

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

**REGULAR MEETING MINUTES
October 21st, 2013 5:00 PM
TREMPEALEAU ROOM**

Chairman Bice called the meeting to order at 5:00 PM.

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

Committee members present: George Brandt, Tom Bice, Michael Nelson, Ed Patzner Kathy Zeglin, Jeff Bawek, Hensel Vold. Jay Low was absent.

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

Others present: Linda Mossman, Robin Jones, Marlys Kolstad and Mary Frisch.

Adoption of Agenda – Vold made a motion to adopt the agenda as presented, Zeglin seconded. Motion to approve the agenda carried unopposed.

Discussion and possible action on Trempealeau County Comprehensive Zoning Ordinance - Chapter 10 – Procedures Lien handed out copies of the changes to the Committee. Lien stated Chapter 10 is the portion of our Comprehensive Zoning Ordinance that deals with Conditional Use Permits. Lien referred the Committee to Page 74, under 10.04 – Conditional Use Permits, they are just trying to keep consistent and clear up some past issues. Lien noted the first change states: “A letter from the Town Board regarding its’ position, in response to the Conditional Use Permit application. If a town board elects to not submit its position after an application makes such a request, then the County will deem the town board to have no position in regard to the Conditional Use Permit”. Lien commented that we have had some problems in the past with letters from the towns as to what the intentions of the town were or whether or not a town would even submit a letter with its’ position. Lien and Radtke felt this language would clarify it more. Lien reminded the Committee that they can amend, add or delete to these suggested changes. Vold commented there were plenty of problems with that one application where they wouldn’t submit a letter stating either way, so he thought it was a good change so that the town either acknowledge or deny or they wouldn’t have any more say. Bawek inquired if there was a time frame needed for a town to either submit a letter or not. Radtke responded in this language it doesn’t state a time, it is open ended. Radtke’s concerns were he wasn’t sure if all town boards meet on monthly basis or if they are able to comply with, i.e. 30 days, etc. or if they are able to get a notice out and make a decision. Radtke questioned if we would be tying the towns hands by putting a time limit on there and felt it was an issue that may come up. Vold thought there was one mine application where we had given the town 30 days to make a decision. Lien responded the town had acknowledged the request but didn’t state an opinion. Brandt commented that after some pleading by an individual they wrote something. Lien thought this wording was requesting a position and a response so that they would either support or deny the request or state they have no comment. In regard to the timeframe, Vold stated when the applicant applies, they pretty much know what their timeframe is. Lien stated DLM has made it a policy not to accept anything without that letter from the town, because of past experiences. It may cause a problem as far as meeting the Class II publication deadlines. I.e. the applicant states they took it to the town and they haven’t responded yet, so we brought it to DLM now. Bice stated we need to be able to move forward and we don’t know what is going to happen. The town doesn’t have authority, under County zoning, so Bice’s question is does this tie anybody’s hands and are we going to be able to move forward with the wording like this? Lien replied the existing Ordinance was just too vague as all it said was, “a letter from the town board regarding the Conditional Use Permit”, and the Ordinance really didn’t

specify what was needed and there was no timeline. Brandt stated there are two reasons for requesting an acknowledgement from the Town. One is the town controlled their Land Use Planning process, so they would know more than anybody if this would work with their land use plan. The other thing is that the stormy weather we have been through in the County's relationship with the towns, in a sense requires, at the very least, a polite nod to the town so that they know what is going on, so we're not doing something without them knowing. That is Brandt's understanding as to the reason for this letter from the town board, not because we are asking them to approve or disapprove. Bawek commented that it was stated that technically the towns don't have the right to deny or approve under County Zoning. Bawek wondered where an overlay district in a township "plays" into this, if we aren't going to let the township weigh in on this and yet, doesn't the Comprehensive Plan in an overlay district allow them to deny? Radtke stated in a "rezone" question. Brandt replied in the case of an overlay district, as in the case of comprehensive planning/county zoning, the townships created, through the land use planning process, the zoning map for the township. If the township changes it then there is a new zoning district, it is the County who enforces the zoning district but it is the township that chooses to have it, upfront. It is the township that makes the decision of what the zoning is for their township, but it is the County that enforces it. Bawek stated so we would want to have a response from the township. Vold commented that would be on a rezone. Lien stated not necessarily. The Town of Caledonia is the only one that has a mining district right now, it is not an overlay necessarily, but it is designated a mining district. If someone were to come into that township and apply for a CUP for that, Lien is assuming we would get a favorable letter from the town if it was in the district, and if it was not, we wouldn't get a favorable letter. Discussion followed on whether they would need a letter or not since they were in the mining district. Lien clarified that in a nonmetallic mining district, nonmetallic mining is still a conditional use and not a permitted use. Lien explained the Town of Caledonia set it up because they had a mining area already and they set a parameter already which they called their "mining district" to kind of keep some borders on it. Any expansion in that district, Lien is assuming one would see a favorable letter. Brandt's understanding was, that within that mining district, new housing/single family construction is a conditional use. Lien responded no, it is still a permitted use, but the plan talks about discouraging it or setbacks. Lien commented one has to look specifically at the Town of Caledonia Land Use Plan as they are the only ones that addressed that. Getting back to the letter issue, Radtke stated this letter doesn't come into effect unless the applicant is already in the proper zoning district for a conditional use permit – ag land. Radtke stated in any other district they would need to get rezoned/zoned properly first and then apply. In those situations where it is not in the correct zoning district, this doesn't even come into play yet. There are other hurdles that an applicant would have to go over to have a rezone go through. Bice asked if the Committee was comfortable with the language. Zeglin stated she didn't see anything wrong with this language and she is sure the town boards would approve it. Lien then referred the Committee to Page 76. Lien felt this language was more of a clarification. Lien read aloud the language it said previously, "Expiration, all conditional use permits shall expire 12 months from the date of issuance where no action has been commenced or established". Lien stated the language added was, "except as otherwise stated in the Zoning Code" because there are exceptions where they pay a non-activity fee that their permit does not expire so that language needed to be added to stay consistent. Radtke commented that the difference is that for a nonmetallic mine a conditional use permit for industrial sand - this would be accurate – 12 months, but if it is for an aggregate then it would not expire in 12 months and that is what is in the proposed language that we will be getting to. Lien added those were the only changes. Lien reminded the Committee that, depending on what comes out of the moratorium study, there may be the possibility that more Ordinances would have to be amended in the future. Radtke and Lien thought for now, these would be the best Ordinance amendments and at some time in the future if it is realized more amendments are needed those can still be done. Brandt made a motion to accept the changes recommended for the Zoning Ordinance Chapter 10, Patzner seconded, motion carried with no opposition. Radtke commented this will go to public hearing next. Lien added if everything is adopted tonight, then next month there will be a public hearing and if the Committee approves or makes some changes, it is then forwarded on to full County Board. Mike Nelson arrived at this time.

Discussion and possible action on Trempealeau County Comprehensive Zoning Ordinance - Chapter 13 - Nonmetallic Mining- Hours of Operation and general review of ordinance. Lien stated Chapter 13 has a lot more changes in it. These changes should reflect all the things that we have been talking about, from the

Advisory Committee, and forward. Lien asked if the Committee wanted to go through each line/every change or if they just wanted to go over the most recent amendments which start on Page 97. Brandt stated we have covered a lot of this already. Lien reiterated the most recent changes start on Page 97. Bawek stated the copy he has talks about boundaries and the new copy does not. Lien responded when this was brought before full County Board, Jack Speerstra, as a representative of the Towns Association, came forward and the towns' had submitted a letter asking that the Ordinance be amended from the property line to a receptor base. Lien and Radtke modified that language to reflect that. Bawek asked if there was a definition of a receptor site. Lien replied that would be addressed a little later. Radtke referred the Committee to subpart B (a third of the way down the page) in the middle, the paragraph line out, "the property boundary" and all the language prior to that is the language that was in its place, "measured at the outside of any building or structure used for human habitation or housing of farm animals including but not limited to cattle, horses, and poultry". Radtke added that language is the verbatim language that was presented to the County Board, which was sent back to this Committee, to make that change, which this Committee did approve and it went back to County Board, where then it was sent back here for further discussion. Radtke stated that is where that change came from and it does apply. That is what we would call the "receptor base" rather than the "property boundary". Bawek wanted that addressed because his copy is all property boundaries. Lien explained this is the final one and this is the one that came from the town's recommendation that it be changed from a property border to a receptor base. Bawek asked if this would technically be the definition of "receptor based" or do we need to reference that. Radtke responded that it is not a defined term; one will not find it in the definitions. It is just referencing where the decibel level is going to be measured at. Those 15-20 words there are used throughout the Ordinance to identify where the measurement is coming from, so that it is consistent throughout. We don't define "receptor base" in the definition section. Bawek inquired if there was any language in regard to distance. Bawek added the discussion was there was no distance applicable. Lien agreed there was no distance; it was the level of noise. Bawek asked if that needed to be included. Lien didn't think so as he didn't think the distance mattered. Lien explained that what was discussed is that if we were in a place that was flat a distance could be set and it would be relatively easy but because of our topography, that distance varies. There could be someone in close proximity on the back side of a hill that won't be affected at all and there could be somebody a mile away (where there is the megaphone effect) and it could be extremely loud there, therefore no distance was included just a meter reading. Lien referred the Committee to the bottom of Page 97 and read aloud "Lapsing of Permits: Conditions Causing and Effect Of. The County may preliminarily approve a conditional use permit if the County requires certain actions to take place prior to actual issuance of the conditional use permit. Any preliminary approved conditional use permit shall expressly identify that the conditional use permit is only preliminarily approved and shall state that the issuance of the conditional use permit is dependant upon the satisfaction of all identified preliminary conditions". Moving on to Page 98, Lien read aloud, "The applicant shall be allowed twelve (12) months from the date when the conditional use permit was preliminarily approved to satisfy all preliminary conditions. The preliminary approved conditional use permit shall lapse as a matter of law upon the failure to satisfy all of the preliminary conditions prior to the expiration of the twelve (12) month period". Brandt stated it is a way of stating intent. If we agree to this, what we're saying is, we want people who are serious about mining sand in Trempealeau County, to come to Trempealeau County and get a permit with us. What we're saying is, we're not interested in people coming in, buying the land, getting a permit and then waiting for somebody else to buy it at a higher price. Brandt's sees it as a way of identifying serious buyers and also avoiding speculation. Speculation creates problems of its' own which isn't something we deal with in this Committee, but this is a way of sending a message that if you're serious – come on, if not – stay away. Patzner inquired if in 12 months the applicant would have to be setup and everything done. Lien stated he would read the second part of the paragraph, "The County may allow one extension of time to the twelve (12) month period to satisfy the preliminary conditions, upon the applicant showing just cause. The length of any extension shall be for a fixed period of time in the discretion of the County. In order to seek such an extension, the applicant must submit a written request to the Department of Land Management prior to the expiration of the 12-month period." Upon Patzner inquiring if there were a few of them out there now; Lien replied there are quite a few of them. Patzner asked if anything is going to be done about it. Lien replied that if this language is adopted by full County Board, a letter would be sent to everyone stating this is the beginning of the twelve month period to complete things. Lien added that a lot of the sites have a majority of the conditions completed

as they have been working with Budish and Lien. Lien stated there are some sites though that have done absolutely nothing. This will either promote the process or end it, so Lien saw it as a good trade-off for the industry and the public. Lien continued on with “b” on Page 98 and read aloud, “After a conditional use permit has been issued and if no activity has taken place, at an Industrial Sand mining site, or rail load out facility under the permit whatsoever or, alternatively, where activity was originally commenced but then has been terminated and such condition of non-activity, exclusive of required, ongoing reclamation under such a permit, has continued for a period of twelve (12) months in succession, the permit shall lapse as a matter of law and no further or other activities in operating the site other than reclamation will be allowed. Conditional use permits for Construction Aggregate mining sites shall not lapse regardless of whether activity is taking place or not. The County shall identify at the time of permitting whether a site is Industrial or Construction Aggregate”. Lien commented that the DLM has already modified the application form, that if this would get passed, it will be clear on the application form as to which type of mining they are applying for. Lien then read aloud (b)(1) on Page 98, “ The Zoning Administrator shall determine whether activity or nonactivity has taken place at a mining site. Activity shall include, but is not limited to: Blasting, Construction, Crushing, Drying, Extraction, Hauling (truck/rail load out), Washing, Screening, Stripping, Non-metallic Mining Operation, and Processing, all as defined in this chapter. Upon the premise that the ultimate goal of non-metallic mining is to sell and/or remove non-metallic minerals from a given mining site, the Zoning Administrator shall consider whether progress is being made at a mining site to produce a finished product intended to leave the site in determining whether a mining site is active”. Lien stated this paragraph probably took him and Radtke the longest to come up with a good way to define everything and how it would be done. Lien added there was a lot of thought put into it, but it can still be amended. Lien continued reading (b)(2) on Page 98, “The legislative purpose of separating Construction Aggregate mining from Industrial Sand mining is based upon the type, volume of product, and the scale of mining operations. Construction Aggregate sites are primarily used for infrastructure projects in a given area to reduce hauling from sites that are not in the vicinity. The foot print of a Construction Aggregate mining site is historically much smaller in scale and correspondingly runoff and erosion are significantly reduced. Industrial Sand mine sites are rarely if ever used for local infrastructure projects; footprints are very large in nature. The separated sand particles from an Industrial Sand mining site are prone to both wind and runoff erosion at a much higher rate than Construction Aggregate”. Lien explained these are just enforcing reasons as to why, even though they are both mining, they should be separated. Radtke commented on (b) on Page 98 where it says, “the County shall identify at the time of permitting whether a site is Industrial Sand or Construction Aggregate”, we had discussed it and he thought the Committee had as well about what happens if someone wants to designate their mine site as both. Should we allow that and if so how do we address that with different rules for lapsing? We are not creating different rules for two separate ones. Radtke stated the way it is written here, it says “it shall identify that it is one or the other”, it sort of implies that it can’t be both. Patzner clarified that the permit can’t be for both, they have to have a permit for each type. To solidify that, Radtke stated one could add some language that says a mining site cannot be industrial sand and construction aggregate or something to the effect that a separate permit would be needed for both to deal with both different types of uses. Right now, Radtke stated it is not exactly clear. Upon inquiry Lien stated there are two sites that were pre-existing aggregate sites and they came back in for permit modifications to add industrial sand so we added more conditions to them for the industrial sand. Those sites were Whistle Pass Quarry and Twesme Quarry. Nelson stated he thought that the Committee decided a few months ago that they had to get separate permits. Lien responded that we did make them come through that process again. It wasn’t a permitted use, so they came through the process and this Committee did attach conditions onto that site. Brandt commented what he thought Nelson was asking is, the last time the Committee had a “kick” at this as a Committee, Brandt thought that two permits would be required. Lien explained DLM has spelled it out on the application form that it will be clearly identified as to which one. If someone wanted to seek two permits, there could be two sets of conditions depending upon the type of product. Radtke reiterated that if Lien wanted to make that clear, it should just be stated that way that they have to identify it one way or the other and add some language that says that a mine site could have two permits, one for industrial and one for construction. If it is in there somewhere then as years go on, and we question what was said at that one meeting and how we were going to interpret that, we don’t have to deal with that as it is right here. Upon Patzner’s inquiry as to if Radtke could write that in, Radtke said he would try writing something right now. Lien referred the Committee to

Page 101 and stated there was just a clarification for sites under one acre; “Under Minimum Reclamation Standards, for sites under one acres are as follows” was left in. Lien referred the Committee to Page 102, 13.05 Definitions noting the only one definition that was added was in fact on Page 103, 10a and b where the definitions from the Nonmetallic Mining Advisory Committee stating what is industrial sand and what is construction aggregate. Lien stated there weren’t a lot of major changes to this from the last time the Committee looked at it. Upon Bice’s inquiry as to Committee concerns, Brandt stated he had a concern that came up the other day, from another town chairman in another county, about “haul back”. That is to say, the sand extracted from this mine, taken across county lines where it is processed and then the stuff that they’re not going to use is hauled back and put back into the mine for reclamation. Brandt questioned if that was going on in this County? Lien responded that it could be. Brandt’s concern was not so much that the stuff is coming back from that site, but asked what happens to mine sites receiving basically mine waste from other mines, from other counties, that really aren’t connected to the process or the mining from that particular site. Lien actually had a complaint, this past spring, that wasn’t an industrial sand site, it was an aggregate site, that they were bringing contaminated fill out of LaCrosse County (that was rejected by LaCrosse County) and hauling it up to the Scherr pit for reclamation purposes. Budish followed up on the material and it wasn’t good clean fill, but it was not contaminated. Bice questioned if that was legal. Lien stated we don’t have rules against it, so Lien thought it is. There are some sites that have been conditioned, because of public concern, that fill not be brought in. Lien thought that was an issue that should be addressed on an individual basis. Brandt thought it was a concern the Committee should keep an eye on so that we don’t have a bunch of holes in the ground that have to be filled and they become very attractive to a lot of people. Discussion continued on this issue. At this point Lien asked Radtke if he was able to draft any language on the topic discussed earlier. Radtke referred the Committee to the first page 89, 13.01, first paragraph and suggested adding a sentence at the end that says, “A mining site may be permitted for industrial sand or construction aggregate or both. If the mining site is permitted for both then two separate permits shall be obtained and shall be enforced separately”. Committee consensus was that they approved of the wording. Brandt made a motion to incorporate the recommended changes into the Ordinance and send it on to public hearing, Vold seconded, motion carried with no opposition.

Discussion and possible action on Trempealeau County Comprehensive Zoning Ordinance - Chapter 19-Erosion Control and Storm Water Management Ordinance Lien stated this is a really big ordinance for erosion control and storm water management. There was only one paragraph in which Radtke and Lien had discussed a possible language change. Lien referred the Committee to page 159. Lien had an asterisk at the bottom of the page by, “nonmetallic mining activities that are covered under a nonmetallic mining reclamation permit under NR-135, Wis. Admin. Code.” Lien explained that back when this Ordinance was adopted, they made that an exemption from that Ordinance and Lien and Radtke were questioning why that was exempt. At the time the Ordinance was written we didn’t have industrial sand mining in the County, we didn’t have the erosion control, storm water runoff issues because we were dealing with more solid aggregate, not fine sand. Brandt asked what sub paragraph 1 was about, if it was under “a”. Lien stated yes and read aloud, “Land disturbing activities directly involved in the planting, growing and harvesting, etc. Brandt clarified what it was saying by reading, “the following land disturbing activity shall be exempt from the erosion control provisions of subparagraph 1 above. Radtke stated subparagraph 1 talks about construction site erosion control and this ordinance does two things. What is it saying is that nonmetallic mining is exempt from sub 1, construction site erosion control but it is not exempt from the storm water management. Lien added that those other things, a and b, come directly out of Shoreland so they are in harmony with what the Shoreland Ordinance states as far as square feet and cubic yards. Discussion followed on this section. Lien’s recommendation was to strike that from an exemption under the “Exempt from Erosion Control Requirements Only” because those are every one of our DNR violations (discharge, erosion control and sediment issues) that we have on every operating industrial sand mine in the County right now. Lien felt to exempt nonmetallic mining activities because of NR-135 was unwise, but again stated it was up to the Committee. Bawek clarified that Lien was asking to strike 3(b)(1). Lien stated right now those issues are being handled through DNR. Radtke commented that some Committee members may be aware of the LRB “draft” 2013 bill related to mining – it is not even a bill, that is talking about pre-emption and language in there that talks about municipalities not doing the following, and one of them is imposing any requirement related to monitoring water quality, quantity or imposing or enforcing water

quality standard. Radtke didn't know if that would apply to storm water erosion control but it does deal with water quality. Radtke continued that obviously this is just in draft form yet, but if it were to move forward, that may affect what we are talking about right here and now. Lien guessed if that moves forward there will be amendments to a lot of the ordinances. Radtke just wanted to make everyone aware of that, if they were not, and there is talk of potentially limiting the counties' ability to make any restrictions or requirement for monitoring of water quality or quantity. Zeglin stated she didn't feel at this point we should act on "what if". Radtke agreed with Zeglin and added he just wanted to make the Committee aware of it. Brandt could see what the rationale was as far as the exemption. The understanding is, we were talking about construction aggregate and there were some things Lien had described in terms of the different sort of activity, small footprint, less possibility of erosion, etc, thereby not putting an undue burden on the aggregate industry, which leads Brandt to think that instead of striking this completely, if in fact that was the rationale, it may be that we needed some language separating out an industrial sand permit and the aggregate permit. Thereby leaving the aggregate industry still free from the requirements of an erosion control permit or plan, instead focusing on the industrial sand where we have seen the most difficult erosion control issues. We've already just separated them, in definition and in permit requirements. Nonmetallic mining or construction aggregate mining activities that are covered under nonmetallic mining reclamation permits, just by adding those words Brandt felt we would get at what we are trying to do. Make it clear that we understand that the issue is with the smaller particles and larger areas opened up. Upon Bice's inquiry, Lien stated he thought that was a good idea as then we are staying fairly consistent too. Lien added we have not had those kind of issues at all with the construction aggregate industry because of the reasons stated; smaller footprint, coarse hard material, less runoff. Brandt commented we would basically be putting a burden on them where there hasn't been one in the past. Radtke stated the language could be, "construction aggregate nonmetallic mining activities as defined in section 13.05 (10)(b) that are covered under a nonmetallic mining reclamation permit under NR 135 Wis. Admin. Code." That is what would be exempt from the erosion control provisions. Brandt made a motion to change the language on Page 159 (3)(b)(1) to add construction aggregate nonmetallic mining activities as defined under the Chapter heading that Radtke quoted and the rest of it being the same, Zeglin seconded the motion, motion carried with no opposition.

Discussion and possible action on Trempealeau County Comprehensive Zoning Ordinance- Chapter 20-Reclamation – Inactivity on mine sites and general review of ordinance. Lien referred the Committee to "Plan review fees", Page 218, #4. Lien read aloud, "Expedited plan review fee. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under sub 20.12 may obtain expedited reclamation plan review by paying a double fee. This expedited plan review process and permit action shall be completed with 30 day instead of the normal 60 days". Lien stated it wasn't defined very well previously and it had a 45 day review timeline which was inconsistent with other ordinances and language that we have. Brandt asked if we have changed anything that would change anything or the number under 20.12 subparagraph. Consensus was that it would not. Bice asked if for a little extra money DLM staff could make that all happen. Lien replied that the Committee set the fee schedule or changed it last year and we made it work. Budish reviewed four revisions to the plan in four days for the Highway 53 group. Lien added that all other work has to be stopped. Lien noted that one thing that still can't be waived is the Class II publication requirements, so it depends on when an application comes in, as to whether we can meet those deadlines. Radtke recommended adding the word "construction" before aggregate so that we are consistent throughout. Lien clarified that on Page 219, 20.27, #4 Reduced Fee for Inactive (adding in "Construction Aggregate")Mines. Any site on which no nonmetallic mining activity has taken place in a calendar year, and where no activity is planned for the following calendar year, shall be assessed at a reduced fee as specified in the permit fee schedule. Zeglin questioned if the expedited plan was something that we have to offer to them, as it takes away from the normal flow of business, and one has to put everything else aside for several days? Bice commented that it does somewhat accommodate the public and the other one is we technically should make a lot of money on that. Lien commented that the amount of time that Budish put into the Highway 53 plan, DLM probably didn't make any money. Lien added he had also spent time looking at the plan. More discussion followed. Lien added it is consistent with other things or even DNR which has an expedited review in which they charge a standard fee. Zeglin went another step and asked if double was enough for the inconvenience to

the Department. Lien responded that the fee schedule is reviewed annually by the Committee, so depending upon the amount of staff we have or permits coming in, we might need to adjust that. Lien explained that NR-135 which is basically Chapter 20, states DLM can not charge more than the service we provide, so we have to be consistent and document everyone's time spent on a plan. Radtke stated any changes approved here would then have to go to DNR for approval because it is a reclamation ordinance and they have to approve any changes to it. Vold made a motion to approve the changes, Nelson seconded. Bawek questioned how many expedited plans the Committee would be hearing in a month. Lien responded our Committee stated there will only be two and this Committee is only going to hear two nonmetallic mining hearings in a month so that is all it will ever be. Bawek questioned what if there are two on the agenda and then there is an expedited hearing. Lien stated the reality is that they are 90 days out and instead we could bump them up to 60 because after that month we could do an expedited review in 30 days again. Lien thought in those cases it might be wiser not to do expedited review and to just wait. Lien stated the Committee made a decision long time ago to only have two hearings a month. There being no more discussion, the motion passed with no opposition.

Discussion and possible action on Trempealeau County Zoning Ordinance - Citation Ordinance

-Regarding the impacts of Nonmetallic Mining. Lien stated it has been some time since this Ordinance has been updated and Radtke did a lot of work to bring it up to date. Lien discussed this Ordinance with staff and they felt we should not have these variable scales based on what the violation is and that all violations no matter what the offense be set at \$55.00. We still have the ability to issue those citations daily depending upon the violation. Radtke stated if the Committee looks at the first page, it just deals with sanitary and private sewage systems. Instead of separating them all out, any violation of an Ordinance will be \$55.00. Radtke went through the citations with the Committee. Lien explained there is a fee schedule through the court system. If we cite someone at \$55.00 the amount that is actually charged to the person is \$206.80. Patzner asked if it could be raised. Radtke stated one would have to file a long form complaint rather than a citation if there was a unique circumstance. Radtke added we would probably have to go that way anyway because that is the only way to get an injunction order to get a court order to get somebody to comply with our Ordinance or stop doing certain activities. A simple citation does not do that. Bice asked, in regard to discharging sewage to the ground's surface, if a septic truck comes up to my house can he legally put it on my field? Lien responded if that field is a registered field with the DNR yes, otherwise no. Bice asked if it does get their approval, it is ok. Lien stated yes because it is a registered field. Lien commented that there are a lot of hazards in raw sewage. Zeglin asked how the \$55.00 was arrived at. Lien stated that has been a standard for a very long time and he wasn't sure how that came about. Lien said he has been here 21 years and the fee has always been \$55.00 as far as what DLM issues, but the court fees go up incrementally, always. Lien stated DLM doesn't get any of the money anyway, very little of it stays in Trempealeau County and none of it comes back to the DLM. Lien added that citations are a last resort as when there is something of real concern, a Cease and Desist stop work order is issued. Citations are usually used for removal of junk, etc. Radtke went through some of the court fee schedule. Bice was ok with the first offense fee, but questioned the second offense, as then we have a blatant violator. Radtke explained that in the Zoning Ordinance there is an Enforcement chapter and it is there that it has a general provision that says for a second violation, the fine/forfeiture doubles and then it talks about the daily offense. Zeglin stated it is in 3.7 of this Ordinance. Lien read aloud, "the forfeiture amount shall double on the second offense and triple on the third offense, if such repeat offense occurred within one year prior to the date". Radtke added that Section 9 talks about the daily offense, but Radtke knew there was also another provision that applies generally to our zoning code as well. Nelson made a motion to approve the Citation Ordinance revisions as presented, Brandt seconded, motion carried unopposed. Radtke stated this is not an Ordinance so this could go directly to the County Board for approval as it does not require a public hearing, it is not an ordinance.

For clarification, Lien stated if the Committee is ok with it, there will be a public hearing next month on the Zoning Ordinance changes (Chapters 10, 13, 19, and 20), to the previous ordinances with the exception of the citation ordinance. It will be presented to the public and any questions will be answered. There could possibly be amendments. Discussion followed on whether it would fit on the November regular meeting agenda and it was determined it would be alright.

Discussion on 2013 Bill in legislature regarding nonmetallic mining regulation. Lien was asked by Brandt to put this proposed bill on the agenda. Brandt stated he has been on this Committee and its' predecessor Committee since 1996 with a brief hiatus in 2008-2009, so he has seen pre-emption. Bice asked Lien to, in just one paragraph, give an overview of what this is. Lien stated it is intended to kind of stream line or "gut" pre-existing ordinances that would regulate nonmetallic mining. Lien continued that the concern across the whole state right now, through Lien's counterparts, is what are underlying reasons. When one talks about restricting air quality and water quality, Lien's counterparts in other county's are questioning how they will enforce sanitary ordinances if this bill is passed because that is directly related to water quality, whether it is surface or groundwater. Lien continued that this bill talks about being able to regulate water quality so then the expanded, perhaps unintentional ramifications might be that it affects how private waste is regulated. Lien explained that is the talk around the State right now as to what else this regulates. Brandt commented what it also does is show an intent or an understanding that water quality and soil quality are not important and that local units of government have no business worrying about that. Bice questioned if it actually says those aren't important. Brandt responded, yes, (Brandt read aloud) "this bill generally prohibits a county to say that, but also a sanitary district in the lake protection rehabilitation district or metropolitan sewer district from establishing or enforcing a standard of water quality, (To Brandt that says water quality is no longer important in Wisconsin). issuing permits related to water quality or quantity and imposing restrictions related to water quality or quantity or requiring monitoring of water quality or quantity. The bill authorizes a local government unit to take actions related to water quality or quantity that are specifically required or authorized by the State Statutes". Brandt stated, first of all, water quality and quantity is not important enough for you to regulate it but you still have to do what the State says you have to do. Lien added his counterparts have summarized some of this bill; (Lien read aloud) "local units of government are restricted from enacting ordinances, setting standards or enforcing matters pertaining to the following, borrowing and material disposal sites for DOT projects, (which our County has dealt with), surface water quality or quantity, groundwater quality or quantity, use of explosives in nonmetallic mining except that blasting schedules can be addressed in a Conditional Use Permit, but only the schedules, air quality coordinating the issuance of a reclamation permit with the issuance of other local land use permits, so it affects all of those things which we do around here weekly/monthly. Brandt commented that there are three techniques to pre-exemption of local zoning. Because we are creatures of the State, we take on responsibility for the State and sometimes when the State is more aggressive, say in environmental laws, they require us to take on the enforcement of those rules; we're talking about reclamation, storm water management and erosion control and those sorts of things. At other times, somebody somewhere decided this is the way it is going to be, so you guys can have a monument of control, but you can never say no. That was the case with cell towers. Somebody decided that everybody in the United States was going to have cell towers and it didn't matter if you didn't trust them or you didn't like what they looked like, it doesn't matter, they are going to be here and they told us as much. You can't say no to a cell tower. The other thing that happens is, if (as we did with the dairy business) we write a regulation that, in their mind threatens their activity or their planned activity, their expanded activity, then they can lobby the State government to change our ability to say this is important and you can or cannot do this, and that is what happened with our Feedlot Ordinance. We can listen to what the public has to say but we can't put conditions on the feedlot. Brandt thinks what's happened here is, something that is a combination of all of those things, but is like "supercharged". Someone has made a decision that nonmetallic sand mining is going to happen and it is going to be here and you won't be able to regulate it at a local level. Someone in the business community has gotten to someone in the legislature and possibly the administration in order to make that point and the third thing is it is obvious that this is a concern at the local level and there have been a lot of rules written for it. Everything that Brandt has seen in the last, almost 20 years, is all coming together in this bill. Brandt stated Radtke is correct it is just in draft form, and it is just kind of thrown out there to see what happens, but whoever it is that came up with this has really learned in the past how it is to undermine local authority and local control. Bice asked Brandt, (as he had talked to someone recently about the wind mill Ordinance at which Brandt was on the County Board) his take on that Ordinance, was it a good thing or a bad thing, etc. Brandt stated it was a good and a bad thing. It was a good thing because we have an Ordinance now that regulates the siting of wind mills which does not make it impossible for wind mills to be sited, but it means they need to be sited in a responsible way. There is nothing in the Ordinance that says you can't have a wind mill, in fact, it encourages smaller wind mills. What you ended up with, with

Michael Vickerman coming into the picture, is that he used the lobbyists standard tag line, “Some people are just against wind mills, Trempealeau County has outlawed wind mills”, when in fact all Trempealeau County did was regulate the wind mills. Bice stated it did make it very hard for a person to put one in most places. Brandt responded, no, it made it very hard for someone to put 50 in one place. Lien commented it actually promoted the small wind turbines and in regard to the industrial farms (large scale, multiple farm) it basically made it really hard unless they mitigate with neighbors, which is what the public wanted at that time, but nobody read that. Everyone stopped short of reading that. It just said that we banned them. Gamroth and Lien commented that is what the Winona Daily News printed in the paper so that is what everybody read. Brandt continued the industrial wind energy because it seems warm and fuzzy and environmentally conscious, etc., had a lot of support for undermining our ability to write or enforce that Ordinance, but what happened is, the people who were for that (some of Brandt’s neighbors and people in this region) got a lot of money together, hired a very powerful lobbyist, who worked the system, he was a Republican, he had connections with Governor Walker and the PSC. Upon Bice’s inquiry as to if that wasn’t before Walker, Brandt responded the issue with the PSC, allowing us to continue to regulate wind happened just after Walker came in, so Brandt went down to the public hearing. A former Senator was coordinating the lobbying effort and there was a counter lobbying effort and they won. Brandt happens to agree that local control of what the landscape looks like is an important thing. Brandt wasn’t real happy with how it “all went down”. There was money, and significant lobbying. Patzner asked if Brandt was for it or against it. Brandt stated he is for the local control. He is for our Ordinances and stated we worked a long time on that Ordinance. Brandt thought it was a really decent Ordinance, it is scientifically based, it has sound issues, it takes into consideration setbacks, etc., and also gives the opportunity for mitigation. There is nothing in that, that says you can’t put a wind mill in Trempealeau County, it just says you can’t put 50 on 20 acres that is basically what it says because it is not appropriate. Lien commented we actually have quite a few small ones which people have put up and he thinks they are great. More discussion took place on wind mills. Brandt asked Radtke for comments. Radtke stated there are other things in there as well of concern, some not so much relevant to this Committee, but to the topic. Radtke saw that the major thing it is trying to do, is to undo the Zweigelhofer vs Town of Cooks Valley case where the Supreme Court said that a town can have a licensing ordinance and regulate nonmetallic mining. This undoes that and says, no towns you do not have that authority. Radtke added there are a variety of things in here. A big concern to Radtke was the nonconforming nonmetallic mining sites and how that will affect it. The language is very loose in the draft that deals with a nonconforming mine. Bice stated, it used to be that some of this would take awhile to go through the Assembly, etc. and inquired of Radtke if it was possible this could pass here in six weeks. Radtke replied this is set for a hearing on Thursday. Brandt asked if they had the final language yet. Radtke didn’t believe so but stated things are happening fast as he understands. As to the nonconforming, Radtke stated it defines nonconforming nonmetallic mining location as land in which nonmetallic mining was occurring when nonmetallic mining became a nonconforming use. Radtke commented we have several of those here, and reiterated that all it says is that it was “occurring”. Lien stated, not really anymore, because everyone of our mines are conforming because every site that is in our County is in our system and pays the fees and operating. Radtke replied that is our definition. What Radtke is saying is that this State Statute would change the definition to say that nonconforming nonmetallic mining means land which nonmetallic mining was occurring when nonmetallic mining became a nonconforming use. So one could argue that, at the time when our Ordinance (1972, 2000, etc.) came into place that there was nonmetallic mining occurring at that time, therefore they would go back to nonconforming which would mean no regulation whatsoever and they could just do whatever they want, so that is why this part, Radtke has some trouble with. It is very curious, at least in Radtke’s eyes, that we have a particular company trying to do this very thing in our County – almost exactly, that this language is in here just like this. Radtke thought that was really something and also that as Lien and Brandt talked, it will basically peel back some of the County’s authority to do regulations for certain things. It doesn’t completely pre-empt the County’s regulation of nonmetallic mining but it certainly holds back some of the authority. Radtke thought a very concerning thing was how it affects highway and road use agreements. Not only does it peel back the authority of the Highway Commissioner and the Highway Committee to enter into road use agreements in terms that are agreeable by both parties, it limits what those can be and that they are very industry friendly terms and not County friendly at all. It also says they are changing the treble damages provision to only apply for willful or acts that were a result of criminal activity.

Which basically means you're never going to get treble damages for damage to highways any longer if this goes through. Radtke added this has a big impact on County highways through road use agreements and just how to recoup damages. Radtke hasn't talked to Highway Commissioner Jim Johnson, but he felt sure they were very troubled across the State with this type of proposed language. Brandt stated this draft language starts out and it is so unusual, "except as provided in Sub 2, a municipality may not do any of the following and then it just goes on for page after page, etc." what you can't do, "impose any restriction related to water quality, monitoring water, establish or enforce a standard of water quality". Lien commented that language is potentially scaring people as to how one will regulate POWTS (Private Onsite Water Treatment System). Brandt agreed and questioned what difference does it make in relationship to the lakes up north or with mining up there. Lien added we just wanted to bring this to the Committee's attention. Brandt mentioned if this does go through, the State will tell us what we will need to do to change our Ordinances because there will be significant language changes. Brandt felt what is happening is the mining industry has just taken its' mask off. They're not about the communities, they are not about the citizens, they are not about jobs, they are about making sure that they can get what they want, when they want it. Vold added they have the money. Brandt stated they have the means to do it, but he thinks it is important because what this does is let us know, if we don't know already, who we are dealing with. They are the guy sitting across the table but we have a better idea of who they are. Radtke stated if this Committee wants to have any involvement in the process, it certainly can. Radtke reiterated there is a hearing on Thursday where they will take public testimony, and there may be other hearings coming up as well. Zeglin's understanding was that it was going to be a joint hearing, it is being fast tracked, and Thursday is going to be it. Radtke hasn't talked to anyone at the Counties Association, but he did know the Towns' Association (because it really affects the towns) is being involved and he thought the county's association as well, so if one can't make it to voice concerns, he is sure the County's Association, their lobbyists, who appear at these types of things, could convey or at least say that they've spoke to Trempealeau County and they can say that at the public hearing that their constituents are raising these various concerns. That is one way that the Committee or the County could become involved in this process. Brandt guessed that we would have to speak individually or as members of the Committee, as opposed to "for the Committee or for the County". Radtke responded that was correct. Zeglin stated the Wisconsin Town's Association will be issuing a statement, scheduled for tomorrow afternoon, against this bill.

Discussion on the acceptance of written testimony during public hearings. Lien stated he thought it was official, after our last meeting, that the public has made a mockery of our democratic system of their voice being heard. Lien wasn't sure how long the Committee wanted to sit and read through stuff from people, that for all practical purposes, don't even live in Wisconsin. Lien's recommendation was that the Committee only take public testimony if someone is at the meeting. We limited it before to 250 words, but these pre-made form letters, that are handed out to every person and then we have to read them during the public comment section, really bogs down the process. Lien would be very willing to call a large percentage of those people and bet they don't even know where the site is or what is happening at that site. Lien stated it has made our meetings stretch out, bogged down the process and if they are used for a deciding factor, Lien thought it would be a shame. Some of these people are from states far away and have no ties to Trempealeau County and are not living next to it. Lien reiterated that his suggestion is the Committee take testimony only from people who have taken the time to attend the meeting. Vold thought perhaps only people from adjoining county's, but not people from far away states. Lien stated Budish counted eleven different states. Bice stated that one of the applicant's (Haines) called him up and told him the reason there were so many people there is because, not too long ago, he was at a family reunion for persons he was in Vietnam with. Lien commented he heard they were at the Pine Creek Parish festival over the weekend and were soliciting signatures. Vold suggested making a provision that all letters be in at least 10 days ahead of the hearing date. That way, staff could go through them and see where some of them are from and eliminate those that are out of the area, if that is a legal possibility. Brandt stated this is a technique for swaying the opinion of the Committee which could be used by either side (if there are sides) and on some levels it can backfire. Brandt appreciates the ability of people to organize. Any time people can organize someone to their side, he gives them credit because it is a whole lot of work. Brandt disagreed with Lien on this one because, Brandt wasn't sure it makes a mockery, it is a transition. Brandt has seen in the last three years it is an educational process where we make decisions based on the experiences that happened

before. Brandt feels pretty sure that after this last hearing, in Brandt's mind, they certainly weren't helping themselves. Vold commented some of them didn't even write anything else except for signing their name. Patzner stated he knows everyone in that valley and no one in Trout Run signed that and they are all against it except for one or two people, only two people in that whole valley. When one goes from Haines' towards Arcadia, there was one person on the hill that did, but otherwise all the way to Arcadia no one signed. Lien stated Jackson County only allows people to come and speak if they live within 300 feet of the mine border. Lien agreed with Brandt that the process was intended for people that would call and say they really can't make the meeting because of a conflict but I would like to make some comments. Lien thought that was great. Brandt understood that this Committee can figure out what is going on and he is afraid of the "knee jerk" reaction and there is value here. Zeglin commented that if we don't restrict this in some fashion, there will be some day where we are going to get a paper box full of form letters from both sides and all we will be doing is spending the whole day listening to letters. Vold felt if they have an opinion that is a little different story, but just to sign their name is something else. Vold reiterated that perhaps they should be in a few days ahead of time and he hates to put more work on the staff, but the staff could go through them and separate them out. Lien commented that Brandt had tried making that recommendation during the meeting, but it was decided to read them all because it was fair to everyone. Radtke stated, it would take a little more work from staff, but he liked the idea of the letters being submitted in advance. If they are submitted in advance, a spread sheet could be created that says the name, whether they are for or against and where they are from with two columns "for" or "against". Radtke didn't think they would need to be read, they could just be posted in the room. Lien thought if the deadline was set far enough in advance and it is published in the paper, it could be done. Vold felt that would eliminate anyone bringing in a stack of paper on the day of the hearing. Bice suggested limiting it to Trempealeau County or anyone within a mile if they don't live in Trempealeau County. Brandt stated he didn't like placing limitations. Bice questioned what the Committee would do if they had 5,000 letters come in. Brandt stated there are a lot of community service people out of the court systems that need some community service. Upon Lien's inquiry as to how many form letters were received, Gamroth stated her count was 370. Lien agreed with Brandt that this is supposed to be a process to allow people to speak their mind, etc. Lien just wanted to discuss this because it seems to be getting out of control. Gamroth questioned why the Committee couldn't limit the input to U. S. stamped envelope or public hearing testimony. More discussion followed. Bice thought one could limit it to Trempealeau County and a certain radius around. Bawek thought the office could be inundated with e-mails the same way. Lien didn't want to restrict people that had something to say, but Lien felt the form letters that are just a checkbox and signed are being used for people who have very little concern about the issue. Lien stated every letter or e-mail that is submitted gets read into the record, but these stacks of form letters are an issue. Bice suggested the Committee think about this and put it on the next meeting agenda. Brandt reiterated that the Committee was smart enough to figure out legitimate issues. What we are doing is taking information and people are raising issues.

Bawek asked if the Committee could talk about some standard conditions for the County. Brandt stated we do have a list of standard conditions. Bawek was aware of that but wanted to present a couple more ideas. The Committee noted it wasn't an agenda item. Bice asked if there was something specific. Lien asked if it was under Chapter 13. Bawek stated in the conditions that the town and the county had, they had 2,500 feet, he felt they should stay consistent to make it simpler. Nelson commented we started out with 4,000 feet and the Committee moved it back because Nelson thought the State had theirs set at 2500. Brandt asked if Bawek was referring to sound or foundations. Bawek responded where they have to check the condition of properties within 2500 feet. Bawek added that at the last one we were going to allow them to not do it before any work took place at the site. Bawek inquired about another condition where there was a 50 foot mining setback. Bawek noted that in Chippewa they are revising their Ordinance and they are going to 250 feet on a dwelling and 250 feet on a private well and they also talk about keeping the exterior berms free of noxious weeds and trash. Bawek felt the Committee could put some of those items into our standard conditions. Bice stated all of those things we basically bring up and put in as conditions. We have that option if you want to establish that. Bawek thought it would be so much simpler as it wouldn't have to be argued about each time. Bawek thought if the applicants want to come in and want to mine, they should know that before one starts what the time frame is and if the Committee got it out there it would be simpler for everyone. Bice stated he can see where Bawek

really hasn't had a chance to bring this up and enter this in. Brandt suggested bringing it up at the next meeting. Bice stated the problem is that everything now in these Ordinances is scheduled to go to public hearing. Lien stated it can be amended. If the hearing is held next month, anything can be added and deleted before it goes to full County Board, however, Lien added the standard conditions really aren't in the Ordinance that is something that staff, from the Committee, has put together. If this Committee wants to talk about those at the next meeting, we can do that. Bawek just thought we should discuss some of those conditions. Bice noted one thing that has always bothered him is that one can do a lot of things in ag zones within 10 feet of a property line.

At 6:50 PM, Chairman Bice adjourned the meeting.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Michael Nelson, Secretary