such that it is not flat, for the most part, noise carries in sort of peculiar ways. Mr. Sanchez pointed out to Lien, yesterday, for that very reason a receptor based makes more sense. If one bases the measurements on the outline of the mine, that sound can carry up the coulee or valley in a peculiar way. For that very reason, Skolis thought one would want receptor based. Industry is still bound by the standard when it hits the receptacle, so Skolis thought the uniqueness of the County would drive the Committee to the decision that receptor based would make more sense than would the exterior boundary. The industry is still bound by the noise standards when it hits that receptor. As to Lien's point regarding receptors not taking into consideration all the uses of the surrounding land, Skolis takes his point, but the Ordinance can certainly be crafted in a way that any inhabitable structure, whether it is a hunting cabin, a residence, a church, or a public facility, could be the receptor. To suggest that somehow we should have a standard that contemplates every single usage at all times of the night, Skolis thought that was a tad overreaching if one looks at the ultimate intent of what we are trying to accomplish here. Skolis listened closely to Mr. Winey's concerns about his existing situation and the way the noise carries up to his house. Skolis sympathizes with that. If a receptor based ordinance is structured, that it would deal directly with the very phenomenon that Winey is worried about. You could have an ordinance, wherein, you have a limitation at the property line but it gives really not much for consideration as to how loud it is at his property. Granted, noise will attenuate as it leaves the property line and become less and less offensive and less noisy. But in Mr. Winey's situation, if that noise is offensive at his place then that is what we should be worried about.

It is irrelevant what it sounds like at the property line if no receptor can hear it. With regard to the ordinance itself, when it comes to 45 dBA, Skolis understands what Lien is saying in some level, but by the same token (think about this) if two workmen talking at the property line exceed the dBA level, to Skolis that is an ordinance that is overreaching and not making any sense. If that sort of noise is the sort of thing you're restricting (casual conversation), common sense suggests that is a standard that is probably too low. If you look at the way the Ordinance is written right now with regard to the 45 dBA and how it is measured, Skolis feels what might be lacking is some sort of averaging. If you read it right now, does it violate the Ordinance if a workman drops a hammer in the bed of a pickup truck and it spikes up to 80 dBA just by the dropping of that hammer. Our expert says there has to be some methodology in place, whereby the sound is averaged over a period of time, i.e. ten minutes, one hour. Somehow, somehow, whatever dBA level the Committee thinks is fine, there must be averaging in place in order to prove the establishment of what the dBA level is instead of measuring things like impulse sound. Skolis reiterated that when he talked to Lien yesterday that was the discussion they had that they were concerned with the ordinance as it is written and it doesn't contemplate the averaging. Bice asked Skolis and Lien to discuss the receptor based issue, because Skolis was saying if the Committee adopted the receptor based, it is more realistic than property line because it gets to the people who are being annoyed. Lien responded it depends and goes back to property rights. Lien again noted they had this discussion at the AC level. Lien agreed that a residence is probably more important, but not necessarily should one exclude how people utilize vacant property, whether it is camping, hunting, etc. Those people still have rights and values that should be preserved as well. Lien agreed with Skolis that there has to be a weighted average. Lien used the following scenario of the gas cannon to scare off birds, that the cannon only goes off once an hour, every hour all night long and a weighted average might be acceptable, but if you were the one living in that residence, Lien guaranteed one would find that very unacceptable. Lien reminded we are talking about 8:00 PM until 6:00 AM. There is absolutely no noise level or no impediments during those daylight/extraction hours. Again, there has to be some kind of weighted average on how this is calculated and Lien agrees with that, but we have to be careful or we go back to the gas cannon scenario. Lien noted when he and Bice were at a mine site, a tailgate dropped and the decibel reader spiked for the one second. Lien didn't think that would be a big deal, but if that happened every ten minutes all night long it could become very annoyed, so again we have to be very careful when looking at weighted average. What is that spike and how repetitive is it? Lien stated it is a very complex issue and everyone on the AC agreed, the sound expert agreed that it is a very difficult thing to regulate. Lien stated 8:00 PM until 6:00 AM is not staff hours, so when we get complaints, some things that happen (tailgate slamming) are going to go unregulated to be practical and real. Those kind of things that happen are going to be hard to enforce and hard to regulate. What we are talking about is how we account for everyone living around these mines, that these mines aren't going to completely disrupt their livelihoods. There are people that have very sensitive hearing and 45 dBA is unacceptable. Those are the cases where the waiver and mitigation would take place. Lien sleeps well, but in the fall when the neighbor starts his corn drier he can tell immediately by the sound that something is different. It doesn't disturb Lien's sleep and it doesn't bother him but he knows it is there. Lien reiterated we are talking about sounds from 8:00 PM until 6:00 AM and how one effectively enforces, measures and regulates those sounds. We're talking about constant tones here where 45 dBA is very acceptable during a meeting, during conversation but if I'm in my residence trying to sleep, camping, etc. is 45 dBA an acceptable noise level. Lien added it is a science and Skolis is correct by saying the farther the distance from the receptor the sound does "fall off". Winey has a unique case where he is above a berm on a hill. If one drew a straight line from Winey's house to the mine, that noise would be louder at the receptor and it would dissipate to his property. But if one goes down below that berm, it significantly drops because there is an impediment/barrier. One needs to take all of that into account when talking about noise levels, etc. and what is acceptable to people. Lien reiterated this is classified as an industrial use (by definition in the Ordinance) that is only allowed as a condition in an agriculture setting.

Winey stated in his situation (and he spoke for anyone else who might end up in the same situation with the mines) he wouldn't find disagreement with the receptor based as is suggested if the decibel limit was tightened up a little bit more. The reason Winey said that is, is if the Committee has an appreciation for what the different decibel levels are, (Winey had sent out an e-mail and noted these are industry standard and generally acceptable and can be researched and pulled up easily so it is not just Winey's opinion) that quiet rural night time which is

what most of us in the county experience is at 30 decibels. A quiet, urban night time is between 40-50 decibels so now one is taking night time urban noise and moving it into the rural environment. Additionally, for every ten decibel increase in sound, you're actually doubling the perceived sound volume. This is an incredibly important piece to remember. We are not talking about something that is linear we are talking about something that is logarithmic. So going from 30 decibels to 45 decibels actually triples the perceived sound volume and that is huge. That is what, in essence, this ordinance is asking the public to give up. They are giving up a quiet rural night for moving back into the city. Winey appreciates the difficulties with weighted sound averaging and Winey would prefer not even averaging because than what if half of it is above, half of it is below. Winey suggested perhaps setting a L90 which is considered background ambient noise. That designation means that the sound level exceeds a preset number 90% of the time. So if one sees a number represented as an L90 that tells you what the background ambient noise of that area is. Those percentages are very easy to set. Winey wouldn't be opposed to the receptor based if the numbers were tightened up. Winey has talked to the mine folks across from his home and he had a conversation on the way into the meeting, that there are sound shield barriers that are manufactured that can be hung from the outside of many of these buildings. They can deaden and dampen the sound. Winey stated, right now, Alpine Mine has no incentive to install those because it doesn't gain them anything. They would have complete incentive if they were allowed the additional hours of operation. That would allow Winey a peaceful nights sleep. It could allow them improved hours of operation, more employment and more business. It is another give and take issue. Winey directed this to Bice and his question regarding the health concerns. In an article from the CDC (Center for Disease Control) it is estimated between 50 and 70 million Americans suffer from some form of sleep deprivation. It is an actual epidemic. Individuals with sleep deprivation suffer from increased risk of heart attack, high blood pressure, cancers, suppressed immune systems, heart irregularities, depression, etc, so this is a health consideration. Winey felt it really does impact those. Winey can count the number of people in the neighborhood where he lives that could be adversely affected. Winey speaks that both personally and professionally as a physician assistant (PA). Winey asked, if it was receptor based, and sound is attenuated (thought there was a 60 dBA drop for every doubling in distance and these are scientific based pieces) then we need to look at a tighter limit on it, again looking at what are the standards for the areas. Custer explained that the AC did discuss receptor based. They came back to the property boundary because the understanding was that if it is 45 dBA at the property boundary it was going to be less at a greater distant because of the attenuation of sound. The AC went back and forth, they talked about distances, and it was very difficult because of our terrain to predict a distance so they started with 2500 feet which is what was in the previous ordinance. Mr. Winey's situation put him outside of those 2500 feet. Then the AC talked about any complaint, anywhere, is that an option (Custer thought that is what they were getting at with the receptor situation) and they came back to the conclusion that something needed to be there that DLM staff can measure. The AC decided the property boundary was an appropriate location with the understanding that (in Winey's situation) we know it is going to be less than the 45 dBA because it would be at the 45 dBA at the boundary. That is how the AC ended up at the property line. Brandt stated there are a number of issues that have been raised in this discussion; 1) having to do with the Committee's ability to set a boundary in order to maintain the quality of life for the people of the County (that is within our ability to do that). It wouldn't be overreaching to suggest that the quality of life is something we're concerned about. In reading Mr. Sanchez's material, Brandt was educated as to the nature, not only of sound, but of the sound "business". It is clear from, not only Mr. Sanchez's resume' but from this "Guide to Noise Control in Minnesota" that this is a science that is at least 50 years old and significantly improved over the years with its' technology. There are a number of things that keep coming to mind; the technology exists to mitigate the sound, the motivation for the mining companies to mitigate that sound is going to be coming from the regulatory authority, which is us. In other words, if they want to have longer hours of operations, they need to mitigate the sound which is possible to do. Mr. Sanchez obviously has considerable experience in not only studying the sound but suggesting ways to mitigate it, so it is not like there aren't experts available to help the mining companies, not only to do the initial studies but to do the twelve month study as well. The other point which is critical to this is, by allowing this kind of activity in a rural setting, both sides have to give something up. The citizens of the County not only are giving up some kind of expectation, but the mining interests also have to be giving up some kind of expectation. At the same time both sides have to be protected. It took a while for Brandt to understand this but the permitting process protects both parties; it protects the mining

operations from frivolous kinds of complaints because they are basically being protected by the DLM because they are meeting all the conditions of their permit (people can complain and be told, “no” they are meeting the conditions of their permit so go away); the citizens of the County are protected because they have an expectation that somebody is making sure that those conditions are met, so it is a compromise. Things have obviously changed. Both sides need to give, both sides need to be protected and that is what this permitting process does. Brandt certainly appreciates the concerns of the mining companies in terms of making money (this is going to cost a significant amount of money – Brandt wasn’t aware of what Mr. Sanchez charges) at the same time we have an expectation of quality of life than needs to be maintained. Brandt also pointed out that a rural night sound – no matter how loud it is (whether it is the coyotes howling or a storm in the night) is a really different quality of sound (Brandt didn’t know if that was even possible to measure) than the grinding that contractor Mark Nelson does at 7:30 at night, when he is making lime on the hill, just above Brandt’s place. Anybody can tell the difference between that even if the grinding is less dBA’s than the howling of coyotes – it is a quality thing. Behling wanted the Committee to know the one thing they didn’t want to do today is to come in and recommend a lot of wholesale changes. They give a lot of deference and appreciation to what the AC has done. They have taken a long look at what the AC has drafted. What they did is provide Lien, in writing, just a few basic revisions on Page 90 and 91, in order to give the Committee some changes which they think makes it a better Ordinance. On the issue of averaging, that is what other states are doing throughout the Midwest. They think if the Committee would adopt averaging, they would actually make the Ordinance fairer, easier for enforcement for both Lien and Radtke’s departments. They think averaging brings it more into the standards across the U.S. versus something unique and untested. Behling thought it important to make that point. They wanted to give those changes to Lien in writing just because again they are not saying they want the Committee to throw out everything that has been done, but the contrary. They made just some smaller suggestions which they think makes the Ordinance fairer and easier to enforce. Skolis commented when they were looking at this issue, Behling and Skolis had discussions about this and they talked with Mr. Sanchez in detail for directive to ordinances, statutes in other states namely Minnesota and Oregon. These are two states that have dealt aggressively with sound issues and noise generally. Skolis understands what Winey is saying about dBA levels being logarithmic as opposed to linear. Skolis understands what Brandt is saying about rural sound versus urban. In those states where they have given great consideration to the matter, their dBA levels are above the 45 (that Skolis has seen) in rural areas. Skolis felt in the discussion that was held in the last 20 minutes, to be underscored is sort of a peculiar complexity and at some level, subjectivity of this issue. Sound is a very difficult thing to understand from Skolis’ perspective. Before Skolis started looking at this, he didn’t know a thing about how sound was measured or the complexity of it. Skolis’ point being, this dialogue at this Committee level, suggests that he didn’t know if it was a discussion best had in more detail when there is a full public comment session for this Committee to further address the issue when more people can weigh in. Skolis thought we could all understand that everyone has a slightly different opinion about how this could be handled and frankly, it is a pretty complex issue. Skolis suggested and has offered to Lien and Radtke, comments that they think would be constructive, at least as a template or a framework and maybe the specific details of that are best left for a public comment session or at least require some evolution or discussion (Skolis wasn’t sure which). In regard to other noise ordinances throughout the country, Haas stated to Radtke that one of the problems lot of prosecutors have is the fact that something that is put in the ordinance, like 45 dBA, lacks specificity and leaves some rather gaping holes for doubt to be established as to if there was a problem or not. It would include things like measuring techniques, calibration of equipment, type of equipment, etc. and that is actually not present in the Ordinance as it is right now. Haas asked for Radtke’s comments on that. Radtke responded there are terms in the proposed changes that deal with a testing procedure - a noise study so Radtke is assuming we are going to have some sort of technology, whatever the criteria is whether it is averaging or a straight number, whether it is receptor based or property line, to tell the DLM, at a minimum, whether or not the Ordinance is being complied with or not. From there, hoping that technology is there from an enforcement standpoint to prove something in court if it were to ever come to that. Radtke hoped that same technology would be available for his own use also. Those were some of the questions Radtke had as well. Haas asked if Radtke agreed that would have to be “spelled out” in the Ordinance. Radtke replied it didn’t have to be spelled out what specific type of measuring, but whatever is in the Ordinance has to be something that we can measure. Haas commented and something that Radtke could defend or prosecute. Radtke responded it would have to be

something that could be measured and if it can be measured than we can show the court, etc. what is actually happening. Haas commented it is not like one is using a yardstick to measure as it is four dimensional (height, width, depth, time). In listening to people here who are far more intelligent than he pertaining to sound, Tuschner stated he does agree with the common sense approach of the using the receptor analogy. The rationale for Tuschner was this. Tuschner lives approximately 8 miles from town. Tuschner hears an awful lot of noise being emitted from the City of Arcadia. To Tuschner some of those noises are very offensive and he is born and raised in the country. So as far as talking about what any resident in the country, which may not be an appealing sound to them, Tuschner has sounds that are not appealing to him either as a resident of the rural area from the urban area or city area. Addressing the 45 dBA, Tuschner didn't know what his voice registered, his voice may carry more than other people, and perhaps that is annoying to some people. Tuschner stated with living in the country all his life (he is a sound sleeper) when he has people coming above his place camping at night, up until midnight, etc. (granted it is not consistent) Tuschner does not sleep. When Tuschner goes to a meeting and he sleeps in a rural or urban area, he does not sleep for the first two nights (or very little) as he is not used to that sound. It is extremely annoying to him. When Tuschner's dog barks and night or coyotes come out, he is awake immediately. Tuschner thought we need to look at what is annoying to not only the people that moved into the rural area for their peace, quiet and tranquility, but we also have to think about those three things for the people that are in the rural area (that we put up with) people from the urban area that we can hear. There is an industry in the Town of Arcadia that runs the fans (Lien eluded to the corn dryer). Tuschner can sit at home and he hears that dryer very audibly. In fact, he can hear it just about as good as his own corn dryer 150-200 feet from his home but they have it against another building to help deaden the sound. Tuschner stated Winey is 100 % correct. There are materials and ways of deadening sound to control it. Tuschner wasn't against Paul Winey, but he didn't think we need to go negatively (lowering dBA). Tuschner really thought that 50-55 is a more appropriate number and he would like to have someone (Tuschner doesn't have the equipment) come to his house (he put in a new, high efficiency furnace in with a variable speed motor) and he stated the dBA on that motor (he sleeps 15 feet from it) is a lot higher than the 45 dBA. Tuschner had a new, high efficiency refrigerator installed and when it kicks in it awakens Tuschner and it is annoying. Tuschner did get used to it. Tuschner has friends that live 20-50 feet from a railroad track, and every time he is visiting them, he jumps out of his chair when the train goes through. Those friends tell him that is normal. The point Tuschner is making is that, some things we become accustomed to because it is necessary and it is a proper change.

Radtke agreed that substantive changes to the Ordinance in today's meeting would be appropriate. Radtke felt the idea here would be to introduce the concepts of the averaging, introduce receptor based, but he felt it would be more appropriate, for the public hearing, to have input as to what are decibel levels, should this Committee use averaging or property lines or those types of issues. The idea of today is to go through the Ordinance and try and clean some things up, make some clarifications and to present a better product to the public for public review. Radtke thought some of these larger issues are things that should be discussed and determined at that public hearing. At this point, Radtke suggested the group go back to clarifying the Ordinance as it is written here. Radtke stated, regarding noise, is that it references non-extraction hours. That implies to Radtke that during extraction hours, there is no limitation as to the noise or decibels that can be emitted. Radtke asked if that is what the intent was. The consensus was yes. Radtke stated the Ordinance should spell that out - that during extraction hours there is no noise limitation because otherwise it isn't quite clear. In the section that was moved which states, "processing below 45 dBA measured at the property line can be allowed starting Monday at 6:00 AM through Saturday 3:00 PM, Radtke felt that implied that processing is always limited to below 45 dBA because processing will be happening Monday all day, Tuesday, during extraction hours, but that doesn't seem to be consistent with having (during extraction hours) unlimited noise. Upon Radtke asking for clarification as to if there is no limitation to processing during extraction hours, consensus in the room was yes. Radtke continued if that was the case, then it could be written a little better to make sure that is clear and just have the limitation that processing noise be during non-extraction hours and then simply not allowed at all during Saturday after 3:00 through Sunday at 6:00, no Sundays or holidays. Custer commented that she thought Radtke had interpreted that correctly and felt the clarification is merited. Thompson inquired if that wasn't put in the hours of operation or some definition? Lien replied that Radtke had moved it before and it states, "processing below 45 dBA measured at the property line can be allowed starting on Monday 6:00 AM

through Saturday 3:00 PM, no Sundays or holidays being allowed. Radtke responded that what it says (even though it was moved, Radtke did think the time limitations should be in that area that it was moved to), “processing below 45 dBA starting Monday at 6:00 AM through Saturday at 3:00 PM” that also includes extraction hours. Radtke stated that noise limitation should not apply during extraction hours so that needs to be spelled out. Radtke was clarifying to make sure it is consistent and that all times frames are represented. Haas asked if one could extract below 45 dBA, could they still mine. Lien responded no, not the way the language is written. In referring to “Property Boundary” in that same paragraph, Radtke stated it is capitalized and then defined as “land contiguous to the permitted mine boundary and owned or leased by the operator of the permitted mining facility”. Radtke questioned if that was intended to be the definition of property boundary because there are other times where property boundary is capitalized, usually indicating that it is a defined term. Radtke continued that there is no definition or definition section with property boundary but there are other uses of property boundary where it is capitalized. Radtke asked if the intent was to have that defined as listed there. Lien responded it was definitely to clarify what we were talking about - regarding being specific and not general. Lien inquired about pulling that out as a definition? Lien didn’t know where else it would apply other than here. Radtke responded if the Ordinance is ultimately changed to a receptor base rather than the property line then Radtke didn’t think such a definition would be needed. If the Ordinance is going to use the property boundary, then Radtke thought there should be a separate definition of it so that it can be used as a defined term. In referring to the sentence that was moved, “processing below 45 dBA measured at the property line” now we are using “property line” instead of “property boundary” and that is not capitalized. That could open up for interpretation as to if that is something other than the defined term “property boundary”. Radtke stated we need to make sure that we are consistent so that when referring to a “property boundary” the meaning is defined as what is there “land contiguous to the permitted mine boundary”. Thompson questioned the difference between “line” and “boundary”. In Radtke’s opinion, it would be one in the same and felt that was the intent, but if we were to capitalize “property boundary” and define it and then later use property line (not capitalized) that could imply that “property line” is something different than “property boundary”. Radtke’s purpose here is to clarify and make sure that the Ordinance is air tight and that people aren’t going to be able to find any loopholes, wiggle room or ways that they can interpret this in their own way or challenge it some way. Radtke wanted to see consistency and that these terms are properly defined. Radtke didn’t think this change needed any formal action as he could make them as just a word usage change. Lien stated he was alright working with Radtke to make the consistency changes as well as the renumbering.

Radtke then referred to the next paragraph (i) which stated, “the testing procedure” as this was the first time this has been brought up. Radtke wondered what the purpose of the testing procedure is. The Ordinance stated, “shall be conducted in a manner that accurately samples noise levels surrounding the perimeter of the property boundary”. Another phrase which Radtke didn’t understand read, “when taking into consideration all relevant factors that may have an appreciable impact on the noise level at the boundary and the surrounding area, including with limitation; topography of the mine site and adjacent property, population density, structures and barriers which may affect sound waves and all other such factors that may reasonably be considered according to industry standards for measurement of sound levels”. Radtke felt that was a lot of language. Radtke broke it down as, “the testing procedure” – it is saying what you’re going to sample but what we are testing as it doesn’t clarify what we are actually testing. It is leaving vague criteria to test. If we are going to be testing something we should have specific criteria. It says “when taking into consideration all relevant factors”. Radtke questioned who it was relevant to; the mining operation, neighbors who are complaining, the DLM – it leaves too much discretion there in sampling noise levels to include certain things and maybe not include other things. Radtke thought this paragraph needed to be looked at to pin down first of all; what are we testing, why are we testing something and if we are testing it, what are we testing so that it is consistent for everybody who comes forward. Radtke wanted to basically add something that gives an introduction as to why all of sudden we are testing. There has been no listing about any requirements to test, where does this come from. Radtke thought maybe this just needs to be moved to another place. Lien stated if one starts reading down below, it makes a little more sense as to why. Brandt felt Radtke’s point was, if you just move that to more of a description under (ii) “Prior to approval, developers of a Non-Metallic mining Facility shall submit a Pre-construction Noise Survey, etc” then the paragraph that Radtke is referring to is actually out of place. Brandt commented that was

part of the discussion that was brought up earlier by Haas as to how one includes/defines the methods to be used in the Ordinance so that it can be defensible. Brandt read this and felt they were trying to make sure that the topography is being taken into consideration as opposed to just “straight line” stuff. Brandt stated it certainly could be cleaned up but by moving it between (ii) and (iii) all it does is fill out what they mean in number (ii). Bice stated for the audience present that didn’t know, with no one talking in here, the sound level here is about 43-45 decibels. That is what it is with no extra noise whatsoever. This paragraph that Radtke has brought to our attention suggests here that when taking into consideration all relevant factors that may have applicable impact on noise level at the boundary, Bice wanted to say that (and several references have been made to) – for lack of a better term – the operating mine not being responsible for any ambient sound. In other words, they are only going to be responsible for the sound that they produce according to this Ordinance and the way it is written. Bice stated that is going to be a very difficult enforcement issue. According to Bice, technically, there is one way to measure that but it involves an incredible amount of cooperation and that is to measure the sound level and then make the mine shut down. A reading would then be taken and then make the mine start back up. The enforcement is going to be difficult and that paragraph kind of says that we are going to try and sort that out a little. Bice made that point because we are working our way into a very difficult enforcement situation. Brandt respectfully had to disagree and stated he wouldn’t have anything to say if he hadn’t read the handout the other day which is exactly the procedure that is used to determine the dBA. Brandt stated it is as Bice describes that one takes the ambient sound noise with the processing, at some level it is adding and subtracting and yes, that is part of what the noise survey is about. There are procedures for that, there are distances required and this is laid out fairly explicitly how far above the ground the microphone is to be, what type of microphone is used, etc. The AC has suggested the sound survey because they know it is available, there are professionals who do it (Brandt assumed that) and they know it can be used as a tool. Bice’s point was that it is going to be very difficult. Bice responded when we are working with a 45 dBA sound level which is almost unattainable, it is difficult and to sort that out is going to be tough. Bice inquired how much staff will have to be hired to sort this all out to keep everybody happy. Radtke responded it starts with the testing procedure. If one is testing the sound levels, wouldn’t the sound levels whether you are at a boundary or a receptor, going to be already taking into consideration the topography (trees, etc.). The noise is what it is, (leaves on the trees may make a difference). Lien interjected saying it would have to be an average because it does change from day to day/hour to hour. Brandt stated, regarding the testing procedure, you don’t do it on a windy day or when it is raining. Brandt added there is a procedure involved with this and it doesn’t have to be DLM staff that does that. The requirement in this Ordinance is for only two tests; one prior to construction and one at 12 months. All staff has to do is certify those tests because they help in determining which outfit is going to be operating. Doerr inquired if it is the will of Trempealeau County Government to try to go down this road of limiting sound so that one can move out of the city and into the country and expect silence and peace, etc. Doerr foresees the next thing as impeding the ability for a large corporate sized corn dryer in the rural area. If it is the intent of Trempealeau County to do that they should be aware that they are then infringing on the potential to take away rights of a large farmer in a rural setting. To answer Doerr’s question, Bice replied that was not the intent of this Committee. Radtke continued in the second paragraph which states, “the testing procedure” between (ii) and (iii) does give a little more introduction and explain what sort of testing would be needed. But in (ii), Radtke felt some of the language could be cleaned up. Such as where it says “prior to approval”, Radtke felt that was implied to mean “approval of a Conditional Use Permit” and then it says “developers” which Radtke thought a better term might be “an applicant for a Nonmetallic Mining Conditional Use Permit” shall submit a preconstruction noise survey with measurements taken at the property boundary. Radtke noted the use of nonmetallic mining “facility” again. Radtke noted the sentence which read “pre-construction noise survey shall be conducted at the Applicant’s expense by an independent noise consultant contractor acceptable to the Trempealeau Counting Zoning Department and to the Operator”. Radtke stated that all makes sense but is the “procedure” paragraph defining what the “noise survey” is? Radtke continued saying the same question could be applied to the post-construction sound measurement sound study. We have a “noise survey”, “sound measurement study” and then a paragraph above them saying the testing procedure is as follows. Radtke questioned if there was something different other than one is pre-construction and one is post-construction or is it the same thing and why is one called a “study” and one is called a “survey”. Quackenbush commented that a “noise study” is also mentioned in paragraph 5. Radtke questioned if these were all one in the same and if they

are can we have one paragraph that lays out the criteria as to what is going to be tested, how it is going to be tested so that one is actually comparing “apples to apples”. Brogan thought that was a good idea and inquired if the second paragraph (testing procedure) couldn’t just be eliminated. Radtke replied it opens up a variety of discretion as to how to test but it doesn’t really lay out specifically what would be tested. Radtke commented if this Ordinance was handed over to an independent noise consultant contractor they would say there is a lot of different ways we can test this and depending on who is paying this person the results may vary. Radtke questioned if that is what the County really wants? Radtke felt we wanted something that is going to accurately affect – what is the sound. Radtke reiterated that he felt the second paragraph needs to be reworked. He didn’t necessarily think it needed to be done away with but should be written to lay out the criteria that should be specifically looked at or what is tested and what should the results say. Winey thought the intention behind this was to try to set that decibel level and allow mines the opportunity to come and say “alright how do we need to construct our facility so we can best accomplish that or so that we can meet those and not have any surprises” hence the preconstruction study to say where the processing plant can be built, what can we do for different berms. The post construction is to assure that what is put into place is actually working. Winey stated that for the AC it was hard, because of the different folks’ background, trying to say this is our intention of what we are trying to accomplish and then come up with the language which needs to be legally enforceable. Winey commented “the devil is in the details” on that one. Lien stated the purpose of the initial investigative study was for the applicant to look at the site and say this site is either going to cost them a lot of money or a lot of waivers because of the topography (they can duplicate the sound and measure it at points). It would give the applicant, before they apply, the option whether they want to look at another site or place it in a particular place and duplicate the noise. Lien added perhaps that part isn’t worked out in the Ordinance language but the intent was that there be that initial study first, prior to application whether or not they think they can meet it at that site. Then, after everything is in, to verify with a follow-up to make sure that they indeed followed through with their initial study and that it is working, because with waivers every site is attainable. Some sites may not require any waivers at all. From the studies that were done at Preferred Sands, in that “bowl” by Przybylla’s, they might be the only ones. They took several readings around there and they were below 45 dBA. The funny thing was that if the mine is shut down, it still was 45 dBA. There was no increase it was just a different noise and that is where a lot of this information came from. Quackenbush stated it had been mentioned that when they did the study, they wouldn’t potentially need the waivers because they were at 45 dBA. Is the idea that before one gets the CUP, one gets the waivers? Lien responded absolutely. Lien continued at the time of application, unless your intentions are not to run 24/7. Lien stated a lot of people mine with the boundaries that are already set in the ordinance, then it wouldn’t be needed. If the intent was to process 24/7, one would do that initial study first, then if there are sites where there might be waivers/mitigation needed, they should obtain that first. Quackenbush questioned that the way one knows who they need the waivers from is by what the decibel level is at the house. Lien responded, no, right now it is at the property line and it would have to be duplicated with a study (which can be done) and then take those measurements. Quackenbush’s point was that, so at the property line we have a 60 decibel dBA, who did he need waivers from? Lien’s response was that property owner. Whichever property owner, where there is that limitation or you extend your property boundary. Quackenbush stated for instance my property boundary is where the line is set, so if my property boundary is at 60 dBA, the person that I’m next to (the next property over) I need a waiver from them, but what about the property behind that? Lien responded unless it would exceed 45 dBA, like in Winey’s case. Quackenbush stated instead of measuring the decibels from his property line and not my property boundary. Lien responded that is why we are talking about the receptor base and why we said “any” property because then it covers it. We didn’t do just at your boundary, we just said at the property line, to include anyone that would be affected. Like in Winey’s case, there could be an owner between him and the mine but because of that berm, they are not over 45 dBA, but back at Paul’s boundary he is. Lien added that is why we didn’t want to do the perimeter or the boundary because it does change and Winey’s case is an excellent example. Lien stated there will be several others who will come forward with that same scenario. Quackenbush stated what he was getting at is that he would have to measure it at his boundary and then at the neighbor’s as well, to know whether he needs a waiver. Lien responded your boundary and the neighbors are contiguous, but the one goes beyond to another property. In referencing the meeting the day before with the noise consultant, we have to be able shut down or not be able to duplicate from the receptor and take into account ambient noises. Brandt questioned if

Lien just said, the property boundary that we are talking about, doesn't have to be the one that exists between the mining operation and the neighbor, it can be some other neighbor that is not next to the mining company? In other words, you are "jumping" property owners? Brandt and Brogan stated they didn't understand that. Lien explained that the person at the edge of the mine might not hear the noise because of a berm, etc, but then you have that house on the hill that is affected, so then one can either move the receptor location (to not affect that person) (Brandt stated if we are talking receptors). Lien responded even if we are not talking about receptors, the sound still has to be duplicated to do the study. Lien questioned where one is duplicating the sound. It doesn't affect landowner "A", but behind them it affects landowner "B", so then one can remove that duplication to either not affect them or do a waiver or mitigate with them. Brandt wanted to go back to the Committee, because Brandt's understanding was, that the reason they took out the 2500 quarter mile/1/2 mile because what they wanted to do, not only to simplify but also to give some sort of consistency of expectation to whoever the operator was, that the only neighbors they needed to be concerned with, in terms of sound, was the one that abutted their property line. Lien stated that was a false interpretation. Lien explained that the AC looked at Winey's situation specifically. Brandt had assumed that Winey's property went up to the mines property line. Lien continued that he does not and there are residents down below him that are not affected, that are below 45 dBA because of the berm. In addressing the AC representatives, Brandt inquired if their intention was to assume that anyone who may be affected, at their property line needed to have a 45 dBA. Brogan responded that was her intention, but that is not what was put in the Ordinance. Brogan's understanding of the Ordinance was that Winey is out of luck and that when they did the sound studies and they measured at the boundary line of the mine, it was below 45 dBA, but at Winey's house it is higher and the AC did not save him with this Ordinance. Brandt asked for Winey and Custer's understanding. Winey responded this was to be able to protect anyone within earshot in excess of the 45 dBA and that is why the 2500 limit didn't work because it could bounce up and over the top, also a lot more difficult to measure. It puts the onus on the mine to say this is the sound coming from them and as was pointed out it is industry standard to turn it off, turn it on, measure it and see if we can prove. It is a burdensome process. Winey stated the AC looked at even trying to say right at the property limits and that is going to exclude people. It is a difficult balance to achieve but the intention is to protect the area surrounding the mines. Winey added the other piece is that it is going to be even more burdensome when one starts to get multiple mines in more than one area and showing what noise is coming from where, hence again the pre-construction study and the post construction study to be able to sort that out. Brandt thanked everyone and stated he had misinterpreted that. Radtke commented that from an enforcement standpoint, he read this and the first thing he wrote down is, "does everybody in the world have a say then?" and that we can't enforce something like that if we don't know who is affected, who does one need to get a waiver from because there are going to be people who abuse this, who are against the sand mine will say, "I can hear this or I have certain noise". Lien interjected saying they had discussed this yesterday with the noise consultant and that noise or measurement can be made ahead of time. Lien stated the noise expert stated he can duplicate that sound (those measurements can be made prior so that we know who is affected and who is not affected). Radtke responded the way the Ordinance is written it says, "if noise levels resulting from a nonmetallic mining "facility" but one could say processing exceeds the criteria listed above. Radtke questioned what criteria listed above? Radtke assumed it means that the audible noise due to the nonmetallic mining operation exceeds 45 dBA measured at the property boundary or property line. Radtke reiterated that is the criteria listed above – 45 dBA at the property line so if it is exceeding that criteria then a waiver from those levels may be granted by the Committee provided that express written consent from all property owners/persons, etc. has been obtained stating that they are aware of the noise limitations imposed by the Ordinance, and they consent to exceeding those. Radtke inquired when you say, "all property owners", he couldn't see how that would apply, because if our criteria is 45 dBA at the property boundary and then one is saying, "all property owners", does that mean everybody in Trempealeau County? Lien responded if they are affected by that mine, then yes. Lien stated it is everyone affected by that mine. Radtke asked how we know they are affected by it. Radtke commented if they are exceeding 45 dBA at the property line, at a certain point (the science of it) unless it is a crazy amount of decibels, how far out before the attenuate, before sound stops travelling and you actually have other sound that is causing the problem. Radtke stated it wouldn't make any sense or he was having trouble understanding the situation where, at the property line of a boundary of the mine, that it is 45 dBA, but at a neighboring property further away, it is louder. Radtke was having trouble

understanding how that even happens from a science standpoint. Lien responded it is as simple as this that here is the receptor (at this level which is the property boundary) we have 45 dBA, here we have Winey's property, that noise travels in a line of site. If it is a level plain. Then every increment out, the noise level drops (it is a science) but because there is no impediment from Point A to Point C, that noise is louder back here than it is at Point B. Radtke stated that makes sense. Lien continued that is what the AC was trying to take into account because if your property boundary is here, a simple berm alleviates this person's issue. This other person that is here, because of topography has, i.e. 65 dBA because of a clear line of site with no impediment. That gives an applicant the ability to plant trees, hang a barrier, insulate the building, or all kinds of caveats to reduce this person's issue. Lien stated that was the whole intent, however the verbalism may not be correct, but this is the exact scenario that we had recorded and discussed and we are trying to alleviate. Again, this is a huge trade-off, if this is too complex, maybe we are better off going back to the original Ordinance and look at, if processing is going to be unlimited, inaudible to anyone then we need industrial parks where this stuff is located, where the "sky is the limit". Radtke responded that is a different issue, but if this is going to be applied to all property owners, but yet our criteria is 45 dBA at the property line, shouldn't this also then have (if this is going to be used as a receptor base) some criteria that states at that receptor it is at least (a certain number) so many decibels. Lien responded no because in his opinion that was variable. Lien stated they have to duplicate that audible noise that they think they are going to admit, which the noise consultant said yesterday, they absolutely could do that. The noise expert can duplicate that noise at the proposed site, then one takes the measurements wherever you think are potentially effected property owners lines. If those measurements are at or above 45 dBA, then you have to start looking at additional things that can be done. Radtke asked how does one know if the noise for all property owners has been addressed, from an enforcement standpoint, where an applicant is saying they have all their waivers, here they are but then there are neighbors two miles away saying, "Wait a minute, they didn't get one from me – I want to get my waiver because I have noise. Lien stated this is a science and if one has nothing there, they are duplicating a noise, you go out to these other people and take a dBA reading and there is nothing coming from the site, and they are at 60 dBA, now automatically there is something else contributing to that and those have to be taken into account because that is not from that mining site then – there is other audible noise. Tuschner had given a scenario where noise is already being contributed by other sources – not a mine site. Bice commented Lien's point is what the Ordinance would like to have and Radtke's point is that we have to have something that is possible to enforce. Lien responded, absolutely and that would be enforceable. Lien and Bice agreed it would be an incredible stretch. Lien added all of this is an incredible stretch to allow audible noise 23 ½ days a week in a rural setting and it is very complex, but it gives the industry tools to make that stretch attainable. Tuschner commented that Pandora's Box is being opened. Winey, directing his comments to Radtke stated that Roman numeral five (V) does address some of his concerns (perhaps could be moved to an earlier part in the Ordinance) and puts the enforcement part back in hand so the Zoning Department can avoid nuisance complaints. Winey stated the AC looked at this and realized they had to have some protection for the mining companies so that they weren't being plagued by individuals out there constantly harassing them. So if there is a complaint that is received, the DLM needs to verify and validate it, and if there are more than two unfounded complaints, then the responsibility goes back on the private individual that makes the complaint. Winey stated again, that they were looking to balance both sides by saying, yes, we realize that sound is very subjective and we're also not going to beat up the industry when the industry is not doing anything wrong. Tuschner stated Winey made an excellent point and also Radtke about enforcement. As Tuschner said before this is sort of opening Pandora's Box. Tuschner asked how many more people Lien would have to employ in his department just to keep up with complaints and enforcement of said complaints. Technically, Tuschner could complain 10 miles away and he thinks we are going way beyond the boundaries. Tuschner agrees with Radtke, he sympathizes with what is coming because Radtke is the one who is going to have to mitigate it and he is going to have to have something down to say this is it, this is where it came from and this is how it was achieved, there are scientific ways of doing that. Quackenbush commented the alternative is to only process during the limited hours from the mining side, but we want to find a way to make it work even it costs a little bit more up front. Quackenbush was having trouble understanding whether before we even start going that we need to decide how loud we are going to be at our site above 45 dBA and then measure whether it reads 45 dBA at all the neighbors or we can't ever be above 45 dBA and there is some way that at a house up further is louder? Lien explained what was discussed with the

noise consultant was that noise can be duplicated. We know what the industry sounds like when everything is running and that is not measured and no one cares from 6:00 AM to 8:00 PM. Lien stated we are talking about after that, when processing is being allowed. That noise can be duplicated which is done at your potential site and then you measure, at the decibel that you normally operate/process at, who you believe will be affected or not. You take that measurement and then you can either adjust your site plan, do things to reduce the noise or you can mitigate or waiver with people where you cannot fall below 45 dBA. If your site is a very flat area, that is going to be a set perimeter, you know at what point you meet 45 and at what point you don't. In unique topography, you are going to have someone right behind you, maybe 100 feet over the hill that is at 30 dBA that is not going to hear anything from you. He may have other noises, but they don't change. This will be documented in your noise study that this person hasn't been affected at all, then one goes to the affected people that are in the "megaphone area" like Winey and resolve that. Quackenbush clarified that he is either allowed a way to operate at less than 45 dBA at the property boundary or he can operate above that and find ways to mitigate it with anybody surrounding it that it would be above 45 dBA at their property line. Lien responded that was correct. It gives the applicant a hand full of tools and the sky is the limit on how one can work that. You can work to reduce your noise personally or you can mitigate to get them to sign the waiver. Lien stated it might not be verbatim what he just stated, but that was the AC's intent. Behling stated, if it is ok with Lien and Radtke, at some point before the Committee leaves they would like to give them their cover letter and their two pages of suggestions that they have made. His second point was, as a former prosecutor for municipalities, he does agree with Radtke, that at some point you do want to set the level so that the Ordinance is specific and easier to enforce. They are not going to tell the Committee what it should be, but that it does need to be specific. Bice advised Behling to give his handout to the Committee members. Haas stated, if this would go through, i.e., Lien comes to him and says, "You have got to fix this sound problem". Haas, hypothetically, constructs this big berm and then instead of the sound hitting Winey's house, it shoots into Buffalo County at other houses. Haas questioned what is the mitigation then? Lien replied that is Buffalo County and our mitigation stops at the County line. Haas questioned if the Buffalo County Zoning Committee couldn't come to this County on behalf of its citizens and sue because you aren't making them fix the problem. Lien responded anyone can sue anyone and Lien didn't believe Radtke was going to answer that question. Haas commented we do have mines that are near the Buffalo County line. Lien responded absolutely but that is just like saying, so it is unfair to the people in the Town of Preston that are going to live with all the noise from Preferred Sands because they annexed to the City of Blair. Mike Blaha stated he has done some sound readings, etc. as he has a decibel reader. He goes out to the property that they want to put this facility on, he was just out there last week on a cloudy day, no wind and his readings are anywhere from 51-58 ambient sound. He is sitting there, outside his pick-up, no noise running, no nothing, so how does he address that issue when they are already 6-8 decibels above what has been established here? Lien stated that is why it is a weighted average, it is not a one time occurrence. Lien explained that he took the meter home in the fall when the corn was dry and still standing. Lien walked around his property at 11:00 PM and couldn't get the meter to drop below 48. Lien also went out during the winter with snow on the ground, no corn and on the edge of Lien's property it was 28 dBA. Lien continued it is time of year, wind/breeze, etc. but it has to be a weighted average. Blaha's one occurrence is not representative of a weighted average. Lien added there are times on that property when there is not a breeze or one could be in a different location, etc. and one will get a lower reading, but that is why one has to do the noise study. Radtke asked if they would have to have a noise study for the whole year before one could start? Lien stated it has to be a lengthened period of time – some homework will have to be done. Radtke stated that needs to be laid out in the Ordinance, if one is going to need a whole year study due to leaves on the trees and snow on the ground, etc., a lot of different things that can cause different noises. Radtke continued if one is doing an average of the ambient noise, is one subtracting from the noise that the mining operation makes? As the point was made, Radtke asked what if the average is 50 and we have a requirement that it needs to be 45 dBA. Radtke asked what does that mean or what happens then? Lien explained that if the average/ambient noise is 50, there is something that is contributing to that because that is not a typical rural noise. Then one is going to have to look at it beyond that point - perhaps why that is being contributed and is the mine adding to that. Lien reiterated that these noises can be duplicated, so if one is near something that is a constant 50 then it can't be blamed on the mine site. If the mine emitted noise doesn't exceed 45 dBA then they are alright. Tuschner asked if in example, his fan is 50 dBA and it is projected that a full fledged mine operation is going to produce

up to 45 dBA, then when that mine is in operation, is it then that the noise level cannot be above 95. Lien stated that was not correct. Tuschner understood that but the reason he said that is because that is what that meter is going to do and that has to be explained. Lien responded that is not how meters and sound work. Radtke asked, from an enforcement standpoint, are we taking the average decibels at the property line (for now because that is what the Ordinance says)? Radtke stated what if for half the year, the processing noise that is being produced there is 40 decibels and the other half of the year it is actually 50 and that average is 45. Does that mean during the times when they are at 50 dBA that is acceptable because on the average, over the year, they are at 45. Haas interjected stating one can't average decibels and that is a mathematical problem here. Bice commented that there was an individual, a few years back that pushed really hard to get a noise ordinance in Trempealeau County. The Sherriff and Lien both told Bice and told this Committee that the problem is that it is too hard to enforce. Bice knows we cannot let the mines run wild but we have to get our figure up somewhere so that they can operate within that level and not have a constant problem (and he means constant and this conversation today is a good example of that there is never going to be a resolution and something that we can live with). Bice stated less than 1% of the people in Trempealeau County are going to live within hearing distance of a mine, that would be 290 people. Bice's opinion is that it is only going to be 1/10<sup>th</sup> of that which is 29 people. Bice didn't feel this was going to be resolved today, but he wasn't sure when we were ever going to resolve it unless we take a broader look at it. Lien, in addressing Bice, stated that as a representative of the E & LU Committee, that is like saying the person living with the gas cannon is less than a hundredth of the representative of Trempealeau County and we should overlook his situation. Bice stated that is exactly what Lien had said. Lien responded he did not say that, he just said that his Department couldn't regulate it. Lien personally feels bad for the person and it should be dealt with but he can't individually take care of it, but he didn't feel it should be overlooked. Bice added they are actually making progress on that. Bice's point is that we just need to try to establish a little more reasonable number/level (it's 43 in here with no one talking) then encourage everybody to work together to put up berms, plant trees, etc. or whatever can be done and mitigate with the neighbor. Bice's opinion was that we are heading into this with an impossible resolve. We cannot resolve this if we establish that like we are trying to. In addressing the mathematics of decibel levels, Brandt stated there are a number of "in bold" things in the handout such as sound increase by ten decibels, a subjective response to the governing of loudness. So it does matter if it is from 20 to 30 as it is a doubling of the perception of sound. When the distance is doubled from a point source which is what we are talking about, the sound level increases by 6 decibels – so distance is important. Brandt read, "a doubling of energy yields an increase of three decibels". So in a point source if you have something that is at 85 decibels and then you turn on something that is also at 85 decibels, the perceived sound is 88 decibels, so for whatever reason it doesn't increase in the way that one thinks it is going to – and that is what we're dealing with. In reading Sanchez's resume' he has worked on a number of big projects in Midwest and Wisconsin that are considerably more difficult than ours. It indicates to Brandt that there are experts out there who are able to do this. An industry can expect us, to expect them, to do what they can to mitigate the issues that are related to that industry. Brandt stated it is not impossible and we can do this. Brandt stated this is the messiness of Ordinance writing and once it is done, it is given back to the staff and they enforce or interpret it. Our job will be done. Winey commented that this Committee is beginning to understand, in a few short hours, what the AC wrangled with for over seven months. The numbers that were reached or the intention behind those numbers (he appreciates Corporation Counsel's input) were that it needs to be something enforceable to put into place. Winey reiterated that there were representatives from the mine companies (Proppant – Mr. Jordan) (Preferred Sands) and others from the industry (Kyle Slaby was the one exception) that felt that getting that down to 45 dBA was meet able. Winey referred back to what is considered typical noise levels for various areas. This is what the Committee is asking the public to give up, virtually 60-70 more hours per week of night time (sleep is precious and a health concern) and move that into suburban conversational levels outside of their homes and they are giving up what was a 30 decibel quiet night. Bice asked Winey to restate that. Winey stated you are asking the public, when allowing the expanded hours of processing, to give up 50-70 extra hours of what would have been quiet, at this point in time. That is what they are giving up and if one allows that to one unfettered, then again you are moving suburban/urban noise levels into the rural area. That was the compromise from the public. After referring to his paperwork, Winey stated the mining industry is gaining 60 hours of processing time (50 during daylight savings time per week). The current Ordinance allows for 78 intermittent hours per week, proposed changed

increases is to 128 hours of uninterrupted processing. That means people will not be escaping this in day time or night time. That is the 60 hours of night time that the public is giving up. In exchange, we are giving the industry the ability to process, uninterrupted, which was what they wanted. That makes it much more efficient for them as that is 60 hours a week and adds another shift and a half of workers, tax base, etc. It is a huge economic impact. Bice stated Winey is assuming that they can qualify under the revised Ordinance. Winey responded that is why the individuals, at the table with the AC, felt they could do that. Winey noted that was a roll call vote with all but one approving – and that individual has never operated a mine. The other individuals speaking there were and are in operation so Winey felt their level of expertise speaks much more highly than the one who dissented. Custer stated, in referring to what Winey had said, this issue had stymied them as well and they had all these conversations so it is no surprise to them. There clearly is some lack of clarity, in perception. Custer didn't think this was going to be solved in a big group discussion, so she suggested that Lien sit down with Radtke, indicate what the intent is and then put that language down so that the Committee can then respond to that language, because the way it is written right now, there are too many gray areas in too big a section there. Custer thought Radtke has made some excellent points here and the AC members were not ordinance writers and to her knowledge there were no attorneys on the AC, but she did think that Lien has a clear understanding of what the intent of the AC was and that the intent needs to be cleaned up and expressed in a way that it is at least clear and that it then comes back to the Committee to decide if it is something that they feel is defensible and appropriate to move to public hearing. Custer agrees with and feels strongly about everything that has been said here, it needs to be as clear as possible. Custer is not a sound expert either and didn't know that anyone in this room was, but she did know the public needs to understand what it is we're composing as an ordinance so we have to come up with a way that they can understand this and respond to it. We can get all the professionals that we want talking about logarithmic and attenuation of sound, but it isn't going to mean anything to people unless they understand what it means to them and their lifestyle and that is the point that we need to bring this discussion to, so that there can be an honest debate by the citizens of this County as to what they are giving up or possibly getting out of this Ordinance. That is the goal here and that is who we are trying to represent – the people – the average person in this County. Winey added that he knew that if the mine across from him were to hang curtains up on the northeast side of that building, Winey's concerns would be eliminated. Right now they have no incentive to do that. We need to provide them that incentive and at the same time protect the public and it will work. Custer stated industry told us that it was logical for them to want to provide appropriate sound barriers so that they could be good neighbors and operate in an environment where they were not shunned and criticized at every corner. It serves industry as well to come up with something that they can actually provide so they can be accepted in the neighborhood that they are moving into. Lien noted that Ben Quackenbush is here as a representative for Proppant Specialists – Ron Jordan. Lien stated Jordan had flown up from Texas almost every month, with the exception of his anniversary, at no fee, he didn't collect mileage or per diem for ever attending the meetings. Lien added that Jordan has said openly that 45 dBA is very attainable and he has no problem doing that to be a good corporate citizen and a neighbor to the people around him. Bice assured everyone that this industry is working as hard and will work as hard as they can to improve and keep a good image. Bice had a conversation with a bunch of people the other night and they talked about this because this is what he does when he is in public. He asked people, give me your thoughts on this (keep in mind these are people that don't live by the sand mines, don't know anything about sand mines). He explained some of the sound stuff to them. Their response was industry coming in is a good thing. The consensus was that the sand industry is a good thing. Bice wanted to make a few points and then perhaps you'll understand a different perspective because we have the industry and we have people representing the public – people who either have a position for or against the sand. Bice has relatives that live in California specifically a niece who is a teacher. Her classroom size has doubled in the last five years because California is in financial disaster, probably going to fail as a state, and they should have never come to that because California has an incredible base. There are two reasons for that; they spend a lot of money, but the other thing they have said is, "not in my backyard – you can't do this here" so regarding electrical generation, they basically quit building plants. Industry cannot run today because they don't have reliable, sufficient electrical power. Time after time, they said, "we don't want it in our backyard" so they have eliminated a lot of things. So his niece's class size has doubled, she has phenomenal property taxes (\$9,000) that she pays on a little tiny house. Bice's point is that we have to make sure that we don't go there, because if we stifle industry,

we are going to end up with a serious problem. We already have it, we have a hard time paying our bills. Bice quoted Brandt saying we have 4 1/2% unemployment – that is an acceptable number and to some extent Bice would say that is true. Bice stated government not only has the ability/need to look out for the people that are affected by some of these things but we also have to look out for the people who are going to ensure that we have enough economic growth and stability to survive. Bice hasn't heard that point made yet, except with the people that he sat with the other night. This should give everyone an idea of where Bice is coming from and he thinks it is extremely important. He loves peace and quiet so he doesn't want to allow the mines just to do whatever they want but he does think we owe it to everyone in Trempealeau County to be reasonable. At this point, Radtke has a lot of input, he thought he could sit down with Lien and put something together. After some discussion it was decided that the Committee would like to take another look at what Lien and Radtke put together. Quackenbush commented he was here today because his company is worried about whether or not they will be able to comply with this and from the opposite end the County is worrying about enforcing it. Quackenbush asked for a copy before it goes to public hearing also. Custer asked that a copy be forwarded to the AC as well. In regarding a point that Bice made, Custer stated she thought there was an assumption being made that the citizens on the Committee are anti-sand. Custer felt there was a spectrum represented on the AC, but from the beginning, when they sat down at the table, the AC was looking at a way to figure it out for both the citizens and the sand mines. It was never proposed that sand mining be eliminated in this County and it was never proposed that there wasn't going to be a solution so please don't operate from that assumption. We are just like you, we are looking for solutions to this, but they have got to make sense to us and they have to be something that we can work with. Custer stated Lien did a great job of letting the AC know that they had to come up with something that will work. That point was outlined at the very outset so that is what they tried to do. In looking at all the facts presented here, Bice felt we needed to give enforcement the ability to be able to accomplish something and be able to actually say these are the rules we are going to have some guidelines here. 45 dBA, in Bice's opinion is not attainable or a figure that anybody can work with. Bice knows that the mining industry agreed to that. Brandt questioned why Bice thinks it is not attainable if the mining industry thinks it is. Bice responded the people on the AC said that. Brandt responded no, the people on the AC reported that the mining industry said they could work with 45 decibels. Lien reminded everyone that it was a roll call vote. Bice is aware of what was said at the AC. Bice went on the tours. Lien and he spent a lot of time together recording sound levels. Brogan and Custer were both along on those tours. Bice's observed, as they listened to the sounds, that 45 was not possible, but he is not a sound expert so he cannot separate out sounds from jets overhead or from all the other things involved. Bice knows that they rarely got down to 45 decibels and of course the idea was because we don't have a processing fence or some kind of sound shield, etc. Bice is trying to let these people come in, run their business, not annoy the public but yet have some leeway so we got a little bit to work with. If there are people that come in and say, "I don't like that noise, I want to stop it", then Bice thinks we are going to have a mess on our hands. Originally, during the meeting the previous week, Bice was going to set up a little demonstration so that we could listen to what 45 decibels sounded like and then bump it up so that we could get an honest idea of what kind of noise that was. Brandt inquired what the levels were that Bice was getting at the processing facilities. Bice didn't think they ever hit 45 dBA. Lien responded probably 50-51 at the two when we stepped back to the property line we were on the edge of the road. Lien stated if Bice is basing all of that on that one visit, that is not a weighted average and that was during a day when everything was running. Lien reiterated we are specifically talking about processing only, which is a complete different operation from everything running. That particular day it was a little bit breezy and breeze definitely affects the meter. Lien added we had 51 in Wyeville, at the road, and we had 55 over in Augusta. That was during the day. Upon Quackenbush inquiring if processing was occurring as well, Lien responded yes but the extraction in Augusta is further down the road. Bice commented they were also using big loaders to load the sand right there so that is part of the process. Brogan commented it was an unenclosed plant. Bice's point is that he thinks everybody can live with it if we can bend, but if we have some issues they have to be cut and dry and that is where we don't have a cushion. While Bice thinks we can probably live with this, he thinks we are asking for a lot of trouble if we don't bump that level up a little bit. Bice knows we owe it to everybody involved. He knows there will be some people who will be inconvenienced more. Bice understands Winey's position and that he has to live with this all of the time. That is the way life is, that is the way society is, unless you want to buy 500 acres and build in the middle of it and then tolerate jets going over, we're just going to

have to live with that. Moving forward, Bice thought we are opening up for huge legal consequences unless we give a little bit of leeway back here. As far as mitigation goes, that is another thing that needs to be defined. In other words if they go to the neighbor and say, "Give us a 100 years of bending that 5 decibels, etc", that has to be a little bit established or people are going to be lining up saying, "I heard that the other night and so I want something for it". Radtke had made the point that we need to be careful as to how many property lines we go out and how many we are going to try to enforce. Bice stated that was impossible to skip a couple properties and let Tuschner complain about something that is in Arcadia. Bice inquired if anyone else had something in place that we could just grab. Lien responded not really and that this is a very complex issue. Nelson asked if Lien knew what the sound decibels were at Winey's hours, during the day, when they are extracting and working? Budish presented an overhead display of decibel readings he had taken at Winey's house. Budish explained they took six different readings, six different times (2 mornings, 2 midday, and 2 afternoons), they wrote down the wind. Budish noted the points were based off of topography. Budish stated, as one can see, #4 is tucked behind the existing topography, within the 2500 foot buffer. Lien explained the mine site, pointing out a large ridge. Lien pointed out the direction of the noise and where Winey's house is located. Lien noted the ridge around the site and because of the berm they built had the mine been tucked in a different location, the noise would travel in a different direction and be affecting little or no one. Lien stated we didn't have the knowledge then that we have today. Budish noted that #3 is actually the driveway of the mine, so it funneled it right out of the driveway. Budish explained how the testing was done. Brogan noted, based on the information Budish presented, that there were really no violations except for inside the mine site. Lien noted, for clarification, that this was during full blown processing, everything was happening; extraction, processing, etc. This wasn't just running the processing, this was the mine in full activity. Budish stated there were no trucks leaving. Bice commented that, now that we have the low tone alarms, isn't it safe to say that trucks are the most annoying sound level item there is. The rest is kind of a constant hum but the trucks come and go, slow down and bring other traffic. For the Committee's sake, when Bice took the tour he was with Lien and went basically for sound purposes. Bice spent a lot of time with Lien and his observation of the Committee members was that noise was not an issue. That was Bice's assessment, he worked hard and that is why he went on the tour. Bice wanted to make sure that when we put this ordinance in place that has huge affects, that he has a reasonable number in there that we can live with. Bice thought we could do that but he also thinks that if we do it too low enforcement will be a constant issue. Bice added that the interpretation of these things is not necessarily on paper and if they can do it or request it, it just creates a lot more doubt for them as far as setting up a design, etc. Bice wants it to be comfortable for everybody, usable, livable for everybody and he thinks it is important that we don't set it so low that we can't live with it. Lien stated Bice has heard a group of professionals that met repeatedly for seven months and beat this subject to death and they came up, uniformly, with 45 dBA. Upon Bice's inquiry of what the old Ordinance stated, Lien responded it had dBA at night to run a generation batch plant to keep diesel engines warm and there was a lot of study that went into that language. That is where it started from and the AC looked at all kinds of things. Staff did their sound study, Winey came in with his study and everyone was at the table. It was uniformly agreeable that the number is not unattainable. It is going to maybe take some effort as everything in life does, but it is very attainable. In addressing the decibel reading graphs, Haas stated 50-60 is cut in half, so the graph should be much steeper. Haas stated we do not have room for error when we are talking billions of dollars worth of mining to be averaging decibels. Haas added you cannot have an algorithm. Budish noted they are not experts, they were just going by the direction of what the AC wanted them to do. Haas responded when one puts sound levels in a graph like this, it doesn't look to bad, but one is twice as much as the other and the graph does not reflect that. Lien stated the numbers are represented on the left side of the graph. Haas wasn't talking about whether the graph was right or not, the graph is fine but it is not representative of the doubling of sound. Haas felt the graph should be at a 45 degree angle for the doubling of sound and it is not. Brandt acknowledged Haas point stating it was well made. Lien responded the point is, if one looks at the bigger picture, looks at the overall numbers from all the points, for someone that is living there, that weighted average, which was around 40, was with absolutely nothing being done, in the middle of the day, with the mine in full operation. Lien commented at how little one would have to do there to reduce noise. Brogan commented that Ron Jordan had said that - he suggested hanging up a sheet to get that noise reduced. Lien reiterated no one on the AC was trying to stifle or object but it was a huge trade off when one looks at the additional hours and the noise that will be emitted out

into the public. Haas reiterated the graph is not accurate or representative of sound. Bice acknowledged Haas' comments.

**Replenish Petty Cash Card** - Quarne made a motion to refill the petty cash card, Brandt seconded, motion carried unopposed.

At 12:38PM, Chairman Bice adjourned the meeting.

Respectfully submitted,  
Virginette Gamroth, Recording Secretary

Michael Nelson, Secretary