

**PROCEEDINGS OF THE BROWN COUNTY  
LAND CONSERVATION SUBCOMMITTEE**

Pursuant to Section 18.94 Wis. Stats., a regular meeting of the Brown County Land Conservation Subcommittee was held on Monday, September 25, 2017 in Room 200, Northern Building, 305 E. Walnut St., Green Bay, WI

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**Present:** Supervisors Norbert Dantine, Dave Kaster, Dave Landwehr, Bernie Erickson, Tom Sieber  
**Vacant:** Citizen Rep  
**Also Present:** County Conservationist Mike Mushinski, Engineering Technician Dave Wetenkamp,  
Deputy Corporation Counsel Greg Gerbers and other interested parties

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**I. Call Meeting to Order.**

The meeting was called to order by Chairman Dantine at 6:00 p.m.

**II. Approve/Modify Agenda.**

**Motion made by Supervisor Kaster, seconded by Supervisor Erickson to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**III. Approve/Modify Minutes of August 28, 2017.**

**Motion made by Supervisor Sieber, seconded by Supervisor Landwehr to approve. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Communication**

- 1. Communication from Supervisor Dantine re: To have Mike Mushinski at Land Con look into appointing a Citizen-at-Large to Land Con from Farm Bureau. *Referred from September County Board.***

Dantine informed they talked about this at the Farm Bureau meeting. Mushinski informed, Wis. Stats. Chapter 92 – Soil and Water Conservation and Animal Waste Management, under (1) Creation; Membership (1)(b) 4. The County Board may appoint to the Land Conservation Committee up to 2 members who are not members of the County Board. Farm Bureau President Stan Kaczmarek informed that he would be more than happy to serve on this committee.

Deputy Corporation Counsel Greg Gerbers stated that annotations in the statutes make it clear that it's the County Board's responsibility to make those appointments and not the County Executive.

**Motion made by Supervisor Erickson, seconded by Supervisor Kaster to appoint Stan Kaczmarek to the Land Conservation Subcommittee for a term of 2 years. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Land Conservation Department**

**2. Open Positions Report.**

County Conservationist Mike Mushinski informed that they continue to look for funding for the open Agronomist position.

**Motion made by Supervisor Sieber, seconded by Supervisor Landwehr to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

- 3. An Ordinance Amending Subsection 26.11(4) of Chapter 26 of the Brown County Code of Ordinances. *Referred from September County Board.***

One of the things Deputy Corporation Counsel Greg Gerbers did after their last discussion was look back at the statutory history, Section 92.16 because there was a real question as to what this actually states. There was an Attorney General opinion from 1988 saying that this only applied to the unincorporated areas of the county. He looked at the statute back then and the thing that struck him was the word town was not included there as someone who could pass one of these ordinances at the time. In 1993 the statute was amended to include town as someone who could pass a local ordinance setting setbacks. When he looked at the addition of town the question because whether or not the legislature intended these to be only handled by a city, village, town or whether the county had any authority there at all. The Attorney General's opinion in 92.11, the legislature very specifically said the county statute would apply to all areas regardless of whether or not there was a different ordinance or governing body. When it came to this particular statute they said, the legislature had the opinion of including that language but didn't and the non-inclusion of that had to be for a reason and that's why it only applied to unincorporated areas. Then the legislature came 5-years after that and adds the word towns as someone who can pass one of these. It was his opinion that county doesn't have the ability to set a setback; this was completely on the towns, villages and cities. There was a question for him as far as statutory construction; there was a rule that says that every word within a statute had to have meaning in it. The question was why is the word county still included in that statute? Where would they ever have any authority based on the Attorney General's opinion? In talking about it within his office, he proposed to go to the Attorney General's office and ask for clarification on it but that could take a year to get that answer. His opinion as of right now, the county really doesn't have any authority to even enforce a setback that those powers had been delegated to the cities, villages and towns and even if they don't have them on the books then that kicks back to the states to ATCP 51.12 which was 350'.

Landwehr stated they had people apply for variances that came before this committee and then to the full board. If they were going to do like they did on most of their zoning and leave it to the municipalities, while also striking it from the ordinance, would applicants have to go to their town, village or such for a variance? Gerbers responded for the variance, they would have to go to the authority that set the setback.

Dantinne questioned, if the ordinance was thrown out and someone went and asked for a variance with a town but the county was still in charge of the manure spreading and all the rest that went along with it, where did the county get the kick at the cat? Gerbers responded that when it came to all of the spreading, facility sitings, all those things are under a different statute and this opinion was very specific to manure storage facilities.

Kaster questioned if the incorporated areas had something to say about it, why did the state have setbacks in their statutes? Gerbers stated it was administrative code and in the 2<sup>nd</sup> sentence of the statute required ATCP to set rules, which would be defaults for them to look at.

In response to Erickson and Dantinne's comments, Gerbers recommendation would be to not touch the setback language at all and seek clarification before they take a position.

**Motion made by Supervisor Erickson, seconded by Supervisor Sieber to leave the ordinance as is at 250' setback and direct Corporation Counsel to get clarification from the state. MOTION WITHDRAWN**

Sieber believed everyone was used to coming to Land Con for a variance, if the county didn't have the authority to grant a variance, what guidance would Gerbers give Mushinski? Gerbers stated that right now his best advice would be to keep doing what they were doing until they got clarification. They ran into the problem where there's not supposed to be extra words in the statute and the county is still in there. So there had to be somewhere where the legislatures intending the county to have authority. Sieber stated right now the county had an ordinance of 250' and the state had an ordinance of 350', if someone built a manure pit 250' away which is a violation of the state ordinance but fit the county

ordinance, which we might not have any jurisdiction over, what is going to happen to the manure pit? Gerbers responded that with the way the administrative code was written, it allowed for a lessor area by a municipality, county, city, etc. There was nothing wrong with the 250' vs 350'. The county's 250' was in place before ATCP came through with the 350' so they wrote in that if you had a lessor variance in there that was a local decision they made. They had this timeframe of them adding towns in as they went without striking counties out. It was one of those rare legal jigsaw puzzles that you had to put a lot of pieces together to get a complete picture.

Mushinski stated that Kewaunee County did not have a distance in their ordinance but the townships varied from 1,320' in West Kewaunee down to 10' in Anhapee. There was a huge difference in setbacks between those local townships in Kewaunee.

Sieber respected the opinion but he felt if they struck the language it would just go to the state and then notify the towns, villages and cities that it was the county's opinion they had no authority to do this and if they wanted a setback they had to put it in place themselves. Gerbers interjected stating that his recommendation wasn't that they strike it at this point, that they leave it as is and keep doing what they were doing until they got clarification. It was his opinion that it will probably come down to the point where they don't have that authority. Sieber felt if it was Gerbers feeling that the county didn't have authority, he'd recommend striking it to clean it up and if the state came back and stated they could do this, then they could put it back in.

Van Dyck agreed with Sieber, the Town of Ledgeview just passed their own ordinance. They could grant a variance at county level but they will still have to go to the town and get a variance from their ordinance. They had a conflict of two different bodies trying to set ordinances here for the same subject matter. It was easier to clean it up by getting rid of it and letting the towns know. Depending upon the township and the municipality you have differing situations, some towns are so more rural. Let each of the municipalities decide based on how their community was developing. If they deferred for a moment, he felt there was some history here on where the 250' came from in the first place. He knew it matched the 250' setback from a well but it kind of came out of necessity and if the state had now put something else in place, let's let them dictate what it was and why get in the middle of it?

Dave Wetencamp informed that after last month's meeting, Van Dyck and he had a discussion about the history of the ordinance and Brown County had an animal waste ordinance since 1986. He believed in 1999 there was a discussion about setbacks and other items came up so the ordinance was reviewed at that time. That 250' setback came up as a result of the Wisconsin Well Code that stated manure storage facility could not be constructed closer than 250' from a well and vice versa. They couldn't have a well constructed closer than 250' to an existing manure storage facility. The 250' alluded to the property line as the setback from there. The thinking there was you would not have an impact on an adjoining landowner if they wanted to construct a home with a well or put a well in on that property, they would have the proper 250' setback at that time. As Gerbers stated, over the years things changed and the state finally put the 350' in there for primarily larger farms, 500 animal units or more. It referenced any existing ordinances that had setbacks, it recognized if they had a lessor distance that would still be allowable and enforceable.

Van Dyck stated if you look at the whole ordinance there was also a 3' setback, 3 vertical feet from groundwater so the setback for a 10 million gallon manure pit was only 3' from your groundwater source, he didn't think that applied to the ordinance and it would go to the DNR to establish that. Wetencamp informed that Chapter 26 also referenced design specifications and standards and those standards had changed over the years as well and those separations had changed as well over the years so they can not approve a storage facility without meeting current standards so even though the ordinance may reference the 3', it would be a counter violation in another section of the ordinance that stated it had to be according to these design specifications and standards which may be 5' or something greater than the 3'. Gerbers stated to be clear they were only talking about setbacks from property lines

with regard to this specific ordinance and not design. There were still requirements for designs, etc.

Erickson questioned if they chose not to have an ordinance, would this put hardship on the Land Conservation Department. Mushinski stated no, everything else applied in the ordinance other than the setback distance.

Sieber suggested an amendment to the proposed motion, to have Deputy Corporation Counsel send a letter to all municipalities within Brown County stating that Brown County's ordinance was off and reversed to 350'. Dantine, Kaster and Erickson as well as Gerbers stated they were not certain about this so it was suggested to leave it alone for now. Gerbers informed that one of the things that he did look at and one of the reasons he felt they probably didn't have that authority was that the other neighboring counties that he looked at, no one else had a setback provision in their county ordinances that he could find. Those counties included Outagamie, Kewaunee, Door, Calumet, Marinette and Manitowoc.

Sieber stated if they sent a letter to a town stating that the county's 250' setback had been repealed and no longer on the books, they did have the authority to set their own setback, seek legal counsel on the distance and if they didn't, it would revert to the states 350'. If they came back and rewrote it at 250', it still wouldn't supersede anything the towns put on the books; their ordinance would still be over the county ordinance. Based on the Attorney General opinion that was out there, the way it was right now, Gerbers stated that was correct.

At last month's meeting there was a question about adjacent properties, whether it was a different property owner or whether it was an adjacent parcel that they may still own, Sieber questioned if Gerbers looked into it. Gerbers responded that it was not defined in the county ordinance by in ATCP they pull it out as having a separate owner.

**Motion made by Supervisor Erickson, seconded by Supervisor Sieber to eliminate the current ordinance effective January 1, 2018 and direct staff to seek clarification on terminology from the Attorney General and have Corporation Counsel send out a notice that the county is repealing their ordinance and if others want their own setback they had the authority to do so. Vote taken. MOTION CARRIED UNANIMOUSLY**

**4. Director's Report:**

**a. Community Digester Feasibility Study-Update.**

Mushinski informed that Dynamics was hired as their feasibility study vendor for the Community Digester Project. In the meantime, the Public Service Commission had \$20 million dollars that they were going to award to a project to implement a nutrient recovery digester system in the state. Dynamics along with 2 big producers in Brown County, about 22,000 cows, BioStar Organics and Wisconsin Public Service WE Energies had their financial backer; we're awarded \$15 million of that \$20 million to construct a digester nutrient recovery system in Southern Brown County. Dynamics had estimated that about 200 million gallons of liquid manure will not be spread in the county, about 5,780 lbs. of phosphorus will be removed from watershed, 162 million gallons of clean water will be produced, and 846 million BTUs of renewable gas will be produced. The feasibility study that Public Service funded and they had an RFP and submitted. The timing worked out really well and it looked like a project will actually come to fruition if everything lined up. It was a good start for Dynamics and that group of producers to be awarded that \$15 million grant. The study will continue and was due to the county in December, they will then submit that to WPS and it will go to EPA.

**Motion made by Supervisor Landwehr, seconded by Supervisor Sieber to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**b. NR 151-Targeted Performance Standards-Update.**

Mushinski stated the NR 151 was their performance standards that the state had developed. They

knew one issue in NE Wisconsin was liquid manure on shallow soils. These targeted performance standards were going to look at pathogens. The sheet in the packet was broken down from soil depths. If this went through spreading liquid manure could not be spread on shallow soils, it will have a little impact in Brown County as they did have some little shallow areas but it would be mainly impact Kewaunee and Door areas where they farmed really shallow soils. Producers could apply manure to 2' or greater, they just still had to follow another series of guidelines. There were areas in Brown County that 3' and 5' area existed. When Nutrient Management Plans were done and agronomists and farms were at work, they will have to address manure spreading on shallow soils. It was really a pathogen, it had nothing to do with nitrate so that's how these requirements were looked at and developed. The big thing was because of the karst area and the rapid transport of groundwater that these standards were developed. Mushinski informed they had a public hearing 2 weeks ago in Green Bay and heard comments both ways, it was either too much or too little but he felt it was a really good start to address the groundwater issues in NE Wisconsin.

**Motion made by Supervisor Erickson, seconded by Supervisor Sieber to receive and place on file. Vote taken. MOTION CARRIED UNANIMOUSLY**

**c. Phosphorous Multi-Discharger Variance Participation.**

Mushinski informed that this was talked about a few months ago. This related to when the point sources selected the multi-discharger variance as part of their permit process; it was a phosphorus reduction variance. The counties are involved and the funding came right from the point-sources to the Land Conservation Department. Each year they were required to submit an application stating they were interested in being involved. What the department needed was to have the committee approve their participation and for the County Executive to sign it as part of the agreement. A sample application was provided (attached).

**Motion made by Supervisor Sieber, seconded by Supervisor Erickson to approve participation in Phosphorus Multi-Discharger Variance. Vote taken. MOTION CARRIED UNANIMOUSLY**

**Other**

5. Such Other Matters as Authorized by Law. None.
6. Adjourn.

**Motion made by Supervisor Sieber, seconded by Supervisor Kaster to adjourn at 6:40 p.m. Vote Taken. MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Alicia A. Loehlein  
Recording Secretary

# Green Pastures Bio Energy Center will generate significant annual benefits

- Eliminate land application of over 200,000,000 gallons of manure in Brown County
- Remove 578,000 pounds of phosphorus from watershed
- Produce over 162,000,000 gallons of clean water
- Eliminate over 88,000 tons of greenhouse gas emissions (16,863 passenger vehicle equivalent)
- Produce over 846,000 MMBtu of renewable biogas
- Reduce county road truck trips by ~20,000 with farmers saving \$3,000,000 in hauling costs
- Provide 10 – 20 new permanent full time jobs

The facility will have an “open door” policy to allow smaller farms to deliver manure for processing when they run out of storage space or shouldn’t spread due to weather conditions.

## Summary of Proposed NR 151 Runoff Management Targeted Performance Standards

Depth to bedrock	Solid manure conditions	Liquid manure conditions
<p style="text-align: center;"><b>&lt;2'</b> <b>Verification Required</b></p>	<p style="text-align: center;"><b>No mechanical application</b></p>	<p style="text-align: center;"><b>No mechanical application</b></p>
<p style="text-align: center;"><b>2' -3'</b> <b>Verification Required</b></p>	<p>Incorporate* within 72 hrs to ≤4" depth and;</p> <p>At least one of the following:</p> <ul style="list-style-type: none"> <li>a) Rate ≤ 15 T,</li> <li>b) Within 10 d planting or established crop,</li> <li>c) Pathogens ≤ 500,000 CFU</li> </ul>	<p>Pre-tillage* and;</p> <p>Inject or incorporate* ≤4" depth within 24hr and;</p> <p>At least one of the following:</p> <ul style="list-style-type: none"> <li>a) Rate is lesser of UW A2809 or Table 1,</li> <li>b) Within 10 d planting or established crop,</li> <li>c) Pathogens ≤ 500,000 CFU</li> </ul>
<p style="text-align: center;"><b>3' -5'</b> <b>Verification required</b></p>	<p>Same as above except ≤6" depth</p>	<p>Pre-tillage* and;</p> <p>Inject or incorporate* ≤6" depth within 24hr and;</p> <p>Same as above</p>
<p style="text-align: center;"><b>5' -20'</b> <b>No Verification required</b></p>	<p>No new conditions proposed</p>	<p>Pre-tillage* and;</p> <p>Inject or incorporate* ≤8" depth within 24hr and;</p> <p>Same as above</p>
<p style="text-align: center;">*Not applicable if long-term pasture, perennial crop, or no-till system</p>		

**Mail Complete Application to:**  
 Wisconsin Department of Natural Resources  
 Permits Section -WQ/3  
 PO Box 7921  
 Madison, WI 53707-7921

**Phosphorus Multi-Discharger Variance  
 Participation for Counties - s. 283.16, Wis. Stats.  
 Form 3200-146 (R 03/17)**

**Notice:** Pursuant to s. 283.16, Wis. Stats, this form must be submitted by counties to determine eligibility to receive multi-discharger variance (MDV) funds. Failure to complete, or submitting late forms, may result in ineligibility of funds. Personal information collected will be used for administrative purposes and may be provided to requestors to the extent required by Wisconsin's Open Records law [ss. 19.31-19.39, Wis. Stats.]

Participant Information		
Name of County Department Participating		County
Land and Water Conservation		Brown
Street Address		
2420 Nicolet Drive, Room 307 Environmental Sciences Building, University of Wisconsin Green Bay		
City	State	ZIP Code
Green Bay	WI	54311
Contact Name	Title	
Mike Mushinski	County Conservationist	
Email Address	Phone No. (incl. area code)	
mushinski_ml@co.brown.wi.us	(920) 391-4621	
Address (if different than above)		
City	State	ZIP Code

List the HUC 8 Watershed(s) in which the County wishes to receive funding:	
HUC 8 Name	HUC 8 Code
Lower Fox River	04030204

Has the county board, land conservation committee or other authorized county representative (e.g. county executive or administrator) been notified of the county's participation in the MDV? (Attach meeting minutes or other supporting documentation)	<input checked="" type="radio"/> Yes <input type="radio"/> No
Has the county board, land conservation committee or other authorized county representative approved the county's participation in the MDV? (Attach resolutions and other supporting documentation)	<input checked="" type="radio"/> Yes <input type="radio"/> No
The County is eligible to receive funds generated from the MDV. By receiving these funds the County commits to submit a watershed plan on March 1 <sup>st</sup> of the next calendar year and complete an annual report to the Department no later than May 1 <sup>st</sup> of the second year after receiving a payment	<input checked="" type="radio"/> Yes <input type="radio"/> No

Certification	
I certify, to the best of my knowledge, the information provided is true, accurate, and complete.	
Authorized Representative Submitting Request	Title
Troy Streckenbach	County Executive
Signature of Authorized Representative	Date