

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

**REGULAR MEETING MINUTES  
June 8th, 2016 9:00 AM  
COUNTY BOARD ROOM**

Chairman Brandt called the meeting to order at 9:05 AM.

Roll Call of Committee members took place. Committee members present: George Brandt, Beth Killian, Wade Britzius, Aaron Kidd, Jon Schultz, and Kathy Zeglin. Jeff Bawek and Curt Skoyen were absent.

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

Others present: Attorney Paul Millis and TCCTV Videographer- Aiden McCluskey

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, Schultz seconded. Motion to approve amended agenda carried with no opposition.

**Adoption of Minutes**

Zeglin made a motion to approve the May 11th, 2016 meeting minutes, Kidd seconded. Britzius made an amendment to the minutes. Gamroth also noted a change to the minutes that she and Killian had discussed previously. Motion to approve the amended meeting minutes carried with no opposition.

**NRCS (Natural Resource Conservation Service) Update**

Ryan Swatek, NRCS District Conservationist stated they had six contracts (five cropland and one forestry application) funded through the CSP (Conservation Stewardship Program) program of which there were eleven applicants. Swatek said there were about 80 applicants for the CRP (Conservation Reserve Program) and only six were funded this year so there is a lot of interest in that program, unfortunately they only took a few acres nationwide. A lot less than what was anticipated. Of those six contracts, four of those were existing tree operations, one is a native prairie planting and the other one was a combination of some soft wood planting and hardwood planting, wildlife tree & shrub planting and some pollinator habitat that they included in it so it is a really diverse mix of things. Brandt commented that when he thinks of CRP, he thinks of hundreds of acres being planted into trees and that's just not happening any more. Swatek responded that is just not the case especially for hardwoods. In talking to the DNR Forester, Swatek said it is just too hard to maintain the numbers for CRP so you have to have a certain amount survive and with the deer numbers, etc. they pretty much can decimate a plantation very easily, so now they are recommending that instead of planting single stems that the landowner do a nut planting. They will use walnuts or acorns, etc. and the theory behind that is to just saturate the area with so many that they can't eat them all and hopefully you will get your stocking levels. So the one individual that has a hard wood planting here, that is what Swatek is going to do. Swatek is curious as to how that is going to work out. Lien asked how the cost compares with a nut planting versus a tree planting. Swatek wasn't sure as he hasn't been involved in these nut plantings at all. Swatek said nut planting is relatively new and it would be instead of putting tree tubes on everything, etc. and the success rates really aren't that good anyway. Gamroth asked if the Forester was actually going to provide the nut seed. Swatek replied no, the individual will have to order that. Gamroth stated she actually had a person come to her counter

and ask about ordering nut seed. Swatek assumed one orders them from the DNR as some landowners collect the nuts and the DNR actually buys the nut seed from them. More discussion took place on the tree and shrub seedlings. Swatek said they do have a couple of cover crop applications that will be submitted for this fall yet. Construction is also taking place, a lot of waterways are being built. The next batching date for the EQIP program is September 2<sup>nd</sup>. They will be working on a lot of those to get them to a high priority status. Swatek said his message to landowners is come in now/or any time but the sooner the better if they are interested in doing some projects, etc.

In the absence of Corporation Counsel Rian Radtke, the Committee moved onto Agenda items #8 and #9.

**2016 SWRM (Soil & Water Resource Management) Grant Contract** - Lien stated every year this has to be approved for our staffing grants. Lien actually received an e-mail this morning that a staffing grant of \$109,826.00 was approved for 2016. The Land and Water Resource Management Plan implementation grant is for \$122,500 for a grand total of \$232,326. Lien asked for a motion for the Committee to approve and accept that. Lien explained that statutorily we are supposed to get 100% of our first position funded, 70% of the second position and 50% of the third and they never seem to have enough funding to fill all of that and because we area “merged” department, we can’t use Lien as the number one position so we use another staff member’s wages for funding the first position at 100% and we use 90% of Lien’s salary at the 70% funding position and then we submit a third at 50% and we used to get a portion of that third and now we are just getting all of the 70% as they don’t have enough money to distribute statewide for the third position. Kidd made a motion to receive and approve the grant contract, Britzius seconded. Some discussion occurred. Motion to approve passed with no opposition.

**2017 Joint DATCP/DNR Grant Application** – Lien explained this is for the TRM (Targeted Runoff Management) grants applied for. We applied for several and this is for the ones we received this years (Bill Sylla – Poultry Manure Stacking Facility, Nick Gamroth – Poultry Manure Stacking Facility, Noah & Sarah Slaby – Animal Waste Storage Facility, Jamie Back – Roofed Barnyard Control System) for a grand total of \$450,000. Killian made a motion to approve and accept the funding for the TRM grants, Zeglin seconded. Motion to approve passed with no opposition.

**Resolution to Amend Budget for Additional Land Records Grant Funds**

Ann Hempel stated her request was just to have her budget amended. Hempel said she had already come before the Committee and had the projects approved. Hempel explained the \$50,000 was not included in her budget. She got the approval for the LTE position as well as the approval for the ESRI software, she just didn’t realize that the budget amendment had to go through Committee approval, etc. Lien added we aren’t asking for levy dollars, it is a grant but because it is a budget amendment, it has to go through the approval process. Britzius clarified it was \$50,000 of new grant money. Killian made a motion to approve the resolution, Britzius seconded. Motion to approve the resolution and send it on to the Exec. /Finance Committee passed with no opposition.

**Comprehensive Plan/Zoning Update** - Lien stated he and Kirstie Heidenreich have been actively meeting with towns, cities and villages. Lien stated there are 15 towns in the County and 11 cities and villages. Lien informed the Committee of upcoming meetings. So far, Lien and Heidenreich have met with Village of Pigeon Falls, Cities of Blair, Osseo, Independence, Towns of Preston, Arcadia, Burnside, Lincoln, and Pigeon. Lien elaborated on some of the meeting conversations. Lien said they are encouraging the municipalities to look hard at their plans and decide whether or not they want to keep some of the current zoning designations next to the bordering municipality. Lien and Heidenreich will be meeting again with the townships in the future. Brandt asked who will be involved in future meetings. Lien replied that originally each one of the towns had a planning committee. Those committee members have been invited to the current planning meetings. The towns are urged to get their planning committee involved in this process again and perhaps put some new faces

on the planning committee. Brandt asked Lien to keep the Committee updated. Zeglin urged Committee members to attend the meetings of the town board that each particular member represents as one can learn a lot and also see a very good presentation by Heidenreich and Lien.

**Comp Time and Overtime Compensation** – Brandt inquired when Lien and Heidenreich are attending evening meetings for three or four hours, what does that mean for their work during the day. Lien stated right now there are a lot of things going on and we can accumulate comp time but people like Lien and a few other staff that have been here for in excess of 20 years have a considerable amount of vacation and time accrued already. Lien added that he and Heidenreich are gaining a lot of time with these night meetings and it would be nice if they had the option of getting overtime pay for all of those meetings versus comp time because we don't have time right now to use our vacation time. Lien has talked to Elsa Kulig in Human Resources about it and if this Committee would approve that, it would have to go onto Personnel/Bargaining Committee as well. Lien said DLM has money in the budget because in the last couple of years we have had some staff vacancies. With that comment, Lien announced that Chelbi Stromblad has taken Nick Gamroth full time position as Real Property Lister and then Chelbi's position has been rehired and that person starts on Monday. On Monday, DLM will be back to full staff. Lien explained that DLM staff has the option of gaining comp time or overtime, but comp time should never be in excess of 40 hours and one should try and use it within the pay period which Lien said has been almost impossible. Britzius asked if Lien and Heidenreich were in different categories because Lien is a department head and she is a regular employee. Lien said Heidenreich is still considered "represented" and Lien is "nonrepresented". Lien can approve Heidenreich's overtime but he wanted Committee support as well because historically that hasn't been done, staff has just been allowed comp time. Radtke asked to clarify some things. Radtke stated this isn't an item that he came down to speak on but since he is here he just wanted to clarify things as Lien had mentioned "represented" versus "nonrepresented" Radtke said the general employees of the County are not represented in a union anymore and so it is not a "represented" position. Radtke thought what Lien is alluding to is that under the Fair Labor Standards Act there are employees that are exempt from over time requirements which means if you work more than 40 hours a week/80 hours in two weeks there are some special rules for an exempt employee (there are certain dollar figures and categories) that determine whether you fit into that category of "exempt". When you are exempt the law says you don't have to pay that person overtime. If you fall under that threshold then you are a nonexempt employee and that means anything over forty hours a week, you're going to have to pay overtime which is time and a half. Radtke said we currently have a County policy that says you can earn comp time up to basically time and a half, so if you work an extra hour over forty, you're going to get an hour and a half of comp time that you can use the next week. According to Radtke, when other Departments have people that need to be at work either early or late, they often just flex their hours so that they are not incurring or accruing overtime pay. So while Lien is right that this would need to go to Personnel/Bargaining because it is not just this one department, whatever the policy would be applied countywide and the Committee needs to think about that as well. Brandt said Lien had pointed out it is at the discretion of the Department Head as to whether to pay overtime and the Committee's permission would be required for Lien to get overtime. What he is laying out is a situation in which it is impossible to use the comp time without losing some of the work that needs to get done. Lien added that County policy only allows one to carry over so many hours of vacation so there is staff that has been here a long time and has a lot of hours that they are going to need to take this year. Lien added this situation isn't typical but because of the planning project there are a lot of night meetings. Otherwise the DLM does try to work that flex schedule when they can. Brandt commented Personnel/Bargaining is re-assessing the County's current way of paying people and there have been a handful of departments that have come to the Personnel/Bargaining Committee and said, "this just isn't working – we have too many things that don't fit into the model that we've got for paying people – everything from how to advance in pay, get raises and this comp time issue. Some discussion took place on how this Committee's decision might affect other departments. Britzius clarified that under the current rules, Lien can just approve Heidenreich's overtime. Britzius suggested Lien just exercise what is sensible using the rules he has. Lien wanted Committee support because he hasn't done this in the past. Discussion took place on what some of the other departments do. Brandt clarified that Lien is asking the

Committee to support his decision to pay overtime to Heidenreich and paying out Lien's comp time in over time as opposed to taking comp time. Lien said that was correct and that the payment would have to be approved by the Committee as that is something Lien can't decide. If this Committee approved it, Lien said it would have to go to Personnel/Bargaining. Brandt clarified that if the Committee pays Lien time and a half they are basically paying out Lien's comp time. Lien thought it would just go forward from the date of approval and not back – it wouldn't be retro-active. Britzius made a motion to support the decision to use the existing system to give Heidenreich the time and a half/over time that is required, Schultz seconded. Kidd clarified that the comp time is going to get paid out at time and a half. Radtke understood the motion to be to give Lien the "go-ahead" to authorize some future overtime for Heidenreich if she is exceeding forty hours as opposed to accruing comp time. Gamroth verified the motion as being to support the decision to use the existing system to give Kirstie Heidenreich the overtime compensation in place of future comp time (going forward). Zeglin suggested that flex time be looked at first and the comp time and if neither would be doable during that pay period then you go to overtime, but that every effort be made first for flex time and then comp time and as a last resort the overtime pay. Britzius said that was his intention. Zeglin made an amendment to the motion that flex time be the first option, if that is not doable comp time is the second option and if that is not doable then overtime pay would be given, Kidd seconded that amendment. For clarification, Lien said that is how we do it now. Motion to approve the amendment passed with no opposition. Motion to approve the amended motion which includes Britzius's support of the department head in using current policy to pay out overtime with the clarification of our desire/order. The amended motion passed with no opposition. The Committee then addressed Lien's request (this would have to be approved by Personnel/Bargaining) to use the same procedure to pay out overtime for the Department Head. Some discussion took place regarding if this Committee should address this or make a suggestion to the Personnel/Bargaining Committee. Radtke commented that traditionally you have a manager and then you have employees under them and that employees sometime work overtime. It is the manager's job to manage the budget and make sure the employees are getting the job done but also approving overtime in certain circumstances to get the job done. That system of approving overtime requires a manager to kind of know what is going on and approve and sign off on things and that is what Lien is talking about here but with another employee. When it comes to a Department Head, it is this Committee that oversees that Department Head but it is the Committee that is going to need to be signing off and approving and kind of knowing where the jobs/projects are to sign off and say yes this overtime is approved or no it is not and so that is something this Committee would have to take on by itself. Radtke just wanted the Committee to be aware that it would not be a good system to allow the Department Head to determine whether or not they should have overtime for themselves so it would need to be this Committee doing that work and to be more involved day to day than currently. Radtke just wanted to bring that point to the Committee's attention. Kidd asked if Department Heads job descriptions are stated as a 40 hour week as far as responsibilities/duties. Brandt responded that is the "exempt" category which they fall under which is this is what you get paid and work as long as it takes to get the job done. Lien clarified they are all based on a forty hour week. Discussion followed as to what amount of overtime Lien might be looking for – if it was just in this situation, etc. Lien responded it would be just through the comprehensive revision. Lien added that since he has been hired he has attended night meetings such as County Board and Town's Association, but this comprehensive land use revision has required a lot of night meetings because we are trying to get through this process within a year with 15 towns and 11 cities and villages and no one meets during the day. Britzius made a motion to approve overtime for the Department Head during this comprehensive planning revision process as needed. Britzius said it didn't include Zeglin's assumptions because Britzius sees Lien operating under those assumptions over time already quite effectively, Kidd seconded the motion. In regard to what Radtke had stated, this is something the Committee should be approving on a month to month basis at a regular meeting. Lien agreed and said he should bring a schedule of what meeting he attended and why, etc. Britzius amended the motion to add approval on a month by month basis, Schultz seconded. Radtke asked, since we are talking about overtime, if we are talking about time and a half. Radtke stated that our employee policy states that anything over 40 hours you get comp time or straight comp time so if you work an extra hour you get an hour off somewhere else, basically flexing your schedule, so any comp time that Lien is talking about that he's accrued is one hour for one hour, not one and a half hour for

an hour. When you talk about overtime or comp time, it is not “apples to apples” from an employee who is exempt versus an employee who is nonexempt. Radtke thought the Committee should be clear on what it is they are talking about. If you’re going to have sort of a monthly review, Radtke thought it would be good to state in there what exactly the Committee is looking for because you are saying you’re going to have that same process, why wasn’t flexing hours able to work, why wasn’t comp time which is just one hour for one hour able to work and why is it that over time being paid time and a half is necessary. Kidd thought that in Lien’s case “overtime” should be struck from the conversation and just be paid out comp time. Lien said that is fine, he just didn’t know how to word it because it is hours above and beyond forty and added that it is hour per hour pay and not time and a half. Radtke added that he wanted this Committee to be aware that doing something like this is a major deviation from how employers pay supervisory employees that are in an exempt category. The law does not say that you can’t pay overtime as you can pay an employee whatever you want. The law does say if you fit in this certain category and you work this much then you have to pay overtime and there is nothing against the law by paying extra or going above that. Traditionally, Radtke said, an employee who is exempt is expected to get the job done and Trempealeau County is very generous by saying, for an exempt employee, if you work more than forty hours you get comp time and flex that somewhere. Radtke thought that is very generous and he wanted the Committee to be aware that beyond Trempealeau County this is something that is almost unheard of – to have an exempt employee being paid overtime, so just be aware that as this conversation goes to Personnel/Bargaining that is likely to be some of the discussion there because, again, you are talking about a lot of the department heads in the County and supervisory positions, etc. who are going to be potentially eligible for this and this is a fairly large deviation from how standard practice is between how employers pay their supervisory employees. Radtke stated he just wanted the Committee to be aware of that. He isn’t trying to speak against Lien. Radtke added he, himself, is a supervisor and if this would be a county wide policy he could stand to have extra time paid out as well so Radtke wanted the Committee to be aware he wasn’t speaking against Lien, but just be aware that is not really how things generally go in the employee/employer world. Brandt also pointed out a line which is at the end of every job description “and other duties as deemed necessary”. Brandt referred to the Emergency Management Director, when he brought this up to the Personnel/Bargaining Committee, as the Director he is currently doing three full time jobs so at what point is there a line of fairness that is crossed by deeming that you have to do this. Lien’s department has just taken on the parks duties and economic development which wasn’t part of Lien’s job description when we hired him so these are elements involved in the conversation. Coming from her previous background, Killian stated she thought this was a good idea but as Personnel/Bargaining is talking about this, perhaps some of that over time pay, etc., if you are here over 10 or 20 years or something, could be given when you leave or at retirement or something like that. After thinking about bargaining packages that she has been through with her previous employer, she suggested it would be something for Personnel/Bargaining to think about. Instead of changing the whole pattern maybe something can be done there. Gamroth read the motion as being “Britzius made a motion to approve overtime for the Department Head during the comprehensive revision process, as needed”, Kidd seconded the motion. Some discussion took place. Britzius made a motion to amend the motion to include at straight time or one to one pay or whatever terms indicates that. It was clarified that the Committee is approving to payout comp time at the hourly/regular pay rate not time and a half above forty hours (in the event that they can’t use it). Gamroth re-read the motion as being, “Britzius made a motion to approve the payout of comp time at the regular rate above forty hours for the department head solely during the comprehensive revision/planning process, as needed and to be approved monthly by the Committee, Kidd seconded the motion. Motion passed with no opposition. Brandt mentioned this will go to Personnel/Bargaining Committee for approval.

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

Brandt acknowledged Attorney Paul Millis who was present. Brandt stated we have been discussing these procedures and we have a draft copy of those procedures. Brandt confirmed that Millis had copies of that draft. Brandt stated he is representing the mine owner/appellant. Brandt added that the Committee approved the draft with some small changes. Radtke went through the changes: the hearing date is July 20<sup>th</sup> starting at 9:00 AM

and stopping at 4:00 PM. Radtke said there was a lot of discussion about the written decision and his gathering was that Attorney Aaron Graf was going to assist in that area. Brandt clarified that as opposed to having each Committee member write why it is they came to that decision, Attorney Graf would try to coalesce the discussions that he had heard into a document that would then be the written decision. Radtke was thinking a level beyond that such as whether to write that in a procedure, it was Radtke's understanding that the Committee would work on how to write that decision with Attorney Graf when that time came and not necessarily putting rules in. Gamroth read from the previous months' meeting minutes, "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 said she understood it was that the Committee, at the end of the proceedings, would give their yes or no vote, then they would get together with Attorney Graf and give him the reasons for each person's vote and he would prepare a written decision for the Committee and that would be presented at the next E & LU Committee meeting. After some discussion it was again clarified by Zeglin that the Committee would vote and get together in open session with Attorney Graf and give our reasons for our vote, he would record those reasons, etc. and then write a summary. Upon Brandt asking if this draft was for the Committee to consider and approve, Radtke responded that was his understanding. Brandt asked if Attorney Millis had any input. Attorney Millis stated their concern is, given the fact that this is a de novo revue meaning when we walk in this door on July 20<sup>th</sup>, it is a clean slate, there is no deference to what Kevin Lien and his Department has done. You're going to rely on the information that is presented to you to make your decision and if we're not allowed to compel people to be here, it is not only unfair to us but it is unfair to you to try and make that decision, so we think it is important that we have the ability to subpoena people to be here and make sure that they are giving you the information that you need to make a decision. We don't think that is a huge request, it is not only fair to us but you folks in making your decision. Radtke stated the language is addressed in the procedures, item #9 states, "while no subpoenas are contemplated, under the Statutes if the permit holder believes the same to be necessary, they may file a request with the E & LU Committee at least seven days before the regularly scheduled E & LU Committee meeting preceding the public hearing". Radtke clarified that if there is a need for it, or if you are unable to secure your witnesses to be here, and you need to compel them by a power of subpoena, it is this Committee who issues the subpoena and you need to come at least seven days before the hearing and ask for that and it will be issued at that time, so Radtke thought that was addressed/handled in the procedures. Brandt acknowledged Attorney Millis's concern and said it has been addressed as much as possible and yet retaining a level of informality – that is to say how it is that we usually do these kinds of hearings, so hopefully that will be sufficient and if it requires a special meeting be called, we would certainly do that. Attorney Millis stated his point is we won't know until the hearing date whether or not that person is going to show up unless he is under subpoena – meaning they can tell us whatever they want to tell us and then we show up here relying on the fact that they said that they will be here but they don't show up and now we don't have any recourse. In a court of law if we subpoena someone and they don't show up that is cause for the court to adjourn that hearing until that witness can be compelled to appear and provide the testimony/evidence. Our fear is that we're stuck in a situation where somebody doesn't show up and you, as the Chair of this Committee, or the Committee together says, "well too bad, so sad". Attorney Millis added that he knew the Committee understands the gravity of this – meaning this is not a situation where our client is saying, "Hey, we're poised to lose millions of dollars in future revenue by revocation of that CUP. Our client has already spent tens of millions of dollars and the CUP has been revoked. So it is "out of pocket" money, we're not talking about that we think we're going to make some money and now you're taking away that opportunity, that is a component of it, but the bigger issues is that our client has millions of dollars already spent on this project, so this little hearing on July 20<sup>th</sup> is potentially one of the biggest hearings in Trempealeau County as far as money. Brandt thanked Attorney Millis for that perspective. Brandt didn't think it would be appropriate for us to be drawn into a discussion of what the stakes are at this time but rather to focus on what we're here to do and that is to determine if the draft that we've been discussing is appropriate for the hearing. Radtke commented that he knew the arguments that are going to be made in advance and obviously this Committee

does not. Basically one of the arguments are there are multiple sites that are tied together. The way the County/Department of Land Management is viewing this is that these are not connected, these are each on its own so any comments relating to moneys being spent for other projects, that money may not have been spent for the specific mine site that we're talking about and Radtke didn't think we need to get into the details of that as that is what that hearing is for on the 20<sup>th</sup>. As to subpoenas, as you prepare for trial that is a risk that anybody takes – to not subpoena somebody and then they don't show up and then you're at a loss and so if you are in that position, the subpoena power is there, issue the subpoena and then we can deal with it from there. One thing Radtke wanted to mention, before we get to sending out all kinds of subpoena's, what was discussed two months ago, is that the parties were going to get together and sit down and reach some sort of accord on what facts we can stipulate to possibly reduce the number of witnesses that are going to be coming forward – to date, we haven't had that conversation as to what the underlying facts are. Radtke thought for the most part there will be an agreement as to what those facts are and so before we get into this discussion about how many people we are going to need to subpoena for witnesses, Radtke thought we should be sitting down and having that discussion as to what facts are we willing to stipulate and agree to so that we don't need to have so many witnesses. Brandt clarified that would be between the attorneys. Zeglin commented the subpoena ability is already in the draft procedure and as to anything else Zeglin would like to limit the conversation to that procedure and not talk about what is at stake here. Zeglin made a motion to approve the draft as the Committee discussed last month, Britzius seconded. Kidd commented, with the subpoena's, etc., in reality seven days before they're going to call a special meeting and it is just going to be an added procedure so Kidd didn't know why you just wouldn't give them that leeway upfront. Radtke, specifically directing his comment to Kidd, advised that due to potential conflicts, he should not be participating in the discussion of these procedures. Brandt stated that part of our discussion up to this point was that we want the proceeding to be as much like a CUP hearing as possible, that is to say not judicial in the sense that a trial is judicial so we're trying to keep it much like we do business otherwise. In response to Radtke, Kidd stated his opinion on subpoenaed people isn't in regards to this trial, it is in general, whether it was this hearing or any one of them. Zeglin commented we have never had anything in this fashion before and hopefully never will again but as far as possible conflict of interest, Zeglin didn't know that Mr. Kidd should be participating. As far as subpoenaing and if someone is subpoenaed and isn't here then we have to delay the hearing for them to appear so if 50 witnesses are subpoenaed then pretty soon we're throwing darts at a calendar as to which day all 50 of those people can show up. Radtke added there are remedies but he is not prepared to speak on each one of those but he didn't want to step in to the shoes of advising the Committee on how to respond to subpoena's but there are remedies. Radtke asked the Committee to talk to the Committee's attorney on this specific issue. Brandt commented Radtke has given the Committee another perspective – that being in order to limit the need for a number of witnesses, if the attorney's all agree on what the facts are you don't need someone coming in to tell you what happened on certain days, etc. because they agree that is what happened. More discussion took place. Britzius asked what it would be like if they appealed for a subpoena within that seven days. Radtke responded that we looked at the calendar and determined that we usually would have this meeting on the 13<sup>th</sup> of July and therefore at that meeting the Committee will deal with that issue at its' regularly scheduled meeting which is seven days prior to July 20<sup>th</sup>. It wouldn't be a special meeting, we should probably have it as eight days so we can make sure that we get it on the agenda to comply with open meeting law, if we are going to be dealing with subpoena issues. We would just put it on the agenda and if it is not used then so be it. Zeglin asked if we didn't allow a provision for written, notarized testimony from witnesses in that draft in lieu of subpoenaing people. Attorney Millis stated he didn't think it was in there and he thought it is unfair to allow written testimony without an opportunity to question the basis of any written testimony. Attorney Millis said that is not allowed in any court of law and he didn't know why you would allow it in this situation. He said the frustrating part about this, for them, is a de novo review. You guys make the decision but on the flip side you're doing it informally and it puts them in a very difficult situation. We wish this was either give Lien's department deference or review the basis of his decision and decide, you know what, he didn't have good basis to revoke it or do what you're doing de novo and do a formal hearing. Attorney Millis said, quite honestly, it is very difficult for them to even prepare, but it is what it is. Even with the informalities of this hearing, under no set of circumstances can

Attorney Millis see where you would allow written testimony. Brandt commented that #5 of the draft doesn't address what Zeglin mentioned but it has more to do with people being required to have factual evidence that they should identify the source of that information and/or any documents in which they obtained this information, so we basically will be requiring people, when they say something, to have some facts to back it up. Brandt added that is the only reference to any kind of written information. Zeglin mentioned that in the draft she believed the Committee also specified the timeframe we are looking at – that being one year. Brandt read aloud, “The ELUC will permit a presentation from the permit holder as to what actions have occurred at that specific site within a one year period from the granting of the CUP, 1-15-15 to 1-15-16. The presentation may be followed by testimony from specific individuals regarding activity at the site”. Brandt said we have a motion and a second to approve the draft hearing procedures as outlined with the addition of the time limit of 9AM – 4PM which is the change we made last time. Motion to approve passed with no opposition with Kidd abstaining from the vote. Attorney Millis asked Radtke to send him the most up to date copy of the hearing procedures. At this time the Committee took a short break.

Brandt called the meeting back to order.

### **Discussion on Development of a County Solar Energy Ordinance**

Carlson stated he handed out information on a Solar Energy Ordinance last month. Carlson said he would concentrate on a couple of the highlights. He felt we were gearing this more towards some of the larger scale solar farms that are rumored to be coming into the County. He is talking about those farms that are 50-70 acres in size. Carlson felt those should probably be addressed in regard to an industrial or commercial level instead of just allowing them to be put anywhere because that is a big area and some people may not want to look at it just like the sand mining issue. Carlson noted there are issues in regard to taking the stuff down too after it is all done. It is kind of a new thing for this area of Wisconsin because no other county in our area addresses it specifically on its' own. Carlson thought the Committee could limit it to some sort of acreage or size. Carlson mentioned the old substation language in our current Ordinance references 1000 square feet. Brandt thought Carlson was suggesting to create a limit in terms of perhaps what would be a condition where in the Comprehensive Zoning Ordinance - Table of Uses it would be a CUP in, i.e. an ag zone and then above that it would need to be zoned either commercial or industrial so there would be a rezone required and then Carlson is also talking about basically reclamation. Carlson didn't think we need to address the homeowner, however, the issue might come up in a subdivision/R-20 zoning. Brandt said it would be keeping in what we have done in the past to differentiate by scale/level of production. Carlson went through some of the specific issues noted in the handout. Lien said they have put out “feelers” to the adjoining counties and no one seems to have anything in place. We are waiting for something to come out that would perhaps be more uniform with adjoining counties. Lien added we have talked about something similar to the Wind Generation Ordinance where small scale residential use would be promoted in certain districts, prohibited in other districts and as the sites get larger, restrictions would get more critical – rezones with a CUP on the large fields (50-80 acres). The small, residential uses would be permitted uses. More discussion followed on setbacks. Lien noted the Comprehensive Ordinance addresses structural things as anything six inches over grade as at that height it can be hit and/or cause damage to a car. Any structure over 150 square feet requires a land use permit so the criteria would probably be similar. Carlson said he would keep looking and if any Committee members have any input e-mail or call him. Britzius suggested consulting with the cities and villages on this issue as the Village of Trempealeau already has one installation for residential use and perhaps they have some information. More discussion took place. Zeglin commented she was pretty sure there might be solar ordinances in California that we might be able to reference although the topography, etc. may be different, there may be something we could use. Zeglin suggested setting up a separate committee to really delve into this issue. Carlson thought that was alright and added we just need to address all the aspects. More discussion took place on possible resources. Brandt stated he heard Zeglin's suggestion and that we have had advisory committees for every significant ordinance change/addition to our Zoning Ordinance. Lien commented that he has had a lot of night meetings lately and wouldn't care to have more so he thought Carlson and he could come up with a draft ordinance and if the Committee has something they don't like then perhaps we could look at forming an advisory committee.

The Committee was in agreement with Lien's suggestion.

**\*\*\*\*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 staff has incorporated some changes/suggestions to Chapter 13 that came out of our discussion of the Public Health Impacts of Nonmetallic Mining Report. Lien and Radtke went through the revisions with the Committee notably the types of water testing required. Brandt mentioned that the Committee's desire was to have a consistency with the water testing program that is going on around the County and so that our database will be complete. The Committee consensus was that Chapter 13 should read both packages (homeowner and metals) as presented in the draft. In regard to #8 in Section 13.02, discussion took place on who would be required to do structure inspection. Committee consensus was that the draft language after "qualified inspector" should read "(which may include a licensed building inspector or engineer)". Radtke wanted to include in #8 that the reports be submitted prior to any mine activity, similar to #7 that the wells be tested prior to any mine activity. Schultz made a motion to approve the draft changes/amendments to Section 13.02 as presented, Britzius seconded. Motion to approve passed with no opposition with Kidd abstaining from the vote. Brandt mentioned that the public hearing will be a couple of months out so the Committee wouldn't be scheduling anything until August. Radtke brought up again that he felt the definition for industrial sand versus construction aggregate needs to be defined a little better especially if the Ordinance is going to change which zoning districts industrial sand mining is allowed in as opposed to the current requirements. Radtke would anticipate then a closer look at what is industrial sand and what is construction aggregate because there is going to be significantly different rules related to which zoning district that activity can be in. Radtke has looked at our definition of industrial sand (Radtke read the definition aloud) and if one reads that definition what it talks about entirely is the end product and then if you go to construction aggregate (Radtke read that definition aloud) again, we are talking mostly about an end product. Nowhere in those definitions does it talk about the actual process, the size or anything related to anything but what the end product is. When the County first made this differentiation between the two of them, on Page 97, #2 on that page it says the legislative purpose of separating construction aggregate mining from industrial sand mining is based on the type, volume of product and scale of the mining operations. Right from our first sentence we are talking about two different things and our definitions don't include that. Radtke was wondering if that is going to be a problem or are we going to have a situation where there would be an industrial operation that would try to appear to be a construction aggregate because they wouldn't have to change the zoning district to industrial and it is allowed in more types of districts. Radtke questioned if our definitions were good enough. He just wanted to present that idea but he doesn't want to get down the road and then we start looking at this issue and then we say, "oh gee our definitions really only talk about the end product, they don't talk about the process" and is that a problem or a concern. Radtke wanted to bring that issue to light. He thought the only way to address it other than the way it has been is to talk about volume, scale and processes and draw some lines if that is possible. Discussion took place on the issue. Radtke suggested an area to start would be to look at our construction aggregate definition and does that include everything that we would consider construction aggregate because then by process of, if it is not construction aggregate, then it is industrial. More discussion took place on Radtke's suggestion. Zeglin stated she understood that these definitions were created in the Advisory Committee by industry professionals. After the Committee's last discussion Zeglin did look up the NAICS and the SIC codes online to perhaps be able to add something to construction aggregate but she couldn't find anything that actually differentiated the two in the NAICS codes. Zeglin was wondering what the State Department of Revenue definitions are because they do the assessing on the various mining entities so they may have specific definitions or they have to follow some outline. Brandt advised the Committee to take into consideration Radtke's request for our thoughts on this and Zeglin will look into the Department of Revenue items.

The next regular meeting date was confirmed as Wednesday, July 13<sup>th</sup>, 2016 at 9:00 AM noting that the Committee will have to make a decision on whether to allow or disallow the subpoenaing of certain people.

At approximately 11:25 PM, Killian made a motion to adjourn the meeting, Britzius seconded, motion carried unopposed.

Respectfully submitted,  
Virginette Gamroth, Recording Secretary

Beth Killian, Secretary