

In The Matter Of:

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

*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

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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

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

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. PYPHER: 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. PYPHER: 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. PYPER: 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. PYPER: 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. PYPHER: 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. PYPHER: 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. Mmhm.

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 --

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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. PYPER: 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. PYPER: 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. PYPER: Nope. Congress doesn't put
17 money into it.

18 MR. VELDRAN: Oh, is that right.

19 MR. PYPER: It's the industry.

20 MR. VELDRAN: Okay.

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

23 MR. VELDRAN: Oh, okay.

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

13 MR. VELDRAN: That's fine.

14 MR. PYPHER: -- 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

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.

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

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.

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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)

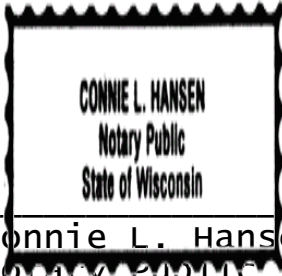
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1 STATE OF WISCONSIN)
2 COUNTY OF WAUSHARA) ss.

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

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

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