

**CHAMPAIGN COUNTY BOARD**  
**COMMITTEE OF THE WHOLE – Highway/Facilities/ELUC Agenda**  
*County of Champaign, Urbana, Illinois*  
*Tuesday, March 1, 2011 – 6:00 p.m.*

*Lyle Shields Meeting Room, Brookens Administrative Center*  
*1776 East Washington Street, Urbana, Illinois*

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To: **Champaign County Board Committee of the Whole**

From: **John Hall, Zoning Administrator**

Date: **February 22, 2011**

RE: **Zoning Ordinance text amendment (Case 675-AT-10)**

Request: **Preliminary Recommendation to amend the Champaign County Zoning Ordinance as follows\*:**

**Part A** Revise 8.1 to authorize that NC lots may be used separately if authorized by variance.

‡ **Part B** Revise 8.2. to increase the limit on expansion of a dwelling that is a nonconforming use; and authorize that a dwelling that is a nonconforming use may be moved if authorized by variance; and clarify "ceases".

**Part C** Revise 8.3. to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance; and to authorize that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.

‡ **Part D** Revise 8.4. to be consistent with Part B and clarify "abandoned" and "discontinued".

‡ **Part E** Revise 8.6 to be consistent with Part B and to eliminate the limit on value of repair or replacement for a dwelling that is a nonconforming use and to authorize a variance to allow a higher limit on the value of repair for other nonconforming structures.

**Part F** Amend 9.1.2 C. to require the Zoning Administrator to provide notice of nonconforming zoning on any permit for a dwelling in a district in which a dwelling is not an authorized principal use.

**Part G** Revise Section 3 Definitions so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

\* **NOTE:** This description of the Request has been simplified from the actual legal advertisement.

‡ Indicates those parts of the amendment that were previously authorized by the Committee of the Whole (to some degree) on 9/7/10

Petitioner: **Zoning Administrator**

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### **STATUS**

The Zoning Board of Appeals voted to RECOMMEND ENACTMENT of this proposed Zoning Ordinance text amendment at their meeting on February 17, 2011. Page 13 of the Finding of Fact summarizes the more important Findings of the ZBA for this case. Attachment B is A Guide to the Parts of Case 675-AT-10 and summarizes the various parts of the amendment.

The Committee of the Whole authorized portions of this text amendment at the September 7, 2010, meeting. The recommended amendment differs from the amendment authorized by the Committee. See the discussion below.

Standard protocol is for the Committee to make a *preliminary recommendation* on a proposed text amendment at the first Committee meeting following a ZBA recommendation so as to give municipalities and townships with plan commissions one month in which to provide comments or protests. The Committee will make a final recommendation on this case at the April 7 meeting and the case will go to the full Board on April 21, 2011.

**RECOMMENDED AMENDMENT DIFFERS FROM AUTHORIZED AMENDMENT**

Attachment A is the memo that the Committee reviewed at the meeting on September 7, 2010, when the Committee authorized the proposed amendment. The version recommended by the ZBA differs in the following ways (see Attachment D for additional explanation):

1. **In Part A the ZBA recommends that variances be authorized to allow nonconforming lots of record that are in common ownership to be used separately.** The Committee of the Whole did not authorize this change. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights.

So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may to some small degree reduce the amount of best prime farmland that would otherwise be converted for development. The ability to use nonconforming lots separately should also make it easier to redevelop areas like Wilber Heights.

2. **In Part B the ZBA recommends that (1) the allowable expansion of very small single family dwellings that are nonconforming uses be increased up to a maximum total floor area of 1,500 square feet; and (2) a single family dwelling that is a nonconforming use may be moved to another part of the lot if authorized by variance; and (3) the limit on accessory buildings simply be the limit for the Zoning District.** The Committee of the Whole authorized increasing this limit to "200 square feet or 25% of building floor area, whichever is greater" at their meeting on 9/07/10. Following that meeting the Zoning Administrator had a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. One of the items discussed was that many of the original homes in Wilber Heights were 10' by 50' mobile homes for which a 200 square feet addition is a very small improvement. Based on that discussion the Zoning Administrator increased the expansion to allow any single family dwelling that is a nonconforming use to expand up to 1,500 square feet in building area but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."

The recommendation also allows a single family dwelling that is a nonconforming use to be moved to another part of the lot if authorized by variance. This change is consistent with the other approved changes. In areas like Wilber Heights it is reasonable to assume that in some instances it might be better to relocate the dwelling to a different part of the property as part of any reconstruction. The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account.

The Committee of the Whole also did not authorize eliminating the limit on expansion of accessory buildings and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke. In the case of Wilber Heights it is not clear why there should be any limit on accessory buildings or structures other than what is already required for the zoning district.

3. **In Part C the ZBA recommends that (1) a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance; and (2) that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.** The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses. It seems reasonable to give the ZBA the authority to approve this kind of variance since in

the future single family dwellings that are nonconforming uses may be rebuilt. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures and this change will allow greater flexibility. This authority may be of particular importance in areas like Wilber Heights with small lots and a mixture of residential and industrial uses. Under such conditions it might be better to relocate the dwelling to a different part of the property as part of any reconstruction and given the small nonconforming lot sizes and narrow lot widths it may be impossible to relocate without increasing nonconformity. The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) are considered.

4. **The ZBA recommendation on Part D contains other changes than were specifically authorized by the Committee on 9/7/10 but all of the changes are consistent and necessary with the Committee's direction.**
5. **The ZBA recommendation on Part E contains one change not authorized by the Committee on 9/7/10 but that change is required to make Subsection 8.6 of the Ordinance consistent with the existing Subsection 8.3.2 of the Ordinance.**
6. **The ZBA recommendation on Part F is another change recommended by a Wilber Heights resident.** The Committee of the Whole did not authorize this change. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights.

This change adds a requirement that the County Zoning Administrator provide a notice with any permit for an addition, expansion, or reconstruction of a single family dwelling that is a nonconforming use. The notice is intended to make the homeowner aware that the property is a nonconforming use so that the chance for future problems or surprises is reduced.

7. **The ZBA recommendation on Part G is intended to prevent confusion and strengthen the Ordinance overall.** The Committee of the Whole did not authorize this change and this change adds no new requirement. This change will simply mean that in the future "nonconforming" will only relate to nonconformities that existed on the date of adoption or amendment of the Ordinance.

The discussion of nonconformities in Section 8 of the Ordinance is confusing because the discussion of nonconforming lots of record is the only part of that Section that explicitly uses the modifier "of record". Changing the definition of "nonconformities" will correct Section 8 and this change is therefore consistent with all other approved changes. In the future, any use, lot, or building that was created after the effective date of the Ordinance (or relevant amendment) that does not comply with the Ordinance can be referred to simply as "noncompliant".

#### ATTACHMENTS

- A Memo to Champaign County Board Committee of the Whole dated August 30, 2010, with Proposed Amendment
- B A Guide to the Parts of Case 675-AT-10
- C Recommended Ordinance (Annotated)
- D As Approved Finding of Fact with Proposed Ordinance

Champaign  
County  
Department of

**PLANNING &  
ZONING**

Brookens  
Administrative Center  
1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708

To: **Champaign County Board Committee of the Whole**  
From: **John Hall, Director & Zoning Administrator**  
Date: **August 30, 2010**  
RE: **Direction to Zoning Administrator Regarding a Proposed Zoning Ordinance Text Amendment**

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**Requested Action:**

**Amend the Champaign County Zoning Ordinance Requirements for Dwellings that are Nonconforming Uses by (1) Removing the Limit on Annual Maintenance and (2) Authorizing Reconstruction**

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**BACKGROUND**

A front page article in the Sunday, July 25, 2010, edition of *The News Gazette* was about Wilber Heights (a residential and industrial area immediately east of Market Place Mall) and the problems that the Champaign County Zoning Ordinance has caused for the residents. The problems discussed in the article exceed the jurisdiction of the Zoning Ordinance but the Zoning Ordinance seems to be at the heart of the major concerns of Wilber Heights residents.

ELUC last discussed zoning problems in Wilber Heights in August of 1992 and the memo from that time still serves as a good introduction (see attached memo). The relevant portion of the minutes from the August 13, 1992, ELUC meeting are also attached.

However, two important zoning problems were not mentioned in the August 6, 1992, memo and they are (1) the prohibition on reconstruction of a dwelling that is a nonconforming use (subsection 8.4.1 of the Ordinance) and (2) the annual limit on ordinary repairs to no more than 10% of current replacement value for a dwelling that is nonconforming use (subsection 8.6 of the Ordinance). These problems were a primary focus of the News Gazette article and are the focus of this memorandum and the subject of the proposed text amendment. These problems are not limited only to Wilber Heights but that neighborhood is probably the largest single part of the County zoning jurisdiction that is affected by these concerns.

**LIMIT ON NORMAL MAINTENANCE AND RECONSTRUCTION ARE COUNTER TO THE PURPOSE OF THE ORDINANCE**

One of the stated purposes of the Zoning Ordinance is to conserve the value of land, buildings, and structures throughout the County (see paragraph 2.(b) of the Ordinance). And, like all zoning ordinances, the Ordinance has rules for uses and buildings that were legal before the Ordinance was adopted but which would be prohibited under the Ordinance. The term for such uses and buildings is "nonconforming" and the rules for nonconformities are found in Section 8 of the Champaign County Zoning Ordinance.

**Zoning Administrator**  
Zoning Ordinance Text Amendment To Address Dwellings That Are Nonconforming Uses  
AUGUST 30, 2010

The annual limit on ordinary repairs to no more than 10% of current replacement value for a dwelling that is a nonconforming use (subsection 8.6 of the Ordinance) is exceedingly restrictive and prevents older homes from being modernized.

The prohibition on reconstruction of a dwelling that is a nonconforming use (subsection 8.4.1 of the Ordinance) typically means that insurance cannot protect this major investment. Both rules mean that the value of dwellings like those in Wilber Heights is being degraded and not being conserved.

This is not an unintended consequence. Both of these provisions were part of the original Ordinance. The introductory narrative to Section 8 of the Ordinance makes it clear that the Ordinance is not intended to encourage the survival of nonconformities.

Neither of these requirements are subject to variance although in the past there have been improper variances granted for the replacement of dwellings that were a nonconforming use.

### **CHAMPAIGN COUNTY IS MORE RESTRICTIVE THAN SIMILAR COUNTIES**

The zoning ordinance requirements for nonconformities for McLean, Macon, Sangamon, Peoria, and Rock Island counties were compared to the Champaign County Zoning Ordinance as background for this memo.

Of these five counties, Macon County is the only other county that has an annual limit on ordinary repairs and it too has a limit of no more than 10% of current replacement value for a dwelling that is a nonconforming use.

All of these counties prohibit the reconstruction of a dwelling that is a nonconforming use.

### **PROPOSED AMENDMENT**

Attachment D is the proposed amendment and it consists of the following changes:

1. Revise and clarify subsection 8.2.1. The revision will increase the allowable expansion of a nonconforming dwelling from 200 square feet to 25% of the building floor area, or whichever is greater. This subsection will also be changed to use more standard wording to describe a dwelling that is a nonconforming use.
2. Revise subsection 8.4.1 to recognize the expansion authorized by subsection 8.2.1. and to allow reconstruction of a dwelling that is a nonconforming use.
3. Revise subsection 8.6 to recognize the expansion authorized by subsection 8.2.1. and to eliminate the limit on repair of a dwelling that is a nonconforming use.

### **ATTACHMENT**

- A *Not Going Anywhere* from the Sunday, July 25, 2010, edition of *The News Gazette*
- B August 6, 1992, memorandum to ELUC
- C Excerpt of approved minutes of August 13, 1992, ELUC meeting
- D Proposed amendment

**Proposed Ordinance Amendment**  
AUGUST 30, 2010

**1. Revise and clarify subsection 8.2.1 as follows:**

**8.2.1 Expansion of NONCONFORMING USE**

- A. No such NONCONFORMING USE of land shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this ordinance except as provided below.
- B. NONCONFORMING SINGLE FAMILY DWELLINGS A STRUCTURE that otherwise conforms to the R-1 DISTRICT requirements and that is a NONCONFORMING DWELLING may be expanded by no more than 200 square feet or no more than 25% of the building floor area, whichever is greater, and by construction of no more than one new ACCESSORY BUILDING or addition to an existing ACCESSORY BUILDING provided that the total area of such ACCESSORY BUILDING is not more than 650 square feet.
- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by no more than 25% of building floor area and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

**2. Revise subsection 8.4.1 as follows:**

- 8.4.1** No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located, except as follows:
- A. As provided in subsection 8.2.1.
  - B. A STRUCTURE that otherwise conforms to the R-1 DISTRICT requirements and that is a NONCONFORMING DWELLING may be reconstructed in the existing location subject to the requirement of a Zoning Use Permit. The reconstruction may include the one time expansion as authorized in subsection 8.2.1.

**3. Revise subsection 8.6 as follows:**

**8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

**Proposed Ordinance Amendment**  
AUGUST 30, 2010

A. As provided in subsection 8.2.1.

B. For a STRUCTURE that otherwise conforms to the R-1 DISTRICT requirements but that is a NONCONFORMING DWELLING, there is no limit on the value of the repair or replacement other than as provided in subsection 8.2.1 and the replacement may include bearing walls.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Amendment Part	Part of Zoning Ordinance Affected	Shortened Description	Degree of change - Direction of regulatory change	Type of approval req. (in Ordinance)
A.1.	First four paragraphs in Sec. 8	In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.	Minor - no reg. change	NONE
A.2.	8.1.2	Revise to authorize that NC lots may be used separately if authorized by variance.	<b>MAJOR</b> - Relaxation	<b>Discretionary (ZBA)</b>
* B.1.	8.2.1B.	Revise as follows: a. Limit applicability to the total expansion since October 10, 1973; b. Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4. c. Eliminate the limit on the amount of accessory buildings.	<b>MAJOR</b> - Relaxation	<b>BY RIGHT</b> or <b>Discretionary (ZBA)</b>
B.2.	8.2.1C.	Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.	<b>MODERATE</b> - <b>Restriction</b>	<b>BY RIGHT</b>
B.3	8.2.2	Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.	<b>MAJOR</b> - Relaxation	<b>Discretionary (ZBA)</b>
B.4.	8.2.3	Revise to clarify "ceases"	Minor - no reg. change	<b>BY RIGHT</b>
C.1.	8.3.1	Revise to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.	<b>MAJOR</b> - Relaxation	<b>Discretionary (ZBA)</b>
C.2.	8.3.3	Revise to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.	<b>MAJOR</b> - Relaxation	<b>Discretionary (ZBA)</b>
* D.1.	8.4.1 & 8.4.2	Revise to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.	<b>MAJOR</b> - Relaxation	<b>BY RIGHT</b>
D.2.	8.4.5	Revise to clarify "abandoned" and "discontinued".	Minor - no reg. change	<b>BY RIGHT</b>
D.3.	8.4.6	Revise to provide for replacement of a SF dwelling that is a NC use.	<b>MAJOR</b> - Relaxation	<b>BY RIGHT</b>
* E.	8.6	Revise to authorize the following: a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1. b. A SF dwelling that is a NC use has no limit on the value of repair or replacement. c. Any structure that is NC may be granted a variance to authorize a higher value of repair.	<b>MAJOR</b> - Relaxation	<b>BY RIGHT</b>
F.	9.1.2 C.	Revise to require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.	Minor - no reg. change	<b>BY RIGHT</b>
G.	Sec. 3 Definitions	Revise so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment.	Minor - no reg. change	NONE

## Notes

\* change authorized by Committee of the Whole (to some degree) on 9/07/10

Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

**Part A**

‡1. In the first four paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

*Notes: This change is really nothing more than Ordinance housekeeping and should have been done as part of 847-AT-93 Part C.*

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\* indicates changes that were specifically authorized by the Committee of the Whole on 9/07/10

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*Notes* are staff comments that are not part of the proposed Ordinance amendment.

Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

Part A (continued)

‡2. **Revise subsection 8.1.2 to authorize that nonconforming lots may be used separately if authorized by variance.**

8.1.2 Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

*Notes: The Committee of the Whole did not authorize this change. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights.*

*Nonconforming lots of record are far more widespread than are single family dwellings that are nonconforming uses. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may to some small degree reduce the amount of best prime farmland that would otherwise be converted for development. The ability to use nonconforming lots separately make also make it easier to redevelop areas like Wilber Heights.*

*The Zoning Board of Appeals (ZBA) has in some instances authorized variances to allow nonconforming lots to be used separately. Two such related cases were 334-V-02 and 335-V-02 which were on property located in Penfield. The minimum lot area required in those cases in which public water was available but there was no public sewer was 20,000 square feet. Case 334-V-02 was for a proposed lot with 13,260 square feet of area (a 34% variance) and Case 335-V-02 was for a proposed lot of 17,160 square feet in area (a 14% variance) that already had a dwelling and a septic system. A handout from those cases illustrating the distribution of zoning lot sizes in Penfield was distributed at the December 16, 2010, public hearing for this case. As reviewed in the Summary of Evidence for Case 334-V-02, 50% of the 86 other properties in Penfield were smaller than the smallest proposed lot. In those cases the Board contacted the Champaign County Health Department who advised that lot size probably was not critical in Penfield given that most of the soils there were not suitable for septic systems; and a Class I Aerobic Treatment Plant was would probably be the only feasible wastewater treatment option; and a public official in the township had previously agreed to maintain a tile to serve as an outlet for a Class I Aerobic Treatment Plant. The variances were approved.*

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Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

Part A. 2. (continued)

*Paragraph 9.1.9 C. of the Zoning Ordinance requires that no variance can be approved unless the ZBA finds that the variance complies with six criteria and one of those criteria is the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.*

*The Ordinance could even be further amended to require special findings for any variance for the separate use of nonconforming lots of record but even if that is not required the existing criteria related to public health, safety, or welfare will still require that the ZBA address the public health concerns.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the existing Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). The existing Champaign County requirements are the most restrictive because McLean and Peoria have similar regulations regarding nonconforming lots but neither county prohibits this kind of variance and Sangamon County apparently has no similar requirement.*

*This change should **HELP ACHIEVE** Goal 3 Prosperity and the goals and policies for both urban land use (policy 5.1.2) and agriculture (policy 4.1.4) in the Land Resource Management Plan (LRMP).*

(end of Part A)

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Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. Limit applicability to the total expansion since October 10, 1973.
  - b. Increase the limit on expansion of a single family dwelling that is a nonconforming use of land provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
- (3) Eliminate the limit on the amount of accessory buildings.

B. ~~ANONCONFORMING SINGLE FAMILY DWELLINGS~~ that is a ~~NONCONFORMING USE~~ of land may be expanded by no more than 200 square feet and by construction of no more than one new ~~ACCESSORY BUILDING~~ or addition to an existing ~~ACCESSORY BUILDING~~ provided that the total area of such ~~ACCESSORY BUILDING~~ is not more than 650 square feet. as follows:

1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
- \* 2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

\* indicates changes that were specifically authorized by the Committee of the Whole on 9/07/10

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Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

Part B. 1. (continued)

**Notes:** *As reviewed in the Preliminary Memorandum, the Committee of the Whole authorized increasing this limit to "200 square feet or 25% of building floor area, whichever is greater" at their meeting on 9/07/10. Following that meeting the Zoning Administrator had a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. One of the items discussed was that many of the original homes in Wilber Heights were 10' by 50' mobile homes for which a 200 square feet addition is a very small improvement. Based on that discussion the Zoning Administrator increased the expansion to allow any single family dwelling that is a nonconforming use to expand up to 1,500 square feet in building area but a variance is required if "...there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4."*

*The Committee of the Whole did not authorize increasing the allowable expansion to a total of 1,500 square feet and that change is much less restrictive than what the Committee authorized.*

*The Committee of the Whole also did not authorize that the limit on expansion applies relative to what existed on October 10, 1973, and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke in which both agreed that the limits in the Ordinance should be as clearly stated as possible. This clarification is consistent with all of the documentation of Case 847-AT-93 Part C in which expansion of single family dwellings that are nonconforming uses was first added to the Ordinance.*

*The Committee of the Whole also did not authorize adding the requirement for a variance in such instances (even when the addition is only 200 square feet) and that change is more restrictive than the current Ordinance.*

*The Committee of the Whole also did not authorize eliminating the limit on expansion of accessory buildings and that change also resulted from discussions that the Zoning Administrator had with Mr. Lemke. In the case of Wilber Heights it is not clear why there should be any limit on accessory buildings or structures other than what is already required for the zoning district.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, that Memorandum states the following:*

- *McLean County is the least restrictive with no limits on expansion of existing nonconforming dwellings and requires no discretionary review.*
- *Peoria County also has no limit on expansion but does require a special use permit to allow a nonconforming dwelling to expand.*

\* indicates changes that were specifically authorized by the Committee of the Whole on 9/07/10

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Part B. 1. (continued)

- *Sangamon County limits the amount of expansion to no more than 25% of the area occupied on the effective date of the Ordinance or amendment which is similar to what is proposed here for Champaign County but Sangamon County also requires a variance (discretionary approval) by their Zoning Board of Appeals (ZBA). The Sangamon County regulations are more restrictive than what is proposed for Champaign County.*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

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2. **Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.**

- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

*Notes: This is identical to part of the change proposed in paragraph B for single family dwellings that are nonconforming uses and is consistent with the documentation of Case 847-AT-93 Part C in which expansion of these kind of nonconforming uses was first added to the Ordinance.*

*The Committee of the Whole did not authorize this change but it is consistent with the intent of the Ordinance and adds an important clarification that could otherwise lead to disagreements.*

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Attachment C Annotated Draft Ordinance With Notes  
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Part B (continued)

‡3. **Revise subsection 8.2.2 to provide that a single family dwelling that is a nonconforming use may be moved if authorized by variance.**

**8.2.2** No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

*Notes: The Committee of the Whole did not authorize this change it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses. In areas like Wilber Heights it is reasonable to assume that in some instances it might be better to relocate the dwelling to a different part of the property as part of any reconstruction. The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account and that could facilitate better neighbor relations improvements in the neighborhood. but*

*The last sentence makes it clear that expansion authorized in subsection 8.2.1 should not be considered "relocation".*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to the expansion of single family dwellings that are nonconforming uses, the table indicates that the existing Champaign County regulations may be the most restrictive, as follows:*

- *McLean County is similar to Champaign County except that McLean County apparently does not prohibit variances from this requirement.*
- *Peoria County apparently authorizes this by means of a special use permit.*
- *Sangamon County apparently has no similar provision and also does not prohibit variances in regards to nonconformities.*

*Because this change could facilitate better neighbor relations between residential and non-residential uses in areas like Wilber Heights, it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Part B (continued)

4. In Subsection 8.2.3 clarify “ceases”.

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

*Notes: The Committee of the Whole did not authorize and this change adds no new requirement or change from current practice. This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important clarification that could otherwise lead to disagreements.*

*Note that compared to previous versions of the Draft Amendment, this version has been revised so that posting a sign on the front property line is not the only means of actively marketing a property for sale or rent. However, this change makes it clear that there must be some verifiable means of proof that the property is being marketed in order to protect the nonconforming rights. In this revised version this change adds no new requirement or change from current practice.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). All three counties have requirements that are similar to Champaign County's Sec. 8.3 but none of those counties prohibit variances from those requirements.*

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(end of Part B)

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Part C

1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

*Notes: The Committee of the Whole did not authorize this change but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.*

*Section 8.3 establishes the regulations for "nonconforming structures" which are structures that do not meet some regulation or standard related to the structure itself rather than what the structure may be used for. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures.*

*It seems reasonable to give the ZBA the authority to approve this kind of variance since in the future single family dwellings that are nonconforming uses may be rebuilt. This authority may be of particular importance in areas like Wilber Heights with small lots and a mixture of residential and industrial uses. Under such conditions it might be better to relocate the dwelling to a different part of the property as part of any reconstruction and given the small nonconforming lot sizes and narrow lot widths it may be impossible to relocate without increasing nonconformity.*

*The requirement for a variance will ensure that the concerns of neighboring property owners (such as neighboring industries or businesses) will be taken into account.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the table indicates the following:*

- *All three counties have requirements similar to Champaign County except that none of those counties appear to prohibit variances from the requirement.*
- *Additionally, Peoria County authorizes that a nonconforming structure may be allowed to continue or expand if authorized by special use permit.*

*The flexibility provided by this change would make it possible to improve the overall environment in areas like Wilber Heights which would benefit both residential and non-residential uses and thus it will **HELP ACHIEVE** Goal 3 of the LRMP.*

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Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

Part C (continued)

‡2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.**

**8.3.3** Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

*Notes: The Committee of the Whole did not authorize this change.*

*The background and justification for this change are similar to those for #C.1. above. The comparison to other Illinois counties is also similar except that Sangamon County apparently has no similar requirement and none of those counties prohibit variances from this requirement.*

(end of Part C)

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Attachment C Annotated Draft Ordinance With Notes  
FEBRUARY 9, 2011

Part D

‡1. **Revise Subsections 8.4.1 and 8.4.2 to authorize that a single family dwelling that is a nonconforming use may be expanded or reconstructed as authorized in 8.2.**

**\*8.4.1** No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be enlarged, constructed, reconstructed, moved, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.

B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING.

**8.4.2** Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

*Notes: As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.4.1. The change proposed here is somewhat different in format but the intention is the same. The change to 8.4.2 is necessary for consistency with subsection 8.2 since that subsection authorizes expansion which is literally "extending a use to occupy land outside of the structure".*

*Subsection 8.4 establishes the regulations for structures that are used for nonconforming uses whereas subsection 8.2 establishes the regulations for the nonconforming use of land. A single family dwelling that is a nonconforming use can be both (1) a nonconforming use of land and also (2) a structure that is used for a nonconforming use. The regulations by which a single family dwelling that is a nonconforming use can be enlarged, constructed, reconstructed, moved, or altered without changing the use are proposed in subsection 8.2 and subsection 8.6 and should not be repeated here but simply referenced. The proposed text is somewhat vague but that is purposefully done so as not to make unintentional changes.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement the*

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**FEBRUARY 9, 2011**

Part D. 1. (continued)

*Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because each of the other three counties all allow nonconforming dwellings to be reconstructed to some degree as follows:*

- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*
- *Sangamon County only allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

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**2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.**

**8.4.5** When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

*Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement or change from current practice.*

*This change is nearly identical to the change proposed in Part B. 4 and the background and justification for this change are similar to those.*

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Part D. (continued)

3. In Subsection 8.4.6 provide for replacement of a single family dwelling that is a nonconforming use.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

*Notes: The Committee of the Whole did not authorize and this but it is consistent with the approved change to authorize reconstruction of single family dwellings that are nonconforming uses.*

*The Zoning Ordinance defines "premises" as a lot or tract of land and any structure located thereon. In areas like Wilber Heights many properties consist of nonconforming lot(s) of record and a nonconforming structure. If this change is not made the rights to the nonconforming use would be lost during the effort to reconstruct the dwelling as authorized in subsection 8.2.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this requirement, the table indicates that all three counties are less restrictive than the current Champaign County regulations, as follows:*

- *Sangamon County allows nonconforming dwellings to be reconstructed if damaged due to catastrophe and if the dwelling is owner occupied (see notes S4, S5, and S7 in the table).*
- *McLean County allows a nonconforming dwelling to be reconstructed for any reason and without either a variance or a special use permit (see note M3 in the table).*
- *Peoria County requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the table).*

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(end of Part D)

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**Part E**

**‡1. Revise Subsection 8.6 to authorize the following:**

- a. a single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.
- b. a single family dwelling that is a nonconforming use has no limit on the value of repair or replacement.
- c. Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement.

**\*8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.
- C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

*Notes: As reviewed in the Preliminary Memorandum to this case, the Committee of the Whole authorized changing subsection 8.6. The change proposed here in paragraphs A and B are somewhat different in format but the intention is the same.*

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Part E. (continued)

*The change in paragraph C. is actually consistent with the current provisions of the Ordinance. Subsection 8.3.2 has always authorized variances to rebuild nonconforming structures but for some reason this limitation on repair has always applied. The limit on repair of nonconforming structures contradicts subsection 8.3.2 which has always given the ZBA the ability to grant a variance to rebuild a nonconforming structure.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). In regards to this comparison the Memorandum and table make clear that the existing Champaign County requirement is the most restrictive because none of the other counties limit the amount of repair authorized on nonconforming dwellings, as follows:*

- *McLean County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note M3).*
- *Peoria County does not limit the value of remodeling for a nonconforming dwelling provided that a special use permit is granted (see note P4 in the table).*
- *Sangamon County does not limit the value of remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see note S8).*

*This change should eliminate one of the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning in areas like Wilber Heights that is no new residences can be constructed and existing residences can have only limited expansion. Therefore, this part of the proposed amendment will **HELP ACHIEVE** Goal 3 of the LRMP.*

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(end of Part E)

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Part F

- ‡1. In paragraph 9.1.2 C. require the Zoning Administrator to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.

C. Issuance of Zoning Use Permit

1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

*Notes: The Committee of the Whole did not authorize and the only requirement that this change adds is on the County Zoning Administrator.*

*This is one of several changes added by the Zoning Administrator after a series of long conversations with Mr. Tom Lemke, a long time resident of Wilber Heights. This change adds an important notice to permits for additions, expansions, or reconstruction of a single family dwelling that is a nonconforming use. The notice is intended to make the homeowner aware of the nonconformities in the zoning so that the chance for future problems or surprises is reduced.*

*The Supplemental Memorandum of 1/06/11 included a table that compared the Champaign County Zoning Ordinance requirements to the relevant ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). No other county had a similar requirement to this.*

(end of Part F)

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Part G

- ‡1. In Section 3 revise Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.

*Notes: The Committee of the Whole did not authorize this change and this change adds no new requirement.*

*This change is consistent with the approved changes.*

*The Supplemental Memorandum of 1/06/11 reviewed a comparison of the ordinance requirements of three similar Illinois counties (McLean, Sangamon, and Peoria). Sangamon and Peoria counties have definitions that are similar to the proposed but McLean uses a definition similar to the existing ordinance.*

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(end of Part G)

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**AS APPROVED**

**675-AT-10**

**FINDING OF FACT  
AND FINAL DETERMINATION  
of**

**Champaign County Zoning Board of Appeals**

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Final Determination: **RECOMMEND ENACTMENT**

Date: **February 17, 2011**

Petitioner: **Zoning Administrator**

Request:

**Amend the Champaign County Zoning Ordinance as follows\*:**

- Part A**
- 1.** In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as authorized herein.
  - 2.** Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance.
- Part B**
- 1.** Revise 8.2.1 B. as follows:
    - a.** Limit applicability to the total expansion since October 10, 1973;
    - b.** Increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot and the lot area is less than required in subsection 4.3.4.
    - c.** Eliminate the limit on the amount of accessory buildings.
  - 2.** Revise 8.2.1 C. so that the limit on expansion applies to the total since Oct. 10, 1973.
  - 3.** Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if authorized by variance.
  - 4.** In 8.2.3 clarify "ceases".
- Part C**
- 1.** Revise 8.3.1 to authorize that a NC structure may be enlarged in a way that increases the nonconformity if authorized by variance.
  - 2.** Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations if authorized by variance.
- Part D**
- 1.** Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC use may be expanded or reconstructed as authorized in 8.2.
  - 2.** In 8.4.5 clarify "abandoned" and "discontinued".
  - 3.** In 8.4.6 provide for replacement of a SF dwelling that is a NC use.
- Part E**
- Revise 8.6 to authorize the following:
- a.** A SF dwelling that is a NC use may expand as authorized in 8.2.1 or reconstructed as authorized in 8.4.1.
  - b.** A SF dwelling that is a NC use has no limit on the value of repair or replacement.
  - c.** Any structure that is NC may be granted a variance to authorize a higher value of repair.
- Part F**
- In 9.1.2 C. require the Zoning Administrator to provide notice of NC zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized principal use.
- Part G**
- Revise Section 3 Definitions so that "nonconforming" only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.

**\* NOTE: the description of the Request has been simplified from the actual legal advertisement.**

**AS APPROVED FINDING OF FACT**

**FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
  - A. The Wilber Heights neighborhood is an area of approximately 36 acres located in Section 31 of Somer Township.
  - B. Wilber Heights is characterized by highly intermixed residential, commercial, and industrial land uses. The area was developed as a single family residence development in 1928 in what was then a semi-rural location.
  - C. Under the City of Champaign's 1961 zoning ordinance existing single family residences were made nonconforming but mobile homes were permitted in the City's industrial classifications.
  - D. The County zoned the western three-quarters of the area I-1 Light Industry and the eastern quarter I-2 Heavy Industry in 1973 following the pattern established by the City of Champaign.
  - E. The County's decision to zone the area industrial extended the nonconforming status of the residential uses in Wilbur Heights. Nonconforming uses may not be expanded or relocated on a lot. Consequently homeowners in Wilber Heights may not add to their residences or construct accessory buildings. The intent of these restrictions on nonconforming uses is to discourage their survival so that sooner or later they will be abandoned and the land converted to more appropriate conforming land uses.
  - F. The zoning of the Wilber Heights neighborhood was reconsidered in a rezoning case filed in 1977 (Case 236-AM-77). That case sought to rezone the entire neighborhood to R-2 Single Family Residence. The rezoning was denied due to its impact on the numerous commercial and industrial uses in the neighborhood by rendering them nonconforming.
  - G. Despite being made nonconforming almost 40 years ago many residential uses survive in Wilber Heights. Abandonment and conversion of these nonconformities is proceeding very slowly. This is likely due to the poor condition of infrastructure in the area, the lack of sanitary sewer, and the very small size of the residential lots. This area is entirely surrounded by land, developed or zoned for intense commercial or industrial use.

Item 2 (continued)

- H. A front page article appeared in the Sunday, July 25, 2010, edition of *The News Gazette* regarding Wilber Heights and the problems that the Champaign County Zoning Ordinance has caused for the residents.
  - I. ELUC discussed Wilber Heights in August of 1992, however, two important zoning problems were not mentioned in the staff memo to ELUC from August 6, 1992. These two problems were the focus of the News Gazette article, as follows:
    - (1) The prohibition on reconstruction of a dwelling that is a nonconforming use; and
    - (2) The annual limit on ordinary repairs to no more than 10% of the current replacement value for a dwelling that is a nonconforming use.
  - K. At their September 7, 2010, meeting the Champaign County Committee of the Whole authorized a text amendment to the Champaign County Zoning Ordinance that would remove the limit on annual maintenance and authorize reconstruction of single family dwellings that are nonconforming uses.
  - J. The proposed amendment will change the Zoning Ordinance requirement for any SINGLE FAMILY DWELLING which is a NONCONFORMING USE and not just those in Wilber Heights.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

**SUMMARY OF THE PROPOSED AMENDMENT**

- 4. The proposed amendment is attached to the Finding of Fact as it will appear in the Zoning Ordinance.

**GENERALLY REGARDING THE LRMP GOALS, OBJECTIVES, AND POLICIES**

- 5. The *Champaign County Land Resource Management Plan* (LRMP) was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:

- A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:

“It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:”

AS APPROVED FINDING OF FACT

Item 5 (continued)

- B. The LRMP defines Goals, Objectives, and Policies as follows:
- (1) Goal: an ideal future condition to which the community aspires
  - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal
  - (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
- C. The Background given with the LRMP Goals, Objectives, and Policies further states, "Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies."

**REGARDING LRMP GOALS**

6. LRMP Goal 1 is entitled "Planning and Public Involvement" and states that "Champaign County will attain a system of land resource management planning build on broad public involvement that supports effective decision making by the County." The proposed amendment appears to **HELP ACHIEVE** Goal 1 for the following reason:

- A. The only objective under Goal 1 that is related to the proposed amendment is Objective 1.1 that is entitled "Guidance on Land Resource Management Decisions", and states, "Champaign County will consult the LRMP that formally establishes County land resource management policies and serves as an important source of guidance for the making of County land resource management decisions."

The proposed amendment appears to **HELP ACHIEVE** objective 1.1.

7. LRMP Goal 2 is entitled "Governmental Coordination" and states "Champaign County will collaboratively formulate land resource and development policy with other units of government in areas of overlapping land use planning jurisdiction." Goal 2 is relevant to the proposed amendment to the extent that municipalities with comprehensive plans are able to protest any proposed amendment to the Zoning Ordinance and those protests must either be defeated by a supermajority of the County Board or alternatively the County Board and protesting municipality find a compromise that has no municipal protest and that is acceptable to a simple majority of the County Board. Any disagreements over land use policy must be settled by elected bodies and those bodies can only be heard late in the text amendment process.

It is assumed that any disagreements that arise over the proposed text amendment will be settled through what amounts to a collaborative process and at this time the proposed amendment appears to provisionally warrant a **HELP ACHIEVE** for goal 2.

## Item 7 (continued)

8. LRMP Goal 3 is entitled "Prosperity" and states "Champaign County will encourage economic growth and development to ensure prosperity for its residents and the region." Goal 3 has three objectives and no policies. The proposed amendment appears to **HELP ACHIEVE** Goal 3 for the following reasons:

A. Regarding the Wilber Heights neighborhood specifically:

- (1) The industrial designation for Wilber Heights was apparently consistent with Champaign City zoning because at the time the City zoning ordinance apparently authorized mobile homes in industrial zoning districts.
- (2) As documented in Zoning Case 236-AM-77 in which Wilber Heights was proposed to be rezoned to the R-2 Single Family Residence District and which ultimately failed, retaining the industrial zoning designation for Wilber Heights was intended to protect existing businesses and that is directly related to the general goal of prosperity.

B. Regarding all areas similar to Wilber Heights in which single family dwellings are nonconforming uses:

- (1) There are likely many reasons why areas like Wilber Heights have not been converted to all industrial or business uses. Small nonconforming lots of record are typically found in such areas and small lot sizes generally make redevelopment very difficult because while property owners can theoretically sell their properties for industrial development it generally requires many multiple lots to provide an adequate area for a modern business or industrial use. At the August 13, 1992, Environment and Land Use Committee meeting the Champaign County Zoning Administrator stated the following in regard to Wilber Heights in particular:

The area was platted into small residential lots but individual properties are usually too small to be used for permitted commercial or industrial uses so this keeps people from selling their individual property for these uses, and realizing the full value of their property unless someone was able to assemble a number of these parcels to offer for commercial or industrial use.

- (2) Over time the effect of the Zoning Ordinance regulations regarding nonconforming uses has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in areas similar to Wilber Heights. The overall effect has been to lessen prosperity.

AS APPROVED FINDING OF FACT

Item 8.B. (continued)

- C. The proposed amendment is intended to eliminate the most serious impediments to ongoing non-conforming residential use but still retain the key feature of industrial zoning- no new residences can be constructed and existing residences can have only limited expansion. Considered in that context, parts B, C, D, and E of the proposed amendment **HELP ACHIEVE** Goal 3.
  - D. It may also be that the provisions of Part A.2. of the proposed amendment that authorizes that nonconforming lots of record may be used separately if authorized by variance, will also **HELP ACHIEVE** the Goal for Prosperity by making redevelopment of areas like Wilber Heights easier.
9. LRMP Goal 4 is entitled "Agriculture" and states, "Champaign County will protect the long term viability of agriculture in Champaign County and its land resource base." The proposed amendment appears to **HELP ACHIEVE** Goal 4 for the following reasons:
- A. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Agriculture this amendment should **HELP ACHIEVE** the following policy:
    - (1) Policy 4.1.4 that states as follows:  
The County will guarantee landowners of one or more lawfully created lots that are recorded and lawfully conveyed and are considered a good zoning lot (ie, a lot that meets County zoning requirements in effect at the time the lot is created) the by right development allowance to establish a single family dwelling or non-agricultural land use on each such lot, provided that current public health, safety, and transportation standards are met.
    - (2) Public health and safety concerns are reviewed under item 11 of this Finding of Fact. That discussion finds that these concerns are adequately addressed by the proposed amendment.
10. LRMP Goal 5 is entitled "Urban Land Use" and states, "Champaign County will encourage urban development that is compact and contiguous to existing cities, villages, and existing unincorporated settlements." The proposed amendment appears to **HELP ACHIEVE** Goal 5 for the following reasons:

Item 10.A. (continued)

- A. Urban land is defined in the Appendix of Volume 2 of the LRMP as land within the County that is either within municipal corporate limits or unincorporated land that is designated for future urban land use on an adopted municipal comprehensive plan, adopted intergovernmental plan or special area plan and served by or located within the service area of a public sanitary sewer system.
  
- B. Part A.2. of the proposed amendment authorizes that nonconforming lots of record may be used separately if authorized by variance. The greatest concentrations of nonconforming lots of record are in the unincorporated areas surrounding the larger municipalities and within existing unincorporated settlements such as Dewey, Penfield, Seymour, etc. So long as adequate light and air are provided and public health concerns are adequately addressed, this kind of variance can result in more efficient use of land which may in some small degree reduce the amount of best prime farmland that would otherwise be converted for development. In regards to Urban Land Use this amendment should **HELP ACHIEVE** the following policy:
  - (1) Policy 5.1.2 that states as follows:
    - a. The County will encourage that only compact and contiguous discretionary development occur within or adjacent to existing villages that have not yet adopted a municipal comprehensive plan.
    - b. The County will require that only compact and contiguous discretionary development occur within or adjacent to existing unincorporated settlements.

11. LRMP Goal 6 is entitled “Public Health and Safety” and states “Champaign County will ensure protection of the public health and public safety in land resource management decisions.” The proposed amendment appears to **HELP ACHIEVE** Goal 6 for the following reasons:

- A. Policy 6.1.2 of the LRMP states that the County will ensure that the proposed wastewater disposal and treatment systems of discretionary development will not endanger public health, create nuisance conditions for adjacent uses, or negatively impact surface or groundwater quality.

The proposed amendment appears to **HELP ACHIEVE** policy 6.1.2 for the following reasons:

- (1) Part B1 of the proposed amendment allows very small single family dwellings that are nonconforming uses to be expanded so as to provide a more modern home but a variance is required if “...there is more than one **PRINCIPAL USE** on the **LOT** and the **LOT AREA** is less than required in Section 4.3.4.”
  
- (2) Most areas like Wilber Heights are not served by a sanitary sewer and development of the property must provide for an adequate septic system particularly if there is more than one principal use on the property.

AS APPROVED FINDING OF FACT

Item 11.A. (continued)

- (3) Requiring a variance allows the Zoning Board of Appeals (ZBA) to make sure that building expansion does not result in a septic problem that could have been avoided.
12. LRMP Goal 7 is entitled "Transportation" and states "Champaign County will coordinate land use decisions in the unincorporated area with the existing and planned transportation infrastructure and services." Goal 7 is **NOT RELEVANT** to the proposed amendment because it does not address transportation infrastructure nor should the proposed amendment create any problems for existing transportation infrastructure.
13. LRMP Goal 8 is entitled "Natural Resources" and states, "Champaign County will strive to conserve and enhance the County's landscape and natural resources and ensure their sustainable use." Goal 8 is **NOT RELEVANT** to the proposed amendment because the proposed amendment does not address natural areas or natural resources nor should it lead to the decline of County's landscape and natural resources.
14. LRMP Goal 9 is entitled "Energy Conservation" and states "Champaign County will encourage energy conservation, efficiency, and the use of renewable energy sources." The proposed amendment appears to **HELP ACHIEVE** Goal 9 for the following reasons:
  - A. Objective 9.3 of the LRMP states the County will encourage land use and transportation planning policies that maximize energy conservation and efficiency. The proposed amendment appears to **HELP ACHIEVE** objective 9.3 for the following reasons:
    - (1) Part D of the proposed amendment eliminates the prohibition in section 8.4 on replacement of a single family dwelling that is a nonconforming use thus making it possible to replace an older energy inefficient home with a newer more energy efficient home.
    - (2) Part E of the proposed amendment eliminates the limit on repair in section 8.6 so that there are no limits on repair of a single family dwelling that is a nonconforming use thus making it possible to upgrade an older energy inefficient home with energy efficient remodeling unconstrained by the Zoning Ordinance.
15. LRMP Goal 10 is entitled "Cultural Amenities" and states "Champaign County will promote the development and preservation of cultural amenities that contribute to a high quality of life for its citizens." Goal 10 is **NOT RELEVANT** to the proposed amendment because the proposed amendment only relates to existing non-conforming structures and properties.

**REGARDING THE PURPOSE OF THE ZONING ORDINANCE**

16. The proposed amendment appears to **HELP ACHIEVE** the purpose of the Zoning Ordinance as established in Section 2 of the Ordinance for the following reasons:
- A. Paragraph 2.0 (b) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.
- (1) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are NONCONFORMING USES has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area.
- (2) The Champaign County Zoning Ordinance does not have to be so restrictive regarding repair and replacement of single family dwellings that are NONCONFORMING USES. Relevant considerations are the following:
- (a) There is nothing in the Illinois Compiled Statutes that requires a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.
- (b) It is difficult to generalize from Illinois case law but at this time there is no obvious reason in Illinois case law for a county zoning ordinance to be so restrictive in terms of single family dwellings that are NONCONFORMING USES.
- (c) The Zoning Administrator compared the existing Champaign County Zoning Ordinance restrictions on single family dwellings that are NONCONFORMING USES to the restrictions on nonconforming dwellings in three comparable Illinois counties (McLean County, Peoria County, and Sangamon County) in the Supplemental Memorandum dated January 26, 2011. The comparison revealed the following:
- i. The other three counties all allow nonconforming dwellings to be reconstructed to some degree whereas Champaign County does not.
- ii. The other three counties do not limit the amount of annual repair authorized on nonconforming dwellings although Peoria County does require a Special Use Permit and Champaign County limits the annual repair to no more than 10% of the replacement value.
- iii. Two of the counties (McLean and Peoria) have no limit on the expansion of nonconforming dwellings unlike Champaign County which currently limits the expansion to 200 square feet. Sangamon County requires a variance to allow a nonconforming dwelling to

AS APPROVED FINDING OF FACT

Item 16. A. (continued)

expand and also limits the expansion to 25% of the area occupied on the effective date of the Ordinance or amendment. Sangamon County could be considered somewhat more restrictive than Champaign County because if the original dwelling was a small home (or small mobile home) of no more than 800 square feet the 25% limit is comparable or less than the current Champaign County limit of 200 square feet and the variance requires a public hearing. However, for nonconforming dwellings that were originally larger than 800 square feet this will result in a greater square footage expansion than currently allowed by Champaign County.

- (3) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
  - (a) He said that the value of the properties in the neighborhood is going down because the homes and accessory buildings cannot be rebuilt or expanded.
  - (b) He said that no one is going to purchase property in Wilber Heights if they are not able to rebuild a structure that is destroyed.

B. Paragraph 2.0 (e) of the Ordinance states that one purpose of the zoning regulations and standards have been adopted and established to promote the public health, safety, comfort, morals, and general welfare.

- (1) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the December 16, 2010, public hearing as follows:
  - (a) He asked the Board what they were supposed to do if their house was destroyed by fire and they were not allowed to rebuild it.
- (2) Mr. Homer Kirby who lives in the Wilber Heights neighborhood at 312 Paul Avenue, Champaign, testified at the January 6, 2011, public hearing as follows:
  - (a) He said that the property owners in the neighborhood are in a no-win situation and it has been this way for years.
- (3) As reviewed in Finding of Fact item 8, the likely effect of the original and existing Zoning Ordinance regulations regarding single family dwellings that are NONCONFORMING USES has been to lower the value of residential properties in areas like Wilber Heights by limiting the amount and type of repairs that are authorized and by not allowing older homes to be replaced even if the residents of those homes were content living in the area. The combined effects of less allowable maintenance and no possible replacement can be that buildings fall into a permanent state of disrepair.
- (4) The proposed amendment will eliminated the limit on repair of single family dwellings that are NONCONFORMING USES and also allow complete replacement of single family dwellings that are NONCONFORMING USES.

Item 16. (continued)

- C. Paragraph 2.0 (j) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to divide the entire County into districts of such number, shape, area, and such different classes according to the use of land, buildings, and structures, intensity of the use of lot area, area of open spaces, and other classification as may be deemed best suited to carry out the purpose of the ordinance.

The proposed amendment will not change the status quo in that areas like Wilber Heights will retain their non-residential designation and new non-residential land uses can continue to be established.

- D. Paragraph 2.0 (k) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to fix regulations and standards to which buildings, structures, or uses therein shall conform.

The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation with specific regulations and standards but it will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are NONCONFORMING USES

- E. Paragraph 2.0 (l) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prohibit uses, buildings, or structures incompatible with the character of such districts.

The proposed amendment will not change the status quo and areas like Wilber Heights will retain their non-residential designation and the establishment of additional dwellings will continue to be prohibited.

The proposed amendment will change parts of the Ordinance that have resulted in long standing problems for owners of single family dwellings that are NONCONFORMING USES.

- F. Paragraph 2.0 (m) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

The proposed amendment will lawfully establish new regulations that are less restrictive than the current regulations but it will still prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

**AS APPROVED FINDING OF FACT**

**DOCUMENTS OF RECORD**

1. Memo to Champaign County Board Committee of the Whole dated August 30, 2010
2. Application for Text Amendment from Zoning Administrator, dated March 11, 2010
3. Preliminary Memorandum for Case 675-AT-10 with attachments:
  - A Memo to Champaign County Board Committee of the Whole dated August 30, 2010 (included separately) with attachments
  - B Section 8 of Champaign County Zoning Ordinance (included separately)
  - C Paragraph 9.1.9 B of the Champaign County Zoning Ordinance
  - D Excerpted Definitions from Zoning Ordinance
  - E Proposed Draft Amendment
4. Handout at the December 16, 2010, public hearing from Cases 334-V-02 and 335-V-02 illustrating the distribution of zoning lot sizes in Penfield
5. Supplemental Memorandum for Case 675-AT-10 dated December 30, 2010, with attachment:
  - A Revised Draft Amendment
6. Supplemental Memorandum for Case 675-AT-10 dated January 6, 2011, with attachment:
  - A Comparison Of Certain Existing Champaign County Zoning Ordinance Requirements For Nonconformities With Other Counties
7. Supplemental Memorandum for Case 675-AT-10 dated January 26, 2011, with attachment:
  - A Revised Annotated Draft Ordinance
8. Supplemental Memorandum for Case 675-AT-10 dated February 10, 2011, with attachments:
  - A A Guide to the Parts of Case 675-AT-10
  - B Revised Annotated Draft Ordinance With Notes
  - C Preliminary Draft Finding of Fact (included separately)

**SUMMARY FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **December 16, 2010; January 6, 2011; January 20, 2011; and February 17, 2011**, the Zoning Board of Appeals of Champaign County finds that:

1. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE** the Land Resource Management Plan because:
  - A. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE** the following LRMP goals:
    - Goal 1 Planning and Public Involvement
    - Goal 2 Governmental Coordination (provisional)
    - Goal 3 Prosperity
    - Goal 4 Agriculture
    - Goal 5 Urban Land Use
    - Goal 6 Public Health and Public Safety.
  - B. The proposed Zoning Ordinance text amendment **WILL NOT IMPEDE** the achievement of other LRMP goals.
2. The proposed text amendment **WILL IMPROVE** the Zoning Ordinance because it will:
  - A. **HELP ACHIEVE** the purpose of the Zoning Ordinance.
  - B. **CORRECT ERRORS** in the text of the Zoning Ordinance.
  - C. **RELAX UNREASONABLE REQUIREMENTS** of the Zoning Ordinance.
  - D. **PROVIDE FLEXIBILITY** in the Zoning Ordinance for land owners in Champaign County.

**AS APPROVED FINDING OF FACT**

**FINAL DETERMINATION**

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 675-AT-10** should **BE ENACTED** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Eric Thorsland, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

**Part A**

- 1. In the first four paragraphs of Section 8 clarify that nonconforming dwellings may be expanded as authorized herein.**

Within the DISTRICTS established by this ordinance or by amendments that may later be adopted, there exist LOTS, PREMISES, STRUCTURES, ACCESSORY STRUCTURES, USES, and ACCESSORY USES of land which were lawful before this ordinance was effective or amended, but which would be prohibited, regulated, or restricted under the provisions of this ordinance or future amendments.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, except as otherwise herein provided, but not to encourage their survival. Such non-conformities are declared by this ordinance to be incompatible with the permitted STRUCTURES and USES of land and STRUCTURES in the DISTRICTS involved. It is further the intent of this ordinance that such NONCONFORMING USES of land, PREMISES, or STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged upon, expanded, or extended except as provided for herein, nor to be used as grounds for adding other STRUCTURES or USES prohibited elsewhere in the same DISTRICT.

A NONCONFORMING USE of land, PREMISES, STRUCTURES or ACCESSORY STRUCTURES shall not be enlarged, expanded, or extended after October 10, 1973, or after the effective date of an ordinance amendment rendering such USE NONCONFORMING except as otherwise herein provided. Attachment to a STRUCTURE, PREMISES, or land, of any additional SIGNS intended to be seen off the PREMISES, or land, shall be prohibited. The addition of other USES which are prohibited in the DISTRICT involved shall not be permitted.

A NONCONFORMING USE or a NONCONFORMING STRUCTURE which is nonconforming only because of failure to provide required off-street PARKING SPACES or LOADING BERTHS shall have all the rights of a conforming USE or STRUCTURE provided that no further reduction of off-street PARKING or LOADING BERTHS takes place.

- 2. Revise subsection 8.1.2 to authorize that nonconforming lots may be used separately if authorized by variance.**

**8.1.2** Once two or more contiguous LOTS or combination of LOTS and portions of LOTS which individually do not meet any dimensional, geometric, LOT ACCESS or other standards are brought into common ownership the LOTS involved shall be considered to be a single LOT for the purpose of this ordinance. No portion of said LOT shall be used separately or conveyed to another owner which does not meet all the dimensional, geometric, LOT ACCESS and other standards established by this ordinance unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

AS APPROVED FINDING OF FACT

Part B

1. Revise paragraph 8.2.1 B. as follows:

- a. Limit applicability to the total expansion since October 10, 1973.
- b. Increase the limit on expansion of a single family dwelling that is a nonconforming use of land provided that a variance is required if there is more than one principal use on the lot and the lot area is less than required in Section 4.3.4.
- c. Eliminate the limit on the amount of accessory buildings.

B. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land may be expanded as follows:

1. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and was 1,200 square feet or less in building floor area (not including basement) on October 10, 1973, may expand up to a total building floor of 1,500 square feet provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
2. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land and exceeded 1,200 square feet in building floor area (not including basement) on October 10, 1973, may be expanded by a total of 200 square feet or 25% of building floor area, whichever is greater, compared to the building floor area that existed on October 10, 1973, provided that a VARIANCE is required if there is more than one PRINCIPAL USE on the LOT and the LOT AREA is less than required in Section 4.3.4. The expansion may occur all at one time as part of a total reconstruction or replacement as authorized by Section 8.6.
3. Expansion of existing or construction of any new ACCESSORY BUILDING or STRUCTURE shall conform to the regulations and standards for the DISTRICT in which it is located.

2. Revise paragraph 8.2.1 C. so that the limit on expansion applies to the total expansion since October 10, 1973.

- C. NONCONFORMING nonresidential USES which are permitted as of right in the R-1, Single Family Residence District and are not otherwise permitted by Special Use Permit may be expanded by a total of no more than 25% of building floor area compared to the building floor area that existed on October 10, 1973, and height, lot coverage, and off-street parking and loading area only if a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

3. **Revise subsection 8.2.2 to provide that a single family dwelling that is a nonconforming use may be moved if authorized by variance.**

8.2.2 No such NONCONFORMING USE of land shall be moved in whole or in part to any other portion of the LOT or tract of land occupied on the effective date of adoption or amendment of this ordinance except that a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be moved on the LOT provided that a VARIANCE is granted by the BOARD in accordance with Section 9.1.9. Expansion as authorized in 8.2.1 B. shall not be considered moving of the NONCONFORMING USE.

4. **In Subsection 8.2.3 clarify “ceases”.**

8.2.3 If any such NONCONFORMING USE of land ceases for any reason for a period of more than 180 consecutive days except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, any subsequent USE of such land shall conform to the regulations and standards set by this ordinance for the DISTRICT in which such land is located.

**Part C**

1. **Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged in a way that increases the nonconformity if authorized by variance.**

8.3.1 No such STRUCTURE may be enlarged or ALTERED in a way which increases its nonconformity unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

2. **Revise subsection 8.3.3 to authorize that a nonconforming structure may be moved without conforming to the regulations if authorized by variance.**

8.3.3 Should any STRUCTURE be moved for any reason for any distance whatever, it shall thereafter conform to the regulations and standards for the DISTRICT in which it is located after it is moved unless a VARIANCE is granted by the BOARD in accordance with Section 9.1.9.

**Part D**

1. **Revise Subsections 8.4.1 and 8.4.2 to authorize that a single family dwelling that is a nonconforming use may be expanded or reconstructed as authorized in 8.2.**

8.4.1 No existing STRUCTURE devoted to a USE not permitted by this ordinance in the DISTRICT in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or ALTERED except in changing the USE of such STRUCTURE to a USE permitted in the DISTRICT in which it is located except as follows:

AS APPROVED FINDING OF FACT

- A. A SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) may be constructed, reconstructed, or ALTERED without changing the USE to a permitted USE and may also be enlarged or moved without changing the USE as otherwise herein provided.
- B. As otherwise herein provided for structures used for other than A SINGLE FAMILY DWELLING.

8.4.2 Any NONCONFORMING USE may be extended throughout any parts of the BUILDING or STRUCTURE which were manifestly arranged or designed for such USE at the effective date of adoption, or amendment, of this ordinance, but no such USE shall be extended to occupy land outside of such STRUCTURE except as otherwise herein provided.

2. In Subsection 8.4.5 clarify “abandoned” and “discontinued”.

8.4.5 When a NONCONFORMING USE of a BUILDING or STRUCTURE or of a PREMISES is discontinued or abandoned for 180 consecutive days or for 540 days during any 1,095 day period except for seasonal vacations lasting less than 274 consecutive days and that occur no more often than once in any 365 consecutive days or except when actively marketed for sale or rent by either the posting of a sign on the front LOT LINE of the property or when marketed by other affirmative means, the STRUCTURE or the PREMISES shall thereafter not be used except in compliance with the regulations and standards of the DISTRICT in which it is located.

3. In Subsection 8.4.6 provide for replacement of a single family dwelling that is a nonconforming use.

8.4.6 Where NONCONFORMING USE status applies to a PREMISES, removal or destruction of the STRUCTURE shall eliminate the NONCONFORMING USE status of the land, except as it may qualify as a NONCONFORMING LOT of record except as otherwise herein provided.

**Part E**

1. **Revise Subsection 8.6 to authorize the following:**

- a. a single family dwelling that is a nonconforming use may be expanded as authorized in subsection 8.2.1 or reconstructed as authorized in subsection 8.4.1.
- b. a single family dwelling that is a nonconforming use has no limit on the value of repair or replacement.
- c. Any structure that is nonconforming may be granted a variance to authorize a higher value of repair or replacement .

**8.6 Repairs or Maintenance**

On any STRUCTURE devoted in whole or in part to any NONCONFORMING USE, or which itself is NONCONFORMING, work may be done in a period of 365 consecutive days on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not to exceed 10% of the then current replacement value of the STRUCTURE, provided that the volume of such BUILDING or the size of such STRUCTURE as it existed at the effective date of the adoption, or amendment, of this ordinance shall not be increased except as follows:

- A. As otherwise herein provided; and
- B. There is no limit on the value of repair or replacement for a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land (including any ACCESSORY BUILDING or ACCESSORY STRUCTURE) including repair or replacement of bearing walls or other structural features.
- C. On any STRUCTURE that is NONCONFORMING a VARIANCE may be granted by the BOARD to authorize a higher value of repair or replacement including repair or replacement of bearing walls or other structural features.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any STRUCTURE or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Part F**

- 1. In paragraph 9.1.2 C. require the Zoning Administrator to provide a notice of nonconforming zoning on any permit for a single family dwelling in a district in which a single family dwelling is not an authorized principal use.

- C. Issuance of Zoning Use Permit

- 1. The Zoning Administrator shall retain the original copy of the Zoning Use Permit and shall mark such Permit whether approved or disapproved and for any Zoning Use Permit authorizing construction on a SINGLE FAMILY DWELLING that is a NONCONFORMING USE of land in a zoning DISTRICT in which a SINGLE FAMILY DWELLING is not an authorized PRINCIPAL USE, the Zoning Use Permit shall include a notice that the zoning district does not authorize a SINGLE FAMILY DWELLING as a PRINCIPAL USE and shall indicate in general the types of PRINCIPAL USE authorized as either business uses or industrial uses.

**AS APPROVED FINDING OF FACT**

**Part G**

- 1. In Section 3 revise Definitions so that “nonconforming” only applies to nonconformities that existed upon the effective date of adoption or amendment of the ordinance.**

**NONCONFORMING LOT, STRUCTURE or USE: A LOT, SIGN, STRUCTURE, or USE that existed on the effective date of adoption or amendment of this ordinance and which does not conform to the regulations and standards of the DISTRICT in which it is located.**

Date: February 23, 2011

To: Champaign County Board Committee of the Whole Members

From: Susan Monte, CCRPC Planner

Regarding: Request to Amend the Champaign County Zoning Ordinance to Implement Land Resource Management Plan Policies 4.1.5, 4.1.7, and 4.1.9

Request: Identify Preferred Version of LRMP Policy 4.1.5 & 4.1.7 and Approve Proceeding

### ***LRMP Policy 4.1.5***

At the February 8, 2011 County Board Study Session, the Board learned that the Champaign County Farm Bureau does not support the proposed Zoning Ordinance text amendments to implement the **adopted** LRMP Policy 4.1.5.

Provided for Board review is an **Alternate** version of the proposed Zoning Ordinance text amendment intended to implement an Alternate version of LRMP Policy 4.1.5, as suggested by the Champaign County Farm Bureau at the Study Session.

Also provided for Board review is a **Compromise** version of the proposed Zoning Ordinance text amendment intended to implement a Compromise version of LRMP Policy 4.1.5. The Compromise version retains many of the Adopted Policy 4.1.5 provisions and at the same time includes provisions to limit Best Prime Farmland use at the same relative proportions as the Alternative (Champaign County Farm Bureau preferred) version.

To enable discussion regarding the 3 versions of LRMP Policy 4.1.5 under review, this memorandum includes the following attached review items:

- Comparison of Adopted Policy 4.1.5 with Alternative and Compromise Versions
- 40 Acre Parcel Best Prime Farmland Example
- 40 Acre Parcel (Previously Divided) Best Prime Farmland Example
- 39 Acre Parcel Best Prime Farmland Example

Actual policies and proposed ordinance text will follow by email and post.

### ***LRMP Policy 4.1.7***

At the February 8, 2011 County Board Study Session, the Board reviewed the proposed Zoning Ordinance text amendment intended to implement LRMP Policy 4.1.7. The proposed text amendment occurs in revised Subsection 4.3.4(G) and reads as follows:

1. A LOT with AGRICULTURE as its principal USE shall have a minimum LOT AREA of { 35 / 40 / 60 / 80 } acres and a DWELLING may be established as a second principal USE. AGRICULTURE will not be the principal USE on any LOT of less than { 35 / 40 / 60 / 80 } acres in LOT AREA.

This item will be reconsidered at the March 1, Committee of the Whole meeting.

To facilitate Committee action, the information in this memorandum has also been provided to the Champaign County Farm Bureau.

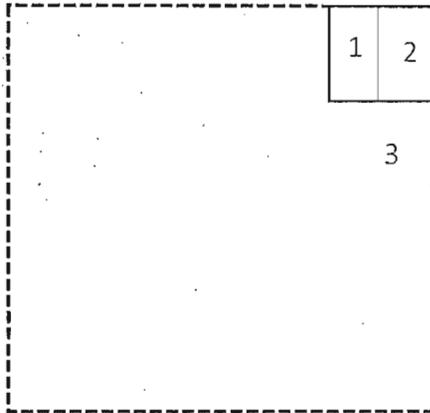
Comparison of Adopted Policy 4.1.5 with Alternative and Compromise Versions

	ADOPTED POLICY 4.1.5	ALTERNATIVE POLICY 4.1.5	COMPROMISE POLICY 4.1.5
<b><i>Number of New Lots and/or New Uses That Can Be Established</i></b>			
Number of authorized NEW lots and uses	1 on less than 40 acres; 2 on 40 acres or more	None on less than 40 acres; 1 on 40 acres or more	SAME AS ADOPTED POLICY
New use on existing lot	Yes	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
TOTAL uses that can be established after effective date	2 on less than 40 acres; 3 on 40 acres or more	1 on less than 40 acres; 2 on 40 acres or more	SAME AS ADOPTED POLICY
<b><i>Limits on Use of Best Prime Farmland (BPF)</i></b>			
General limit on By Right use of BPF	3 acres for new lot on less than 40 acres; 3 acres per 40 acres on 40 acres or more	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
New use on existing lot	No limit on use of BPF	Included in general limit on use of BPF	Included in general limit on use of BPF
TOTAL limit on use of BPF including RRO	3 acres for new lot on less than 40 acres; 3 + 3 acres per 40 acres on 40 acres or more	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
<b><i>Staffing Requirements and Budget Impact</i></b>			
Lot inquiry effort	NO CHANGE	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
By right lots permit view effort	NO CHANGE	MORE EFFORT (MODERATE)	MORE EFFORT (MODERATE)
Incidence of RRO requests	SLIGHT INCREASE	LIKELY INCREASE	SAME AS ADOPTED POLICY
Complexity of RRO requests	LESS COMPLEX	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
Numbers of lots per RRO request	FEWER ON BPF	SAME AS ADOPTED POLICY	SAME AS ADOPTED POLICY
Effect on overall program costs	SLIGHT INCREASE	LIKELY INCREASE (MODERATE)	LIKELY INCREASE (MODERATE)

40 Acre Parcel as existing on January 1, 1998

In 2007, the parcel remained undivided.

**ADOPTED 4.1.5**



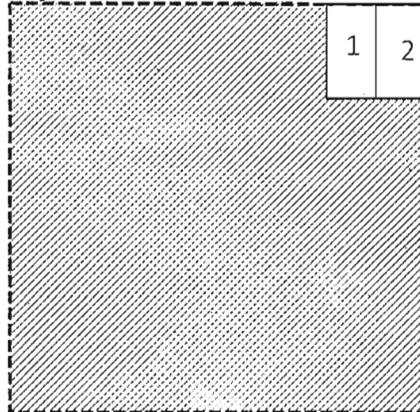
One dwelling is permitted by right on the existing lot.

2 new lots may be created from the parcel, with one dwelling permitted by right on each.

The amount of Best Prime Farmland used for the 2 new lots may not exceed 3 acres.\*

No further division is permitted by right.

**ALTERNATIVE 4.1.5**



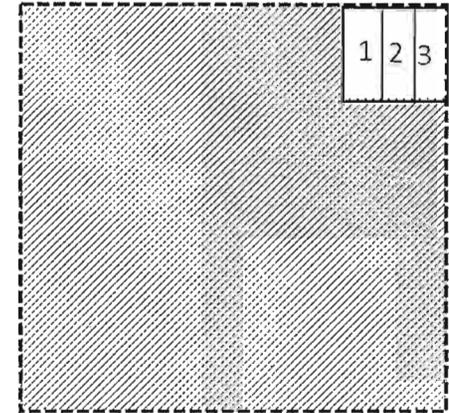
One dwelling is permitted by right on the existing lot.

1 new lot may be created from the parcel, with one dwelling permitted by right.

The amount of Best Prime Farmland used for the existing and new lots may not exceed 3 acres.\*

The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

**COMPROMISE 4.1.5**



One dwelling is permitted by right on the existing lot.

2 new lots may be created from the parcel, with one dwelling permitted by right on each.

The amount of Best Prime Farmland used for the existing and new lots may not exceed 3 acres.\*

The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

 Remainder Area

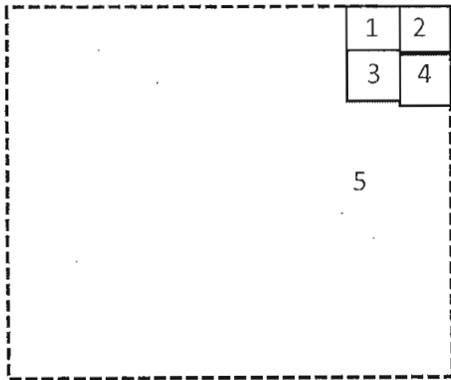
\* The diagrams are intended to illustrate the maximum use of 3 acres for by right land use other than agriculture on best prime farmland. Actual lot dimension or configuration may vary within the 3 acre area.

40 Acre Parcel (Previously Divided) Best Prime Farmland Example

**40 Acre Parcel as existing on January 1, 1998**

**In 2007, the parcel was divided into 4 'small lots and one 35-acre lot.**

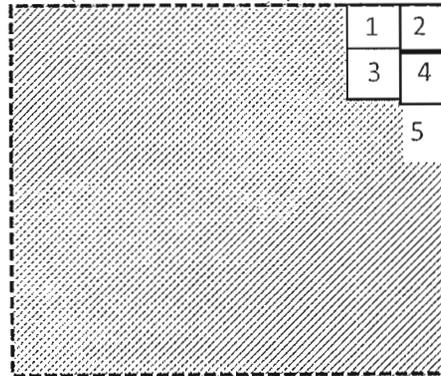
**ADOPTED 4.1.5**



All 5 lot are existing good lots according to the Ordinance.

One dwelling may be permitted by right on each existing lot.

**ALTERNATIVE 4.1.5**



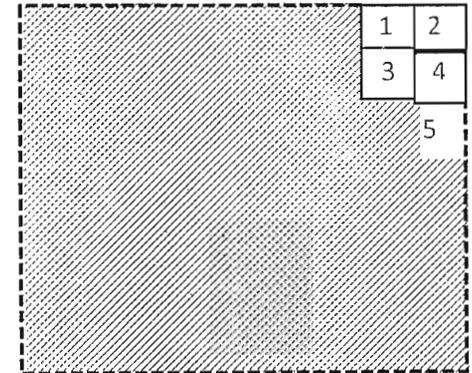
All 5 lot are existing good lots according to the Ordinance.

One dwelling may be permitted by right on each existing lot.

The least amount of acreage (1 acre) must be used for the dwelling on the 35 acres.

The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

**COMPROMISE 4.1.5**



All 5 lot are existing good lots according to the Ordinance.

One dwelling may be permitted by right on each existing lot.

The least amount of acreage (1 acre) must be used for the dwelling on the 35 acres.

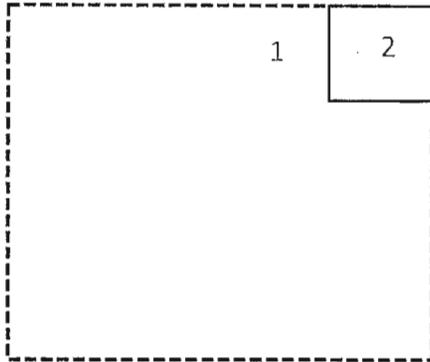
The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

 Remainder Area

39 Acre Parcel as existing on January 1, 1998

In 2007, the parcel remained undivided.

**ADOPTED 4.1.5**

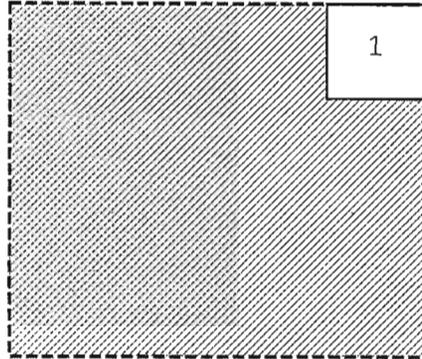


One dwelling is permitted by right on the existing lot.

1 new lot may be created from the parcel, with one dwelling permitted by right. The amount of Best Prime Farmland for the by right dwelling on the new lot may not exceed 3 acres.\*

No further division is permitted by right.

**ALTERNATIVE 4.1.5**

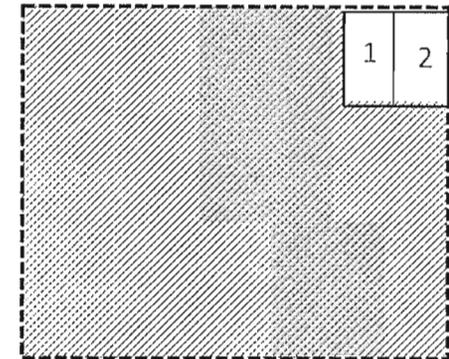


One dwelling is permitted by right on the existing lot.

The total amount of Best Prime Farmland for the by right dwelling may not exceed 3 acres.\*

The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

**COMPROMISE 4.1.5**



One dwelling is permitted by right on the existing lot.

1 new lot may be created from the parcel, with one dwelling permitted by right, provided that the total amount of Best Prime Farmland used does not exceed 3 acres.\*

The rest of the parcel becomes a Remainder Area, with no further use permitted by right.

 Remainder Area

\* The diagrams are intended to illustrate the maximum use of 3 acres for by right land use other than agriculture on best prime farmland. Actual lot dimension or configuration may vary within the 3 acre area.

Date: February 23, 2011

To: Champaign County Board Committee of the Whole Members

From: Susan Monte, CCRPC Planner

Regarding: Request to Amend the Champaign County Zoning Ordinance to Implement Land Resource Management Plan Policies 4.1.6 and 4.3.1 – 4.3.4

Request: Approve Proceeding

At the February 8, 2011 County Board Study Session, Board members discussed improving the proposed Zoning Ordinance text amendments intended to implement LRMP Policies 4.1.6 and 4.3.1 – 4.3.4 by substituting the word ‘adequate’ with the word ‘available’ in certain instances.

Staff has made the requested change to substitute the word ‘availability’ where it occurs with regard to public services. For example, the ‘availability’ of an emergency service is an easier condition to discern than the ‘adequacy’ of an emergency service.

The revised Zoning Ordinance text is provided as an attachment.

Attachment: Clean Copy of Revised Draft Zoning Ordinance Text Amendment

NEW CONTENT SHOWN IN BLUE. CURRENT REVISIONS HIGHLIGHTED IN YELLOW AND UNDERLINED

*1. Add a definition for 'best prime farmland', 'suited overall', and 'well suited overall'*

**3.0 Definitions**

**BEST PRIME FARMLAND:** Soils identified in the Champaign County Land Evaluation and Site Assessment (LESA) System with a Relative Value of 85 or greater and tracts of land with mixed soils that have a LESA System Land Evaluation rating of 85 or greater.

**SUITED OVERALL:** A discretionary review performance standard to describe the site on which a development is proposed. A site may be found to be 'suited overall' if the site meets these criteria:

- the site features or site location will not detract from the proposed use;
- the site will not create a risk to the health, safety or property of the occupants, the neighbors or the general public;
- the site is not clearly inadequate in one respect even if it is acceptable in other respects;
- necessary infrastructure is in place or provided by the proposed development; and
- available public services are adequate to support the proposed development effectively and safely.

**WELL SUITED OVERALL:** A discretionary review performance standard to describe the site on which a development is proposed. A site may be found to be 'well-suited overall' if the site meets these criteria:

- the site is one on which the proposed development can be safely and soundly accommodated using simple engineering and common, easily maintained construction methods with no unacceptable negative affects on neighbors or the general public; and
- the site is reasonably well-suited in all respects and has no major defects.

*2. Add new Subsection 5.4.3 with limits as outlined in LRMP Policy 4.1.6*

**5.4 Rural Residential OVERLAY Zoning DISTRICT**

**5.4.3 Limit on Amount of BEST PRIME FARMLAND Acres Converted**

- A. On BEST PRIME FARMLAND, the County may authorize discretionary residential development subject to a limit on total acres converted which is generally proportionate to tract size and is based on the January 1, 1998 configuration of tracts, with the total amount of acreage converted to residential USE (inclusive of BY RIGHT development) not to exceed three acres, plus three acres per each additional 40 acres of PARCEL (including any existing RIGHT-OF-WAY), but not to exceed 12 acres in total.
- B. Any FARMSTEAD area shall not count towards the three acres per 40 acre limit.

NEW CONTENT SHOWN IN BLUE. CURRENT REVISIONS HIGHLIGHTED IN YELLOW AND UNDERLINED

3. *Revise Subsection 5.4.4 to include factors described in LRMP Policies 4.3.1-4.3.4*

5.4.4 Establishment of the Rural Residential OVERLAY Zoning DISTRICT

C. BOARD Findings

1. The BOARD shall make the following findings before forwarding a recommendation to the GOVERNING BODY with respect to a map amendment case to create a Rural Residential OVERLAY DISTRICT:
  - a. That the proposed site is or is not suitable for the development of the specified maximum number of residences.
  - b. That the proposed residential development will or will not be compatible with surrounding AGRICULTURE.
2. In making findings, the BOARD shall consider the following factors:
  - a. The adequacy and safety of roads providing access to the site and infrastructure (e.g., drainage systems, culverts, bridges) to support the proposed development;
  - b. Effects on nearby farmland and farm operations;
  - c. Effects of nearby farm operations on the proposed residential development;
  - d. The LESA score of the subject site;
  - e. Effects on drainage both upstream and downstream including road drainage facilities;
  - f. The suitability of the site for onsite subsurface soil absorption or surface discharge wastewater systems;
  - g. The availability of water supply to this site;
  - h. ~~The adequacy of available~~ availability of public services (i.e., police protection, fire protection, and emergency ambulance service) to support the proposed development;
  - i. The flood hazard status of the site;
  - j. The amount of disturbance to wetlands, historic or archeological sites, natural or scenic areas or wildlife habitat;
  - k. The presence of nearby natural or man-made hazards; and
  - l. The amount of land to be converted from agricultural USES versus the number of DWELLING UNITS to be accommodated.

NEW CONTENT SHOWN IN BLUE. CURRENT REVISIONS HIGHLIGHTED IN YELLOW AND UNDERLINED

4. *Add Special Use criteria to Subsection 9.1.11 that include the standards of LRMP Policies 4.3.1 - 4.3.4*

**9.1.11 SPECIAL USES**

B. SPECIAL USE Criteria

A SPECIAL USE Permit shall not be granted by the BOARD unless the public hearing record and written application demonstrate:

1. that it is necessary for the public convenience at that location;
2. that it is so designed, located, and proposed as to be operated so that it will not be injurious to the DISTRICT in which it shall be located or otherwise detrimental to the public welfare;
3. that the subject property is on BEST PRIME FARMLAND and the site with proposed improvements is WELL SUITED OVERALL for the proposed SPECIAL USE; or the subject property is on other than BEST PRIME FARMLAND and the site with proposed improvements is SUITED OVERALL for the proposed SPECIAL USE;
4. that existing public services are ~~adequate~~ available to support the proposed SPECIAL USE effectively and safely without undue public expense;
5. that existing public infrastructure, together with proposed improvements, is adequate to support the proposed development effectively and safely without undue public expense;
6. that it conforms to the applicable regulations and standards of and preserves the essential character of the DISTRICT in which it shall be located, except where such regulations and standards are modified by Section 6.
7. that granting the SPECIAL USE is in harmony with the general purpose and intent of this ordinance.
8. that, in the case of an existing NONCONFORMING USE, it will make such USE more compatible with its surroundings.
9. approval of a SPECIAL USE Permit shall authorize USE, CONSTRUCTION and operation only in a manner that is fully consistent with all testimony and evidence submitted by the petitioner or petitioner's agent(s).

Date: February 23, 2011

To: Champaign County Board Committee of the Whole Members

From: Susan Monte, CCRPC Planner

- Regarding: B 3.a Request to Amend the Champaign County Zoning Ordinance to Implement Land Resource Management Plan Objective 4.4 by Adding a Special Use Permit for the RRO
- B 3.b Request to Amend the Champaign County Zoning Ordinance to Implement Land Resource Management Plan Objective 4.4 by Adding Standard Conditions for the Special Use Permit for the RRO

Request: Approve Proceeding

At the February 8, 2011 County Board Study Session, Board members reviewed the proposed Zoning Ordinance text amendment intended to implement LRMP Objective 4.4. The proposed text amendment includes provisions to add a Special Use permit requirement to occur concurrently with the rezoning requirement to obtain a Rural Residential Overlay (RRO) and to add seven Standard Conditions for the Special Use for the RRO.

Staff has separated the proposed standard conditions portion of this text amendment to enable it to stand alone.

Attachment: Item B-3 from the February 8, 2011 County Board Study Session Packet

Date: August 31, 2010

To: Champaign County Board Committee of the Whole Members

From: Susan Monte, CCRPC Planner  
John Hall, Director, Champaign County Department of Planning & Zoning

Regarding: Direction to Zoning Administrator Regarding Proposed Zoning Ordinance Text Amendment

**Request: Conduct a Champaign County Zoning Ordinance Text Amendment implementing Objective 4.4 of the Land Resource Management Plan**

### Background

On April 22, 2010, the Board adopted the Champaign County Land Resource Management Plan (LRMP). On June 8, 2010, the Committee of the Whole approved the remaining FY 2010 planning contract work plan. The remaining FY 2010 work plan includes the task of amending the *Champaign County Zoning Ordinance* to include provisions of the following specific LRMP objectives and policies: Policies 4.1.5 and 4.1.6; Policy 4.1.9; Policies 4.3.1 - 4.3.4 and Objective 4.4.

This memorandum describes the proposed zoning text amendments intended to represent the changes to the Zoning Ordinance needed to implement LRMP Objective 4.4. If authorized by the Committee, the proposed zoning ordinance text amendments will proceed to public hearing review to be held by the ZBA.

<i>LRMP Objective 4.4</i>	<i>Brief Description</i>
	special use added to discretionary review for rural residential overlay

Attachment A includes the complete text of Objective 4.4, and text of the directly relevant LRMP Goal 4.

### Specific Issues Related to Objective 4.4

#### *State's Attorney Review*

The existing Rural Residential Overlay District (RRO) zoning provisions were found by the State's Attorney to be potentially susceptible to legal challenges for the following reasons:

- 1) The existing RRO review procedure involves obtaining a zoning map amendment (a rezoning). The ability to impose conditions on a rezoning request is very limited. A condition of rezoning (conditional zoning) must be carefully constructed in order to be considered as valid. The validity of a condition is questionable in each of the following circumstances: if a condition is specific and not general; if there is nothing about a particular site that makes it uniquely suited to a residence; if there is not an overall public benefit to be gained; if the proposed zoning is inconsistent with a comprehensive plan; if it appears that the County is engaged in negotiations with a property owner for concessions in exchange for a zoning classification (e.g, contract zoning); or if a condition improperly delegates County zoning authority to a private party (e.g., if the property owner is required to enter into a restrictive covenant as a condition of RRO).

2) The existing RRO zoning provisions were found by the State's Attorney to be potentially susceptible to legal challenges because, over time, the RRO system of review may result in a pattern of land use which, if taken alone, could suggest that spot zoning is occurring. A special use review – either in lieu of or in conjunction with a rezoning – could more effectively assure that a residential subdivision is compatible with the surrounding area. For example, if a special use is granted to allow a residence, findings will have been made that the proposed residence is compatible with the surrounding land uses.

The limitations of the existing RRO zoning provisions outlined by the State's Attorney can be specifically addressed by proposing that a Special Use be required in addition to a rezoning. This additional special use requirement: 1) allows more flexibility in imposing standard or special conditions; 2) more effectively assures that proposed residential development is compatible with the surrounding area; 3) allows for clearly defining landowners rights at each stage of the approval process, and 4) facilitates a more streamlined approval process by limiting the cases that have to go to the County Board by meshing with the subdivision approval process.

#### *County Board Special Use or ZBA Special Use*

At the September 7 Committee of the Whole meeting, members will be asked to consider whether the Special Use to be required for a Rural Residential Development should be what is referred to as a "County Board Special Use" or a Special Use that can be approved by the ZBA.

#### *Special Use Standard Conditions*

Staff proposes certain standard conditions for a Special Use request for a Rural Residential Development. (Refer to Attachment C.) The standard conditions serve to alert the applicant to potential costs that may need to be incurred should specific site conditions warrant.

#### **Attachments**

- A Relevant Policies
- B Proposed Special Use Standard Conditions for a Rural Residential Overlay
- C Strike-Out Version of Draft Zoning Ordinance Text Amendment

## Attachment A

### Relevant Policies

LRMP Objective 4.4 is an objective under the LRMP Goal 4, as stated below:

LRMP Goal 4            Champaign County will protect the long term viability of agriculture in Champaign County and its land resource base.

#### LRMP Objective 4.4

Champaign County will update County regulations that pertain to *rural residential discretionary review* developments to best provide for site specific conditions by 2010.

## Attachment B

### Proposed Special Use Standard Conditions for a Rural Residential Development

The following proposed special use standard conditions address potential needs, only if they are applicable to the proposed Rural Residential Development:

1. Each residential LOT in the Rural Residential Development shall have at least one acre of buildable area that is not in the Special Flood Hazard Area.
2. More than two residential LOTS that are no larger than six acres in aggregate area shall front a new STREET that shall meet the standards of the relevant SUBDIVISION jurisdiction.
3. LOTS that front on and have access to existing STREETS shall have driveways co-located with other driveways as much as possible and each pair of co-located driveways shall not be closer than {600} feet to other driveways in the same Rural Residential Development that front existing STREETS.
4. Any DWELLING located more than {140} feet from a STREET shall have a minimum 20 feet wide driveway consisting of a minimum of six inches of gravel or similar all weather surface that shall be maintained with a vertical clearance of 13 feet six inches and with a minimum 20 feet by 40 feet turnaround area for emergency vehicles.
5. If so advised by the Illinois State Water Survey (ISWS) Center for Groundwater Science, the applicant shall contract the services of the ISWS to conduct or to provide a review the results of a recent groundwater investigation to determine if adequate groundwater resources exist on the site for the proposed RRO, without endangering groundwater availability for the existing neighboring residences.
6. If the proposed RRO is located in a 'high probability area' as defined as defined in the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420/), the applicant shall notify the Illinois State Historic Preservation Agency (ISHPA) to request information regarding whether the proposed site is a known cemetery or human burial site, and shall provide a copy of the ISHPA response.
7. If, upon notification regarding the proposed RRO, the Illinois Department of Natural Resources (IDNR) determines that potential adverse effects are possible to endangered or threatened species that may be present as a result of the proposed RRO and requests additional information about the proposed RRO, the applicant shall provide the additional requested information.

## Attachment C

### Strikeout Version of Draft Zoning Ordinance Text Amendment

1. *Revise Section 5.4.3 to establish requirement for a { County Board Special Use / Special Use } in addition to a rezoning for a Rural Residential Overlay District.*

#### 5.4.3 ~~4~~ Establishment of the Rural Residential OVERLAY Zoning DISTRICT

- A. The establishment of the Rural Residential OVERLAY Zoning DISTRICT is an amendment to the *Champaign County Zoning Ordinance* and shall be implemented in accord with the provisions of Subsection 9.2 as modified herein.
- B. A { *County Board Special Use / Special Use* } approval for a Rural Residential Development is also required and shall be implemented in accordance with the provisions of Subsection 9.1.11 as modified herein.
- C. The Rezoning Approval and Special Use Approval stages must occur concurrently.
- B. D. The adoption of Rural Residential OVERLAY Zoning shall augment the provisions of the underlying DISTRICT but shall not alter any requirement otherwise applicable to the tract of land except as provided by this section.
- C. E. BOARD Findings

2. Add { County Board Special Use / Special Use } requirement for a Rural Residential Development Subdivision

Section 5.2 Table of Authorized Principal USES

Principal USES	Zoning DISTRICTS					Zoning DISTRICTS					I-1	I-2		
	CR	AG-1	AG-2	R-1	R-2	R-3	R-4	R-5	B-1	B-2			B-3	B-4
<b>Residential Uses</b>														
BOARDING HOUSE						S								
DWELLING, SINGLE FAMILY													7	
DWELLING, TWO-FAMILY			S	S	S									
DWELLING, MULTI-FAMILY														
Fraternity, Sorority, or Student Cooperative														
Dormitory														
Home for the aged			S											
NURSING HOME			S											
MANUFACTURED HOME PARK								S						
HOTEL - No more than 15 LODGING UNITS	S	S	S						S				S	
HOTEL - over 15 LODGING UNITS														
TRAVEL TRAILER Camp			S											
Residential PLANNED UNIT DEVELOPMENT		S	S	S	S	S	S	S						
MANUFACTURED HOME in MANUFACTURED HOME PARK														
<u>SUBDIVISION(S) of one lot from less than 40 acres or no more than two lots from 40 acres or greater totaling three LOTS or less</u>	9	9	9											
<u>SUBDIVISION(S) of more than one lot from less than 40 acres or more than two lots from 40 acres or greater totaling more than three LOTS or with new STREETS or PRIVATE ACCESSWAYS</u>	B <sup>10</sup>	B <sup>10</sup>	B <sup>10</sup>											

3. Revise Footnote 10 in Section 5.2 as follows:

- No SUBDIVISION(S) of a PARCEL that existed on January 1, 1998, into more than one lot per PARCEL that is less than 40 acres in area or more than two lots per PARCEL that is 40 acres or greater in area or with new STREETS or PRIVATE ACCESSWAYS shall be created unless a Rural Residential OVERLAY DISTRICT has been created and a Rural Residential Development County Board Special Use Permit has been authorized.. See Section 5.4. No SUBDIVISION shall be created unless a Rural Residential OVERLAY DISTRICT has been created except as provided in Section 5.4.2

4. Add Special Use Standard Conditions for the category 'Rural Residential Development County Board Special Use'

6.1.3 Schedule of Requirements and Standard Conditions

The numbers in parentheses within Table 6.1.3 indicate Footnotes at the conclusion of Table 6.1.3. ....

SPECIAL USES or USE Categories	Minimum Fencing Required <sup>a</sup>	Minimum LOT Size		Maximum HEIGHT		Required YARDS (feet)					Explanatory or Special Provisions	
		AREA (Acres)	Width (feet)	Feet	Stories	Front Setback from STREET Centerline <sup>2</sup>			SIDE	REAR		
						STREET Classification						
			MAJOR	COLLECTOR	MINOR							
Rural Residential Development County Board Special Use Permit	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	See below
<p>1. Each residential LOT in the Rural Residential Development shall have at least one acre of buildable area that is not in the Special Flood Hazard Area.</p> <p>2. More than two residential LOTS that are no larger than six acres in aggregate area shall front a new STREET that shall meet the standards of the relevant SUBDIVISION jurisdiction.</p> <p>3. LOTS that front on and have access to existing STREETS shall have driveways co-located with other driveways as much as possible and each pair of co-located driveways shall not be closer than { 600 } feet to other driveways in the same Rural Residential Development that front existing STREETS.</p> <p>4. Any DWELLING located more than {140 } feet from a STREET shall have a minimum 20 feet wide driveway consisting of a minimum of six inches of gravel or similar all weather surface that shall be maintained with a vertical clearance of 13 feet six inches and with a minimum 20 feet by 40 feet turnaround area for emergency vehicles.</p> <p>5. If so advised by the Illinois State Water Survey (ISWS) Center for Groundwater Science, the applicant shall contract the services of the ISWS to conduct or to provide a review the results of a recent groundwater investigation to determine if adequate groundwater resources exist on the site for the proposed RRO, without endangering groundwater availability for the existing neighboring residences.</p> <p>6. If the proposed RRO is located in a 'high probability area' as defined as defined in the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420/), the applicant shall notify the Illinois State Historic Preservation Agency (ISHPA) to request information regarding whether the proposed site is a known cemetery or human burial site, and shall provide a copy of the ISHPA response.</p> <p>7. If, upon notification regarding the proposed RRO, the Illinois Department of Natural (IDNR) determines that potential adverse effects are possible to endangered or threatened species that may be present as a result of the proposed RRO and requests additional information about the proposed RRO, the applicant shall provide the additional requested information.</p>												

To: **Champaign County Board Committee of the Whole**

From: **John Hall, Zoning Administrator**

Date: **February 22, 2011**

RE: **Zoning Ordinance text amendment (Case 665-AT-10)**

Request: **Final recommendation to amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:**

- A. **Increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots less than five acres in area in the AG-1 and AG-2 Zoning Districts.**
- B. **Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas:**
  - (1) **In Residential Zoning Districts, all fencing that is in the front yard.**
  - (2) **On residential lots less than five acres in the AG Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling.**
- C. **Increase the maximum allowed height of all fencing to allow for up to three inches of ground clearance.**

Petitioner: **Zoning Administrator**

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***STATUS***

Last month the Committee voted for a preliminary recommendation of approval of the proposed text amendment.

Two jurisdictions have taken action in regards to the proposed amendment:

- On February 14, 2011, the Newcomb Township Trustees decided not to protest the amendment.
- The Urbana City Council defeated a resolution of protest at their February 21, 2011, meeting.

An update on actions by other jurisdictions will be provided at the meeting.

---

**ATTACHMENTS**

- A Proposed Ordinance (excerpted from the Approved Finding of Fact)

**1. Revise Paragraph 4.3.3 G. to read as follows:**

**G. Fences**

1. Fences in R Zoning Districts shall meet the following requirements:
  - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. Fences located in required FRONT YARDS shall meet the following additional requirements:
    - (1) A maximum of six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5.; and
    - (2) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent.
  - c. Fences located in required SIDE and REAR YARDS shall meet the following additional requirements:
    - (1) A maximum of eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5; and provided that
    - (2) Any portion of fence that is not in a defined SIDE YARD nor a defined FRONT YARD shall have the same HEIGHT limit as if in a SIDE YARD; provided that
    - (3) Any portion of any fence that is between the DWELLING and the FRONT YARD and that is over four feet in HEIGHT must be at least 50% transparent for that portion of fence that is over four feet in HEIGHT.
2. Fences on residential lots in the AG and CR Zoning Districts shall meet the following requirements:
  - a. Any fence must meet the requirements for visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. On lots less than five acres in area in the AG Zoning Districts the following additional requirements shall apply:
    - (1) Fences located in required FRONT YARDS shall meet the following requirements:
      - (a) A maximum of six feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5. ; and
      - (b) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent when located between the DWELLING and the driveway within 25 feet of the dwelling.

*AS-APPROVED FINDING OF FACT*

- (2) Fences located in required SIDE and REAR YARDS shall not exceed eight feet in HEIGHT, not including any clearance authorized in 4.3.3 G.5
3. Fences in B and I Zoning Districts shall not exceed eight feet in HEIGHT not including any clearance authorized in subparagraph 4.3.3 G.5., except that any barbed wire security barrier may be up to an additional two feet in HEIGHT. Fences may be located in the required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
4. The HEIGHT of fences shall be measured from the highest adjacent GRADE and may be in addition to up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence. No minimum clearance is required by this Ordinance, and further, the fence HEIGHT may be increased by any portion of the allowable three inches of clearance to GRADE that is not used as clearance.

Champaign  
County  
Department of



Brookens  
Administrative Center  
1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708

To: **Champaign County Board Committee of the Whole**

From: **John Hall, Zoning Administrator**

Date: **February 22, 2011**

RE: **Zoning Ordinance text amendment (Case 666-AT-10)**

Request: **Final recommendation to amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11 D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

Petitioner: **Zoning Administrator**

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### *STATUS*

Last month the Committee voted for a preliminary recommendation of approval of the proposed text amendment.

Two jurisdictions have taken action in regards to the proposed amendment:

- On February 14, 2011, the Newcomb Township Trustees decided not to protest the amendment.
- The Urbana City Council defeated a resolution of protest at their February 21, 2011, meeting.

An update on actions by other jurisdictions will be provided at the meeting.

---

### **ATTACHMENTS**

- A Proposed Ordinance (excerpted from the Approved Finding of Fact)

**1. Revise Subsection 6.1 as follows:**

The standards listed in this Subsection which exceed the applicable DISTRICT standards in Section 5.3, in either amount or kind, and which are not specifically required under another COUNTY ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction, to the extent that they exceed the standards of the DISTRICT, in either amount or kind, shall be considered standard conditions which the BOARD or GOVERNING BODY is authorized to waive upon application as provided in Section 9.1.11 on an individual basis.

**2. Revise Paragraph 9.1.11. D.1. as follows:**

Any other provision of this ordinance notwithstanding, the BOARD or GOVERNING BODY, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1 Standards for Special Uses, to the extent that they exceed the minimum standards of the DISTRICT, in either amount or kind, except for any state or federal regulation incorporated by reference, upon finding that such waiver is in accordance with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or to the public health, safety and welfare.

## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB2195

Introduced 2/10/2011, by Sen. Toi W. Hutchinson

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1062 from Ch. 34, par. 5-1062  
55 ILCS 5/5-1062.2

Amends the Counties Code. Provides that a county board in a metropolitan county located in the area served by the Northeastern Illinois Planning Commission, or Madison, St. Clair, Monroe, Kankakee, Grundy, LaSalle, DeKalb, Kendall, or Boone county, that has adopted a stormwater management plan may adopt a schedule of fees applicable to real property within the county that benefits from the county's stormwater management facilities and activities. Sets forth requirements and uses for the fees. Provides that the county shall give land owners at least 2 years' notice of the fee during which time the county shall provide education on green infrastructure practices and an opportunity to take action to reduce or eliminate the fee. Further provides that a fee waiver shall be included for property owners who have taken actions or put in place facilities that are approved by the county that reduce or eliminate the cost of managing runoff. Provides that the county may enter into intergovernmental agreements with other bodies of government for the joint administration of stormwater management and collection of the fees. Effective immediately.

LRB097 10210 KMW 50406 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing  
5 Sections 5-1062 and 5-1062.2 as follows:

6 (55 ILCS 5/5-1062) (from Ch. 34, par. 5-1062)

7 Sec. 5-1062. Stormwater management.

8 (a) The purpose of this Section is to allow management and  
9 mitigation of the effects of urbanization on stormwater  
10 drainage in metropolitan counties located in the area served by  
11 the Northeastern Illinois Planning Commission, and references  
12 to "county" in this Section shall apply only to those counties.  
13 This Section shall not apply to any county with a population in  
14 excess of 1,500,000, except as provided in subsection (c). The  
15 purpose of this Section shall be achieved by:

16 (1) consolidating the existing stormwater management  
17 framework into a united, countywide structure;

18 (2) setting minimum standards for floodplain and  
19 stormwater management; and

20 (3) preparing a countywide plan for the management of  
21 stormwater runoff, including the management of natural and  
22 man-made drainageways. The countywide plan may incorporate  
23 watershed plans.

1 (b) A stormwater management planning committee shall be  
2 established by county board resolution, with its membership  
3 consisting of equal numbers of county board and municipal  
4 representatives from each county board district, and such other  
5 members as may be determined by the county and municipal  
6 members. However, if the county has more than 6 county board  
7 districts, the county board may by ordinance divide the county  
8 into not less than 6 areas of approximately equal population,  
9 to be used instead of county board districts for the purpose of  
10 determining representation on the stormwater management  
11 planning committee.

12 The county board members shall be appointed by the chairman  
13 of the county board. Municipal members from each county board  
14 district or other represented area shall be appointed by a  
15 majority vote of the mayors of those municipalities which have  
16 the greatest percentage of their respective populations  
17 residing in such county board district or other represented  
18 area. All municipal and county board representatives shall be  
19 entitled to a vote; the other members shall be nonvoting  
20 members, unless authorized to vote by the unanimous consent of  
21 the municipal and county board representatives. A municipality  
22 that is located in more than one county may choose, at the time  
23 of formation of the stormwater management planning committee  
24 and based on watershed boundaries, to participate in the  
25 stormwater management planning program of either or both of the  
26 counties. Subcommittees of the stormwater management planning

1 committee may be established to serve a portion of the county  
2 or a particular drainage basin that has similar stormwater  
3 management needs. The stormwater management planning committee  
4 shall adopt by-laws, by a majority vote of the county and  
5 municipal members, to govern the functions of the committee and  
6 its subcommittees. Officers of the committee shall include a  
7 chair and vice chair, one of whom shall be a county  
8 representative and one a municipal representative.

9 The principal duties of the committee shall be to develop a  
10 stormwater management plan for presentation to and approval by  
11 the county board, and to direct the plan's implementation and  
12 revision. The committee may retain engineering, legal and  
13 financial advisors and inspection personnel. The committee  
14 shall meet at least quarterly and shall hold at least one  
15 public meeting during the preparation of the plan and prior to  
16 its submittal to the county board.

17 (c) In the preparation of a stormwater management plan, a  
18 county stormwater management planning committee shall  
19 coordinate the planning process with each adjoining county to  
20 ensure that recommended stormwater projects will have no  
21 significant impact on the levels or flows of stormwaters in  
22 inter-county watersheds or on the capacity of existing and  
23 planned stormwater retention facilities. An adopted stormwater  
24 management plan shall identify steps taken by the county to  
25 coordinate the development of plan recommendations with  
26 adjoining counties.

1 (d) Before the stormwater management planning committee  
2 recommends to the county board a stormwater management plan for  
3 the county or a portion thereof, it shall submit the plan to  
4 the Office of Water Resources of the Department of Natural  
5 Resources and to the Northeastern Illinois Planning Commission  
6 for review and recommendations. The Office and the Commission,  
7 in reviewing the plan, shall consider such factors as impacts  
8 on the levels or flows in rivers and streams and the cumulative  
9 effects of stormwater discharges on flood levels. The Office of  
10 Water Resources shall determine whether the plan or ordinances  
11 enacted to implement the plan complies with the requirements of  
12 subsection (f). Within a period not to exceed 60 days, the  
13 review comments and recommendations shall be submitted to the  
14 stormwater management planning committee for consideration.  
15 Any amendments to the plan shall be submitted to the Office and  
16 the Commission for review.

17 (e) Prior to recommending the plan to the county board, the  
18 stormwater management planning committee shall hold at least  
19 one public hearing thereon and shall afford interested persons  
20 an opportunity to be heard. The hearing shall be held in the  
21 county seat. Notice of the hearing shall be published at least  
22 once no less than 15 days in advance thereof in a newspaper of  
23 general circulation published in the county. The notice shall  
24 state the time and place of the hearing and the place where  
25 copies of the proposed plan will be accessible for examination  
26 by interested parties. If an affected municipality having a

1 stormwater management plan adopted by ordinance wishes to  
2 protest the proposed county plan provisions, it shall appear at  
3 the hearing and submit in writing specific proposals to the  
4 stormwater management planning committee. After consideration  
5 of the matters raised at the hearing, the committee may amend  
6 or approve the plan and recommend it to the county board for  
7 adoption.

8 The county board may enact the proposed plan by ordinance.  
9 If the proposals for modification of the plan made by an  
10 affected municipality having a stormwater management plan are  
11 not included in the proposed county plan, and the municipality  
12 affected by the plan opposes adoption of the county plan by  
13 resolution of its corporate authorities, approval of the county  
14 plan shall require an affirmative vote of at least two-thirds  
15 of the county board members present and voting. If the county  
16 board wishes to amend the county plan, it shall submit in  
17 writing specific proposals to the stormwater management  
18 planning committee. If the proposals are not approved by the  
19 committee, or are opposed by resolution of the corporate  
20 authorities of an affected municipality having a municipal  
21 stormwater management plan, amendment of the plan shall require  
22 an affirmative vote of at least two-thirds of the county board  
23 members present and voting.

24 (f) The county board may prescribe by ordinance reasonable  
25 rules and regulations for floodplain management and for  
26 governing the location, width, course and release rate of all

1 stormwater runoff channels, streams and basins in the county,  
2 in accordance with the adopted stormwater management plan.  
3 These rules and regulations shall, at a minimum, meet the  
4 standards for floodplain management established by the Office  
5 of Water Resources and the requirements of the Federal  
6 Emergency Management Agency for participation in the National  
7 Flood Insurance Program.

8 (g) In accordance with, ~~and if recommended in,~~ the adopted  
9 stormwater management plan, the county board may adopt a  
10 schedule of fees applicable to all real property within the  
11 county which benefits from the county's stormwater management  
12 facilities and activities, and as may be necessary to mitigate  
13 the effects of increased stormwater runoff resulting from new  
14 development and redevelopment. The total amount of the fees  
15 assessed must bear a reasonable relationship to the actual  
16 costs of the county in the preparation, administration, and  
17 implementation of the ~~shall not exceed the cost of satisfying~~  
18 ~~the onsite stormwater retention or detention requirements of~~  
19 ~~the~~ adopted stormwater management plan, construction and  
20 maintenance of related facilities, enforcement of any  
21 ordinances adopted pursuant thereto, and management of the  
22 runoff from the property. The individual fees must bear a  
23 reasonable relationship to the portion of the cost to the  
24 county of managing the runoff from the property. The fees shall  
25 be used to finance activities undertaken by the county or its  
26 included municipalities to mitigate the effects of urban

1 stormwater runoff by providing and maintaining regional  
2 stormwater collection, retention, ~~or~~ detention, and treatment  
3 facilities and improving water bodies impacted by stormwater  
4 runoff, as identified in the county plan. In establishing,  
5 maintaining, or replacing the facilities, the county shall not  
6 duplicate facilities operated by other governmental bodies  
7 within its corporate boundaries. The schedule of fees  
8 established by the county board shall include a procedure for a  
9 full or partial fee waiver for property owners who have taken  
10 actions or put in place facilities that reduce or eliminate the  
11 cost to the county of providing stormwater management services  
12 to their property, with a preference for facilities that reduce  
13 the volume, temperature, velocity, and pollutant load of the  
14 stormwater managed by the county, such as systems that  
15 infiltrate, evapotranspire, or harvest stormwater for reuse,  
16 known as "green infrastructure." In exercising this authority,  
17 the county shall give land owners at least 2 years' notice of  
18 the fee during which time the county shall provide education on  
19 green infrastructure practices and an opportunity to take  
20 action to reduce or eliminate the fee. All such fees collected  
21 by the county shall be held in a separate fund, and shall be  
22 expended only in the watershed within which they were  
23 collected. The county may enter into intergovernmental  
24 agreements with other government bodies for the joint  
25 administration of stormwater management and the collection of  
26 the fees authorized in this Section.

1           (h) For the purpose of implementing this Section and for  
2 the development, design, planning, construction, operation and  
3 maintenance of stormwater facilities provided for in the  
4 stormwater management plan, a county board that has established  
5 a stormwater management planning committee pursuant to this  
6 Section may cause an annual tax of not to exceed 0.20% of the  
7 value, as equalized or assessed by the Department of Revenue,  
8 of all taxable property in the county to be levied upon all the  
9 taxable property in the county. The tax shall be in addition to  
10 all other taxes authorized by law to be levied and collected in  
11 the county and shall be in addition to the maximum tax rate  
12 authorized by law for general county purposes. The 0.20%  
13 limitation provided in this Section may be increased or  
14 decreased by referendum in accordance with the provisions of  
15 Sections 18-120, 18-125, and 18-130 of the Property Tax Code.

16           Any revenues generated as a result of ownership or  
17 operation of facilities or land acquired with the tax funds  
18 collected pursuant to this subsection (h) shall be held in a  
19 separate fund and be used either to abate such property tax or  
20 for implementing this Section.

21           However, unless at least part of the county has been  
22 declared after July 1, 1986 by presidential proclamation to be  
23 a disaster area as a result of flooding, the tax authorized by  
24 this subsection (h) shall not be levied until the question of  
25 its adoption, either for a specified period or indefinitely,  
26 has been submitted to the electors thereof and approved by a

1 majority of those voting on the question. This question may be  
 2 submitted at any election held in the county after the adoption  
 3 of a resolution by the county board providing for the  
 4 submission of the question to the electors of the county. The  
 5 county board shall certify the resolution and proposition to  
 6 the proper election officials, who shall submit the proposition  
 7 at an election in accordance with the general election law. If  
 8 a majority of the votes cast on the question is in favor of the  
 9 levy of the tax, it may thereafter be levied in the county for  
 10 the specified period or indefinitely, as provided in the  
 11 proposition. The question shall be put in substantially the  
 12 following form:

13 -----  
 14        Shall an annual tax be levied  
 15 for stormwater management purposes        YES  
 16 (for a period of not more than  
 17 ..... years) at a rate not exceeding -----  
 18 .....% of the equalized assessed  
 19 value of the taxable property of        NO  
 20 ..... County?

21 -----  
 22        (i) Upon the creation and implementation of a county  
 23 stormwater management plan, the county may petition the circuit  
 24 court to dissolve any or all drainage districts created  
 25 pursuant to the Illinois Drainage Code or predecessor Acts  
 26 which are located entirely within the area of the county

1 covered by the plan.

2       However, any active drainage district implementing a plan  
3 that is consistent with and at least as stringent as the county  
4 stormwater management plan may petition the stormwater  
5 management planning committee for exception from dissolution.  
6 Upon filing of the petition, the committee shall set a date for  
7 hearing not less than 2 weeks, nor more than 4 weeks, from the  
8 filing thereof, and the committee shall give at least one  
9 week's notice of the hearing in one or more newspapers of  
10 general circulation within the district, and in addition shall  
11 cause a copy of the notice to be personally served upon each of  
12 the trustees of the district. At the hearing, the committee  
13 shall hear the district's petition and allow the district  
14 trustees and any interested parties an opportunity to present  
15 oral and written evidence. The committee shall render its  
16 decision upon the petition for exception from dissolution based  
17 upon the best interests of the residents of the district. In  
18 the event that the exception is not allowed, the district may  
19 file a petition within 30 days of the decision with the circuit  
20 court. In that case, the notice and hearing requirements for  
21 the court shall be the same as herein provided for the  
22 committee. The court shall likewise render its decision of  
23 whether to dissolve the district based upon the best interests  
24 of residents of the district.

25       The dissolution of any drainage district shall not affect  
26 the obligation of any bonds issued or contracts entered into by

1 the district nor invalidate the levy, extension or collection  
2 of any taxes or special assessments upon the property in the  
3 former drainage district. All property and obligations of the  
4 former drainage district shall be assumed and managed by the  
5 county, and the debts of the former drainage district shall be  
6 discharged as soon as practicable.

7 If a drainage district lies only partly within a county  
8 that adopts a county stormwater management plan, the county may  
9 petition the circuit court to disconnect from the drainage  
10 district that portion of the district that lies within that  
11 county. The property of the drainage district within the  
12 disconnected area shall be assumed and managed by the county.  
13 The county shall also assume a portion of the drainage  
14 district's debt at the time of disconnection, based on the  
15 portion of the value of the taxable property of the drainage  
16 district which is located within the area being disconnected.

17 The operations of any drainage district that continues to  
18 exist in a county that has adopted a stormwater management plan  
19 in accordance with this Section shall be in accordance with the  
20 adopted plan.

21 (j) Any county that has adopted a county stormwater  
22 management plan under this Section may, after 10 days written  
23 notice to the owner or occupant, enter upon any lands or waters  
24 within the county for the purpose of inspecting stormwater  
25 facilities or causing the removal of any obstruction to an  
26 affected watercourse. The county shall be responsible for any

1 damages occasioned thereby.

2 (k) Upon petition of the municipality, and based on a  
3 finding of the stormwater management planning committee, the  
4 county shall not enforce rules and regulations adopted by the  
5 county in any municipality located wholly or partly within the  
6 county that has a municipal stormwater management ordinance  
7 that is consistent with and at least as stringent as the county  
8 plan and ordinance, and is being enforced by the municipal  
9 authorities.

10 (l) A county may issue general obligation bonds for  
11 implementing any stormwater plan adopted under this Section in  
12 the manner prescribed in Section 5-1012; except that the  
13 referendum requirement of Section 5-1012 shall not apply to  
14 bonds issued pursuant to this Section on which the principal  
15 and interest are to be paid entirely out of funds generated by  
16 the taxes and fees authorized by this Section.

17 (m) The powers authorized by this Section may be  
18 implemented by the county board for a portion of the county  
19 subject to similar stormwater management needs.

20 (n) The powers and taxes authorized by this Section are in  
21 addition to the powers and taxes authorized by Division 5-15;  
22 in exercising its powers under this Section, a county shall not  
23 be subject to the restrictions and requirements of that  
24 Division.

25 (o) Pursuant to paragraphs (g) and (i) of Section 6 of  
26 Article VII of the Illinois Constitution, this Section

1 specifically denies and limits the exercise of any power which  
2 is inconsistent herewith by home rule units in any county with  
3 a population of less than 1,500,000 in the area served by the  
4 Northeastern Illinois Planning Commission. This Section does  
5 not prohibit the concurrent exercise of powers consistent  
6 herewith.

7 (Source: P.A. 88-670, eff. 12-2-94; 89-445, eff. 2-7-96.)

8 (55 ILCS 5/5-1062.2)

9 Sec. 5-1062.2. Stormwater management.

10 (a) The purpose of this Section is to allow management and  
11 mitigation of the effects of urbanization on stormwater  
12 drainage in the metropolitan counties of Madison, St. Clair,  
13 Monroe, Kankakee, Grundy, LaSalle, DeKalb, Kendall, and Boone  
14 and references to "county" in this Section apply only to those  
15 counties, except that any county that is subject to the  
16 Illinois General NPDES Permit No. ILR40 (stormwater permit), or  
17 with one or more municipality partially or fully within its  
18 borders that is subject to the permit, is authorized to adopt a  
19 schedule of fees as outlined in subsection (h) of this Section.  
20 This Section does not apply to any other counties in the State,  
21 including those located in the area served by the Northeastern  
22 Illinois Planning Commission that are granted authorities in  
23 Section 5-1062. The purpose of this Section shall be achieved  
24 by:

25 (1) Consolidating the existing stormwater management

1 framework into a united, countywide structure.

2 (2) Setting minimum standards for floodplain and  
3 stormwater management.

4 (3) Preparing a countywide plan for the management of  
5 stormwater runoff, including the management of natural and  
6 man-made drainageways. The countywide plan may incorporate  
7 watershed plans.

8 (b) A stormwater management planning committee may be  
9 established by county board resolution, with its membership  
10 consisting of equal numbers of county board and municipal  
11 representatives from each county board district, and such other  
12 members as may be determined by the county and municipal  
13 members. If the county has more than 6 county board districts,  
14 however, the county board may by ordinance divide the county  
15 into not less than 6 areas of approximately equal population,  
16 to be used instead of county board districts for the purpose of  
17 determining representation on the stormwater management  
18 planning committee.

19 The county board members shall be appointed by the chairman  
20 of the county board. Municipal members from each county board  
21 district or other represented area shall be appointed by a  
22 majority vote of the mayors of those municipalities that have  
23 the greatest percentage of their respective populations  
24 residing in that county board district or other represented  
25 area. All municipal and county board representatives shall be  
26 entitled to a vote; the other members shall be nonvoting

1 members, unless authorized to vote by the unanimous consent of  
2 the municipal and county board representatives. A municipality  
3 that is located in more than one county may choose, at the time  
4 of formation of the stormwater management planning committee  
5 and based on watershed boundaries, to participate in the  
6 stormwater management planning program of either or both of the  
7 counties. Subcommittees of the stormwater management planning  
8 committee may be established to serve a portion of the county  
9 or a particular drainage basin that has similar stormwater  
10 management needs. The stormwater management planning committee  
11 shall adopt bylaws, by a majority vote of the county and  
12 municipal members, to govern the functions of the committee and  
13 its subcommittees. Officers of the committee shall include a  
14 chair and vice chair, one of whom shall be a county  
15 representative and one a municipal representative.

16 The principal duties of the committee shall be to develop a  
17 stormwater management plan for presentation to and approval by  
18 the county board, and to direct the plan's implementation and  
19 revision. The committee may retain engineering, legal, and  
20 financial advisors and inspection personnel. The committee  
21 shall meet at least quarterly and shall hold at least one  
22 public meeting during the preparation of the plan and prior to  
23 its submittal to the county board. The committee may make  
24 grants to units of local government that have adopted an  
25 ordinance requiring actions consistent with the stormwater  
26 management plan and to landowners for the purposes of

1 stormwater management, including special projects; use of the  
2 grant money must be consistent with the stormwater management  
3 plan.

4 The committee shall not have or exercise any power of  
5 eminent domain.

6 (c) In the preparation of a stormwater management plan, a  
7 county stormwater management planning committee shall  
8 coordinate the planning process with each adjoining county to  
9 ensure that recommended stormwater projects will have no  
10 significant impact on the levels or flows of stormwaters in  
11 inter-county watersheds or on the capacity of existing and  
12 planned stormwater retention facilities. An adopted stormwater  
13 management plan shall identify steps taken by the county to  
14 coordinate the development of plan recommendations with  
15 adjoining counties.

16 (d) The stormwater management committee may not enforce any  
17 rules or regulations that would interfere with (i) any power  
18 granted by the Illinois Drainage Code (70 ILCS 605/) to  
19 operate, construct, maintain, or improve drainage systems or  
20 (ii) the ability to operate, maintain, or improve the drainage  
21 systems used on or by land or a facility used for production  
22 agriculture purposes, as defined in the Use Tax Act (35 ILCS  
23 105/), except newly constructed buildings and newly installed  
24 impervious paved surfaces. Disputes regarding an exception  
25 shall be determined by a mutually agreed upon arbitrator paid  
26 by the disputing party or parties.

1 (e) Before the stormwater management planning committee  
2 recommends to the county board a stormwater management plan for  
3 the county or a portion thereof, it shall submit the plan to  
4 the Office of Water Resources of the Department of Natural  
5 Resources for review and recommendations. The Office, in  
6 reviewing the plan, shall consider such factors as impacts on  
7 the levels or flows in rivers and streams and the cumulative  
8 effects of stormwater discharges on flood levels. The Office of  
9 Water Resources shall determine whether the plan or ordinances  
10 enacted to implement the plan complies with the requirements of  
11 subsection (f). Within a period not to exceed 60 days, the  
12 review comments and recommendations shall be submitted to the  
13 stormwater management planning committee for consideration.  
14 Any amendments to the plan shall be submitted to the Office for  
15 review.

16 (f) Prior to recommending the plan to the county board, the  
17 stormwater management planning committee shall hold at least  
18 one public hearing thereon and shall afford interested persons  
19 an opportunity to be heard. The hearing shall be held in the  
20 county seat. Notice of the hearing shall be published at least  
21 once no less than 15 days in advance of the hearing in a  
22 newspaper of general circulation published in the county. The  
23 notice shall state the time and place of the hearing and the  
24 place where copies of the proposed plan will be accessible for  
25 examination by interested parties. If an affected municipality  
26 having a stormwater management plan adopted by ordinance wishes

1 to protest the proposed county plan provisions, it shall appear  
2 at the hearing and submit in writing specific proposals to the  
3 stormwater management planning committee. After consideration  
4 of the matters raised at the hearing, the committee may amend  
5 or approve the plan and recommend it to the county board for  
6 adoption.

7 The county board may enact the proposed plan by ordinance.  
8 If the proposals for modification of the plan made by an  
9 affected municipality having a stormwater management plan are  
10 not included in the proposed county plan, and the municipality  
11 affected by the plan opposes adoption of the county plan by  
12 resolution of its corporate authorities, approval of the county  
13 plan shall require an affirmative vote of at least two-thirds  
14 of the county board members present and voting. If the county  
15 board wishes to amend the county plan, it shall submit in  
16 writing specific proposals to the stormwater management  
17 planning committee. If the proposals are not approved by the  
18 committee, or are opposed by resolution of the corporate  
19 authorities of an affected municipality having a municipal  
20 stormwater management plan, amendment of the plan shall require  
21 an affirmative vote of at least two-thirds of the county board  
22 members present and voting.

23 (g) The county board may prescribe by ordinance reasonable  
24 rules and regulations for floodplain management and for  
25 governing the location, width, course, and release rate of all  
26 stormwater runoff channels, streams, and basins in the county,

1 in accordance with the adopted stormwater management plan.  
2 Land, facilities, and drainage district facilities used for  
3 production agriculture as defined in subsection (d) shall not  
4 be subjected to regulation by the county board or stormwater  
5 management committee under this Section for floodplain  
6 management and for governing location, width, course,  
7 maintenance, and release rate of stormwater runoff channels,  
8 streams and basins, or water discharged from a drainage  
9 district. These rules and regulations shall, at a minimum, meet  
10 the standards for floodplain management established by the  
11 Office of Water Resources and the requirements of the Federal  
12 Emergency Management Agency for participation in the National  
13 Flood Insurance Program. The Commission may not impose more  
14 stringent regulations regarding water quality on entities  
15 discharging in accordance with a valid National Pollution  
16 Discharge Elimination System permit issued under the  
17 Environmental Protection Act.

18 (h) In accordance with, ~~and if recommended in,~~ the adopted  
19 stormwater management plan, the county board may adopt a  
20 schedule of fees applicable to all real property within the  
21 county which receives benefit from the county's stormwater  
22 management facilities and activities, and as may be necessary  
23 to mitigate the effects of increased stormwater runoff  
24 resulting from new development and redevelopment based on  
25 actual costs. The total amount of the fees assessed must bear a  
26 reasonable relationship to the actual costs of the county in

1 the preparation, administration, and implementation of the  
2 shall not exceed the cost of satisfying the onsite stormwater  
3 retention or detention requirements of the adopted stormwater  
4 management plan, construction and maintenance of related  
5 facilities, enforcement of any ordinance adopted pursuant  
6 thereto, and management of the runoff from the property. The  
7 individual fees must bear a reasonable relationship to the  
8 portion of the cost to the county of managing the runoff from  
9 the property. The fees shall be used to finance activities  
10 undertaken by the county or its included municipalities to  
11 mitigate the effects of urban stormwater runoff by providing  
12 and maintaining regional stormwater collection, retention, or  
13 detention, and treatment facilities and improving water bodies  
14 impacted by stormwater runoff, as identified in the county  
15 plan. In establishing, maintaining, or replacing such  
16 facilities, the county shall not duplicate facilities operated  
17 by other governmental bodies within its corporate boundaries.  
18 The schedule of fees established by the county board shall  
19 include a procedure for a full or partial fee waiver for  
20 property owners who have taken actions or put in place  
21 facilities that reduce or eliminate the cost to the county of  
22 providing stormwater management services to their property,  
23 with a preference for facilities that reduce the volume,  
24 temperature, velocity, and pollutant load of the stormwater  
25 managed by the county, such as systems that infiltrate,  
26 evapotranspire, or harvest stormwater for reuse, known as

1 "green infrastructure." In exercising this authority, the  
2 county shall give land owners at least 2 years' notice of the  
3 fee during which time the county shall provide education on  
4 green infrastructure practices and an opportunity to take  
5 action to reduce or eliminate the fee. The county board shall  
6 provide for a credit or reduction in fees for any onsite  
7 retention, detention, drainage district assessments, or other  
8 similar stormwater facility that the developer is required to  
9 construct consistent with the stormwater management ordinance.  
10 All these fees collected by the county shall be held in a  
11 separate fund, and shall be expended only in the watershed  
12 within which they were collected. The county may enter into  
13 intergovernmental agreements with other government bodies for  
14 the joint administration of stormwater management and the  
15 collection of the fees authorized in this Section.

16 (i) For the purpose of implementing this Section and for  
17 the development, design, planning, construction, operation,  
18 and maintenance of stormwater facilities provided for in the  
19 stormwater management plan, a county board that has established  
20 a stormwater management planning committee pursuant to this  
21 Section may cause an annual tax of not to exceed 0.20% of the  
22 value, as equalized or assessed by the Department of Revenue,  
23 of all taxable property in the county to be levied upon all the  
24 taxable property in the county or occupation and use taxes of  
25 1/10 of one cent. The property tax shall be in addition to all  
26 other taxes authorized by law to be levied and collected in the

1 county and shall be in addition to the maximum tax rate  
2 authorized by law for general county purposes. The 0.20%  
3 limitation provided in this Section may be increased or  
4 decreased by referendum in accordance with the provisions of  
5 Sections 18-120, 18-125, and 18-130 of the Property Tax Code  
6 (35 ILCS 200/).

7 Any revenues generated as a result of ownership or  
8 operation of facilities or land acquired with the tax funds  
9 collected pursuant to this subsection shall be held in a  
10 separate fund and be used either to abate such property tax or  
11 for implementing this Section.

12 However, the tax authorized by this subsection shall not be  
13 levied until the question of its adoption, either for a  
14 specified period or indefinitely, has been submitted to the  
15 electors thereof and approved by a majority of those voting on  
16 the question. This question may be submitted at any election  
17 held in the county after the adoption of a resolution by the  
18 county board providing for the submission of the question to  
19 the electors of the county. The county board shall certify the  
20 resolution and proposition to the proper election officials,  
21 who shall submit the proposition at an election in accordance  
22 with the general election law. If a majority of the votes cast  
23 on the question is in favor of the levy of the tax, it may  
24 thereafter be levied in the county for the specified period or  
25 indefinitely, as provided in the proposition. The question  
26 shall be put in substantially the following form:

1            Shall an annual tax be levied for stormwater management  
2            purposes (for a period of not more than ..... years) at a  
3            rate not exceeding .....% of the equalized assessed value  
4            of the taxable property of ..... County?

5            Or this question may be submitted at any election held in the  
6            county after the adoption of a resolution by the county board  
7            providing for the submission of the question to the electors of  
8            the county to authorize use and occupation taxes of 1/10 of one  
9            cent:

10           Shall use and occupation taxes be raised for stormwater  
11           management purposes (for a period of not more than .....  
12           years) at a rate of 1/10 of one cent for taxable goods in  
13           ..... County?

14           Votes shall be recorded as Yes or No.

15           (j) For those counties that adopt a property tax in  
16           accordance with the provisions in this Section, the stormwater  
17           management committee shall offer property tax abatements or  
18           incentive payments to property owners who construct, maintain,  
19           and use approved stormwater management devices. For those  
20           counties that adopt use and occupation taxes in accordance with  
21           the provisions of this Section, the stormwater management  
22           committee may offer tax rebates or incentive payments to  
23           property owners who construct, maintain, and use approved  
24           stormwater management devices. The stormwater management  
25           committee is authorized to offer credits to the property tax,  
26           if applicable, based on authorized practices consistent with

1 the stormwater management plan and approved by the committee.  
2 Expenses of staff of a stormwater management committee that are  
3 expended on regulatory project review may be no more than 20%  
4 of the annual budget of the committee, including funds raised  
5 under subsections (h) and (i).

6 (k) Any county that has adopted a county stormwater  
7 management plan under this Section may, after 10 days written  
8 notice receiving consent of the owner or occupant, enter upon  
9 any lands or waters within the county for the purpose of  
10 inspecting stormwater facilities or causing the removal of any  
11 obstruction to an affected watercourse. If consent is denied or  
12 cannot be reasonably obtained, the county ordinance shall  
13 provide a process or procedure for an administrative warrant to  
14 be obtained. The county shall be responsible for any damages  
15 occasioned thereby.

16 (l) Upon petition of the municipality, and based on a  
17 finding of the stormwater management planning committee, the  
18 county shall not enforce rules and regulations adopted by the  
19 county in any municipality located wholly or partly within the  
20 county that has a municipal stormwater management ordinance  
21 that is consistent with and at least as stringent as the county  
22 plan and ordinance, and is being enforced by the municipal  
23 authorities. On issues that the county ordinance is more  
24 stringent as deemed by the committee, the county shall only  
25 enforce rules and regulations adopted by the county on the more  
26 stringent issues and accept municipal permits. The county shall

1 have no more than 60 days to review permits or the permits  
2 shall be deemed approved.

3 (m) A county may issue general obligation bonds for  
4 implementing any stormwater plan adopted under this Section in  
5 the manner prescribed in Section 5-1012; except that the  
6 referendum requirement of Section 5-1012 does not apply to  
7 bonds issued pursuant to this Section on which the principal  
8 and interest are to be paid entirely out of funds generated by  
9 the taxes and fees authorized by this Section.

10 (n) The powers authorized by this Section may be  
11 implemented by the county board for a portion of the county  
12 subject to similar stormwater management needs.

13 (o) The powers and taxes authorized by this Section are in  
14 addition to the powers and taxes authorized by Division 5-15;  
15 in exercising its powers under this Section, a county shall not  
16 be subject to the restrictions and requirements of that  
17 Division.

18 (Source: P.A. 94-675, eff. 8-23-05.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.

**The Center for Neighborhood Technology** emphatically supports **SB 2195**, a bill to provide Illinois counties the resources to adequately address basement and street flooding and water pollution from stormwater runoff, which has been introduced and is awaiting assignment to a committee. We applaud **Senator Toi Hutchinson and each of the co-sponsoring legislators** who have exercised their leadership to ensure our counties' fiscal health and the sustainability of their stormwater infrastructure. Consider the following:

- **Stormwater runoff** from the built environment is a principle contributor to local basement and street flooding as well as pollution of water bodies in Illinois. These problems are **costly for property owners** and stormwater managers, and getting worse with increased development and climate change.
- **Green infrastructure** – using trees, plants and green roofs to manage stormwater on-site – is a proven, effective method for addressing stormwater runoff that is **cheaper and faster** to implement than conventional grey infrastructure.
- Current stormwater regulations impose significant requirements on urban counties to reduce stormwater runoff volume and its pollutants. These regulations require or encourage the use of **green infrastructure** practices to retain rainwater on-site before it becomes contaminated runoff.
- Under existing Illinois law, however, these urban counties must pay the state a stormwater permit fee, but are not given any financial assistance, and they have limited resources to effectively reduce stormwater volume and pollution. Peoria County's stormwater program funding problems, laid out in the Peoria Journal-Star article (over), are a perfect example of what Illinois counties are facing if S.B. 2195 fails to pass.
- A statewide backlog of stormwater infrastructure maintenance and upgrades exists due to the long-term failure to address them. Counties need resources and tools to help encourage the use of **green infrastructure** practices on private and public property to reduce runoff, which is a more economically and environmentally sustainable method of maintaining and upgrading water infrastructure.

## **Proposed SB 2195 would:**

- Allow, but not require, counties to establish a system to encourage the use of **green infrastructure** on private and public property to reduce runoff before it reaches the county stormwater piping and treatment system.
- Give counties the authority to adopt a schedule of fees as a dedicated source of revenue to cover the cost of ongoing stormwater management services and activities.
- Require that counties provide at least two years notice prior to adopting any fees, during which time the counties must provide education on **green infrastructure** practices and encourage landowners to install them in order to earn credits to potentially reduce or eliminate their fee.

### **Center for Neighborhood Technology**

*The Center for Neighborhood Technology (CNT) is an award-winning innovations laboratory for urban sustainability. Since 1978, CNT has been working to show urban communities in Chicago and across the country how to develop more sustainably. CNT promotes the better and more efficient use of the undervalued resources and inherent advantages of the built and natural systems that comprise the urban environment.*

*As a creative think-and-do tank, we research, promote, and implement innovative solutions to improve the economy and the environment; make good use of existing resources and community assets; restore the health of natural systems and increase the wealth and well-being of people — now and in the future. CNT's unique approach combines cutting edge research and analysis, public policy advocacy, the creation of web-based information tools for transparency and accountability, and the advancement of economic development social ventures to address those problems in innovative ways. CNT works in four areas: transportation and community development, natural resources, energy and climate. CNT's two affiliates, I-GO Car Sharing and CNT Energy, enable individuals and building owners to reduce their expenses in transportation and energy.*

## Unfunded mandate draining Peoria County

Enforcing state's erosion control permits becoming more and more costly

By KAREN McDONALD (kmcdonald@pjstar.com) | Posted Mar 21, 2010 @ 10:04 PM

Without relief from the state and federal government, Peoria County could be in arrears hundreds of thousands of dollars each year to enforce required erosion control permits without the funding attached to do so.

County officials are drafting a letter to the Illinois Environmental Protection Agency and state legislators regarding funding concerns and seeking relief.

"The state of Illinois is requiring us to enforce the regulatory scheme they've created. They're collecting all the permit revenue and not sharing it with us," said County Administrator Patrick Urich. "The frustration point is they are making us comply at a time when there are no resources to go along with it. It's the classic unfunded mandate."

As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System, or NPDES, permit program controls water pollution by regulating sources that discharge pollutants into bodies of water from municipal streets and catch basins to storm drains.

"We're considering requesting the state work with the county to alleviate, in this time of fiscal crisis, this federal mandate so we're not going to be held to the dates and requirements of enforcing the NPDES program when we don't have any funding that's attached it," Urich said.

All municipalities and counties holding federal NPDES permits pay annual fees to run their wastewater and storm water systems. The fees were introduced in 2003 to help eliminate the state's then-budget deficit. They are assessed based on a variety of factors including type of operation and nature and flow rate of discharge and can vary greatly from city to city.

Currently, NPDES enforcement comprises 25 percent of the annual budget for the Planning and Zoning

Department. In two years, it is estimated to cost 40 percent of the total budget, said Director of Planning and Zoning Matt Wahl.

"Counties have to enforce stormwater pollution prevention permits, but the state gets money. There are other counties that are in the same boat as we are. The EPA needs to step up to the plate. It's just a ridiculous situation we are in," Wahl said.

Peoria County either wants relief from enforcement in extending the time frame required to comply with the mandate or eliminating it altogether, or money to implement the program.

Compliance includes six minimum control measures for an estimated annual cost of \$142,000. That includes public education and outreach on stormwater impacts, public involvement, illicit discharge detection and elimination, control of construction site runoff and post-construction stormwater management and pollution.

The next phase of compliance - beginning in 2014 - includes establishing water quality-based standards to assure protection of state waters; regulating chemical contaminants of rivers, streams, and lakes and their impacts on living organisms; and implementing water sampling procedures to analyze contaminants. That will cost an estimated \$220,000 annually, Wahl said.

In order to be fully compliant, Peoria County eventually will have to amend its erosion control ordinance, subdivision ordinance, create an illicit discharge ordinance, require and review maintenance reports for stormwater retention and inspect residential, commercial and industrial property violations.

The EPA can issue orders against violators for non-compliance and seek civil or criminal penalties, including fines and/or imprisonment.

*Karen McDonald can be reached at 686-3285 or kmcdonald@pjstar.com.*

<http://www.pjstar.com/news/x126577993/Unfunded-mandate-draining-Peoria-County>