

2 **MINUTES OF REGULAR MEETING**  
3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**  
4 **1776 E. Washington Street**  
5 **Urbana, IL 61801**

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7 **DATE:** November 29, 2007 **PLACE:** Lyle Shield's Meeting Room  
8 **1776 East Washington Street**  
9 **TIME:** 6:30 p.m. **Urbana, IL 61802**

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11 **MEMBERS PRESENT:** Doug Bluhm, Dennis Goldenstein, Debra Griest, Joseph L. Irle

13 **MEMBERS ABSENT :** Roger Miller, Melvin Schroeder, Richard Steeves

15 **STAFF PRESENT :** John Hall, JR Knight, Leroy Holliday, Pius Weibel

17 **OTHERS PRESENT :** Herb Schildt, Michael Tague, Tanna Fruhling, Louis Wozniak, Hal  
18 Barnhart,  
19 Matthew Anderson, Dave Spillers, Neil Malone, Frank Kamer, Eric  
20 Thorsland

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25 **1. Call to Order**

27 Mr. Griest called meeting to order at 6:34pm.

29 **2. Roll Call and Declaration of Quorum**

31 The roll call was taken and a quorum declared.

33 **Mr. Bluhm moved, seconded by Mr. Irle to receive other information. Motion carried by voice vote.**

35 Mr. Weibel read Resolution 6278 Honoring the retirement of Dennis Goldenstein from the Champaign  
36 County Zoning Board of Appeals.

38 **3. Correspondence**

40 None

42 **4. Approval of Minutes**

44 None

46 **5. Continued Public Hearing**

48 **Case 583-AT-07: Petitioners: Zoning Administrator Request: 1. Amend Section 3.0 Definitions to**

add "GAS PIPELINE"; "HAZARDOUS LIQUIDS PIPELINE"; "PIPELINE IMPACT RADIUS".

2. Add new paragraph 4.3.4 H, that does the following:

- a. Identifies the PIPELINE IMPACT RADIUS for a HAZARDOUS LIQUIDS PIPELINE to be 150 feet.
- b. Identifies the PIPELINE IMPACT RADIUS for GAS PIPELINE to be identical to the potential impact radius as defined by Title 49 of the Code of Federal Regulations (FCR), Part 192.03 which is based upon maximum allowable operating pressure in the Pipeline segment in pounds per square inch and the nominal diameter of the pipeline in inches. The PIPELINE IMPACT RADIUS for a GAS PIPELINE is specific to each pipeline. Typical PIPELINE IMPACT RADIUS for GAS PIPELINE in Champaign County is 350 feet or more.
- c. Prohibits the following within any PIPELINE IMPACT RADIUS:
  - (1) Creation of a new lot.
  - (2) The establishment of any USE other than AGRICULTURE or an AGRICULTURE ACCESSORY USE.

Mr. Hall said that there is a new memo which gives an update also attached is a letter from the Farm Bureau in support of the idea of the pipeline amendment and draft minutes dated October 11, 2007, but those minutes are not for approval tonight. Mr. Hall said the memo in the mailing has a couple of revised maps and he is still working on more. He said that he has some comments back from the pipeline operators and had some suggestions for improvement of the draft language on technical issues. He said that the idea of the Attachment E and Attachment F on the November 21<sup>st</sup> memo was to change the direction from the proposed amendment to find a way to achieve ELUC's direction while still allowing some portions of lots to be within the potential impact radius. Mr. Hall said that the new version of Attachment E goes more on ELUC's direction and does not have an exemption for new by-right lots to be created within the potential impact radius so Attachment E is more restrictive than what the Board looked at the first time and the deletions are indicated there. He said that Attachment F is an alternative version that violates the guidance that ELUC gave staff and would allow by right lots to be created that are within the potential impact radius partly or completely. He said both Attachment E and F include the requirement for notice to be given for any permit that is in a pipeline impact radius. He said that Attachment F would allow entirely new by right lots to be created in the potential impact radius while Attachment E would not allow that and this Board should follow its mind in considering a recommendation to ELUC. Mr. Hall said the Board may decide to follow the guidance from ELUC or the Board may consider the testimony and may recommend something else other than what ELUC asks for. He said that we will have a Finding of Fact for this case at the next hearing. He said that if the Board is going to do something other than what ELUC directed than give staff the guidance it needs to tailor the finding so ELUC will understand the recommendation.

Mr. Hall said that on page 2 of the November 29<sup>th</sup> memo it shows a table that summarizes staff's work contacting the gas pipeline companies in the area. He said that he sent out letters and did some follow up calls and some had responded back with specific data regarding pipeline pressure and diameter and hoped at the next meeting to have a map which is a kind of map staff would use in the office which will show sections, pipelines and estimated potential impact radius. He said that this map will be used to implement the regulations and will not be used by the public to look at or for the public to receive copies. He said that

1 once a zoning application is made and they look at the map and check to see if there is a likelihood that the  
2 property is in a pipeline impact radius and if it is we give the contact name to the applicant so they can  
3 contact the pipeline operator who is willing to share that information with someone who has the property  
4 the property in the potential impact radius. He said that they are concerned that we don't share the  
5 information indiscriminately with people coming in with inquiries so we need to have a detailed map so we  
6 are not making avoidable errors and we hope to have this by the next meeting.

7  
8 Ms. Griest asked Mr. Hall if one of the concerns besides sharing that information in addition to sharing the  
9 pipeline company private information if this has anything to do with national security.

10  
11 Mr. Hall said that the Freedom of Information Act has been changed to give discretion so we do not have to  
12 honor those requests in regards to facilities like that. He said that the map that staff is going to prepare will  
13 have that statement on the face of it so staff will be able to react properly when requests like that are made.  
14 Mr. Hall said that no pipeline operator he had talked to would refuse anyone whose property would be  
15 affected by these proposed regulations but they want to make sure that they are talking to an actual property  
16 owner and not to someone who is out fishing for information.

17  
18 Ms. Griest asked if the Board had any questions for Mr. Hall and there were none.

19  
20 Mike Tague said that he had spoken with Mr. Doenitz, a member of ELUC and asked him if he meant if  
21 someone had a lot in which part of it was in the impact area and there was suitable building area outside of  
22 the impact area is that something he would want a text amendment to prohibit. He said that Mr. Doenitz  
23 said that was something that he hadn't thought about carefully and he would like to see the ZBA use  
24 judgment in completing their Finding of Fact. Mr. Tague said at least one County Board member would  
25 like for the Board to use their conscience when all the facts are heard to determine whether or not lots  
26 should be in the impact area or look at the facts and benefits as well as burdens to land owners and the cost  
27 and then make a recommended text amendment that will do that. He said that as exemptions develop staff  
28 recognizes they need to provide ELUC with useful information rather than marching to a tune on an initial  
29 direction. He said that when you look at H.2 and that language it said something to the affect that no lot  
30 without adequate building area outside the pipeline impact radius shall be created in the R-1, R-2, R-3, R-4,  
31 R-5 or RRO District that then deals with the safety issues based upon reasonable probabilities of  
32 occurrences and damages. Mr. Tague said but on the other hand it does not restrict the properties to make it  
33 useless or unsuitable for R-1, RRO or other uses that would be applicable. He said in the Bateman situation  
34 weighing all the pros and cons it was determined this was an appropriate area for an RRO under appropriate  
35 circumstances. Mr. Tague said that additional testimony as we go forward and the comments that were fore  
36 stated should be looked at with that concept in mind as the Board makes it determination.

37  
38 Ms. Griest asked the Board if there were questions for Mr. Tague and there were none.

39 Ms. Griest asked staff if there were questions for Mr. Tague and there were none.

40  
41 Herb Schildt read a prepared statement although he did not submit it for the record. Mr. Schildt said that  
42 both revised draft of 583-AT-07 are improvements from the original draft. He said that the alternative draft  
43 in Attachment F is the better of the two drafts. He said that this version fully exempts by-right lots and  
44 although he believes that the use of the impact radius formula for zoning is fundamentally flawed for the

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1 reasons he stated in the previous meetings, the alternative draft of 583-AT-07 does preserve the  
2 fundamental by-right rights for all land owners and he sees this as an important step forward.

3  
4 Ms. Griest asked the Board if there were any questions for Mr. Schildt and there were none.

5 Ms. Griest asked staff if there were any questions for Mr. Schildt and there were none.  
6

7 Louis Wozniak said that he is in support of what Mr. Tague had in the letter he mailed to everyone and also  
8 believes that potential impacted land owners be notified like the pipeline companies. Louis Wozniak said  
9 that he spoke with Mr. Hall regarding the definition of nominal. He said that nominal means by name, Mr.  
10 Hall nominally is John Hall. He said a 2X4 is nominally 2inches by 4inches that is the nominal dimension.  
11 He said that a 10 inch pipeline is nominally 10 inches not 10.1 or 10.4 or something like that. He said that  
12 he noted that the nominal diameter used in a determination of a pipeline impact radius is the approximate  
13 diameter of the pipe. He said that you can't argue with that but you can make it not arguable at all by  
14 saying nominal diameter, a 10 inch pipe is 10 inches, a 2x4 is 2inches by 4inches although it is not. Mr.  
15 Wozniak said that the Farm Bureau letter begins by saying that it is supportive of the efforts of the Zoning  
16 Ordinance then it qualifies that by saying they believe that an amendment encompassing a reasonable  
17 interpretation of federal guidelines and he thinks that qualifies what they are trying to say. He said that he  
18 believes that what he read so far is overly restrictive and not a reasonable interpretation. Mr. Wozniak said  
19 that he made a calculation of the probability that if there would be an accident and he made certain  
20 assumptions that one may or may not go with. He said that he looked back at the last ten years and he noted  
21 that there was one explosion that left a crater and scorched a house but nothing has happened since that  
22 time. He said that since that time Peoples Energy has taken a maintenance type program where they load  
23 pipes with water and watch for a decrease in pressure overnight and they do this every 5 years or so on a  
24 rotation basis. Mr. Wozniak said that one could guess that the probability of an accident happening now has  
25 been greatly reduced compared to before this control program whet into effect. He said that he used the  
26 distance of pipelines and then went to the internet for accident statistics that had personal injuries and he  
27 came up with the probability of having an accident to a pipeline to be a factor of ten less than the  
28 probability of someone getting injured in a car accident. He said again, he made some assumptions that  
29 someone could argue with but he found that someone would be 10 times more likely to be in an auto  
30 accident than a home being in the full impact radius of the pipeline.  
31

32 Ms. Griest asked the Board if there were any questions for Mr. Wozniak and there were none.

33 Ms. Griest asked if there was anyone else who wished to sign the witness register and there were none.  
34

35 Mr. Hall said that he did get some suggestions for some wordsmithing regarding the proposed changes on  
36 the amendment and the changes that were discussed would relate whether the Board recommend  
37 Attachment E or F. He said that only one of the changes that we are discussing relate to the comments here  
38 tonight and those changes relate to the very unuseful way that he tried to handle nominal diameter in the  
39 draft amendment and the sentence in the draft probably would not help decrease arguments in the future.  
40 Mr. Hall said that he is looking for guidance from the Illinois Commerce Commission to get their  
41 understanding on what nominal diameter as applied in this area of their regulation. He said that he would  
42 hope to get some kind of guidance from the Illinois Commerce Commission maybe that would be  
43 definitive.

44 Mr. Hall said that the other changes do not relate to anything that anyone has given testimony on but from a

1 staff level he would like to have some sense to where this Board is leaning towards either Attachment E or  
2 Attachment F because that is material to the concerns of the citizens that are here tonight and also so that a  
3 Finding of Fact could be constructed accordingly. He said that Attachment F has the exemption in it that  
4 completely exempts new by right lots from these regulations. He said that it does not exempt someone if  
5 they creates a by-right lot and it is within the pipeline impact radius they would get a notice of the impact  
6 radius and could follow up with the pipeline operator if they wished to. He said but the Attachment E does  
7 not provide for that except in a case of a variance so the Board may get a lot of variances if they  
8 recommend Attachment E. Mr. Hall said that the Board could recommend it to be a prohibited variance but  
9 prohibited variances cause concern because something that is prohibited means that there is no alternative  
10 to that and the Board may want to think hard about recommending a prohibited variances.

11

12 Ms. Griest asked the Board if there was discussion regarding the alternative.

13

14 Mr. Bluhm said that he liked Attachment F because of the by-right lot and the need to still have  
15 notification. He said that with the RRO everything has to be looked at and public safety has to be  
16 considered.

17

18 Mr. Goldenstein said that he concurred

19

20 Mr. Irle said he concurred.

21

22 Mr. Hall said that if Attachment F is recommended Attachment E would still be entered in as testimony so  
23 that ELUC would know that one exemption.

24

25 Ms. Griest said that initially she liked F because the ordinance allows the ZBA the flexibility to make  
26 choices but she is not sure if she clearly understands what F provides and that means that the by right lots  
27 are not required to have a buildable area outside the impact zone.

28

29 Mr. Hall said no.

30

31 Ms. Griest said that is her main concern that they must have enough buildable area outside the impact zone  
32 otherwise she would not have a problem with them creating by right as long as they have adequate  
33 buildable area outside the impact zone.

34

35 Mr. Hall asked Ms. Griest if she would have a problem allowing the lots if adequate buildable area is  
36 outside the impact zone.

37

38 Ms. Griest said no as long as the buildable area is outside which is consistent with the Bateman decision  
39 but she is uncomfortable with the by right being allowed to have all the buildable area in the impact area  
40 when the R-1, R-2, R-3, R-4, R-5 and RRO Districts cannot.

41

42 Mr. Hall said that the by right is a little different than coming to the County Board and asking them for a  
43 rezoning.

44

1 Ms. Griest said that in the interest of public safety if that is their objective that people shouldn't be more or  
2 less safe buying a by-right lot as opposed to any other lot that is the dilemma she is struggling with.

3  
4 Mr. Hall said that when he was struggling with this in the office that he finally decided that if you are going  
5 to let part of the lot be in the impact radius realizing how much of a burden this will be on the office to  
6 enforce this, once you let some part of the lot be in the impact radius why not accept the fact that people are  
7 doing that and as long as the staff has made them aware of it that's where the obligation ends. He said that's  
8 all we could do rather than trying find a way they can build outside the pipeline impact area and if they  
9 can't then it's not a good lot. He said that if you read all the time the Board is going to allow construction  
10 to continue to occur in a pipeline impact radius given the limited number of by right lots it maybe feasible  
11 to just provide notices and let it be at that. He said that in the minutes from the last hearing, the  
12 representative from Ameren was concerned about the more difficult these requirements become for land  
13 owners the more difficult it would be for the pipeline operators to get new easements and put in new  
14 pipelines and he raised a valid concern. Mr. Hall said on page 21 lines 13, 14 and 15 he is not arguing the  
15 probability of a pipeline accident because staff believes that there is a small probability.

16  
17 Mr. Bluhm said that when dealing with a RRO we are talking about 10 to 15 homes but with by-right lots  
18 there are fewer homes and more spread out and we still have to consider how much buildable area there is  
19 outside the impact area. He said that one would hope that with the by-right lots they are being notified  
20 which is more than what they did before and it is their decision whereas if a developer is putting in a RRO  
21 he is deciding how those lots are being created and it is a difference there because you are getting a lot  
22 based on the developer point of view.

23  
24 Ms. Griest said that she completely understands that perspective if you are building your by right lot and  
25 it's your home and you configured the by-right knowing this when you were configuring the lot. She said  
26 that what she is concerned about is the owner who creates the by-right lots and sells them to an  
27 unsuspecting buyer and then that buyer goes to get a permit that's the point when the buyer get's the notice  
28 and it does not come any sooner so they don't make an informed choice. She said that if it is for someone's  
29 personal residence then fine builder beware especially if they knew that going in that is your choice but she  
30 is looking at the unsuspecting consumer who buys the lot with all of that space only to find out that part of  
31 that is not a reasonable building area until after they own it.

32  
33 Mr. Hall said that he doesn't know how often that is going to happen where someone creates a lot and then  
34 the person comes in to get an application finds out about the potential impact radius and then decide they  
35 like to add more area to their lot to give them a buildable area outside the potential impact area he doesn't  
36 how often that land would not be available but it is bound to happen.

37  
38 Mr. Bluhm said that they would need a variance if it will be increased to over a two acre lot.

39  
40 Mr. Hall said that three acres is the maximum lot size and depending on how they configure the lot, if it is  
41 200 feet wide and providing land can be purchased they should be able to get at least an acre outside the  
42 pipeline impact radius.

43  
44 Ms. Griest said that it would be nice if the realtor or the community when they are listing these parcels

1 would actually have better disclosures on that but the Board cannot force that.

2  
3 Mr. Bluhm said that maybe the information would be on the title work but if the pipeline is across the road  
4 it may not be.

5  
6 Ms. Griest said that she could be swayed on this point she just wanted to have this discussion on the topic.

7  
8 Mr. Hall said that in regards to the direction staff would take after tonight, we could use Attachment F as a  
9 template for the next version that you would see and that would have the more technical word changes that  
10 he had suggested and then the Board would then understand that F is to be stricken or reinforced as the  
11 Board sees fit but it sounds like we could proceed using Attachment F.

12  
13 Ms. Griest said that she would support F as the model.

14  
15 Mr. Hall said that if the Board goes with the Attachment F it makes the case much easier to the extent that  
16 it's not a clear exemption for new by right lots than things become more complicated but with that we  
17 could get back on the case and get a Finding on Fact for the next hearing so it could be tailored like Mr.  
18 Tague has suggested.

19  
20 Ms. Griest asked Mr. Hall if he could determine and provide an estimate of how many by right lots are  
21 created per year.

22  
23 Mr. Hall said that there is no easy determination to do that.

24  
25 Ms. Greist asked Mr. Hall if there is a proposed date for a continuance.

26  
27 Mr. Hall said that the earliest that this case can come before the Board for final action would be January 31,  
28 2008.

29  
30 **Mr. Bluhm moved, seconded by Mr. Goldenstein to continue this hearing to January 31, 2008.**  
31 **Motion carried by voice vote.**

32  
33 **6. New Public Hearing**

34  
35 There was no new public hearing.

36  
37 **7. Staff Report**

38  
39 Mr. Hall said that there is no staff report.

40  
41 **8. Other Business**

42  
43 Mr. Hall said that March 27, 2008, is a County Board Meeting but they may have the new meeting room  
44 completed by then but we could reserve this room for April 3, 2008 in case the meeting room is not

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1 complete.

2  
3 Ms. Griest said that a Special Dinner Meeting for Mr. Goldenstein will be December 13, 2007, at 5:00PM.  
4 She said that the regular meeting will follow at 6:30PM.

5  
6 Ms. Griest introduced Eric Thorsland as the new Zoning Board of Appeals member replacing Mr.  
7 Goldenstein who term was up on November 30, 2007.

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

10  
11 There was no audience participation.

12  
13 **10. Adjournment**

14  
15 Ms. Griest declared meeting adjourned at 7:29PM.

16  
17 Respectfully Submitted

18  
19 Secretary of Zoning Board of Appeals