

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street
Urbana, IL 61801

DATE: May 26, 2005

Street

PLACE: 1776 East Washington

Meeting Room 1

TIME: 7:05 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Doug Bluhm, Debra Griest, Joseph L. Irle, Richard Steeves, Melvin Schroeder, Roger Miller

MEMBERS ABSENT : Dennis Goldenstein

STAFF PRESENT : John Hall, Lori Busboom, Joel Fletcher

OTHERS PRESENT : Mack Weckel, Helen Weckel, Brian Luckenbill, Diane Palmer, Mark Weckel, A.B. Coffey, William Campo, Marilyn Jeakins, Alvin Christians, Don Wauthier, Jeannette Elliott, Greg Elliott, Verlen Kelly, Devon Kelly, Roy Humphrey

1. Call to Order

The meeting was called to order at 7:05 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

None

4. Approval of Minutes (November 13, 2003)

Mr. Hall requested that approval of the minutes be continued to the June 16, 2005, Zoning Board of Appeals Meeting. He said that he would appreciate additional time to further review the case minutes prior to their approval.

Mr. Bluhm moved, seconded by Mr. Irle to continue the approval of the November 13, 2003, minutes to June 16, 2005. The motion carried by voice vote.

5. Continued Public Hearing

Case 453-AM-04: Petitioner: William and Peggy Campo Request to amend the Zoning Map to change the zoning district designation from AG-2, Agriculture to B-1, Rural Trade Center

(as amended on April 18, 2005). Location: A .62 acre tract of land located in the N1/2 of the NW1/4 of the NE1/4 of the SW1/4 of Section 34 of Somer Township and located approximately one-half mile east of Illinois Route 45 on the south side of Oaks Road (CR 1900N) and known as the business located at 2305 East Oaks Road, Urbana.

Mr. Hall distributed a Supplemental Memorandum dated May 26, 2005, for the Board's review. The memorandum reviews possible conditions of approval intended to address the concerns of both the adjacent landowners (who have placed a frontage protest on this case) and other neighbors. He explained that the State's Attorney has not had time to adequately review these conditions and staff does not recommend final action based on these conditions until the State's Attorney has provided comments. He said that the Revised Finding of Fact is attached to the distributed memorandum.

Mr. Brian Luckenbill who resides at 3405 E. Oaks Rd, Urbana, IL stated that he does not support any permanent zoning changes for the parcel however they would like to see the existing business remain under the AG-2 zoning.

Mr. Hall stated that the existing business is not allowed in the AG-2 Zoning District unless as a Home Occupation. He said that Condition #1, which requires approval from the State's Attorney, proposes rezoning to B-1 allowing "Minor Auto Repair" as the only use allowed on the parcel. He said that currently the general statement included in B-1 is "Minor Auto Repair" and is not limited to Bernie's Place. He said that Condition #2, requires that the property be brought into compliance with the Champaign County Zoning Ordinance within one year of map amendment approval with the exception of the setback from Oaks Road or as authorized by variance. He said that Condition #3, requires that the zoning district designation shall revert back to AG-2, Agriculture upon either of the following: (A) damage or destruction of the existing building by more than 50% of its replacement value; or (B) the cessation of a minor automobile repair business or the cessation of activities defined as minor automobile repair on the subject property in which case the Champaign County Department of Planning and Zoning shall be notified in writing upon the cessation of said use.

Mr. Luckenbill stated that he feels that the operator of the existing business has basically been placed in a bad situation. He said that the entire neighborhood does have compassion for Bernie because he has placed his financial investment at this location although the neighborhood does not share the same compassion for Mr. Campo. He said that Mr. Campo is involved in real estate and should have known that this type of business was not allowed on the property in the first place. He said that there are some issues regarding screening which need to be addressed and it appears that those issues are being dealt with. He said to put it bluntly the neighborhood feeling is that they do not care if Mr. Campo is "left holding the bag" for a future tenant and their compassion is only with Bernie who was allowed to establish his business on the property by Mr. Campo.

Ms. Griest asked Mr. Luckenbill if he was included in the protest filed by the adjacent landowners.

Mr. Luckenbill stated that he was not included in the protest because Mr. Christians owns land between his property and the subject property.

Ms. Griest asked Mr. Hall if the protest still stands since it was filed against the original request for

B-3.

Mr. Hall stated that the protest still stands because it was filed against the case.

Mr. Luckenbill stated that it is irrelevant whether the proposed zoning is B-1 or B-3 because the protest requests that the parcel remain under the AG-2 zoning.

Ms. Griest asked the Board if they desire to take final action or continue for State's Attorney review of the conditions.

Mr. Irle stated that he would like to have the State's Attorney's office review the proposed conditions.

Mr. Bluhm agreed with Mr. Irle regarding State's Attorney's review of the proposed conditions.

Mr. Fletcher stated that he will review the condition as requested and asked if he was correct in assuming that the tenant was not aware that the current use was not allowed in the properties zoning designation.

Ms. Griest stated that the tenant was not aware of the zoning designation nor its restrictions.

Mr. Fletcher requested a copy of the lease for the subject property. He said that he should be able to have an answer to staff by July 18, 2005.

Mr. Irle moved, seconded by Mr. Miller to continue Case 453-AM-004: William and Peggy Campo to July 28, 2005. The motion carried by voice vote.

Case 480-V-04: Petitioner: Marilyn Jeakins Request to authorize the following variances in the AG-1, Agriculture Zoning District: A. The use of a lot that averages 175 feet in width in lieu of the minimum required average lot width of 200 feet; and B. The reconstruction of a nonconforming dwelling with the following variances in relation to U.S. Route 136 (a major street): (1) a setback of 40 feet from the centerline of U.S. Route 136 instead of the required setback of 85 feet; and (2) a front yard of zero feet instead of the minimum required front yard of 35 feet. Location: a 1.272 acre tract of land in the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of Section 35 of Harwood Township, commonly known as the residence at 2222 CR 3000N, Gifford, Illinois.

Mr. Hall stated that this case was continued from the March 17, 2005, meeting because the petitioner was unable to attend that meeting. He said that this case was triggered by the application to rebuild a shed that had been blown down by high winds. The review of the ZUPA identified that the subject property is in fact in the AG-1, Agriculture Zoning District and that the lot has an average lot width of only 175.67 feet which is less than the 200 feet minimum average lot width required in the AG-1 District. He said that in processing the case for the legal advertisement staff realized that the dwelling is nonconforming and included it in the case. He said that the garage has already been built because the ZUPA was issued conditionally upon submission of the completed variance application.

Ms. Jeakins who resides at 2222 CR 3000N, Gifford stated that she has no additional comments but will answer any questions that the Board may have.

Mr. Bluhm asked Ms. Jeakins who owned the adjacent farm ground.

Ms. Jeakins stated that her mother owns and resides on the farmland to the west of the subject property. She said that Mr. Gerhts own the land to the east. She said that when she purchased the property from her parents in 1997 there was a shed which existed on the parent tract and her parents desired to keep the shed for themselves. She said that she nor her parents were aware that this would cause a nonconforming lot.

Mr. Irle asked if there was enough room on the property to rebuild the home, if required.

Mr. Hall stated that there enough room for the home to be rebuilt to meet all of the required setbacks included in the variance request.

Mr. Bluhm stated for clarification that the lot was created after the adoption of zoning and has always been in the AG-1 District but the previous ZUPA was approved based on the erroneous determination that the property was in the AG-2 District which requires a lot width of 150 feet.

Mr. Hall stated that he was correct. He said that an Item #4 should be added to the Documents of Record indicating the Supplemental Memorandum dated May 20, 2005 with attachment. He said that the date of the Summary of Evidence should be corrected to indicate May 26, 2005 and the date March 26, 2005, should be added to the Finding of Fact.

Finding of Fact for Case 480-V-04:

From the documents of record and the testimony and exhibits received at the public hearing conducted on March 17, 2005 and May 26, 2005, the Zoning Board of Appeals of Champaign County finds that:

1. Special conditions and circumstances do exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land and structures elsewhere in the same district.

Mr. Bluhm stated that special conditions and circumstances do exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land and structures elsewhere in the same district because the house was constructed prior to the Zoning Ordinance and the right of way for Route 136 was narrower at that time. Mr. Steeves stated that the lot was reconfigured in shape in 1997 to allow the shed to remain on the parent's property. Mr. Irle stated that the lot was previously considered conforming due to an erroneous determination that the property was in the AG-2 district.

2. Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied will prevent reasonable or otherwise permitted use of the land or structure.

Mr. Irle stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied will prevent reasonable or otherwise permitted use of the land or structure because it will prevent the rebuilding of a structure which was damaged by a wind storm in 2004.

3. The special conditions, circumstances, hardships, or practical difficulties do not result from actions of the applicant.

Mr. Bluhm stated that special conditions, circumstances, hardships, or practical difficulties do not result from actions of the applicant because the house was built prior to adoption of the Zoning Ordinance and in 1997 the Zoning Use Permit was approved under the AG-2 designation.

4. The requested variance is in harmony with the general purpose and intent of the Ordinance.

Mr. Steeves stated that the requested variance is in harmony with the general purpose and intent of the Ordinance because granting the variance will allow the garage to be rebuilt and the house to maintain its previous value.

5. The requested variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare.

Mr. Steeves stated that the requested variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare because the house has been there for many years and relocating the garage will make access difficult. Mr. Bluhm stated that the lot width is greater than what the AG-2 District would require.

6. The requested variance is the minimum variation that will make possible the reasonable use of the land/structure.

Mr. Irle stated that the requested variance is the minimum variation that will make possible the reasonable use of the land/structure because the footprint of the proposed structure is not much more than the damaged structure which it replaces.

Mr. Irle moved, seconded by Mr. Steeves to adopt the Finding of Fact, Summary of Evidence and Documents of Record as amended. The motion carried by voice vote.

Mr. Steeves moved, seconded by Mr. Schroeder to close the public hearing for Case 480-V-04: Marilyn Jeakins. The motion carried by voice vote.

Ms. Griest explained to Ms. Jeakins that a full Board is not present at tonight's meeting therefore it is at the Petitioner's discretion as to whether the Board would take a final vote or continue the hearing to a later date when a full Board is present.

Ms. Jeakins stated that she would like the Board to proceed with the final determination.

Final Determination for Case 480-V-04:

Mr. Bluhm moved, seconded by Mr. Irle that the Champaign County Zoning Board of Appeals finds that, based upon the testimony and other evidence received in this case, that the requirements of Section 9.1.9C have been met and pursuant to the authority granted by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the variance requested in Case 480-V-04 is hereby granted to the petitioner, Marilyn Jeakins, to authorize the following variances in the AG-1, Agriculture Zoning District:

- A. The use of a lot that averages 175 feet in width in lieu of the minimum required average lot width of 200 feet; and
- B. The reconstruction of a nonconforming dwelling with the following variances in relation to US Route 136 (a major street):
 - 1. A setback of 40 feet from the centerline of US Route 136 instead of the required setback of 85 feet; and
 - 2. A front yard of zero feet instead of the minimum required front yard of 35 feet.

The roll was called:

Bluhm-yes	Irle-yes	Miller-yes
Schroeder-yes	Steeves-yes	Griest-yes
Goldenstein-absent		

6. New Public Hearings

Case 490-V-04: Petitioner: Mark Thompson Request to authorize the separate use of a nonconforming five-acre lot with residence that is currently in common ownership with an adjacent flag lot that abuts a public street and that is proposed to be used separately from the flag lot and is proposed to access the public street by means of an existing shared easement of undetermined width instead of abutting either a public street right of way or a private accessway in the CR, Conservation Recreation Zoning District. Location: The East ½ of the Southeast 1/4 of the Southwest 1/4 of Section 36 of Newcomb Township and the West ½ of the Southeast 1/4 of the Southwest 1/4 of Section 36 of Newcomb Township lying south and east of the Sangamon River and north of Crooked Creek Subdivision and known as the residential property located at 564-B CR 2400N, Dewey.

Case 491-V-04: Petitioner: Mark Thompson Request to authorize construction on and the separate use of a nonconforming 20-acre lot that is currently in common ownership with an adjacent flag lot that abuts a public street and that is proposed to be used separately from the flag lot and is proposed to access the public street my means of an existing shared easement of undetermined width instead of abutting either a public street right of way or a private accessway in the CR, Conservation Recreation Zoning District. Location: See Case 490-V-04.

Ms. Griest called Case 490-V-04 and Case 491-V-04 concurrently.

Mr. Hall stated the variance requests are to allow separate principal uses to be established on each of the petitioner's three parcels. He said that Parcel A the petitioner's central five acre parcel on which the petitioner has his home, appears to have been purchased in 1987 with an easement of access from CR 2400N through Parcel B and this same easement provides access to the Flora residence to the north and to Parcel C, the petitioner's additional parcel to the east. He said that the petitioner's central five acre parcel became a nonconforming lot of record with the adoption of the current minimum street access requirements on February 18, 1997. He said that Mr. Thompson desires to sell two of the parcels for residences therefore the variance is required. He said that after review of a previous variance request (Case 302-V-04) and upon visiting the site he noticed a sharp radius in the existing shared lane. He said that the first radius along Trunk Lane, as indicated in View #1 of the photo attachment, is probably adequate for an emergency vehicle although the second radius adjacent to Mr. Humphrey's home is very sharp and can be a problem for emergency vehicle access. He said that View #2 of the photo attachment is a view of the 8' diameter culvert at the drainageway and appears to be unsuited for any pavement width greater than the existing 10' drive and that it may be very difficult for Mr. Thompson to meet the proposed condition that was included in the May 20, 2005, Preliminary Memorandum. He said that Mr. Thompson is prepared to make the changes which are proposed but the changes will be very significant. He said that View #3 of the photo attachment indicates the entrance lane and how it is located around Mr. Thompson's garage and it is unknown if the lane can be made to accommodate a fire truck or if the lane should be improved past Mr. Thompson's dwelling. He said that if the lane is required to extend past Mr. Thompson's dwelling then some sort of realignment may be necessary. He said that these things which can be dealt with later if the Board decides to take action at tonight's meeting but in his opinion the feasibility of some of the proposed conditions is questionable.

Mr. Hall stated that correspondence has been received from Chief John Jay of the Cornbelt Fire Protection District indicating that 8 inches of compact gravel would be required to meet the requirements of the Cornbelt Fire Protection District although during a telephone conversation Mr. Jay indicated that he would accept a minimum of 6 inches of gravel. He said that there could be an issue with existing guy wires and a power pole and if it would pose any problem with widening the lane.

Mr. Roy Humphrey, who resides at 562D CR 2400N, Dewey, IL stated that the power pole is located on his property and is located in the right of way.

Mr. Mark Thompson, who resides at 564 CR 2400N, Dewey, IL asked if it basically gets down to the road is not adequate.

Mr. Hall stated that the existing pavement is only 10 to 11 feet wide and the Cornbelt Fire Protection District requires a minimum of 20 feet.

Mr. Thompson stated that 28 acres surrounds the road and to widened what is currently 10 to 12 feet in width to 20 feet is very possible because he owns the property on both sides of the sharp radius portion of the drive. He said that the issue of the culvert is very simple in that if he is required to replace it then he will. He said that he has invested too much money in this property to be turned down because of a power pole or because the culvert wasn't adequate. He said that he

would like to see this case finalized at tonight's hearing and if it is a case that the approval is contingent upon him meeting certain criteria then he would like to know the criteria so that he knows what he needs to do. He said that the proposed improvements for the road in widening it and constructing the turn-around will enhance the area.

Mr. Bluhm asked Mr. Thompson if there were two other homes to the north or one.

Mr. Thompson stated that there was one house to the north of his home. He said that there are no homes located on Tract B or C. He noted that there is a tremendous amount of growth around this property.

Mr. Irle asked if the road improvements would end at the turn-around.

Mr. Thompson stated that the road improvements would end at the turn-around which will be north of his home. He said that the intention is that anyone who would want to build on Tract C would want to build it on the ridge line therefore it is a logical location for the lane.

Mr. Bluhm asked if the second radius is located on the southwest corner of Tract C.

Mr. Hall stated that he was correct.

Mr. Thompson stated that if he is required to take out a few trees and add fill to change the angle then he will comply.

Mr. Bluhm asked if it would be a problem to configure the road on the right hand side of the power pole.

Mr. Thompson stated that it would not be a problem and once you pass the power pole the road is recycled asphalt which is a very hard surface. He said that when he had originally requested a variance on this property the 20 foot requirement did not exist therefore he would like to have this request approved before the County changes the rules again.

Mr. Hall stated that the condition is written to state that wherever the existing gravel is less than six inches where it joins to the new gravel the existing gravel pavement shall be topped with new gravel pavement to achieve a minimum thickness of six inches. He said that he spoke to Chief John Jay, Cornbelt Fire Protection District about this condition and he was satisfied.

Mr. Irle asked what type of waste disposal truck travels the road.

Mr. Thompson stated that it is fairly small waste disposal truck with a side loader.

Mr. Hall stated that the Supplemental Memorandum dated May 26, 2005, does include a couple of additional conditions. He said that Item #3 of the Summary of Evidence indicates the following: The site plan submitted with the Zoning Use Permit Application for each dwelling shall clearly indicate and the applicant shall agree to construct a driveway as follows: (a) the driveway shall be identical in construction and clear height to the private lane; and (b) the driveway shall lead from the shared private lane to the proposed dwelling by the shortest possible path; and (c) the driveway shall be constructed prior to the placing of any other new construction materials on the

lot. He said that Item #4 of the Summary of Evidence indicates the following: A private restrictive covenant has been recorded requiring the following: (A.) the petitioner and the two new lot owners shall equally share in the maintenance and cost of keeping the shared lane in compliance with the conditions of approval; and (b) required maintenance shall consist of at least annual filling of pot holes with suitable gravel and provisions for snow removal when the snow depth is two inches or more; and (c) each of the three lot owners shall be responsible individually for maintenance whenever notified by the Champaign County Zoning Administrator that the private lane does not conform to the standards. He said that Item #5 indicates that: Each Zoning Use Permit Application shall include a statement signed by the lot owner acknowledging the restrictive covenant regarding maintenance of the land and indicating their acceptance to the obligation.

Mr. Thompson stated that he agreed with the conditions.

Mr. Miller asked Mr. Thompson if other than widening the road did he have any other intentions to secure his property from hazardous traffic when traveling down the lane which is in close proximity to his shed.

Mr. Thompson stated that he would like to install a speed bump.

Mr. Roy Humphrey, who resides at 562D CR 2400N, Dewey stated that the first curve (radius) does infringe upon his property. He said that the road will have to be moved to the northeast approximately 3 to 4 feet. He said that the power poles are located on the 60 foot right of way of Crooked Creek Subdivision. The distance between the poles is approximately 20 feet especially by the cemetery. He said that he did have a surveyor come out and there are pins set on the property line therefore if it is supposed to be 20 feet from CR 2400N then it must be an awful short 20 feet. He said that when his father sold the property to Mr. Leach years ago they did not have all of the rules and regulations that are in force today and they probably used the technique of stepping it off to obtain a measurement for the easement. He said that when he subdivided his property in 1968 it was discovered that there was no deed drawn up on the sale and he is not aware if it has been since or not. He said that his 60 foot of right of way is to be hard surfaced and hopefully maintained by the township but the curve does belong to him.

Mr. Verlen Kelly, who resides at 588 CR 2400N, Dewey stated that he lives just east of Tract C, the 20 acre wooded area. He said that he has heard a lot of "ifs" during the testimony given tonight. He asked if Mr. Thompson had considered contacting the University of Illinois in regard to the 20 acres of woods. He asked how the widening of the road would effect other property owners and their easements for utility service.

Mr. Irle stated that Mr. Humphrey testified that at least the first pole is located on his property.

Ms. Griest asked Mr. Hall to confirm that none of the rest of the property is less than 20 feet in width.

Mr. Hall stated that Ms. Griest was correct. He said that once past the curve past Mr. Humphrey's property the 28 acre wooded area begins. He said that given the condition that Mr. Humphrey said about how this thing was originally paced off at 20 feet wide then there is plenty of room for the pavement all the way back to the curve and beyond that there is no question that there is

enough land.

Mr. Greg Elliott, who resides at 588 CR 2400N, Dewey asked if Tract B or Tract C were going to be subdivided into smaller residential lots. He said that he is concerned that the placement of the road is the beginning process of a future subdivision. He asked if the property is zoned for only one residential use.

Mr. Hall stated that at this point there is no subdivision being discussed for Tract C in that it would be a much more complicated process. He said that this does not mean that anyone who purchases Tract C could not propose a subdivision in the future but with the current rules that are set up any additional homes on Tract C would require similar variances which would require notification to adjacent landowners.

Mr. Elliott stated that he does not mind the improvements to the road but he is concerned that once the petitioner starts down this road and the expenditures which are occurred they may want to develop the area around it to benefit from the investment. He said that he does enjoy the area as it is currently and would not like to see it changed or destroyed.

Ms. Jeanette Elliott, who resides at 588C CR 2400N, Dewey stated that she is relatively new to the area and is unaware of any of its history. She said that the Preliminary Memorandum dated May 20, 2005 indicates that the petitioner's property was previously the subject of a similar variance request except that it was a request to allow further division of the existing parcels. The current variance request is to allow separate principal uses to be established on each of the petitioner's three parcels. She asked why the previous variance was denied.

Mr. Hall stated that no final action was taken for Case 302-V-01.

Ms. Elliott stated that one step leads to the next and she is concerned with any future division of the land. She requested that the Board take more time to allow an engineer to review the proposed road changes to see if they are even feasible and what the costs will be incurred by the petitioner.

Mr. Irle stated that the petitioner is being asked to upgrade the road for the fire protection district and not for additional homes. He said that it was his impression that Chief John Jay consulted with the Newcomb Township Road Commissioner prior to making his recommendations regarding the road.

Mr. Hall stated that he does not recall if Chief Jay consulted with the Newcomb Township Road Commissioner. He said that he consulted the County Engineer regarding his recommendations for the gravel thickness because the Cornbelt Fire Protection Policy doesn't include any minimum thickness.

Ms. Griest stated that currently these are three separate, distinct parcels and the petitioner is not requesting that he be allowed to make them into new parcels that do not already exist. The parcels are in common ownership.

Mr. Hall stated that Ms. Griest was correct.

Mr. Bluhm stated that the parcels were purchased prior to the changes to the Zoning Ordinance which prohibited access by easement.

Ms. Griest asked how the 20 acre parcel was granted its right of access.

Mr. Hall stated that the easements are discussed in the attachment to the Preliminary Memorandum dated May 20, 2005. He said that at this point staff does not have a copy of the deed but does have a copy of the ALTA Policy. He said that Schedule B of the ALTA Policy refers to the easement.

Ms. Griest stated that the petitioner is only asking to make the three parcels which he owns buildable lots.

Mr. Hall stated that Ms. Griest was correct.

Mr. Irle stated that if the petitioner had done this prior to the ordinance regarding flag lots he would not have been required to go through this process.

Ms. Griest stated that when the petitioner purchased the lots they were buildable lots.

Mr. Hall stated that Ms. Griest was correct. He said that when he purchased the property he could have divided the 20 acres into five acre lots each one gaining access by the easement. He said that Tract B has changed shape since Mr. Thompson purchased it but these lots, as they currently exist, existed this way when the land came within the Village of Mahomet's Extra-territorial Jurisdiction. He said that he spoke to the Teri Legner, Village of Mahomet Administrator and she indicated that there will not be any subdivision issues in using these lots as long as they are individual lots with one home.

Mr. Irle stated that there is sufficient room for the easement and sufficient room for the 20 foot width and the petitioner is willing and able to do it.

Mr. Hall stated that the petitioner has reviewed the conditions and is willing to comply to those conditions but if he is unable to comply then he is just stuck.

Ms. Griest asked what alternative would available in having such an issue resolved prior to taking final action.

Mr. Hall stated that some sort of a sketch by a Professional Engineer identifying the 20 foot road. He said if final action is taken tonight and Mr. Thompson cannot comply then he would have to come back before this Board for another variance. He said that with cases which are this complicated staff can only indicate if it meets or doesn't meet and if there is any suggestion that it doesn't meet the condition then the petitioner cannot proceed.

Mr. Thompson stated that if it is a matter being contingent upon a Professional Engineer's final word in relation to Chief John Jay's desires then that is what will happen.

Mr. Hall stated that the proposed condition requires a 20 foot gravel pavement for the full length of the lane and if at some point Chief Jay decides that he could accept something less it is not an option.

Ms. Griest stated that economically it is probably viable to have the road width issue resolved before final action is taken. She said that the Board can entertain conditions which require the maximum width and would incur the highest level of costs and the petitioner would have no alternatives.

Mr. Thompson stated that one year ago if he had come before the Board the road would not be an issue. He said that everything else is covered and he is willing to bring the road up to Chief Jay's requirements. He said that if Chief Jay states at a later date that he does not require the 20 foot width then it should be negotiable.

Mr. Irle asked if the approval could be contingent upon Chief Jay's final recommendation.

Mr. Bluhm stated that it would give Chief Jay the latitude but it does not assist the Zoning Officer for enforcement.

Mr. Hall stated that it is not the fire chief's job to determine the road width or make decisions for the Zoning Board.

Mr. Fletcher stated that he has a problem with delegating the decision to the fire chief.

Mr. Hall stated that perhaps the petitioner would rather take the chance rather than being required to apply for another variance in order to deal with whatever contingency might be a problem. He said that the petitioner may want to take the risk rather than a continuation and being required to hire an engineer to do whatever level of analysis would be required to have greater confidence that 20 feet is required with no questions of visibility.

Mr. Irle stated that the condition would basically state that upon approval of a licensed professional engineer the roadway would be sufficient to handle the conditions suggested by the fire chief.

Ms. Griest stated that this condition would be detailed for length and width.

Mr. Hall stated that as the condition is written it doesn't require any consideration of corner radius. He said that it is possible that we could end up with a 20 foot wide pavement but if the corner is too sharp for a fire truck. He said that text could be added that all radius shall be the minimum required to accommodate access for Cornbelt Fire Protection District vehicles.

Mr. Schroeder stated that he is concerned with the issue of liability if someone would have an accident on this road or if an emergency vehicle was not able to access an emergency on the road due to its existing conditions.

Mr. Thompson asked if there are issues on the floor which could possibly cause a denial.

Ms. Griest stated that she is unable to answer Mr. Thompson's question. She asked Mr. Hall if

since Mr. Thompson has his application on file and a subsequent change occurred to the Ordinance or the requirements would his application be required to adhere to those changes or would it be under the rules and regulations as they existing upon his application date.

Mr. Fletcher stated that it is customary to have cases decided on the basis of the rules that exist on the date of application.

Ms. Griest stated that 15.A.1(h) states: other additional paving meeting the requirements of Cornbelt Fire Protection District Ordinance No. 96.B as revised on March 2, 2005, may be provided in addition to the gravel.

Mr. Hall stated that the Cornbelt Fire Protection Policy, prior to March 2, 2005, did require 10 feet of pavement but Chief Jay points out that the 10 feet was not wide enough.

Mr. Bluhm stated that in 2001, one of the Board's sticking points was a turn-around for fire trucks and road width.

Mr. Fletcher asked if there were any other text amendments which would effect this pending case.

Mr. Hall stated no.

Ms. Griest stated that if the final determination is made at tonight's hearing with certain parameters it might leave Mr. Thompson with no alternatives. She said that if a continuance is granted so that Mr. Thompson can investigate these issues further he may have alternatives available. Ms. Griest informed the petitioner that one of the members is absent from tonight's meeting and it will take five affirmative votes to approve his request.

Mr. Hall stated that a continuance would give Mr. Thompson time to review the engineer's report and discuss those findings with Chief Jay.

Mr. Miller stated that it would also give Mr. Thompson time to review the costs which may be incurred in relocating the power poles, widening the road and placement of the culvert.

Mr. Irle stated that perhaps the petitioner should contact the power company to provide commentary on the guy wires.

Mr. Miller stated that it would be helpful to have a professional survey completed for Board review.

Mr. Fletcher noted that the ZBA cannot grant a partial approval.

Mr. Steeves stated that a continuance would give the petitioner time to make sure that no other issues are going to pop up.

Mr. Irle stated that if this case is going to be continued then Mr. Thompson should be aware of the documents which he needs to provide this Board and staff for review. He said that the Board has indicated that they would like to see the following: 1. a recommendation from a licensed

professional engineer regarding the requirements set forth by the Board and the fire protection district for road construction; 2. commentary from Illinois Power regarding relocation of the power poles and guy wires.

Mr. Irle moved, seconded by Mr. Steeves to continue Case 490-V-04 and Case 491-V-04: Mark Thompson to the August 11, 2005, Zoning Board of Appeals meeting. The motion carried by voice vote.

7. Staff Report

Mr. Hall stated that Case 489-S-05, Seymour Fire Protection District was previously continued to the July 28, 2005, Zoning Board of Appeals meeting. He said that Mr. Marc Sellers called and indicated that July 28th, was not an unacceptable date for attendance and requested that the case be moved to the July 14, 2005, Zoning Board of Appeals meeting.

Mr. Bluhm moved, seconded by Mr. Steeves to move Case 489-S-05, Seymour Fire Protection District from the July 28, 2005, Zoning Board of Appeals meeting to the July 14, 2005, Zoning Board of Appeals meeting. The motion carried by voice vote.

Mr. Hall stated that Case 487-S-05, Hindu Temple and Cultural Society of Central Illinois was previously continued to the August 11, 2005, Zoning Board of Appeals meeting. He said that the petitioner called and indicated that one of their primary points of contact will be out of the country on August 11th and requested that the case be omitted from the August 11, 2005, Zoning Board of Appeals meeting and moved to the August 25, 2005, Zoning Board of Appeals Meeting.

Mr. Irle moved, seconded by Mr. Steeves to move Case 487-S-05, Hindu Temple and Cultural Society of Central Illinois from the August 11, 2005, Zoning Board of Appeals meeting to the August 25, 2005, Zoning Board of Appeals meeting. The motion carried by voice vote.

8. Other Business

A. Notice of proposed amendment of ZBA By-Laws Article 6-Procedure regarding cross examination in zoning cases.

Mr. Hall distributed a memorandum dated May 25, 2005, from Joel Fletcher, Senior Assistant State's Attorney regarding Cross Examination Rights in Zoning Cases for the Board's review.

Mr. Joel Fletcher stated that in 2002 the Illinois Supreme Court held that due process requires the Zoning Board of Appeals to give cross-examination rights to interested parties in administrative or quasi-judicial zoning proceedings. He said that it appears that cross-examination rights are required to be given in special use permit cases and in variance cases but cross-examination rights are only required to be given in rezoning cases which are combined with special use permit or variance cases in a single hearing.

Mr. Steeves asked who controls the cross-examination. He asked Mr. Fletcher if the cross-examination process became out of control could the Chair cease the hearing and request a

continuance for the case.

Mr. Fletcher stated that limits can be imposed on the cross-examination and the Chair of the ZBA would control the cross-examination. He said that if someone disagrees with the Chair in regard to the limits which are imposed on the cross-examination then they could ask for a vote from the full Board to continue the cross-examination. He said that if the cross-examination became out of control that the Chair could request a continuance for the case.

Ms. Griest asked if the cross-examination must be allowed at the conclusion of each witness' testimony or can it be at an alternative time.

Mr. Fletcher stated that allowing cross-examination for another date would be problematic.

Ms. Griest asked if the cross-examination process could begin upon conclusion of the witness register.

Mr. Fletcher stated that a person may testify and leave before they are called back to the podium to be cross-examined by an interested party therefore the ZBA would have to disregard all of their testimony because an interested party was not given the chance to cross-examine the witness. He said that this could open the ZBA up for legal claims.

Mr. Irle stated that as a Board member he is more interested in hearing what all of the witnesses have to say before hearing cross-examination. He said that it appears that a lot of time will be taken up with cross-examination of each witness rather than allowing each witness to testify individually and then he called back to the podium for cross-examination.

Mr. Fletcher stated that the Chair can rule the cross-examination out of order if their question has already been answered.

Mr. Irle asked if there was a requirement to set the procedure before the case is heard or is the right to cross-examination given anytime during testimony.

Mr. Fletcher stated the Board can determine in advance of the hearing as to who has the right to cross-examine the witness. He said that there is nothing wrong with the Board announcing that the following people have the right to cross-examine the witnesses.

Ms. Griest asked if pre-registration is required for cross-examination is there any legal exposure for not allowing someone to register at the meeting site. She said that the public would sign the witness register at the meeting but the cross-examination register would be closed.

Mr. Fletcher stated that he is fairly confident that the Board can require pre-registration for cross-examination and he does not believe that it will open the Board up to legal liability. He said that a pre-determination of who is on the cross-examination list is entitled to do so.

Ms. Griest stated that the adjacent property owners and reasonable criteria based upon the type of request, the Board would make a determination and possibly state it before the meeting as to what the criteria is for cross-examination. She asked if the criteria would be required to be included in the public notice.

Mr. Fletcher stated that the criteria would not be required to be included in the public notice.

Mr. Hall stated that he is unsure how the pre-registration process would work because there may be additional information included during the hearing that may trigger someone to want to cross-examine the witness.

Mr. Steeves stated that he is concerned that the cross-examination could get out of control and continue the hearing for a case way past the allotted time.

Mr. Irle stated that at the beginning of the meeting an announcement could be made and before any testimony occurred members of the audience could decide whether or not to participate in the cross-examination.

Ms. Griest stated if the registration for cross-examination is completed at the beginning of the hearing the Board already knows that adjacent land owners have the right to cross-examine but other interested parties may also have viable information. She said that it is going to prove very difficult to pick and choose who gets to cross-examine the witnesses.

Mr. Steeves stated that the witness sheet could have a column which the public could indicate their interest in the case therefore indicating if they meet the criteria for cross-examination.

Mr. Fletcher stated that the Board then is requesting that on the witness form there will be a column indicating the petitioner, a column for adjacent landowners and a column for other interested parties.

Mr. Hall stated that this suggests that this form will be reviewed for some sort of standard. He said that perhaps staff could check with other jurisdictions to see what their procedures are for cross-examination.

Ms. Griest asked if the Board can impose a time limit for cross examination.

Mr. Fletcher stated that he would not recommend a time limit. He said that if the cross-examination becomes repetitive, argumentative, badgering or irrelevant then the Chair can end the cross-examination. He said that he would have a hard time recommending, for example, a twenty minute time limit if that time limit would cut off relevant questions.

Ms. Griest stated that in the initial announcement the public should be informed that their questions must be relevant and if they are not then they will be called out of order. She asked Mr. Fletcher if he could prepare a disclaimer which is to be read to the public at the beginning of the hearing. She asked Mr. Fletcher if the Board has an agenda with three or more scheduled cases and one individual case appears to be taking up the entire time period of the hearing is it within the Board's right to request a continuance of the case if all of the witnesses have had the opportunity to be cross-examined.

Mr. Fletcher stated that he does not see a problem with the Board requesting a continuance date as long as the hearing is not continued prior to giving the opportunity of cross-examination to the

witnesses which have testified.

Ms. Griest asked if it could be viewed that if the Board did not complete the entire witness register that the Board was cutting off their right if the other witnesses on the register could not attend the continuance date of the hearing. She said that it seems unfair that one case be allowed to take up the majority of the meeting because of the length of the witness register when there are perhaps two other petitioners which have been present the entire time and were docketed on the agenda. She said that the other petitioners should not lose their opportunity to be heard on their published night because another case consumes the hearing time.

Mr. Irle asked whose rights are more important, the right to be heard or the right to be continued.

Mr. Fletcher stated that this is a scheduling issue.

Ms. Griest stated that if one case consumes a majority of the hearing and the Board decides not to continue the meeting time it is very possible that the other petitioners, which have been sitting through the entire testimony of the other case, could not be heard until a later date. She said that it seems unfair to the other petitioners to be pushed back or delayed in their process due to the length of another cases witness register.

Mr. Bluhm stated that the Board's agenda lists continued cases first and then new public hearings. He asked Mr. Fletcher if he had a problem with the Board re-arranging the agenda to hear the less controversial cases first.

Mr. Irle stated that if three cases are scheduled for a hearing night, which is three hours in length, it should be reasonable for a petitioner to believe that within one hour or so your case should be heard.

Ms. Griest asked if the Board has the right to continue a case after two hours of testimony for one case.

Mr. Fletcher stated that he does not see a problem with the Board continuing a case after two hours of testimony but the petitioners and the public should be made aware of this at the beginning of the hearing.

Mr. Irle stated that staff normally schedules the docket with the expectation of the length of the hearings but if, for some reason, a hearing does run long then the Board should have the opportunity to continue the case to give the opportunity for the other petitioners to be heard.

Ms. Griest stated that perhaps the By-Laws should be amended to include the Board's right to continue a hearing after a two hour time period.

Mr. Fletcher stated that he does not believe that this should be included in the By-Laws. He said that the Board has the right to continue a case to a date specific as long as everyone's right to cross-examine the witnesses has been executed.

Ms. Griest asked if it would be beneficial to have the petitioner or the petitioner's representative

stay at the podium for cross-examination.

Mr. Fletcher stated it would be beneficial for the petitioner and the person cross examining the witness to be in front of a microphone so that the testimony can be adequately recorded.

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

None

10. Adjournment

The meeting adjourned at 9:55 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

