

AS APPROVED MAY 13, 2010

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: March 25, 2010

PLACE: Lyle Shields Meeting Room
1776 East Washington Street

TIME: 7:00 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Doug Bluhm, Catherine Capel, Thomas Courson, Melvin Schroeder, Eric Thorsland, Paul Palmgren

MEMBERS ABSENT : Roger Miller

STAFF PRESENT : Connie Berry, John Hall, J.R. Knight

OTHERS PRESENT : Herb Schildt, Sherry Schildt, Jed Gerdes

1. Call to Order

The meeting was called to order at 7:00 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present with one member absent.

3. Correspondence

None

4. Approval of Minutes

None

5. Continued Public Hearing

None

6. New Public Hearings

Case 664-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign County Zoning Ordinance as follows: 1. Delete paragraph 6.1.4 A.1(c); and 2. Revise paragraph 9.1.7E.1 to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.

1
2 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said
3 that the new memorandum includes new information for the Finding of Fact. He said that the following
4 should be added at the end of the last sentence in Item #7.A: except for the Second Industrial Land Use
5 Goal. He said that a new Item #7.B should be added as follows: The Second Industrial Land Use Goal
6 appears to be relevant to the proposed amendment. The Second Industrial Land Use Goal is: Location and
7 design of industrial development in a manner compatible with nearby non-industrial uses. The proposed
8 amendment appears to {ACHIEVE} the Second Industrial Land Use Goal because it will make clear that a
9 wind farm developer is required to provide mitigation for shadow flicker for land that receives more than 30
10 hours of shadow flicker in a given year. He said that the following should be added as new Item 9: None of
11 the Land Use Regulatory Policies appear to be relevant to the proposed amendment.
12

13 Mr. Hall stated that the Board has seen part of this amendment during Zoning Case 658-AT-09 however
14 after the public hearing it was discovered that Part 1 of this amendment was not included in Case 658-AT-
15 09. He said that Part 2 of this case updates the *Zoning Ordinance* in regards to the number of Board
16 members required for a vote. He said that for some time the *Zoning Ordinance* has required five even
17 though the statutes require four. He said that it is the opinion of the State's Attorney is that if the state
18 statutes only require four affirmative votes then the County cannot require a greater number. He said that
19 the County has been operating with the understanding that only four affirmative votes are required and now
20 staff has time to run the text amendment to get it clarified in the Ordinance. He said that since 2003 the By-
21 laws have only required four affirmative votes and when the By-laws were amended in 2002 staff believed
22 that they had completed all of the amendments that were needed but this item in the Ordinance was
23 overlooked.
24

25 Mr. Hall stated that for relatively minor amendments such as this staff searched through the Land Use Goals
26 and Policies and the Land Use Regulatory Policies trying to identify anything that would be relevant to the
27 proposed amendment and it was determined that the Second Industrial Land Use Goal and the Fifth General
28 Land Use Goal were relevant. He said that the two other text amendments that are on tonight's agenda also
29 have evidence which includes some common sense things but staff was hard pressed to find any common
30 sense justification for the two amendments included in 664-AT-10, Part 1 and Part 2 that would include
31 relevant evidence that wasn't already included under the Fifth General Land Use Goal and Second Industrial
32 Land Use Goal. He said that the even though it appears that this case is ready for final action it would not
33 be unreasonable to continue this case to a second meeting to allow time for comment from municipalities.
34 He said that he doubts that the municipalities are interested in this case but as a courtesy the Board could
35 continue the case.
36

37 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.
38

39 Mr. Bluhm asked Mr. Hall if he knew what kind of timeframe the municipalities were working on.
40

41 Mr. Hall stated that since the municipalities have not contacted staff it is unknown. He said that before the
42 ZBA makes a recommendation the best thing for the Board to do is to make sure that staff does not see any
43 glaring problems. He said that staff does not know what the municipalities position will be until the ZBA
44 makes a recommendation therefore if the Board is comfortable then there is no reason not to take final action

1 at tonight's meeting.

2
3 Mr. Bluhm asked Mr. Hall if the municipalities will still have plenty of time to submit any comments
4 regarding the text amendment.

5
6 Mr. Hall stated yes. He said that text amendments are held at the Committee of the Whole for one month to
7 provide the municipalities time to react to ELUC's recommendation before it goes to the County Board.

8
9 Mr. Bluhm stated that it appears that the municipalities have ample time to submit comments therefore it
10 appears that there is no reason to continue this case to a second meeting.

11
12 Mr. Bluhm stated that there are no signatures on the witness register at this time and asked the audience if
13 anyone desired to sign the witness register to present testimony regarding Case 664-AT-10 and there was no
14 one.

15
16 Mr. Bluhm closed the witness register.

17
18 Mr. Bluhm requested a consensus of the Board regarding whether to continue Case 664-AT-10 to a later
19 date or move forward to the final determination at tonight's public hearing. He reminded the Board that the
20 municipalities will have ample time to present comments to the County Board regarding this case.

21
22 **The consensus of the Board was to move forward to the final determination at tonight's public**
23 **hearing.**

24
25 Mr. Hall stated that a new Item #5 should be added to the Documents of Record as follows: Supplemental
26 Memorandum for Case 664-AT-10, dated March 25, 2010.

27
28 **Mr. Thorsland moved, seconded by Mr. Courson that the proposed amendment appears to ACHIEVE**
29 **the fifth General Land Use Goal because it will make the Zoning Ordinance more consistent and clear,**
30 **as follows: (a) Deletion of paragraph 6.1.4 A.1(c) will make the Zoning Ordinance more internally**
31 **consistent; and (b) The proposed change to paragraph 9.1.7 E. 1. will make the Zoning Ordinance**
32 **consistent with state statute. The motion carried by voice vote.**

33
34 Mr. Hall noted that ELUC gave their approval of all three text amendments during the March Committee of
35 the Whole meeting therefore he would take that approval as a good sign.

36
37 **Mr. Palmgren moved, seconded by Mr. Schroeder to adopt the Summary of Evidence, Documents of**
38 **Record and Finding of Fact as amended. The motion carried by voice vote.**

39
40 **Mr. Thorsland moved, seconded by Mr. Courson to close the public hearing for Case 664-AT-10. The**
41 **motion carried by voice vote.**

42
43 Mr. Bluhm informed Mr. Hall that one Board member is absent from tonight's meeting therefore it is at his
44 discretion to either continue Case 664-AT-10 until a full Board is present or request that the present Board

1 move forward to the Final Determination. He informed Mr. Hall that four affirmative votes are required for
2 approval.

3
4 Mr. Hall requested that the present Board continue to the final determination.

5
6 **Final Determination for Case 664-AT-10:**

7
8 **Mr. Courson moved, seconded by Mr. Thorsland that pursuant to the authority granted by Section**
9 **9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign county**
10 **determines that the Zoning Ordinance Amendment requested in Case 664-AT-10 should BE**
11 **ENACTED by the County Board in the form attached hereto.**

12
13 The roll was called:

14			
15	Capel-yes	Courson-yes	Miller-absent
16	Palmgren-yes	Schroeder-yes	Thorsland-yes
17	Bluhm-yes		
18			

19 **Case 665-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign**
20 **County Zoning Ordinance by revising paragraph 4.3.3G to increase the maximum fence height**
21 **allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and**
22 **on residential lots in the AG-1 and AG-2 Zoning Districts.**

23
24 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said
25 that the new memorandum includes new information for the Finding of Fact as follows: Items #9: None of
26 the Land Use Regulatory Policies appear to be relevant; and Item #10: Increasing the allowable fence height
27 will provide landowners in the unincorporated area as much freedom in regards to fencing as property
28 owners in municipalities; and Item #11: Increasing the allowable fence height to eight feet will reduce the
29 need for variances which will reduce the costs of the County’s zoning program.

30 Mr. Hall noted that during Mr. Bluhm’s reading of the description of the case there was no mention of a
31 three inch clearance. He said that the Supplemental Memorandum dated March 19, 2010, included a
32 provision in 4.3.3G as follows: The height of the fences shall be measured from the highest adjacent
33 GRADE. There may be up to three inches of clearance between the highest adjacent GRADE and the bottom
34 of the fence panels. He said that anytime there is a variance on a fence there is an issue about the ground not
35 being level and if the fence is placed on the surface of the ground it will rot prematurely therefore the fence
36 is raised a little bit it will need to be cut off to comply with the six foot height requirement. He said that
37 Item #12.A is the justification for the three inch ground clearance. He read new Item #12: Regarding the
38 economic soundness of the proposed amendment: A. The proposed three inch ground clearance is
39 reasonable in regards to pre-manufactured fence panels for the following reasons: (1) Pre-manufactured
40 fence panels are available in standard six-foot high panels; and (2) Adding the proposed three inch clearance
41 to ground means that standard six-foot high pre-manufactured fence panels can be installed above the
42 surface of the ground without the need to cut off any of the fence panel; and (3) Three inches is an arbitrary
43 amount for the ground clearance but it allows the fence to be at least one-inch above the highest point of a
44 ground surface that could vary by as much as two inches; and B. The proposed three-inch ground clearance

1 is reasonable in regards to custom made fence panels for the following reasons: (1) Eight-foot high fences
2 are generally custom built; and (2) Eight feet is a standard increment of length for lumber; and (3) Adding
3 the proposed three inch clearance to ground means that custom made eight-foot high fencing can be installed
4 above the surface of the ground without the need to cut off and waste so much of the lumber; and (4) Three
5 inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above
6 the highest point of a ground surface that could vary by as much as two inches. He repeated that the three
7 inch clearance was not included in the legal advertisement and the time could be taken to re-advertise the
8 case to include the clearance but in his mind it is a small deviation and a re-advertisement is not necessary.
9 He said that he is comfortable with proceeding but if the Board believes that the case should be re-advertised
10 then it is certainly worth the time. He said that the Table Comparing Residential Fence Height Limits in
11 Champaign County Zoning Ordinance to Larger Local Municipalities is included as an attachment to the
12 Preliminary Memorandum dated March 19, 2010. He said that as far as staff knows municipalities do not
13 have any formal clearance like the three inches that is being proposed in this amendment. He asked Mr.
14 Knight if any calls have been received from municipalities regarding this case.

15
16 Mr. Knight stated no.

17
18 Mr. Hall stated that perhaps since the three inch clearance was not included in the legal advertisement would
19 be reason enough to continue this case to see if municipal staff objects to the three inches.

20
21 Mr. Bluhm asked if the Board had any questions for Mr. Hall and there were none.

22
23 Mr. Bluhm asked Mr. Hall if an eight foot fence would be allowed in the front yard.

24
25 Mr. Hall stated no, the eight foot fence would only be allowed in the side and rear yards.

26
27 Mr. Bluhm asked Mr. Hall if the fence in the front yard could be a solid fence.

28
29 Mr. Hall stated yes, except in the area of the visibility triangle.

30
31 Mr. Bluhm stated that the City of Champaign and the City of Urbana require that fences in front yards be at
32 least 50% open. He asked Mr. Hall if staff has considered requiring something similar to the City of
33 Champaign and the City of Urbana. He said that he is concerned about a solid eight foot fence being
34 allowed around the property and up to the driveway because if emergency services or the sheriff's office are
35 called to the property they cannot see what is going on until they get inside of the property. He said that if
36 there is a domestic dispute the deputy would not be able to see anything until he actually entered the
37 driveway.

38
39 Mr. Hall stated that the *Zoning Ordinance* does require a visibility triangle of 15 feet for a driveway
40 although the requirement does not limit the fence size.

41
42 Mr. Bluhm stated that at first he was not concerned about the text amendment but as he further considered it
43 he became concerned about a deputy that might be called out to a property in the middle of the country
44 which has an eight foot fence on three sides and a six foot fence on the front. He said that the deputy would

1 not be able to see inside of the property until he actually got past the fencing.
2
3 Mr. Hall stated that when he reviewed the proposed amendment at the Committee of the Whole they very
4 nearly did away with all fence height requirements which he quickly indicated would be a problem therefore
5 they went with the eight foot height.
6
7 Mr. Courson noted that the same issue would be with trees on a property.
8
9 Mr. Thorsland stated that crops are also an issue for visibility.
10
11 Mr. Bluhm stated that perhaps this is a question for the Sheriff Walsh.
12
13 Mr. Hall stated that there is no rush in determining final action for this case therefore staff could contact the
14 Sheriff's office for comments. He said that if the case is continued he would also like to contact the City of
15 Champaign and the City of Urbana to see if emergency service's safety is a reason why they require a
16 degree of openness on the front yard.
17
18 Mr. Thorsland stated that perhaps the City of Champaign and the City of Urbana allow for variances in
19 regard to front yard fencing.
20
21 Mr. Knight stated that when he was conducting research on this case he found that the City of Champaign
22 and the City of Urbana does require adult businesses to have solid fencing around the perimeter of the
23 property.
24
25 Mr. Bluhm asked the Board if they would like to continue the case to a later date.
26
27 Mr. Thorsland asked Mr. Hall if there was any reason to rush this case through.
28
29 Mr. Hall stated no. He said that Mr. Drollinger does have a pending case which is awaiting a decision of
30 this case and in the mean time Mr. Drollinger has an eight foot fence which provides him with the privacy
31 that he desired.
32
33 Mr. Bluhm stated that there are no names on the witness register at this time and asked the audience if
34 anyone desired to sign the witness register to present testimony regarding this case.
35
36 Mr. Herb Schildt signed the witness register.
37
38 Mr. Bluhm called Herb Schildt to testify.
39
40 Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet stated that he has had a lot of experience with
41 deer and an eight foot fence is very important if someone desires to protect their garden from the deer. He
42 said that deer could jump over anything smaller than an eight foot fence.
43
44 Mr. Hall stated that Mr. Knight noticed that there are no height limits in the CR district. He said that this

1 requirement only applies to the agricultural districts on lots less than five acres in area therefore if someone
2 owns a property that is more than five acres and it is located in the agricultural districts there would be no
3 height limit on a fence.

4
5 Mr. Bluhm asked the audience if anyone else desired to sign the witness register to present testimony
6 regarding this case and there was no one.

7
8 Mr. Bluhm closed the witness register.

9
10 **Mr. Thorsland moved, seconded by Ms. Capel to continue Case 665-AT-10 to April 29, 2010. The**
11 **motion carried by voice vote.**

12
13 Mr. Bluhm asked the Board if they desired to have the case re-advertised to include the three inch clearance.

14
15 Mr. Thorsland asked Mr. Hall to indicate how much re-advertisement would cost.

16
17 Mr. Hall stated that the cost would be approximately \$75.

18
19 **The consensus of the Board was to re-advertise Case 665-AT-10.**

20
21 Ms. Capel stated that it might be a good idea to contact the Sheriff’s office prior to the re-advertisement
22 because he may have additional changes that need to be included in the new legal advertisement.

23
24 **Case 666-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign**
25 **County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11D.1 to clarify that the**
26 **standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either**
27 **amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

28
29 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said
30 that the new memorandum includes new information for the Finding of Fact. He said that the items that are
31 on pages 4 and 7 of the Draft Finding of should be renumbered to allow for the new items of evidence which
32 are included in the memorandum. He said that new Item #8.A(7) should read as follows: Easing the review
33 of special use permit cases and eliminating the filing of parallel variance cases will help keep the costs of the
34 County zoning program lower than it would be otherwise and reduce the application costs to applicants and
35 leave applicants more freedom and flexibility in developing their special use. He said that new Item #9
36 should read as follows: None of the Land Use Regulatory Policies appear to be relevant. He said that the
37 Board had previously seen part of this case in the previous text amendment and when that amendment got to
38 the County Board there were objections made by the public. He said that at that time it was his position that
39 while he disagreed completely with the public’s objections the fact that there were objections was sufficient
40 reason to redo the text amendment trying as much as possible to eliminate any basis for disagreement in
41 regards to standard conditions. He said that the County Board agreed and the text amendment was re-
42 advertised and the new phrase, pursuant to the objections that were raised at the County Board, was inserted
43 as follows: “in either amount or kind.” He said that this phrase makes it very clear that the standard
44 conditions which are subject to waiver are any standard condition of any kind that is not in Section 5.3. He

1 said that what needs to be done during this public hearing is, at least amongst everyone in the room, make
2 sure that everyone agrees that the new language removes any ambiguity about what a standard condition is.
3 He said that in his view there is no ambiguity at the present time but comments have been made at the
4 County Board and the Zoning Board of Appeal's task is to make the language perfectly clear.
5

6 Mr. Hall distributed a handout which includes new items of evidence for the Finding of Fact which can be
7 added as new Items #10; #11; #12; and #13. He said that the new items of evidence should only be added if
8 the Board believes that it would add clarity to the text amendment. He read the new proposed items of
9 evidence as follows: #10: A special use permit is not required by statute to have standards. Standards are a
10 convenience for both the County and the special use applicant; and #11: Whether or not a special use permit
11 has standards that are subject to a variance or standard conditions that are subject to a waiver, applicants can
12 in either case make a request for something less than is otherwise required by the Ordinance; and #12: A
13 special use should always be in accordance with the general purpose and intent of the ordinance and should
14 never be injurious to the neighborhood or to the public health, safety or welfare whether or not that special
15 use permit has standards that are subject to a variance or standard conditions that are subject to a waiver;
16 and #13: Maintaining standard conditions that are subject to a waiver rather than standards that are subject
17 to a variance should result in quicker and easier public hearings at the Zoning Board of Appeals (and County
18 Board when relevant); lower overall costs of the zoning program; and lower application costs for special use
19 permit applicants.
20

21 Mr. Hall stated that the Board can do this either way because we do not have to have standards. He said that
22 this is a true policy issue and staff's recommendation to the County Board is that the best policy is to
23 maintain the greatest degree of freedom for both the applicant, ZBA, and County Board. He said that either
24 way the special use permit has to be consistent with the general purpose and intent of the Ordinance and it
25 cannot be injurious to the neighborhood. He said that he would like to add evidence to Item #8(2)(c) as
26 follows: These two findings are essentially the same as two of the required criteria for variances found in
27 subparagraph 9.1.9C.1.d. and 9.1.9C.1.e. which addresses injury to the neighborhood, public health, safety
28 and welfare and harmony and purpose of Ordinance. He said that a new Item #8(2)(d) should read as
29 follows: The other criteria required for a variance are not related to either injury to the neighborhood, public
30 safety and welfare or to the purpose or intent of the Ordinance. He said that the point is that the other
31 criteria for a variance have nothing to do with injury to the district and purpose and intent of the Ordinance.
32 He said that both the variance and special use permit have to meet those common things and that is the
33 reasoning why standard conditions were introduced back in 1993 and that is why they have been there for 17
34 years and why they should continue to stay that way. He said that with the new evidence that was included
35 in the handout as new items #10; #11; #12; and #13. He said that if it appears that staff is working very hard
36 to make sure that this case gets adopted then that would be correct. He said that changing from standard
37 conditions to standards would be a terrible setback.
38

39 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.
40

41 Mr. Palmgren asked Mr. Hall to give an example of the differences.
42

43 Mr. Hall stated that the only difference would be that instead of the Board doing a single special use case,
44 which it has done for the past 17 years, it would do a special use plus a variance case for any variance from

1 the standard. He said that under the special use case there would be seven findings and under the special use
2 and the variance cases there would be 10 findings. He said that the petitioner would have to pay two
3 application costs and staff would have to prepare memorandums, legal notices and legal advertisements for
4 two cases. He said that in both cases the Board would have to make sure that the request is not injurious to
5 the district, injurious to the public health, safety and welfare and meets the purpose and intent of the
6 Ordinance.

7
8 Mr. Bluhm asked the Board if there were any additional questions for Mr. Hall and there were none.

9
10 Mr. Hall stated that his response to Mr. Palmgren’s question might be good evidence to add to the Finding
11 of Fact.

12
13 Mr. Palmgren stated that it appears that there will be an increased workload for staff.

14
15 Mr. Bluhm stated that perhaps new Item #13 could be expanded.

16
17 Mr. Bluhm called Mr. Herb Schildt to testify.

18
19 Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet distributed a written statement dated March 25,
20 2010, to the Board for review and as a Document of Record. Mr. Schildt read his statement. He said that
21 tonight he is expressing his opinions as well as his wife’s. He strongly recommended that the Board not
22 adopt Case 666-AT-10 because it will make all of the regulations contained in the wind farm amendment
23 (Section 6.1.4) subject to waiver. He said that it is clear to him that, as the zoning code is currently written,
24 the wind farm regulations cannot be waived. Therefore, adopting this amendment will cause a very
25 significant change to the zoning code, and he opposes it. He said that the Board knows that he believes the
26 wind farm amendment adopted last year is seriously flawed. He said that he also has a problem with the
27 substantial changes made to the amendment after the close of ZBA hearings and furthermore he is troubled
28 that the legal notice for the wind farm amendment included an overlay district, but this district requirement
29 was not part of the final amendment. He said that the wind farm regulations provide at least a baseline of
30 protection for the residents of the County and they also set expectations about where a wind farm can or
31 cannot be located. He said that these minimum standards should not be subject to waiver and as the zoning
32 code is currently written they are not subject to a waiver and this is as it should be. He said that no changes
33 to the zoning code in this regard are needed.

34
35 Mr. Schildt stated that it is useful to point out why he believes that the wind farm provisions are not
36 currently subject to waiver. He said that Section 9.1.11D.1 defines situations in which a standard condition
37 for a special use permit can be waived and it specifically refers to the special uses enumerated in Section
38 6.1.3. He quoted a portion of Section 9.1.11D.1 as follows: “Any other provision of this ordinance not
39 withstanding, the Board or Governing Body, in granting any Special Use, may waive upon application any
40 standard or requirement for the specific Special Use enumerated in Section 6.1.3 Schedule of Requirements
41 and Standard Conditions, to the extent that they exceed the minimum standards of the District...” He said
42 that as the ordinance is currently written, Section 6.1.3 contains a table that depicts a Schedule of Standard
43 Conditions for Specific Types of Special Uses. He said that this table does not, however, include wind
44 farms. He said that wind farms are handled separately by Section 6.1.4 therefore the ordinance specifically

1 exempts wind farm standard conditions from waiver. He said that he sees no ambiguity here. He said that
2 in the current ordinance the wind farm regulations cannot be waived and furthermore the types of conditions
3 that can be waived for the special uses in Section 6.1.3 are listed in the table in Section 5.3. He said that it
4 includes such things as minimum lot size and average width, maximum height, required yards, and
5 maximum lot coverage. He said that it has nothing to say about the vast majority of the provisions in the
6 wind farm ordinance. He said that in his view, the law is clear: the wind farm regulations define the
7 minimum standards that pertain to wind farms and these standards can't be waived. He said that attempting
8 to make the wind farm regulations subject to waiver, as the proposed amendment seeks to do, will result in a
9 fundamental alteration in the meaning of the zoning code and make no mistake this is not a small or clerical
10 change. He said that it makes a radical change in the meaning of the ordinance. He said that the wind farm
11 rules are important because they deal with important things, such as setbacks, turbine height, noise, damage
12 to farmland, electromagnetic interference, impact on wildlife, decommissioning, site reclamation, liability,
13 shadow flicker and the list goes on. He said that making these regulations subject to waiver simply puts it
14 all up for grabs again.

15
16 Mr. Schildt stated that it is his strong belief that making the wind farm requirements subject to waiver will
17 have a profoundly negative effect on property values because no one will be able to know where a wind
18 farm might be built, what setbacks will be used, what the noise limits are, the impact of shadow flicker, etc.
19 He said that if all of these conditions are subject to change, who will know where they stand. He said that
20 he believes that this uncertainty will fundamentally destabilize property values throughout Newcomb
21 Township where he lives and throughout the County in general. He said that if the wind farm regulations
22 become subject to waiver, landowners who want turbines will no longer be assured of the protections that
23 the current ordinance offers. He said that these protections include reclamation, decommissioning, and farm
24 land damage mitigation, among others and it is important that these protections remain requirements. He
25 said that they provide critical safeguards for landowners who will have turbines, especially those who have
26 already signed leases and these protections must not be subject to waiver.

27
28 Mr. Schildt stated that as he sees it, having a fixed set of minimum standards is beneficial to all landowners,
29 whether a landowner will be hosting a turbine or not. He said that it is not about whether you like wind
30 turbines or don't like wind turbines but is about providing a baseline of protection for all and about
31 maintaining continuity in the zoning code therefore he recommend that the Board rejects Case 666-AT-10.
32 He said that this will leave the zoning ordinance as it currently stands and thus prevent a major change to the
33 law. He said that simply put, this text amendment is not needed. He said that if the Board chooses to move
34 forward with Case 666-AT-10, it must, at a minimum, be changed to explicitly exempt the wind farm
35 regulations for waiver. He said that this would mean that the reference in Section 6.1.3 must remain in
36 paragraph 9.1.11D.1 and Section 6.1 could begin something like this: Except for the provisions specified in
37 Section 6.1.4, the standards listed in this Subsection... He said that doing this will keep the ordinance
38 unchanged as it relates to wind farms.

39
40 Mr. Bluhm asked the Board if there were any questions for Mr. Schildt and there were none.

41
42 Mr. Bluhm asked if staff had any questions for Mr. Schildt.

43
44 Mr. Hall asked Mr. Schildt if he was aware that all of the requirements for wind farms are labeled as

1 standard conditions from the very beginning and were in fact advertised as such in the legal advertisement.

2
3 Mr. Schildt stated that he is aware that several places in the law refer to the requirements as standard
4 conditions.

5
6 Mr. Hall asked Mr. Schildt if he was aware that, as indicated in Item #1 Attachment A of the March 19,
7 2010, Preliminary Memorandum, if the parts that have strikeout are ignored everything else is as the
8 ordinance exists today. He said that the ordinance as it exists today Subsection 6.1 indicates the following:
9 the standards listed for the specific special uses which exceed the applicable district standards in Section 5.3,
10 and which are not specifically required under another County ordinance, state regulation, federal regulation,
11 or other authoritative body having jurisdiction, to the extent that they exceed the standards of the district,
12 shall be considered standard conditions which the Board is authorized to waive upon application as provided
13 in Section 9.1.11 D.1 on an individual basis. He asked Mr. Schildt if he understood that Subsection 6.1.4 is a
14 subsection of 6.1 therefore the ordinance as it stands today makes it very clear both at the beginning of
15 Section 6.1 and at Subsection 6.1.4, that all of the requirements for wind farms are standard conditions.

16
17 Mr. Schildt stated that he lost the question. He said that the last portion of Section 6.1, as it currently stands
18 in the ordinance, indicates that the following: shall be considered standard conditions which the Board is
19 authorized to waive upon application as provided in Section 9.1.11 on an individual basis. He said that the
20 current version of Paragraph 9.1.11.D.1 indicates the following: Any other provision of this ordinance not
21 withstanding, the Board or Governing Body, in granting any Special Use, may waive upon application any
22 standard or requirement for the specific Special Use enumerated in Section 6.1.3. He said that there is
23 circularity here in that Section 6.1 refers to Paragraph 9.1.11.D.1 and Paragraph 9.1.11.D.1 says that it can
24 only be in Section 6.1.3.

25
26 Mr. Hall stated that his point was that Section 6 is very clear that everything in Subsection 6.1 could be a
27 standard condition.

28
29 Mr. Schildt stated that he and Mr. Hall have had many discussions and he would never question Mr. Hall's
30 understanding of the zoning code but in this regard he does disagree. He said that Subsection 6.1
31 specifically states that the standards listed for specific special uses which exceed the applicable District
32 standards in Section 5.3. He said that Subsection 6.1 eventually indicates that those standards can be waived
33 if they meet the criteria in Section 9.1.11. He said that he reads both sections unambiguously. He said that
34 he reads 9.1.11D.1. as only those standard conditions enumerated in 6.1.3 can be waived and Subsection 6.1
35 further specifies which standard conditions can be waived and those are standard conditions with equivalent
36 requirements in Section 5.3. He said that this is his clear understanding of what the law is stating.

37
38 Mr. Hall asked Mr. Schildt to indicate his understanding of what it means when Section 6.1.4 begins every
39 paragraph referring to everything in that paragraph as a standard condition.

40
41 Mr. Schildt stated that it says standard condition but it doesn't say anywhere that they are subject to waiver
42 except for the fact that there are private waivers. He said that we are not talking about the private waivers
43 that are within the ordinance that have nothing to do with the County. He said that he has studied this with a
44 focus on the wind farm but what about the mobile home parks included in Section 6.2. He said that there is

1 also the issue of decommissioning which is under Section 6.1.

2
3 Mr. Hall asked Mr. Schildt what he would make of the fact, that what he is proposing would result in the
4 Zoning Ordinance having everything under the wind farm being labeled as a standard condition. He asked
5 Mr. Schildt if he believes that it would be consistent to have those standard conditions not subject to waiver.

6
7 Mr. Schildt stated that it is important to go back to what the law indicates. He said that the law states that
8 the only standard conditions which can be waived are those included in Section 6.1.3 and clearly the law can
9 be changed. He said that he does not want the law to be changed but there are a couple of clauses in Section
10 6.1.4 which do not use the term “standard condition” and he is not sure if that is staff’s intent. He said that
11 standard condition is not a defined term in the ordinance. He said that Item Q only indicates the following:
12 Complaint hotline. He said that Item Q does not say standard condition for it.

13
14 Mr. Hall agreed.

15
16 Mr. Schildt stated that he has the same issue with Item S: Application requirements.

17
18 Mr. Hall stated that the intent of the drafter was that everything in Section 6.1.4 was a standard condition
19 and those two items are probably not a significant issue. He asked Mr. Schildt if he included in his written
20 statement what his understanding is of what are waivable standard conditions for all other special uses at
21 this time.

22
23 Mr. Schildt indicated that he does not believe that he made an explicit statement like that but the law
24 indicates such. He said that the law states, “any other provision of this ordinance notwithstanding the
25 Board or Governing Body, in granting any Special Use, may waive upon application any standard or
26 requirement for the specific Special Use enumerated in Section 6.1.3 Schedule of Requirements and
27 Standard Conditions, to the extent that they exceed the minimum standards of the District...”

28
29 Mr. Hall asked Mr. Schildt if it is his position, in reference to the phrase “in either amount or kind” is not
30 necessary because Section 9 makes it clear that everything in Section 6.1.3 is a standard condition that can
31 be waived.

32
33 Mr. Schildt stated that he has been focused strictly on the issue concerning the provisions in Section 6.1.4.
34 He said that, in general, he does not feel that this text amendment is needed but if the Board is going to
35 move forward with the text amendment and if the phrase is needed for the other issues then he does not have
36 an opinion on the phrase at this time. He said that the big change is being generated by making the wind
37 farm special conditions subject to waiver. He said that if the Board believes that the text amendment cleans
38 up the language in some sense relative to other special uses then he has no opinion one way or the other but
39 his sole concern is the change in making the wind farm provision subject to waiver.

40
41 Mr. Hall stated that the reason why he agreed to re-advertise this case was because at the County Board
42 meeting Mr. Schildt made the argument that nothing in Section 6.1.3 was subject to a waiver except things
43 that had the same requirement in Section 5.3. He said that he is glad that he and Mr. Schildt have come to
44 an agreement on this subject although it is unfortunate that the case has been re-advertised.

1
2 Mr. Schildt stated that he was responding to the possibility of the change being made. He said that clearly
3 the language of the law is very specific and he made the point at the County Board meeting that it doesn't
4 have anything to do with the vast majority of things in the wind farm amendment and the unaltered
5 language. He said that his point was that there is not concept of noise in Section 5.3 therefore there is no
6 applicable standard in Section 5.3 to exceed. He said that his main concern is strictly the issue of the change
7 to the wind farm standards making them subject to waiver. He said that if the recommended changes are
8 enacted then the standards would be subject to waiver and he does not believe that such a change should be
9 made therefore he offered his two alternatives.

10
11 Mr. Hall asked Mr. Schildt if he understood that if the Board went with the direction that he is
12 recommending that all of the wind farm standards could still be subject to a variance.

13
14 Mr. Schildt stated that the standard for a variance is higher because it has to meet five criteria.

15
16 Mr. Hall stated that the variance has to meet five criteria three of which are not related to injury to the
17 district, or to public health, safety or welfare or the purpose and intent of the ordinance.

18
19 Mr. Schildt stated that new Item #8.A.(7) states that, easing the review of special use cases and eliminating
20 the filing of parallel variance cases will help keep the costs of the County zoning program lower than it
21 would be otherwise and reduce the application costs to applicants and leave applicants more freedom and
22 flexibility in developing their special use. He said that he does not know if the wind farm standard
23 conditions are subject to variances. He said that he has reviewed this section in the zoning code and it is not
24 under discussion tonight except indirectly because of Mr. Hall's question. He said that it is not clear to him
25 that the standard conditions are subject to variance, as the code is written, but hypothetically if they were
26 subject to variance they would have to meet additional criteria. He said that he and Mr. Hall are seeing this
27 issue a little bit differently and he totally respects Mr. Hall's point of view and no matter how this turns out
28 it is not the first time that they have butted heads and it probably won't be the last time but in all honesty
29 when Mr. Hall states, "leave applicants more freedom," it suggests that waivers are easier to obtain than
30 variances. He said that this supports his concern regarding wind farms. He said that wind farms will be the
31 biggest change to Champaign County since the swamps were drained and it is a really big deal and he
32 believes that the standards should be extraordinarily high. He said that he does not believe that there should
33 be any waivers or variances for wind farms at all.

34
35 Mr. Bluhm asked the Board and staff if there were any additional questions for Mr. Schildt and there were
36 none.

37
38 Mr. Bluhm called Mr. Jed Gerdes to testify.

39
40 Mr. Jed Gerdes, who resides at 1448 CR 2700E, Ogden asked Mr. Hall if he is determined to get this text
41 amendment adopted.

42
43 Mr. Hall stated that the text amendment needs to be done.

44

1 Mr. Gerdes stated that it is his understanding that staff believes that it is important to be able to give waivers
2 out to wind farms for basic criteria. He asked Mr. Hall why it is so necessary to be able to grant these
3 waivers.

4
5 Mr. Hall stated that if there are no standard waivers the County will end up spending more money in trying
6 to get to the same result although it is a policy issue.

7
8 Mr. Gerdes stated that it is a policy issue. He said that he finds it interesting that this issue never came up
9 until his case regarding a requested restricted landing area was heard. He asked Mr. Hall what is actually
10 being waived. He said that if the wind farm desires to place a turbine closer to a non-participating
11 landowner so they could squeeze in one more turbine they could obtain a waiver and not abide by the
12 standards. He asked why the non-participating landowner does not deserve the same protection as the
13 participating landowner; and why should there be dual standards; and why should this be on a case-by-case
14 basis. He said that this is not a typical variance such as the height of a fence because the height of the fence
15 basically only affects the petitioner and the people next door are not asked if they will be affected by the
16 height. He said that the Board decides for those neighbors as to what will be done. He said that it could
17 create a situation where someone has a \$1 million dollar home and they desire to not have a wind turbine
18 more than 1,200 feet away from their home and another neighbor, who is a poor, single mom with a couple
19 of kids who lives in a shack that probably won't be in existence much longer, can be crowded by the turbine
20 because the wind company gets a waiver to only have a 1,000 foot setback from the shack. He said that
21 such a situation puts everything up for guessing and it also leads to corruption because it leaves everything
22 up for grabs. He said that it just isn't for this Board but for future ZBA members.

23
24 Mr. Hall requested that Mr. Gerdes address the Board and not staff.

25
26 Mr. Gerdes stated that it appears that the text amendment will put everything up for grabs. He said that he
27 has to address Mr. Hall about his next comment because he is the one that did it.

28
29 Mr. Hall informed Mr. Gerdes that he did not do anything other than his job.

30
31 Mr. Gerdes stated that Mr. Hall stated at the last RLA meeting that the Gerdes' were exempt as an
32 agricultural use and that they could go ahead and install their RLA. Mr. Gerdes said that a wind farm
33 representative came to him and said that the wind farm company would like his family to get rid of the RLA
34 or the company will go talk to the County. Mr. Gerdes said that two weeks later Mr. Hall wrote a letter to
35 his family indicating that the RLA is only okay if Robert Gerdes puts in the RLA and that Jed Gerdes could
36 not use it because at that point the RLA would be considered a commercial RLA. Mr. Gerdes stated that his
37 family has taken this issue to court and Mr. Hall has now determined that the RLA is not exempt at all
38 which is a total flip from his previous determination. He said that Mr. Hall previously stated that it is not a
39 concern of the County, when zoning rules for safety are being developed, as to how many tax dollars are
40 coming in and late Mr. Hall stated that it is a concern.

41
42 Mr. Bluhm requested that Mr. Gerdes address the Board and only give testimony which is relevant to this
43 case.

44

1 Mr. Gerdes stated that he believes that it is very dangerous if the whole thing is put up for grabs because it
2 puts individuals at risk currently and in the future.

3
4 Mr. Bluhm asked the Board if there were any questions for Mr. Gerdes and there were none.

5
6 Mr. Bluhm asked if staff had any questions for Mr. Gerdes and there were none.

7
8 Mr. Schildt requested the opportunity to address the Board.

9
10 Mr. Bluhm granted Mr. Schildt a quick opportunity to address the Board.

11
12 Mr. Schildt asked the ZBA to take their time with this because it really merits a lot of thought about the
13 downstream ramifications of this text amendment.

14
15 Mr. Bluhm asked the audience if anyone desired to sign the witness register at this time to present testimony
16 regarding this case.

17
18 Mr. Bluhm called Ms. Sherry Schildt to testify.

19
20 Ms. Sherry Schildt, who resides at 398 CR 2500N, Mahomet stated that if someone were to apply for a
21 variance there are five criteria and the petitioner must demonstrate that all of the five criteria for that
22 variance are met. She said that Section 9.1.9.C(d) and (e) of the Zoning Ordinance are similar to the criteria
23 for giving waivers. She said that to get a variance you have to prove the following (a) that special
24 conditions and circumstances exist which are peculiar to the land or structure involved which are not
25 applicable to other similarly situated land or structures elsewhere in the same zoning district; and (b) that
26 practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be
27 varied prevent reasonable and otherwise permitted use of the land or structures or construction on the lot;
28 and (c) that the special conditions, circumstances, hardships, or practical difficulties do not result from
29 actions of the applicant. She said that a variance is a higher standard to meet than a waiver. She said that if
30 the Board does delay a determination at this meeting she would suggest that the Board review the section in
31 the Zoning Ordinance regarding variances.

32
33 Ms. Schildt stated that the handout distributed by Mr. Hall, which was to provide clarity for the text
34 amendment, indicates the following text under Item #2: Whether or not a special use permit has standards
35 that are subject to a variance or standard conditions that are subject to a waiver, applicants can in either case
36 can make a request for something less than is otherwise required by the Ordinance. She said that she and
37 Herb tried to find some sort of definition in the Zoning Ordinance indicating whether a special use is able to
38 have variance and according to the text included in Item #2 of the handout if something is considered a
39 standard then it could be subject to a variance but if it is a standard condition it is subject to a waiver but not
40 a variance. She asked Mr. Hall if this was his intention.

41
42 Mr. Hall stated yes.

43
44 Ms. Schildt stated that if this is correct then every item that is included in Section 6.1.4 except for the

1 complaint hotline and the application is called a standard condition therefore it would not be subject to a
2 variance. She said that if by definition a standard is subject to a variance and a standard condition is subject
3 to a waiver and a standard is not subject to a waiver and a standard condition is not subject to a variance
4 then this whole discussion is moot because the standard conditions in the wind farm ordinance would not be
5 subject to a variance.
6

7 Mr. Hall asked Ms. Schildt if they would be subject to a waiver.
8

9 Ms. Schildt stated that they would only be subject to waiver if the proposed text amendment is
10 recommended because she agrees with Herb's analysis of the whole ordinance in itself and only standard
11 conditions in Section 6.1.3 are subject to waiver. She said that Table 6.1.3 is not an exhaustive list of all
12 special uses because it does not address schools or industrial uses for electrical power generation for
13 example. She said that she is not aware of what happened in 1993 but it appears that it went on for a long
14 time and the language was crafted very carefully.
15

16 Mr. Hall stated that Table 6.1.3 doesn't have all special uses because there are some special uses which have
17 no standard conditions, such as schools.
18

19 Ms. Schildt stated that schools do have to meet the standards applicable to the district. She asked Mr. Hall if
20 a school could build anywhere in any manner and not have setback or side yard variances.
21

22 Mr. Hall stated that as long as they meet the requirements in Section 5.3 and the Board can impose any
23 special condition that it sees fit in any special use. He said that Ms. Schildt commented that not all special
24 uses are included in Table 6.1.3 and he has tried to explain that the reason that they are not is because those
25 special uses do not have any standard conditions.
26

27 Mr. Schildt stated that wind farms are not included in Table 6.1.3.
28

29 Mr. Hall stated that Mr. Schildt is correct and that the wind farms are included in Section 6.1.4. He said that
30 the zoning case in 1993 went on for so long because a review of the finding of fact would show that it
31 consisted of Parts A, B, C and D and the part that had to do with standard conditions was Part D and the
32 findings for Part A and B were much more extensive than D.
33

34 Ms. Schildt stated that she is going by what the current ordinance states right now and what Mr. Hall stated
35 about standard conditions versus standards. She stated that she stands by her testimony.
36

37 Mr. Bluhm asked the Board if there were any questions for Ms. Schildt and there were none.
38

39 Mr. Bluhm asked if staff had any questions for Ms. Schildt and there were none.
40

41 Mr. Schildt requested an opportunity to re-address the Board.
42

43 Mr. Bluhm granted Mr. Schildt a brief opportunity to re-address the Board.
44

1 Mr. Schildt stated that when Mr. Hall was speaking about variances Mr. Hall was referring specifically to
2 the wind farm ordinance but Mr. Hall just stated that because they are listed as standard conditions they are
3 not subject to variance and only to waiver. He asked Mr. Hall if that was correct.

4
5 Mr. Hall stated yes.

6
7 Mr. Schildt stated that if the text amendment is not approved and there is no waiver or a variance on the
8 wind farm requirements then they are the rules, not guidelines, and they are as they stand. He asked Mr.
9 Hall if this was correct.

10
11 Mr. Hall stated that he does not see how that would ever be correct. He said that this text amendment is
12 being proposed because there is a disagreement or contradiction in the ordinance.

13
14 Mr. Schildt asked Mr. Hall to clarify that wind farm standard conditions are subject to waiver and not to
15 variance so therefore if this change is made they would become subject to waiver and not variance but if this
16 change isn't made then they are explicitly not subject to waiver and they are also not subject to variance. He
17 said that the handout that Mr. Hall distributed indicates that standard conditions are not subject to variance
18 they are subject to waiver. Mr. Schildt asked Mr. Hall if this was correct.

19
20 Mr. Hall stated that perhaps he misspoke. He said that the only things that are not subject to a variance are
21 the things that are listed in Section 9.1.9B. as prohibited variances.

22
23 Mr. Schildt asked if the wind farm provisions are not made subject to waiver are they are still subject to
24 variance.

25
26 Mr. Hall stated that in his mind they are subject to waiver right now and the text amendment is only
27 correcting an error in the ordinance.

28
29 Mr. Schildt stated that he appreciates Mr. Hall's clarification. He said that at any point he does not believe
30 that the wind farm provisions should be subject to waiver and he is not convinced that they are subject to
31 variance. He said that the newly introduced comments from Mr. Hall would prove cause for the Board to go
32 slow so that they truly understand what is going on.

33
34 Mr. Bluhm asked the Board if there were any questions for Mr. Schildt and there were none.

35
36 Ms. Sherry Schildt requested the opportunity to re-address the Board.

37
38 Mr. Bluhm allowed Ms. Schildt the opportunity to re-address the Board.

39
40 Ms. Schildt stated that the 6.1.3 Table does have some explanatory special provisions and it aligns with
41 Section 5.3 except for the far right had column. She said that for some of these things the standard is higher
42 or lower because the setback is greater for some of the uses. She said that all Special Uses in the Industrial
43 Uses, Chemical and Allied Products category must be setback 350 feet from a major street rather than what
44 is required in Section 5.3 and that is understandable. She said that it appears that the reason that these things

1 are included in the table is not necessarily because they have standard conditions but because the
2 requirements are greater. She said that the reason why the wording was so specific about Section 5.3 is
3 because the ZBA or Zoning Administrator or County Board at the time did not intend to waive the
4 Explanatory or Special Conditions but to only make those things, like setbacks from roads, subject to waiver
5 not the Explanatory or Special Provisions. She said that there are six different requirements that an Ethanol
6 Plant must meet, such as a water study, sufficient public sanitary sewer access, and those things would not
7 be something that the County would want to have waived.

8
9 Mr. Hall stated that all the Ethanol Plant requirements in 6.1.3 are subject to waiver.

10
11 Ms. Schildt stated that this is Mr. Hall's interpretation but not her interpretation and that is the whole crux of
12 the matter. She said that she is saying that only standard conditions that are the equivalent of applicable
13 district standards in Section 5.3 are subject to waiver and not all of the other stuff that doesn't have anything
14 to do with Section 5.3.

15
16 Mr. Thorsland asked staff if the Board would have the capability to close the witness register so that the
17 Board could discuss this case without additional public testimony.

18
19 Mr. Bluhm stated that the Board could not go into closed session but he could close the witness register for
20 tonight's meeting.

21
22 Mr. Bluhm asked the audience if anyone else desired to sign the witness register to present testimony
23 regarding Case 666-AT-10 and there was no one.

24
25 Mr. Bluhm closed the witness register.

26
27 Mr. Thorsland stated that the Board has spent a lot of time on the wind farm and the wind farm seems to be
28 the issue of this evening. He said that if any section of the wind farm ordinance is reviewed it would be
29 discovered that it has substantially higher standards than most other special uses. He said that the modified
30 version is very clear and even though he appreciates being read the five criteria for a variance the Board
31 knows those criteria very well. He said that no standard condition has ever been allowed to be waived to the
32 extent that the use would be injurious to the neighborhood or would have any implications upon public
33 health, safety or welfare. He said that the Board worked very hard on the ordinance and he is very
34 comfortable with the language of the proposed text amendment. He said that regardless whether it is the
35 present Board or a future Board none of those members are willing to give up the concept of health, safety
36 or welfare of the public. He said that currently some of the variance cases that have come before this Board
37 have been worked to death so that everyone is as happy as possible. He said that he is willing to move
38 forward with the text amendment because if there was much concern from the public the meeting room
39 would have been full.

40
41 Mr. Schroeder stated that he agrees with Mr. Thorsland. He said that he has been on the Board for a very
42 long time and the Board has worked very hard on the wind farm ordinance. He said that normally when the
43 Board makes a mistake there are over 300 people in the meeting room willing to make them aware of such
44 but he does not believe that any more time and energy could have been put towards this ordinance than what

1 was done. He said that society will require future energy for the public and toes may get stepped on from
2 time to time. He said that he appreciates the comments from the public but it is up to this Board to move
3 ahead and see the overall picture as to what has to be done for the community for future energy
4 requirements. He said that he is also willing to move forward with the text amendment.
5

6 Mr. Bluhm asked the Board if there were any other comments.
7

8 Mr. Palmgren asked Mr. Hall if the proposed text amendment is a clarification or a change in the language.
9

10 Mr. Hall stated that it is his view that the proposed text amendment is a clarification or correction. He said
11 that everything in the wind farm case was presented with standard conditions which are subject to waiver
12 and after that case was completed it was discussed that this error existed in the ordinance. He said that he is
13 only the Zoning Administrator and he does not have perfect knowledge but this is his position which is
14 supported by the State's Attorney. He said that even if the text amendment was a change in the language the
15 Board would have the right to make such a change.
16

17 Mr. Bluhm stated that he missed a couple of the wind farm meetings but it is his recollection that the wind
18 farm case was presented with standard conditions which were subject to waiver.
19

20 Mr. Thorsland agreed. He said that the Zoning Board has always been very generous with their time and at
21 the wind farm hearings the Board listened to testimony from people who were not even residents of
22 Champaign County. He said that during those very long hearings the ZBA gave a level of freedom for
23 testimony that other meetings would not have allowed.
24

25 Mr. Bluhm stated that just because a standard condition is subject to waiver does not mean that it will be
26 easy to obtain.
27

28 Mr. Thorsland stated that the Board worked very hard on the ordinance to try to balance the opinions of
29 those who did and did not want it. He said that at the time when the Board was considering the ordinance
30 the Board was not suppose to think about the tax revenue but the safety issues for the public. He said that
31 the Board must determine if the variance criteria are necessary for the public good and tax revenue is also
32 for the public good.
33

34 Mr. Hall stated that not considering costs in establishing the standards for public safety is a reasonable thing
35 to do and he believes that considering public safety when someone requests a waiver or variance and not
36 considering costs is a reasonable thing to do. He said that he believes that the testimony that he gave during
37 the wind farm hearings and the testimony that he gave regarding this case is consistent.
38

39 Mr. Bluhm requested direction from the Board.
40

41 Mr. Thorsland stated that he is comfortable in moving forward.
42

43 Mr. Bluhm requested a consensus from the Board to move forward or continue this case to a later date.
44

1 Mr. Hall reminded the Board that this case is not about the wind farm case and is entirely a different case.
2 He said that if the Board takes action tonight he would recommend that the difference between a variance
3 and a waiver is included in the finding so that it will be there for the County Board. He said that he would
4 like to add the following text to new Item #13 as follows: Maintaining standard conditions that are subject
5 to a waiver rather than standards that are subject to a variance should result in quicker and easier public
6 hearings at the Zoning Board of Appeals (and County Board when relevant); because even one variance of
7 conditions requires a separate variance case whereas a waiver of standard condition requires only two
8 additional findings for each waiver; lower overall costs of the zoning program; because a variance case
9 requires separate legal advertisement, separate notice to neighbors, separate staff memorandums, separate
10 findings of fact and a separate determination. Whereas a waiver of standard conditions only requires two
11 additional findings for each waiver; and lower application costs for special use permit applications because a
12 variance case requires a separate application fee whereas there is no additional fee for a special use permit
13 waiver.

14
15 Mr. Bluhm asked the Board if there were any additional questions for Mr. Hall and there were none.

16
17 Mr. Hall stated that he is concerned that the discussion at the County Board could turn into a discussion of
18 the wind farm standards rather than the substance of this amendment. He said that he does not know what
19 could be added to the finding of fact to prevent that but the last thing that he wants to have at the County
20 Board is a discussion of something that is not relevant to the case that is in front of them. He said that this
21 case is about making it clear in the ordinance what are standard conditions that are subject to waivers and he
22 would assume that he will have to deal with the continued discussion of wind farm standards.

23
24 Mr. Bluhm stated there are three new items that need to be added to the Documents of Record as follows:
25 #4: Supplemental Memorandum for Case 666-AT-10, dated March 25,2010, with attachments; and #5:
26 Handout regarding new items #10-#13 for the Finding of Fact dated March 25, 2010, distributed by John
27 Hall, Zoning Administrator at the March 25, 2010, meeting; and #6: Letter of testimony dated March 25,
28 2010, from Herb Schildt.

29
30 Mr. Courson asked Mr. Hall if it would be a small change and a huge savings if the wind farm was excluded
31 from the text amendment.

32
33 Mr. Hall stated that he would be opposed to excluding the wind farm.

34
35 Mr. Courson asked Mr. Hall to explain why he would be opposed.

36
37 Mr. Hall stated that such an exclusion would not be a small change but would be a big change. He said that
38 he prefers to receive direction from the County Board before he makes any big changes. He said that he is
39 pretty confident that the County Board would not support such a change and he is opposed to it. He said
40 that he previously ran the three text amendment by the County Board and they agreed to move forward. He
41 said that in his tenure as Zoning Administrator he ran two amendments without receiving direction from the
42 County Board and neither one of them were successful therefore this case is based on experience. He said
43 that if the Board desires they can make such a request to the County Board and we can wait to see how they
44 respond in May.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

Mr. Courson stated that he understands that the County Board is pro-wind.

Mr. Hall asked the Board if they would prefer to wait until the County Board has taken final action on Case 664-AT-08 before they take final action on this case.

Mr. Schroeder indicated that he was thinking the same thing.

Mr. Hall stated that it might prevent overload.

Mr. Thorsland stated that he would not be uncomfortable in waiting until the County Board adopted Case 664-AT-08. He said that ZBA does not have a full Board present at tonight's meeting either so the petitioner could choose to request a continuance.

Mr. Hall stated that, as the petitioner, he would be comfortable with the present Board's decision.

Ms. Capel moved to continue Case 666-AT-10. The motion failed due to the lack of a second.

Mr. Hall stated that Case 664-AT-08 will be before the County Board on May 4th and will stay at the Committee of the Whole until June 8th and move forward to the full County Board on June 24th therefore Case 666-AT-10 could return to the ZBA on July 15th. He said that the July 15th continuance date would be beyond the 100 day limit for a continuance therefore a motion would need to be made to suspend the by-laws. He said that this Board many want to provide comments to the County Board regarding the Committee of the Whole approach. He said that the Committee of the Whole approach has resulted in ELUC having less time for Planning and Zoning issues. He said that the COW has also resulted in more County Board members becoming aware of Planning and Zoning issues which is a good thing but it has put a real cramp on the amount of items which can be placed on the COW agenda.

Mr. Courson moved, seconded by Mr. Palmgren to suspend the by-laws for the 100-day continuance date. The motion carried by voice vote.

Ms. Capel moved, seconded by Mr. Courson to continue Case 666-AT-10 to the July 15, 2010, meeting. The motion carried by voice vote.

7. Staff Report

None

8. Other Business

A. October 28, 2010, Meeting

Mr. Hall stated that the Treasurer's office has contacted staff indicating that they are having the County's real estate tax sale on October 29, 2010, and the Lyle Shields Meeting Room will be set up for that sale on October 28th. He said that it is his recommendation to cancel the October 28, 2010, meeting. He said that he has received information that staff should expect a wind farm application in the fall of 2010 therefore the

ZBA

AS APPROVED MAY 13, 2010

3/25/10

1 ZBA could have a wind farm hearing going on and no access to the Lyle Shields Meeting Room. He said
2 that an alternative date could be set but his advice would be to cancel the meeting.
3

4 **Mr. Thorsland moved, seconded by Mr. Schroeder to cancel the October 28, 2010, ZBA meeting. The**
5 **motion carried by voice vote.**
6

7 **9. Audience Participation with respect to matters other than cases pending before the Board**
8

9 None
10

11 **10. Adjournment**
12

13 The meeting adjourned at 8:55 p.m.
14
15
16
17

18 Respectfully submitted
19
20
21
22

23 Secretary of Zoning Board of Appeals
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

ZBA

DRAFT

SUBJECT TO APPROVAL

DRAFT

3/25/10

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31

ZBA //

DRAFT SUBJECT TO APPROVAL DRAFT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23