

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

**REGULAR MEETING MINUTES  
December 7th, 2016 9:00 AM  
COUNTY BOARD ROOM**

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

A moment of silence was observed in memory of the deceased on the 75<sup>th</sup> anniversary of the attack on Pearl Harbor.

Committee members and DLM staff introduced themselves. Committee members present: George Brandt, Beth Killian, Jeff Bawek, Mike Nelson, Curt Skoyen, and Kathy Zeglin. Jon Schultz arrived at 9:21 AM. Aaron Kidd was absent.

Staff/Advisors present: Kevin Lien, Virg Gamroth and Kyle Johnson. DLM staff member Kirstie Heidenreich, Pete Fletcher-Mississippi River Regional Planning Commission (MRRPC), Rian Swatek-NRCS, and Corporation Counsel Rian Radtke were present for part of the meeting. Others present: Mary Drangsveit, Mary Ann and Gary Bixby, Wade Britzius, Tom Bice, Ron Tuschner, Darlene Rossa, Ivan Pronschinske, Randy Sonsalla, Kerry Tamke, Dianna Brown, Dave Hesch. Tom Forrer, Linda Mossman, Tim Zeglin, Charlotte Everson, Mary Lee Hegenauer.

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

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

**Adoption of Minutes** – Bawek made a motion to approve the October 26th, 2016 special meeting minutes, Nelson seconded. Motion to approve carried with no opposition with Killian abstaining as she was not present at that meeting. Nelson made a motion to approve the November 9<sup>th</sup>, 2016 regular meeting minutes, Skoyen seconded. Motion to approve carried with no opposition.

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

Brandt acknowledged Rian Swatek, NRCS District Conservationist who was present. Swatek stated there are more changes going on with the agency. The State Conservationist, Jimmy Bramblett will be leaving Wisconsin as he has accepted a position in Washington. Swatek explained his agency State leaders are not politically appointed like the Farm Service Agency so the FSA Director will also be changing too, so our State leadership will be revamped due to possibly both directors leaving. Swatek stated in their office they are working quite a bit with the EQIP (Environmental Quality Incentive Program) Program which is their main cost sharing program. They had 15 applications that made it to the high priority process so they are in the midst of ranking those applications among our local workgroup and they will know which ones will be funded probably by the end of January for construction in 2017. They had applicants in all land uses within our local work group and Swatek assumed they would exceed the dollar amount that they have available to them. Swatek said, in Trempealeau County, he had close to 60 applications so there is still a need out there for people wanting to do conservation work. Upon Brandt's inquiry, Swatek stated there have been a lot of waterways, grade stabilizations, lot of streambank work, obviously, due to the flooding issue that we had in August. Swatek mentioned they do have a special sign up for that through the Trout Unlimited RCPP (Regional Conservation Partnership Program) proposal. This was the first round of funding that was cut off. There will be another

round of funding in March so if landowners are still interested in doing some type of stream bank work they can stop into the office and they will take a look at those sites. Brandt asked about funding available specifically for flood damage. Swatek replied that would have had to go through the Farm Service Agency and, if there was, they would have had to report any losses in regard to that and then some funds could have been made available but according to Swatek he didn't think they (NRCS) had a lot of people interested or reporting that. They usually report those losses to FSA who documents that and if there is a need then there will be some funds applied for. Swatek reported the construction season went well but it did get wet so NRCS will have a number of projects that carry over until next year just due to the weather. Swatek stated he had sent Lien a copy of the new MOU (Memorandum of Understanding) agreement as it had expired so Swatek was just inquiring if we want to renew that for another year or however long we decide. Lien mentioned that he and Doelle are working on some responses back on the MOU (Memorandum of Understanding) and that is why it isn't on today's meeting agenda. Brandt stated to Swatek that we've been grateful for the opportunity to be able to work together on the projects that we have and Brandt knew that Swatek has expressed appreciation for the work that some of the DLM staff does with NRCS. Brandt noted that the MOU would be on the January meeting agenda.

**Public Hearing – Adoption of the Trempealeau County Farmland Preservation Plan, Certified under s.91.16, Wis. Stats. And Public Hearing - Amendment to the Trempealeau County Comprehensive Plan**

Brandt called the public hearing to order at 9:15 AM. Killian read the public hearing notice aloud. Peter Fletcher from the Mississippi River Regional Planning Commission introduced himself and stated he assisted Trempealeau County with the update/revision to its' Farmland Preservation Plan. The original plan was adopted in 1981. Ten years ago, the Wisconsin Department of Agriculture (DATCP) put into place the requirement that counties had to update their plans and for Trempealeau County this has to be done by the end of 2016. Fletcher explained that the Farmland Preservation Program helps farmers and local governments preserve farmland, protect soil and water and minimize land use conflicts. Through participation in the program, counties develop Farmland Preservation Plans and then once those plans are developed there are a couple of ways to implement. One of those is that the counties could develop Farmland Preservation zoning districts and the second one is that land owners and local governments together can form what is called "Agriculture Enterprise Areas (AEA's)" that would allow property owners to be eligible to receive Farmland Preservation tax credits. Ultimately, if an area is designated as a Farmland Preservation area, then landowners within an area, who meet soil and water conservation standards, become eligible to claim tax credits. Fletcher, referring to the map behind him, pointed out the farmland preservation areas in "green" and the other areas that are not are in "white". Fletcher stated those areas in green just make property owners potentially eligible to receive Farmland Preservation tax credits and it depends on the other two implementation measures being in place. Fletcher added the plan itself is in there to provide the tool to allow landowners to become eligible for Farmland Preservation tax credits. As far as the Trempealeau County Farmland Preservation Plan timeline, as was mentioned, the original plan was adopted in 1981 and hasn't been updated in 35 years. Through June 2016, we had meetings with the town chairmen and they worked with us looking at the Farmland Preservation Map based on their Land Use Plan maps that are currently on the books. The town chairmen also took information back to their town boards and came back with recommendations. We also had public input via these meetings – there was always an agenda item for almost the last two and half years regarding the plan update. In June 2016 Trempealeau County's application for Farmland Preservation certification was submitted to DATCP. Fletcher stated a plan was prepared in draft form (pretty much what you have before you) as we wanted to get their approval before we brought the plan to this Committee for a final say on the matter. In September 2016, the Farmland Preservation Plan was certified by DATCP saying it meets their requirements. As we stand here today and through the end of the year, Fletcher said the Farmland Preservation Plan must be adopted by the County to meet the State deadline. As far as the timeline, over the last 35 years our County has faced many challenges to agriculture, obviously there has been an increase in residential development, there has been encroachment from the neighboring urban areas. The impacts of frac sand mining on the rural landscape has taken place in the last several years. Obviously there has been large changes to agriculture as we go from smaller dairy farms to now larger and certainly more cash cropping, etc. Through the challenges, agriculture and rural lifestyle continue to

be sited by residents as vital components of the County's future. Fletcher said that is one thing they have heard throughout this process and certainly other processes that the County has undertaken with regard to land use. Heidenreich stated they wanted to show a brief snapshot of how important agriculture is to Trempealeau County. It brings over \$15 million dollars in taxes, just from agriculture alone. We understand how important this is. We want to keep farmland and agriculture as a priority for the County as obviously, this is an industry that we need to continue to support and protect going into the future. We understand that doing this update to the Farmland Preservation Plan really does provide an extra step to really ensure that our farmers will be protected going into the future and that there will be farmland available for them, and so there is a game plan for that preservation. Heidenreich stated they are very excited that one of the big reasons for doing this is tax incentives for landowners. Right now, landowners are able to receive some tax incentives but once the plan is certified (which has already been done by DATCP) and is adopted, it opens the County up to opportunities in the future to actually receive higher tax credits than what we currently do now. We get to stick with the base we have but continue to grow that going into the future. In regard to Ag Enterprise Areas (AEA's), Heidenreich said this is where they see the vision/future of Farmland Preservation in Trempealeau County. Ag Enterprise Areas (AEA's) are where you have a minimum of five landowners that have contiguous or touching parcels that enroll in the Farmland Preservation Program together. One of the main reasons in doing that is to encourage the preservation of wide swaths of farmland as opposed to little tracts of land all over the County. Heidenreich said that does take a little bit more teamwork with neighbors, etc. but the County plans on assisting landowners with that. It is a program where one needs to work with the town board and the County and the landowners and Heidenreich has seen great success in AEA's around the State so she is excited to bring that to Trempealeau County. At this point Brandt suggested Heidenreich wait with questions and allow the public to speak. Brandt called for any public testimony. Brandt noted that Jon Schultz arrived to the meeting.

**Randy Spangler/Cameron Rail Site LLC e-mail** - I am writing this email to express my opposition to the County enacting any changes to the zoning laws that affect landowner rights to do what is lawfully allowed under the current DNR NR135 mining code.

**Michael and Patricia Berkley e-mail** – Opposition to proposed changes of Farmland Preservation Plan and the amendment to the Trempealeau County Comprehensive Plan. To Whom It May Concern: In general, we oppose the changes proposed because the changes appear to be a thinly veiled attempt to make it extremely difficult to permit nonmetallic mining (NMM) in the County. We believe our property rights are being violated by the additional burdens being proposed by these changes. Specifically, the changes that amend Industrial sand mining on Ag zoned property with a conditional use permit. Changes that separate aggregate mining from industrial mining are designed to be prohibitive to industrial mining. These include differences in well and foundation testing, buffering zones from property lines and habituated structures. Where is the generally accepted science that shows the basis for these proposed changes? The Wisconsin DNR has the responsibility and means for regulating nonmetallic mining and has developed regulations they have determined provide for safe regulation of the industry. Science demonstrates that Wisconsin Statutes that regulate nonmetallic mining protect the health and safety of the citizens. The DNR take their responsibility seriously and base their regulations on demonstrated repeatable science, the Department does not selectively site concerns or studies that fit a predetermined agenda. We believe that it is important that the Trempealeau County Board reject the proposed changes and take a serious look at what is driving these propositions. In our opinion, these proposed changes are an attempt to legislate through zoning and institute a moratorium by committee on the industry and our property rights based on self-selected science and extremist views.

Brandt asked if the town boards have all approved the maps? Fletcher responded we worked with them in forming the maps and they have had input throughout the process and these maps were given to each of the towns. Lien said there is one major change. If one looks at the Town of Hale, the town had previously been zoned all Residential-8 (R-8) and that would have made them completely ineligible for the benefits of Farmland Preservation so that town board took it upon themselves to change everything that was R-8 to Rural Residential

so that now everything mapped in green in the Town of Hale would be eligible for Farmland Preservation. Brandt called for any other public testimony. There being none forthcoming, Brandt closed the public hearing at 9:29 AM. Zeglin stated both Fletcher and Heidenreich attended the County Towns' Association meeting so all of the towns have been thoroughly educated to this and know what is going on and they (towns) have each had their individual meetings so Zeglin knows the towns are behind the revised plan and have given it their seal of approval. It is clear to Brandt that we have two choices in terms of what we do today; approve a revised map (which is presented here) and to agree to focus on Ag Enterprise Areas. (We can also choose to do nothing). Brandt asked Heidenreich or Fletcher to explain those two choices. Fletcher replied that what the map does is (if the map is approved the way it is) allow the next step which would be implementation and after the plan is approved then any landowner could work toward creating an Ag Enterprise Area in any of those areas of green. Fletcher explained the document creates the opportunity for those areas in green on the map to be eligible to receive Farmland Preservation tax credits and that is the next step. Brandt clarified the Committee's role today would be to approve the draft Farmland Preservation Plan and send it to the County Board. Fletcher added you aren't approving an AEA. This is just a baseline step that needs to happen before something else can be put in place. In reading the plan, Killian acknowledged there was a lot of work put into it but she pointed out a couple of typographical errors that she thought should be cleaned up. She added it doesn't change the content of the plan. Brandt voiced that he thought the ability of local, individual landowners to apply for a Farmland Preservation Plan and tax credit was going away. Heidenreich stated it has as of 2009 when DATCP developed the Working Lands Initiative. Prior to that any singular landowner in the County could apply to be in the Farmland Preservation Program. Post 2009 one can only enter the program through an AEA area so one needs at least four teammates to enter into the program with you. Anyone that has land in "green" on the map, they are not automatically in the program, you are just eligible to be in the program. Since she oversees the Farmland Preservation Program in the County, she stated we do have people continually interested in entering the program and so there is a great deal of interest out there especially as our contracts are expiring quite rapidly with the existing agreement holders. We really do need a new vein for people/interested citizens to enter into the program so we want this opportunity to be available for landowners in the County. In regard to the testimony in opposition from Michael Berkley and Randy Spangler, Bawek asked if Heidenreich could speak specifically to what in the plan would limit their concerns which basically had to do with sand mining or the restriction of it and Bawek's second question is; are Michael Berkley or Randy Spangler a resident of Trempealeau County. Heidenreich responded that Michael and Patricia Berkley own land in Trempealeau County but she did not know if they reside on that land. She believed they may be out of LaCrosse in terms of their residence, but Randy Spangler is owner of Cameron Rail site in Trempealeau County. Heidenreich believed he may reside elsewhere but they both own land in Trempealeau County. Fletcher stated nonmetallic mining is regulated through your Zoning Ordinance and this is the Farmland Preservation Plan which doesn't regulate mining at all. This wouldn't have any impact on that as essentially whatever is allowed with the zoning district is what the regulation is as to how things could be mined or if the mining would be permitted. Heidenreich stated this is not a new zoning district. Farmland Preservation zoning does exist. Trempealeau County has chosen not to implement a zoning district in the past as it has been an option. This is not a zoning district it is just a map where landowners are eligible to be in the program. It is a document that will be inserted into the Land Use Plan so we are hoping it is used as a guiding document by governing bodies in Trempealeau County in terms of what Trempealeau County chooses to pursue in the future. It will be in the plan but, to be honest, Heidenreich thought the comments are maybe a little bit off the radar in regard to exactly what the plan is trying to accomplish. Fletcher agreed and added the Farmland Preservation Plan doesn't regulate mining. In regard to the two e-mails, Zeglin said they seemed to her to be more pertinent to #11 on the agenda – Amendments to Chapter 13 and she asked that they also be read into the record at that time during the public hearing. Brandt stated he thought the second e-mail actually referred to the Chapter 13 provisions as well. Heidenreich noted she was required to mail notices of these changes to anyone with mineral rights in the County and anyone that has applied for a Conditional Use Permit for mining. Heidenreich said she mailed to approximately 200 people or so and it is required by State Statute to do so when you are amending a comprehensive plan. Bawek made a motion to adopt the Trempealeau County Farmland Preservation Plan,

Zeglin seconded. To clarify exactly what the Committee was adopting, Brandt said we obviously have the plan. We are adopting a map which indicates what land would be available for Farmland Preservation within the County. We are agreeing to the information that was presented in the plan and then we are also amending the Comprehensive Plan to include the Farmland Preservation Plan as an amendment. Fletcher stated one of the requirements of the Farmland Preservation Program at DATCP is that the documents be consistent and that ensures it. Heidenreich said that will be a separate resolution. Heidenreich explained the first resolution is simply to adopt the Farmland Preservation Plan and there will be a separate resolution to amend the Comprehensive Plan inserting it as an appendix. Nelson had some inquiries about eligibility. Heidenreich explained that what other areas of the State have done is created a larger radius of an ag enterprise area with many landowners in it and they have done that at times when they can't necessarily find one in a very concentrated little area. There are ways to create a large swath of land of an AEA. Not everyone in that circle has to be in the program but as you increase the radius of it there are ways to get more people involved. Upon Nelson asking if the land had to touch, Heidenreich responded even by a miniscule amount, yes. Zeglin inquired if that also mean corners. Heidenreich said, "yes". Lien added the different property owners too can also be LLC's as it is, what is a different legal entity. Brandt stated we have a motion to approve and adopt the Trempealeau County Farmland Preservation Plan as per State Statute 91.16. Motion to approve passed with no opposition.

### **Amendment to the Trempealeau County Comprehensive Plan.**

Heidenreich stated that essentially we are required to not only adopt the Farmland Preservation Plan but also we do have to insert it into the Comprehensive Plan so Heidenreich just explained that, i.e. if the Committee didn't adopt the Comprehensive Plan then what we all just accomplished is null and void, so in order to complete the process you do have to insert the FLP as an appendix into the Comp. Plan so now when folks do read our Comprehensive Plan it will be the last appendix in our plan – Appendix I. We are technically amending the plan by inserting that as an appendix. Fletcher added that language meets the consistency requirement on the DATCP side that is why they are requiring that county's do it this way. Brandt clarified that the Farmland Preservation Plan revision and the amendment to the Comprehensive Plan will both have to be approved by the County Board. Killian made a motion to approve adding the Farmland Preservation Plan as an amendment to the Trempealeau County Comprehensive Plan, Skoyen seconded. Motion to approve carried with no opposition.

### **Public Hearing – Conditional Use Permit –Kerry and Bridget Tamke, Landowner, Bridget Tamke, Petitioner/Operator – Retail Business – Town of Arcadia**

Brandt opened the public hearing at 9:42 AM. Killian read the public hearing notice aloud. Brandt acknowledged Kerry Tamke who was present. Heidenreich stated she is in the process of working with each town to update their Comprehensive Plan. We are also trying to do what we call a zoning clean-up that hasn't been done in quite a few years, just to make sure the use on the land is truly matching the zoning since we are finding many outdated areas. Each town has probably had, at least, a dozen rezones that we found that we are going to do in one big public hearing in 2017 so the business Tulips and Treasures came up on the list for a potential rezone to commercial use since it fit somewhat into that category. Upon discovering that, Heidenreich found out it is actually in the basement of Tamke's home which we didn't know just from looking at paperwork. It was decided that it would probably be a better fit to have them get a Conditional Use Permit (CUP) rather than rezoning their home to commercial. Tamke's are currently in Transitional Ag zoning so it would require them to get a Conditional Use Permit for their business so that is where we are today. Heidenreich knows they have been in business there for many years but we did still recommend that they get a CUP. Brandt asked Tamke if that was a good synopsis of what is happening. Tamke stated he thought so. Tamke said they have been there for 22 years and when they started they checked with both the township of Arcadia and the County and nobody required any rezoning or any permits other than we had to get a permit to put a sign along County Road J. Tamke said he is a little surprised that this has even come up. The business occupies the basement of their home which is about 30% of the house. According to Tamke, on the outside there is no indication that the business is even there other than a sign in their front yard. Tamke didn't believe they have ever had any negative impact on anybody. Tamke hasn't heard any complaints. Tamke said it is a flower shop. Tamke understood they are currently zoned agriculture. Tamke said they do receive questionnaires and

things they have to fill out for the Dept. of Agriculture every year. Apparently, we are an agricultural based business so perhaps we are in the right zoning but Tamke guessed that was up to the Committee to decide. Brandt stated, as Heidenreich pointed out, and certainly it was reflected in the comments that the town made, that they understand that rezoning is not necessary and that a CUP was what is being requested. Brandt called for any public testimony. Heidenreich read a letter dated October 13<sup>th</sup>, 2016 from the Town of Arcadia which stated the Town of Arcadia Board of Supervisors was informed by the Department of Land Management that they are in the process of conducting a rezoning effort for various properties throughout Trempealeau County. One of the businesses listed was Tulips and Treasures owned by Bridget and Kerry Tamke. It was determined that since the business resides in their residence and the fact that it has been operating for over 20 years, the appropriate method would be to not rezone the property. After further clarification from County personnel, it was determined that a CUP should be requested by the Tamke's. The Town of Arcadia Board of Supervisors unanimously passed a motion at their October 13<sup>th</sup>, 2016 board meeting stating that they have no objection to granting the request.

**Tom Bice** – Registered to testify in favor. Bice stated he just wanted to say that he has been out to Kerry's place. It is a very remote area. It doesn't create any kind of issue for anyone whatsoever. He is a great member of the community and of society and he just wants to utilize part of his property for his own needs and a small business and Bice didn't see any reason that he shouldn't be able to do this if you should decide that he can't. And if you should decide that he can't, Bice would like to know who will be harmed if you allow him to have his CUP.

Brandt called for any other public testimony. Brandt closed the public hearing at 9:49 AM. Zeglin made a motion to approve the CUP, Schultz seconded. Upon Brandt asking if staff was recommending any conditions, Lien responded no, that in this case he, Mark Carlson and Heidenreich had discussed conditions and there are no additional conditions recommended as the site has been there being utilized for years, just kind of flying "under the radar" and as Heidenreich had stated, in our efforts this summer meeting with each town and trying to get the proper uses on the land in harmony with the zoning districts, this does fall under the current transitional ag zoning where it would be a conditional use. It is a good fit that way so staff is not recommending any conditions. Motion to approve the CUP passed with no opposition.

### **Public Hearing - Amendments to Chapter 13-Nonmetallic Mining and Table 2.05 of the Trempealeau County Comprehensive Zoning Ordinance**

Brandt opened the public hearing at 9:51 AM. Killian read the public hearing notice aloud. Brandt stated the Committee has been looking at this on and off for a couple of years now, since the recommendations came from the Health Impact Study Committee as well as changes that have happened throughout the County. Lien said it has been about a two-year process of going through the Health Impact Study and taking into account the public comments over time. The Committee suggested and/or approved amendments to this Ordinance which is what the public hearing is on today. All of those amendments are underlined in the draft. Lien has two letters that he received that he will read into the record. Lien has a recommended amendment also. Radtke wanted to recite to the Committee the general authority to make zoning ordinances and sort of the parameters that any amendment to a zoning ordinance would have to fall within. Radtke stated it is under Chapter 59.69 of Wisconsin Statutes which is the authority for county zoning. Radtke read aloud, "For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities, establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section" and Radtke added and those again being for public health, safety and general welfare. That is a general statement and then there are some things specific to or what Radtke thinks are at least relevant to the proposed amendments here. Radtke read aloud, "powers granted under this section shall be exercised through an ordinance which may determine, establish, regulate and restrict (Radtke was paraphrasing) areas which agriculture, industry, mining may be conducted. It also talks about the authority to regulate or designate certain areas or uses or purposes which may be subject to special regulation. In this particular case, as the County has already done in Chapter 13-Nonmetallic Mining, as a series of specific regulations and also there is a specific statement regarding setting building setback lines. Radtke knew there was a setback proposal in the draft ordinance. Radtke just wanted to read to the Committee that this is what the Statutes say of the authority that this Committee has or actually that the County Board has, but before it gets there it has to go through here. Radtke is reminding the Committee of that because any ordinance changes that are made have to fall within that criteria so normally a lot of times when we have a proposed action before a

committee, we'll draft the resolution in advance and have something for the Committee to consider. Radtke has a blank resolution and he intends to listen and as the discussion of the draft Ordinance goes on, he will note the things that are relevant to those proposed amendments that are specific to the public health, safety and welfare so that we can add that language in explaining why it is that these ordinance changes happen and that they fall within the authority of the County if in fact it does move forward to approval. Brandt made the public present aware that there were copies of the draft Ordinance language available in the back of the room. If anyone wanted to register to speak in favor or in opposition, please do that. Upon Lien asking if the Committee wanted to go through the changes first, it was decided to take public comment first. Brandt stated that anyone who had registered and chose not to speak that he would give them an opportunity at the end of the public testimony to speak if they want to.

**Randy Sonsalla** – Registered in opposition but not testify.

**Gary Bixby** – Registered in favor but not testify.

**Ivan Pronschinske** – Registered to testify in opposition. Pronschinske said he didn't get a chance to read all the rules and regulations that is why it would be nice if Lien would explain what the change really is in the Ordinance. Not getting a chance to read all the changes, Pronschinske said he is opposed, you know we got plenty of rules and regulations in our County with the mining. If the County don't have enough, the DNR's got a few, OSHA's got a few and EPA's got a few and the list goes on and on. If we're going to be more or less friendly and as a County we've taken a lot of taxes whether it be real estate tax or sales tax from the mining in this community. If we totaled up the numbers in sales tax, Pronschinske said it didn't come from potato chips. It came from big expansions like Hi-Crush over in Blair and Whitehall and Mississippi Sand in the City of Arcadia now and others. Pronschinske stated he is opposed to any more regulations. Pronschinske said the other thing we are taking is our property rights. We pay taxes on property. Pronschinske saw a comment in the paper that we held the taxes down to \$46 per \$100,000 of assessed valuation and we need a pat on the back. If a taxpayer has an opportunity on his property to make money, whether it be mining for gold, or oil or sand or gravel or rock or build a chicken coop or whatever, why do we want to put more strings on it.

**Mary Ann Bixby** – Registered to testify in favor. Bixby stated she is a resident of the Town of Preston in the County of Trempealeau. Bixby read this nonmetallic mining draft and she knows that is has been available for other people to read for a period of time. Bixby supports these amendments completely and the amendments that she is really in favor of is market value of land adjacent to mines and a lighting plan – because we live just three miles from Hi-Crush on the east end of Blair and it has been a change in the night sky for us. We no longer have our night sky. I'm in support of well inspection because a lot of wells in my area are very susceptible to explosives and things like this. I'm supportive of structure inspection because we have a 110 year-old farm house that we live in. I am very much in support of definitions of construction aggregate and industrial sand. I think it is about time we have a definitive definition on this because I am in support of road construction and quarry's. I am not in support of nonmetallic sand. Again, I am in support of road use agreements. I am still looking for a road use agreement on Carpenter Bridge Road which is in our Town of Preston. And, having been an avid bicyclist, I am in support of bicycle routes. We really need to support our tourism in the County of Trempealeau. I thank you for this time and I thank you for listening.

**Darlene Rossa** –Registered to testify in opposition. Rossa just had to state that I like my status as Trans. Ag. It gives me the opportunity to do what I want to with my property that I pay the taxes on. I'm the one that pays the taxes, nobody else comes and says, "Oh, I'll help you out or anything". I ought to have that opportunity to decide what my zoning is. My fear on changing mining sites to industrial is that if you really read about the industrial one it eliminates the farming, it eliminates hunting so the reclamation of land and everything else you could almost throw out the window because you can't farm it and you can't hunt it so they might as well just take like they do with aggregate and just close it down, throw some grass on it and that is it. Sometimes I feel

that because mining is in the minority that a lot of our Boards do not look at us fairly and give us equal representation and sometimes that brings me to question why are we even doing all of this but I guess it comes down to property rights and what we ought to be able to do with our own property. I don't go to town and say, "You know what, I think this area ought to be just green houses or this area ought to be brown houses" and then come here and say, "You know I think everybody ought to change the color of their house on this block", but everybody seems to not have a problem coming into the agriculture area and saying, "You can do this, you can't do that" and that is my only concern. Where does the property rights start and where do they end?

**Dianna Brown** – Registered to testify in favor. Brown stated that although her mailing address is Taylor she does reside in the Town of Preston in Trempealeau County. Brown said she is testifying in favor to the amendments to the Nonmetallic Mining Chapter 13. In no way do these amendments prohibit nonmetallic mining it just adds further safety and well-being of the residents that are adjacent to these mines. I presently have a mine directly in back of me and believe me, my private property rights have been greatly affected. Fifty feet from my property line is not enough to help me cope with the shaking of my house when blasting occurs, the booming from the sand mine trains at 3,4,5:00 in the morning. I know neighbors who are surrounded on three sides by future sites that will be opened up to the Hi-Crush mining and we are losing residents because of this. I pay property taxes also and I would appreciate if the Board and the Committee members would take into consideration how greatly my private property rights have been affected. The only potential buyer of my property would probably be someone associated with Hi-Crush or someone who doesn't mind their house shaking. I live in constant concern that my well will collapse. I have no idea what the future of my water quality will be and I have attended hearings on the local level where a property owner wanted to add a wash plant to their property and this person had to admit that one high capacity well affects the water level within one to two miles of that plant. I presently live within 300 feet of one of these wash plants. The sound of the crushing of the aggregate is very disturbing. I've talked to other residents in the area and their children can't even sleep at night. They are awakened at night. Please consider not only does this affect the private property rights of people who wish to, perhaps in the future, open up a mine on their property, it helps the private property rights and the safety and well-being of the people who are going to be affected by any future mine.

**Mary Drangsveit** – Registered in favor but not testify.

**Tom Forrer** – Registered in favor but not testify.

**Ron Tuschner** – Registered to speak in opposition. Tuschner introduced himself as being from the Town of Arcadia. To start with, Tuschner had two comments; First, Tuschner thanked this Committee for the opportunity to be brought here and give our opinion in a decent, respectful way. Tuschner thought that was very appropriate. Second, Tuschner would personally like these hearings to be held at a different time schedule because there are a lot of rural people that have jobs, etc. and it does not give them the opportunity other than to e-mail, etc. to this Committee. Sometimes a face to face comment is much more effective. At least the opportunity is given to them, if they don't respond that is fine. In regard to private property rights, Tuschner said Heidenreich made a comment that Tuschner thought was quite pertinent here - \$15 million in taxes in Trempealeau County comes from agriculture. Tuschner said that was extremely important and part of that agriculture is part of our zoning regulations whether you like it or not and it carries over to mining. Tuschner thought that has a lot to do with private property rights. Even though the population in Trempealeau County of rural people is in the minority versus urban or city and it is changing and Tuschner understands that. It just seems that the value per capita of private property owners is really skewed high and low and I think that should have something to do with this Committee's rationale when they make decisions. The other thing is credible and documented evidence to sustain whatever decisions that you make – credible and documented evidence – meaning not hearsay but stuff/documentation that has been done for the health, the safety and the welfare of all citizens in Trempealeau County. I'm not trying to pick anyone out. I have not seen all of that and I would like to be made aware of where there is documentation – not just people coming in and spewing things before a

committee and for/to the public. The tax base increase, and we're talking mining, we're talking farmland and along with that we're talking use value taxes for our County. This is how this governmental body decides what they're going to do and where funding comes from. We have to take that into account. The largest portion, probably, I can't document this because I didn't get into it deep enough yet and I'd like to see this Committee report on this – how many dollars in rural taxes versus urban and city, which I think would be some credible evidence because it can be documented and I'll grant you I did not have the time to do it. My fault, but I would like to see it sometime in the future as I think that has to have some bearing on this which is health, safety and welfare. In regard to Trans Ag, I am in it. I would not want anybody to take that away from me, not at all. I'm the fourth generation farmer, if my son stays on, he will be the fifth. That means a lot to us. We're not supposed to have some kind of personal feelings to land but believe it or not, we do. Whether it is a person that owns a house, small acreage or large acreage or whatever, that is important and I think this may have some bearing on it with negative connotations. Equal representation and I get back to that as far as dollars that we pay in taxes, dollars that come from the land that we own because it is a necessity of a farmer, for example, to own the acreage and/or lease or rent. So, either way, he is paying those taxes, one way or another because someone is not going to lease land to a renter unless it is going to cover his taxes plus to give him some kind of ROI (Return on Investment). That is an absolute necessity, so I think that should have some definitive bearing on this. As far as the sound, I have relation that lives in another State, just across the river here in Winona that has trains that come by. They are within 150 feet. Every time we go there to visit them (this may sound stupid) here comes a train, I'm there and it is a natural reaction and they are just sitting there like "What's wrong with you". They said after they lived there for a couple of months, they don't really notice it. That isn't going to be for everybody but you become accustomed to noise such as we do in a rural area. You get a coyote or a dog barking at night when it shouldn't be, it wakes you up from sleep, things such as that. There are also regulations on the DCB that this equipment emits. A long time ago they said that those DCB's could be regulated downwardly, (Tuschner believed 48 or 48.5 and he thought Lien has this material), if installed in proper locations and proper facilities, so point being, there are regulations to keep these things within tolerable levels. The last thing is light emissions. I travel home at night to my place. Why are some industries regulated by light emissions and other ones are not and along with sound? I'm not here to give specific names as that is up to this Committee to take a look at that part of it. My point being, good for the goose, good for the gander. It should be for all. Thank you for giving me the opportunity to speak before you.

**Tom Bice** – Registered to testify in opposition. First off, my name is Tom Bice I'm from Trempealeau. I'm just going to start by saying I've listened to Rian Radtke's comments about State Statutes and I will start by saying that for years some of his comments about what this Committee stands for has been misinterpreted. When you talk about safety and welfare and health of people there is a lot more that comes into it than the issues that you consider. Some of you may know I used to Chair this Committee and at that time I used to try my best to make it real clear as to how important it was that we uphold our Constitution. All of you elected people have sworn to uphold the Constitution. The appointed people on this Committee are not, but the elected people are. With that in mind I'm just going to mention a couple of things that are extremely important. If I asked you all, and I've asked many people this and many have no concept of our Constitution and no concept of the Bill of Rights. If I asked you all how we got the Bill of Rights or why we got the Bill of Rights most of you would hem and haw. George could sort of give me an answer but about four hours later we would have to wake everybody up and go over in detail and I can do that really quick. We got the Bill of Rights in this country because the States wanted to ratify our Constitution and they knew that if they were going to do that, we needed something in there to protect individuals rights and so those individual rights come down to extreme importance and what they said was, "We'll ratify that Constitution as long as you add our Bill of Rights" which is our first ten amendments and in there you know the first one, the second one and most of them and we have the fourth amendment. The fourth amendment is about illegal search and seizure. What you're continuing to do in this revision of this Ordinance is to seize more property. By making the determinations that you have and putting this in place you are taking away the rights of people to utilize their property. If it weren't for the Constitution America would have failed years ago. America has a great Constitution. It was given to us at extreme cost by certain individuals

who knew the history of government and so it is very important that we follow, it is very important that you take and have respect for that and that you understand that we can all live together. You know we've had a few people testify well it's noisy and there's too much light. Well, you go out on the street it is noisy and there is too much light so if you continue to erode people's constitutional rights I would highly recommend that those of you that vote for it should be arrested and cited with contempt of our Constitution and I really believe that. I've got somebody here that is looking at me with a smirk. She did the same thing when I sat there in George's chair and tried to explain to you that property rights are important and they need to be respected. So, I'll also tell you that I'm working with some State officials to make sure that the oversight of the County here is looked into and other county's because I can tell you that you continue to move forward with the agenda that you have, many of you have a proven agenda. We have two people on this Board that don't have a proven agenda but the rest of you do and it is working against the people of Trempealeau County and it is actually going to come back to haunt you. So, while you all should realize, George has been around forever, you know that when you abuse people's rights like livestock siting, etc., etc., etc., the State steps in and says "Sorry you can have a meeting but you're not going to make any decision on that". So, as you heard me say and you should have if you hadn't, government is supposed work for the people not against the people and I know you all think that you have your little click here that thinks this is important and a proper thing to take away people's control of their property, that is wrong. Government shouldn't do that. If any of you have any questions I will answer them. I know that is not appropriate. Schultz stated he thought our Committee has been served notice that Tom has taken it upon himself to be the liaison between County residents and State officials. Bice stated that is not what I said, I said I am working with State officials. Schultz interjected saying, "Yes, you're working with State officials to develop some kind of oversight over our Committee". Schultz asked Bice to share some of those discussions with us in the future that (inaudible word) our Committee. Brandt stated every opportunity I get to speak with State officials, we understand the current administration is interested in pre-emption of local control, so I'm also hoping to hear from State officials whenever that is starting to come down the line. Schultz said his question is, can we keep discussion pertinent to Ordinance changes or are we being served notice. Brandt said he thought probably both and thanked Bice for his comments and stated that we certainly hear what Bice says. Bice said he would throw one more quick comment in. Bice stated you talk about local control, we had local control in Trempealeau County. It was abused by this Committee and now local control is, as I said, you watch Ordinance after Ordinance being taken away and mandated by State. You should have learned that you cannot abuse the people and get away with it.

**Wade Britzius** – Registered to testify in favor. Britzius stated he lives in the Village of Trempealeau currently. Just for full disclosure, Britzius said he was a member of this Committee for about 2 ½ years and helped develop some of these proposed changes that are being voted on today. Britzius stated he enjoyed the discussion about rights that has come up so strongly and it is important. Britzius has been a landowner and homeowner in Trempealeau County for the last 45 years or so and he too believes in personal autonomy. I want to have the right to control what happens on my land, my home and I'd be upset if my neighbor could come over and do something on my land that I didn't like or I couldn't do what I wanted, so I get it. But there is an incredible tension there when you talk about our rights, yes we all have our rights, but I think a discussion of rights always has to include a discussion of responsibilities. Those two are completely intertwined and live in a relational world and we live in a changing world. I want the right to do what I want on my property but I affect my neighbor. I always affect my neighbor. I always have and in the modern world I affect my neighbor more than I used to. With the kind of farming we do nowadays, it has effects. The chemicals drift, the land – the scale of the ownership is larger, it affects the land and the water, the people who live downstream, the people who live around us. It's just unavoidable. We have responsibilities as well as rights. I see this governmental process as an attempt to balance that tension and it's not going to end and it is going to keep changing and it is a changing world. In terms of mining, to address Radtke's point about health, safety and welfare I see these changes as very much about the health, safety and welfare of the public here and in this changing world we also want to address the health safety and welfare of the world around us; the plants, the animals, the land, the water, all of that, they have rights too. It is not just humans who have rights. That's part of our changing landscape,

our changing view of the world and we have to take all of that into account. To address these changes, this Committee has worked for over two years and had lots of meetings and spent time looking at the specifics of these things. We changed some of those distances of inspections of wells and buildings. We changed it from a half mile to a mile – that’s what the proposed changes are. That wasn’t just made up, that was based on experience that we’ve had in this County for quite a while now. Talk to people in the Town of Lincoln who’ve had their wells affect other people, the people who live near a mine. Mines have a big effect. Mining has the possibility of bringing tax income and benefits to a lot of people. It has the possibility of bringing negative impacts to a lot of other people and we have to balance that and I see these changes as good steps in the direction of doing the right thing and the most good for the largest number of people and for the landscape. It is an ongoing debate about the science. One of the letters that came in said let’s address this scientifically. That is kind of important and of course, the science can disagree on that. We had some information sent to us as County Board members that was scientific from Midwest Environmental Advocates. It gave us scientific information, supposedly, about reclamation of land after mining. Britzius stated he ended up calling one of the principal researchers on the research that they sighted and he called a University Extension agent who has worked in that area (down in the southern U.S.) and that research or experience they had down there completely did not apply to what we are doing here. According to Britzius, the researcher said that. Britzius’s point being that science goes all over the place and we all want to be scientific at some point. It takes people looking at the situation to make an evaluation and make a decision, so I urge you to look at all the things, as you have. This Committee has, in the past, looked at the health, safety and welfare of the residents of this County, to look, to the best of your ability and take everything into account and make these changes. That is the process that has gone on here and these are good changes based on the experience and study of a lot of people here - a lot of knowledge. They are good changes so I just abdicate for their adoption.

**Dave Hesch** – Registered to testify in opposition. Hesch asked that the letters Lien had be read first as a lot of what he is going to say will probably be in those letters and Hesch didn’t want to take up a lot of time.

Lien read aloud the following letters.

**Harry Griswold letter** - I am part owner of a large farm in the southeast part of the town of Arcadia, primarily in section 14 in Norway Valley. I own this farm with my wife’s sibling’s families. They are Rachel and Steve Tabor and Robert and Colleen Mulder. Our farm is approximately 625 acres and is just south of the Dennis and Darlene Rossa farm where frac sand mining has started. I often drive by the large mine just south of State Highway 95 on Thompson Valley Road. I understand this is a \$30 million facility but because of the sand market there hasn’t been much activity recently. My main point is that sand mining is environmentally sustainable. I can tell by looking at the Thompson Valley mine site that everything has been meticulously engineered so that no rain water leaves the site. I can imagine the millions of dollars that went into high paying engineering work that designed this site so that it complies with all environmental rules, laws, and ordinances. The Thompson Valley mine site, I understand, is on the tax roll for about \$30 million which I believe would generate anywhere from \$700,000-\$900,000 a year in tax revenue for the Arcadia School District, City of Arcadia, and Trempealeau County. Mines of this type would be a boon to the local economy. There would be many good paying, family supporting jobs in trucking, heavy equipment use and operations with no damage to the environment. All these mines are under strict reclamation laws and rules. I expect in a hundred years it would be difficult for a person to identify where sand mining was mined a century earlier. Top soil will be replaced and the trees will grow and it will become a natural part of the environment. I have watched in dismay as county and local governments in Trempealeau County have been taken over by the environmental activists to put a stop to an industry that has the potential to dramatically improve the economy in Trempealeau County and create wealth and jobs for thousands of people in Trempealeau County. Voting more restrictions against the frac sand mining business in Trempealeau County will destroy the job prospects for good paying, family supporting jobs in Trempealeau County. It will deny Trempealeau County and local government and school districts millions of tax dollars every year in added real estate property tax revenues. The restrictions on this sustainable

and valuable industry in Trempealeau County are a tragedy being perpetrated by a small group of self-centered, selfish, and power hungry environmental radicals. Many decent people are going to suffer the loss of good jobs and lost property value increases. That will be a shame.

**Carl LaPrairie/Canadian Silica letter** – As a landowner in Trempealeau County, through LaPrairie Holdings and holder of a non-metallic mining permit through CSI Sand Wisconsin, I would like to comment on the proposed changes to Chapter 13 of the County Comprehensive Zoning Ordinance and, while at the same time, extending a thank you to the Committee members for the hard work they have done drafting these revisions. I have been following the evolution of this Ordinance in the County, and my understanding of the history is as follows: In 1996 the County put together a Non-metallic Mining Advisory Committee that consisted of mine operators in Trempealeau County, real estate investors, bankers and citizens that lived-in proximity to mining operations. In 1997 the Ordinance was adopted and remained unchanged until 2006, at which time the Committee was reconvened and again the major industrial sand producers were represented along with others. In 2013 changes were again made to the Ordinance with recommendations from this Committee. On August 19, 2013, the Trempealeau County Board of Supervisors adopted a resolution submitted by the Trempealeau County Board of Health instituting a one-year moratorium on the issuance of any new industrial sand mining permits or any permits to expand existing sites and forming a study committee. The committee consisted of 12 members, 4 of whom were on the County Board of Supervisors and the balance citizen members, while some of the citizen’s members had ties to organizations that oppose the industry (e.g. Midwest Environment Advocates) none had industry experience, nor was industry asked to participate in this study as per past practices. The report was finalized on September 8<sup>th</sup>, 2014 and the Environment and Land Use Committee (ELUC) has deliberated for two years on the recommendations and has proposed amendments to the Ordinance. First, I would like to go on record as supporting the proposed amendments of the ELUC except one, and that is changing the zoning requirements to allow nonmetallic mining of industrial sand as a conditional use only if in an industrial district, not in an agricultural district. Our thoughts and questions about the Committee’s changes are as follows:

1). This change for nonmetallic mining in industrial districts was not a recommendation of the 2014 report or any of the other reports we are aware of. Why is this particular recommendation being proposed and how is it consistent with the 2014 Report?

2). There are several questions we have regarding impacts to agricultural uses, where farming and similar uses will be eliminated if the zoning code is revised as proposed:

a.) Generally, non-metallic sand mining is viewed as a use which is consistent with agricultural uses. This is because of the large number of acres which must be used in mining and, consequently, the fact that mining is generally located in rural areas. While within an agricultural zoning district, mining itself requires a Conditional Use Permit (“CUP”). A CUP is issued for a use which is otherwise allowable within the zoning district but which contains restrictions on the use to mitigate and minimize anticipated adverse impacts. However, the Committee’s proposed revisions limit agricultural usage both pre-and post-mining.

b.) The land use chart in 2.05 does now allow agricultural uses in an industrial zone. By having a “blank space” in the use table, agricultural uses such as farming, orchards, and green houses are all prohibited uses. For landowners who desire to change their zoning to an industrial district to create an opportunity to engage in nonmetallic mining, does any zoning change from agricultural to industrial prohibit agricultural uses from continuing as a matter of right?

c.) Looking at your zoning code, it says “all nonconforming uses of land shall be authorized only by a conditional use permit.” Because agricultural uses are not conditional uses in the use table for an industrial district, a farmer cannot apply for a conditional use to harvest his crops or continue farming if a rezone to industrial is granted and existing agricultural uses are absolutely stopped and prohibited by the zoning code’s proposed revisions. Can a farmer harvest his planted crops after a rezone to industrial is granted? Or does a dairy farmer have to immediately stop his dairy operations if a rezone to industrial is granted? If that isn’t the Committee’s intent, perhaps the Committee can first consider and address those issues before adopting the Committee’s proposed Zoning Ordinance revisions?

d.) Since mining doesn't occur on all acres at one, and landowners tend to farm the remainder of the unmined portion, won't the Committee's proposed zoning changes have the effect of reducing or absolutely eliminating agricultural uses of land because farming will be a prohibited use in the industrial district? Overall, isn't the Committee's proposed Zoning Ordinance revision inconsistent with the County's Comprehensive Zoning Code to "encourage agricultural uses"? How is the change consistent with the overall purpose for the Zoning Code?

3). Recommendation SC11 of the study states that Post-Reclamation land uses should be compatible with pre-mining uses. Agriculture is the prevalent pre-mining use of the mines permitted in Trempealeau County. Because of the proposed zoning code changes, which will prohibit pre-existing agricultural uses in an industrial district, it appears reclamation permits will not allow reclamation to agricultural land/uses because agricultural lands/uses are prohibited in an industrial district. Will this proposed zoning code change result in isolated non-agricultural industrial uses in agricultural areas as post mining industrial usages?

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4.) For the same reasons, above regarding an absolute prohibition on and inability to engage in agricultural uses if a rezone to industrial occurs, it seems the Committee's proposed revisions will absolutely stop hunting in areas rezoned to industrial. Are we misunderstanding the Committee's proposed revisions? If we are not misunderstanding the effect, why is the Committee proposing to prohibit hunting and fishing on land that is rezoned, but which is not being mined? How is that consistent with the existing Zoning Ordinance's purpose or the Comprehensive Land Use Plan?

5.) Before the County adopts these changes, we respectfully request written clarification in the Zoning Ordinance itself that these proposed zoning changes do not apply to land which has registered marketable nonmetallic mineral deposits on them. In Trempealeau County, the minerals are located primary in agriculturally zoned areas, and under State law a property owner is allowed to register with the state the existence of minerals on their property. The county may then not allow a land use which is inconsistent with the registration of the minerals. By the State allowing any landowner with marketable nonmetallic mineral deposits to register his or her land, the intention is to prevent future land uses that would interfere with extracting the deposits, and the zoning cannot be changed to prohibit mining on that parcel. "**Any zoning change** to implement a lawfully adopted master plan, comprehensive plan or land use plan **does not apply** to land containing a registered marketable nonmetallic mineral deposit." NR135.62(4)(b).

Again, we support all the proposed amendments to Chapter 13, except the amendment to change the zoning to industrial which we believe is counter intuitive to landowner's property rights, the preservation of farm and recreational land and proper reclamation. We respectfully request the Committee pause these Zoning Ordinance revisions until the above questions and comments are addressed in the Zoning Ordinance itself.

Lien stated those were the only two e-mails/letters he received prior to this meeting. Brandt asked Heidenreich to re-read the letter she had read previously.

At this time Heidenreich re-read the e-mail from Randy Spangler (See entire content of the letter on Page 3 of these minutes).

Heidenreich re-read the letter from Michael and Patricia Berkley (See entire content of the letter on Pages 3 and 4 of these minutes.)

**Dave Hesch** – Registered to testify in opposition. Hesch stated he lived in the City of Arcadia. He also owns land in the Town of Arcadia. Hesch said all this discussion probably starts from six years ago when he applied for the first nonmetallic mining permit. I took a lot of grief and I took a lot of changing in the rules since I did the first permit which goes all the way from back-up alarms to traffic to reclamation, everything. A lot of

people have sat here and said, “It can’t be done”. Well I proved them wrong. You can do it as long as you are cooperative with your townships and your neighbors. One of the first mines Hesch opened up, the neighbor absolutely came to every hearing and complained that everything I was proposing was going to wreck the well, wreck her house and devalue her property. Now that is over with and the mine has actually been completely reclaimed (Hesch thought it is the first one in Trempealeau County). Hesch said he had people who sat at the hearing and said, “I’ve farmed for forty years and there is no way you can reclaim what you have destroyed, that hillside is horrible, you’ll never farm it again”. Well, that same individual has to drive by that farm every day he comes to town now and it is reclaimed and it is growing and it’s going to be farmed. So, what is proposed by the Committee and zoning, they’ve done everything that they’ve said they’ve done and I’ve done everything that I said we were going to do and so do most of these mining companies. Hesch explained that when he started out backup alarms was a big issue. Hesch stated he voluntarily spent \$250 per machine to put on the green back-up alarms. Before Hesch even started his second site, he was turned in saying he violated that. The township said they were going to come and pull my permit. Come to find out, we hadn’t even started, but the farmer that had the mine had gone out and bought a brand-new bobcat with a brush cutter on it and he was out cutting brush at 8:00 on an August evening. Hesch said he took blame for that – that was me – well, it wasn’t me. That’s like taking a feather pillow in a wind storm and dump all the feathers out. Once the feathers are all gone, try to go back and catch all those feathers, you can’t do it. That is what bad publicity does. I think a lot of us had a lot of bad publicity. I’m here to tell you that the only reason I’m opposed to this change is exactly what Carl said. If we understand it correctly, all the changes that you’re proposing right now, Hesch didn’t see a problem with any of it other than the industrial zoning portion. Because if that site Hesch just reclaimed was industrial, then the landowner wouldn’t be able to farm it again or hunt or whatever, if I understand what you’re proposing. That is the only thing Hesch said he is opposed to. Everything else we can all live with. I’ve lived with it. I’m still living with it. We’ve done everything that’s been asked so if that is a portion of this zoning ordinance that you’re proposing maybe we should take another look at that. Thank you and good luck.

Brandt mentioned we had four people who wanted to register in favor/opposition who chose not to speak. Brandt called on them again.

**Gary Bixby** – Bixby stated he couldn’t say much more than he has already said. To me, my own personal opinion, we have more than enough frac sand mining in Trempealeau County right now. We don’t need any more period. If people can’t see the difference in the community and the environment, they’re not looking.

**Randy Sonsalla** – No comment

**Tom Forrer** – Forrer wanted to ask a question. Forrer stated he thought two of these people made a very valid point about the zoning – industrial – and then eliminating farming. When these mine sites are reclaimed can’t they petition or can’t it be somehow understood that the industrial zoning change back to agriculture. Brandt replied he thought the Committee would be discussing that.

**Mary Drangsveit** – No comment.

**Linda Mossman** – Registered to testify. Mossman stated she lives in the City of Whitehall. Mossman wanted to thank this Committee for the over two years of numerous meetings, special meetings and listening to individuals and experts coming in and giving testimony relative to these proposed changes. This was something that was directed by the County Board in November 2014 that you be charged with reviewing the Health Impact Study. By the way, they started meeting in January and February in the evenings. We had numerous night meetings and she believed they were even held throughout the County if she wasn’t mistaken. Also, in early summer, Mossman gave a 20-minute presentation on equalized value of the towns, the city’s, the total county and the population as well as building permits for each of those governmental entities. She updated those

statistics and they were included at the County Board budget hearing in November, so that information relative to evaluation, Mossman believed from 2013 through 2016 has been taken into account. Mossman did not do building permits for 2016 yet. So, those numbers are available and have been made available to this Committee on, at least, two different time periods. The Health Impact Study recommendations, Mossman wanted to commend the Committee for going through them one by one, having an in-depth conversation relative to each one of those. Mossman did appreciate that conversation. We did have ongoing dialogue which was open to the public pretty much throughout the special meeting portion and there were times when there were a lot of differing opinions relative to each one of these proposed ordinances. Thanks to this Committee we got through each one of them without name calling, without raising our voices, without making slurs or threats and we had numerous conversations for hours about each one of them. Mossman didn't ever remember walking away and feeling that she had been threatened, name called or that my opinion was at risk. So, Mossman commended the Committee on that work, in particular, thank you for the inclusion of the bicycling and tourism in Trempealeau County which does contribute to the sales tax and Mossman can prove it. Mossman has the facts to back it up. So, Mossman wanted to thank the Committee for that and asked that you adopt them as they are written.

**Tim Zeglin** – Registered to testify in favor. Zeglin stated he would like to testify in favor of the Ordinance including all the changes. Zeglin said he did arrive late so he has heard only some of the objections to the Ordinance but he would like to reply to those point by point. Zeglin's main point would be that nonmetallic mining is obviously an industrial operation and it belongs under industrial zoning. To bring up anything else seems to be an attempt to obscure the actual essence of the question. Anybody who looks at that has to agree that is an industrial operation. It should be zoned industrial. The objections in Mr. LaPrairie's letter about "farmers won't be able to farm" and "people won't be able to hunt", those are essentially not true. The land could be rezoned after the reclamation is done. So, to make those kinds of charges and accusations is really both pointless and is distracting. Also, some of the letters had mentioned or did a lot of name calling about radicals and extremists and things like that. Zeglin wanted to point out that there is always two points of view on any question and Zeglin is not labeling the people who oppose me at all. They are entitled to their opinion but I think the attempt to label people who support the Ordinance, which I do support the Ordinance as it is written, again, to label those people is an attempt to obscure their good intentions and actually obscure the truth. Zeglin encouraged the Committee to adopt changes, adopt the revised Ordinance including all the changes that are written in.

Brandt called for any other testimony twice more. At this time the Committee took a short recess.

At 11:07 AM Brandt called the meeting back to order. Brandt closed the public hearing at 11:07 AM. Brandt asked Lien to review some of the issues that have been raised and offer some response or rationale and then we will open it up to the Committee for discussion. Lien asked Kyle Johnson to display Table 2.05 of the Comprehensive Zoning Ordinance on the overhead screen. In summarizing the public comments, Lien stated rules and regulations seem to be a way of life. Property rights always go on both sides of the fence. No matter what kind of zoning laws we are talking about it's always a two-way street whether one is proposing an ag expansion or a subdivision. There is the applicant that wants to do what they want with their property and then you have the, potentially, adversely affected neighbor so property rights are a constant balance for this Committee. This Committee constantly tries to balance those uses. With that said, Lien referred the Committee to Table 2.05 and the top of that is under industrial uses. If one looks at the list of industrial uses, it is heavy industrial uses, light industrial uses, nonmetallic mining which is broken out into construction aggregate, industrial sand, metallic mining, salvage yards, sawmills and planeing mills. If one looks at all those industrial uses they are very similar in nature where they produce noise, dust, light and other things so they are a good fit under industrial uses. The Advisory Committee was very adamant that they did not want to be lumped into industrial sand. Industrial sand was clearly an industrial type use and construction aggregate was not. We have construction aggregate mines in this County that produce topsoil, limestone, shale, sand, and gravel and all those things are lumped into construction aggregate. Those would all remain the same – Conditional Uses in an

agriculture district. Industrial sand as the other uses listed there would be Conditional Uses in an industrial district. The outfall to that is reclamation plans. Lien explained that reclamation plans primarily return to an ag use or perhaps a residential subdivision, etc. that could require a rezone back to that use. Lien said very seldom, in industrial sand mining do they incorporate an existing farmstead so that isn't usually an area that they would be looking at rezoning anyway. One possible scenario is that the applicant, once the site is reclaimed, would revert those areas back into the prior predominant zoning, whether it be exclusive ag, exclusive ag 2, primary ag. Another option would be to make additional amendments to the Table of Uses. In looking at the front page of the Table of Uses, Lien said two possible scenarios that could apply would be "Second Farm Dwelling" if one looks at the definition it probably wouldn't apply because the second structure has to be within 300 feet of the primary farm dwelling and with a "Single Family Dwelling" if they rezoned an area of the farm for industrial sand mining and someone wanted to put a residence on it, that could potentially be a conditional use in an industrial district which currently isn't allowed. Lien referred the Committee to the second page of Table 2.05 under "Agriculture Uses", Lien felt the public is right. Under general ag, green houses, aquaculture or orchards, they wouldn't be permitted uses in an industrial district. We could add them as permitted, put "P" s in that column, make those permitted uses or have the property rezoned back to the predominant zoning to allow for those uses. Lien stated either route would work for the Committee in order to address the public concerns. Brandt clarified that on the very back page, under "Principal Uses", agricultural uses which Lien described as general agriculture, greenhouse agriculture, aquaculture and orchards, we slide over to the industrial column and just put "P" for permitted in there. Lien said that was right and added that currently those are permitted uses in the ag districts. They are conditional use in R-8, not allowed in R-20. A greenhouse is a permitted use in a commercial district otherwise the other uses aren't allowed in commercial and they aren't allowed in industrial, institutional or environmentally significant, so you could add under industrial that those would be permitted uses for the general ag. Brandt again clarified that those were some possibilities that Lien is recommending to the Committee when we start discussing the concerns. That would be permitted uses in reclaimed areas so Brandt asked if Lien was suggesting that prior to reclamation, if it has been rezoned industrial, and prior to the actual mining that those could also be permitted at that time. Lien said that was correct. Brandt clarified that at any time that people are capable of farming in an industrial area they would be permitted to do that. As an example, Lien stated that with salvage yards, a salvage yard might rezone 20 acres but they are only utilizing 10 acres. The other ten, especially if it came out of an agriculture zoning district should and could be utilized to raise livestock, to crop or other things of that nature and this would allow that, where currently we haven't. People tend to rezone smaller acreages for that specific use. Lien said that would be an additional approach too. If you have a 200-acre mine site but you're only going to have ten acres open, that could be zoned industrial (if it's for industrial sand) and that could "leapfrog" with reclamation behind it. That is a way to minimize the zoning district. This is one way to look at it or you could just allow those other agriculture uses at permitted in that industrial district. Brandt asked Radtke if he was seeing any issues related to that. Radtke stated just one issue. Radtke asked if you're going to have reclamation and a reclamation to be complete and be done you have to prove that you followed through and did what the plan says. If the plans says some sort of farm production, you can't do that until it is zoned properly – if this is as written – without it being permitted. Radtke was speaking to the option of rezoning it. You're going to have whether or not someone can comply with their reclamation plan contingent on whether they can get a rezone which that is not a guarantee. The County Board has to amend the Ordinance. There are landowners who have rights related to rezone applications. Radtke thought that, having a system that sets that up, where you have to require a rezone in order to comply with the reclamation plan is probably a bad idea. In addressing the alternatives of just saying it's permitted in that district, Radtke didn't see any issues with that. Another option (we haven't done this here in Trempealeau County) but you could put a condition on the rezone that once the nonmetallic mining is completed that the zoning district reverts back to whatever it was previously. That could be in the Ordinance as well. Killian made a motion to approve the Nonmetallic Mining- Chapter 13 and Table 2.05 amendments to the Trempealeau County Comprehensive Zoning Ordinance so that we may be able to discuss it, Zeglin seconded. Brandt stated we have a motion and we have also heard the comments of the public and they have been related to property rights, issues related to zoning and land use and what is appropriate in certain zones within the

County. There were some specific references to the industrial zoning for this that had to do with the ability to use that land for other things, either simultaneously or afterwards. Lien has also given us some option to address that. Brandt found it heartening in a way, that not only Hesch but Mr. LaPrairie had indicated that with the exception of the difficulties they saw with industrial zoning they were supportive of the changes to the Ordinance. Basically saying, you can and you have adjusted to the regulations as has the industry and the County as a whole. Hesch asked if the mines already permitted are “grandfathered” in or do they all have to switch now with this new Ordinance. Radtke responded that in regard to the zoning district change, they are “grandfathered” but Radtke is hesitant to make a blanket statement as to what is currently nonconforming use and what would not be. Radtke thought those were fact specific questions on a site by site but generally when something is permitted in a zoning district and then there is an amendment to that zoning ordinance that does not allow that, that previous use that was allowed at the time, is still going to be allowed under a nonconforming use on that site. Radtke reiterated it is really site specific so I can’t make a blanket statement but generally that is the law. Nelson reminded the Committee that he was gone from the Committee for several months and asked Radtke for clarification as to what the Committee was voting on. Radtke stated he thought the motion was to approve that document as it was written. There was no specific mention to the alternatives that Lien had mentioned as possible alternatives to address some of the issues raised in the public hearing. Radtke said what the Committee has in front of them right there. The changes are anything that is underlined and is new language. Anything with a strikethrough, obviously is something to be removed. Radtke suggested the Committee go through the changes one by one. Brandt agreed the Committee would do that at this time. Lien referred the Committee to the first page, Page 89, Section 13.01. Lien read aloud, “Nonmetallic mining is an industrial land use according to Section 2.05 of this Ordinance nonmetallic mining of construction aggregate as defined in this chapter may be permitted as Conditional Use land in an exclusive agriculture, exclusive agriculture 2, primary ag, transitional ag and industrial zoning districts. Nonmetallic mining of industrial sand is defined in this chapter and may be permitted as a Conditional Use in the industrial zoning district”. Lien asked for any questions or comments. Brandt noted that was the change that got the most attention during the public hearing. Prior to this, industrial sand mining may be permitted as a conditional use in all the same districts as the construction aggregate mine. Bawek inquired if we are going to go through these individually and have discussions, as we go through each one is this the time to make a change and can we make a change? Lien responded yes you can. Just to make clarification to that front paragraph, Lien referred the Committee to on the bottom paragraph on Page 97 (Lien noted this came out of the Advisory Committee which had several industrial sand mine operators, aggregate miners, etc. on it – it was a historic committee from 1996 with several new members added). Lien read aloud, “The legislative purpose of separating construction aggregate mining from industrial sand mining is based upon the type, volume of product, scale of the mining operations. Construction aggregate sites are primarily used for infrastructure projects in a given area to reduce hauling from sites that are not in the vicinity. The footprint of a construction aggregate mining site is historically much smaller in scale. Correspondingly, runoff and erosion concerns are significantly reduced. Industrial sand mine sites are rarely, if ever, used for local infrastructure projects. Footprints are very large in nature. The separated sand particles from an industrial sand mining sites are prone to both wind and runoff erosion at a much higher rate than construction aggregate.” Lien stated that was sort of the mindset of the Advisory Committee in their reasoning for separating the two from the beginning. Brandt noted that particular change had been approved some time ago. Bawek stated since we are talking about zoning and both of the larger mining responses of people that are involved in mining said that they agree with everything except the zoning and then Radtke brought forth the point that these can be rezoned back to what they were or we can simply do a reversion. Bawek asked how we state that in the Ordinance to have it revert back to what it was prior to industrial mining. Bawek continued by saying Hesch brought up the point of it being “grandfathered” and someone brought up the point of prior registration rights. Bawek clarified that neither one of those will be involved in this change. Lien said that was correct. Bawek clarified that we aren’t taking away anything from anybody that has been done so far. What we’re doing is making a change at this point. Lien agreed. Bawek continued by saying if we make a change that the property would revert back to what it was prior to the industrial designation there should be no issues with this. Bawek stated if Radtke could give the Committee some language to that, he would make a

motion that we change it to include the reversion back to the prior zoning designation. Radtke replied he has given the Committee some responses “off the cuff” as this topic just came up. As Bawek mentioned about putting something into the Ordinance itself which would state that certain zoning changes would need to have some sort of reversionary clause, Radtke wasn’t sure that was advisable either to add that into the Ordinance because that is a decision that needs to be made on a case by case basis. It is a decision that this Committee would have to go through a public hearing and have an approval that goes to the County Board and so to say in our Ordinance that the rezone would have to have a reversionary clause, Radtke didn’t know if that was appropriate because it needs to be on a case by case basis. In that light, Radtke would probably retract what he said before as that being a potential option. While it could be an option to get the land back into the right zoning district but to require it in advance of anybody even applying for it in our Ordinance here, Radtke thought that could have some issues because it does need to be a case by case decision. Bawek inquired if it should be that it has an allowance to go back to being used as agriculturally since that was the issue. Radtke responded he thought that is what Lien spoke to in that Table of Uses. Radtke said there is a column where if you put “P” in the areas of their industrial uses in the principal uses – agricultural uses rows, if you look at the industrial column, if you put a “P” which stands for “permitted” in each of those four spots then you would address the problem as to agriculture because in those agricultural uses, they would be permitted uses in the industrial zoning. Bawek asked Radtke what four designations he was referring to. Radtke said general agriculture, greenhouses, aquaculture, orchards – those specific rows. Bawek voiced he thought that would solve the problems since we pretty much have to go with industrial sand mining it has to be in an agricultural zoning to begin with. Nelson stated, i.e. the land is zoned agricultural and they find sand there and they start mining, now when they do that, they have to come before this Committee and get it rezoned to industrial before they start but then when they’re done, it can go back to where it was if they come before this Committee or whatever. Brandt said that is Radtke’s point, in order to rezone back to agriculture that would have to be a decision of whatever Committee or County Board is sitting at that time. Radtke clarified that what Nelson is saying is if the land is in agricultural zoning, the rezone is made to industrial, industrial sand mining happens and then part of the reclamation plan is to go back to that agricultural use. With the proposal that Lien is talking about of putting the four “P” s in that column then agricultural uses would be permitted in an industrial zone. You would not need to rezone that property back to agricultural use. Again, Radtke said this is something that Lien just came up with. Radtke didn’t know if that had any implications on any Farmland Preservation issues or anything like that but that is how Radtke is understanding the argument at this point, that one would not have to do that rezoning because that type of use would be permitted in the industrial zoning. Nelson clarified that if it is in Farmland Preservation, they can’t mine there anyway right, because it should be just for agriculture. Lien agreed and said the land would have to come out of Farmland Preservation so it wouldn’t affect that. On that point, Schultz said if the landowner is in Farmland Preservation and they decide to do sand mining, what are their steps towards altering that decision to be in Farmland Preservation and moving towards sand mining. Schultz knew they could do so. Heidenreich said it is possible to buyout of Farmland Preservation but one has to have been in the program for a minimum of 10 years to begin with. So, even if someone were to try and go through a rezone and i.e. they’ve only been in Farmland Preservation for eight years, there is literally no way to get out of it until a minimum of ten years has happened and then one has to pay back all the last ten years of tax credits plus 3.9% interest to do that as well. Just because that area is in “green” on the zoning map, it doesn’t mean these people are in Farmland Preservation because they need to have a signed contract so that is different than someone in Farmland Preservation. Heidenreich stated mining cannot happen and neither can any type of non-ag improvements on the property (i.e. building a residence or have industrial buildings built or anything like that). Upon Bawek inquiring if there was an allowance to build a house, Heidenreich replied for family, yes. Brandt stated a solution to our issue here, having to do with agriculture uses being potentially rezoned industrial area, is to allow agricultural uses in an industrial area throughout the County. At this point in our discussion related to the Ordinance, we’re not “at the table” so to speak unless you want to just jump to that and just do that. Brandt stated if the Committee wants to deal with the issues raised by the first changes in the Ordinance, the place to potentially do that would be in the Table of Uses. Zeglin commented that this is the value of having our public hearings; to get a variety of views on these matters and none of us really thought,

prior to this hearing, that agriculture would be left out of the possibility, so this is very valuable. Zeglin thought addressing it in the Table of Uses is a good way to go. She also thought that when a rezone application comes in for industrial use, that applicant could state that they would like the zoning to revert back to what it was before, after their use is completed so that also is an option to the applicant. It does appear to Zeglin the proper place to address this would be in the Table of Uses. Bawek asked Lien what could possibly be the negative side of permitting agriculture to come back into an industrial zone or what potential problems could one run into. Lien stated if one looks at industrial parks where they typically lie and the example in the Ordinance is pretty good; sawmills and salvage yards, which are out in the rural area. All the uses that Lien could think of were out in the rural area where he didn't see a conflict. Again, it depends upon individual sites, Lien explained we do have some salvage yards that have permitted more area than they are currently using so that they can expand and we do have some that probably have agricultural uses on them right now without realizing it is in conflict to the Ordinance. Bawek asked if any type of planting was considered an orchard and if someone wanted to plant pine trees was that going to be allowable. Lien replied that was horticulture so that is a given agriculture use or in some cases it could be reclamation windbreaks, there are other uses for tree plantings as well. For clarification, Britzius heard in Mr. LaPrairie's letter that he addressed the issue of hunting. If a recreational use allowed in these industrial zones, Britzius suggested perhaps the Committee should consider that as well as the agricultural. Lien didn't recall reading anywhere in our Ordinance where we regulate hunting by district. Lien thought the only thing that applies is "outdoor rec." uses and it just says private outdoor rec, public outdoor rec, campgrounds and riding stables. Nowhere in our Table of Uses do we have specifically "hunting" so those would be allowed in industrial, commercial and all those districts. Rossa commented it is blank in the Table of Uses and if it states if it is blank then it is not allowed. Lien referred Rossa to the Ordinance definitions as he didn't think hunting listed under the Outdoor recreation definition. Rossa thought it would also include four-wheeling, bicycle riding, horseback riding, etc. Schultz stated the point is we have to look at how it is defined in the Ordinance and suggested taking a look at it. Section 4.07 of the Comprehensive Zoning Ordinance was displayed on the overhead screen for all to view. Lien stated the language talks specifically about campgrounds, trailer camps, riding stables (commercial and private) so it doesn't really talk about hunting, so hunting would be permitted because they are not restricting it. If we are thinking of including agricultural uses as permitted, we should also think about permitted use for a single-family dwelling and a second farm dwelling. Lien referred the Committee to the definitions which were up on the overhead aerial photo. Lien read aloud, "Outdoor Recreation, Private" is land uses which offer recreation activities primarily outdoors, including such uses as private parks, sportsman's clubs, campgrounds, golf courses, and ski hills, and which are operated for members or on a commercial basis for members of the public. "Outdoor Recreation, Public" is land uses operated by governmental units which offer recreation activities primarily outdoors. Brandt stated we are discussing the possibility of adding agricultural uses and two kinds of residences as permitted in the industrial zone as a way of addressing issues raised in the public hearing. Brandt recapped that he does have a motion to approve the Ordinance as printed, Brandt asked for a motion to amend it related to that. Bawek made a motion to add in the designation of agricultural uses and the two suggestions that Zeglin made related to single family dwelling and second farm dwellings – making those conditional in an industrial zone. Brandt noted it would be permitted in the agricultural zone. Schultz seconded the motion. Brandt clarified that in the Table of Uses there will be four "P" s under the industrial column on the last page related to general agriculture; greenhouses, aquaculture and orchards – permitted in the industrial zone, And, on the prior page, second farm dwelling and single family dwelling there will be "C" s in the industrial zone which is the motion to amend. Zeglin clarified this vote would only be for the amendment. Motion to approve the amendment to the Table of Uses passed with no opposition. Brandt referred the Committee back to Page 1. Lien continued to read the paragraph aloud, " in addition to taking into consideration the general criteria governing the granting of the Conditional Use Permit under Section 10.04 the County shall specifically analyze nonmetallic mineral mining proposals in light of the County's interest in providing for the wise use of the natural resources of the County; aesthetic implications of the siting of such a mine at a given location; impacts of such mining operations on the general health, safety and welfare of the public, including the impact on the market value of lands adjacent to or in the vicinity of the proposed operation. Each application shall be judged on its' own merits, subject only to the

standards set forth in this section and in the Zoning Ordinance as a whole. It is impossible to prescribe the criteria upon which such a permit may be granted in each and every case. A mining site may be permitted for industrial sand or construction aggregate or both. If a mining site is permitted for both the two separate conditional use permits shall be obtained and shall be enforced separately”. Brandt clarified the change there was “including the impact on the market value of lands adjacent to or in the vicinity of the proposed operation”. Lien referred the Committee to Page 90. Under item “I”, Lien read aloud, “A lighting plan for the proposed site including a preconstruction analysis to establish baseline night sky conditions, an assessment of future light impacts from the proposed nonmetallic mining and related activities and a photometric diagram showing lighting levels and locations of proposed fixtures”. Brandt stated this is not asking for anything more than information. We, obviously, can put conditions on related to lighting but we thought just making applicants aware that lighting was an issue in the County and dealing with it on some level was sufficient. Lien commented it really brings it to the applicant’s attention to take into account light pollution. Things as simple as shielding and guards that project light downward instead of outward just makes it work. Some applicants have done it on their own but other times we’ve had a lot of complaints from the public regarding the light pollution, so Lien said this was a way to mitigate those issues and bring it to their attention. According to Lien this is not a high dollar cost item nor a very strict regulation. Lien referred the Committee to Page 94. Lien read aloud #7, “All wells within one mile of a mine boundary shall be tested prior to any mine activity and annually thereafter. Well tests shall, at a minimum, test for coliform bacteria, total hardness, alkalinity, conductivity, ph., saturation index, nitrogen nitrate, chloride, arsenic, calcium, copper, iron, lead, magnesium, potassium, sodium, sulphate and zinc. The test results shall also include the depth of water in the well on the date the test is performed”. Lien explained this is in harmony with the heavy metals testing that they’re doing through extension right now. All of those things came right out of that test that we’re currently offering countywide for landowners to test their water so we’re consistent with what is being tested for. Charlotte Everson asked who gets the results. Brandt answered that it is a combination of effort between this Department, the Health Department and UW-Extension. Brandt said he believes the Health Department stores/controls the data, UW-Extension creates it and then we access it when necessary. Upon Everson asking if that needs to be stated in there, Lien responded we are collaboratively creating a well water data base (between the three departments) so all that information is getting plugged into there. Zeglin noted that any testing of water done by the mine is required to be reported as part of their conditional use. Lien clarified that the well and foundation investigations have always been given to us and are in the applicant’s file. We currently have all of them and they wouldn’t be compliant unless we received the results. Zeglin clarified that we would need to have base line data, whether or not those landowners participated in the well test program. Brandt said they can always choose not to. Dianna Brown stated that from personal experience, she had her well tested by the County and by Hi-Crush. Brown said she received the results from her County testing and it is going on four months and she has not received the results from Hi-Crush. Brandt noted the major change to this paragraph has to do with the distance. Prior to this the requirement was for well testing within 2500 feet and we have expanded it here to a mile and that is also the case for the next paragraph as well. Lien read aloud #8, “All structures, buildings and wells within one mile of the mine boundary shall be inspected and documented by a qualified inspector, (includes licensed building inspector and engineer) for type, quality and existing overall condition of foundations and structures. The inspection reports shall be submitted to the Department of Land Management prior to any mine activity and shall be kept on file”. Bawek asked if the last sentence in #8 also covers #7 – “The inspection reports shall be submitted to the Department of Land Management, etc.” Lien replied to be compliant with that paragraph they would have to. Bawek said that would apply to #8 but what about #7? Lien said even in #7 for them to be compliant, it is an annual testing thereafter. If we don’t have the results, we don’t know if they have met all of these, so the results we would get would have to address each one of the items under 7 and 8. Killian suggested taking the last sentence in #8 and adding it to #7 because then it would be specific to the water and to the well and to the structures. Lien thought it made things more clear and it addresses Zeglin’s and Everson’s concerns. Some discussion took place. Lien thought #7 would have to say, “The results shall be submitted to the Department of Land Management prior to any mine activity and annually and shall be kept on file”. Killian made a motion to make the amendment, Zeglin seconded. Motion carried

with no opposition. Radtke suggested the following language for the amendment and the Committee agreed to it; "The initial and annual test results shall be submitted to the Department of Land Management and shall be kept on file". Lien read aloud the changes to #9, "For all Construction Aggregate non-metallic mines" and "In addition, a Construction Aggregate non-metallic mining boundary shall be setback at least 250 feet from any building or structure used for human habitation or for the housing of farm animals and from any potable water source, unless such setback is waived, in writing, by the fee owner(s) of the applicable building/structure or potable water source". Lien then read #10 aloud, "For all Industrial Sand non-metallic mines, a 100-foot setback from the mining site boundary shall be maintained where no mining activity shall be allowed. In the event two adjoining property owners are permitted for Industrial Sand non-metallic mining activity, the Zoning Administrator may review the mining and reclamation plans of the two sites and may authorize a setback less than 100 feet. In addition, an Industrial Sand non-metallic mining boundary shall be setback at least 500 feet from any building or structure used for human habitation or for the housing of farm animals and from any potable water source, unless such setback is waived, in writing, by the fee owner(s) of the applicable building/structure or potable water source. Brandt stated that Radtke suggests that we highlight the fact that setback distances are different between construction aggregate and industrial sand and also talk about how we came to those distances. Lien said a lot of this came from public comment and in the Health Impact Study it was mentioned that people wanted a greater setback due to complaints received. Specifically, in regard to turbidity (which this isn't going to cure that nor would Lien claim that it would cure that) this is to relieve that but not to completely eliminate those issues. Lien continued that back when this first started, the towns, on their own, had increased the setback to 50 feet. The County originally only had a 10-foot setback from property lines. So, the greater setback is again to try to minimize and reduce some of those adverse impacts that people were experiencing. Zeglin believed and pointed out that the Health Impact Study recommended setbacks of 2500 feet or a half mile, so we are far below their recommended setback allowances. Lien thought, in some cases they had even stated a mile, similar to the Wind Generation Ordinance. Zeglin agreed with Lien's statement and said we are far below those suggestions. Brandt commented that with property owners being involved, the mine boundary came up during a public hearing in which it didn't make any sense to have this strip of unmined land between, just because there was a border there and mining was taking place on both sides. Lien and Brandt moved the Committee onto Page 95 under #14 which was added, "If a mine site will utilize a haul route on a county or town road, the permit shall have a condition that requires a road use agreement between the permit holder and the county/town unless the county/town waives the road agreement". Lien said, currently, the County has in place a heavy road use agreement policy so that is being done now, it was just added into this Ordinance. Brandt commented the Committee was surprised that it wasn't in the there. Darlene Rossa commented the County does these road use agreements and she understands the purpose of them but the other aspect of it is, like right now mining is slow and if they don't use that road they are still required to pay to upkeep that road even though they haven't used it all year. Rossa said she knows that as a fact. Lien thought each one of the road use agreements are individual to the site so he couldn't answer on a specific one. Rossa added she knew that every year for County Road T, LaPrairie pays for whatever construction is done even if they haven't used the road, so that is saving you guys, according to Rossa it was almost \$25-\$30,000 this year, and the County is not paying for the upkeep of that road. As someone who drives that road, Killian said she appreciates that. Lien clarified the County is still plowing and maintaining the road. Rossa reiterated that was right but LaPrairie pays for all the blacktopping, etc. from their site to the highway. Lien clarified that was through their heavy road use agreement. Lien referred the Committee to Page 95, under 13.03 Term of Conditional Use Permit #1 there was a small change, "owner or operator" was added. The Committee moved on to Page 96, Factors to consider for Conditional Use Permits, (a)(1) "established bicycle routes/loops" was the only addition. On the bottom of Page 98 #7, "Owner/Operator" was added. Lien read aloud, "A Conditional Use Permit issued under this chapter shall be transferable to a new owner/operator upon compliance with the terms and conditions of the existing conditional use permit". Tuschner asked if, at the time of the transfer, if they are obligated to the previous conditions or are they obligated to the new conditions for that mine as it isn't explicit. Brandt clarified, that in other words, will the new owner be "grandfathered" in. Lien said the permit is for the site so a transfer of ownership would not change anything. Tuschner said it might be nice to clarify that

so it is black and white. Zeglin commented that paragraph already does state, "Upon compliance with the terms and conditions of the existing conditional use permit" so the language is already there. The Committee moved on to Page 102, 10(a) and Lien read the revised definition aloud, "Industrial sand" is a high purity silica sand or silicon dioxide (SiO<sub>2</sub>). It is nearly pure quartz, very well rounded, of uniform particle shape and size, having a high compressive strength, and meeting size gradation standards for its various uses. Industrial sand is sold for any of the following uses: glassmaking, metal casting, metal production, chemical production, paint and coatings, ceramics and refractories, molding, abrasives, and otherwise preparing sand for uses other than construction. It is most commonly used by the oil and gas industry as a proppant for hydraulic fracturing of shale for the exploration, drilling, production, and recovery of oil and gas (i.e. "frac sand"). It is a product that is not used locally. This sand is classified as 212322 Industrial Sand Mining according to the NAICS (North American Industry Classification System), and as 1446 Industrial Sand, and 1481 Nonmetallic Minerals Services except fuels, according to the SIC (Standard Industrial Classification System). Brandt recalled that Zeglin and Radtke were responsible for finding and working out the definitions. Zeglin mentioned the definitions had been discussed in many Committee meetings and she and Radtke sort of "hammered out" the final draft definitions. Radtke stated the reason his recommendations weren't present for previous meetings was that when you change the zoning to only allow industrial sand in an industrial zone and then differentiate between construction aggregate, in his opinion he thought there would be pressure put on that definition whether it would fit into this category or that category. That is why Radtke thought it was important to provide some further clarity, to the best we can, between those two definitions. Zeglin said she did do a lot of research into these, especially getting the right codes in place, in order to completely define each of these different products. Charlotte Everson asked if a sand mine can actually sell both sands if they are industrial? Brandt replied they are required to get two different conditional use permits. Everson continued by saying a lot of the sand mines in our area aren't selling sand to the industry anymore so now they're trying to sell sand to farmers and to the Tri-City Sanitation, etc., so they are coming to us (Town of Preston) with road agreements for a different type of hauling, so Everson asked if this addresses that. Brandt commented Everson brought up a really good point but her situation was not germane because we don't ever see that operation. Lien commented this had been addressed with the Guza mine site through a conditional use because they had a different haul route and we allowed them to do that but they had to name the route. Lien read the revised definition aloud, "Construction Aggregate is sand, gravel, or crushed stone (stone crushed from bedrock) that is predominantly produced and used for local construction purposes. Construction aggregate is sold for any of the following uses: asphalt or concrete roads, concrete, asphalt, building or dimension stone railroad ballast, decorative stone, retaining walls, revetment stone, and other similar uses. It is also used in agriculture for fertilizers, ag lime, and bedding sand for livestock operations. Small amounts of sand and gravel or crushed stone may be produced and used for other purposes such as salt and sand for icy roads, water filtration systems in septic systems, landfills, mortar sand, and sand for sand blasting. It is historically viewed as for agricultural use on the farm and to construct the infrastructure needed to transport supplies to the farm and products from the farm to various markets. It is a product that is typically used locally. This aggregate is classified as 212321 Construction Sand and Gravel mining according to the NAICS (North American Industry Classification System), and as 1422 Crushed and Broken Limestone, 1429 Crushed and Broken Stone not elsewhere classified, and 1442 Construction Sand and Gravel, according to the SIC (Standard Industrial Classification System). Lien stated those are all the changes to Chapter 13 with the additional amendments to Table 2.05 which were discussed and amended. Brandt recapped that we have a motion to approve the Ordinance and an amendment to change the Table of Uses to include agriculture practices as a permitted use in the industrial zones and a couple of different kinds of residences as conditional uses in industrial zones. Nelson said, it seemed to him, that a lot of this stuff is being addressed here but questioned just what wasn't being addressed and what are we voting on. Lien responded we are voting on the changes that we just highlighted. Lien stated we already voted to amend the changes to the Table of Uses – 2.05, adding those permitted and a couple of conditional uses and right now, we would be supporting the amendment to Table 2.05 and those changes we just highlighted in Chapter 13. Lien said Killian had made the motion and Zeglin had seconded it. Brandt mentioned the industrial zoning is new, extending the setbacks is new, requiring annual testing of wells is new and the definitions and we also added

lighting and bike trails as things to be considered in conditional uses. Brandt commented that after two years of work this is what we can do. Nelson said the biggest difference to him was the zoning change to industrial as we didn't have that earlier. Brandt agreed. Zeglin said there were a couple of things brought up during the public hearing comments that she wanted to address before we vote. One was the zoning which Rossa brought up which Zeglin thought was already addressed. Zeglin said the zoning change will not affect any permits that have already been issued. Brandt agreed and said we got that clarified. Zeglin wanted to reiterate that this will not have any change to your current property. Also, Tuschner had brought up taxes. Zeglin stated the Ordinance and any zoning changes do not have any effect on taxes whatsoever. Taxes are assigned per use of the property by the Department of Revenue. We have no influence on that whatsoever nor would any changes here have any change in taxation. As far as light and sound in other areas, we have no authority to regulate anything in municipalities. Killian wanted to make it clear for the public that we are only addressing the changes today and not the whole thing. Killian wanted to thank everybody who put in so much time on this because she was not involved in very much of it. Motion to approve the changes to Chapter 13, with the amendment that was voted on today, passed with no opposition. Brandt stated that Radtke will write up a resolution and present it at next week's meeting.

### **Approval of Cañar Pines Development Plat and Resolution**

Killian read the "Resolution of the Trempealeau County Environment and Land Use Committee to approve the plat of Cañar Pines Development" aloud. Lien stated this is required because of the way the Surveyor submitted the plat. There are some statutory requirements for approval and thus it requires this Committee's approval. Brandt clarified that the Committee had approved the rezone which included a description. Lien explained this is actually the plat that gets reviewed and approved by the State. A copy of the plat was passed around for all Committee members to view. Skoyen made a motion to approve the plat, Killian seconded. Nelson asked for clarification of what was happening because he had not been on the Committee when the rezone was approved. Brandt suggested Nelson was free to abstain from the vote if he so chooses. To clarify, Radtke said the Committee was being asked to approve the plat, which the County Surveyor Joe Nelsen has reviewed and feels it is in compliance with the Statutes and our ordinances and is recommending that it gets approved. Radtke added, as Lien had mentioned, that there are a couple of ways these plats can get approved and one of them is to have the Committee approve it. Generally, Lien could sign off on it, if the plat was printed up that way but it was Radtke's opinion that the Surveyor did not talk with the County as to which they wanted it approved, before they prepared it, therefore it requires this Committee to pass a resolution to approve the plat which our Surveyor is recommending. Radtke said this has nothing to do with the rezone or anything, it is just whether or not that plat is compliant with the law. Motion to approve the plat passed with no opposition with Nelson abstaining from the vote.

### **D95 'Activity' Hearing – Setting Order of Hearing**

Brandt recapped for the Committee that we will be having an "activity" hearing. The purpose of this hearing is that the permit holder for site D95 North and South wishes to contest the Zoning Administrator's conclusion that no activity has taken place at the mine site for a period of 12 months. Brandt said both our staff and Radtke have gone through a considerable amount of work to accommodate the request of both the property owners and the permit holders and we have agreed on a date for this Committee to hear, as a quasi-judicial body, their reasons why we should overturn Lien's decision. The hearing is happening next Wednesday, December 14<sup>th</sup>, from 9:00 AM-4:00 PM with the possibility of going into Thursday as well. Brandt stated there are two sites involved; the South site and the North site. An overhead aerial map of the two sites was displayed. Radtke stated, in that hearing, he will represent the Department of Land Management. The County has appointed counsel, Aaron Graf who represents this Committee. Attorney Ryan Steffes, representing Spartan Sands had requested if the Committee could commit to what order to hear the case in so they could plan accordingly as to when witnesses should show up, etc. According to Radtke, their recommendation was to hear the North site first and hear the South site second and in their estimation, that would save time. On behalf of the Department, Radtke said we do not object to that order so it is really just a matter of this Committee making it formal as to the order. Zeglin asked if this was a public hearing. Brandt responded no. Some discussion took place. Upon Brandt asking if the sites were two separate conditional use permits, Lien said they were. Zeglin commented if that is what Spartan Sands counsel prefers to do, she saw no objection to it. Since these hearings were all new territory for everybody, Zeglin questioned as to when the Committee will be making their decision, will the decision on each site be after each site presentation or at the end of both. Radtke chose not to answer that as he was representing the Department and said that Attorney Graf had said he could be reached by phone. Some discussion took place. T. Zeglin suggested the Committee not

make a decision, which may affect the outcome, until they have talked to their attorney. Everson commented that there are two separate sites with different purposes and one is contingent on the other one so to say that one should be before the other could be backwards in what the Town has adopted as to how these should be run. To Everson, it didn't seem quite right as to what they were even asking. Everson reiterated that one site is contingent on the other site. Everson said the south site was not set up to be a processing plant and each site has different entities to them. At this time the Committee took a short break in an effort to get in touch with Attorney Graf via telephone. Brandt reconvened the meeting. At this point Attorney Graf was not available by telephone. Some discussion took place as to whether it matters which site goes first. Brandt thought without knowing what their (Spartan Sands) plan is the Committee really doesn't have enough information to make a decision about that. Zeglin asked Radtke if anyone is going to be presenting the actual mining plan as she didn't think the Committee will be able to make a solid decision either way if they don't know what the original plan was for. She didn't think the Committee needed maps or reclamation plans, but rather how it was applied for and agreed to be fulfilled. Brandt commented he could dig through his files and find his documentation, but not everybody was on the Committee at that time. Zeglin asked if Radtke knew what evidence was going to be presented and she expressed the wish that Spartan Sands was present today. Radtke stated he was not comfortable getting into what evidence and who is submitting what. To Radtke that was sort of starting the hearing and obviously the Department is the only party here. All that is before this Committee today is that Spartan Sand had asked the Committee to make a decision on which site should be presented first. Radtke stated the Department's position is we don't really have a position as it does not matter which one is done first. They had requested it and Radtke understood their position to be is that if there is no decision they should be prepared to do either at this time. Zeglin commented that she supposed the Committee could request those plans at the hearing. Radtke suggested that was a good question for Attorney Graf. In regard to the request, Schultz said some people wonder if there is a strategy but Schultz thought was it was just for efficiency purposes in how they present the facts. Schultz's question was are we supposed to review the original plans and applications. Brandt said the approach that we've agreed to is that this is brand new so just imagine that it is new eyes on an issue. Schultz asked if we're not to review past minutes. Schultz mentioned he is coming in totally new to this. Brandt thought that is where the Committee should be. Radtke is going to provide the Committee with Attorney Graf's contact information. Killian commented she is looking at this as something totally new. She knows where the D95 site is but she hasn't been to the site to inspect it or look at anything. She is looking at it as she knows nothing about it, she is going to hear both sides, hear the facts and then she can make her decision. She said she will certainly know Chapter 13 and that kind of thing but as far as the plan or what was supposed to happen or what is happening, etc., she said she is clueless. Tuschner commented to him this will be a quasi-judicial hearing and it is very similar (to every board member that has ever sat on a board) to a board of review/adjustment. You go to it, you listen, same concept. Brandt added we've been advised of that a number of times.

**LWRM (Land & Water Resource Management) and TRM (Target Runoff Management) Requests and Payment Approval**

Lien presented the following payment for approval.

**Land & Water Resource Management (LWRM)**

Name	Type	Amount	New CSA Total	Reason for change	Town
David Waniorek	Contract	\$4,861.50	\$4,861.50	Waste Facility Closure	Arcadia
David Waniorek	Pay Request	\$4,861.50		Certify Waste Facility Closure	

Killian made a motion to make the payments as presented, Nelson seconded. Motion to approve passed with no opposition.

**Surveying Update and Payment Approval**

Lien presented the Surveyors report and payment for approval. In Township 18 North, Surveyor Joe Nelsen has reviewed 161 of the corners and completed the maintenance of 147. 14 of the corners are buried in fields and will not be reviewed. In Township 19N Range 9 and 10 West he has reviewed 123 corners, 108 of them are completed, 15 of the corners require additional field work and 9 of the corners are also buried in fields. In Township 22 North, Range 7 and Range 9 West he is in the process of compiling the work files in preparation for the field work. Skoyen made a motion to approve the report and payment as presented, Nelson seconded, motion carried with no opposition.

At this point a telephone call came in from Attorney Graf. Brandt explained to Attorney Graf of the request, from

Attorney Steffes representing the mining company coming before the Committee next week, to give them an indication as to which site presentation (D95 North or D95 South) the Committee wanted to hear first. After a short telephone conference with Attorney Graf it was decided that the North site should be heard first and the South site second. Some discussion took place about when the Committee would be making their decision. Brandt asked if the Committee makes a decision on D95 North and then we hear D95 South and then make a decision or how does Attorney Graf foresee this playing out. Attorney Graf said the Committee had a couple of different options. There are no time requirements in the Zoning Ordinance on this particular kind of decision so it isn't where you need to make it the same day. Attorney Graf said we can't go into closed session to deliberate because we purposely made this not a quasi-judicial proceeding so any deliberation has to be done in open session. Attorney Graf recommended receiving all the evidence for the North and South site and then making a decision for each. It is up to the Committee whether they want to do that on that same day after deliberating in open session or we could do it where the Committee receives all the evidence, Attorney Graf could draft a statement of facts for each one and then the Committee could come back the next week and issue the decision itself. It is really how the Committee wants to do it. It sounded to Attorney Graf like there was going to be quite a bit of information so he wasn't sure making a decision that same day was feasible. Given that there wasn't any time requirement, Attorney Graf thought it would best just to "dot all our I's and cross all our T's" and since there would be about 20 days before the next regular meeting, have the decision drawn up with the statement of facts which the Committee would then obviously review and approve and then issue that to the applicant. Attorney Graf said we could wait until the end of the hearing to decide how the Committee wants to handle it. Brandt said Committee consensus in the room was nodding of heads in agreement. Because Schultz had asked, Lien inquired if Committee members should be reviewing the original permit application. Attorney Graf recommended not reviewing anything in advance because the Committee really needs to constrain their review to just the evidence that is presented before us at the hearing. Attorney Graf encouraged Committee members not to review anything.

#### **Confirm Next Regular Meeting Date**

As some staff and Committee members expressed interest in wanting to go to Madison to attend the Supreme Court hearing in regard to the All-Energy Site, the Committee decided to schedule their next regular meeting for Wednesday, January 4<sup>th</sup>, 2017 which is a week earlier than normal. Killian noted she will not be at the January E & LU Committee meeting.

At approximately 1:00 PM, Skoyen made a motion to adjourn, Nelson seconded, motion carried with no opposition.

Respectfully submitted,  
Virginette Gamroth, Recording Secretary

Beth Killian, Secretary