

POLK COUNTY
Land and Water Conservation Committee
Minutes of December 19, 2008 meeting (pre-hearing conference)

(Record of the initial open session was taken by the court reporter. That record is available through the County Clerk's office.)

Kienholz/Johnson moved that the committee go into closed session; motion carried unanimously by roll call vote. Closed session commenced at 12:35 p.m. Present were Larry Jepsen, chair; Ted Johnson and Kathryn Kienholz, committee members; and Priscilla Dorn Cutler, attorney for the committee. Committee members Diane Stoneking and Dean Johansen were absent.

The committee discussed the following five motions brought by the attorneys for the Appellants and by those of Mathy Construction:

- a. Question raised by Mathy at the pre-hearing conference: do the Appellants have standing in this matter?
- b. Motion brought by the Appellants to prohibit Mathy Construction Company from supplementing its reclamation permit application during the contested case hearing; dated December 15, 2008.
- c. Motion brought by the Appellants to remand to the Polk County Land and Water Resources Department for comprehensive environmental review; dated December 15, 2008.
- d. Motion brought by the Appellants to postpone contested case hearing until related lawsuits are resolved; dated December 15, 2008.
- e. Motions brought by the Polk County Land and Water Resources Department; dated November 21, 2008.

- a. Question re: standing.

Consensus of the committee was to grant the Appellants the opportunity for their case to be heard. The committee also noted that Mathy and Polk County have standing in this matter.

- b. Motion re: prohibiting Mathy from supplementing its reclamation permit during the contested case hearing.

Consensus of the committee was that it would deal with the permissibility of such supplementation point by point during the contested case hearing in January.

- c. Motion re: comprehensive environmental review.

Consensus of the committee was that the township had foregone this requirement by not putting zoning regulations in place. The Polk County Non-metallic Mining

Ordinance does not require a full environmental impact study; thus, the committee will not require one. Motion denied.

- d. Motion re: postpone contested case hearing until related lawsuits are settled.

Consensus of the committee was that the hearing is a proceeding that is separate from and independent of other proceedings. Motion denied.

- e. Motion re: five purposes for the pre-hearing conference enumerated by Mr. Fuge, counsel for the Land & Water Department.

1. Clarification of issues.

Committee agreed that this was a purpose of the pre-hearing conference.

2. Necessity or desirability of amendment to the pleading.

Committee found no such amendments were presented.

3. Obtaining admissions of fact and of documents that will avoid unnecessary proof.

Committee will allow the attorneys for the Appellants and for Mathy to determine these between themselves, such determination, plus a witness list, to be accomplished by December 31, 2008.

4. Limitation of the number of witnesses.

The committee will not set a limit for the number of witnesses; rather, it will leave that to the discretion of the attorneys.

5. "Such other matters as may aid in the expeditious disposition of this Administrative Appeal."

No additional matters; no committee action necessary.

The committee agreed on the following procedures to be followed during the contested case hearing:

1. The hearing will be conducted from 9:00 am until 4:30 pm each day.
2. The location is tentatively set for one of the courtrooms in the Polk County Justice Center. Chairman Jepsen and Ms. Dorn Cutler will determine the final location.
3. There will be a county clerk available to swear witnesses and mark exhibits.

4. Any decisions during the course of the hearing will be made by consensus of the committee.
5. The committee members will be allowed to ask follow-up questions of witnesses.
6. The hearing sessions will open and close just like the committee's regular meetings.
7. Ms. Dorn Cutler will research and report back to the committee as to the best manner for the committee to make and deliver its decision(s) on the matter(s) presented in the contested case hearing.
8. All communication between Appellants' and Mathy's attorneys and the committee shall be directed through Ms. Dorn Cutler.

Motion by Johnson/Kienholz to resume open session at 2 pm; carried.

Motion by Johnson/Kienholz to adjourn at 2:01 pm; carried.

Respectfully submitted,

Kathryn Kienholz
Secretary