

Special Meeting of the Rushford Town Board Minutes  
Wednesday, May 10, 2017 at 6 p.m.

The Special meeting of the board was called to order by Chairman Thomas Egan followed by the Pledge of Allegiance. Roll call was taken with Thomas Egan, Jerry Schoonover, Pat Kafer, & Peggy Hendricks present. Attorney Peter Culp was present to provide his final findings on the complaints against Blue Sky Garden. Also present for all or part of the meeting: 17 additional persons per attendance record on file, though others were present who did not sign in.

Attorney Culp was retained last month to look into the matter & issues regarding Blue Sky gardens that the Township and Attorney Blazel provided. It seemed to him the most central issue is the cause and connection between the operations on the Pomplun property to the health issues by Mr. Domke. This is the first issue he will address. He was in contact with Melanie Burns with the DNR. She provided materials both when the permit was issued as well as the compliance audit that took place in March 2017. He read materials from the County, particularly to ones who went out there and determined there was no testing that could take place for the particular fungus there. In addition, he also called and spoke with Dr. Mackey, for he had a copy of the document where the Doctor stated a number of things. He wanted to find out if from a legal perspective, what Dr. Mackey would say and if his opinion would hold up in a court of law. Dr. Mackey told Attorney Culp that he only knows of one individual who claims he has been affected from the operations on the Pomplun property. He has not taken any air samples and he does not know anyone who has. He has not taken any samples from the piles or mulch. He cannot identify any particular fungi or other aerosolized chemicals from the fungi that is originating from the property. He cannot state from a reasonable degree of scientific certainty that there is cryptococcosis is in the piles. That was important to Attorney Culp, for in a court of law, you need to establish a degree of scientific certainty that what is in those piles of mulch or compost was a substantial factor in causing the health issues for Mr. Domke. If you cannot prove that, you lose your court case. He asked the Doctor if he could testify to a reasonable degree of scientific certainty that what was in the piles was causing Mr. Domkes health issues. His answer was no, he could not. It is only circumstantial evidence and he understands from testifying for over 40 years in cases that circumstantial evidence is inefficient to carry the burden in a court of law. That was substantial and significant to Attorney Culp. He has provided copies of a case that was decided in 1999 that sent shockwaves though the legal community. There was a case against the Mr. Turkey store (Jerome Foods), located though out Wisconsin and Minnesota. It was a case where a mother gave birth to a child with deformities and she believed it was due to a chemical used in the turkey processing plant. A specialist said yes, he thought there was some relationship. \$700,000 was spent in 6 months to deal with the potential fallout of the allegations that this chemical caused this particular defect. At the end of 6 months, the attorney for the lady said that they did not have the scientific testimony to establish the connection, so they wanted to dismiss the case. Jerome Foods said that they may have had evidence when they commenced the lawsuit, but during the lawsuit, they knew that they did not have the scientific evidence to make the causable connection, but yet they continued legal action without a factual basis and they continued a frivolous action and they wanted the woman's side to pay all the cost. It was found to be a frivolous lawsuit. This went all the way to the Supreme Court. The attorney for that woman personally paid that damage and the award. That case is prevalent to this case because of Dr. Mackey's inability to prove causable connection between what is in the piles and Mr. Domkes medical condition.

Then the attorney went further to research cryptococcosis from the Iowa University Public Health Department, He said the incubation is uncertain. The organism is ubiquitous, which means it is found everywhere. It is found when you work land. It comes out in the air. Droppings of birds, turkeys pigeons, etc have it. In addition, it is found when you cut lumber. It is a natural type of product that has been around for ages and usually does not affect people, but sometimes it affects those who have had their immune system suppressed or compromised in some way. The research goes further to say that complete prevention of exposure is probley impossible, for it is around us everywhere. He said it would be impossible to separate if these came from the piles or the natural environment. From a legal perspective, it would be impossible to do. Then he thought about what a potential option would be for the Domkes. He stated the Domkes can take action on their own. They can allege negligence in part of the Pompluns to say there is that causable connection, they can hire their own experts though discovery, & they can take samples. According to the information Attorney Culp has, this has only affected one person and he does not know of any other reports from any other Doctors that talked about someone who might have cancer that was caused by this, or someone who had diabetes that was caused by this, or any other health issue or condition that was caused by this. He does not have this information. But if it affects 1 particular individual, it is not a public nuisance. A public nuisance is when it affects multiple people in the community or community activities in general. It would be considered in Wisconsin law a private nuisance affecting a particular individual. He is not saying

there is not a procedure for the Domkes to follow up and to address what they believe to be a causable connection, but it is not something a Township or another municipality does for a particular person. You will hear from other municipalities that it is not a wise use of the Townships resources to essentially address a private nuisance. This is something he considered and wants to make clear his analysis is only from a legal prospective and also from the prospective of the Township.

Ken Basel, Ripon, WI thanked the attorney for doing all that work, but said the question was zoning. Attorney Culp said, he respected that, but he also saw a petition signed where there were 51 individuals who signed it said it was a public nuisance. The issues that the Attorney discussed and analyzed in that respect was from the petition that was filed. With respect to the zoning, he has looked at it, talked to Melanie Burns from the DNR, he has reviewed the materials from Ann Boyce and he does not see where there is a zoning violation that is being committed. He feels the ordinance does apply, but he does not see in the ordinance where the use of that property and the manner in which it is being used is anything that violates the zoning code.

Richard Domke asked that even if they could sample the piles, would it still be a good case that he is growing this fungi and releasing it in the air? What if someone becomes sick later?

The attorney cannot say if it would be a good or bad case. The only thing he can point out is Dr. Mackey cannot tie up a connection between the two. It means then it is merely suspicion and circumstantial. To answer the question if someone would get sick later, there is not a competent person, expert, or medical doctor who is able to make that connection so far. It is true that Dr. Mackey is treating Mr. Domke. He has intimate personal knowledge, who has interacted with Mr. Domke for a long period of time and he cannot make the causable connection.

Mr. Domke said it is because he has not sampled the piles or the air. He is asking if there were samples taken, if that would be different. He said the biggest issue is getting on private land to take samples.

Attorney Culp said Ann Boyce addressed that in a letter in March 24, 2017 and communicated by Melanie Burns. She said that she received information about cryptococcosis from Ann Boyce. Quote ; "The State of Wisconsin does not do any environmental testing because cryptococcosis as it would be expected to be found in nature." This means you could take a test in any of the farm fields and it would turn up positive. Mr. Domke asked about high concentration in the piles.

Attorney Culp said lets fast forward. If the Domkes hire an attorney who files a lawsuit and who conducts discovery under SS 804.10 and asks the court for permission to appear on the property to collect sample for testing. That is an option for the Domkes. This is part of the discovery process for any civil action that would be filed. There is also pre-suit discovery. You have to get an order from the court to do that as well. That is another available option to the Domkes and to anyone else who believes there is a causable connection.

Kelly Domke had a question about the cease and desist order. It was issued in 2014 when the Town must of thought they had a zoning problem at that time. She said neither the Town nor Mr. Pomplun followed through on it.

Attorney Culp said he does not know what happened in 2014. He was brought in to give this a fresh look and has spent significant time evaluating both the zoning side as well as the public nuisance side, Mr. Domke has a medical condition and whenever you have an infectious disease, it is significant. But he has looked at the zoning code and he does not see where the use of the land violates any particular provision. Kelly Domke said she does not feel the land use is appropriate. Attorney Culp says it does not say anywhere that it is a prohibited use.

Dawn Henderickson asked Attorney Culp asked the Attorney to read the cease and desist letter. The Attorney said she could read it. She read the letter that was sent to Mr. Pomplun in 2014. She wondered why it was not followed though.

Attorney Culp said he could not answer that for he was not here in 2014, but he wanted to address the part respect to run off. The March 20, 2015 letter from Valarie Joosten, professional Engineer in Waste & Material Management program specifically addressed the potential detrimental effect in surface water, significant effect on wetlands and if there were any detrimental effect in ground water quality. The DNR evaluated all those 3 things and found there was not and would not be any detrimental effect on surface water, impact on wetlands or detrimental effect in ground water quality and in additional, there would be no detrimental effect on habitat areas. The DNR is very critical when it comes to these types of permits. They analyzed this substantially, and in March of 2015 they said that the permit was approved. He also knows that there was a complaint that was filed on February 15, 2017 about rather or not if there was compliance with the initial permit and there were not issues that were identified with respect to surface water, water runoff, ground

water contamination. There were issues identified in the fact boundaries for this material where it could be deposited, it was outside of the area and then there were some record keeping issues about identifying the days of turnover of the material and the temperature. But when he talked to Melanie Burns about that, she said they were insignificant.

Dawn has done extensive research on the disease that affects her father. She read some of her research from her phone. She is aware that Dr. Mackey can't give 100% that that is what it is, but it is a good indication. The Doctor wouldn't tell someone not to go home where they lived for 30 years if it wasn't from the compost piles said Dawn.

Jesse Domke pointed out some of the wordage that was on the introductory from the DNR that was attached to the permit. It states that these viruses and bacteria are in these piles, and if done correctly, it will minimize them. Melanie Burns told him he was not keeping temperature logs, it was in areas it was not suppose to be, there were several violations and there was other violations that she was going to take care of after that report. He said the Winnebago Health department said there was not a way to test the piles, but Dr. Mackey said there was. It is private property, so they can't go get samples to have it tested.

Attorney Culp said they would have the ability to if they hired an attorney and filed a law suit in Circuit Court. Then they could make a demand under SS 804.10 and get their samples. They could determine what fungus is in there and rather or not it is consistent with what has been found in Mr. Domkes system. Since it only affects one person in the Town, it is a private issue. It is an issue between Mr. Domke and Mr. Pomplun and his operations there.

Jesse Domke said Dr. Mackey said not only can it affect his father, but it can affect other people. It hasn't yet, but it can. There are other people in the area that has cancer, & has respiratory issues. A lot of people did not know the effects of composting until they were made aware of it.

Attorney Culp said as a trial lawyer in court, they always have to present cases to juries in a way that they believe that they will understand. There are a couple of common sense things such as – does any of the Pompluns have an infectious disease. A jury would also want to know if anyone else in the Town has been diagnosed with an infectious disease where there has also been a causable connection between what is in the piles and that disease. If you only have one person who has this disease and if none of the Pompluns has an infectious disease, it makes it that much more difficult to persuade a jury that it was that operation that has caused the condition.

Jesse said right now the Pompluns immune system is not compromised, but if they would become sick, then they could have it.

Attorney Culp said the concerns are valid. But they have the process available to do something about it. He is not saying he shouldn't but he is not saying he should. He is just saying that if they hire a competent lawyer who will evaluate this, who will hire the experts, who will do the discovery, who will make that causable connection if it can be done, that is where the remedy and process is. As opposed, if there were 30 people concentrated around the operation that all had the same infectious disease, that had all the neoformans in their system, that is one thing, but when you have one individual in a concentration of people around there that is affected, that makes it difficult. Not impossible. There is a process for them to address it. He said one thing he thought about, the Pompluns are over there, turning up the material, you have the steam and the aerosol fungi in the air, there is nothing that would stop a person from taking an air sample on their own property. For if the argument is that the aerosol fungi goes from his property to another property, you can hire someone to take an air sample. That air sample will determine if there is fungi in there. You would not need a court order, an SS 804.10 request, and you can do it on your own property.

Jesse wanted to talk about the zoning. In the Town Zoning, under the Industrial, which the DNR says he is running a solid waste facility. That is what his permit was issued for. Under the Towns regulations, he would need to be zoned Industrial for a Solid Waste facility. He wonders how he can state where the zoning is correct.

Attorney Culp said the DNR regulation by statute, which covers the solid waste facility which has a definition of what that is. The definition can and usually is different in zoning definitions with a municipality and respect to zoning regulations on the local level. Just because it is defined a solid waste facility for DNR purposes and permits, pursuant to Wisconsin Statutes, that does not mean it is a solid waste facility for purposes of the zoning code. You look at Stuarts Nursery and many other nurseries – they sell mulching compost. When you look at the Towns zoning code, nurseries are a permitted use. Attorney Culp said when he talked to Melanie Burns from the DNR, she was very careful in saying that she is making no determination as to rather or not this is a permitted use within the zoning code. He said that is consistent in dealing with the DNR, law enforcement and other state agencies when you are dealing with cases. They never extend themselves, for they know once they do it, they are going to be subpoena to be a witness in the court of law. Melanie said she was making no determinations as to rather or not their operations comply with the zoning

code. That is dealt on the local level. Just because it is a solid waste facility for DNR purposes – for permitting purposes, that does not necessary mean it is a solid waste facility for purposes for the zoning ordinances in a municipality.

Jesse asked if the DNR considers it a solid waste facility, why doesn't the Town.

Attorney Culp says because DNR does not coordinate with respect to the zoning ordinances and never do they.

Jesse said the Town Board told him before that they follow the DNR regulations or stricter. The Attorney said that would be new information. He is not knowledgeable if the Township follows the DNR regulations with respect to zoning. Usually that is not done, but in this case, he has reviewed the zoning and obviously the materials he has shared and the cause he has made – he did not take this lightly. It is an evaluation that if he is going to put his opinion and stamp of approval on it, it is going to be something that is solid. And this is an opinion that with respect to the zoning code, there is no zoning violation that he feels comfortable with. If in the Towns definitions in the zoning code, if it listed a definition for a solid waste facility to be the same as in the DNR regulations, then the zoning would be incorrect. But it doesn't.

Richard Domke wanted to say to the Town Board that he does not think we should be the dumping ground for the City of Oshkosh and whoever else. People are going to get sick, the smell is terrible – why would we allow this in our Town for the profit of just one person. They can dump up to 800 loads a day,

Attorney Culp said he knows the permit allows them up to 20,000 cu yards. He asked Mr. Domke if he has talked to the DNR about the concerns about the quantity and see if rather or not their permitting process can be reconsidered to reduce the cubic yards. That would be a route to go if there are concerns about the quantity.

Jesse Domke has concerns about selling his house. Dr. Mackey said his dad could not go back to his house. Jesse was told if there is a known health hazard, you must inform the seller.

Attorney Culp said you could turn Dr. Mackey's opinion around in his favor, for if he is unable to establish a connection between the Pomplun operation and the disease, then he does not have any obligation to say there is a health hazard that has to be disclosed. Jesse said it is right in the DNR papers. The Attorney said there are a lot of things said in the news, in papers, on websites – etc. you can find answers to everything and inconsistent answers. This does not mean that because that permit is out there that he has established a cause of connection. They can rely on even a better piece of evidence which is Dr. Mackey's opinion which is there is no cause of connection.

Sarah McClelland is immune suppressed and lives next to the operation. She takes a lot of drugs which lower her immune system. She did not even know this was going on. She has broken out in rashes. She cannot say it is from that, but it is coincidental that when he is turning it, she is breaking up in rashes. She feels her life quality is affected. She is going to discontinue taking her drugs. She feels there is a concern in what the city is bringing in. There is grass with weed killer, and other chemicals.

Attorney Culp said he does not discount her concerns. She is experiencing what she is. It is the cause of connection. As Dr. Mackey said, it is circumstantial evidence, so could it be the composting or could it be something else. Obviously she is seeking medical treatment, so maybe a referral to an infectious disease doctor would be something to consider.

Sarah says she understands that this is everywhere, but she is concerned about massive quantities on a little piece of land. She is wondering if it is putting more in the air then what would naturally be found.

{Further comments at this point will not be transcribed. Copies of recording can be requested.}

Carolyn Domke asked the Attorney if Melanie Burns would address the health issues with the Attorney. The answer was no. She feels that the Town is not fighting for these 50 people who signed the petition. The Attorney said the petition was signed by 51 and it said that there was "A public health and safety issue". He says there is no evidence to establish a cause of connection. That is important, for when a lawyer analyzes these issues, they analyze 360 degrees. They stand in the shoes of Mr. Domke, of the Township, and in the shoes of Mr. Pomplun. When he is analyzing from these different perspectives, he is thinking when someone makes an allegation about this caused that – and if their medical doctor cannot make that connection, from a lawyers perspective, it is to tread cautiously, because you never want to accuse anybody from doing anything. He has tried deformation cases and if you stand in front of a jury and tell them that you do not have the evidence to make the connection but thought or surmised there was a connection, you will find that you went

from worrying about your health, which is legitimate, but now you are on the firing range explaining to a jury why you made these allegations without scientific evidence.

Carolyn asked if he was aware of other diseases caused by composting. There was a list of how many diseases you could get from compost. It is not just what Mr. Domke has. This is being brought into Town. It is a hazard, a nuisance, it stinks and he runs it on the weekend. She showed pictures of him planting trees on a bream that is not bream material. This is the garbage that comes in with all the paper and all the plastics. She thinks the Town should be fighting for the 51 people. She feels the petition did nothing.

Attorney Culp said the petition did get the attention of the Town Board and he said that most municipalities would have said "We've looked at the issue, we've addressed it, we understand your concerns, thank you." That is what typical Town and City Boards would do. But the Town of Rushford went and hired a person with a fresh look to evaluate it. He looked at this objectively. He did not have a preconceived notion of where he wanted to go. His opinion is not result orient. He does not represent the Board. John Blazel is the Towns attorney. So his opinion does not have to be favorable to anybody. He can tell you that the direction and instruction he got was to look at this issue objectively and let the Town know what his opinion is.

Carolyn said this is a residential area though next to her house. She does not need this or the trucks coming in all day. Carolyn asked if the Attorney asked Dr. Mackey about the other 6 diseases that are in composting.

Attorney Culp said he read his dictation from March 17, 2017 in which he identified cryptococcosis as being the fungi in the system of Mr. Domke. The Attorney said he has seen the pictures where there is a cloud of steam and the aerosols, and he would be curious in taking an air sample. She could retain someone to come out and take an air sample and find out what is in there. She asked if he asked Dr. Mackey if there was something he could test piles with. Attorney Culp said he would have to do testing of the air and testing of samples within the pile. The Dr. did not say that there was a specific test called XYZ that you can check for cryptococcosis. Does that mean there is no such test? He is not saying that. The attorney said that they have a mechanism and a process to address this. It is available at 8:00 am if you want to do it that fast. It is a summons, a complaint. It is a filing at the Court house. They could do it or anyone there could do that.

She asked if everything Pomplun is doing is legal. The Attorney said he could not say, but from the zoning ordinance perspective is legal. And this is not a public nuisance. This could be a private nuisance between Mr. Domke and Mr. Pomplun. Mr. Domke can go to the Courthouse and file a lawsuit against him saying his compost piles, his mulching is causing me this infectious disease and I want damages. He can do that. If they are that convicted about it, he would highly encourage them to hire a competent lawyer and do that.

Carolyn asked Tom is the bream was illegal bream material. Tom Egan said he would have to say no, not now. And he cannot say everything he is doing is correct.

Attorney Culp said there are 2 issues. One is use of property and 2<sup>nd</sup> is health issue. It seems to him that the health issue is the one that is extremely emotional and certainly has affected Mr. Domke. He said if you truly believe in it, file that lawsuit tomorrow. Attorney Culp read from Wisconsin law what a public nuisance is. It is a condition or activity which unreasonably interferes with the use of a public place or with the activities of an entire community. A private nuisance is invasion or interference with a plaintiff's interest in the private use and enjoyment of his land. Right now, there is no scientific evidence making that cause of connection.

Carolyn feels it is a public nuisance. She feels it is a residential area and this should not be brought into the Town and she is hoping the town will stand behind the 51 people.

Mary Basil, Ripon said the attorney was hired by the Board. Tom clarified that he was hired because our Town attorney had a conflict of interest. None of the board has ever met Attorney Culp. He was asked to look at this objectively. Mary Basil thinks the Board should pay for the sample. Attorney Culp asked her if she was aware of any other individuals that have been diagnosed with an infectious disease besides Mr. Domke. She replied not today.

Attorney Culp said that is the problem with respect to a Town Board. In his opinion, it would be a misuse of taxpayers' money for a town board to get involved to do the testing and the sampling with respect to one individual. Now if it was a community based, such as what you see on 60 Minutes with ground water contamination in the City wells and hundreds of people who are affected by it, that is a different story. She said we are Eureka, not Flint Michigan. But if you ask all the people on the petition if they would like the Town to use the tax payers money to pay for the testing, she thinks they would say yes. It could be in all of our systems, and later when we are compromised, we all could have it.

The Attorney said alternatively you could go to the 51 people and pull money together to pay for the testing.

Ken Basil asked if a municipality was allowed to take a definition that the government makes and make it less. Attorney Culp said yes. If the state and municipality regulated the same thing, then the answer would be no. The state law provides the threshold and the municipality cannot go less. But in this case, the local municipality is not regulating a solid waste permit.

Dawn Hendrickson asked if the cease and desist letter from 2014 simply does not exist. The Board said at that time he had violations and now they are gone? Attorney Culp said when he took a fresh look from the fresh perspective as if rather or not the operations on that property violated any provision of the zoning code, he says they have not. She wants to know why the letter was not followed though. He cannot answer anything from 2014 since he was not here. Tom Egan said he would answer the best he could. The letter was sent in 2014. The Board and the zoning committee went out. At that time the main complaint was the stream. The main concern was if there was paper in there. They did find very little. At that time they thought it was OK, so they did not push it. Tom thinks maybe they should of. That is just his opinion.

Sarah McClelland asked why he is allowed to bring so much in. She does not feel that her quality of life has to suffer so he can make money.

It was asked who is going to keep track of what is brought in. Attorney Culp said that is the DNR.

Carolyn said the DNR does not care. They do not care about the health issues. No one is going to monitor how much he brings in and how much goes into the water.

Andrea Rew, Spring St, Eureka said Pompluns is in her back yard. She said if there is not an issue that they can pursue as a court case as a township, and if it has to be addressed as an individual issue, that is fine. But she wants to know where they go from here. They have a lot of concerns. She feels none of this is making anyone feel any better or does it solve any issues that they are concerned with.

Attorney Culp said he has had cases with other townships, and usually what you see is if there is a group of individuals- for example with the Town of Neenah with the cell tower. Everyone thought the transmission; electricity is going to cause health effects, etc. So there was a group of about 20 people who wanted to fight this. He looked at it and told them that they really did not have a valid position to stand on. They said thank you and went elsewhere. They sued the Town. They lost in the Circuit Court and spent \$25,000 as a group. He is saying everyone here, as a group or individuals, if you truly believe in this issue, band together. He is not saying they have a case or they don't. If it is that much of an issue, there is a process out there. Attorney Culp said if there was a violation of the DNR permit, such as he has more than 20,000 cubic yards, it is a DNR issue. If you go to Melanie and she does not do anything, there are so many opportunities to keep going. Even up to the Governor or your legislature.

Carolyn Domke asked isn't it the Town's responsibility if this is being done in a residential area. The Attorney said there is no violation of the zoning code.

Dawn Hendrickson asked if the cease and desist never expires. The Attorney said he didn't know if there was any explanation that is associated with the mailing of those letters. Dawn asked if he could still be in violation of what was written in that letter in 2014. The Attorney said from his review of the zoning code, he did not find any violations.

Tom Egan thought in one of the letters he read, someone was going to send someone up to check the air. Attorney Culp said Dr. Mackey contacted Dr. Jeffrey Davis of the Wisconsin Department of Health who was going to do some testing. Then he heard that Ann Boyce talked to the Department of Health and they said there is no testing for the fungi that Mr. Domke has for it is naturally occurring. The testing would not prove valid or reliable because if we were all tested, almost everyone would have it in their system.

It was asked why the air couldn't be tested in a couple of locations. It is thought it is more than what it normally would be.

Attorney Culp said the Wisconsin Department of Health did not think it would be appropriate to do that testing. Now if others have a different opinion, there are avenues available for them.

It was said that this went to the landfill earlier and they want to know why it is being brought into our Town. It was said it would be one thing if the tax payers were getting a tax cut because this was coming in. There is only one family profiting from this.

Tom Egan said Pat Schoonover brought this up at the last Town board meeting and the Town attorney is looking into the possibility of charging fees.

Attorney Culp encourages everyone to look at the materials he brought. Tom Egan asked for a summary of what he would recommend to the Town Board. Attorney Culp said the two issues are zoning and public health. He did not find any violation of the zoning code, so he does not think there should be any action on behalf of the Town Board. With respect to the health related issues, he thinks to the extent that there are 1, 2 or more individuals that believe it is a nuisance, that is an action that can be taken privately through the court system. It is not a matter that the Town Board should pursue nor is it something that should be pursued in behalf of the Town Board.

Ken Basil asked who oversees the Town Board. Or can you go to your legislature to have them look at the zoning. Tom Egan said there is an appeals board. The Clerk said the appeals board is only used for variances. Tom Egan thought maybe the judges.

Tom Egan had a question for Attorney Culp. He asked if they hired an attorney, they could go ahead on to private property and get samples? Do they need an attorney or can they do it themselves. Attorney Culp said anyone could file a large claim suit – over \$10,000 of damages if that is what you are claiming. You don't need to have an attorney. You file, prepare and file a summons. You prepare and file a complaint and then you prepare a Demand for Inspection under SS 804.10. So don't necessarily need an attorney, but an attorney can help you navigate very easily through the rules and regulations, codes and procedures.

Carolyn Domke asked why there are no zoning issues. Why is there nothing wrong with the zoning in a residential area and how he can build a bream with this material and it is not a zoning issue.

Attorney Culp said it is almost like proving a negative that is so difficult to do. If there is a violation, you can say it is right here. If you say there is no violation, there is nothing in the code – it is proving a negative which is difficult.

Pat Schoonover asked what procedure or where do you go to the Court House. Small claims? Attorney Culp said if a person said damages were less than \$10,000, you can go to small claims. You go to the Clerk of Courts and they have the form. Who you are suing and why. Then you can make a SS 804.10 request to get the samples. If it is larger than \$10,000, then it is Circuit Court. It is more formal with rules and procedures, Rules about evidence apply.

Sarah McClelland said even though 51 people said they do not want this, other than taking a legal action, can't the Town Board just say to Pompluns that the people don't want this here and we want you to stop? Attorney Culp said there are 2 things. It is a property right. Whenever you have property, you have the right to use it within the context of the zoning code. He found no violations. To tell him he could not do it, that is taking away his property right, which would subject the Town Board to substantial damages. You hear it a lot with respect to adult establishments. Milwaukee got themselves into terrible trouble doing exactly what Sarah is taking about. They are paying \$100 and \$100's of thousands of dollars for preventing an adult establishment from going on Water Street. That was a risk the city council made when they bent in the direction of all those who were opposing the adult establishment and now they are paying the price. There are \$100's of thousands of dollars the taxpayers have paid, because the City Council bent in that direction when they shouldn't of.

She asked isn't Pompluns denying the other residents the enjoyment of living on their property? Attorney Culp said that is why he pointed out the definition of a private nuisance. If they believe that the use of their land is being interfered because of the Pompluns, that is a private nuisance.

It was said when the cease and desist letter was sent in 2014, the Board felt there was a violation of the zoning at that time. Maybe they are not in violation now, but can you go back to that time in what he was doing.

Attorney Culp said he could not answer that. He was not there in 2014, he was not the author. She does not understand where 3 years ago they were in violation and now he isn't. She said they had the Solid waste district back then. Attorney could not answer this. It was asked if he had the time, if he could answer it. He said he thought those questions were best directed at the Town Board.

Carolyn stated it was zoned as a solid waste facility, not a residential. Attorney said it is not zoned as a Solid Waste facility. There is a official zoning map of the Town of the Towns website. It was asked what the

attorney thought composting was. The Attorney thinks it more pertains to a nursery. You look at Lowe nursery, Stuarts – that is what they do. Lowe nursery is in Town. Attorney Culp said he has heard the residents talk about quantity many times. The Town Board did not establish the quantity. They had nothing to do with that. Carolyn said the Town should enforce it. If it is a solid waste, he should have gotten a Conditional use permit. Attorney Culp said to the DNR, it is a solid waste, but it is not to the Town zoning. As a lawyer, he can tell you that the Town does not have to classify the nursery as a solid waste as the DNR does. They have that definition for permitting. Pompluns is not in violation of the zoning code.

It was asked if the Town had the ability to limit what can be brought in. Attorney Culp said he does not believe at this time, it can.

It was asked what the difference between composting and solid waste. Attorney Culp said you could ask 10 people and get 10 different answers. What matters for the zoning is what is defined. The zoning code does not define in Chapter 1 of the solid waste facility. It doesn't say a solid waste facility is defined with DNR definitions. He thinks when you look at the letter from the DNR from May 28<sup>th</sup>, it specifically identifies what he can do. It was said he is not in compliance. Attorney Culp said the DNR will enforce it with more aggressiveness if these issues keep re-occurring if complaints are given. He represented a tire shredding facility in the north part of the states and the DNR came down on them hard because out of 3 inspections, there were continued violations.

Carolyn Domke asked Tom Egan, as a Board, will they do anything. Tom said the agenda stated update with the attorney. It is not written to take any action. But as a Board, it will be on the agenda next month and it will have to go one way or another for sure. Tom said someone talked about the Town paying for the testing. He would like to know how much the testing would be and what it entails. Dawn said she would call for Tom. But she said they would not be able to get samples. Tom Egan said he has talked to both sides. He has talked to Russ and he tries to keep an open mind talking to both sides. He was going to call Russ and tell him about tonight. But he didn't. He usually lets him know. Tom thanked everyone for coming.

**Discussion on Town Insurance:** Hendricks said our policy expires June 1<sup>st</sup>. We had a proposal from Horton and we did not receive anything from Rural Mutual. She had called Andy to let him know the Town was taking bids for the insurance. ***Motion by Kafer, 2<sup>nd</sup> by Schoonver to switch our insurance to Horton.*** Tom Egan asked what would happen if a lawsuit came up between now and June 1<sup>st</sup>. He is concerned about that. Pat didn't think anything would be filed in 15 days.

***Kafer amended the motion that we would switch to Horton insurance with the understanding if something is filed against the Town before June 1, that they will go ahead and cover us. If not, the Town will stay with Rural Mutual.*** Kafer said he was disappointed that Rural Mutual did not get back to us. ***Motion carried.***

***Motion by Kafer, 2<sup>nd</sup> by Schoonver to adjourn at 8:00. Motion carried.***

Respectfully submitted by Peggy Hendricks, Clerk