

## **CASE NO. 895-AT-18**

*SUPPLEMENTAL MEMORANDUM #16*

*June 21, 2018*

**Petitioner:** Zoning Administrator

**Request:** Amend the Champaign County Zoning Ordinance to add “Solar Farm” as a new principal use under the category “Industrial Uses: Electric Power Generating Facilities” and indicate that Solar Farm may be authorized by a County Board Special Use Permit in the AG-1 Zoning District and the AG-2 Zoning District; add requirements and fees for “Solar Farm”; add any required definitions; and make certain other revisions are made to the Ordinance as detailed in the full legal description in Attachment A.

**Location:** Unincorporated Champaign County

**Time Schedule for Development:** As soon as possible

**Prepared by:** **Susan Burgstrom**  
Senior Planner

**John Hall**  
Zoning Administrator

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### **STATUS**

We will continue to refer to the following documents at the June 28, 2018 ZBA meeting:

- “Revised Proposed Amendment – Annotated” (Attachment H, Supplemental Memo #14 dated June 7, 2018)
- “Revised Proposed Amendment – Clean” (Attachment I, Supplemental Memo #14 dated June 7, 2018)
- “Revised Draft Finding of Fact 06/14/18” (Attachment J, Supplemental Memo #14 dated June 7, 2018)
- “Summary Finding of Fact – Expanded dated June 14, 2018” (Attachment B, Supplemental Memo #15 dated June 14, 2018)

A summary of the determinations made by the Board at the June 14, 2018 ZBA meeting can be found in the “Review of decision points...” section below.

Staff proposes corrections to the revised Finding of Fact dated June 7, 2018; see the “Corrections...” section below.

Attachment B includes the public testimony from June 14, 2018; see the “Additions...” section below for revisions staff proposes to the Finding of Fact. Staff is in the process of transcribing the remaining minutes from the June 14, 2018 ZBA meeting; they might not be available for the meeting.

**REVIEW OF DECISION POINTS BASED ON DETERMINATIONS MADE IN THE JUNE 14, 2018 ZBA MEETING**

The following changes were recommended by the Board to section 6.1.5 D.(3), subject to approval by the Environment and Land Use Committee and the full County Board:

- D. Minimum Standard Conditions for Separations for PV SOLAR FARM from adjacent USES and STRUCTURES

The location of each PV SOLAR FARM shall provide the following required separations as measured from the exterior of the above ground portion of the PV SOLAR FARM STRUCTURES and equipment including fencing:

- (3) For properties not participating in the solar farm:
- a. For any adjacent LOT that is five acres or less in area (not including the STREET RIGHT OF WAY):
    - (a) For any adjacent LOT that is bordered (directly abutting and/or across the STREET) on no more than two sides by the PV SOLAR FARM, the separation shall be no less than 240 feet from the property line. This separation distance applies to properties that are adjacent to or across a STREET from a PV SOLAR FARM.
    - (b) For any adjacent LOT that is bordered (directly abutting and/or across the STREET) on more than two sides by the PV SOLAR FARM, the separation shall exceed 240 feet as deemed necessary by the BOARD.
  - b. For any adjacent LOT that is five acres or more in area (not including the STREET RIGHT OF WAY), the separation shall be no less than 255 feet and the perimeter fencing shall be a minimum of 10 feet from a SIDE or REAR LOT LINE but not less than 255 feet from any existing DWELLING or existing PRINCIPAL BUILDING. This separation distance applies to properties that are adjacent to or across a STREET from a PV SOLAR FARM.
  - c. Additional separation may be required to ensure that the noise level required by 35 Ill. Admin. Code Parts 900, 901 and 910 is not exceeded or for other purposes deemed necessary by the BOARD.

The following changes were recommended by the Board to section 6.1.5 M.(2)a.(a), subject to approval by the Environment and Land Use Committee and the full County Board:

- (2) Screening
- a. A visual screen shall be provided around the perimeter of the PV SOLAR FARM as follows:
    - (a) The visual screen shall be provided for any part of the PV SOLAR FARM that is visible to and located within 1,000 feet of an existing DWELLING or residential DISTRICT except that the visual screen

may not be required within the full 1,000 feet of an existing DWELLING or residential DISTRICT provided the applicant submits a landscape plan prepared by an Illinois Registered Landscape Architect and the BOARD finds that the visual screen in

the landscape plan provides adequate screening. However, the visual screen shall not be required if the PV SOLAR FARM is not visible to a DWELLING or residential DISTRICT by virtue of the existing topography.

The following change was recommended by the Board to section 6.1.5 N.(2)b., subject to approval by the Environment and Land Use Committee and the full County Board:

N. Standard Conditions to Minimize Glare

- (2) After construction of the PV SOLAR FARM, the Zoning Administrator shall take appropriate enforcement action as necessary to investigate complaints of glare in order to determine the validity of the complaints and take any additional enforcement action as proves warranted to stop any significant glare that is occurring, including but not limited to the following:
  - a. The Zoning Administrator shall make the Environment and Land Use Committee aware of complaints about glare that have been received by the Complaint Hotline.
  - b. If the Environment and Land Use Committee determines that the glare is excessive, the Environment and Land Use Committee shall **require** the Owner or Operator to take reasonable steps to mitigate the excessive glare such as the installation of additional screening.

The following change was recommended by the Board to section 6.1.5 Q.(4)b.(g) ), subject to approval by the Environment and Land Use Committee and the full County Board:

Q. Standard Condition for Decommissioning Plan and Site Reclamation Plan

- (4) To comply with paragraph 6.1.1 A.5., the Applicant shall provide financial assurance in the form of an irrevocable letter of credit and an escrow account as follows:
  - b. Net salvage value may be deducted from decommissioning costs as follows:
    - (g) The total financial assurance after deduction of the net estimated salvage value shall not **be less than \$1,000 per acre**.

## **CORRECTIONS TO REVISED FINDING OF FACT DATED JUNE 7, 2018**

Staff has 3 changes for the “Revised Finding of Fact 06/14/18” in Attachment J to Supplemental Memo #14 dated June 7, 2018.

1. Page 18 of 49, Item 14 regarding Goal 9:  
 Change “will **HELP ACHIEVE**” to “is **NECESSARY TO ACHIEVE**” so it is consistent with the “Summary Finding of Fact Expanded” that was distributed as Attachment B to Supplemental Memo #15 dated June 14, 2018.
  
2. Page 39 of 49, Item 16.Q. regarding Zoning Ordinance Purpose paragraph 2.0(q):  
 Staff recommends deleting the existing text in subparagraph (1) and replace with the following: “The proposed amendment is not inconsistent with this purpose.”
  
3. Page 27 of 49, Item 16.B.(5)i. regarding alternative decommissioning:  
 As written, the item assumes either a recommendation or no recommendation, but the current status is a recommendation with changes. Staff suggests the following revisions:
  - i. ~~OPTION 1:~~ The Zoning Board of Appeals hereby recommends the Alternative Decommissioning standard that was included as Attachment K to Supplemental Memorandum #5 dated March 22, 2018, with the following changes:
    - (a) with financial assurance to cover {12.5% /25% / 50%} of the decommissioning costs in years 1-5 (see paragraph 6.1.5 Q.(4)a.(a) of the amendment); and
  
    - (b) with the conversion from letter of credit to escrow account to be made in years {15 through 20 / 20 through 25} (see paragraph 6.1.5Q.(4)e. of the amendment).

## **ADDITIONS TO REVISED FINDING OF FACT DATED JUNE 7, 2018 BASED ON PUBLIC TESTIMONY FROM JUNE 14, 2018 ZBA MEETING**

A summary of testimony from Ms. Tiffany McElroy-Smetzer and Mr. Ted Hartke will be added under Item 16.E.(6) as follows (renumber existing). The complete transcript of this public testimony can be found in Attachment B to this memorandum.

- E. Paragraph 2.0 (e) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to promote the public health, safety, comfort, morals, and general welfare.
  - (6) At the June 14, 2018 public hearing for this case, the following testimony was received regarding this purpose:
    - a. Tiffany McElroy-Smetzer, PO Box 1005, St. Joseph, stated that the choice of whether to participate in a solar farm should be left to each land owner. She said that her mother could benefit from the stable income that a solar farm would provide. She said that it isn’t a sure thing that her mother will lease any of her farm to the solar company, because her land, her farm

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tenants and her family are important to her, but her mother should certainly have the right to receive additional income to help her sustain if she so chooses.

- b. Ted Hartke, 1183 CR 2300E, Sidney, asked the Board to give additional consideration to noise levels and what would be acceptable for neighbors of a solar farm. He requested that solar farm inverters be kept 1,000 feet from a residence. He requested that his statement from the May 3, 2018 hearing be revised in the proposed text amendment as shown on page 23 of the May 3, 2018 minutes: “will not exceed sleep disturbance levels published by the World Health Organization and/or the United States EPA and the Illinois Pollution Control Board standard.” Mr. Hartke stated that this Board’s job is to protect the health, safety, and welfare of the residents of Champaign County, and the Board should be very attentive to that responsibility. Mr. Hartke stated that his last concern is the salvage value and the cost of decommissioning the panels. He said that he believes that the current decommissioning plan is inadequate.

#### ATTACHMENTS

- A Legal advertisement
- B Excerpt of draft minutes from June 14, 2018 ZBA meeting – public testimony

**LEGAL PUBLICATION: WEDNESDAY, FEBRUARY 14, 2018**

**CASE: 895-AT-18**

**NOTICE OF PUBLIC HEARING REGARDING A PROPOSED AMENDMENT TO THE  
CHAMPAIGN COUNTY ZONING ORDINANCE.**

CASE: 895-AT-18

The Champaign County Zoning Administrator, 1776 East Washington Street, Urbana, has filed a petition to change the text of the Champaign County Zoning Ordinance. The petition is on file in the office of the Champaign County Department of Planning and Zoning, 1776 East Washington Street, Urbana, IL.

A public hearing will be held **Thursday, March 1, 2018, at 6:30 p.m.** prevailing time in the Lyle Shields Meeting Room, Brookens Administrative Center, 1776 East Washington Street, Urbana, IL, at which time and place the Champaign County Zoning Board of Appeals will consider a petition to:

Amend the Champaign County Zoning Ordinance as follows:

Part A. Amend Section 3 by adding definitions including but not limited to “NOXIOUS WEEDS” and “SOLAR FARM”.

Part B. Add paragraph 4.2.1 C.5. to indicate that SOLAR FARM may be authorized by County Board SPECIAL USE permit as a second PRINCIPAL USE on a LOT in the AG-1 DISTRICT or the AG-2 DISTRICT.

Part C. Amend Section 4.3.1 to exempt SOLAR FARM from the height regulations except as height regulations are required as a standard condition in new Section 6.1.5.

Part D. Amend subsection 4.3.4 A. to exempt WIND FARM LOT and SOLAR FARM LOT from the minimum LOT requirements of Section 5.3 and paragraph 4.3.4 B. except as minimum LOT requirements are required as a standard condition in Section 6.1.4 and new Section 6.1.5.

Part E. Amend subsection 4.3.4 H.4. to exempt SOLAR FARM from the Pipeline Impact Radius regulations except as Pipeline Impact Radius regulations are required as a standard condition in new Section 6.1.5.

Part F. Amend Section 5.2 by adding “SOLAR FARM” as a new PRINCIPAL USE under the category “Industrial Uses: Electric Power Generating Facilities” and indicate that SOLAR FARM may be authorized by a County Board SPECIAL USE Permit in the AG-1 Zoning DISTRICT and the AG-2 Zoning DISTRICT and add new footnote 15. to exempt a SOLAR FARM LOT from the minimum LOT requirements of Section 5.3 and paragraph 4.3.4 B. except as minimum LOT requirements are required as a standard condition in new Section 6.1.5.

Part G. Add new paragraph 5.4.3 F. that prohibits the Rural Residential OVERLAY DISTRICT from being established inside a SOLAR FARM County Board SPECIAL USE Permit.

Part H. Amend Subsection 6.1.1 A. as follows:

1. Add SOLAR FARM as a NON-ADAPTABLE STRUCTURE and add references to the new Section 6.1.5 where there are existing references to existing Section 6.1.4.
2. Revise subparagraph 6.1.1 A.11.c. by deleting reference to Section 6.1.1A. and add reference to Section 6.1.1A.2.

Part I. Add new subsection 6.1.5 SOLAR FARM County Board SPECIAL USE Permit with new standard conditions for SOLAR FARM.

Part J. Add new subsection 9.3.1 J. to add application fees for a SOLAR FARM zoning use permit.

Part K. Add new subparagraph 9.3.3 B.8. to add application fees for a SOLAR FARM County Board SPECIAL USE permit.

All persons interested are invited to attend said hearing and be heard. The hearing may be continued and reconvened at a later time.

Catherine Capel, Chair  
Champaign County Zoning Board of Appeals

**TO BE PUBLISHED: WEDNESDAY, FEBRUARY 14, 2018 ONLY**

Send bill and one copy to: Champaign County Planning and Zoning Dept.  
Brookens Administrative Center  
1776 E. Washington Street  
Urbana, IL 61802  
Phone: 384-3708

**MINUTES OF REGULAR MEETING – SOLAR FARM PUBLIC TESTIMONY ONLY**

**CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

**1776 E. Washington Street  
Urbana, IL 61801**

<b>DATE:</b>	<b>June 14, 2018</b>	<b>PLACE:</b>	<b>Lyle Shields Meeting Room</b>
			<b>1776 East Washington Street</b>
<b>TIME:</b>	<b>7:00 p.m.</b>		<b>Urbana, IL 61802</b>

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**MEMBERS PRESENT:** Frank DiNovo, Ryan Elwell, Debra Griest, Marilyn Lee, Jim Randol, Brad Passalacqua

**MEMBERS ABSENT:** Cathe Capel

**STAFF PRESENT:** Connie Berry, Susan Burgstrom, John Hall

**OTHERS PRESENT:** Tannie Justus, Aaron Esry, Jackie Compton, Tiffany McElroy-Smetzer, Peter Folk, Marcus Ricci, Daniel Herriott, Phillip Geil, Tammar Geil, Matthew Herriott, Theodore P. Hartke, Marjorie Tingley

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**WITNESS TESTIMONY:**

Ms. Griest called Marjorie Tingley to testify.

Ms. Marjorie Tingley declined to testify.

Ms. Griest called Jackie Compton to testify.

Ms. Jackie Compton declined to testify.

Ms. Griest called Tiffany McElroy-Smetzer to testify.

Ms. Tiffany McElroy-Smetzer, whose address is PO Box 1005, St. Joseph, stated that her mother is a property owner in the area for a proposed solar farm. She said that her mother’s property has been in her family for over 100 years, and before Ms. Smetzer’s grandmother passed away, she had the farmland divided into eight separate parcels. Ms. Smetzer stated that her mother believed that it was very important to keep the farmland together, so they purchased all eight parcels so that it stayed together. She said that this is a hard decision for her mother, because she loves the farmland, the crops that are grown, etc.; it is her entire life. But she is also a 72-year old woman with kidney failure, and the choice of whether to sign up her land or not is her choice. Ms. Smetzer stated that her father has been gone for twenty years and an agreement with the solar company would provide financial stability for her mother that she would not be able to get somewhere else. She said that no one is guaranteed perfect neighbors, even if you believe that you live in a perfect neighborhood, there could be loud noise, trash in the yards, homes in disrepair, etc. She said that the solar farm would not be taking anything away from the best prime farmland because it will not be destroying



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1 the nutrients in the property, and if anything, it is preserving the land's nutrients for the future. She said that  
2 at some point, a landowner should not have to satisfy everyone within a 15-mile range, and even though that  
3 is an exaggeration, she can guarantee that everyone who came to the last meeting that she attended would not  
4 want her to tell them what she thought they could and could not do with their property or their job and their  
5 ability to earn.

6  
7 Ms. Smetzer stated that her mother's farmland has been in her family for over 100 years, and her mother is  
8 not taking any of these decisions lightly, because if she says no, she will have to look at how her life would  
9 be without the income. She said that her mother thinks about the life of her tenant farmers and how this  
10 would affect their income, because some of her tenants are third generation tenant farmers of her land, and  
11 they are important to her and they are part of the family. She said that while sitting in the audience, and she  
12 is not criticizing the Board, she has not heard the Board indicate that her mother's rights are not important,  
13 and she does not want to minimize any of the other property owners' rights either. She said that it isn't a  
14 sure thing that her mother will lease any of her farm to the solar company, because her land, her farm tenants  
15 and her family are important to her, but her mother should certainly have the right to receive additional  
16 income to help her sustain if she so chooses to do so.

17  
18 Ms. Griest asked the Board if there were any questions for Ms. Smetzer.

19  
20 Mr. DiNovo asked Ms. Smetzer to indicate the amount of acreage that her mother owned.

21  
22 Ms. Smetzer stated that her mother has approximately 77 acres left because the power company came to her  
23 several years ago and suggested that they could use eminent domain for her property, so her mother sold  
24 them 13 acres. She said that selling them 13 acres was not her mother's first choice, but since they were  
25 threatening to use eminent domain, her mother made her own deal.

26  
27 Ms. Smetzer stated that she served on the Land Resource Management Plan Committee, and farmland is  
28 important to her, and if some of the land was used for the solar farm purpose, then perhaps that would  
29 provide enough income to purchase another farm to keep other people going in other areas. She said that  
30 this is a very important matter and it is very deep to her family's heart, but the Board should keep in mind a  
31 72-year old widow with kidney failure, or an 80-year old woman who has her whole life's savings in this  
32 farmland. She said that these farms are people's entire savings and they should have the right to make their  
33 own decisions as to what they want to do with their land.

34  
35 Ms. Griest asked Ms. Smetzer if she would submit her written statement to staff.

36  
37 Ms. Smetzer stated that she would email her written statement to staff.

38  
39 1:45:20 Ms. Griest called Mr. Ted Hartke to testify.

40  
41 Mr. Ted Hartke, who resides at 1183 CR 2300 East, Sidney, asked the Board if witnesses have the  
42 opportunity to pose questions to the other witnesses during the hearing process.

43  
44 Ms. Griest stated that there is no such opportunity, although Mr. Hartke could present his questions to the  
45 Board regarding a previous testimony from a witness and the Board can pose those questions to that witness.

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1 Mr. Hartke stated that as he sat in the audience, he heard or read testimony indicating that if the solar panels  
2 are lined up in rows, they can block noise and break it down so that the inverters can be placed closer to the  
3 neighbor's property. He said that there could be a case where the inverter is directly down a row pointing to  
4 a house; he would like the Board to be aware that the noise could reflect and tunnel or funnel to the home on  
5 the property, and he encouraged the Board to keep the inverters 1,000 feet away from a house. He said that  
6 at the last meeting, Mr. Elwell mentioned if 40 dBA is where health impacts start and the human perception  
7 is that 3 dBA is hardly noticeable, then perhaps the Board should go with 43 dBA. Mr. Hartke stated that if  
8 the human perception is that 3 dBA is not noticeable, then he would recommend that the Board should  
9 recommend a noise limit of 37 dBA, because that would be the same as 40 dBA. He asked the Board if  
10 anyone has ever testified that a noise level louder than 40dBA is safe for the neighbors, because the Board  
11 keeps going back to the Illinois Pollution Control Board standard, which is too noisy. He asked the Board to  
12 review their distance setbacks for inverters.

13  
14 Mr. Hartke stated that Page 3, of the May 3, 2018, minutes indicates testimony from John Hall as follows:  
15 "He said that another number that has been mentioned is 39 dBA; that would require increasing the property  
16 line separation to 330 feet plus the 275 feet to the inverter, or 605 feet total, with the noise at the property  
17 line to be 39 dBA." Mr. Hartke stated that he believes that the distance should be checked again, and he  
18 wonders if perhaps an acoustician should be involved to tell the Board what the noise level is at 10 meters  
19 and what it will be at 605 feet, or at 800 feet as Mr. Hartke had previously recommended, or even at 1,000  
20 feet, which would finally provide a safe zone. He said that he would like to make a correction to his  
21 testimony at the May 3, 2018, meeting regarding where the microphones were placed when the wind  
22 company measured ambient noise for their wind farm in Vermilion County. He said that during his  
23 testimony he indicated that one microphone was set up on Route 9, and the other microphone was set up in  
24 the front yard of the new town middle school. He said that he wanted to correct his statement and indicate  
25 that the microphone to measure the ambient noise was not set up in the front yard of the new town middle  
26 school, but was set up at the center of town in Oakwood, the corner intersection at the entrance of the  
27 Oakwood grade school where the buses come in and out. He said that his purpose is to show that the  
28 countryside is not noisy, although it could be noisy at the bus depot at the grade school in the middle of  
29 town, but it is not noisy in the rural countryside.

30  
31 Mr. Hartke asked the Board if they have revised the proposed language of the text amendment to include the  
32 following statement that he provided at the last public hearing. He said that the statement is on Page 23 of  
33 the May 3, 2018, minutes, and is as follows: "will not exceed sleep disturbance levels published by the  
34 World Health Organization and/or the United States EPA and the Illinois Pollution Control Board standard."  
35 He said that if this statement is included in the text amendment, then he believes that the County's residents  
36 will still be healthy. He apologized for the repeat testimony, but this is very important and the Board has not  
37 adequately addressed this matter.

38  
39 Mr. Hartke stated that on Page 29, Line 45 of the May 3, 2018, minutes, Mr. Hall states the following: He  
40 thinks that we live in a loud county, particularly when you're in a rural area, and there is farming, there's a  
41 railroad, and there's a village close by. Mr. Hartke stated that it is not loud in the rural area where the solar  
42 farms are proposed.

43  
44 Mr. Hartke stated that on Page 31, Line 24 of the May 3, 2018, minutes, Mr. Hall states the following: "He  
45 said, again, the ICPB standard is the standard, which he agrees is way too high, and he also believes that you

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1 will always be better than that, simply because you are making sure that the inverters are at least 275 feet  
2 inside the development.” Mr. Hartke stated that Mr. Hall, Zoning Administrator, has indicated that the ICPB  
3 standard is too high, yet that same standard is still in the proposed amendment, at least as far as he knows.  
4 He said that Mr. Hall also said that “he hopes you never even get to that level; he hopes you are always  
5 below the IPCB level. He said that is the problem with that standard; it is so high, but with the kinds of  
6 separations you are talking about, you are going to be well below that.” Mr. Hartke stated that hope is not a  
7 strategy, and this Board’s job is to protect the health, safety, and welfare of the residents of Champaign  
8 County, and the Board should be very attentive to that responsibility.

9  
10 Mr. Hartke stated that his last concern is the salvage value and the cost of decommissioning the panels. He  
11 said that he believes that the decommissioning costs should require that the developer submits a plan  
12 regarding the removal of the panels and where they intend to dispose of them, whether it is at a landfill - and  
13 we now know that there is no landfill in Illinois which takes solar panel materials - or whether they are  
14 sending it to a recycling or e-waste disposal facility, and what it will cost. He said that perhaps the developer  
15 will attempt to sell the solar panels, but the Board should know if there is a market for such a thing. He said  
16 that he believes that the current decommissioning plan is inadequate.

17  
18 Ms. Griest asked the Board and staff if there were any questions for Mr. Hartke, and there were none.

19  
20 Ms. Griest asked the audience if anyone else would like to sign the witness register and present testimony  
21 regarding Case 895-AT-18, and there was no one.

22  
23 Ms. Griest closed the witness register for tonight’s hearing.

24  
25 Ms. Griest entertained a motion to continue Case 895-AT-18 to the June 28<sup>th</sup> meeting.

26  
27 **Mr. DiNovo moved, seconded by Mr. Passalacqua, to continue Case 895-AT-18 to the June 28<sup>th</sup>**  
28 **meeting. The motion carried by voice vote with one opposing vote.**

29  
30 Mr. Elwell informed the Board that he will not be attending the June 28<sup>th</sup> meeting.

31  
32 Ms. Griest entertained a motion to have the agenda for the June 28<sup>th</sup> meeting to indicate the following:  
33 Board discussion will occur prior to witness testimony.

34  
35 **Mr. Elwell moved, seconded by Mr. Passalacqua, to have the agenda for the June 28<sup>th</sup> meeting to**  
36 **indicate the following: Board discussion will occur prior to witness testimony. The motion**  
37 **carried by voice vote.**