

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

**REGULAR MEETING MINUTES
May 11th, 2016 9:00 AM
COUNTY BOARD ROOM**

Chairman Brandt called the meeting to order at 9:03 AM.

Roll Call of Committee members took place. Committee members present: Jeff Bawek, Wade Britzius, new Committee member Beth Killian was welcomed, Jon Schultz, Curt Skoyen, George Brandt, Michael Nelson, Kathy Zeglin, Aaron Kidd was absent

Staff/Advisors present: Kevin Lien, Virg Gamroth, Jake Budish. DLM Staff member Mark Carlson, Ryan Swatek-NRCS (Natural Resource Conservation Service) and Corporation Counsel Rian Radtke were present for only part of the meeting.

Others present: TCCTV Videographer-Nancy Bergman, Carol Anderson-Moder, Brad Ivers, Tom Forrer, Eric Anderson.

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

Adoption of Agenda - Britzius made a motion to approve the amended agenda, Killian seconded. Motion to approve amended agenda carried with no opposition.

Lien informed Brandt that he has been appointed as “interim” Chair so Brandt continued to run the meeting.

Election of Chair, Vice Chair, Secretary and or Treasurer

Brandt stated the Committee re-organizes after County Board elections taking place in April of even numbered years and after the County Board Chair appoints the Committees. Brandt opened up nominations for Chair of the Committee. Schultz nominated George Brandt, Britzius seconded. Bawek nominated Kathy Zeglin. There being no other nominations, Brandt closed the nominations. Ballots were distributed. Brandt appointed Skoyen and Schultz to count ballots. Schultz announced the results of the seven ballots as four being cast in favor of George Brandt, three ballots cast in favor of Kathy Zeglin therefore George Brandt was re-elected Chair. Brandt opened the nominations for Vice Chair. Bawek nominated Kathy Zeglin for Vice Chair. Brandt called three times for any other nominations. Skoyen made a motion to close nominations and cast a unanimous ballot for Kathy Zeglin, Britzius seconded. Motion carried with no one in opposition. Zeglin was elected as Vice Chair. Brandt opened nominations for Secretary. Bawek nominated Beth Killian for Secretary. Britzius nominated Curt Skoyen. Skoyen declined the nomination as he stated he has too many items on his plate and he made it a point to say that he is not always here. Skoyen had talked to Brandt about the situation also but he thanked Britzius for the nomination. Brandt called three times for any other nominations for the office of Secretary. Skoyen made a motion to close nominations and cast a unanimous ballot for Killian as Secretary, Britzius seconded. Motion to approve carried with no one in opposition. Killian was elected Secretary.

Adoption of Minutes

Zeglin made a motion to approve the April 13th, 2016 meeting minutes, Britzius seconded. Motion to approve the meeting minutes carried with no opposition.

NRCS (Natural Resource Conservation Service) Update

Ryan Swatek, NRCS District Conservationist stated they had six more applications funded through their EQIP (Environmental Quality Incentives Program) program totaling over \$98,000. Swatek stated it was more than what they initially had which is a good sign. Swatek said the majority of their high priority applications were funded this year so there is work being completed right now as we speak and a lot of construction (grassed waterways, etc.) going on so their technician is busy getting a lot of that stuff installed. The CRP (Conservation Reserve Program) sign-up has been announced. According to Swatek, the results of the CRP sign-up for the general CRP was almost 80 applications for Trempealeau County. Out of the 80 only six were selected for funding. What they had was 1.8 million acres which were offered in that program as this is a nationwide program and they accepted 411,000 acres nationally, so there is an acreage cap when it comes to CRP nationwide. Swatek is assuming they are bumping up against that acreage cap that is why they only accepted that many offers but that shows there is a lot of interest out there for that program. In Trempealeau County there were about 80 people that offered acres and only six of those eighty were funded. There was a very high point total – one gets a certain amount of points based on soil types, rental rates, and the type of cover that you plant. They had the cut off at, i.e. 290 total points so above that were funded which resulted in six people from Trempealeau County. What we are probably going to see is more people come in that still want to get into CRP but they are not going to enroll their whole entire farm so NRCS has the HEL (Highly Erodible Land) Initiative which is a continuous sign-up so only maybe certain fields qualify for that program versus the whole entire farm/acreage. A lot of people signed up their entire acreage for the general sign-up, they wait to see what happens with that and then they find out that they are not accepted then they pick certain fields that may qualify on a “field by field” basis. NRCS is receiving calls on filter strips and stuff along the strips, etc. and questions about lower land areas, etc. As long as the landowner qualifies and have a water source, they can have filter strips next to those so those are onsite visits that NRCS has to do. Landowners can still get some of their property enrolled in the CRP just not maybe the whole entire farm. Swatek mentioned they do have the new sign-up with Trout Unlimited through the EQIP program. It is the RCPP (Regional Conservation Partnership Program) proposal (one that went through) which is a five year commitment for that program with \$2.9 million over the course of those five years. They are taking applications at any time now for that program. There will be a cut-off date of June 10th for the first sign-up. According to Swatek, they weren't even sure if they were going to have a sign-up because the MOU (Memorandum of Understanding) isn't totally finalized and signed with Trout Unlimited and the other agencies involved. They don't have the actual ranking criteria, etc. but they can take a look at NRCS's back log of work and they can see that NRCS has a lot of practices that are high priority and are ready to go. This covers the whole “driftless” area of Wisconsin. This program will be going on over the next five years. They are looking at habitat and also access, some kind of easements, so those are the projects that are going to rank the highest. Swatek stated it is a new pot of money that people can apply for just specifically for streambank restoration. It gives them another opportunity for funding. Swatek was going to help out with the Soil Judging Contest today. June 10th is also NRCS's cover crop deadline date. Bawek asked if NRCS was doing any work with DNR and the municipality discharge limitations with the streambank restoration for Trout Unlimited or if there has been any coordination going on with that. Lien responded he and Kirstie Heidenreich have met with three of the cities already. Bawek asked if it is being tied to what NRCS is doing with streambank restoration. Swatek responded not on his end and that he is not in any kind of talks with any municipalities or anything like that. Bawek asked if that isn't what we are supposed to be doing. Lien explained DLM has offered it to the cities but they have to step up and decide and make a decision if they want to work with DLM and go that route to reduce their phosphorus requirements. Bawek asked if Lien knew about the streambank restoration through this program so that Lien can offer it to the municipalities. Lien replied it can be used that way as DLM can't “piggyback” other funding sources. NRCS nor DLM can do it through the programs, it has to be funded by the municipalities in order for them to get the credit. Bawek added that DLM has to give them the information that they can get on a program like that. Brandt explained DLM is “brokering” with the municipalities, but Brandt thought what Bawek was talking about was the landowner. Brandt added the landowner/farmer can “piggyback” the NRCS program with the DATCP program related to phosphorus, i.e. if a landowner wants to fix streambank erosion and Trout Unlimited can't help you all the way perhaps the municipality can. Bawek commented there has to be some

communication from DLM with that. Brandt added communicating with the landowner that there are multiple options for a project that they might have which would include this phosphorus reduction. So again, not necessarily communication with the municipality but the landowners. Lien stated that would be Carla Doelle's role. Lien knew Doelle had a few potential people that were interested in the phosphorus trading if that comes to fruition. Lien thought she was talking to people about the different options available. Bawek clarified that DLM has a MOU with NRCS to work together. Gamroth acknowledged and thanked Kelly Sippl from the NRCS office who came and helped the DLM office sort trees. Zeglin mentioned it was unfortunate that the Soil judging was the same day as the Committee meeting as she attended Soil Judging last year and she had a great time with all the kids. Zeglin thought there were 74 students participating today in the Soil Judging from 9 schools which was up quite a bit from last year. Schultz mentioned a student from Arcadia just returned from the National Soil Judging competition. Swatek briefly explained the soil judging procedures.

Public Hearing – Land Use Change/Rezone – Rural Residential (RR) to Residential-8 (R-8) – Ivers Revocable Grantor Trust, Bradley P. Ivers and Sharon V. Ivers, Trustees, Petitioner/Landowner, Whitehall, WI –Town of Pigeon

Chairman Brandt opened the public hearing at 9:24 AM. Killian read the public hearing notice aloud. Carlson stated the purpose for the rezone is that the property is currently zoned as Rural Residential. For the amount of lots that Ivers wants to create/pursue, the land needs to be rezoned to Residential-8. Carlson has received one comment from the public which was from a neighbor, Leroy Haug. According to Carlson, Haug told him on the phone that he was in favor of them creating the new lots. Carlson also had a letter from the Town of Pigeon. Carlson displayed an overhead aerial photo of the area which is south of State Hwy 53 where the lots would be created. Ivers stated he thought they had four lots but the Highway cut the forty off so he needed to rezone to R-8 to get the proper zoning. Ivers said it was plotted out for four lots and his son built on the first one a couple of years ago, so there are three more there. Ivers doesn't want to do any more than four but the "leftover" lot counts as a lot also for density purposes. Lien stated that by default Ivers has a building lot on the north side of the road because that is a separate pre-existing parcel which is divided off by a public roadway. Lien briefly explained how the density is calculated. Brandt called for any public testimony.

Eric J. Anderson – Registered in favor and also to appear and testify for information only. Anderson asked what this does to the tax base or anything else to someone who owns land adjoining his (Ivers). Lien responded it shouldn't affect the taxes at all, if anything the more improvements there are in a township, in theory, taxes should go down. Lien added it doesn't have any tax implications on neighboring properties. Land is taxed as it is used so until a home or something goes up the taxes won't change. The rezone itself won't change the taxes either but as structures are added, the assessment will rise on that particular lot. Brandt called for any other testimony. Carlson read a letter from the Town of Pigeon dated April 7th, 2016 which stated the Town of Pigeon board supported a zoning change at its' April 6th, 2016 meeting to allow the building process to continue. It is the town's understanding that the zoning has to be changed to R-8 and as a township they encourage the County to support the change. Brandt closed the public hearing at 9:30 AM. Bawek made a motion to approve the rezone, Skoyen seconded. In reference to the survey map in their packets, Zeglin clarified that the parcel being rezoned is the 29.16 acres south of the State Hwy and the lots to be built are along Sjuggerud Coulee Road. Motion to approve the rezone passed with no opposition. Lien noted that the rezone will go to County Board the following Monday for final approval.

Public Hearing – Conditional Use Permit – Duplex, Ivers Revocable Grantor Trust, Bradley P. Ivers and Sharon V. Ivers, Trustees, Landowner, Erik Ivers, Petitioner, Whitehall, WI-Town of Pigeon

Brandt called the public hearing to order at 9:32 AM. Killian read the public hearing notice aloud. Carlson stated as per the Comprehensive Zoning Ordinance, Table of Uses 2.05, a duplex requires a Conditional Use Permit (CUP). Carlson said there was a CUP for a duplex issued to Iver's son, Jason, right next to this property. There were no conditions put on that duplex and it was approved. Carlson received a letter from the Town of Pigeon in regard to their support. Carlson received no other correspondence from the public other than the

information Carlson had mentioned during the previous rezone hearing. Carlson pointed out on the displayed overhead aerial photo where the duplex was to be located. Brandt called for any public testimony three times. Carlson read a letter from the Town of Pigeon which stated the town unanimously approved the permit at its' March 2nd, 2016 town board meeting and encourages the E & LU Committee to do the same. Brandt closed the public hearing at 9:37AM. Bawek made a motion to approve the CUP, Skoyen seconded. Britzius clarified that this is for one duplex on one lot. Britzius asked if every time there is another duplex built it requires another CUP. Lien responded that was correct. Zeglin asked if this duplex would be similar to the one that is there now. B. Ivers responded they are almost identical. Britzius asked if the intention was for this duplex to be a rental unit. B. Ivers said E. Ivers is probably going to live in one half and rent out the other side. Motion to approve the CUP passed with no opposition.

Public Hearing – Land Use Change/Rezone –Exclusive Agriculture 2 (EA2) to Primary Agriculture (PA)- Carol J. Anderson Moder, Landowner/Petitioner, Watertown, SD – Town of Arcadia Brandt called the public hearing to order at 9:40 AM. Killian read the public hearing notice aloud. Carlson stated that because of Anderson-Moder's request to build a home on that parcel and that the parcel has an Exclusive Ag designation, the parcel needs to be rezoned to Primary Ag to allow two lots on it. Carlson said he hasn't received any input from the public at all on this. The Town of Arcadia has a letter which will be read later. Anderson-Moder stated that on Kurth Valley Road just north of the tree line, they are planning on building a barn this summer and hopefully down the road a retirement home. Anderson-Moder said she has a total of 87 acres and there is a little "snag" because of the road dividing the parcel out. Some of the land is in the Town of Lincoln and they (Town of Lincoln) were not approached because she didn't realize that, especially with the road dividing the parcel. The Town of Arcadia has approved it and Anderson still needs to go to the Town of Lincoln to get approval from them. Lien clarified everything north of the road is what is being rezoned. Lien said the original request was south of that line all in the Town of Arcadia so the application was just focused on Town of Arcadia. When County Surveyor Joe Nelsen reviewed it, he looked at and said because of the zoning designation it would be easier and a best fit for the land use plan and surrounding area if everything north of the road was rezoned which would allow the two parcels, the one created for the new dwelling and barn and the remainder parcel, however we never noticed the dividing township, so we have a letter from the Town of Arcadia, we did not contact Town of Lincoln and rezones are required to send a registered letter to Town of Lincoln to get their comments back. Lien's suggestion was to take action contingent upon any changes from Town of Lincoln. Lien didn't anticipate there would be any problem but he wanted to follow the requirements by sending them a letter to see if the Town of Lincoln has any changes. Lien added that the neighbors received letters, it's just that the town wasn't notified because we were focused on the original rezone in the Town of Arcadia and overlooked that we jumped town lines. Brandt commented he has sat on this Committee for a long time and this is the first time that he has heard that, by State Statute, any road dividing a parcel creates two parcels. Lien added the whole density issue is a pretty complex issue that he and Nelsen have wrestled with for a number of years. Lien elaborated on some of the issues. Anderson-Moder mentioned she does not live in South Dakota anymore, they reside in Woodbury, MN. Brandt requested Anderson-Moder give her new address to Gamroth. Brandt called twice for any public testimony. Carlson read a letter from the Town of Arcadia which stated Anderson-Moder requested a five acre parcel of their property located on Kurth Road to be rezoned. The Town of Arcadia Board of Supervisors unanimously passed a motion at their March 24th, 2016 board meeting stating they have no objection for the request of the rezoning. Brandt called for any public testimony. Brandt closed the public hearing at 9:48 AM. Bawek made a motion to approve the rezone. Schultz added pending information from the Town of Lincoln. Bawek agreed to amend his motion to include that information. Schultz then seconded the amended motion. Bawek stated Carlson had read in the letter from the Town that the rezone was for five acres, and Bawek said we are talking about 65.95 acres being rezoned. Carlson stated he thought the five acres was where the home is going to be. Carlson explained the whole parcel is being rezoned to allow for the two separate parcels but the five acres is for the home. Anderson-Moder explained their original intent was to rezone about five acres so that she could deed it into her husbands and her own name and leave the rest of the land in Anderson-Moder's family name as her husband will be putting

money into the building and so she wants him to have ownership in the five acres. Lien clarified that this wouldn't prohibit building on it, but with the request to break out the five acre lot, by default Anderson-Moder gets two lots, thus the rezone is required. If for some reason the rezone wouldn't go through, Lien said the parcel is still a buildable lot. Lien clarified that the Committee is rezoning the whole parcel to allow the creation of a five acre piece because rezoning of the whole parcel will allow them two lots. Bawek inquired if what Carlson read into the record (letter from the town) would need to be changed from five acres to 65.65 acres. Lien responded he thought the letter reads that way because she wants to create the five acre lot. Lien said he was at the Town of Arcadia meeting that night and when the request was read, Lien didn't want to interject as he was there for an entirely different purpose, but it didn't need to be residential zoning as Primary Ag met the requirements but because the approval was for something that was considered less restrict then it is alright. If Anderson-Moder said today she wanted to rezone less acres that would be alright because we advertised for more acres, but if she wanted to do more than that we wouldn't be able to do that because we didn't publish in the paper for the increased acres. Lien added to be more restrictive is ok. Lien re-clarified that we are rezoning what the application says which is the total 65, however the town letter referred to five. Upon Lien asking Schultz (Town of Arcadia Chair) if it was clear that Anderson-Moder wanted a five acre lot, Schultz said yes. Lien added it has to be as the application was received which was for the total acres north of the road to be rezoned and then by default she is going to create that five acre lot which is what the town's letter addressed. Bawek stated he just wanted that clear. Carlson stated the application is for 65.95 acres and that is what we are rezoning which is what is north of the road. Zeglin asked if the 65.95 acres includes the acres in Town of Lincoln. Lien responded yes, it is both Town of Arcadia and Town of Lincoln. Brandt clarified the motion is pending notification of the Town of Lincoln and their response. Lien added this will not be on the County Board agenda Monday night, it will have to wait until next month for County Board. Upon Bawek asking if the motion has to state that the response has to be positive. Brandt replied that the Committee has had this conversation as well. Lien added that the Ordinance says we require a letter from the Town. Bawek commented if they would reject it we may have to bring it back to the table. Lien agreed and added that is why the rezone is contingent upon a response from the Town. Brandt clarified that Bawek's amendment to his own motion was that approval be contingent upon a positive or neutral response from the Town of Lincoln. Bawek agreed. Being the person who seconded the motion, Schultz agreed to Bawek's amendment. Brandt clarified that the motion made by Bawek and seconded by Schultz is to approve the rezone pending a positive or neutral response from the Town of Lincoln. Since the Committee has had a lot of discussion at this level about the relationship of people building new homes in proximity to sand mines, and Britzius saw her property was quite close to Hi-Crush, he asked if Anderson-Moder would be willing to share her thinking about how she feels about that possibility when thinking about building a retirement home. Anderson-Moder stated they have thought a lot about it. Anderson-Moder's home farm has been sold to the sand mine and they know they are close. They are just hoping that everybody between doesn't sell as they feel they have a little buffer there, plus with the downturn in the sand mining due to the drop in oil prices right now, they are hoping that it doesn't reach them, at least in their lifetime. So they have thought about it but you can't really stop them either, but they still feel there is going to be a buffer. Britzius commented so that at this time you are willing to risk putting a home there and risk hearing and seeing mining activity. Anderson-Moder replied yes, we are risking that and added there is a good sized woods on the west side of the property so they hope that buffer will be there. Britzius was curious because the Committee has discussed whether people are willing to build homes or not if this is happening. Motion to approve the rezone, pending a positive response from the Town of Lincoln, passed with no opposition. Upon Anderson-Moder asking if she would need to come back to this meeting next month, Brandt responded only if the Town of Lincoln objects.

Discuss and Approve Hearing Procedures for D95 North and South Hearing Procedure

Brandt reminded the Committee that last month there was a phone conversation with Attorney Aaron Graf. The handout represents the second draft of procedures of how he incorporated our suggestions/changes and the various attorney's suggestions for how to go about this. Brandt stated it is a legal proceeding but it is an informal legal proceeding; no subpoenas, no witnesses under oath. Information is being given and then the

Committee is making a decision. This will be a new decision based on newly submitted evidence in the E & LUC's application of the Zoning Ordinance. It will be akin to the meeting at which the original conditional use permit application was heard and decided. Brandt inquired if Attorney Graf is asking the Committee to approve this and then wait for the date. Lien stated we have the date set and the handout out is a revision completed by Corporation Counsel Rian Radtke reflecting last months' meeting and Attorney Graf's comments. Brandt acknowledged that the attorneys for the mining company are not present and he assumed that they have the draft revision. Lien confirmed they do. Lien went through the changes of the draft with the Committee. (For a full recap of any part of this meeting a videotape can be obtained from Trempealeau County Community Television (TCCTV). It was noted that the Committee had agreed on a date and time for the hearing of July 20th, 2016 from 9:00 AM to 4:00 PM and Brandt had advised the Committee to keep the next day open on their calendars. Zeglin questioned how and when the Committee renders a written decision. Some discussion started. Lien advised the Committee that if they have notes that you bring that are prepared that is ok but you cannot have a predetermined decision, so your notes should just reflect factual information that you have prepared and then you listen to the testimony throughout the day and make your decision. Bawek asked if he could use his own reference material for clarification, i.e. a dictionary. Lien thought that was alright to make clarity for oneself but added that one would have to use the Ordinance definitions for any clarity within the Ordinance. Britzius thought the language in 3F of the D95 hearing procedures handout, "ELUC will render a written decision" was vague. Discussion took place on what the procedure will be. At this time, with Corporation Counsel not present to answer questions, Brandt suggested the question be put on next month's meeting agenda so that Corporation Counsel can clarify what the procedure will be, thus the Committee postponed approving the procedures. At this time the Committee took a short break.

Brandt called the meeting back to order. Corporation Counsel Rian Radtke was present. Brandt noted the Committee is on agenda item #11-D95 Hearing procedures. Britzius stated his question was in regard to 3F of the hearing procedures as the language says, "The ELUC will render a written decision on whether activity occurred and whether the permit had lapsed as a matter of law under the Zoning Ordinance". Britzius questioned what the proper procedure will be, whether each Committee member will write their own decision or whether the Committee will do it as a group/Committee decision. Radtke started out by saying Attorney Aaron Graf has been appointed to assist the Committee on this issue/case, but Radtke thought it was a question he could answer without crossing over into his realm. Radtke stated a written decision would be by the Committee and that can happen in a variety of ways. The Committee could work together to draft a decision but more likely/possibly what would happen is that Attorney Graf would as legal counsel assist the Committee in drafting a response. Then the Committee would ratify or verify that is in fact what the Committee's decision was. So, basically take notes during the hearing and write up the decision. It could be done by having a recess while he writes it up or another way of doing it would be that someone on the Committee is assigned to draw something up and bring it back to the Committee to consider and ratify as well but then we certainly wouldn't want to have each/every individual Committee member having their own decision, it should be a single decision written. Upon Britzius asking if the decision would be made in closed session, Radtke responded that generally, no, that is not a closed session topic. You are putting in writing what was discussed in open session, a decision that was made in open session and you are really just summarizing that onto a piece of paper and that everybody agrees that is, in fact, what the decision was and that it is in fact for the reasons stated. Radtke added there is no hard, fast rules on how that is done, it just needs to be done. Upon Britzius questioning what if the Committee would decide to render their decision within a week, Radtke stated they could have the decision drawn up in between meetings and then come the following month with a written decision and ratify it at that time or it could be done at the same meeting. It would really be up to the Committee. Brandt stated we are talking about two decisions; the first decision would be whether or not to agree or disagree with staff's decision or staffs ending of the permit, the second decision would be to approve the written summary of our rationale for the approval or disapproval. Brandt stated there will be presentations, discussion, a vote and then someone will write up the summary of the reason for that vote and then the Committee will agree to that summary or not and so those are the decisions the Committee is going to be making. Radtke added he is just letting the Committee

know what they could do and what needs to happen. If the Committee has questions as to how they should do it, those questions should be directed to Attorney Graf since he is going to be advising the Committee in that regard. While the Committee was trying to contact Attorney Graf via telephone, Budish covered agenda item # 17- Water Action Volunteers (WAV) Training, Saturday, May 14th, 2016. Budish stated he was trying to get this organized but he hasn't gotten any people signed up. He asked for it to be on the agenda so he could make a pitch here but since he doesn't have enough people or anyone interested in it, he is going to postpone this training for this date. Budish explained this is a Level 1 training which involves looking at six parameters within water testing and this is going to be a citizen volunteer group in which anyone in the community can check out these kits and look at certain things within surface water quality, either on their land or public property and do a report. At this time the Committee had Attorney Graf on the telephone.

The Committee conversed with Attorney Graf via telephone conference. Britzius asked Attorney Graf to address item 3F of the D95 hearing procedures regarding the ELUC rendering a written decision and what the procedure will be. Attorney Graf stated he thought the best practice was to construct a written decision with the reasons for the decision. In the event of any future legal challenge it gives the court something to review other than just a really long transcript with different reasons and the court doesn't know what the Committee did or didn't rely on, so Graf thought the best practice is to do a written decision with reasons. As far as how to carry that out whether the Committee takes forty minutes at the end of the hearing to construct a written decision then or they hold it over and render a decision and approve it at the next E & LU Committee meeting, however the Committee is going to do it, Attorney Graf stated it was up to the Committee but Graf thought that is the best practice. Upon Britzius's inquiry as to whether it was true that the Committee would first take a vote and make a decision with a vote and then after that we need to prepare a written decision, Graf said that was correct, yes. Britzius thought perhaps the Committee members could think about that on their own as to how they want to go about constructing the written decision. Britzius stated Radtke had suggested that the Committee might take a break and designate a person to write the written decision from what they had heard and then we would listen to that and decide on that in a group process. Attorney Graf replied that is fine, the Committee could sort of have one person summarize it but obviously at the end when it is all said and done the members of the ELUC have to approve that and make that their written decision. It can't be just one individual just sort of summarizing it and saying this is the written decision on behalf of the ELUC. It really should be approved by the whole Committee obviously. Britzius asked if we can have our attorney draft that written decision. Attorney Graf responded yes they could make a draft and then obviously the ELUC can change/modify it and address the permit. Britzius said a good plan may be to take some time to have a draft written decision and then work on the permit. Graf asked if there was any deadline on this decision as he didn't have the Ordinance in front of him. Zeglin commented what is in the Ordinance refers specifically to rejecting a permit application and this isn't a permit application so questioned if that language would be valid for this situation. Radtke said the Ordinance doesn't even contemplate a written decision so he thought it was more along the lines of what Attorney Graf indicated as a best practice. Britzius added the Ordinance doesn't even indicate a written decision is needed and there are no timing deadlines. Since there appears to be no deadline for a decision, Attorney Graf didn't see any reason why a decision couldn't be drafted up and then considered at the next ELUC regularly scheduled meeting. Britzius then stated that a question came up on item #4 of the public hearing procedures and in contemplating what would be a one day schedule. It doesn't say it in the procedures but the Committee had indicated in discussions that one day would be defined as 9:00 AM - 4:00 PM. Attorney Graf agreed to make that change. Zeglin clarified that the Committee would have a voice vote at the end of deliberation. Zeglin then asked if at the voice vote if the Committee members would have to give verbally our reasons for our "yes" or "no" at that time and then get together and create something in writing. Attorney Graf responded that was correct and that the written decision is obviously meant to summarize the reasons as to why each of the members voted the way they did, but unless that information is actually in the record itself, there is nothing to create their decision from so we'd have to summarize the reasons for this decision on the record. Zeglin clarified the Committee would verbalize first and then get together and do it in writing. Attorney Graf added that from what he is hearing, Committee members would summarize their reasons thoroughly on the record and following the hearing,

Attorney Graf or someone else can draft up a written decision summarizing those reasons and that would be considered and either approved, modified or rejected at the following ELUC regularly scheduled meeting. Zeglin asked if that discussion on the written decision can be done in a closed session or a private session without public present but with all the lawyers. Attorney Graf responded that is an authority issue under Wisconsin Law and he advised that it's not allowed unless it's a contested case hearing which is what we are trying not to do in this circumstance. If it is a contested case hearing, one tends to find that it is a judicial or quasi-judicial decision, therefore that the Committee consider it in closed session. Here what we are trying to avoid is the quasi-judicial role and keep it more informal and he would recommend not going into closed session for that. Zeglin clarified that the Committee, in their first meeting, decided not to do swearing in of witnesses and asked if that was proper procedure in the format that the Committee had decided upon. Attorney Graf responded that is within the discretion of the ELUC as to how they want to set up the hearing. It was Attorney Graf's understanding that we had agreed that witnesses wouldn't be sworn in and that is fine. At this time the telephone conference with Attorney Graf was terminated. Brandt recapped the decisions the Committee had to make. Zeglin stated her preference would be to create a written decision at the time the Committee makes their verbal decision and have Attorney Graf do a draft of our reasons and then we would finalize and approve the draft at our next meeting. A lengthy discussion took place on procedures for drafting a written decision. Brandt stated we seem to agree that Attorney Graf will assist us in the written part of this and then approving the written rationale at the next month's meeting. More discussion took place on how they should render/draft their decision and in what timeframe it must be done. One point that was clarified by Radtke was that if the agenda says the meeting starts at 9:00 AM and ends at 4:00 PM, the Committee cannot continue with the meeting (in the event they would still want to continue to make perhaps a decision) because the public has been informed that the meeting is done at 4:00. It was noted that the next day has been set aside for continuation of the hearing and/or discussion. More discussion took place on the written aspect of a decision. Britzius made a motion, to add to the hearing procedures, that the ELUC will render a decision, a written version to be developed for, and approved at, the subsequent meeting of the ELUC. Zeglin started to amend the motion, however more Committee discussion broke out. Bawek posed the question that if the evidence has been presented and it comes to the point where it is time to make the decision and we don't make the decision and we go home, there could be some questions. Zeglin and Brandt agreed. Zeglin added three of the Committee members have been through similar problems (that have been brought to court) before in regard to a decision that the Committee has made, so three of us are a little "gun shy" and would prefer some specifics. Bawek stated he didn't want to be accused of doing the wrong thing and questioned what the criteria is for having received all the evidence and being at the point of making a decision-how do we get there? More discussion took place amongst the Committee on Bawek's questions. It was decided this issue would be put on next month's meeting agenda. Lien asked Radtke about Bawek being able to have a dictionary present to clarify any terms used. Radtke didn't see that as a problem but suggested that if someone uses an unfamiliar term that Committee members inquire to that person as to what they mean or to clarify the term. Lien asked if the Committee members could have notes of questions to ask or their thoughts, as long as they do not come in with a pre-determined decision. Radtke responded he thought that was the advice he has given to the Committee in the past. Radtke was relating that advice to Conditional Use Permit hearings in the past where the Committee was given a thick binder of the mining plan and the Committee was given the information in advance to review. Radtke thought that was certainly something appropriate to have some notes after review so that when one comes to the meeting Committee members know what they want to ask about, etc. and it makes good sense to take good notes, but certainly with any permit decision that is made, this Committee needs to come in to any hearing for an application with an open mind that you didn't make up your mind ahead of time and that you're going to apply the facts that are present to the law and make a fair decision and if you are unable to do that, whether you have a conflict or are just unable to do that, then you should step aside for that particular matter.

Revisions to County Well Ordinance – Corporation Counsel Rian Radtke

Radtke explained that what the County has is a free standing ordinance which Budish has up on the screen now

called the Trempealeau County Private Water Systems Ordinance. Radtke added the word “well” since it is commonly referred to as the Well Ordinance and not the Private Water Systems Ordinance. Radtke continued that the law in this regard, Chapter 280 of Wisconsin Statutes, NR-845 and some of the other NR-800’s regulate private well systems, water systems, wells, drill holes, and the law says that the County can adopt an ordinance that is in strict conformance, not more strict or more lenient than the code, so the DNR has put together a draft model ordinance and the model ordinance we received recently is identical to the one the County adopted back in probably 2003. Radtke stated he and Lien are before the Committee today as they want to update the Ordinance and Radtke would like to add it into the County Code Book of Ordinances as well. It is a free-standing ordinance and it is not part of the Comprehensive Zoning Code. Radtke went through the changes with the Committee. Radtke noted that this Ordinance used to be administered in the Health Department and so the Board of Health, Health Officer and the Health Department are listed in this Ordinance as who administers it and this will be changed wherever applicable to the Department of Land Management and that Director. Appeals will go to the Board of Adjustment. Permit fees and inspection fees will be established by the E & LU Committee. Radtke also noted that he and Lien discussed drill holes and regulating them related to recent mining exploration that we have had and they discussed it with the DNR as well. According to Radtke, there doesn’t seem to be a clear answer that the County can regulate that. The way the code and Statutes are is that (and they are usually referred to in the context of a geothermal type project) once a drill hole is in place then the County can regulate how that drill hole is filled at a later time and a drill hole is basically anything where you are drilling down deeper than you are wide. Ironically, Radtke said the Statutes and code do not regulate drill holes on the front end, meaning that in order to do a drill hole you don’t have to have a permit or apply. What appears to be the case is that you can make a drill hole without any sort of regulation, but once it is done then one needs to follow certain things to fill it. That was one of Lien’s concerns which he raised to Radtke in looking at amending this ordinance, as to if there was a way to regulate that on the front end so that DLM knows where the drill holes are so that they can verify whether they were, in fact, filled appropriately and to code. Radtke explained he and Lien got kind of a “wishy-washy” answer first from DNR and then when Radtke pressed them as to where in the code it says we can do that, Radtke thought DNR reached the conclusion that it isn’t there and the only thing that is there for County’s is that we can create an ordinance but we can’t be more strict or lenient than the existing code. Radtke’s opinion would be to expand the regulation to the front end of drill holes and other sort of regulation would be becoming more strict than the existing code and the law is clear that any area where the State says “this is our area, County’s you can only do what we regulate, but we make the rules”, basically you can’t go beyond that. The law is real clear that any ordinance we would make outside of that authority would likely be thrown out. Radtke’s advice to Lien is that until the DNR addresses this through their code or the Statutes are changed, Radtke didn’t believe we could do anything other than just adopt what the State Statutes and code are and enforce that. A brief discussion took place. Zeglin made a motion that the Committee approve the revisions to the Water Well Ordinance, Britzius seconded. As a former Chair of the Board of Health, Brandt inquired if someone talked to the Board of Health about this. Brandt said the Health Dept. is aware that they are supposed to be enforcing this Ordinance, however they don’t have the resources to do it and they haven’t been, so they wouldn’t miss it in a sense. On the other hand it would not be polite to not let the Board of Health know that some of the authority that they oversee is changing. Radtke responded he has not talked to the Board of Health on this issue. Lien had explained it to Radtke as when an employee of the Health Dept. moved to the Zoning Dept., with that employee came the administration of this program and so it had been administered in what is now DLM even though the Ordinance itself was not changed at that time, so by practice it is no longer there and hasn’t been for a long time. It is just a matter of cleaning up the language. Radtke also clarified that it would be a County ordinance and part of the Code Book of Ordinances which would be a series of free standing ordinances that are collectively put together in a numbering system. Gamroth asked what the difference was in referencing Corporation Counsel in the revised Ordinance as opposed to the District Attorney. Radtke responded basically the number you dial on the phone and really it is that District Attorney’s are to enforce obviously the criminal law and also any State Statutes or any County Ordinances that are in strict conformance with the State Statutes. Even though it is a County Ordinance, the District Attorney’s office handles those. Things that are more of a civil nature, typically and

should be handled by the Corporation Counsel. It is just a difference in what it is as attorneys that we do. Radtke thought the Ordinance had previously referenced the District Attorney because at one time in Trempealeau County, Corporation Counsel and the District Attorney were one in the same and when they were split Radtke thought some of these things probably didn't pass to Corporation Counsel or were left with the District Attorney. Gamroth asked if the way the Department issues citations for violations would change. Radtke stated a citation is one form of enforcement or larger picture of enforcement so if there is an enforcement issue with this ordinance or one of our zoning ordinances, it often starts out as a phone call or an e-mail from someone in DLM. There are enforcement tools that Radtke can put together, i.e. restraining order, file a legal action to try to get them to comply or compel them to comply with the ordinance. We're issuing the citation and so based on facts there is discretion as to how/which direction that goes. Radtke stated Gamroth is talking about issuing a citation and yes, a citation gets filed with the Clerk of Court, a copy given to the defendant and then you would also give a copy to the attorney for the plaintiff which would be Radtke. If the District Attorney's office handles the enforcement you would be giving a copy of that citation to the D.A.'s office, and they would process it out of their office. Lien clarified the DLM would still file the citation but after the fact we would work with Radtke instead of the District Attorney's office. Brandt clarified that DLM is still making the decision as to who gets a citation or a fine. More discussion took place. Brandt stated we have a motion and a second to approve the changes to the Ordinance and send it to County Board. In regard to this Ordinance revision, Lien asked Carlson to verify the reference to NR-812 as in some of our ordinances it states a well has to be five feet from a foundation and Lien didn't want there to be a conflict. Upon Bawek's inquiry regarding drill holes, Lien stated that apparently, at this time, we can't get clarification where we could require an upfront permit, but if it is brought to our attention we can require abandonment. Radtke stated the County already has this Ordinance, we've already adopted it, so basically what we are really doing is just cleaning up the language of who is enforcing it. The Ordinance just adopts the administration of code that the DNR has, so if Bawek has questions Radtke directed him there. Brandt stated his frustration continues to be with the limitations that the State is putting on our ability to deal with environmental issues that are unique to our area and our significance. Motion to approve the changes to the Private Well System Ordinance passed with no opposition.

Resolution Authorizing Transfer of Funds from the General Fund for the Purpose of the Well

Water Testing Program Lien stated we had dealt with this but because there was a change to the Committee before this resolution goes to County Board, even though we only had one Committee member change, the County Clerk felt it was good policy to bring this back through the Committee. Lien stated the resolution has already been approved by the Executive/Finance Committee and the Board of Health. Lien reiterated the Committee has already approved this resolution. Brandt read aloud from the resolution, "Therefore be it resolved that the Trempealeau County Board of Supervisors amends the 2016 Budget by transferring funds from the unassigned General Fund in the amount of \$30,000 to the Well Water Testing Account for the purposes of groundwater research, cost sharing and administrative costs in the County". Britzius made a motion to approve the resolution, Killian seconded. Motion to approve passed with no opposition.

County Cost Share Program Resolution Amendment

Lien asked the Committee to recall that last month he came before the Committee and gave a presentation and the Committee had approved taking \$80,000 from the General Fund and utilize it for the County Cost Share Program. Lien stated when he went to Exec/Finance, they initially approved it and then said there should be a dollar amount in the resolution. Upon Lien informing them the resolution read \$80,000, they rescinded it and had great discussion about other possible expenditures countywide and then re-approved it at \$50,000. Lien is now bringing the amended resolution (which read \$50,000 from the undesignated General Fund) back. Brandt read aloud, "Therefore be it resolved that Trempealeau County Board of Supervisors amends the 2016 budget by transferring funds from the unassigned General Fund in the amount of \$50,000 to the County Cost Share account for the purpose of cost sharing high impact, low cost conservation programs. Zeglin made a motion that the resolution stay at \$80,000, Britzius seconded the motion. Discussion took place on Zeglin's motion and

the reasoning of the \$80,000 amount. Staff availability in regard to implementing the projects was also discussed along with other things. In the interest of Committee harmony, Zeglin revised her motion to approve the resolution to read \$50,000 and to go along with Exec/Finance Committee, Britzius agreed to the revision. Motion to approve carried with no opposition.

Surveying Update and Payment Approval – Lien stated there is no report or payment request this month.

Discussion on Development of a County Solar Energy Ordinance

Lien stated we've had a few more requests in the DLM for personal solar systems. DLM staff also received an e-mail from our District asking who out there has or is looking into solar energy ordinances, so the timing was pretty good. According to Lien, Carlson was able to find some information which was distributed to the Committee, but they were unable to find anyone that has an actual ordinance. Carlson explained the handout and asked the Committee to review it also and look at it as a guideline. Brandt requested this item be put on the agenda for next month.

Water Action Volunteers (WAV) Training, Saturday, May 14th, 2016-9:00 AM

Brandt stated Budish had given the Committee information on this earlier. Brandt requested the Committee members take a look at that information. Currently, the group training is suspended due to lack of recruits but if people are interested they can still contact Budish and he will do individual training. He had intended to do a group training but there wasn't enough interest. Budish is postponing any group training until possibly June. This training is free and open to anyone, and it involves looking at water temperature, dissolved oxygen, simply water chemistry titration, etc. and then developing a database. The overall goal is to get enough people involved with this as you need one year to get into Level II testing (which would be looking at phosphorus). Level III would be looking at nitrates in the surface water. The 4-H groups, etc. have been contacted to try to get more interest. Bawek was certain the Boy Scouts would be interested in this. Budish elaborated more on the training. Bawek commented this will be valuable information for the municipal discharge limitations and this will all tie together. Zeglin agreed. Budish noted there is information on the County webpage about this.

******Special Meeting Agenda Items******

Discussion and possible action in regard to the Final Report on the Public Health Impacts of Nonmetallic Mining. (Note: All Committee Members should review and bring their copy of Health Impact Study to the Meeting). Review and Discuss Amendments to Chapter 13-Comprehensive Zoning Ordinance

Brandt stated Lien has a draft of all the changes the Committee has made through our discussions related to the Public Health Impacts Nonmetallic Mining. Lien stated from past months, these were the motions that were made by Committee members and the language is just draft language. Lien added that Radtke hasn't had a chance to look at it. Lien requested Committee members review the handout and think about it. If we don't have a lot of changes, at some point in the near future, Lien said it would be nice to bring a completed draft to public hearing. Lien questioned Radtke about 13.01. Lien asked if we had a public hearing and we adopt this, it definitely relates to the Comprehensive Zoning Ordinance along with Table 2.05 and if that would not get amended until a later date would that be an issue. Radtke recommended the Committee change Section 2.05 at the same time because that Table is going to be needing to reflect these changes as they go hand in hand. If the Committee does one and not the other then you're going to have a conflicting ordinance which is a problem. Radtke recommended changing both or neither. Lien explained the changes in the handout.

Brandt informed the Committee that the Soil Judging Contest awards along with lunch is currently going on at Colonel Larson Park here in Whitehall if any Committee members wanted to attend after the meeting.

The next regular meeting date was confirmed as Wednesday, June 8th, 2016 at 9:00 AM.

At approximately 12:05 PM, Schultz made a motion to adjourn the meeting, Britzius seconded, motion carried unopposed.

Respectfully submitted,
Virginette Gamroth, Recording Secretary

Beth Killian, Secretary