

**In The Matter Of:**

*Appeal of Decisions of Dane County, Zoning & Land Reg  
Enbridge Energy Company, Inc.,*

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*Transcript of Recorded Proceedings - Enbridge  
December 3, 2015*

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STATE OF WISCONSIN  
COUNTY OF DANE  
BEFORE THE DANE COUNTY BOARD OF SUPERVISORS  
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IN RE APPEAL OF DECISIONS OF DANE COUNTY,  
ZONING AND LAND REGULATION COMMITTEE  
REVOKING OR AMENDING CONDITIONAL USE  
PERMIT NO. 2291

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Transcript of Recorded Appeal Hearing:  
DANE COUNTY BOARD OF SUPERVISORS

Madison, Wisconsin  
Recorded on December 3, 2015

Transcribed by: Connie L. Hansen

1           TRANSCRIPT OF RECORDED HEARING transcribed by Connie  
2 L. Hansen, a Notary Public in and for the State of  
3 Wisconsin, recorded on the 3rd day of December, 2015.

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1 P R O C E E D I N G S

2 CHAIR CORRIGAN: We are now on the  
3 Special Order of Business, the appeal of CUP 2291.  
4 And --

5 UNIDENTIFIED SPEAKER: Hold on, please.

6 CHAIR CORRIGAN: Okay.

7 UNIDENTIFIED SPEAKER: (Inaudible) Okay.

8 CHAIR CORRIGAN: Okay. Supervisor  
9 Kiefer, are you asking to be recognized on this  
10 issue? Or --

11 MR. KIEFER: Yes.

12 CHAIR CORRIGAN: Okay.

13 MR. KIEFER: Line 10, Special Order of  
14 Business.

15 CHAIR CORRIGAN: Oh, Special Order of --  
16 hey, it's on the Special Order of Business. Okay.  
17 Let me -- I'm --

18 MR. KIEFER: (Inaudible)

19 CHAIR CORRIGAN: We have registrants?  
20 Okay. We have registrants, and we have a lot. So  
21 supervisor de Felice, are you also on the CUP?

22 MR. DE FELICE: Yes.

23 CHAIR CORRIGAN: Okay. We're going to --  
24 I'm going to go through what the order of business  
25 is and how -- what we're doing and then we'll have

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1 an opportunity for discussion afterwards.

2 UNIDENTIFIED SPEAKER: And a point of  
3 order?

4 CHAIR CORRIGAN: Okay. Supervisor de  
5 Felice on a point of order.

6 MR. DE FELICE: Thank you. We are about  
7 to become a quasi judicial body here, which I know  
8 the lawyers in the crowd are salivating over it.  
9 But I want to remind us what happened at our last  
10 CUP appeal. We had a scurrying about of the  
11 lawyers who are supervisors and hushed tones and  
12 admonishments and legal debates. I hope we can  
13 avoid that this time around. And if there is a --

14 CHAIR CORRIGAN: Supervisor de Felice,  
15 that isn't a point of order. You can --

16 MR. DE FELICE: Oh, it is. It's my  
17 process.

18 CHAIR CORRIGAN: You can speak -- you can  
19 speak at the end.

20 MR. DE FELICE: I'm asking about process.

21 CHAIR CORRIGAN: And you can --

22 MR. DE FELICE: I'd like that to be  
23 directed to the chair of the board so that she can  
24 rule on that (overlapping audio).

25 CHAIR CORRIGAN: Thank you, Supervisor de

1 Felice.

2 UNIDENTIFIED SPEAKER: (Inaudible)

3 CHAIR CORRIGAN: I appreciate that. Just  
4 as -- we have many documents attached on the  
5 calendar for this appeal, and I just want to set --  
6 kind of give you some background. I'm sure many of  
7 you have read through the documents, but this ended  
8 up coming to us somewhat complicated because there  
9 are two appeals are before us.

10 Prior to legislative action on the -- which  
11 affected the CUP, Enbridge Energy made an appeal in  
12 April and they -- and then once there was  
13 legislative action that affected that -- that when  
14 it was taken off the calendar, we -- they did not  
15 withdraw that appeal and then there were subsequent  
16 events, which the zoning administrator will  
17 summarize, that caused a second appeal to happen in  
18 October. So those appeals are both before us, and  
19 they challenge the Zoning and Land Regulations  
20 authority to direct -- the second one directs --  
21 deals with directing the zoning administrator and  
22 whether they had the authority to take action. And  
23 the first one deals with two items that are  
24 Conditions -- Conditions 7 and 8. And so this  
25 hearing is considering both of those appeals.

1           And I'm going to go through what the Order of  
2           Business is just to give you an idea of what we're  
3           going to be doing. And I will -- I mean,  
4           Supervisor's de Felice's point is well taken that  
5           there should be no side conversations on this.  
6           This is something you're hearing from the  
7           individuals up here. And everyone is hearing the  
8           same information. So there should be no side  
9           conversations while this is going on.

10           The first -- what is going to happen -- and  
11           this is Chapter 7. We have a procedure for doing  
12           this. The zoning administrator is going to provide  
13           a summary of the CUP and the decisions being  
14           appealed and that only Enbridge has filed an appeal  
15           of the CUP.

16           Next, Enbridge, the appellant, will have 30  
17           minutes to present their case. And then we,  
18           members of the County Board, have a chance to ask  
19           questions of Enbridge once they're done presenting  
20           their case. And the next step is public testimony.  
21           And we have quite a bit of public testimony  
22           tonight. And each member of the public will have  
23           the opportunity to speak for up to five minutes and  
24           what I plan to do is take testimony from  
25           individuals of the public in groups of ten so that

1 ten people will testify, and then there'll be an  
2 opportunity by the County Board to ask questions of  
3 any of those ten if there are any questions so that  
4 we don't go through all of the testimony and then  
5 try to remember what people said to ask questions.  
6 So we'll do it in groups of ten and then take  
7 questions.

8 The appellant then has three minutes to  
9 provide a closing statement. And then at the end,  
10 we'll have a County Board debate and action. And  
11 the Board, with a three-fourths vote of those who  
12 are present tonight, can approve -- can appeal and  
13 reverse the actions of the ZLR. And a yes vote is  
14 a vote to approve the appeal, and a no vote tonight  
15 -- and I'll remind you at the end about this --  
16 sustains the actions of the Zoning and Land  
17 Regulations Committee.

18 So first of all are there questions on the  
19 procedure?

20 Supervisor Kiefer.

21 MR. KIEFER: I just want to say at the  
22 beginning that I -- before I pack up and leave, I'm  
23 recusing myself from these deliberations. I just  
24 want to make a record of why I'm doing that. I'm  
25 referencing the email, "Remember the quasi judicial

1 nature of a CUP appeal," where it indicated that  
2 any statement that could be possibly be construed  
3 as expressing an opinion regarding the outcome  
4 could be evidence of impermissible bias recommended  
5 by the corp counsel to make no statements regarding  
6 the matter.

7 I went back and looked at the video actually  
8 of my speech, I guess you'd call it, during the  
9 budget deliberations on the resolution setting the  
10 tax levy -- of people really interested it's a one  
11 hour and 17 minutes into the video -- and I did  
12 talk about Enbridge. I talked about the pipeline.  
13 And I think a reasonable person watching that would  
14 conclude I made up my mind at that point. I think  
15 it's important that Enbridge get -- and everyone  
16 get a fair opportunity. I'm a biased decision  
17 maker. So I'm going to recuse myself from further  
18 participation.

19 CHAIR CORRIGAN: Thank you, Supervisor  
20 Kiefer.

21 Supervisor Matano.

22 MR. MATANO: Thank you, Madame Chair. I  
23 had a hand in drafting the ordinance in question.  
24 And my recollection -- and correct me if I'm  
25 wrong -- was that there's an appellant and an

1           appellee. So --

2                   CHAIR CORRIGAN: That's correct.

3                   MR. MATANO: I -- maybe I misheard you,  
4 but I thought that there -- that you went directly  
5 from the appellant to the public testimony.

6                   CHAIR CORRIGAN: That's -- that's  
7 correct, because you have a time period in order to  
8 be -- to have filed an appeal, and no one other  
9 than Enbridge has -- Enbridge filed. And then no  
10 one -- there was no additional appellant on that.  
11 So we don't have someone who has filed to be --  
12 within the time period to be --

13                   MR. MATANO: To be a party?

14                   CHAIR CORRIGAN: -- to be a party to it.

15                   MR. MATANO: Okay. Thank you.

16                   CHAIR CORRIGAN: Thank you.

17                   Supervisor Downing.

18                   MR. DOWNING: Thank you, Madame Chair.  
19 Isn't three minutes our normal public testimony  
20 time?

21                   CHAIR CORRIGAN: No. Five minutes is.

22                   Supervisor Hendrick.

23                   MR. HENDRICK: Thank you, Madame Chair.  
24 I'd like to also recuse myself. I have an opinion  
25 on the matter in which I publicly stated, and I

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1 will not participate in the proceedings.

2 CHAIR CORRIGAN: Thank you, Supervisor  
3 Hendrick.

4 Supervisor Miles.

5 MR. MILES: Thank you, Madame Chair. I  
6 guess I'm just looking at the -- at Legistar and  
7 the presentation of what is before the board  
8 tonight. And I guess it was my impression, because  
9 the May appeal isn't even included in tonight's  
10 meeting detail, just the October 19th appeal -- so  
11 I guess I'm under the impression -- came in here  
12 under the impression that that was what is before  
13 the Board tonight.

14 CHAIR CORRIGAN: Well, I'd like the  
15 corporation counsel to address that. He has  
16 indicated that -- well, I'll let him speak for  
17 himself.

18 CORPORATION COUNSEL: The -- well, first  
19 off, the October appeal, based on my review of  
20 their notes, the appeal incorporates the May notice  
21 of appeal because the May notice of appeal was  
22 specifically just the two conditions. The October  
23 notice of appeal, if you note their request for  
24 action, the very last one is "Void the insurance  
25 requirements in order the insurance requirements be

1 removed from the CUP." That's exactly what the May  
2 appeal was.

3 But the May appeal was scheduled for a hearing  
4 in July and removed from the agenda for the July  
5 Board meeting, quite honestly probably at my  
6 recommendation, because we considered it moot at  
7 that time based upon the adoption of the budget  
8 bill, which had a provision prohibiting the County  
9 from imposing insurance requirements. But Enbridge  
10 never withdrew their May appeal. It's still on the  
11 table.

12 MR. MILES: I -- okay. I'm sorry. I was  
13 just (inaudible) --

14 CORPORATION COUNSEL: No, I was -- that's  
15 it.

16 MR. MILES: All right. I agree that that  
17 one was never dealt with, but from a public notice  
18 perspective and what's before us and for what this  
19 body's supposed to consider is that if they're  
20 supposed to have considered the arguments made in  
21 that May appeal, then that should have been part of  
22 the agenda, and it isn't. And members of this body  
23 didn't have an opportunity to go back and review  
24 that in preparation for this meeting. What is here  
25 in Legistar is just the October 19th appeal. The

1           October 19th appeal does reference removing the  
2           insurance requirements, but it's stated in their  
3           four reasons. So they're four grounds for appeal.  
4           And it references back to that October -- I think  
5           it was October -- I'm sorry -- September 29th  
6           meeting of the ZLR. It's in context of that, not  
7           of the April action. So I don't think the -- the  
8           May appeal is before us.

9                       CHAIR CORRIGAN: But it's referenced in  
10           the October appeal.

11                      MR. MILES: It's explicitly referenced in  
12           the appeal? I don't think so.

13                      CORPORATION COUNSEL: But the -- the  
14           relief they were --

15                      MR. MILES: The four grounds for appeal  
16           does not reference the May. (Overlapping dialogue)

17                      CORPORATION COUNSEL: The relief they  
18           were seeking in the May appeal is also in the  
19           September appeal. The September appeal is just  
20           requesting more relief.

21                      CHAIR CORRIGAN: I think I'll clarify my  
22           statement then that the October appeal asks for the  
23           same relief that the May appeal does, and that's  
24           what I was -- I was commenting that there are --  
25           the October appeal asked for relief of the clauses

1 that were added in the original and the only CUP  
2 that has been issued -- really April CUP so that  
3 those two -- those two items are included in there  
4 by reference. It is not on the -- it is not on the  
5 Legistar but included by reference.

6 MR. MILES: The grounds are different  
7 between the two appeals, you know. I -- all right.  
8 I'm just wondering now procedurally because I --  
9 I'd like to challenge the Chair's opinion on this  
10 that the May appeal is to be considered by the body  
11 right now. This -- and I'm not sure -- I don't  
12 recall procedurally how I do that.

13 CHAIR CORRIGAN: Well, then you can  
14 challenge -- there'll be a vote of the -- you make  
15 a motion to challenge the Chair.

16 MR. MATANO: All right. Then that is my  
17 motion to challenge the ruling that the -- the May  
18 appeal is before us right now for consideration.

19 CHAIR CORRIGAN: Is there a second to his  
20 motion? Seconded by Matano. Is there discussion?  
21 Supervisor -- Supervisor Ripp.

22 MS. KOLAR: Well, it's actually me.

23 CHAIR CORRIGAN: No. Wait, I'm sorry.  
24 It's Supervisor Kolar. One moment. I'm just  
25 confused by where you're sitting tonight.

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1 MS. KOLAR: Something happened tonight,  
2 and it worked out for us.

3 MR. DE FELICE: I'd like to recuse  
4 myself. I have an opinion on this, and I don't  
5 think I should be (inaudible).

6 CHAIR CORRIGAN: Have you -- Supervisor  
7 de Felice, have you publicly stated your opinion?

8 MR. DE FELICE: I have stated my opinion  
9 to members of the public. That's correct.

10 CHAIR CORRIGAN: Okay. It's up to you  
11 whether you recuse yourself.

12 Supervisor Kolar.

13 MS. KOLAR: Well, for clarification, I --  
14 I know that sometimes depending on how we look at  
15 our packets -- so for Madame Chair and for  
16 Supervisors Miles, I see the May appeal as the  
17 fourth or fifth item. It's the fifth item on our  
18 package. So I don't know if that answers the  
19 concern about the appeal. It is -- the appeal is  
20 before us tonight and it includes the October  
21 appeal, but the May appeal is a part of our package  
22 is how I see it. I have it on my county-provided  
23 iPad --

24 CHAIR CORRIGAN: It's listed.

25 MS. KOLAR: And it's item No. 5 of the

1 items.

2 CHAIR CORRIGAN: It's on the attachments  
3 as the fifth item.

4 MS. KOLAR: Correct. Thank you.

5 CHAIR CORRIGAN: Further discussion?  
6 Supervisor Ferrell.

7 MR. FERRELL: Yes. Thank you, Madame  
8 Chair. With regards to Supervisor Miles' motion, I  
9 think as a quasi -- quasi judicial body acting on  
10 this or these matters this evening, I think we owe  
11 it not only to ourselves but to everyone here to do  
12 this properly. I think Supervisor Miles has some  
13 valid points. And rather than make a mistake, I  
14 think we're safer to vote on just the one -- the  
15 October appeal. The way I understood, Madame  
16 Chair, your instructions is we would actually be  
17 having two votes this evening because there are --  
18 that's what you said -- there are two appeals, and  
19 there would have to be two votes.

20 CHAIR CORRIGAN: That is not what I said.

21 MR. FERRELL: So I still agree with  
22 Supervisor Miles that we should be very careful on  
23 what we're doing in this body. I have a feeling if  
24 we don't separate it, we may be back here doing  
25 this again at a later date. So I urge that we vote

1 in favor of the motion.

2 CHAIR CORRIGAN: Thank you, Supervisor  
3 Ferrell.

4 Supervisor Schauer.

5 MR. SCHAUER: Thank you, Madame Chair.  
6 would it be possible -- just asking a question to  
7 the chair: would it be possible to ask the -- if  
8 the requested remedy from the April appeal is  
9 included in the October appeal, would it be able --  
10 would we be able to ask the appellant to simply  
11 withdraw their April appeal?

12 CHAIR CORRIGAN: No.

13 MR. SCHAUER: Is that able to done at  
14 this point --

15 CHAIR CORRIGAN: Not at this point.

16 MR. SCHAUER: -- of the proceedings? All  
17 right. Thank you.

18 CHAIR CORRIGAN: Supervisor Dye.

19 MS. DYE: Thank you, Madame Chair. I am  
20 rising to also recuse myself. In the interim  
21 between when this issue was originally going to be  
22 before the Board and when later events resulted in  
23 and initial -- an additional appeal, I, outside of  
24 my duties as a county supervisor, had the  
25 opportunity -- or was presented with a

1 representative from Enbridge and engaged in  
2 conversation about the actions of the state  
3 legislature at that time and I don't think it would  
4 be appropriate for me to sit on this.

5 CHAIR CORRIGAN: Thank you, Supervisor  
6 Dye.

7 Supervisor Willett.

8 MR. WILLETT: Thank you, Madame Chair.  
9 So as you explained this procedure, I agree with  
10 what you said so far. You did say that we had two  
11 appeals before us. Correct. You did say that we  
12 would be voting at the end. You did not say two.  
13 You said one. Correct? You just said we would be  
14 voting at the end.

15 CHAIR CORRIGAN: I said we would be -- we  
16 would vote at the end. And with a three-fourths  
17 vote of those present, we can approve the appeal  
18 and reverse the actions -- and -- and this is the  
19 key -- reverse the actions of ZLR. And a yes vote  
20 is a yes vote to approve that appeal to reverse the  
21 action. And a no vote sustains the actions.

22 MR. WILLETT: And I appreciate that.  
23 That's how I remembered it, but what seems odd to  
24 me in that explanation is how we can have two  
25 things in front of us but yet only have one vote.

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1 CHAIR CORRIGAN: I'm going to allow the  
2 corporation counsel to answer that.

3 CORPORATION COUNSEL: My reading of the  
4 two appeals, and quite honestly also my  
5 conversation with -- with counsel for Enbridge, is  
6 that although different grounds are raised in both  
7 appeals, the relief they're seeking is the same in  
8 both, which is to have those two conditions taken  
9 off the CUP. So you're really -- I think there's  
10 only going to be one issue for a vote, which is do  
11 they remain on or do they come off.

12 MR. WILLETT: And I understand that, and  
13 I agree with that; and I'm really good with that.  
14 However, I still come back to the point of: was  
15 public notice put out there right? Because we're  
16 putting public notice of an appeal, and we didn't  
17 have public notice of two appeals. That's my  
18 question. And we've really only given one public  
19 notice of an appeal, haven't we?

20 CORPORATION COUNSEL: I'm not familiar  
21 with what the public notice is.

22 CHAIR CORRIGAN: Well, the public notice  
23 says it's an appeal of CUP No. 2291. And then --  
24 and the CUP is the number that was given to this  
25 CUP when it was originally given in April. And

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1           there are attachments to this. There are two  
2           appeals attached to this in the documents.

3                     MR. WILLETT: Okay. Thank you.

4                     CHAIR CORRIGAN: Supervisor Pertl.

5                     MR. PERTL: I am rising, and I'm going to  
6           vote on the appeal tonight.

7                     CHAIR CORRIGAN: I'm glad there will be  
8           one vote.

9                     MR. PERTL: By the end of the night, I  
10          might be the only one left. On the issue of  
11          appealing the ruling of the Chair, and I think  
12          Corporation Counsel sort of just spoke to this, the  
13          CUP is 2291. There is a properly noticed document  
14          with a lot of people here tonight to speak on this  
15          particular issue. There was an original appeal.  
16          That appeal was then, I think, rendered moot based  
17          on legislative action. There was subsequent  
18          consideration in a committee, subsequent action.  
19          The appeal was then refiled. It is now yet again  
20          before the body. The remedy is the same. I  
21          believe it is properly noticed. I believe the  
22          public and the appellants are present and intend to  
23          pursue this matter tonight. And for those of us  
24          that are left to participate in it, I think that we  
25          should hold the hearing.

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1                   CHAIR CORRIGAN: Thank you, Supervisor  
2                   Pertl. Is there further discussion on the  
3                   request -- the motion to appeal the rule of the  
4                   Chair -- Supervisor Miles has -- to overturn the  
5                   ruling of the Chair. I'm sorry. Is there further  
6                   discussion on that?

7                   All those in favor of overturning the Chair,  
8                   say aye. (Multiple ayes heard) Opposed say no.  
9                   (Multiple noes heard) The noes have it. And the  
10                  Chair's statement stands.

11                  So we're going to start this process with the  
12                  zoning administrator. So if Roger would come  
13                  forward.

14                  MR. LANE: My name is Roger Lane. I'm  
15                  the Dane County Zoning Administrator. Hopefully I  
16                  can simplify things. To summarize the appeal,  
17                  Enbridge Energy is claiming that two conditions  
18                  under Conditional Use Permit 2291 should not be  
19                  part of the 12 conditions of approval, specifically  
20                  they are Conditions 7 and 8. These Conditions  
21                  pertain to additional insurance requirements beyond  
22                  what Enbridge currently maintains. The Conditions  
23                  were placed on the Conditional Use Permit in order  
24                  to address public concerns regarding a pipeline  
25                  spill.

1           However, as part of the state budget, changes  
2           were made to legislation to prohibit counties from  
3           requiring additional insurance from pipeline  
4           transportation companies. After this legislation  
5           was passed, Enbridge requested that the Conditions  
6           be removed from the Conditional Use Permit. After  
7           request from Enbridge and a memo from corporation  
8           counsel verifying that the Conditions are  
9           unenforceable, I removed the Conditions to reflect  
10          the legislative changes. It seemed prudent at the  
11          time. But in hindsight, I realized that I had no  
12          authority to change Conditions once approved by the  
13          Zoning and Land Regulation Committee. The  
14          authority lies with the Zoning and Land Regulation  
15          Committee.

16          The issue of removing the two Conditions were  
17          brought before the Zoning and Land Regulation  
18          Committee. They reviewed my actions and felt that  
19          it would be best to leave the Conditions as  
20          originally proved. Instead of removing the  
21          Conditions, a note was added to the Conditional Use  
22          Permit to identify that the changes in legislation  
23          were -- that the two Conditions were unenforceable.  
24          Enbridge is here tonight to appeal the two  
25          Conditions and the process that has transpired.

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1           So I'll tell you a little bit about the  
2           Conditional Use Permit to warm everybody up here.  
3           This is not the first time that Enbridge has  
4           submitted an appeal. In May, Enbridge submitted an  
5           appeal regarding the two conditions. But given  
6           legislative change, the matter was not taken up by  
7           the County Board and considered moot. This  
8           appeal -- Enbridge claims that the zoning  
9           administrator has the authority to change a  
10          Conditional Use Permit, and the Zoning and Land  
11          Regulation Committee does not have oversight of the  
12          zoning administrator's actions. Being the zoning  
13          administrator, I don't believe that. The authority  
14          for Conditional Use Permits lies with the Zoning  
15          and Land Regulation Committee and the town board.

16          This Conditional Use Permit is for a pumping  
17          station, which will be located in the town of  
18          Medina. The pumping station is one of 12 pumping  
19          stations that are being constructed across  
20          Wisconsin to facilitate the second phase of Line 61  
21          Pipeline, which was installed in 2008. The second  
22          phase of Line 61 increases the volume of product  
23          from 560,000 barrels per day to 1.2 million.  
24          Line 61 is one of four lines that is currently  
25          operating in a petroleum pipeline corridor running

1 the length of Wisconsin. Twelve miles of the  
2 450-mile long corridor are in Dane County.

3 In October of 2014, the Zoning and Land  
4 Regulation Committee held a public hearing for a  
5 Conditional Use Permit to allow the construction of  
6 the new pumping station. Public raised concerns  
7 regarding pipeline spills due to increased pressure  
8 to Line 61. The Town of Medina also had expressed  
9 concerns regarding spills and required the spill  
10 containment basin around the pumping station to be  
11 enlarged in size. Conditions were also drafted to  
12 address concerns on noise and road usage.

13 The Zoning and Land Regulation Committee  
14 expressed concerns of the applicant's ability to  
15 pay for a clean up and remediation in the event of  
16 a catastrophic spill at the pumping station.  
17 Enbridge presented summary information about its  
18 existing liability insurance. Due to the  
19 complexity of the insurance issues under  
20 consideration, the committee directed staff to  
21 investigate the possibility of hiring an insurance  
22 expert for the purposes of determining the  
23 insurance needs.

24 The County contracted with Mr. David Dibdahl  
25 of American Risk Management Resources Network for

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1           those services. The report concluded that Enbridge  
2           has \$700 million in commercial general liability  
3           insurance and has adequate assets to cover spill  
4           clean up. However, it was recommended that  
5           Enbridge carry \$25 million worth of Environmental  
6           Impairment Insurance. It's EIL, because people I'm  
7           sure is gonna start talking about that.  
8           Mr. Dibdahl is here tonight in case the County  
9           Board has questions.

10           On April 14, 2015, the ZLR approved the  
11           Conditional Use Permit with 12 Conditions, which  
12           included the requirements of additional insurance.  
13           See Conditions 7 and 8.

14           On May 4, 2015, Enbridge submitted an appeal  
15           of the approval of Condition Use Permit,  
16           specifically objected to Conditions 7 and 8 of the  
17           permit pertaining to the required EIL insurance and  
18           technical specifications regarding general  
19           commercial liability insurance.

20           On July 14th, the State of Wisconsin passed  
21           legislation as part of the State budget. The  
22           legislation included provisions prohibiting  
23           counties from imposing insurance requirements on  
24           operators of interstate hazardous liquid pipelines.  
25           And basically the legislation reads, "A County may

1 not require an operator of interstate hazardous  
2 liquid pipeline to obtain insurance if the pipeline  
3 operating company carries comprehensive general  
4 liability insurance coverage that includes coverage  
5 for sudden accidental pollution liability."

6 On July 17th, the County corporation counsel  
7 wrote a letter informing me, the zoning  
8 administrator, of the changes in the state law,  
9 indicating that the legislative action rendered the  
10 insurance requirements in Conditions 7 and 8 of the  
11 Conditional Use Permit unenforceable. In response  
12 to corporation counsel's letter and request by  
13 Enbridge, I removed the two unenforceable  
14 Conditions from the Conditional Use Permit on  
15 July 24th.

16 On September 29th, the Zoning and Land  
17 Regulation Committee reviewed my action. They  
18 determined that the zoning administrator did not  
19 have the authority to change the Conditional Use  
20 Permit as approved. The committee approved the  
21 motion indicating that the permit would reflect --  
22 should reflect the exact Conditions as approved by  
23 the committee on April 14th and further note that a  
24 note would be added which identifies that the  
25 County being prohibited enforcing Conditions 7 and

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1 8 due to the state budget bill 2015, Act 55.

2 On October 9, 2015, the zoning administrator  
3 notified Enbridge in writing that the original  
4 Conditions as approved on April 14th would remain  
5 with a notation as directed by the Zoning and Land  
6 Regulation Committee.

7 And that brings us here today with Enbridge  
8 appealing two Conditions, Conditions 7 and 8 of  
9 Conditional Use Permit 2291.

10 CHAIR CORRIGAN: Thank you, Roger.  
11 Supervisor Pertl.

12 MR. PERTL: I have questions for Roger.

13 CHAIR CORRIGAN: Okay. That's --

14 MR. PERTL: Sorry. So thank you for  
15 presenting that. I just -- I want to walk through  
16 some of the questions I guess I had about this  
17 quickly. So the original CUP that's issued in  
18 April is 2291. That language is intact with the  
19 exception by items 7 and 8 which are preempted by  
20 state law; yes? Based on the original --

21 MR. LANE: That is still -- they're still  
22 intact with a notation at the bottom.

23 MR. PERTL: I just want to walk through  
24 the steps. So then when you issued what I lovingly  
25 call the Lane permit in July, you since

1 acknowledged that you do not believe that was  
2 properly issued because you did not have committee  
3 approval at the time.

4 MR. LANE: That's correct.

5 MR. PERTL: Okay. And so the committee  
6 is invested with that power. So that is never --  
7 that was improperly issued and not legally binding.  
8 Is that your assertion?

9 MR. LANE: That's correct.

10 MR. PERTL: Okay. So we're -- so in  
11 essence, we're still back at the original permit  
12 (overlapping dialogue).

13 MR. LANE: That's correct.

14 MR. PERTL: Okay. So then later the  
15 committee went back and added a note to the file,  
16 but they did not revoke or amend the original  
17 permit in any way, they added a notation  
18 acknowledging the preemption; is that correct?

19 MR. LANE: That's correct.

20 MR. PERTL: Okay. So as I'm walking  
21 through the arguments that they have -- and they're  
22 going to get to lay out there's, but you're here.  
23 So I'm going to ask you now -- much of it seems to  
24 be predicated on their view that your issuance of  
25 the CUP is the valid one, and then any subsequent

1 changes is somehow a harm to their rights and  
2 vested interest.

3 MR. LANE: That's a pretty --

4 MR. PERTL: But my question is: If it  
5 was not valid, then that's a moot point from your  
6 perspective? That if your CUP was never legally  
7 binding --

8 MR. LANE: That's -- that's correct.

9 MR. PERTL: -- there's been no subsequent  
10 changes to it?

11 MR. LANE: Yes.

12 MR. PERTL: Here's my last question for  
13 you: So whether we go with Option A, which was the  
14 original permit, and it's been preempted; or you  
15 went with the Lane permit or the permit with the  
16 note, from an enforceability perspective, the  
17 permit is identical and any of those scenarios,  
18 Items 7 and 8, are unenforceable?

19 MR. LANE: You got the gist of it, yes.

20 MR. PERTL: Okay. I just want to be  
21 clear. Thank you.

22 MR. LANE: Mm hmm.

23 CHAIR CORRIGAN: Are there any further  
24 questions of the zoning administrator?

25 Thank you, Roger.

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1           Next, Enbridge, the appellant, will have 30  
2 minutes to present their case.

3           MR. PYPER: Thank you, Madame Chair. My  
4 name is Tom Pyper, and I am a lawyer. I'm a local  
5 Madison attorney. My office, in fact, is right  
6 across the street. And I do represent Enbridge  
7 Energy. And Enbridge asked me, as well as one of  
8 their representatives, engineers, to come and speak  
9 tonight for representing their position on the  
10 appeal.

11           This saga really started earlier than you've  
12 heard. It really started a year and a half ago  
13 when Enbridge applied for a zoning permit to be  
14 able to make these changes to the Waterloo Pump  
15 Station in the town of Medina. That was in April  
16 of 2014. And in April, 2014, that zoning permit  
17 was issued. We thought the issue was done at that  
18 time. A month and a half later, Enbridge got a  
19 letter from Dane County Zoning Administrator saying  
20 that the zoning permit was being revoked. And it  
21 was being revoked because apparently, according to  
22 administrator, it had been issued without proper  
23 authority and that a Conditional Use Permit was  
24 needed. So Enbridge decided to comply with the  
25 request and filed an application for a CUP.

1           That is what started the journey that got us  
2           to what we believe today is an unprecedented  
3           position in Wisconsin. I am not aware of any CUP  
4           that has ever been issued that has knowingly  
5           unlawful and illegal conditions in it. And that is  
6           where we are today.

7           The ZLR committee has adopted a public policy  
8           that it can issue a Conditional Use Permit and put  
9           Conditions in that permit that it knows are  
10          unlawful, but that's all right because it can  
11          simply put a little note in saying these are  
12          unlawful, but we're going to put those requirements  
13          in the CUP anyway. And I'll tell you why that is  
14          so significant in just a minute.

15          I don't want to add to what appears to be the  
16          confusion on what's in front of the Board, and I  
17          don't purport to be a rules of procedure; but we  
18          are simply asking a very fundamental issue and that  
19          is that insurance requirements 7 and 8 be removed  
20          from the CUP that has been issued to Enbridge. I  
21          agree with Supervisor Miles that there were two  
22          different reasons. In the first appeal, we argued  
23          that they were unlawful under various  
24          constitutional provisions, interstate commerce  
25          clause, preemption provision because we believe the

1 authority was with PHMSA to regulate safety. We  
2 are still asking they be removed but on entirely  
3 different grounds. And the grounds we're bringing  
4 up are those based upon the new law that has  
5 been -- the two new laws that has been adopted by  
6 the State of Wisconsin. So our argument is that  
7 the requirements should be removed. The grounds  
8 are because Wisconsin law does not permit them.

9 Much of what I was going to say has been  
10 summarized already. And because I think it's  
11 important for the -- for the Board to understand  
12 the chronology of what took place, I reference the  
13 zoning permit. And then there was an application  
14 for the CUP in August. That was of 2014. The  
15 procedures then -- proceedings -- excuse me -- then  
16 went through a series of adjournments and  
17 nonactions and continuations. And there wasn't  
18 anything actually resolved until April of 2015  
19 while the CUP application was pending in front of  
20 the committee. During that period of time,  
21 however, there -- a number of things were achieved.

22 One, the Town had already approved the CUP.  
23 The CUP was -- they attached a couple of conditions  
24 to it. One of the conditions was a basic road  
25 agreement. The other condition, which you heard

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1 mentioned, was an enlarged spill berm so that it  
2 could accommodate a flow of 60 minutes. And  
3 Enbridge immediately agreed to those. So then it  
4 was finally taken up in October by the ZLR  
5 Committee, but it was stalled all the way until the  
6 next April. But that gave enough time for Enbridge  
7 to address other concerns that came up from the  
8 members of the public. One was noise. One was  
9 lighting. And all the other Conditions were  
10 accommodated by Enbridge until there was a question  
11 of the insurance issue.

12 Enbridge explained to the committee. And the  
13 committee engaged in discussions about it, very  
14 productive discussions, of how much insurance  
15 Enbridge had. And at that time, Enbridge had  
16 \$700 million worth of general liability insurance  
17 which included sudden and accidental pollution  
18 coverage. That, by the way, has since been raised  
19 to \$860 million.

20 Also, there were discussions that you have not  
21 heard about a \$4 billion trust fund that has been  
22 established at the federal level through surcharges  
23 based on the industry, not tax based, but the  
24 industry pays into it. So there's an additional  
25 \$4 billion worth of money there to pay for any kind

1 of remedial measures if Enbridge didn't pay for  
2 them itself.

3 Notwithstanding those discussions, there was  
4 a request that Enbridge pay for a consultant,  
5 insurance consultant, chosen by the committee, to  
6 give a second look at the issue. And Enbridge did  
7 agree to pay for Mr. Dibdahl. And Mr. Dibdahl  
8 reviewed the insurance coverage of Enbridge and  
9 confirmed the existence of the federal \$4 billion  
10 trust fund. But he did recommend this EIL  
11 insurance you heard of. So that on top of  
12 everything else, Enbridge should buy a policy of  
13 \$25 million for EIL additional coverage. He also  
14 recommended certain insurance rating issues, and  
15 that was adopted as part of the Conditions of the  
16 CUP in April of 2015.

17 Because Enbridge did not -- it did not believe  
18 that it could in good faith say that it would  
19 always be able to comply with those Conditions,  
20 because those Conditions are driven by market  
21 factors that are outside Enbridge's control. And  
22 so insurance is renewed year after year after year.  
23 And this is a very long project. And with a  
24 Condition that said, You must always maintain  
25 \$25 million worth of EIL coverage, there's a

1           constriction in the market on how much is  
2           available. And it couldn't guarantee that it would  
3           ever be able to comply always with those  
4           Conditions, but it also didn't believe those  
5           Conditions were lawful. It believed that they  
6           violated certain constitutional provisions and was  
7           beyond the authority of the ZLR Committee to  
8           implement. So it did appeal. And it appealed to  
9           this body.

10           while that appeal was pending, you heard about  
11           the two new laws. They're in Chapter 59. And they  
12           circumscribe the authority of a County to be able  
13           to impose these types of insurance requirements on  
14           them. One provides expressly that the County  
15           cannot impose these insurance requirements on a  
16           pipeline company such as Enbridge that carries the  
17           same type of insurance Enbridge carries. The other  
18           one says that no Conditions can be imposed by a  
19           County if they have been preempted by either  
20           federal or state law. Well, state law now preempts  
21           the ability of the ZLR Committee to impose these  
22           Conditions and put them into a CUP.

23           So at that point, the whole environment  
24           changed. And you heard that Assistant Corp.  
25           Counsel Dave Gault sent his letter out. And in the

1 letter, it was referenced that what he said was  
2 that the insurance requirements were unenforceable.  
3 what he really said is quote, "The County is  
4 prohibited from requiring the insurance  
5 requirements," end quote.

6 And based on that letter, Zoning Administrator  
7 Lane did issue his new CUP. And he did it by  
8 removing the insurance requirements from the CUP.  
9 I take issue with his legal opinion as to whether  
10 he had the authority to do that. It is our  
11 position that he was well within his authority. We  
12 put it in our pre-brief that we filed. It's --  
13 part of his Dane County authority is in 10.25(1)(b)  
14 of the Dane County ordinances. And he is given the  
15 authority to issue a CUP after it has been voted on  
16 by the ZLR Committee, but he also has the inherent  
17 ministerial authority to make sure that it complies  
18 with the existing law. And there's a difference  
19 between discretionary authority, which I certainly  
20 agree with him and Assistant Corp Counsel Gault.  
21 He does not have the authority to take  
22 discretionary actions, but he does have the  
23 ministerial authority to take action on the CUP  
24 that had been duly voted upon and remove the  
25 conditions that had then expressly been made

1 illegal. So I differ in how many CUPs are around.

2 Our position is that July CUP was in fact  
3 lawful. In fact, Enbridge got a zoning permit  
4 issued. You must have a valid CUP. And it was  
5 issued based upon the July CUP. And then once the  
6 zoning permit was issued, Enbridge started  
7 construction in earnest.

8 And now I want to interrupt myself for a  
9 moment and introduce Aaron Madsen. I want him to  
10 tell you what actions Enbridge has taken in  
11 reliance on the July 2015 CUP, because you're going  
12 to hear me say that Enbridge has vested rights in  
13 that CUP that cannot be changed. And so if you'll  
14 indulge me, I'd like to have Aaron Madsen come up  
15 and just give you a brief synopsis of what has been  
16 done.

17 MR. MADSEN: Hello. My name is Aaron  
18 Madsen, and I am the manager of engineering and  
19 construction for the Waterloo site and the  
20 additional facilities that we are adding as part of  
21 our mainline enhancements projects, the additional  
22 pump stations on Line 61. I reside here in the  
23 state of Wisconsin. And I am a registered  
24 professional engineer in the state of Wisconsin  
25 here.

1           After issuance of the CUP in July, we began in  
2 earnest working on updating our environmental  
3 permits that we had previously to reflect the  
4 changes that were required as due to the additional  
5 Conditions 3, 4, and 5 of the CUP. At that point,  
6 we worked on getting our zoning permit, which was  
7 issued on August 4th, and began mobilization to the  
8 site on August the 20th. The environmental permits  
9 were revised and reissued on -- by September the  
10 3rd, and then we began ground disturbance  
11 activities on September the 8th.

12           Since September the 8th when construction  
13 started on site -- significant construction on site  
14 started, personnel has varied between 18 and 24  
15 workers there on site utilizing multiple local  
16 union contractors, both a general contractor,  
17 concrete, excavation, erosion control, installation  
18 companies, also utilizing local suppliers for our  
19 gravel and building materials that have been  
20 utilized to date there.

21           The work really in detail that we started out  
22 there afterwards was redesigning and drafting our  
23 engineering construction drawings to update the  
24 enlarged berm to hold the 60 percent flow --  
25 60-minute flow rate. We had done initial drawings

1 for the CUP, and then we had to update the detail  
2 drawings so that we could get additional -- or  
3 environmental permits and were correct with the  
4 impervious area and the land disturbance areas that  
5 we were having out there. After we had these  
6 designs done, we met with both the Dane County Land  
7 and Water Conservation Department, as well as the  
8 Wisconsin Department of Natural Resources,  
9 reviewing the updated plans and reissuing updating  
10 their permits that were previously issued to us to  
11 reflect the new layout of the site, incorporating  
12 the larger berm as required.

13 Once that was completed, we started site  
14 survey to establish property lines actually on  
15 site, staked out for our buildings, and performed  
16 our four-way sweeps for buried utilities out there.  
17 That's a step that we take -- one pass to One-Call  
18 in insuring that we know where all of our buried  
19 utilities are out there to make sure that we do not  
20 hit any or disturb them during our construction  
21 phase -- also mobilized construction trailers onto  
22 site, established site security fencing, and moved  
23 construction equipment onto the site. Also  
24 included at this point was installation of erosion  
25 control measures, best management practices

1 required by Dane County and by the Wisconsin DNR:  
2 silt fence, tracking drives, protection of the  
3 navigable stream to the south as well as the areas  
4 that we were not going to disturb out there.

5 Once those were installed, we began topsoil  
6 stripping of the site, construction and  
7 installation of a required biofilter, storm water  
8 ponds, and pervious pavements that are required as  
9 part of our storm water permitting out there --  
10 also began mass excavation for our foundations,  
11 drives, rough grading of the large containment  
12 berming, also imported and placed approximately  
13 26,000 tons of gravel fill on site for our drive  
14 lanes and berming. The foundations for our pump  
15 blocks and for our buildings have been excavated  
16 now. And we're preparing for the first concrete  
17 pour soon.

18 To date, Enbridge has committed approximately  
19 \$10 million since issuance of the CUP in late July  
20 to construction and procurement of the final  
21 materials for out there. Overall, Enbridge expects  
22 to spend approximately \$45 million in total on this  
23 project.

24 You want to take over?

25 MR. PYPER: So while all those

1 construction activities were taking place, the 350  
2 Madison group asked the ZLR Committee to reconsider  
3 the CUP and brought a request that it add  
4 additional Conditions to the CUP. And at that  
5 time, Attorney Gault again advised the committee  
6 and said quote, "The committee cannot reconsider or  
7 rescind the CUP granted to Enbridge for the pumping  
8 station at this time," end quote.

9 One of the reasons was due to the quote,  
10 "vested rights to the CUP," end quote.

11 At that time, the July CUP had been issued.  
12 And we agreed with that conclusion that there could  
13 not be an amendment or a revision to it. The  
14 additional requests by 350 Madison at that time for  
15 a different type of financial assurance to be added  
16 was not agreed to by the ZLR Committee, and 350  
17 Madison did not appeal that decision.

18 But on September 29th is when the ZLR  
19 Committee took it up again on its own, the CUP, and  
20 directed the administrator to either put the  
21 insurance requirements back into the July CUP or  
22 to -- the reason I'm hesitating, it wasn't really  
23 explained directly, but to issue a CUP that had  
24 insurance requirements in it and had a note that  
25 the enforceability may be quote, "affected" end

1 quote by the new laws. So whether there was a  
2 change to the earlier one way back in April or it  
3 was a change to the July one, there was a change  
4 made. There was an amendment to that CUP, either  
5 by reinserting the insurance requirements back into  
6 it or taking the earlier one if the argument is  
7 correct that the administrator didn't have the  
8 right to issue the July one but not leave it as it  
9 was but to instead insert new language that said  
10 they may be affected.

11 That had been in October, and that is what led  
12 us to the new appeal. But the grounds are  
13 different now. As I started out by saying, the  
14 constitutional arguments are by the wayside. This  
15 is strictly on the basis of the new legislation  
16 that you cannot have a policy where you put  
17 unlawful conditions into a CUP, or leave them there  
18 for that matter, and just note that maybe they're  
19 not enforceable depending on the new law.

20 And the basis for that is, in your ordinance  
21 10.255(2)(n), the only thing that is talked about  
22 in terms of changing a CUP is revoking it. And  
23 revocation of a CUP can only be done if there's a  
24 violation of a condition in that CUP and if the CUP  
25 no longer meets the standards for issuance of the

1 CUP. Both have to be in place.

2 Now, I know in a different case in which my  
3 firm is involved with Attorney Gault, he has taken  
4 the position that in fact a CUP can be amended  
5 despite the fact that there's nothing mentioned in  
6 the ordinance about amending a valid CUP. But in  
7 that situation, the County has staked out the  
8 position that it still has the same two conditions.  
9 There has to be a violation of a condition in the  
10 CUP and the standards of the CUP are no longer met  
11 in order to amend it. And with an amendment it has  
12 to be sent back to the Town. Well, in this case,  
13 there's no argument that can be made that Enbridge  
14 has violated any provision in the very first CUP  
15 that was issued, the July CUP, or the October CUP.  
16 There have been no violation of any condition, even  
17 no allegation made.

18 If this is an amendment by placing the new  
19 language in that qualifies the insurance  
20 requirements, under the County's own  
21 interpretation, that had to go back to the Town.  
22 And it did not. And so for those reasons alone, we  
23 believe that the insurance requirements cannot  
24 survive the new law and the procedure that has been  
25 adopted in going forward with this.

1 I've already talked about our view on the  
2 authority of the zoning administrator, but the  
3 other issue is the Vested Rights Doctrine. And  
4 that's what Attorney Gault himself told the ZLR.  
5 You can't make these modifications to a CUP because  
6 of a vested right that Enbridge has. Enbridge took  
7 action on it. Enbridge you heard has incurred  
8 \$10 million of action on this CUP. And in order to  
9 now change that CUP and strip the -- or leave the  
10 insurance requirements in it with simply this note,  
11 that is hurting Enbridge. And let me tell you  
12 exactly why. This is not an academic question. If  
13 you leave the insurance requirements in there with  
14 simple noting that they are subject to this new  
15 law, what happens five or ten years from now if the  
16 law changes? Are those requirements enforceable?  
17 They were never valid. There was never authority  
18 to put them in. Will we be in another struggle to  
19 say you cannot now enforce requirements that were  
20 illegal at the time they were inserted into it?

21 And the company is now about to spend  
22 \$45 million to finish this pump station, and yet  
23 it's facing the prospect of complete uncertainty as  
24 to what might happen down the future. If there  
25 were a change in the law, there would be a process

1 that would be available to the committee to  
2 determine whether that kicked in any rights to  
3 change a CUP that has been acted on and in place  
4 for a very long time at that point. But to leave  
5 these requirements in and present an argument that  
6 automatically illegal requirements have now been  
7 somehow legalized and are enforceable, that causes  
8 a lot of uncertainty. And it threatens the  
9 \$45 million that the company would impose.

10 So this is not simply an academic question.  
11 This is a question of: should this committee and  
12 this Board sanction issuance of a CUP and putting  
13 in insurance requirements that it knows is -- are  
14 illegal? whether it was the July CUP or whether it  
15 is the October CUP, the ZLR Committee took action  
16 at that point in time. It chose to simply put a  
17 footnote in and leave conditions in a CUP that it  
18 knew at that time were illegal. That's farther  
19 than just bad public policy. That's unlawful under  
20 Wisconsin law. It doesn't have anything to do with  
21 whether the insurance requirements should have ever  
22 been imposed. That was the old appeal. And it  
23 doesn't have anything to do with whether the ZLR  
24 Committee or this Board likes the new laws. The  
25 new laws are what they are. And it's our position

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1           that the Board cannot approve a CUP that has  
2           Conditions in it that it knows sitting here today  
3           are unlawful under Wisconsin law.

4           So we're asking for the Board to do a simple  
5           task. And that is remove the unlawful CUP  
6           Conditions 7 and 8 from the CUP.

7           CHAIR CORRIGAN: Have you completed your  
8           presentation?

9           MR. PYPER: I have. Thank you.

10          CHAIR CORRIGAN: Okay. We're going to  
11          have questions for you. So why don't you remain  
12          there.

13          Supervisor Pertl.

14          MR. PERTL: Okay. I have a series of  
15          questions. So walking through the different  
16          arguments that you lay out, I understand your  
17          assertion that the Lane permit is valid and your  
18          concerns about the April issuance of the permit.  
19          My -- let's start with: If Act 55 made Conditions 7  
20          and 8 -- preempted them and made them illegal, but  
21          they were validly passed by the committee in the  
22          process, we can't enforce them. Is it your  
23          contention that we are obligated to remove them in  
24          addition to not enforcing them?

25          MR. PYPER: Yes. Because of the appeal,

1           which we were arguing at the time, they should have  
2           been removed. But in addition, in October, the ZLR  
3           Committee took action on them. It's our position  
4           that at that point in time in September when it  
5           unilaterally chose to revisit that CUP and take  
6           action, because those Conditions they knew at that  
7           time were illegal, it was obligated to remove them.  
8           Yes.

9                         MR. PERTL: So acknowledging the  
10           preemption and the letter rather than amendment, in  
11           your argument, opened up the CUP, which you're  
12           contending we didn't have the authority to do  
13           because we hadn't met the two conditions for an  
14           amendment. So these are all process questions, but  
15           your contention is we didn't have the ability to  
16           amend it in the first place. But if we did, then  
17           in doing so, we were required then to remove the  
18           Conditions?

19                        MR. PYPER: That's true.

20                        MR. PERTL: Is it possible to public --  
21           if we had never had any of these actions, if Lane  
22           hadn't issued the July CUP, the committee hadn't  
23           moved, and we were all the way back looking at this  
24           originally-approved April CUP with unenforceable  
25           Conditions, would your contention be that we would

1 be obligated to remove those? or could they be let  
2 lie? They were valid when they were put in, but  
3 they can't be enforced.

4 MR. PYPHER: First of all, remember we did  
5 not take the position they were valid when they  
6 were put in. And we had an appeal pending. It was  
7 adjourned because of the pronouncement that it  
8 was -- that the appeal was moot.

9 MR. PERTL: Mmhm.

10 MR. PYPHER: Because in fact, those  
11 conditions were unenforceable and we were -- a  
12 notice that a new CUP was going to be issued  
13 without them. Had we not been told there was going  
14 to be a new CUP issued without them, we would have  
15 gone forward with that appeal. And we would have  
16 done exactly what Supervisor Miles said, we would  
17 have been here saying, New grounds. It's not  
18 because of our constitutional provisions. Now,  
19 County, we are here asking that you remove them  
20 because you now know they are invalid under  
21 Wisconsin law.

22 MR. PERTL: Okay. So my other question  
23 resting sort of on the Lane issue and his ability  
24 to issue the permit, which he and you disagree  
25 about whether that was a valid action or not, and

1           you site in your brief to us, both part of our  
2           ordinance language that references that he may take  
3           action as necessary for the enforcement of  
4           regulations therein.

5                       MR. PYPER: Yes.

6                       MR. PERTL: I think that necessary part  
7           is key about whether it was a necessary action or  
8           not. And then you argue it's ministerial saying,  
9           Absolute certain and imperative involving the  
10          performance of a specific task that the law  
11          imposes, prescribes, or defines at the time  
12          (inaudible) for its performance with certainty and  
13          nothing remains for judgment or discretion.

14                      Here's my concern about that: It seems like  
15          there was a lot of judgment about whether or not he  
16          had the ability to issue it. It had to go back to  
17          the committee for approval and/or whether the  
18          previous piece could sit, the previously CUP. So  
19          how could that be an exclusively ministerial  
20          action? And how could it be exclusively necessary  
21          if there were multiple avenues of action available  
22          to him?

23                      MR. PYPER: Well, the committee may  
24          differ on whether he had the authority, but that  
25          doesn't make it a discretionary issue. They had a

1 CUP issued with the Conditions in it, two of which  
2 then became unlawful under Wisconsin law. It's our  
3 position at that point in time, it is certain. And  
4 the requirement of the law was to have those  
5 removed. That's a ministerial action of a zoning  
6 administrator. And I certainly agree with you that  
7 Mr. -- Administrator Lane takes a different view.  
8 I'll tell with my conversations with Assistant Corp  
9 Counsel Gault, he takes a different view. So I  
10 acknowledge that there is a different view on the  
11 law on that, but it is our position that it was  
12 sufficiently certain under Wisconsin law that those  
13 were unlawful, that it was within his ministerial  
14 authority to remove them and not touch any of the  
15 other Conditions that had been imposed under the  
16 discretion of the committee.

17 MR. PERTL: Because the -- in your view,  
18 the state preemption law would allow us to go back  
19 and amend the CUP to remove Conditions without  
20 revocation because they're preempted by state law  
21 and not have to follow the other process and the  
22 two other Conditions required?

23 MR. PYPER: It wouldn't have allowed you  
24 to reach back in time but for our pending appeal,  
25 which said they are unlawful and we want you to

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1           remove them, which you now are duty bound to do.  
2           So you still -- the County had not issued a final  
3           CUP at that point in time. The committee had. We  
4           appealed. It was up to the County to determine  
5           whether to issue that CUP. It knew at that time  
6           those conditions were unlawful. It's our position  
7           you have a legal duty to remove them, yes.

8                         MR. PERTL: Okay. Thank you.

9                         CHAIR CORRIGAN: Thank you, Supervisor  
10           Pertl.

11                        Supervisor Bayrd.

12                        MS. BAYRD: Thank you, Madame Chair.  
13           Good evening. A lot of legalese, but I'm a lawyer.  
14           So I'm enjoying following you. I represent  
15           different clients than you do, but I have a couple  
16           of questions. You had said -- I mean, you make  
17           some serious charges against our committee that  
18           they knowingly issued unlawful conditions and that  
19           they -- it knows they are unlawful. So do you hold  
20           that belief of their actions on the April issuance?

21                        MR. PYPER: No. Not knowingly, no. I do  
22           not.

23                        MS. BAYRD: Not knowingly in April?

24                        MR. PYPER: I do not, no. I certainly  
25           don't make that assertion. We made our arguments

1 to them. And they had a different view of it, and  
2 that's what (inaudible) probably would have been  
3 for, but no. I don't say that they knew those  
4 Conditions were unlawful in April, no.

5 MS. BAYRD: And you appealed that, but  
6 then that appeal was withdrawn?

7 MR. PYPER: That appeal was not withdrawn  
8 by us.

9 MS. BAYRD: Oh, okay.

10 MR. PYPER: That appeal was declared moot  
11 by the -- I believe the zoning administrator  
12 because of the requirements that those Conditions  
13 could not be -- Enbridge could not be required to  
14 comply with those Conditions. We never withdrew  
15 our appeal.

16 MS. BAYRD: So do you believe at that  
17 time they were moot?

18 MR. PYPER: Do I believe the Conditions  
19 were moot? I believe that the appeal was moot  
20 because we had been told that -- though a new CUP  
21 was going to be issued without them. And therefore  
22 we were, okay, issue your new CUP. We'll go  
23 forward, and we won't pursue the appeal.

24 MS. BAYRD: Okay. And when it was  
25 clarified -- because there was sort of, you know,

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1           some confusion that happened -- when it was  
2           clarified, the new CUP wasn't issued though. So  
3           now -- do you now not think it's moot? Do you now  
4           think that provisions 7 -- 7 and 8, do you think  
5           that they have potential to be enforceable?

6                     MR. PYPER: Wait. First of all, a new  
7           CUP was issued.

8                     MS. BAYRD: What if --

9                     MR. PYPER: July CUP was in fact issued.

10                    MS. BAYRD: So I'm a member of this  
11           Board, and I believe I'm going to respectfully  
12           disagree. I believe that part of my decision this  
13           evening revolves around whether I believe the April  
14           CUP is before us or if there was a -- a -- a future  
15           CUP. I think that the CUP issued by Roger Lane, it  
16           is of the opinion of our corporation counsel and  
17           others that have that was inappropriately issued.

18                    MR. PYPER: Well --

19                    MS. BAYRD: I respect that you disagree.  
20           But then -- so here's the second question: In  
21           August, do you think the committee by acknowledging  
22           and adding a footnote -- you believe that  
23           acknowledging that the State acted that was a  
24           change to the CUP and issuing of a new CUP by  
25           adding a footnote?

1 MR. PYPER: I -- I believe when in  
2 September -- at the end of September, when it took  
3 up the matter on its own at that time and instead  
4 of removing the conditions, it directed the zoning  
5 administrator either to leave them in, if you go  
6 way back to the first one, or to reinsert them into  
7 the July one and simply impose a footnote -- as  
8 opposed to removing them, inserting a footnote that  
9 the enforceability may be affected. Then at that  
10 point in time, yes, that was a substantive change.

11 MS. BAYRD: You think by acknowledging  
12 that the State -- we would -- you'd be making a  
13 different argument if we didn't even acknowledge  
14 that the State had made an action?

15 MR. PYPER: Well, we certainly would have  
16 continued with our initial appeal. I mean, at that  
17 point in time if nothing had happened, we would  
18 have gone forward believing that the July CUP was  
19 the controlling CUP and had no insurance  
20 requirements in it.

21 MS. BAYRD: And what if the July CUP had  
22 been withdrawn and the zoning committee did  
23 nothing, didn't add that footnote? They just said,  
24 It was improperly issued because of this procedure  
25 and the April CUP stands?

1 MR. PYPER: Then we would have asked to  
2 have our April -- our appeal of the April CUP  
3 reinstated because we never withdrew it.

4 MS. BAYRD: Okay. So for me, I feel like  
5 that's the situation of where we're in, where  
6 you're -- we're talking about the April CUP. So I  
7 now have a question about that. Do you believe  
8 that just because we were preempted that that  
9 requires us -- if it was -- potentially legal for  
10 us to put those conditions in in April, does that  
11 mean that we have to remove it now?

12 MR. PYPER: Yes, because it was not a  
13 final CUP. It was on appeal to this Board. So it  
14 was up to the County to decide at that point in  
15 time whether it would issue a CUP that had invalid  
16 and unlawful conditions in it.

17 MS. BAYRD: So --

18 MR. PYPER: And I don't believe it would  
19 have been proper for the Board to approve at that  
20 point in time, when in the interim between the  
21 first CUP being issued with those insurance  
22 requirements and then the law is passing they are  
23 unlawful -- and then it's up to the Board to make  
24 the final statement -- it would have been improper  
25 for the Board to say, Yes, we're going forward with

1 a CUP that has unlawful conditions in it.

2 MS. BAYRD: Even though it was lawful  
3 when they made the decision and we are just an  
4 appeal board?

5 MR. PYPER: Yes, because it is now up to  
6 you to decide whether to approve its issuance. And  
7 you know at that point in time, the law says those  
8 conditions are unlawful.

9 MS. BAYRD: So I just have one more  
10 question. And maybe to throw the ball a little bit  
11 in the law that I practice, there's an area of law  
12 that I practice, and currently the State of  
13 Wisconsin has a law that is preempted by the  
14 federal government. Should the State of Wisconsin  
15 be allowed to keep that law on the books?

16 MR. PYPER: I'm sorry. Can you state  
17 that again?

18 MS. BAYRD: So I can be a little more  
19 specific. Abortion is illegal in the State of  
20 Wisconsin, but there's a federal law, Roe v. Wade,  
21 that makes the State of Wisconsin law invalid.  
22 State of Wisconsin didn't appeal -- sorry -- repeal  
23 their law because they felt their law was valid  
24 when they put it forward and reflected their values  
25 at the time. I feel the same way about our

1 decision in April. It was valid at the time and  
2 reflected the values of the Dane County Board. Do  
3 you see a difference between those two? That state  
4 law -- the state hasn't appealed that law. Why  
5 should we appeal ours?

6 MR. PYPER: Well, in terms of the  
7 equating the passage of a law by a legislative body  
8 with issuance of a Conditional Use Permit --

9 MS. BAYRD: By a legislative body.

10 MR. PYPER: -- I -- yeah, passage of a  
11 law by a legislative body.

12 MS. BAYRD: And we're a legislative body.

13 MR. PYPER: Right, but a Conditional Use  
14 Permit is in fact applying the law that is in  
15 existence at the time and implementing the law. I  
16 don't think the State of Wisconsin would be  
17 required, if it has been determined that their law  
18 arguably is preempted, to remove it from the books.  
19 But if it wants to implement it, it has to make the  
20 decision. And it should not be implementing it if  
21 it's been preempted by federal law. Same thing  
22 here. If a state law has been passed, and now you  
23 are to implement the laws of the State, and you  
24 have a Conditional Use Permit in front of you that  
25 you know has illegal conditions in it, you're duty

1 bound to remove those and not let it go forward  
2 because you're not passing a new law at that point  
3 in time. You're implementing the law of the State.

4 MS. BAYRD: And you think by leaving  
5 7 and 8 in, it's equivalent to implementing 7 and  
6 8, even though we actually have a footnote that now  
7 says we can't enforce it?

8 MR. PYPER: No. By leaving 7 and 8 in,  
9 you're doing what the legislature said you cannot  
10 do, which is, you cannot issue a CUP that has  
11 unlawful conditions at the time you're making your  
12 decision.

13 MS. BAYRD: Thank you.

14 MR. PYPER: Mhm.

15 CHAIR CORRIGAN: Thank you, Supervisor  
16 Bayrd.

17 Supervisor Schauer.

18 MR. SCHAUER: I want to talk -- thank  
19 you, Madame Chair. I'd like to ask just a couple  
20 of questions about this difference between  
21 preemption and the state law -- of the state law of  
22 a CUP as opposed to a federal ruling in essence  
23 overturning a state law. I think the point  
24 Supervisor Bayrd made was a fair one. And I want  
25 to -- is it your opinion that every time that the

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1 State changes a law with regard to what it preempts  
2 a county board to do that they then have to go and  
3 change every single CUP that may have been issued  
4 across the state --

5 MR. PYPER: No.

6 MR. SCHAUER: -- that is now in violation  
7 of it?

8 MR. PYPER: No, it's not.

9 MR. SCHAUER: But you're forcing us to do  
10 that here.

11 MR. PYPER: The difference is the timing  
12 of what happened. There were -- the insurance  
13 requirements were put into a CUP. That wasn't a  
14 final CUP because it was on appeal to this Board.  
15 And during the pendency of that appeal, the law was  
16 enacted saying those are illegal. And at that  
17 point in time, it isn't going backwards to see what  
18 a prior CUP looks like. You have the CUP in front  
19 of you to make the final decision, and you have a  
20 law that says a County cannot impose those  
21 requirements. At that point in time, it's our  
22 position that you were duty bound to remove them.  
23 And it has nothing to do with taking a retroactive  
24 look at prior final-issued CUPs.

25 MR. SCHAUER: At the end of the day,

1           you're not going buy -- your client isn't going to  
2           buy the insurance; correct?

3                     MR. PYPER: The insurance?

4                     MR. SCHAUER: The insurance. The  
5           additional -- the additional environmental  
6           insurance that 7 and 8 refer to; correct?

7                     MR. PYPER: That's true.

8                     MR. SCHAUER: Correct? Right. And this  
9           county -- no one within this county is going to or  
10          have the ability to -- if this passes or fails --  
11          is going to take any action against Enbridge for  
12          you guys -- for your client not purchasing that  
13          insurance; correct?

14                    MR. PYPER: When?

15                    MR. SCHAUER: Now.

16                    MR. PYPER: Now? No.

17                    MR. SCHAUER: All right.

18                    MR. PYPER: But if the law is repealed  
19          five years from now --

20                    MR. SCHAUER: If the law is -- God  
21          willing, if the law is repealed five years from  
22          now, won't you have the ability then to make a --  
23          you will be able to take the matter to circuit  
24          court and be able to say this law -- if -- but then  
25          two things would have to happen before then. First

1 of all, we would have to then require the  
2 insurance. Somebody would have somebody from us  
3 say, Hey, the law changed. You would get note --  
4 your client would then get notice.

5 MR. PYPER: Right.

6 MR. SCHAUER: And that we were then, per  
7 the law, requiring the insurance; correct?

8 MR. PYPER: I would hope so. Mhm.

9 MR. SCHAUER: At that point, you would  
10 have a remedy to that to go to circuit court and  
11 discuss whether or not -- see, again, we're talking  
12 about something that's five years from now or ten  
13 years from now or whenever the law might change in  
14 the future. And you're telling us that this is --  
15 why this isn't all academic?

16 MR. PYPER: Because there isn't any  
17 certainty as to what you are saying is correct.  
18 Right now the issue is the CUP that is on appeal.  
19 And if we don't exhaust our administrative remedies  
20 at this point in time and bring the challenge, what  
21 happens if we don't do that, had sat back and done  
22 nothing and then the eventuality you just described  
23 happened, and we went into court and said, we want  
24 to challenge those now, and the judge said, where  
25 were you back when you had the opportunity to

1 challenge it? And because of that, there's no  
2 certainty here. And the company is looking at  
3 investing \$45 million here. So if I had the  
4 absolute guarantee of what you are saying, that if  
5 the law were repealed later on that Enbridge would  
6 in fact have the able to challenge it at that time,  
7 you still have the uncertainty of what that outcome  
8 is going to be, and Enbridge would have sunk  
9 \$45 million into it.

10 We can remove all of that uncertainty today by  
11 the simple fact of: It's in front of you now, you  
12 know those conditions are unlawful, take them out.

13 MR. SCHAUER: One moment, Madame Chair.  
14 Did Enbridge have any role in the change of the  
15 state law?

16 MR. PYPER: What state law?

17 MR. SCHAUER: The state law referenced in  
18 the CUP as -- as -- as were passed in October.

19 MR. PYPER: These two laws we're talking  
20 about here?

21 MR. SCHAUER: Yeah.

22 MR. PYPER: I'm outside counsel for  
23 Enbridge. And I do certain kinds of things. I can  
24 tell you that I certainly didn't have any, and I  
25 can tell you that I had been advised from public

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1 information, Mr. Maki's letter, stating  
2 unequivocally that they were not behind the passage  
3 of this law and did not lobby in favor of it.  
4 That's all I can say to you.

5 MR. SCHAUER: I appreciate having that on  
6 some record. Nothing further, Madame Chair.

7 CHAIR CORRIGAN: Thank you, Supervisor  
8 Schauer.

9 Supervisor Wegleitner.

10 MS. WEGLEITNER: Thank you, Madame Chair.  
11 When did your client get notice that the July Lane  
12 permit was revoked or that the County considered  
13 that it was void and, you know, that -- when --  
14 because you're talking about vested rights. So I'm  
15 wondering when you got that notice -- or your  
16 client?

17 MR. PYPER: We got that notice -- I'm  
18 hesitating because I'm not sure exactly when we got  
19 the notice that there was a belief that it had been  
20 issued without authority. We certainly had the  
21 notice that it was going to be changed when the ZLR  
22 Committee took it up on September 29 and directed  
23 Administrator Lane to reissue a CUP or leave the  
24 original CUP with the conditions in it. So we knew  
25 there was a change as of the end of September. And

1 then the October CUP came out with the insurance  
2 requirements, I believe, on October 9.

3 MS. WEGLEITNER: Okay. And you  
4 reference -- and I know you referenced that  
5 Corporation Counsel also talked about vested rights  
6 as it factored into that September or October  
7 hearing. What's -- is there in your brief or  
8 notice any authority for the application of vested  
9 rights in this context?

10 MR. PYPER: Yes, there is in the brief.  
11 There's also reference in Attorney Gault's letter  
12 to case law. It's called the Zoning Vested Rights  
13 Doctrine. So both his letter to the committee and  
14 our brief references that vested rights.

15 MS. WEGLEITNER: Okay. Thanks. I'll  
16 look for that. I was just looking in your appeal  
17 notice.

18 CHAIR CORRIGAN: Thank you, Supervisor  
19 Wegleitner.

20 Supervisor Stubbs.

21 MS. STUBBS: Thank you, Madame Chair.  
22 Are we able to ask Corp Counsel a question yet or  
23 later?

24 CHAIR CORRIGAN: That would be later.

25 MS. STUBBS: Thank you.

1           This is just -- okay. Thank you. Are there  
2 further questions for the appellant?

3           Supervisor Downing.

4           MR. DOWNING: well, thank you, Madame  
5 Chair. And how do you do, sir?

6           My question to you is: If we were to remove  
7 Conditions 7 and 8, would we then be opening the  
8 door to further claims and litigation from you as  
9 you've claimed the actions were unreasonable and  
10 arbitrary or whatever reasons you claim for the ZLR  
11 action?

12           MR. PYPER: Certainly not to my  
13 knowledge. Again, I don't want to equivocate here,  
14 but I am outside counsel. I have never been given  
15 any indication whatsoever that that's what this is  
16 about. This is about getting a CUP that is certain  
17 and gives the company certainty so that they can go  
18 forward with this.

19           MR. DOWNING: And so I understand you --  
20 that as saying you're not willing to guarantee that  
21 this would end the litigation?

22           MR. PYPER: I cannot do that because I'm  
23 not management at Enbridge, but I can certainly  
24 tell you that there's never been any discussion  
25 with me, and I'm their outside counsel in the State

1 of wisconsin, to do this -- to do anything like  
2 that. All they are after is to get a CUP so they  
3 can go forward that doesn't have those insurance  
4 conditions in it.

5 MR. DOWNING: Thank you.

6 MR. PYPER: And, you know, quite frankly,  
7 to give you an opinion against my client, I don't  
8 think they'd have any damages to show that. I  
9 mean, if it's removed and they go forward and  
10 they've already been going forward and don't skip a  
11 beat -- so --

12 CHAIR CORRIGAN: Thank you, Supervisor  
13 Downing. Further questions for the appellant? (No  
14 response heard) Thank you very much, sir.

15 Next we're going to have public testimony. We  
16 have a number of individuals registered. I'm going  
17 to read two names at a time. So if you would --  
18 the person who's read first would come up and the  
19 second person come up and be ready to speak, that  
20 would be helpful. And again, you have five  
21 minutes.

22 First up is Ronni Monroe to be followed by  
23 Bruce Noble.

24 Hi.

25 MS. MONROE: Hi.

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1                   CHAIR CORRIGAN: I should say Ronni  
2 Monroe is wishing to speak in opposition.

3                   MS. MONROE: Yes. Hi, my name is Ronni  
4 Monroe, and thank you for giving me the opportunity  
5 to speak. I want to thank the Dane County Zoning  
6 Committee for all its done to protect the citizens  
7 of Jefferson County downstream from the Waterloo  
8 Pump Station, which is actually very close to the  
9 county line.

10                  I'm not a lawyer. I'm a Jefferson County  
11 resident, a retired R.N., public health nurse,  
12 former first responder, and I'm probably one of the  
13 few certified Enbridge responding emergency  
14 responders -- yes, I passed your course -- in the  
15 room. I have a framed certificate at my home. If  
16 anyone wants to see it, it's on my phone.

17                  The reason I'm here is I'm concerned with the  
18 safety and the welfare of our people along the  
19 pipeline statewide, which is why I'm concerned with  
20 the CUP. I used to live on the pipeline as a  
21 resident of the property adjacent to the corridor  
22 but with no legal rights as I did not own the  
23 easement. We have thousands of people in this  
24 position in our state. Pipeline 68 (ph) was far  
25 closer to my home than it was to the home of the

1 person who owned the easement. Many of my former  
2 neighbors still live there and are not legally free  
3 to speak.

4 I'd like to bring to the floor the comments on  
5 property rights made by Governor Scott walker in  
6 relation to the proposed shoreline. It's an ironic  
7 source for me to be quoting. But he said that  
8 making sure that local property owners have first  
9 considerations given to the impact of people's  
10 property rights before other things. That's the  
11 most important. Wisconsin Public Radio summed it  
12 up more articulately in their article online when  
13 they stated, "walker said property owners should  
14 have control of their land as long as they don't  
15 violate the health and safety of others." This is  
16 one of the few times I agree with walker. Looking  
17 at the face value of his comment, I don't think he  
18 meant for his words to be applied in this  
19 situation.

20 We as landowners should have property rights.  
21 We should have the right to recompense. Enbridge  
22 is risking the health and safety of our landowners  
23 and people living nearby, and now they don't want  
24 to take responsibility for the damage that they may  
25 do to those who live along the pipeline corridor.

1           They want the insurance clause removed from the  
2           CUP. In a Koch-like paternalistic attitude, they  
3           want us to accept that they will take care of us in  
4           the event they poison us and our land and our  
5           water. These are the same people who proclaim that  
6           the Kalamazoo River is clean.

7                        Should not our rights to safety and  
8           compensation be considered? Is it not bad enough  
9           that a foreign-owned company is transporting a  
10          dangerous foreign product for export across our  
11          sovereign land, land owned by our citizens, and now  
12          those citizens are not going to be given the  
13          security of insurance if this toxic oil should  
14          spill and ruin their land, their homes, and for  
15          some their livelihood? Should they not be covered  
16          in the case of death or bodily injury due to the  
17          extreme large volume of toxic gas in this pipeline?

18                       We have yet to have a spill from a pipeline  
19          this large because this is the first time in  
20          history that this enormous amount of toxic oil has  
21          been pushed through the pipelines of this size at  
22          this pressure. It's all a sick experiment, and we  
23          are the unwilling subjects. The last thing I want  
24          to hear is another half-baked apology from Enbridge  
25          saying that it was the worst day in their history.

1           Clearly the facts -- they don't -- the fact is they  
2           don't want to insure for this. Insurance is  
3           expensive. And to them it's expensive because  
4           there is great risk. Insurance premiums reflect  
5           risk.

6           We in Dane and Jefferson County and 14 other  
7           counties are being threatened by a multi-national  
8           corporation that is risking our safety, and yet our  
9           legislature is kowtowing to this corporation  
10          absolving them from responsibility.

11          CHAIR CORRIGAN: You have one minute.

12          MS. MONROE: It is bad enough our land is  
13          going to be snatched by eminent domain for Line  
14          Line 66, made easier by the state legislature. Is  
15          it also reasonable that this company not be held  
16          financially liable for the damages? If it isn't  
17          clear to the Dane County Board by now, the  
18          legislature will attack the County's right to zone,  
19          regardless of what the County Board decides to do  
20          here tonight. Enbridge will extract monetary  
21          penance from the people who dare to oppose them.  
22          We are not dealing with a fair and reasonable  
23          legislature or system. We are dealing with  
24          tyranny, and we can stand up to it with courage or  
25          cower. A governmental body that represents the

1 people must at some point take a stand for the  
2 people. No matter which body takes a stand, no  
3 matter when they do it, the odds are next to  
4 impossible to prevail. But the duty to take the  
5 stand has never been greater. For history will  
6 record our courage or our cowardice on this matter.  
7 I'm asking that the language of the CUP be retained  
8 and that the appeal be rejected. Thank you.

9 CHAIR CORRIGAN: Thank you very much.

10 Next up is Bruce Noble, wishing to speak in  
11 opposition, to be followed by Tom Pyper, who wishes  
12 to speak in support.

13 Bruce Noble.

14 MR. NOBLE: Thank you very much, Madame  
15 Chairman. I'm Bruce Noble. I live in Madison. I  
16 would like to actually veer just a little bit from  
17 my written presentation here to speak a little bit  
18 about Attorney Pyper. I believe that's P-Y-P-E-R,  
19 if I'm not mistaken. He's a partner in a law firm  
20 that's not two blocks from here. And it's my  
21 understanding, and I've seen written material that  
22 will support it, that he led interference for  
23 the -- for the Republicans in the legislature --

24 CHAIR CORRIGAN: Mr. Noble --

25 MR. NOBLE: -- to --

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1 CHAIR CORRIGAN: This is testimony on the  
2 Conditional Use Permit.

3 MR. NOBLE: This is critical because I  
4 think the people here ought to know that he led  
5 interference which really stopped the County --

6 CHAIR CORRIGAN: Mr. --

7 MR. NOBLE: -- Board's action. Okay?

8 CHAIR CORRIGAN: Mr. Noble --

9 MR. NOBLE: I'm ready to go.

10 CHAIR CORRIGAN: -- if you would speak to  
11 the issue.

12 MR. NOBLE: A recent book on climate  
13 change is entitled "Why science will Make all the  
14 Difference." You could substitute maybe  
15 legislative action for science and say, "Why  
16 legislative action will make all the difference."  
17 Well, I'm not gonna buy into either of those two  
18 designations tonight, not in this case anyway. Of  
19 course I believe in science. I believe in  
20 following the law. I think science can be -- and  
21 facts can be game changing. But the difference in  
22 Dane County tonight, and I believe in Paris in  
23 coming days, goes deeper than science. Whether to  
24 accede to Enbridge's corporate greed and genuflect  
25 to big oil around the globe is ultimately a matter

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1 of mortality -- mortality -- to rise above the  
2 usual thinking of whereases and wherefores to seek  
3 a higher level of authority.

4 Gas and oil extraction, transportation, and  
5 utilization accounts for the major share of global  
6 warming. Climate change ends when governmental  
7 bodies like this take moral stands against those  
8 who are hell-bent to damage the planet as we know  
9 it, as well as our grandchildren yet to be born.

10 I ask you to deny Enbridge, to be heroes. A  
11 hero doesn't do what's normal, what seems to be  
12 effective by calculated analysis. Heroes go where  
13 angels tread -- and I didn't misspeak -- where  
14 angels tread. That's where heroes go.

15 Who do we think of when we think of a person  
16 who stands against big business and putting safety  
17 belts in automobiles, who fought against General  
18 Motors? Who do we think of? What person? (No  
19 response heard) Maybe you're not as old as I am.  
20 Ralph Nader. Ralph Nader. Let Dane County be a  
21 Ralph Nader of climate change, of standing up to  
22 Enbridge. I ask you to be my hero.

23 CHAIR CORRIGAN: Thank you, Mr. Noble.

24 Next up is Tom Pyper followed by Aaron Madsen.  
25 Tom Pyper wishes to speak in support.

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1 MR. PYPER: (Inaudible)

2 CHAIR CORRIGAN: Okay. Thank you. Next  
3 up is Mike Pale (ph), wishing to speak in support,  
4 to be followed by Dave Branson wishing to speak in  
5 support.

6 Is Mike Pale here? (No response heard) Maybe  
7 we ran too long for him.

8 Next up is Dave Branson wishing to speak in  
9 support.

10 MR. BRANSON: Hi, I'm Dave Branson. I'm  
11 the executive director of the Building Trades  
12 Council of South Central Wisconsin. I'm asking the  
13 county board to remove the requirements 7 and 8  
14 from Enbridge's permit. Enbridge has been forced  
15 to appeal the Conditional Use Permit for the  
16 Waterloo Pump Station. The CUP has been used  
17 either to prevent or delay construction of the pump  
18 station.

19 Opponents first added environmental insurance  
20 language that wasn't necessary. Enbridge is  
21 responsible for any release and already has more  
22 than 800 million in liability insurance. When  
23 legislation invalidated that requirement, the CUP  
24 was further amended to keep the insurance provision  
25 in place after Enbridge had already begun

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1 construction. The insurance provision introduces  
2 confusion, uncertainty, and unpredictability in the  
3 permitting process. Consequently Enbridge is at  
4 risk of being out of compliance with the CUP even  
5 after the pump station is operational.

6 Infrastructure projects like the Waterloo Pump  
7 Station are important to Wisconsin and to our  
8 economy. They're also important to the many  
9 skilled building trades workers here in Wisconsin  
10 who build and maintain them. The County Board  
11 should remove the insurance provision from  
12 Enbridge's permit. Enbridge has tried to  
13 accommodate all of the requests made of it. This  
14 is a state-of-the-art pipeline. It has many safety  
15 features build into it. The welders that are out  
16 there making the welds for this are the  
17 best-trained welders that we have. And pipelines  
18 have been around for the last 60 years, and they  
19 haven't been questioned much up until now. So I'm  
20 asking, please remove requirements 7 and 8. Thank  
21 you.

22 CHAIR CORRIGAN: Thank you, Dave.

23 Next up is Mary Elliott wishing to speak in  
24 opposition to be followed by Kate Schulte. Is Mary  
25 here? (No response heard)

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1 MS. SCHULTE: Ma'am, I'm Kate Schulte.  
2 I'm not going to be speaking.

3 CHAIR CORRIGAN: Kate Schulte, you won't  
4 be speaking? Okay.

5 Mary. And I'll just say, Peter Anderson is up  
6 next then.

7 MS. ELLIOTT: I want to thank the  
8 organizers here. My name is Mary Elliott, and I  
9 live in Madison. And I'm a member of 350 Madison,  
10 a member of the Tar Sands group there, and also  
11 with Sierra Club. I'd like to say that there is a  
12 reason for these matters to come before,  
13 originally, the Zoning and Land Regulation  
14 Committee. This is because zoning can help protect  
15 land, property, farms, and taxpayers in prime  
16 agricultural land, which is what we're talking  
17 about here. The Conditions in question are the  
18 key. These can't be swept under the rug as if they  
19 are not needed at this point. I'd like to make  
20 five main points.

21 Ag-1 land requires protection. The ZLR was  
22 diligent, and I congratulate them. They brought in  
23 an expert witness, who I may add was the gentleman  
24 who did the post-Chernobyl insurance. So he knows  
25 environmental insurance. And it was his view, as

1 well as that of the committee, this insurance was  
2 needed. That is not a fiction.

3 Number 2, the only reason the CUP was issued  
4 at all was that a process was in place to protect  
5 land and properties, that is the EIL insurance.  
6 The CUP would not otherwise have not been issued.  
7 Or else possibly another assurance measure would  
8 have been put in place otherwise, a trust fund or  
9 something else. Something was needed, and that's  
10 why it was passed.

11 Three, a possible spill, given that this  
12 pipeline will have 2.1 million gallons per hour of  
13 tar sand spill in the case of a full rupture, is a  
14 very severe risk. The cost of cleaning up tar  
15 sands is \$29,000 per barrel for tar sands compared  
16 to \$2,000 per barrel of normal crude oil. May I  
17 remind you that regardless of what Enbridge says  
18 about their insurance, they do not have adequate  
19 environmental insurance. They have some sudden and  
20 accidental insurance, but Kalamazoo was not even  
21 turned off until it spilled for 17 hours. So much  
22 for sudden and accidental. They already knew they  
23 had defects in the line. Kalamazoo cost  
24 \$1.2 billion more than their current insurance.  
25 And as a master limited partnership, Enbridge does

1 not actually have very deep pockets as a true  
2 corporation would have.

3 Number four, sometimes it's good to be able to  
4 explain things to a third grader. And I think that  
5 there are third graders living here in Madison, you  
6 may know one yourself, who it would boggle their mind  
7 to appreciate the fact that the legislature passed  
8 something that was to benefit -- who? And who  
9 didn't have any influence? who had nothing to do  
10 with this? The legislature just dreamed this up  
11 for Exxon? No. Exxon doesn't have a pipeline  
12 here.

13 Number five, I've looked to see if there's a  
14 pipeline that's going to be carrying more than this  
15 one. I found one in Russia. It's going to have  
16 1.3 million barrels per day in that pipeline. I  
17 don't think that's something that we want to mimic.  
18 That's not a safe thing. And I would view that  
19 there is probably not a diligent ZLR there making  
20 sure that whatever Russian company it is that has  
21 that pipeline, they probably aren't going to be  
22 requiring environmental or other insurance from the  
23 company there either. Thank you for your  
24 attention.

25 CHAIR CORRIGAN: Thank you, Mary.

1           Next up is Peter Anderson. And then we're  
2 going to take a break and see if there's any  
3 questions for any of the members of the public that  
4 have spoken.

5           MR. ANDERSON: Thank you, Chairman  
6 Corrigan. I'm the one who wrote that brief sent to  
7 you very late on Tuesday night. I apologize for  
8 not giving you much time to read it, but I hope you  
9 understand that we're just the volunteers and doing  
10 the best we can. But, I think apology is probably  
11 unnecessary because the discussion that you have  
12 had shows you understand the single issue before  
13 you is being a judicial-type decision, not a  
14 legislative one. The single issue is: Is the  
15 fabrication put forward repeatedly, as if  
16 repetition makes truth, that on October 9th the  
17 zoning committee issued a new CUP? The minutes  
18 don't show it. When the lawyer at that meeting  
19 tried to create confusion by saying you issued a  
20 new one, they were corrected by the committee not  
21 to say that. That's not what's happening. And  
22 they keep repeating it as if, just by the act of  
23 repetition, a fallacious, a duplicitous, a  
24 dishonest, a fabricated recitation of the past  
25 becomes true. So long as you understand, as you

1 do, that nothing changed after April. Mr. Lane, in  
2 his good faith effort to try to avoid confusion to  
3 the best he could, and he acted outside the law.  
4 And actions outside the law are held uniformly in  
5 court to have no legal effect. Any reliance that  
6 they say they put on that -- the law says you may  
7 not. You're a landowner petitioner for a permit --  
8 is that it has to be understood in law to  
9 understand when an official is operating outside  
10 it. They have no rights. So this is an  
11 open-and-shut case unless you are gonna accept this  
12 fabrication. I don't believe anyone here is.

13 That said, the second and only other point I  
14 want to make is: some people have a curiosity --  
15 why are we going through all this if it can't be  
16 enforced? In that regard, the question about what  
17 happens when the legislature passed that law for  
18 the benefit of Enbridge, and of course Enbridge had  
19 nothing to do about it, that doesn't have the  
20 effect of removing the provisions that the County,  
21 or perhaps can enforce, all that that does is say  
22 that you go back to what your ordinance provides.  
23 And your ordinance in 10.255(h) say about CUPs,  
24 which are not building permits -- building permits  
25 confer vested rights because you're entitled to

1           them. No one -- no one is entitled to a CUP. And  
2           if I may read from it, "No application for a CUP  
3           shall be granted unless the following six  
4           conditions can be met."

5           We know from this company, which has had the  
6           worst accident record in the U.S. history, which  
7           has lied repeatedly to Congress and to everyone  
8           else -- and as I expect it to be (inaudible) truth  
9           that we should rely on their misrepresentations  
10          again? We are entitled. And those conditions make  
11          it -- require the committee to get financial  
12          assurances that mean something. So if they want to  
13          have a situation where these things that the County  
14          can't enforce removed, they have to go back to the  
15          committee and say, what else are you going to put  
16          there to give the same kind of assurance for Dane  
17          County as people and as taxpayers so they don't  
18          have to bail out these guys in 25 years when they  
19          go broke, just like the coal companies are going  
20          broke right now?

21          So the remedy that they are seeking is not to  
22          remove. You have no power to remove it unless  
23          you're going to repeal your ordinances. Your  
24          ordinances say you cannot issue this unless those  
25          Conditions are met, those criteria are met. And

1           you'll have the fact-finding people, the  
2           (inaudible) who've told you that requires financial  
3           assurances. If they are unhappy with this residuum  
4           hanging over them -- their remedy is not to try and  
5           remove it -- it can't do that -- is to go back to  
6           zoning and say, what are you going to put in there  
7           in its place that is not proscribed by the  
8           statutes? And that's their remedy -- not to come  
9           before here.

10           And lastly, I should just say very vaguely  
11           that the law says only the County may not enforce.  
12           It doesn't say thinking about anyone else. And  
13           with that, I'll be glad to answer anymore questions  
14           when you get to the cycle.

15           CHAIR CORRIGAN: Thanks, Mr. Anderson.

16           Are there any questions for any of the  
17           individuals who have spoken so far from the public?  
18           Supervisor Veldran.

19           MR. VELDRAN: Thank you, Madame Chair. I  
20           have a question for Dave from the Building Trades.  
21           I'm sorry, I forgot -- I didn't get your last name.  
22           I appreciate it.

23           I just had a question: Right now, how many  
24           members are working or would be working if these  
25           were moved? Is it stopping --

1 MR. BRANSON: Right now, my understanding  
2 is they're doing some site work there. So there  
3 aren't too many members out there working. When  
4 the project gets going -- we have not had a pre-job  
5 yet -- so I really don't know I have a good answer  
6 for you.

7 MR. VELDRAN: Are you doing any work on  
8 any of the -- I don't know -- I can't remember if  
9 the other pumping stations have to be -- I think  
10 they all had to be improved. So do you have any  
11 work on -- any history or any knowledge of what  
12 was -- of the people who worked on those?

13 MR. BRANSON: I --

14 MR. VELDRAN: Do you know if there's any  
15 other pumping stations along --

16 MR. BRANSON: With the other 12 -- you  
17 know, our jurisdiction here for South central  
18 Wisconsin --

19 MR. VELDRAN: Right.

20 MR. BRANSON: -- is only seven counties.

21 MR. VELDRAN: I understand.

22 MR. BRANSON: So with the other 12 pump  
23 stations --

24 MR. VELDRAN: Right.

25 MR. BRANSON: -- they weren't in our

1 jurisdiction. So I wasn't involved. So I really  
2 don't know how many people were over there.

3 MR. VELDRAN: That's fine. I just  
4 thought maybe you knew from, you know, contact in  
5 other areas.

6 MR. BRANSON: I wish I had a better  
7 answer for you.

8 MR. VELDRAN: That's fine. So what do  
9 you -- do you have anticipation of what -- how many  
10 folks might be working? I mean, have you done  
11 anything that's close to this?

12 MR. BRANSON: You know, I --

13 MR. VELDRAN: Or is it unique? And  
14 that's, I think, why this gets such attention?

15 MR. BRANSON: Yeah. It I don't really  
16 have a good answer for you on that. I know that  
17 there's gonna be many crafts needed on there.  
18 There's gonna be operating engineers and laborers,  
19 carpenters, electricians, steamfitters. And I  
20 would assume that's it's gonna take a substantial  
21 amount of people.

22 MR. VELDRAN: Sure, thanks. Just one  
23 more point on that: So would these be considered  
24 long term? Or once that pump station's done,  
25 everyone's --

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1 MR. BRANSON: well --

2 MR. VELDRAN: I mean, I guess, it's like,  
3 you know, building the building, I understand --

4 MR. BRANSON: So with the building  
5 trades, we make our living off of temporary  
6 assignments.

7 MR. VELDRAN: Okay.

8 MR. BRANSON: I know everybody's fond of  
9 calling them temporary jobs, but they're not  
10 temporary jobs. They're family-supporting jobs.  
11 We have temporary assignments. When we're done  
12 with one assignment, we go to the next assignment.  
13 That's how we earn our pay. And that's how we put  
14 into our pension and put into our healthcare.

15 MR. VELDRAN: Yeah, thanks. I totally  
16 understand that.

17 CHAIR CORRIGAN: Thank you, Supervisor  
18 veldran.

19 Supervisor Ripp. Oh, I'm sorry, Supervisor  
20 Kolar. I keep forgetting --

21 MS. KOLAR: Somehow, we got switched  
22 tonight. So I'll use this one. How's that? Thank  
23 you chair, Corrigan. I do have a question for  
24 Attorney Pyper.

25 I think you were at some of the ZLR Committee

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1 meetings, but maybe you can verify for me whether  
2 or not Enbridge had legal representation at most,  
3 if not all, of the ZLR committee meetings?

4 MR. PYPHER: I only attended one. I know  
5 that Angie Black from our office attended. And I  
6 know that Jeff Vercauteren attended. I assume it  
7 was most, but I'm not sure.

8 MS. KOLAR: So you would agree that  
9 Enbridge was a part of the committee deliberations  
10 at each meeting throughout October to April when we  
11 met and had questions and dialogues and so forth?

12 MR. PYPHER: Enbridge was part of the  
13 process, yes.

14 MS. KOLAR: Thank you. And also then,  
15 Enbridge was well aware of the concern about, and  
16 has been mentioned tonight, a spill -- and I -- a  
17 spill that occurred in Michigan that cost  
18 1.2 billion to clean up, which according to you  
19 tonight, there's 4 billion in the federal trust  
20 fund now, which -- so a spill like that that  
21 occurred in Michigan would be a quarter of that  
22 fund. And that would be -- happened in just one of  
23 50 states. So Enbridge was a part of that  
24 conversation. And I know it wasn't you, but it's  
25 no surprise that an Enbridge person, that I recall

1 speaking to personally -- and I said the word that  
2 was in my mind was Kalamazoo -- it's the Kalamazoo  
3 River. And so I understand, and I have read the  
4 appeals, that the position in the appeals is that  
5 Enbridge is making -- is taking a position that the  
6 ZLR Committee could not ask for the additional  
7 insurance. But I again, as you have confirmed,  
8 Enbridge was a part of that conversation. And  
9 thankfully for your generosity, Enbridge paid  
10 actually for the research on the insurance. And  
11 has been documented also in your appeals, that  
12 the --

13 CHAIR CORRIGAN: Supervisor Kolar, are  
14 you going to ask a question on this?

15 MS. KOLAR: Yes. Federal pipeline --  
16 your position is -- is your position that though  
17 you were a part of the insurance deliberations,  
18 your position now is that we can't ask for  
19 additional insurance because the Federal Pipeline  
20 Safety Act?

21 MR. PYPER: I believe that is true, but  
22 that isn't the point we are pushing right now  
23 because there is a state law that says it cannot be  
24 imposed, and it's preempted by state law. So  
25 irrespective of whether this is safety regulation

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1 and preempted by PHMSA, the Pipeline Hazardous  
2 Safety Administration -- we do believe that -- but  
3 the more fundamental issue is it can't be imposed  
4 because of Wisconsin law.

5 MS. KOLAR: Okay, you've just said that.  
6 But now back to the two appeals. I'm confused by  
7 what you've just said. Because why are we here  
8 tonight? why do we have this appeal? we're  
9 here -- from what you've just said, we're here  
10 because you are taking the position -- you,  
11 Enbridge, are taking the position that a CUP that  
12 was approved in April in this room with cheers from  
13 both sides, all parties -- labor, Enbridge, and  
14 environmentalists -- that we reached, in my mind,  
15 the best decision that could be made knowing that  
16 Enbridge would be expanding the pipeline but that  
17 also because of the potential for a spill, and  
18 knowing we could not do anything about a pipeline,  
19 but we had a moral obligations as elected officials  
20 representing Dane County to ensure the safety of  
21 the community that okay, what can we do? And you,  
22 Enbridge, were a part of additional insurance  
23 deliberations. And we came to a conclusion of  
24 25 million. So for clarity tonight, maybe then say  
25 for me again that we're here tonight because of the

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1 wisconsin legislature changing what we can do? Or  
2 because Enbridge is appealing and saying that we  
3 don't have the authority to ask for additional  
4 insurance?

5 MR. PYPER: I don't remember the rounding  
6 of cheers when the CUP was issued in April.

7 MS. KOLAR: Maybe it was just big sighs  
8 of relief?

9 MR. PYPER: We -- we appealed it  
10 immediately.

11 MS. KOLAR: Yes, you did.

12 MR. PYPER: And we challenged at that  
13 time the imposition of the insurance requirements.  
14 And we never dropped that. Our argument changed  
15 once the new law was put in place because really it  
16 was no longer that it would interfere with  
17 interstate commerce if it was imposed, because it  
18 couldn't be imposed -- wisconsin state law could  
19 not. And you don't get to the federal preemption  
20 issue if it's preempted by state law. So the  
21 nature of the arguments have changed, but we --  
22 Enbridge has never applauded the inclusion of the  
23 insurance requirements in any CUP. It's challenged  
24 those from day one.

25 MS. KOLAR: would it not have been more

1           advantageous to Enbridge to speed up the process,  
2           maybe make some point in the decision or make the  
3           decision earlier than if -- I guess why would  
4           Enbridge pay for the insurance study in the first  
5           place if you then would, after the CUP has been  
6           approved, appeal that insurance decision?

7                   MR. PYPER: We didn't have anyplace to  
8           appeal it until the CUP was issued. And then we  
9           have a statutory period of time, or an ordinance  
10          period of time, in which to appeal it. I mean, we  
11          always -- correct me if I'm wrong -- but it was  
12          always our position -- I remember when Mr. Dibdahl  
13          testified in front of the committee. I testified.  
14          And Enbridge's position at that point was: No,  
15          they shouldn't be imposed. But until they were in  
16          April, we didn't have any ability to speed it up.  
17          Speeding it up? We filed the application in  
18          August. And we didn't get a decision in April.  
19          And I don't know how we could have taken steps to  
20          speed up the process. We would have liked to. But  
21          as soon as the decision was made that included the  
22          insurance requirements, we undertook the appeal  
23          promptly.

24                   MS. KOLAR: And again, I would just make  
25          the point that -- though, you were a part of the

1 insurance conversation?

2 MR. PYPER: Yes.

3 MS. KOLAR: And you actually paid for the  
4 insurance study?

5 MR. PYPER: Yes.

6 MS. KOLAR: Thank you.

7 CHAIR CORRIGAN: Thank you, Supervisor  
8 Kolar.

9 MR. PYPER: Is there anything more you  
10 need from me?

11 CHAIR CORRIGAN: You can sit back down  
12 unless somebody else has a question for you.

13 Supervisor Veldran.

14 MR. VELDRAN: I do have a question for  
15 Mr. Pyper. Sorry. I wasn't sure if we could come  
16 back to you. I just have this question, and it's  
17 to follow up on part of Supervisor Kolar's  
18 question: The fed fund, the 4 billion -- 4.4 --  
19 and it's a -- 300 million gets put in annually?  
20 Did I see that? I think I saw that in somebody's  
21 brief.

22 MR. PYPER: I'm sorry. I can't answer  
23 that question.

24 MR. VELDRAN: Okay. That's fine. Can  
25 any company that's part of the -- I guess if it's

1 PHMSA, can they take whatever they need for a clean  
2 up then? Because we talked about the Kalamazoo --  
3 obviously it's always been known to, you know, many  
4 of us that that actually that was a quarter of that  
5 fund. And as Supervisor Kolar said, you know, it's  
6 one of 50 states or a quarter of what could be  
7 three or four, you know, easily amounts that would  
8 be drawn out of that. Is that part of the -- is  
9 that part of the argument that we have -- you have  
10 enough insurance? I understand that you're saying,  
11 No, it's because of the state legislature.

12 And I understand that. But do you understand  
13 what I'm saying? Is that a fund that everyone can  
14 tap into forever? I mean, obviously Congress can  
15 appoint -- put more money in it.

16 MR. PYPHER: Nope. Congress doesn't put  
17 money into it.

18 MR. VELDRAN: Oh, is that right.

19 MR. PYPHER: It's the industry.

20 MR. VELDRAN: Okay.

21 MR. PYPHER: Fully funded by the industry.  
22 No tax dollars goes into it.

23 MR. VELDRAN: Oh, okay.

24 MR. PYPHER: And let me clarify. Yes,  
25 there was a \$1.2 billion cleanup charge in Marshall

1 around the Kalamazoo Grand River. Enbridge paid  
2 every dime of that. No money out of that trust  
3 fund was used for that. And in fact, Enbridge has  
4 never said, well, landowner you need to wait until  
5 our insurance company will pay. Enbridge has  
6 always in its history paid dollar one for every  
7 dime of clean up and then went back to its  
8 insurance company to indemnify itself. So it was  
9 always on the risk of getting that insurance  
10 money -- no landowner was ever at risk on the  
11 insurance -- and has always paid every dime. And  
12 Enbridge has never used one -- to my knowledge,  
13 there are a couple of landowners that there was a  
14 dispute as to whether they were supposed to be  
15 paid, whether they had any real money coming from  
16 them. And I believe, and this is subject to check  
17 because I wasn't involved with it because it was in  
18 Michigan.

19 MR. VELDRAN: Sure.

20 MR. PYPHER: But I believe they made a  
21 separate claim to the fund. But the fund is there.  
22 If a responsible party does not do the clean up,  
23 then the money will be paid out of that fund. And  
24 then the fund will go back against that responsible  
25 party to try to seek indemnification. But it's

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1 important to note here, Enbridge has never used the  
2 money in that fund. But it is available if  
3 Enbridge didn't do what it did in Michigan, which  
4 is pay every single dime. And it paid -- well, my  
5 math's bad -- but 1.2 -- half a million dollars.  
6 It had 700 million then. It paid 1.2 million for  
7 the clean up, and then it had to go back to its  
8 insurance company to get its money back.

9 MR. VELDRAN: Was it fully paid back by  
10 the insurance company? Do you know?

11 MR. PYPER: I think that the last I  
12 heard -- and so this is again subject to check --

13 MR. VELDRAN: That's fine.

14 MR. PYPER: -- that there was one  
15 policy -- because there's multiple policies  
16 needed -- that was questioning whether it fell  
17 within the terms of the policy. And that was for  
18 about a hundred million dollars. But again, that's  
19 Enbridge's risk. That wasn't the landowner's risk  
20 because Enbridge paid for all that clean up. So  
21 maybe Enbridge will or will not, if it's still  
22 pending, get that money back. But it was never put  
23 at the risk of the landowners.

24 MR. VELDRAN: Okay. Thank you.

25 CHAIR CORRIGAN: Supervisor Krause.

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1                   MS. KRAUSE: Thank you, Madame Chair.  
2                   Question for Mr. Anderson. Thank you. In your  
3                   remarks, it seemed that you were implying that  
4                   Enbridge had some influence in the State's decision  
5                   making. I wasn't following that process. I was  
6                   wondering if you could tell us what you know about  
7                   whatever type of involvement they may have in that?

8                   MR. ANDERSON: Well, I mean, I prefer --  
9                   all I can say is speculation. And it's not fact.  
10                  And it's speculation, which I just stated in our  
11                  brief in more specifics. I prefer, if I could,  
12                  Supervisor, to suggest that all the other stuff  
13                  that's being put out as well is collateral to the  
14                  single issue you have. It's getting late. And if  
15                  I may make a suggestion. The only issue you really  
16                  have before you, as I understand it, is: Did the  
17                  committee, the zoning committee, on October 9th  
18                  issue a new CUP post-legislation? Or did it just  
19                  say to the zoning administrator, the one you issued  
20                  illegally didn't occur and we are back to April?  
21                  That's all you have to decide. I think it  
22                  certainly would make us mad if they're lying to us  
23                  and they claim they didn't and did have something  
24                  to do with it. But being mad is not the basis for  
25                  a decision. It's just collateral. And so I would

1 suggest we go on -- it's my preference if you just  
2 go on to deal with the merits, the legal merits.  
3 And did the Committee change or just go back to --  
4 on October 9th? The record is clear. The  
5 disassembling is clear. I think you should just go  
6 to your decision.

7 MS. KRAUSE: Thank you. I accept that.

8 CHAIR CORRIGAN: Thank you, Supervisor  
9 Krause. I don't see anyone else seeking  
10 recognition to ask questions of this first group.  
11 So -- and I included the representatives of  
12 Enbridge -- a lot of questions for them, but we're  
13 going to move on to the next group of  
14 public representatives -- public -- members of the  
15 public wishing to speak, and then we'll allow  
16 questions of them. And then we'll move on to the  
17 debate.

18 So next up is Joan Arnold, wishing to speak in  
19 opposition, to be followed by Harry Bennett wishing  
20 to speak in opposition.

21 MS. ARNOLD: Thanks for listening. I'm a  
22 retired Army colonel. And I spent a lot of times  
23 in a lot of places, or a lot of time in a lot of  
24 places, I should say. And I guess it comes back to  
25 the basic question -- I had some other stuff here,

1 but you all did a job of -- the zoning committee --  
2 of approving something with an honest attempt to  
3 protect us, the taxpayers of the county in the case  
4 of an oil spill or accident to make sure that those  
5 subsequent costs were covered. That was an honest  
6 attempt. You made that decision back in April.  
7 Period. You didn't change that. Nothing changed  
8 that except, you know, the time that it took to get  
9 to where we are today.

10 So I understand where he's saying about  
11 uncertainty, but we've got uncertainty too. That's  
12 exactly why we need the insurance is because who's  
13 the one that's gonna pay for it if there's an  
14 accident in both land being ruined et cetera,  
15 et cetera? And I'm a farmer now after the Army.  
16 And I understand everything about value of life and  
17 the value of our land and clean water. And that's  
18 all we have left. And that's how we subsist --  
19 sustainability.

20 You know the uncertainty -- yeah, money. It's  
21 gonna cost us money down the road too, our  
22 livelihoods. They've got money to throw away at  
23 advertisements I look at up at the farm. Enbridge,  
24 oh, this big thing. They're paying money for  
25 advertising, but they can't pay for insurance?

1           what do they need advertising for? They're getting  
2           sabotage -- they're getting brainwashing here.  
3           It's brainwashing us to think that they're so  
4           great, that we can't -- just like the Koch Brother  
5           ads. You know they are tied with everything that  
6           we touch. And that's the danger, because they can  
7           control us in that regard. I know a lot about, you  
8           know, trying to convince people, dropping leaflets  
9           to have them change their mind and to brainwash  
10          people.

11                 So you know you made your decision already.  
12          Something above you tried to negate that decision  
13          because it didn't go to whoever was filling their  
14          pockets. You know if I had an accident, if you  
15          have an accident, who pays for that? I or my  
16          insurance pays for it. And you know the Governor  
17          and the legislatures that put that bill forward in  
18          that budget rider? You know, they're the ones  
19          that's saying, well, the taxpayers aren't gonna  
20          subsidize it if I have that accident. So why  
21          should I, as your -- you, as a taxpayer, why should  
22          we be subsidizing big corporations? What's the  
23          difference? How come the small-crime people are  
24          the ones that pay, but the big-crime people that  
25          cost a lot of lives and money don't? Because they

1 got -- they got the pockets of the people that are  
2 in power. Then when are we, as the local people,  
3 going to stand up to that? We made our decision.  
4 That decision was made. And thank God you made  
5 that decision.

6 CHAIR CORRIGAN: You have one more  
7 minute.

8 MS. ARNOLD: And all we need to do is  
9 stick by it. And that needs to be retained for our  
10 kids' benefit, our grand kids' benefit because we  
11 made that decision. And stick by it.

12 CHAIR CORRIGAN: Thank you, Joan. Next  
13 up is Harry Bennett to be followed by Kathleen  
14 Kearns (ph). And Harry Bennett wishes to speak in  
15 opposition.

16 MR. BENNETT: Thank you for the  
17 opportunity to speak tonight. I've spoken a couple  
18 of other times here on the same issue. And I'm  
19 here to ask that we retain the insurance  
20 requirement on the CUP.

21 One of the contentions that we had during the  
22 testimony, and there were many reasons to have  
23 that, but one of the reasons for the insurance was  
24 the -- the economic instability that can occur in  
25 companies no matter how big, particularly in a

1 commodity like oil, a global commodity. And I  
2 think that the -- that has become so much more true  
3 since we gathered here when we started talking  
4 about this some months ago.

5 Last month Enbridge laid off 500 to 600  
6 employees -- not contractors, employees, people  
7 that work for Enbridge. The price of crude oil is  
8 going down and continues to go down. I just heard  
9 a report today there's apparently a meeting of  
10 OPEC. There is no desire on the part of OPEC to  
11 cut back on the oil that they're exporting into  
12 this country and other countries. Oil is a global  
13 commodity, and it goes to the lowest denominator  
14 when there is a big supply. And there is a big  
15 supply. And the Middle East is in a position where  
16 it needs a lot of revenue from that oil.

17 The oil that Enbridge transports is the most  
18 expensive oil to extract. They tried in the 1980s,  
19 or early 80s, to do the tar sands oil then. Saudi  
20 Arabia turned on the taps. We had cheap oil. Tar  
21 sands went into mothballed. I think there's a  
22 possibility that we could see that same thing  
23 again.

24 Now, you want insurance for those rough spots  
25 when the company's no longer flush and they can't

1           come in and, you know, buy their way. And maybe  
2           they have to extract themselves from situations by  
3           bankruptcy or some other vehicle. Insurance will  
4           protect those on the ground if it comes from a  
5           third party and it's legitimate insurance that's  
6           written by an actuary that looks at the risks  
7           involved and then a premium is paid. That's what  
8           we asked back when we started this, and it's still  
9           real today. And the financial situations of this  
10          industry dictate that if you want to be protected,  
11          you better have insurance. Because I'm a  
12          businessman. I'm a trader in agriculture  
13          commodities. And if there ain't no margin, there's  
14          no business. And if you're at the high end of the  
15          extraction cost, you may very well be out of  
16          business. And there'd be nothing to put in that  
17          pipeline.

18                 I think we did -- we did an exercise here  
19                 where we came out, they came out. They came out  
20                 basically on salary. We came out as volunteers  
21                 because we felt impassioned about this issue. And  
22                 we came and presented our case. You folks made a  
23                 decision that I feel like reflected a lot of what  
24                 you heard from us, that there were real risks and  
25                 that the insurance would be something that would be

1 good.

2 CHAIR CORRIGAN: One more minute.

3 MR. BENNETT: what happens is that  
4 Enbridge, to double down, they go behind our backs.  
5 And it may -- we didn't hear the figure when the  
6 engineer was giving the costs that they've sunk  
7 into this project, but I'm sure there were some  
8 costs to get that law. And I'd like to know what  
9 that was because they had lobbyists. I know they  
10 had a lobbyists and several attorneys. So if there  
11 was a company in the United States that had done  
12 the same thing in Canada, my sense of fairness  
13 would hope that that company would never be allowed  
14 to do business again in Canada. And I think we  
15 should hold the same standard for a company from  
16 Canada that wants to do business here. They cannot  
17 be allowed to come in and corrupt our system and go  
18 around our laws when we are only asking that they  
19 take part in a procedure that our democratic system  
20 allows us. And that is that citizens can come out  
21 here, be heard, decisions can be made by a party of  
22 governance. Thank you.

23 CHAIR CORRIGAN: Thank you very much.  
24 Next up is Kathleen Kearns wishing to speak --

25 MS. KEARNS: I'm not going to speak.

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1                   CHAIR CORRIGAN: You're not going to  
2 speak? Okay.

3                   Next up is Carol (sic) Whiting wishing to  
4 speak in opposition to be followed by Tim Jensen.  
5 Oh, Carl. I'm sorry.

6                   MR. WHITING: Oh, that's okay. It's my  
7 writing. It's not your interpretation. I'm gonna  
8 take the risk -- thank you for being here so late  
9 on an issue that is very concerning to some of us  
10 here in the gallery listening -- of -- take the  
11 risk of telling you a bedtime story. But it's a  
12 story that might keep you up at night.

13                  And actually that's where we begin, with a  
14 wealthy powerful benefactor tossing and turning in  
15 his bed as the hours tick on. He's trying  
16 desperately to think of a way to help the  
17 oppressed, particularly that vanishingly-narrow  
18 class of the oppressed represented by oil pipeline  
19 operators in the state of Wisconsin who are  
20 staggering under the burden of a local requirement  
21 that they purchase the necessary insurance to  
22 properly clean up any mess they make as decided by  
23 an independent expert. But how? "How to help?"  
24 thought the benefactor.

25                  And this is where our story goes a little

1 dark. Because laying in that rumpled bed, the  
2 wealthy and powerful altruist hit upon the idea of  
3 using a 999 Bill. And he or she or they -- maybe  
4 it was a big bed -- rushed down to the state  
5 legislature just in time to be successful. But  
6 when they went to affix their signature, alas there  
7 was no place to sign. Such a loss for humanity.  
8 For if we could only identify this person or  
9 persons, we could implore them to use their  
10 miraculous gifts in Paris to get a stronger climate  
11 change accord or something like that. And that  
12 should be where our story ends. The giant pipeline  
13 company would no longer be shackled to the  
14 appropriate environmental insurance requirements  
15 and could live happily ever after.

16 But like any appropriately-frightening bedtime  
17 tale, this one gets a little darker. Because now  
18 the giant pipeline company is back, demanding not  
19 only that the right of the County to protect its  
20 flora, its fauna, and its citizenry be forfeited;  
21 but indeed that any trace of it should be expunged  
22 from the record. why? why would a limited  
23 liability partnership with so many irons in the  
24 fire be concerned with a ragged little hole in a  
25 trampled community rights document? And then it

1           dawned on me. There's gonna be a giant new  
2           pipeline coming to town. And although any County's  
3           successful bid to protect its member was  
4           frightening to that pipeline giant, if their  
5           massive line were to ever blow out, well, the  
6           second, almost equally awful thing, would be to  
7           have any evidence on record that the County had  
8           ever tried to protect its citizens.

9           That wrinkled scrap ripped out of our  
10          collective rights isn't for you, Enbridge. It  
11          never was for you -- anymore than that  
12          ever-expanding tar sands freeway through our county  
13          was ever for us. Fresh from your quiet work to  
14          create the largest tar sands pipeline in the  
15          Western Hemisphere, you have announced to investors  
16          and then denounced to the public and then  
17          re-announced again to the business community that  
18          you plan to twin Line 61, modestly suggesting that  
19          it will carry an additional 800,000 barrels per  
20          day, which is roughly equivalent to the canceled  
21          Keystone Pipeline seen not to be in our national  
22          interest.

23          But given your track record, we think that  
24          800,000 barrels a day, staggering as that figure  
25          may be, is only the camel's nose under the tent.

1           Because Line 61 started out at a mere  
2           400,000 barrels a day. And since then, it has  
3           quickly tripled in size. This time, hearing the  
4           snufflings of an 800,000-barrel camel nose, we're  
5           more than a little worried about the size of the  
6           entire beast lurking outside.

7                        With the construction of this beast looming  
8           just to our east, it makes good sense that rather  
9           than leaving a ragged hole torn from the county's  
10          collective rights, your organization would like,  
11          here in this body of democratic government, to  
12          apply a little selective amnesia.

13                      CHAIR CORRIGAN: You have one minute  
14          left.

15                      MR. WHITING: So that's when the next  
16          inevitable rupture occurs. It can be a brand new  
17          worst day in all of our lives. And it will be  
18          unsullied by that nagging paper trail, documenting  
19          of legal efforts of a community who once stood up  
20          to demand the proper protection should they ever  
21          find themselves in a rising pool of oil. That  
22          wrinkled scrap of our rights, unenforceable as your  
23          miraculously-invisible friend may have rendered it,  
24          belongs to us, all of us who must live with the  
25          increasing threat of this expanding corridor over

1           our lakes, our rivers, our land, our lives, and our  
2           future.

3                       By your actions in this chamber, you have  
4           shown that the undemocratic actions of an  
5           international conglomerate are clearly not in our  
6           national interest and that by coming back to sweep  
7           up any evidence of this trampling of rights, your  
8           actions are indeed a danger to the local democracy  
9           everywhere. Wisconsin never signed up to be the  
10          nation's tar sands freeway --

11                      CHAIR CORRIGAN: You're at five minutes.

12                      MR. WHITING:    -- at least not the  
13          Wisconsin I know. I suggest we keep our scrap of  
14          paper. And to all a good night.

15                      CHAIR CORRIGAN: Thank you.

16                      Next up is Tim Jensen (sp), who wishes to  
17          speak in opposition, to be followed by Susan  
18          Nossal.

19                      MR. JENSEN: Good evening, my name is Tim  
20          Jensen. And I'm proud of you folks that are here  
21          and proud that you represented me so well over the  
22          years. And I wish I was as eloquent and  
23          knowledgeable as people who have spoken before me.  
24          I'm only qualified to be here because I live in  
25          Medina township. I live a half mile from the new

1 operation. It's becoming bigger all the time. I  
2 don't feel comfortable with them being my neighbor.  
3 I don't feel comfortable with my property rights --  
4 or property values going down. I built the house  
5 that I'm living in. I built it with my own hands,  
6 raised my kids there. And I'm proud -- I built it  
7 better than this. I'm proud of having done that,  
8 and I'd like that little corner of Medina to stay  
9 the way it is. I know that's impractical, but I'm  
10 proud of you folks. And I'm proud that you're not  
11 exposed to the same pressures that our state  
12 legislators are apparently exposed to, where they  
13 don't represent -- I don't feel like they represent  
14 me in some of the things they do anymore.

15 And I'm proud to say that you guys are still  
16 in here working for us. And I want to thank you  
17 for doing that and thank the people that have  
18 spoken before me tonight. Thank you.

19 CHAIR CORRIGAN: Thank you.

20 Next up is Susan Nossal to be followed by  
21 Cassie Steiner. Susan is wishing to speak in  
22 opposition.

23 MS. NOSSAL: Can I share my time with my  
24 boyfriend (inaudible)?

25 CHAIR CORRIGAN: Pardon me?

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1 MS. STEINER: Can I share my time with  
2 (inaudible)?

3 CHAIR CORRIGAN: You have five minutes  
4 total. So you can --

5 MS. STEINER: Yeah. So --

6 UNIDENTIFIED SPEAKER: I'm (inaudible),  
7 and I've written in in opposition.

8 CHAIR CORRIGAN: Have you -- excuse me.  
9 Have you filled out --

10 UNIDENTIFIED SPEAKER: Yes, I did. And  
11 I -- and I wrote in opposition that I wasn't going  
12 to speak, but all I just wanted to say in just a  
13 short piece is just thank you, you know. And I  
14 just hope that you continue with your clarity. I  
15 appreciate your clarity of thought and what you've  
16 done in the past. And you honor the history of the  
17 decisions you've made to this date and that, you  
18 know, you've made a special note that, you know,  
19 what has happened -- but just honoring what you've  
20 done. It's not going to change anything. You  
21 didn't do anything criminal. You took good action,  
22 and just let that stand as history. And nothing  
23 really changes. They still put in what they put  
24 in, but we know the history of how this has  
25 evolved. So just thanks a lot. And Susan -- just,

1           it's very moving, but player (ph) time is greatly  
2           appreciated (inaudible).

3                       MS. NOSSAL: And I just wanted to speak a  
4           few words, just as a Dane County resident.

5                       Oh, thank you very much.

6                       I'm just speaking as a Dane County resident,  
7           but I'm very highly concerned, very highly  
8           concerned about the potential of a spill from the  
9           Enbridge, Wisconsin Pipeline, especially with this  
10          expanded capacity and especially we've heard from  
11          some of the people right along the pipeline -- and  
12          the health and well being of people. Animals,  
13          plants can't speak. There are beautiful, natural  
14          areas at risk. And while the -- the insurance  
15          doesn't insure against a spill, it can encourage  
16          some better -- perhaps some better safety  
17          practices. And it is a step saying that we are --  
18          it's very, very important to recognize that we  
19          really want to protect our natural areas -- and our  
20          natural areas and our people, plants, and  
21          environment.

22                      And I also want to say I'm also a union  
23          member. And I'm also concerned about the need for  
24          union jobs, good union jobs. And I'm sympathetic  
25          to that concern. However, I feel that independent

1 of the pipeline, there can -- the talents of union  
2 members can be better utilized on projects that  
3 benefit our environment and future generations,  
4 such as -- for example, renewable energy. And so I  
5 just wanted to say again, thank you so much for all  
6 your time and all your work. And I just wanted to  
7 encourage you to keep the insurance provision.  
8 Thank you so much. And thanks to the other  
9 speakers.

10 CHAIR CORRIGAN: Thank you very much.

11 Next up is Cassie Steiner, who will be  
12 followed by Karis Ritenour. Cassie is wishing to  
13 speak in opposition.

14 MS. STEINER: Hi, I'm Cassie Steiner.  
15 And I'm a staff member of the Sierra Club, the John  
16 Muir Chapter. I've been staff since summer. But  
17 before that, I was a volunteer working on the Tar  
18 sands Team of 350. I do reside in Madison. And I  
19 have noticed that there are three main arguments  
20 that have been laid out in this appeal that seem to  
21 somewhat contradict each other depending on which  
22 angle and which CUP we're talking about.

23 The first one is that the provision of  
24 insurance is illegal and unenforceable. The second  
25 is that Enbridge wouldn't need it, as seen with the

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1 Kalamazoo. They've cleaned things up on their own,  
2 and they wouldn't need insurance. And the third is  
3 the fear that it would be enforced in the future,  
4 and they would have to get insurance. And some of  
5 those things don't seem to line up to me.

6 So on behalf of the Sierra Club, John Muir  
7 Chapter, and its members, especially those who live  
8 in Dane County, I'm opposed to the appeal of the  
9 CUP 2291. The appeal of the CUP holds no ground.  
10 The July 24th, 2015 -- that is referenced in the  
11 letter was not authorized as has been mentioned  
12 before. The only CUP that was passed includes the  
13 insurance requirement, which was passed before this  
14 was changed by the state legislature in the budget.  
15 Many taxpayers of Dane County and the members of  
16 community groups like Sierra Club, 350, and WISE  
17 Alliance, the zoning committee, and the  
18 professional legal references all worked diligently  
19 to craft a CUP that's common sense and protects the  
20 safety, water, and wallets of our county.

21 And while it's no longer enforceable, the  
22 condition is an integral part of the permit as  
23 passed originally. If this line is removed, it  
24 would take away all of that diligent work that the  
25 zoning committee worked on, as well as all of the

1 citizen volunteers who have put in countless hours.

2 On top of that, kind of addressing some of the  
3 comments made about the Kalamazoo spill, that spill  
4 happened in 2010. And in 2012, authorities opened  
5 part of the river. In 2013, the EPA said it was  
6 not cleaned up, as Enbridge has said, and required  
7 them to dredge further. So the statement that it  
8 was all taken care of and rainbows and butterflies  
9 has been proven to be untrue. And if you ask folks  
10 there, they can still see the sheen of oil on the  
11 river. Many folks have had cases of cancer,  
12 asthma, children dying. And their economy has been  
13 destroyed because the river, that a lot of their  
14 local industry depended on, was ruined. So saying  
15 that this was all paid off immediately is a little  
16 shortsighted.

17 But back to the initial point is that the CUP  
18 was passed to protect the citizens of Dane County.  
19 And if the insurance requirement is removed, that  
20 contradicts that protection to be applied in the  
21 future. And if it's unenforceable now, I don't see  
22 how any laws are being violated because it was  
23 passed prior.

24 So I thank you for your diligence. And I ask  
25 that you retain the lines 7 and 8 as written and

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1           that the language specifying insurance requirement  
2           remains in the CUP to assure that this vast  
3           overreach from a foreign company does not happen to  
4           our county and to our citizens. Thank you.

5                       CHAIR CORRIGAN: Thank you very much.

6           Next up is Karis Ritenour, wishing to speak in  
7           opposition, followed by William Greendeer.

8                       MS. RITENOUR: I think that everyone  
9           else who spoke in opposition did a pretty good job  
10          of covering all the main points. I just -- I was  
11          planning on just coming here and listening, but I  
12          just wanted to say that I have heard a lot from the  
13          people representing Enbridge about the uncertainty  
14          that they'll be facing. And I think that that's  
15          incredibly ironic considering that what we were  
16          trying to -- what you all were trying to do by  
17          requiring insurance was to reduce the uncertainty  
18          of the citizens who are going to be affected by  
19          this pipeline and any potential spill from this  
20          company who has spilled more oil inland in this  
21          country than any other in the history of the world.  
22          So I think that Enbridge can stand a little bit of  
23          uncertainty if we're being forced to.

24                      CHAIR CORRIGAN: Thank you very much.

25          Next up is William Greendeer, wishing to speak in

1 opposition.

2 MR. GREENDEER: (Inaudible) I really  
3 want to say that you should actually retain this 7  
4 and 8. I'm a Ho-Chunk tribal member. This is all  
5 Ho-Chunk land, but you are all my brothers and  
6 sisters. You know this -- this here whole deal  
7 about insurance -- I'm -- I grew up in the woods  
8 where I live, and I actually carry insurance. I  
9 think everybody has to here.

10 why should a corporation that does hoo-ya  
11 (ph), that doesn't even come from here -- why --  
12 what makes them exempt from carrying insurance? We  
13 all have to try to take care of this land.

14 Enbridge hasn't really done a good job over in  
15 Michigan. What makes you think that they're gonna  
16 do a good job here? They -- you know they use  
17 those smart digs, but they're not really a  
18 hundred percent. Everybody -- they're pipeline  
19 monitoring is totally infective. You know they'd  
20 rather pay a fine than adequately check all their  
21 pipes, you know. And not only that, they only  
22 check them once in what -- five years? And they  
23 don't check it all. You know, I worry about this.  
24 we have our children and our grandchildren to think  
25 about. It's their future. And I think that

1 everybody really has to be smart in all this. They  
2 should be paying insurance. There's nothing wrong  
3 with that. I have to do it. Everybody here has to  
4 do that.

5 I worry about the children and the water, the  
6 air. We're getting blasted with silica mines all  
7 over the place. That sand blows a hundred miles.  
8 What happens if a spill happens here? Who's going  
9 to take care of all that? Who's gonna take care of  
10 our children and our grandchildren's future? They  
11 should be carrying insurance. It's plain and  
12 simple, I hope.

13 CHAIR CORRIGAN: Thank you very much.  
14 And we'll take questions for any of the members of  
15 the public who have spoken. I also want to mention  
16 there are two individuals who are here available  
17 for information only. Steve Schulz, from the Town  
18 of Medina, and Dave Dibdahl, who is the  
19 insurance -- who was the analyst who had  
20 recommended the insurance, are available for  
21 questions also. So are there any questions for any  
22 of the individuals who have just spoken or for the  
23 two individuals who are available for information?  
24 (No response heard) I don't see any questions.

25 I'm going to read the other registrations into

1 the record, and then we'll move onto the closing  
2 statement by the appellant.

3 MR. FERBER: Excuse me. I have a  
4 registered statement.

5 CHAIR CORRIGAN: Oh, I thought -- let  
6 me -- just wait.

7 MR. FERBER: (Inaudible)

8 CHAIR CORRIGAN: That is not true, Don.  
9 Just a moment. You may have gotten put in the  
10 wrong stack. Next up is Don Ferber, who wishes to  
11 speak in opposition.

12 MR. FERBER: Thank you. I'm sure you all  
13 want the night dragged anyhow. You get the  
14 pleasure of listening to a second person from the  
15 Sierra Club. I'm representing the Four lakes Group  
16 of the Sierra Club here in South Central Wisconsin.  
17 Sierra Club's motto is "Explore, enjoy, and protect  
18 the planet." And the last item is what we're  
19 asking you to do here. I think we're very  
20 fortunate to have a ZLR Board, five of your members  
21 here, who did very careful review of this process  
22 and the risks, including hiring the investigator  
23 for insurance and came up with the insurance  
24 requirement. They did their due diligence. That's  
25 what I'm asking you to do tonight.

1           You know, I'd love to believe Enbridge's  
2           claims about things that they're saying, but I have  
3           some problems with some things that have occurred.  
4           First of all, they have a record of 800 spills in  
5           the Midwest Pipeline System in the last ten years.  
6           Pipelines do spill and leak. When they were  
7           building this pipeline, they were fined  
8           \$1.1 million by the DNR for environmental  
9           regulations that they violated. A company that is  
10          willing to, that wants to protect the environment,  
11          doesn't come up with those violations. There were  
12          also two spills on that pipeline the very first  
13          year it was put in and an additional one in 2012,  
14          after which when they said they had it fixed --  
15          they just wanted to ramp it up right away. A  
16          pipeline hazardous materials agency had to tell  
17          them, No, we want you to do this properly.

18                 But they were ready to rush through again. So  
19                 I think that's a problem.

20                 The spill they had in Michigan -- they again  
21                 have claimed it's cleaned up. I had the privilege  
22                 of talking to a gentleman this summer who went back  
23                 there because that's where he grew up; and he said  
24                 he talked to friends, and they still have their  
25                 lawns dying back from that spill that is supposedly

1 cleaned up. I have talked to another gentleman who  
2 is an engineer and said, well, I can tell you in  
3 part why these pipelines are spilling because I  
4 know about the materials that they're using, and  
5 they've been getting inferior materials from  
6 overseas, which they wouldn't be doing if they  
7 wanted to contain the risks.

8 So you are being put at additional risk here.

9 what this partly boils down to, it's been  
10 pointed out, is with the zoning administrator  
11 having sent -- provided a Conditional Use Permit  
12 that he wasn't supposed to do, which if that was  
13 true, than the original one was still in effect.  
14 And that's all that you're being asked to do is to  
15 say, we think what was done originally was valid.  
16 we realize we can't enforce it.

17 But it's been pointed out that there are other  
18 laws on the books that are not enforced, but they  
19 are in place. And it's in place because the zoning  
20 board did the right thing back then.

21 There's another issue that seems to me a  
22 little inconsistency too. I don't know if people  
23 have noticed that -- talk about 25 million for  
24 insurance -- we're only talking insurance premiums,  
25 not 25 million -- which is this is a \$43 billion

1 company right now. So it's hard to believe they  
2 couldn't set aside 25 million, especially when they  
3 said one of their 12 pumping stations is costing  
4 45 million, nearly twice what they're being asked  
5 to only provide insurance requirements for.

6 There's a reason that they're concerned about  
7 this. The only way this could cost them any  
8 conceivable financial problems is if the insurance  
9 premiums were so high because the risk is so high  
10 that would give them any problems. The lawyer here  
11 who said this is going to cause a financial problem  
12 for Enbridge -- I can't come up with that  
13 conclusion from a company that that's well-off is  
14 only asked for premiums on 25 million.

15 So I'm asking you to continue to protect our  
16 people, our lands, and our waters and uphold the  
17 CUP. Thank you.

18 CHAIR CORRIGAN: Thank you, Don.

19 Has anyone else registered to speak that  
20 didn't -- wasn't called? (No response heard)

21 I'll read in the other registrants: Ann  
22 Edwardson (ph), who is registering in opposition;  
23 Jeff Vercauteren with Enbridge Energy, registering  
24 in support; Lisa Wilson, representing Enbridge  
25 registering in support; Jennifer Smith,

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1 representing Enbridge, registering in support; Dean  
2 Hackel (ph), registering in support; Judith Stadler  
3 (ph), registering in opposition; Jim Foy (ph),  
4 registering in support; Dan Burke (ph), registering  
5 in support; Roderick (ph) something, registering in  
6 support -- I'm sorry that I can't read the last  
7 name; Susan O'Leary, registering in opposition; Jim  
8 Roseberry (ph), registering in opposition; Deanna  
9 Lietz (ph), registering in opposition; Marianne  
10 Ewig (ph), representing -- registering in  
11 opposition; Phyllis Hasbrouck, registering in  
12 opposition; Patrick Healy (ph), registering in  
13 support; Jeff Crocker (ph), registering in support;  
14 Margie Lambert (ph), registering in opposition; Ken  
15 Skog, registering in opposition; Lynn Schumacher  
16 (ph), registering in opposition; Cynthia Statz  
17 (ph), registering in opposition; Lori Van Caster,  
18 registering in opposition; Laura Schlachter,  
19 registering in opposition; Bob Hotis (ph),  
20 registering in opposition; Aaron Zimmerman (ph),  
21 registering in support; and Kate Schulte,  
22 registering in opposition.

23 Now we'll move on to the closing arguments  
24 from the appellant. The appellant has three  
25 minutes for a closing statement.

1                   MR. PYPER: Thank you. Again, the issue  
2 does not revolve around whether the insurance  
3 requirements are good or unnecessary. That just  
4 simply isn't the issue. The issue is you are the  
5 last voice of the County. You have a CUP in front  
6 of you that has two unlawful conditions in it. The  
7 state legislature said the County may not issue a  
8 CUP that requires a company like Enbridge with its  
9 insurance to carry additional insurance  
10 requirements. That's what the CUP is doing. If  
11 you approve it, you're violating that law.

12                   And now is a time for the County to speak.  
13 It's either going to follow the law and remove  
14 those conditions or simply going to say, we don't  
15 care about Wisconsin law. We're going to pass a  
16 CUP right now today that has unlawful conditions in  
17 it.

18                   And it's your choice. And we are asking that  
19 you remove conditions 7 and 8 so that it complies  
20 with Wisconsin law. Thank you.

21                   CHAIR CORRIGAN: Thank you very much.  
22 Now we will have debate and action on this.  
23 Supervisor Schauer.

24                   MR. SCHAUER: Thank you, Madame Chair.  
25 It's clear to me that despite the wonderful efforts

1 of a lot of people in this room, the insurance  
2 requirement is gone. That's not due to us. That's  
3 due to our friends two blocks down. Enbridge won  
4 the war -- or -- or did they or whatever. But the  
5 war is -- they won the war, but now here that they  
6 want to re-litigate a battle of that war for their  
7 own peace of mind. That's the only thing we're  
8 here over. I asked them point-blank. I said,  
9 you're still going to go forward with this pipeline  
10 no matter what we do; correct?

11 Yes.

12 You're still not going to get insurance  
13 because the state law has made that insurance  
14 unnecessary and our requirement unenforceable?

15 Yes.

16 They're only worried about whether or not a  
17 different legislature sometime down the future --  
18 in the future changes that law. I think they can  
19 worry about that considering what the people who  
20 live in that area have to worry about. Now, this  
21 takes nothing away from the hard work of the people  
22 who are working on that pipeline, the union people  
23 who are building that are building that. I'm sure  
24 their work is good. I'm sure they're going to do  
25 everything up to specs and standards. But that's

1 clearly all we're talking about here. This -- it's  
2 clear to me that this CUP was properly and legally  
3 passed in April. The law changed after that. And  
4 all of the wrangling after that, all of it,  
5 including what the zoning administrator did, as  
6 they say, with -- from his own, you know -- he did  
7 that with a good -- with an eye towards doing the  
8 right thing, but he was wrong. And the CUP was  
9 properly passed in April.

10 The ZLR was appropriate in telling them that  
11 they can't change that on its own. This wouldn't  
12 be the first time in the world that there would be  
13 a law or a regulation on the books that wouldn't be  
14 enforceable. So I -- I agree that the -- this  
15 appeal should be dismissed tonight by this body.  
16 And I think Enbridge can consider their  
17 administrative rights exhausted. And if they have  
18 to worry about an appeal -- if they have to worry  
19 about a different legislature, let them worry about  
20 them then. And to the people who -- with 350  
21 Madison, it's your job to get there to be a  
22 different legislature, you know. So that's your  
23 focus now. But that's what we should do as a body,  
24 judiciously, and there's a quasi judicial role  
25 here. I feel comfortable denying this appeal for

1 the reasons I just stated. And go Packers.

2 CHAIR CORRIGAN: Thank you, Supervisor  
3 Schauer.

4 Supervisor Ferrell.

5 MR. FERRELL: Yes, thank you, Madame  
6 Chair. I have a question for staff, and I'm not  
7 quite sure who to direct it to. I'm trying to  
8 review through the various testimony and what's  
9 before us and the minutes and the agendas going  
10 back to when this process all started. I see where  
11 ZLR approved the CUP on April 14th at their  
12 meeting. Has the County Board ever approved it?  
13 Or is that not something that actually gets  
14 approved? I'm a little confused.

15 CHAIR CORRIGAN: Conditional Use Permits  
16 are --

17 MR. FERRELL: Don't come before the  
18 Board?

19 CHAIR CORRIGAN: -- don't come before the  
20 full Board.

21 MR. FERRELL: Okay. So this body  
22 actually never voted on that CUP?

23 CHAIR CORRIGAN: That's true. The only  
24 option that the full body has is if there is an  
25 appeal of the CUP.

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1                   MR. FERRELL: It's a zoning change that  
2 would be -- that's what we get for us -- okay. I  
3 just wanted to make sure I wasn't missing  
4 something. Thank you.

5                   CHAIR CORRIGAN: Thank you, Supervisor  
6 Ferrell.

7                   Supervisor Matano.

8                   MR. MATANO: Thank you, Madame Chair.  
9 That's a good sign that they're aren't that many  
10 people in the queue. It's been a long night.  
11 Again, thanks for coming and for those in the  
12 group. I speak as a member of the Zoning and Land  
13 Regulation Committee, and I appreciated one of the  
14 speakers spoke -- used the words that I had in mind  
15 was "due diligence." The committee did our due  
16 diligence. We worked on this for many, many  
17 months.

18                   The one thing the Enbridge attorney said that  
19 I thought sounded out of -- out of sync was that we  
20 were on it from September to April. It seemed  
21 much, much longer than that, but I'll take his word  
22 on that. This isn't the usual CUP appeal.  
23 Generally the CUP appeals process brings before  
24 you, the members of the County Board, a question of  
25 thought, not law.

1           In the case of the volleyball courts at  
2           Christy's Landing, what we were looking at was:  
3           Did the committee underestimate the level of  
4           nuisance that those volleyball courts presented?  
5           And so it's a -- it's a viable thing for this -- it  
6           takes a three-quarters majority, as you know. So  
7           it's a very high bar to clear. But sometimes it  
8           could be that a five-member committee had just a  
9           perspective that was overruled by the broader  
10          perspective of the County Board. And so in the  
11          case of the volleyball courts, we were upheld. In  
12          another one, around that same time, a majority of  
13          the County Board actually did vote to overturn.  
14          But it didn't meet the three-quarters threshold.

15          The legal issue, really the one legal issue at  
16          hand, is that -- which has been mentioned of  
17          exhausting administrative remedies, we should all  
18          do Enbridge a big service. Turn down the appeal,  
19          and let them get into circuit court where they  
20          really should be since their arguments are legal  
21          ones.

22          Essentially, we at the committee looked at a  
23          problem. We had a federal law, the oil Pipeline  
24          Safety Act, which preempts addressing issues of  
25          safety or environmental protection. That's all it

1 preempts. It doesn't preempt insurance  
2 requirements. We looked into it. That's why we  
3 started investigating that angle. We learned more  
4 than we ever anticipated about the difference  
5 between general liability insurance, which is the  
6 kind of thing that you'll hopefully have when you  
7 drive your car home tonight, versus environmental  
8 impact liability. The sudden and accidental  
9 threshold means, ooh, something went kabam (ph).  
10 And an insurance company could arguably deny  
11 coverage for a slow leak, such as would happen with  
12 a pipeline.

13 You heard testimony that there's \$4 billion  
14 available, including a federal trust fund, which as  
15 others noted is not a piggy bank that one company  
16 can raid but rather something that's designed to  
17 serve all clean ups for all pipelines nationwide.

18 We learned about insurance through  
19 Mr. Dibdahl. We discussed a concept that insurance  
20 is a free-market mechanism. Regulatory agencies  
21 may set arbitrary limits, but risk is something  
22 that those insurance companies measure because it's  
23 in their interest to do so. So really insurance is  
24 almost a more accurate way of measuring  
25 environmental dangers than would be environmental

1 regulations.

2 We've heard about the \$1 billion it took to  
3 almost clean up the Michigan spill. So when all  
4 was said and done, we did what we did. We adopted  
5 the insurance requirements. And Enbridge went to  
6 the legislature and got what they needed -- or so  
7 they think. Now, the attorney -- the one thing  
8 they didn't have was retro activity. They passed  
9 the legislation in July. Our action was taken in  
10 April. And so now they're trying to bootstrap  
11 retro activity through what I would argue were  
12 clerical errors. The committee didn't vote in  
13 October -- the committee didn't vote in July to  
14 issue the permit without the -- without the  
15 insurance conditions. And the attorney did say,  
16 what happens if the law changes?

17 Well, that's precisely why we didn't want  
18 those conditions removed. What if the law changes?  
19 What if the provision of law provides for a private  
20 right of action? He used these sweeping terms  
21 repeatedly. And as somebody else said, Repetition  
22 was intended to pound it home. But the law isn't  
23 ever black and white. That's why we have a Supreme  
24 Court.

25 knew they were illegal. The committee knew

1           they were illegal. Knew they were illegal. Well,  
2           nothing like insulting your audience to win their  
3           vote.

4                    unlawful under Wisconsin law. We have  
5           scofflaws (ph) on this committee. But if you look  
6           at the language of the statute, it's far fuzzier  
7           than that, like all law. It was intended to be an  
8           ironclad thing. And if the legislature had had  
9           their way, and if Enbridge had had their way, it  
10          would have been retroactive, but it wasn't. And it  
11          isn't.

12                   And so ZLR did not implement the CUP. We -- I  
13          mean, we're -- so I wrote that -- basically we  
14          aren't the criminals we're made out to be, the  
15          committee -- the ZLR Committee, because we didn't  
16          exercise the insurance provisions. We merely  
17          exercised our right as a legislative body to make  
18          sure that the legislative intent be restored to  
19          what it was intended to be, which was that we  
20          impose these insurance requirements. And after  
21          that fact, the legislature attempted to revoke our  
22          right to do so in the future.

23                   Thank you, Madame Chair.

24                            CHAIR CORRIGAN: Thank you, Supervisor  
25          Matano.

1 Supervisor Miles.

2 MR. MILES: Thank you, Madame Chair. I'm  
3 gonna maybe jump around a little bit here because  
4 Supervisor Matano just covered a number of my  
5 points probably more concisely and eloquently than  
6 I can. Let me begin with first the questions  
7 raised under the October 19th appeal. It's all  
8 premised on a couple matters, a couple assumptions.  
9 One, that -- that the zoning administrator had the  
10 authority to modify the CUP, and then that the  
11 action that the committee took on September 29th  
12 was actually a modification or revocation of the  
13 CUP. Neither of those assumptions are true. And I  
14 think on that basis, the entire case of the  
15 October 19 appeal falls apart.

16 Each of their four grounds for the appeal tie  
17 back to the September 29th action of the committee.  
18 But first we have to begin with the assumption that  
19 when the zoning administrator issued his letter on  
20 July 24th, I believe it was, that that equated to a  
21 revision of the CUP. The CUP in essence is a form  
22 of ordinance. It is a policy. This is the body  
23 that makes the decision on policy. It is the job  
24 of the zoning administrator to interpret  
25 the policies and to enforce those policies. So

1 ministerially I believe he did have that authority  
2 to make a decision about how it would be enforced  
3 given subsequent state action but not to actually  
4 revise the policy.

5 And so when we first learned about that July  
6 action by the zoning administrator -- was in  
7 September when the request was made by the 350  
8 group for us to consider some other options. And  
9 that's when -- through those discussions we learned  
10 about that. And that is why we scheduled a meeting  
11 after that to correct what was done erroneously  
12 back in July.

13 So the action by the committee in September  
14 was not a new action. It was not a revision to the  
15 CUP. It was taking us back to April to the  
16 committee's action, because it is only the  
17 committee that can establish policy under a CUP.

18 So jumping now to the points regarding -- and  
19 I guess I'm going to be really brief here because I  
20 think Supervisor Matano covered some of the things  
21 that fall under the May appeal, and that is whether  
22 or not the committee was in error or took a -- made  
23 a legal action in approving a CUP with Conditions  
24 requiring insurance. First of all, it wasn't  
25 illegal to have that requirement at that time

1 because there was not yet state action preempting  
2 our authority to do that. So if you go back to the  
3 October 19th appeal, and you understand that the  
4 committee did not take new action, we just simply  
5 went back to the April action that predated State  
6 action. So the committee did nothing illegal.

7 So the May appeal references -- basically  
8 points to issues that are outside our bailiwick.  
9 And this is why we took so much time with this.  
10 There were so many complications. So many issues  
11 came to play on this. The timeliness of this CUP  
12 consideration, contrary to some who have  
13 characterized this as a delay tactic, was for us to  
14 do our due diligence and understand all the nuances  
15 of this and to gather all the information to make  
16 the proper decision.

17 And you know, as Supervisor Matano stated,  
18 some of these issues will be issues -- will be  
19 laid -- you know, brought to bear in court probably  
20 where they should be. But we gathered our  
21 information. We consulted with Corp Counsel, and  
22 some of that was in closed session, to get legal  
23 opinions around what our authority was. And we  
24 determined, as the committee, through consultation  
25 with Corp Counsel and through the recommendations

1 from the insurance expert, that an insurance  
2 requirement was proper and necessary given that --  
3 by our insurance consultant's recommendations, that  
4 there are gaps in the general commercial liability  
5 coverage. Supervisor Matano pointed to a couple of  
6 them being -- you know, the term "sudden  
7 accidental." That doesn't cover something that's  
8 discovered after 30 days.

9 As far as the Pipeline Safety Trust Fund goes,  
10 that is something that -- the insurance consultant  
11 spoke to as well. That there is no guarantees  
12 about the future of that. That is a political  
13 animal and political invention. There is not  
14 certainty that that fund will be there. Also there  
15 are caps and limits on the uses of that fund.

16 Let's see -- the idea that the insurance  
17 requirements are unprecedented and burdensome for  
18 the applicant. I believe the committee did not  
19 agree with that given that there is precedents for  
20 such requirements. We were made aware of the  
21 Olympic Pipeline in Washington state. At the  
22 municipal level such insurance requirements have  
23 been made numerous times. By the way, Enbridge has  
24 65 percent ownership of the Olympic Pipeline. And  
25 it is my understanding from an attorney with the

1 Pipeline Safety Trust that that was challenged at  
2 one point in court, and it was upheld in court.  
3 Olympic Pipeline did not appeal that court  
4 decision. So there is precedents for such a  
5 requirement.

6 And as Supervisor Matano stated, I am of the  
7 opinion that the Conditions should remain in the  
8 event that there is change in state statute but  
9 that we did not place them there after the State  
10 action. So it is not illegal and should remain.

11 So I guess in the final analysis, if you were  
12 to support the appeal, you would have to agree that  
13 the applicant is aggrieved by the requirements.  
14 And I don't know how they can be aggrieved by  
15 something that's not enforceable. And given the  
16 precedents of such insurance requirement -- and  
17 that has not prevented such work from moving  
18 forward in those cases -- I do not believe they are  
19 aggrieved by the requirements. And I hope that  
20 members will agree and deny the appeal. Thank you.

21 CHAIR CORRIGAN: Thank you, Supervisor  
22 Miles.

23 Supervisor Bayrd.

24 Thank you, Madame Chair, I'll be brief. My  
25 favorite statement of the night so far has been by

1 I think our bedtime loyette (ph) when he said that  
2 any trace of it should be expunged. And for me  
3 that's the summary of the evening.

4 This is my tenth year on the County Board, and  
5 we have many long nights. And I never thought sad  
6 or negative of any of the long nights. I'm really  
7 proud of the work that we do here. I'm really  
8 proud to be part of this body. This is the first  
9 time in my ten years where I think this is a waste  
10 of our time. Enbridge won. They won. And they  
11 are here to kick us when we're down. The  
12 conditions are the opinion of the committee.  
13 They're the values of the committee. They are the  
14 hard work of the committee in April. Enbridge  
15 wants us to change them because they're worried  
16 that the state law might change. I hope the state  
17 law changes. Thank you.

18 CHAIR CORRIGAN: Thank you, supervisor  
19 Bayrd.

20 Supervisor Stubbs.

21 MS. STUBBS: Thank you, Madame Chair.  
22 Questions for our corp counsel. I hope I can  
23 digest them correctly. What happens in the event  
24 that we vote to the original CUP, and the  
25 conditions are there -- and right now with the

1 state law, it's not -- prohibited. So my question  
2 would be: Can you tell me what would happen, and  
3 I'll vote tonight, if we have Conditions 7 and 8  
4 right now when the State says we cannot enforce the  
5 insurance piece? What happens? Are we in some  
6 violation as supervisors? Are we gonna be taken to  
7 court? Is there some legal action? Explain that  
8 piece to me, please.

9 CORPORATION COUNSEL: There's a lot of  
10 questions there. I can't envision any particular  
11 violation of law by any supervisors. The  
12 Conditions -- if you turn down the appeal, the  
13 Conditions will remain on the CUP. As long as the  
14 state law that was adopted as part of the budget  
15 bill is in effect, we can't enforce them. Will we  
16 be sued? I think undoubtedly we'll be sued if you  
17 do that. So I don't know if that answers your  
18 question.

19 MS. STUBBS: Sure. That's exactly what I  
20 was --

21 CORPORATION COUNSEL: I mean, I can't  
22 imagine that Enbridge won't challenge this by  
23 certiorari if you deny their appeal.

24 MS. STUBBS: My additional question, and  
25 you may or may not want to answer this one, but let

1 me try. It appears as if though the conversation  
2 led to the action of our zoning administrator on  
3 making a decision to enforce something that really  
4 he could not have changed, the CUP Conditions. Do  
5 you think that led us to here tonight, why we're  
6 really have this discussion? Had he not made  
7 those -- that decision, would we really have been  
8 here tonight?

9 CORPORATION COUNSEL: I'm assuming we  
10 would have been here -- or at some point anyway --  
11 because presumably Enbridge still would have  
12 challenged the Conditions being added. I can't  
13 speak for them. I'm only guessing. My guess is we  
14 would have been here on an appeal anyway.

15 I didn't -- I quite honestly didn't understand  
16 Enbridge's reliance upon the September 29th action  
17 of ZLR earlier. I understand their position better  
18 now after I listen to it. I still don't agree with  
19 their legal position because they based it entirely  
20 upon there being an ability of the zoning  
21 administrator to have issued a new CUP on  
22 July 24th. And as Supervisor Matano said, There's  
23 very few things that are black and white in the  
24 law. That one is pretty well to me black and  
25 white, that the zoning administrator doesn't have

1 authority to unilaterally change a CUP.

2 The reference was made to it being a  
3 ministerial act. A ministerial act is something  
4 that a public officer has to do because the law  
5 requires it without discretion. A couple examples  
6 I can think of is if -- including the zoning  
7 administrator -- if somebody comes in and wants to  
8 get a zoning permit to build a house and if they  
9 got the correct zoning classification on that  
10 property and if they have the proper setbacks and  
11 they meet all the requirements in the ordinance, he  
12 doesn't have any discretion to turn that down.  
13 He's got to grant them a permit. That's a  
14 ministerial act. If somebody comes in to the  
15 county clerk and wants to get a marriage license  
16 and they meet all the requirements set forth in the  
17 statute to get a marriage license, he doesn't get  
18 to determine whether or not they get a marriage  
19 license. That's a ministerial act. He's got to  
20 give them a marriage license.

21 The zoning administrator doesn't have that  
22 unfettered discretion to just say, I'm gonna knock  
23 some conditions off a Conditional Use Permit that  
24 only the zoning committee can approve.

25 He's got discretion to say, I'm not gonna

1 enforce those conditions because Corporation  
2 Counsel told me they're unenforceable, but he  
3 doesn't have discretion to wipe them off. So in my  
4 opinion -- there's a legal term called ultra vires,  
5 which means it was done without authority. I mean,  
6 with the greatest of intentions, Roger issued a  
7 document in July that really didn't have any legal  
8 authority. So in my opinion what the committee did  
9 was simply tell him that we want the Conditional  
10 Use Permit to reflect the Conditions that we  
11 adopted in April. And that's what's really still  
12 there as a matter of law in my opinion.

13 MS. STUBBS: Thank you. Because those  
14 were -- that was really critical to hear that from  
15 you. And many of you know I've always believed in  
16 what communities say. And I think when we are in a  
17 position where we're doing committee work and  
18 committee has spent the time to look more in depth  
19 at an issue and come back to this body and lead us  
20 in those directions -- and so I thank all of the  
21 community that have come out, have spent the time.

22 And I think what Enbridge needs to do is learn  
23 how to be a neighbor and be a friend to those that  
24 are really going to be impacted. And if you're a  
25 billionaire, what's a couple of million? Do what

1 you need to do in order to stay within, as I say,  
2 the game. And I am very supportive of what the  
3 committee has done. They've done due diligence  
4 through this process.

5 Thank you so much, Attorney Gault, for  
6 explaining this process even more. But I am going  
7 to stand with the committee and what they've asked  
8 for. And I'm also gonna stand here because I  
9 believe in representing the values of our people.  
10 And let the values of the people speak, and power  
11 to the people. Thank you.

12 CHAIR CORRIGAN: Thank you, Supervisor  
13 Stubbs.

14 Supervisor Pertl.

15 MR. PERTL: Thank you, Madame Chair. I  
16 think folks have covered many of the issues that  
17 we've talked about here tonight. I agree with  
18 Counsel Gault's interpretation. I don't think that  
19 the July permit was issued correctly, and therefore  
20 is not valid. And I really thing subsequent to  
21 that, the only action that the ZLR Committee took  
22 was to append a note acknowledging that the State  
23 had preempted the duly-issued CUP that they had  
24 adopted back in April. I don't think that  
25 constitutes an amendment. They didn't use the

1 amendment process. And acknowledging that the  
2 State has preempted something, that a preemption is  
3 in effect, does not necessarily constitute an act  
4 that reopens the CUP.

5 The issue that they raise that concerned me  
6 throughout the evening was sort of this pending  
7 question of: well, if we hadn't acted on the  
8 appeal, was the CUP really issued? And if it  
9 hadn't been finalized and issued, can we still  
10 impose these conditions? Because I agree with  
11 Counsel, we no longer have the ability under  
12 current law to impose these conditions going  
13 forward, I absolutely think that's true. I also  
14 think we can't impose -- we can't enforce them.  
15 But I believe we did at the time.

16 And I think there was a critical question that  
17 was answered just recently, which is that this body  
18 does not issue CUPs. We never have. They don't  
19 come to us. We don't approve them. We are the  
20 quasi judicial body that hears appeals. The April  
21 CUP was issued at a time when it was legal to  
22 impose those conditions. Those conditions are not  
23 currently valid. They cannot be enforced, but I  
24 don't think that is grounds to require the  
25 revocation and the reissue of the CUP. It was

1           valid. It is enforceable. They have it. They  
2           have a (inaudible) in it. They're acting on it.  
3           And we cannot enforce some of the Conditions that  
4           are currently in it. I don't think that binds us  
5           to reopen and alter the Conditions or to overturn  
6           the committee's actions subsequently.

7                     And I do have one question. And it's a very  
8           simple technical question, but how long is the CUP  
9           good for? Can staff answer that?

10                    CHAIR CORRIGAN: Roger?

11                    MR. PERTL: In perpetuity; right?

12                    CHAIR CORRIGAN: You have to come up  
13           here. We have to get a record.

14                    MR. LANE: If the land use becomes  
15           abandoned for one year, the CUP expires. But there  
16           is no expiration date on it.

17                    MR. PERTL: So that is the -- I mean --  
18           okay.

19                    MR. LANE: That is when it terminates.

20                    MR. PERTL: So this is a permanent  
21           action. I mean, this is how it is going to  
22           function. This is the permanent record. I  
23           recognize the concern they identified. I think  
24           it's the same thing that Supervisor Bayrd  
25           identified, which is the only question of harm

1 here, because whether we're in the April CUP or the  
2 July CUP or the version that's issued in September,  
3 is immaterial to the realities that they are able to  
4 execute all the things currently available to them  
5 under the law.

6 The concern they've identified is that if the  
7 legislature were in some future action to change  
8 the law again, that these provisions could become  
9 enforceable, which I believe was the intent of the  
10 committee when they adopted it. And I don't think  
11 is illegal. If the state legislature had required  
12 us to retro actively preempt and delete those  
13 items, they could have done that. They did not.  
14 They made it impermissible for us to enforce them,  
15 impose them moving forward. Maybe that was their  
16 error. Maybe they'll be back tomorrow, and they'll  
17 change the law again now that I've given the whole  
18 thing away. But I don't think they did that.

19 And so while I share what their concern is,  
20 and I don't want to belittle that -- I mean, I know  
21 there's a lot of sort of politicking and joking and  
22 things going on -- I think they have a reasonable  
23 and valid concern for which they are raising in  
24 front of us. I don't think that requires us to  
25 change our position and to overturn the committee.

1           So I'm going to be voting to sustain the committee  
2           action. I recognize the concern that they've  
3           raised. I think they made very good arguments, but  
4           I don't think that's what the law requires.

5           And it's unfortunate that the process was so  
6           complicated to get us here because I think that's  
7           just muddled the issues that are before us. But in  
8           the end, they are going to build a pipeline. And  
9           we are not going to enforce, under current law, the  
10          conditions that are there. But I do not believe we  
11          have to remove them. Thank you.

12                   CHAIR CORRIGAN: Thank you, Supervisor  
13          Pertl.

14                   Supervisor Levin.

15                   MR. LEVIN: Thank you, Madame Chair.  
16          Quick question for Counsel Gault: So had Enbridge  
17          exhausted their appeals process prior to the state  
18          legislature taking their action?

19                   CORPORATION COUNSEL: Had they?

20                   MR. LEVIN: Had they exhausted their  
21          appeals process?

22                   CORPORATION COUNSEL: No.

23                   MR. LEVIN: Okay. Because if I look at  
24          the summary created by staff, we were originally  
25          supposed to meet on the 16th. We delayed it.

1           So -- I mean, as much as I also really disagree  
2           with what the legislature did, I'm torn by the fact  
3           that we messed it up, the County, in terms of at  
4           least staff issuing something that shouldn't -- but  
5           that only then got them to delay an appeals process  
6           they hadn't exhausted. Because otherwise we would  
7           have been voting -- and if we would have voted back  
8           in July, we still would have then had potential to  
9           say, well, the state legislature changed this. And  
10          we might have had a different view potentially, or  
11          not, of how this would affect our duty to represent  
12          the County, though also knowing potential legal  
13          action that might change.

14                 But I did want to at least draw that point  
15          out, because I think that's something that also  
16          isn't clear, is they still had the right to come  
17          here tonight. And it's something that is making my  
18          decision very muddled too. So I just want to  
19          clarify that.

20                         CHAIR CORRIGAN: Thank you, Supervisor  
21          Levin.

22                         Supervisor Veldran.

23                         MR. VELDRAN: Thank you, Madame Chair.  
24          Certainty is what corporations for the most part  
25          want. And that's what really was being requested.

1 You always hear in different areas: Certainty.  
2 Certainty.

3 We had questions about the oil supply. That's  
4 big. And that repressed the oil industry for  
5 the -- in the 80s. And they stopped -- they for  
6 the most part stopped drilling in Texas for the  
7 most part. But the CUP 2291 brings me to the point  
8 that there's uncertainty being given to the  
9 citizens of Dane County and, frankly, everybody  
10 along the pipeline. It's obviously been a tough  
11 and a controversial item, you know, our project and  
12 other projects of this same nature throughout the  
13 country. But back to the point that the CUP --  
14 what I wasn't clear on, but as the evening  
15 progressed, I understood the April -- the first CUP  
16 and what was imposed on it rather than the second  
17 one or the changes to it. And that I think was  
18 brought out earlier in discussion and about  
19 confusion. Supervisor Matano made the same point.  
20 And that's what I think is really going on for me,  
21 as well as others, that, where do we fall?

22 I was happy that Supervisor Matano also  
23 brought up, and Attorney Gault did, about facts  
24 versus the law. So that puts me in a much more  
25 comfortable position.

**Transcript of Recorded Proceedings - Enbridge - December 3, 2015**

1           You know, this is a little bit of money, and I  
2           just want to thank everybody for coming and thank  
3           the attorney for a fine presentation. Because that  
4           was really -- this put most of the points clearly  
5           in my mind so I could make a decision.

6           But there's this concern that this insurance  
7           is such a burden. The one thing I was concerned  
8           about -- two things -- was that Enbridge is laying  
9           off people. Will they start losing money all over  
10          the place? And then we may really be stuck if  
11          something dreadful happens.

12          As it was also said, this pipeline's in.  
13          They're gonna boost it up, and the oil's gonna  
14          flow. And this is pretty -- we know this is pretty  
15          heavy oil. And there might be, you know, concerns.  
16          And that's why ZLR did what they did because there  
17          are -- there's a uniqueness to the product coming  
18          through that line and how much is gonna flow at an  
19          incredible rate.

20          One of the things that legislate -- or was  
21          done earlier -- years -- a year or two back, was --  
22          a lot of citizens, what they really wanted from  
23          Enbridge was the DNR to require an environmental  
24          impact statement. And that is what never really  
25          got done. And then they were referring to a much

1           older one saying, This is it. And the DNR had  
2           (inaudible) the air permit that was requested at  
3           the state level. They said, well, we can't do it  
4           under that. And that was a frustrating point. So  
5           that was -- those are the concerns that I think the  
6           citizens are having, that this seems like a very  
7           small imposition, this rider, this insurance, for  
8           something that we are really concerned about.

9           And we've seen not only Enbridge, we've seen  
10          ATC, we've seen Gogebic go down the street and get  
11          what they needed to keep going. Somebody said  
12          about corporate citizen. ATC seems to be that nice  
13          corporate citizen. Now you see their name  
14          plastered -- I was sure they were gonna walk out of  
15          here and we weren't going to see a dime of  
16          advertisement once they put that line up. But they  
17          still got lines going up in other parts of the  
18          states. So they've become a more friendly company  
19          to us. But I still have a line going through my  
20          district.

21          And the concerns about the spillage -- and  
22          this goes back to the insurance -- it seems like a  
23          very small burden. And we've seen this in the  
24          Kalamazoo spill. We saw it back in the -- it  
25          wasn't the 90s -- the 80s from that Exxon Valdez.

1 we got it cleaned up. No, we don't. No, we don't.  
2 we don't. Saw it do you do in the Gulf, Deepwater  
3 Horizon. Others too say, We have it. And then we  
4 still don't. So that's the uncertainty.

5 And frankly 25 million, it's probably -- where  
6 are they gonna be dipping in if there's something  
7 really bad?

8 So I just think with that we uphold the -- the  
9 ZLR's opinion on this. I think looking at the  
10 April CUP and relying on that, I think we're solid.  
11 And I still think that this is just gonna go down  
12 the street because that's all they needed to do to  
13 close this kind of loophole and then move on. So  
14 they want to make sure they've exhausted their work  
15 at the county level. So with that, I ask you to  
16 vote against the appeal. Thank you.

17 CHAIR CORRIGAN: Thank you, Supervisor  
18 Veldran.

19 Supervisor Willett.

20 MR. WILLETT: Thank you, Madame Chair.  
21 well, it's pretty clear listening to the  
22 conversation how this is gonna end up. But I have  
23 one thing -- one thing that I -- thank you -- I  
24 thought I had the floor -- one thing that I want  
25 you to think about.

**Transcript of Recorded Proceedings - Enbridge - December 3, 2015**

1           First of all, Roger Lane, our administrator,  
2           did this not in any sort of ill will. He did, as a  
3           county employee of ours, what he felt was right.  
4           When a county employee does that, I think it's our  
5           responsibility, whenever we can, to stand behind  
6           what they've done. Start with that. Okay. So he  
7           did it, and many of you think that he was wrong in  
8           doing that.

9           Then the question is -- comes to me anyway is:  
10          How does that hurt Enbridge? And we hear a little  
11          bit about how that hurts them -- when they get  
12          started, all the rest of this. Here's what I  
13          haven't heard. Enbridge had an appeal before this.  
14          And we've been told, as this meeting started, that  
15          we're voting on both, that they're included in  
16          this. Well, I don't know about you, I don't know a  
17          thing about what their appeal was before that got  
18          passed by our zoning administrator. They had, they  
19          thought, a case. And I don't know whether they had  
20          a case or not, but because of the way this has been  
21          handled, because of the way we dealt with it, they  
22          now no longer have that appeal right because we're  
23          gonna close it on them tonight without hearing one  
24          thing of why they thought they had an appeal  
25          before.

**Transcript of Recorded Proceedings - Enbridge - December 3, 2015**

1                   CHAIR CORRIGAN: Thank you. Supervisor  
2 Bayrd.

3                   MS. BAYRD: Sorry. I just wanted to  
4 quick respond to something Supervisor Willett said  
5 because I've had -- I have some more thought. And  
6 my thought is: They changed the rules. They could  
7 have appealed it. And we could have had a  
8 substantive conversation on it, but they got the  
9 state legislature to make that substantive  
10 conversation irrelevant. We don't get to have a  
11 substantive conversation about 7 and 8 anymore.  
12 The State told us it's moot. So it's moot. If  
13 they wanted to have a substantive conversation  
14 about it, maybe they shouldn't have gone to the  
15 State.

16                   CHAIR CORRIGAN: Thank you, Supervisor  
17 Bayrd.

18                   Supervisor Kolar.

19                   MS. KOLAR: For clarification, earlier  
20 this evening I did specifically ask Attorney -- I'm  
21 fried -- Snyder? Pyper. Thank you. And it was --  
22 the appeal is based on the insurance. And the  
23 insurance is included in the appeal that is before  
24 us, the second appeal. I also agree and totally  
25 support the staff -- that Roger Lane very -- by his

1 own admission, he thought he was doing the right  
2 thing. And regrettably it did muddle the waters.  
3 And it wasn't until September 8th, based on a  
4 series of emails, that we actually discovered that  
5 Roger had issued the CUP. And so you've heard it  
6 already tonight, but there was an appeal that was  
7 made, as (inaudible) heard, after our April  
8 decision.

9 Enbridge has said, and the workers have said,  
10 The work is occurring in Medina, in the town of  
11 Medina near Marshall. The work is occurring. The  
12 pipeline exists. We are not approving a pipeline.  
13 The pipeline already exists. It's a pipeline  
14 expansion. It is occurring. What the requests --  
15 right here on page 14 of the appeal -- I'm gonna  
16 start with, "Reverse the ZLR Committee decision to  
17 impose insurance requirements and void the  
18 insurance requirements."

19 And we heard, and Supervisor Matano eloquently  
20 responded, that we are -- allegedly the ZLR did  
21 something illegal. I know that, again, in this  
22 room, in April, a CUP was approved with numerous  
23 Conditions, including Numbers 7 and 8. The record  
24 states what those Conditions were. They occurred.  
25 And I completely understand, which I believe

1           everybody in this room understands no matter what  
2           their position is on the pipeline, that the State  
3           legislature said we can't enforce them. But  
4           nonetheless, they are a part of the record. They  
5           did exist. It is only because of the muddying of  
6           the waters -- that they were removed for a time by  
7           a person who thought he had the authority to do  
8           so -- that we again are meeting now this late in  
9           December and this late at night because of that.  
10          But nonetheless, the Conditions existed. They are  
11          unenforceable. We all know that, including  
12          Enbridge, knows that.

13                 So their -- number one on their conclusion was  
14          that the ZLR Committee did not keep within its  
15          jurisdictions. As has been said tonight, we did  
16          have jurisdiction to do it, and Enbridge was well  
17          aware through our deliberations at numerous  
18          committees. It was -- the committees were done to  
19          thoroughly consider the CUP and what could be done  
20          to protect Dane County and, most particularly, the  
21          Town of Medina. We applied rules that we could do.  
22          We acted with good conscience. It was not  
23          arbitrary or capricious. And that includes letting  
24          Enbridge and the zoning administrator know that the  
25          CUP that he wrote in July was not within his

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1 purview. And so in September the ZLR Committee for  
2 the record stated once again that this is what the  
3 CUP said in April. It still says that, but items 7  
4 and 8 are unenforceable because of state law.  
5 we're not doing anything illegal to say that we can  
6 enforce. We are acknowledging that the state  
7 legislature said you cannot enforce them. We're  
8 not enforcing them. I recommend you deny this  
9 appeal.

10 CHAIR CORRIGAN: Thank you, Supervisor  
11 Kolar.

12 Is there further discussion? (No response  
13 heard)

14 Seeing none, we will take a vote now. And as  
15 I said before, a yes vote is to approve the appeal,  
16 to agree with Enbridge that the actions of ZLR  
17 should be overturned. And a no vote sustains the  
18 actions of the Zoning and Land Regulation  
19 Committee. So we will take a vote, and we'll need  
20 three fourths of those who are present in order to  
21 overturn the actions of the zoning committee. The  
22 clerk will call the roll.

23 MR. SCHAUER: Madame Chair?

24 CHAIR CORRIGAN: Yes.

25 MR. SCHAUER: Can I ask for a very short

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1 break only to make sure all of our colleagues who  
2 weren't -- and may want to vote are in the room?  
3 (Inaudible)

4 CHAIR CORRIGAN: He'll -- I'm sure  
5 he'll -- I'm not sure where he is, but he'll --

6 MR. SCHAUER: Okay. All right.

7 CHAIR CORRIGAN: Let's begin the roll.  
8 Thank you, Supervisor Schauer.

9 MR. SCHAUER: Thank you.

10 CHAIR CORRIGAN: The clerk will call the  
11 roll.

12 THE CLERK: Okay, I'm calling the roll  
13 for those who are present in the room now. That's  
14 what the vote is based on.

15 CHAIR CORRIGAN: An aye vote is to --

16 THE CLERK: Ripp? No or aye?

17 MR. RIPP: No.

18 THE CLERK: Okay. Sorry. Ritt?

19 MS. RITT: No.

20 THE CLERK: Ritt, no. Rusk?

21 MR. RUSK: No.

22 THE CLERK: Rusk, no. Salov?

23 MR. SALOV: No.

24 THE CLERK: Salov, no.

25 MR. SCHAUER: No.

**Transcript of Recorded Proceedings - Enbridge - December 3, 2015**

1 THE CLERK: Schauer, no. Schmidt?  
2 MS. SCHMIDT: No.  
3 THE CLERK: Schmidt, no. Stubbs?  
4 MS. STUBBS: No.  
5 THE CLERK: Stubbs, no. Veldran?  
6 MR. VELDRAN: No.  
7 THE CLERK: Veldran, no. Wegleitner?  
8 MS. WEGLEITNER: No.  
9 THE CLERK: Wegleitner, no. Willett?  
10 MR. WILLETT: Aye.  
11 THE CLERK: Willett, aye. Zweifel?  
12 MR. ZWEIFEL: No.  
13 THE CLERK: Zweifel, no. Bayrd?  
14 MS. BAYRD: No.  
15 THE CLERK: Bayrd, no. Bollig?  
16 MR. BOLLIG: No.  
17 THE CLERK: Bollig, no. Chenoweth?  
18 MR. CHENOWETH: No.  
19 THE CLERK: Chenoweth, no. Clausius?  
20 MR. CLAUSIUS: No.  
21 THE CLERK: Clausius, no. Downing?  
22 MR. DOWNING: No.  
23 THE CLERK: Downing, no. Erickson?  
24 MR. ERICKSON: No.  
25 THE CLERK: Erickson, no. Ferrell?

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1 MR. FERRELL: Aye.  
2 THE CLERK: Ferrell, aye. Gillis?  
3 MR. GILLIS: No.  
4 THE CLERK: Gillis, no. Jones?  
5 MS. JONES: No.  
6 THE CLERK: Kolar?  
7 MS. KOLAR: No.  
8 THE CLERK: Kolar, no. Krause?  
9 MS. KRAUSE: No.  
10 THE CLERK: Krause, no. Levin?  
11 MR. LEVIN: No.  
12 THE CLERK: Levin, no. Matano?  
13 MR. MATANO: No.  
14 THE CLERK: Matano, no. Miles?  
15 MR. MILES: No.  
16 THE CLERK: Miles, no. Nelson?  
17 MR. NELSON: No.  
18 THE CLERK: Nelson, no. Pan?  
19 MR. PAN: No.  
20 THE CLERK: Pan, no. Pertl?  
21 MR. PERTL: No.  
22 THE CLERK: Pertl, no. Corrigan?  
23 MS. CORRIGAN: No.  
24 THE CLERK: Corrigan, no.  
25 CHAIR CORRIGAN: The vote is two ayes, 27

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1           noes. And the appeal fails.

2                       Such other business as the Board is authorized  
3           the conduct by law? Seeing no one wishing to be  
4           recognized, is there a motion to adjourn? Moved by  
5           Chenoweth. Seconded by Matano. All those in favor  
6           say aye. (Multiple ayes heard) Opposed say no.  
7           (No response heard) The ayes have it, and we are  
8           adjourned.

9                                       (End of video recording)

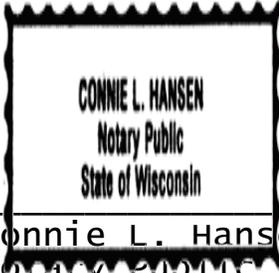
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1 STATE OF WISCONSIN )  
2 COUNTY OF WAUSHARA ) ss.

3 I, CONNIE L. HANSEN, a Notary Public in and for  
4 the State of Wisconsin, do hereby certify that I have  
5 carefully transcribed the foregoing pages and that the  
6 same is a true and correct transcript transcribed by me  
7 to the best of my ability from video recording.

8 Dated at Wautoma, Wisconsin, this 22nd day of  
9 December, 2015.

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Connie L. Hansen  
Notary Public, State of Wisconsin  
My Commission Expires May 20, 2017.

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