

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: November 12, 2009

**PLACE: Lyle Shields Meeting Room
1776 East Washington Street**

TIME: 6:30 p.m.

Urbana, IL 61802

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

MEMBERS ABSENT : Doug Bluhm, Roger Miller

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

OTHERS PRESENT : Steve Burdin, Sherry Schildt, Herb Schildt, Kent Follmer, Josh Helmick, Alicia Helmick, Stephanie Amabeli

1. Call to Order

The meeting was called to order at 6:31 p.m.

Mr. Hall informed the Board that due to the absence of Doug Bluhm, Chairman of the ZBA, the Board must appoint an Interim Chair for tonight's meeting.

Ms. Capel moved, seconded by Mr. Palmgren to appoint Eric Thorsland as Interim-Chair for the November 12, 2009, meeting. The motion carried by voice vote.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

3. Correspondence

None

4. Approval of Minutes (October 15, 2009 and October 29, 2009)

Mr. Thorsland indicated that Page 16 of the October 15, 2009, minutes was missing from the packet therefore no consideration for approval should occur at tonight's meeting. He said that the October 15th minutes should be placed on the December 3rd agenda for approval.

Ms. Capel moved, seconded by Mr. Palmgren to approve the October 29, 2009, minutes as submitted.

1 The motion carried by voice vote.

2
3 Mr. Thorsland requested a motion to re-arrange the agenda and hear Case 657-V-09, Larry Lambright prior
4 to Case 634-AT-08, Part B, Zoning Administrator.

5
6 Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear Case 657-V-09, Larry
7 Lambright prior to Case 634-AT-08, Part B. Zoning Administrator. The motion carried by voice vote.

8
9
10 **5. Continued Public Hearing**

11
12 **Case 634-AT-08 Part B Petitioner: Zoning Administrator Request: Amend the *Champaign County***
13 ***Zoning Ordinance* as follows: 1. Add definitions for “SMALL WIND TURBINE TOWER” and “BIG**
14 **WIND TURBINE TOWER,” and revise the definition for “WIND FARM”; and 2. Amend subsection**
15 **4.2.1. to allow “BIG WIND TURBINE TOWER” as a principal use on lots in the AG-1 and AG-2**
16 **Zoning Districts; and 3. Amend paragraph 4.3.1E. to add new height regulations that apply to**
17 **“SMALL WIND TURBINE TOWER” AND “BIG WIND TURBINE TOWER”; and 4. In Section 5.2**
18 **replace “wind turbine” with “BIG WIND TURBINE TOWER” and indicate BIG WIND TURBINE**
19 **TOWER is only authorized as a second principle use on lots in certain Zoning Districts; and 5. In**
20 **Section 6.1.3 add new standard conditions for “BIG WIND TURBINE TOWER” that are similar to**
21 **the standard conditions for a WIND FARM; and 6. Add new subsection 7.7 making “SMALL WIND**
22 **TURBINE TOWER” an authorized accessory use by-right in all zoning districts and add**
23 **requirements including but not limited to: (a) the turbine must be located more than one and one half**
24 **miles from the nearest municipal zoning jurisdiction; and (b) minimum required yard that are the**
25 **same as for other accessory structures in the district provided that the overall height is not more than**
26 **100 feet; and (c) an overall height limit of 200 feet provided that the separation from the nearest**
27 **property line is at least the same as the overall height and authorize private waivers of the separation**
28 **by adjacent neighbors; and (d) a limit of no more than two turbine towers per lot; and (e) allowable**
29 **noise limits; and (f) a requirement for engineer certification; and (g) a requirement to notify the**
30 **electrical power provider if interconnected to the electrical grid; and (h) a requirement that no**
31 **interference with neighboring TV, radio, or cell phone reception; and (i) a requirement for the**
32 **removal of inoperable wind turbines. 7. In Section 9.3.1.add fees for SMALL WIND TURBINE**
33 **TOWER and BIG WIND TURBINE TOWER; and 8. In Section 9.3.3 add application fees for BIG**
34 **WIND TURBINE TOWER Special Use Permit.**

35
36 Mr. Hall distributed Supplemental Memorandum A dated November 12, 2009, and Supplemental
37 Memorandum B dated November 12, 2009, to the Board for review. He said that the Supplemental
38 Memorandum dated November 6, 2009, included a prohibition on variances for rotor diameters of small
39 wind turbines. He said that the Board needs to be very careful when it prohibits a variance on something
40 because it could shut off a path for someone to correct a problem and it is very rare that staff would ever
41 propose a prohibited variance. He said that the reason why staff proposed it in this case is because going the
42 variance approach we are dealing with a height greater than 150 feet everything else will be subject to a
43 variance therefore someone could propose a 300 feet tall small turbine with a 100 feet diameter rotor which

1 are physical parameters that would closely match a big wind turbine. He said that a small wind turbine is
2 prohibited in certain districts therefore it would be a way to skirt that use prohibition in Table 5.2. He said
3 that it is improper to grant variances on use therefore staff believes that it is well founded in this case to
4 propose a prohibitive variance. He noted that this is not a small thing and it will get the attention of those
5 County Board members who have served on the Zoning Board in the past and they will be very sensitive to
6 such a prohibition. He said that he believes that such a prohibition is warranted and is not a bad thing.
7

8 Mr. Hall stated that the clarification of the definitions meets the Board's goals discussed at the last meeting
9 and they remove any ambiguity making the intention as clear as possible. He said that clarification of the
10 relations of the *Zoning Ordinance* standard for EMT versus FCC compliance indicates that the County has a
11 standard for the *Zoning Ordinance* only and FCC compliance must be met individually.
12

13 Mr. Hall stated that Supplemental Memorandum A dated November 12, 2009, does not add any new
14 evidence but simply reviews the moraine of evidence that has been given during this case. He said that the
15 memorandum principally adds to the Finding of Fact any relevant evidence about the American Wind
16 Association's Small Wind Ordinance, which was the starting point, and it also adds what staff found in their
17 review of other selected Illinois county zoning ordinances. He said that McLean County has a 150 feet
18 maximum height on lots that are 5 acres or larger and every other county requires a minimum separation to
19 the property line which is the key difference between this draft ordinance at this point and the other county
20 ordinances that were reviewed. He said that this ordinance does not require any minimum separation from
21 the property line, per say, other than the minimum side yard for accessory structures. He said that this
22 ordinance has limits on rotor diameters and there is only one other county ordinance that has a limit on rotor
23 diameter. He said that the draft ordinance is more liberal in terms in height but in all other respects it is
24 more restrictive.
25

26 Mr. Hall stated that he feels that he needs to apologize to the Board for indicating in one of the earlier
27 hearings that even though there was a noise standard in the Ordinance he didn't think that many
28 manufacturers provided noise data and Mr. Courson agreed with that statement. He said that in doing the
29 background work that he has been doing lately for ELUC in trying to substantiate the hiring of a noise
30 consultant for the wind farm review he has become aware of some of the legal cases in the northern part of
31 the state related to suits for noise produced by small wind turbines. He said that he did some checking on
32 what was known about the noise levels of small wind turbines and distributed two separate attachments from
33 Supplemental Memorandum B dated November 12, 2009, for the Board's review. He said that one handout
34 includes manufacturer's data and there are at least 10 manufacturers represented in the document and of that
35 there are only three which mention noise and typically it is in reference to a single decibel level and the
36 Pollution Control Board noise standard divides noise up into eight relevant frequencies. He said that the
37 Swift Wind Turbine indicates a statement of less than 35 decibels for all wind speeds and the Jacob's
38 handout includes some charts that actually give a single decibel rating up to 300 feet away from the turbine
39 both up wind and down wind. He said that this is by far the most extensive data available from a
40 manufacturer, at least available on the internet, and perhaps if the time was taken to contact each individual
41 manufacturer more data could be made available. He said that in regard to the Northwind 100, one of the
42 brands carried by Arends Brothers, it is a 100 kilowatt rated unit and the chart indicates less than 55 dBA at
43 the base of the tower for apparent noise level which is an interesting rating considering that this is one of the

1 turbines that NREL (National Renewable Energy Laboratory) reviewed in their acoustic tests for their 2004
2 conference. He said that NREL's measurement for the Northern wind turbine was that it was about 93.8
3 decibels at the base of the wind turbine.
4

5 Mr. Hall stated that the handout of manufacturers includes a document from *Bergey Windpower News* where
6 they review the NREL study and they report a sound power level and a different wind speed. He said that
7 the study reports the Northern Power brand, a 100kW model, with a sound power level of 95.1 dB, Atlantic
8 Orient Corporation, a 50kW model, with a sound power level 101.9 dB which is what a wind farm turbine is.

9 He said that when he read this data the hair stood up on the back of his neck because according to this data,
10 at least for the larger small wind turbines, they appear to have noise characteristics almost identical to wind
11 farm turbines yet there is no suggestion that they should have a 1,000 feet separation from the nearest
12 dwelling. He said that the draft ordinance by virtue of the separation for large rotor diameters, for example,
13 the Northwind 100 would require a 600 feet separation which is more than one-half of the 1,000 feet
14 separation required for wind farms. He said that to a certain extent when a turbine has a large rotor the draft
15 ordinance requires a greater separation and he does not believe that this separation would ensure compliance
16 with the Pollution Control Board standard but he is more concerned about smaller units. He said that the
17 *Bergey Windpower News* article indicates the top four units, a 400 watt unit, a 900 watt unit, a 1,000 watt
18 unit and a 10kw unit, the type of unit that is located on Phillip Geil's property, in the given chart. He said
19 that for the first three units the lowest sound power level is 75 decibels therefore if 100 decibels for a wind
20 farm unit and 48 decibels being the sound rating for the Pollution Control Board night time noise level there
21 is span of 52 decibels yet the small Bergey unit is at 75 decibels which is half way to the Pollution Control
22 Board Standards with a 100 foot separation. He said the County would not be meeting the Pollution Control
23 Board Standards if the separation distance is set at 150 feet therefore he does believe that the draft ordinance
24 is really very good when it actually gives neighbors the right to complain when their neighbor's small wind
25 turbine tower does not meet the Pollution Control Board standard because staff already knows that it won't
26 meet those standards and this is a problem. He said that some counties have inserted a decibel rate of 60 dB
27 but that doesn't do any good if noise data is not available from the manufacturer. He said that he would like
28 the Board to consider whether they want the Pollution Control Board standard to apply to some subset of the
29 smallest small wind turbines because personally he believes this could be justified. He said that to a certain
30 degree the sound of wind turbines will be a permanent feature of life in America for the foreseeable future.
31 He said that everyone wants to be protected from the most outrageous kinds of wind turbine noise although
32 he is not sure if there is any difference between a 100 kW unit and a 1 megawatt unit.
33

34 Mr. Courson stated that decibels do not indicate what kind of sound the turbine will make and the small
35 turbines sound like a fan and the sound of the wind farm that he visited is completely different due to the
36 speed. He said that many times there will be more noise from the smaller wind turbines due to the variable
37 wind speeds but it is a much different sound than the wind farm turbine. He said that the smaller wind
38 turbines produce a buzzing sound whereas the wind farm turbine produces a swooshing or humming sound.
39 He said that the buzzing from his personal small wind turbine can be heard.
40

41 Mr. Hall asked Mr. Courson if his small wind turbine is the Whisper500.

42
43 Mr. Courson stated yes.

1
2 Mr. Hall stated that there is a manufacturer's data sheet in the packet and it does not provide any information
3 about sound level.
4
5 Mr. Courson stated that the manufacturer advertises the Whisper500 as a quiet unit. He said that the sound
6 produced is not annoying but it can be heard. He said that when his unit was not in operation his neighbors
7 did indicate that they noticed the quiet.
8
9 Mr. Hall stated that Mr. Geil installed a 10kW Bergey unit and staff has not received any complaints
10 regarding noise.
11
12 Mr. Courson stated that Mr. Geil's property is heavily wooded which cuts down the noise.
13
14 Mr. Hall stated that he is presenting the idea of perhaps exempting the smallest units from noise standards
15 but for the larger units either requiring manufacturer's data or requiring a greater separation. He said that he
16 is proposing the range of greater separation at 700-900 feet. He said that 900 feet should be close to
17 reaching the Pollution Control Board standard although not at 700 feet but there may be less noise from the
18 smaller units. He said that some people may question the reasoning for treating some units differently than
19 others but his concern is that if everything is held to the Pollution Control Board standard it could eventually
20 come back to bite the County. He said that staff did check with the City of Champaign and the City of
21 Urbana, the staff person who is working on their wind ordinance was gone this week, and the City of
22 Champaign staff was up front that they will follow the Pollution Control Board standard and if it is found out
23 later that those standards were not followed the owner may be required to shut down their turbine and this is
24 not a situation that the County should get into. He said that he apologizes for springing this topic on the
25 Board so late in the process and the available information indicates that you can hardly hear the noise
26 generated by small wind turbines over the wind, which is a good thing, but the Pollution Control Board
27 standard indicates that at night time the decibels cannot be over 48dB. He said that a lot of manufacturers
28 indicate that their unit puts out a noise less than 55dB, which is good, but is not less than 48dB. He said that
29 in his mind this is such an important issue therefore if it merits continuing the case to a later date then so be
30 it but if in the Board's mind it knows where it wants to go then the issue is settled.
31
32 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.
33
34 Mr. Thorsland stated that the height limit on big wind turbines is 499 feet therefore does the small wind
35 turbine fall into that limit.
36
37 Mr. Hall stated that 500 feet is the same threshold for a variance on a small wind turbine as it is a threshold
38 for a standard condition on a big wind turbine. He said that anything beyond 500 feet requires FAA approval
39 and a waiver of that standard condition can be requested as part of a variance.
40
41 Mr. Thorsland stated that physically there is a limit governed by the FAA at 500 feet.
42
43 Mr. Palmgren stated that he thought that 200 feet was the limit.

1
2 Mr. Hall stated that the 200 feet limit is only within 4 miles of an airport.
3
4 Mr. Thorsland stated that the Board started with a 200 feet limit and changed it to 150 feet and anything
5 beyond that would require a variance. He said that the Board did not determine a maximum height limit. He
6 asked Mr. Hall if the Board could apply a different maximum height limit, somewhat like the FAA
7 standards, to a variance.
8
9 Mr. Hall stated that the Board could make it a prohibition because the Board has identified the level beyond
10 which it does not trust itself to make that decision.
11
12 Mr. Thorsland stated that the Board was pretty comfortable with the prohibition of above a 75 feet rotor
13 diameter for a small wind turbine. He asked if the Board would be comfortable with a prohibition of a
14 height limit on a variance.
15
16 Mr. Courson stated yes.
17
18 Mr. Palmgren requested clarification of the difference between small and big wind.
19
20 Mr. Hall referred to Attachment J. of the Supplemental Memorandum dated November 6, 2009. He said that
21 the table indicates the limit on physical size of turbine tower for a small wind turbine tower, big wind turbine
22 tower and wind farm and wind farm tower. He said that the wind farm tower has a 500 feet maximum height
23 which is a standard condition which a developer could request a waiver. He said that a big wind turbine
24 tower also has a 500 feet maximum height. He said that the current draft ordinance has a 150 feet maximum
25 height limitation on a small wind turbine tower but there is no cap on what a variance could be requested for.
26
27 Mr. Palmgren asked if the rotor diameter would limit the height.
28
29 Mr. Thorsland stated no.
30
31 Mr. Palmgren asked how large of a rotor could be placed on a 500 feet wind tower.
32
33 Mr. Hall stated that a 300 to 330 feet rotor is typical.
34
35 Mr. Palmgren stated that the rotor diameter would probably limit the height of the tower.
36
37 Mr. Thorsland stated that he would not be uncomfortable with a height limit on a small wind tower
38 regardless of the variance but he is not sure where to stop. He said that he does not believe there will be a
39 situation in Champaign County where someone needs a 24 feet rotor at 500 feet. He said that he does not
40 believe that there will be any harm in placing a reasonable limit on the height and that anyone will be upset
41 about such a limit plus it will probably help make the *Ordinance* a tighter package. He asked what will
42 happen if, at some point, the County finds out that it is very easy to personally construct a 900 feet tower
43 with a small rotor because they are super-light weight, quiet and very productive. He asked if the County

1 will box itself out or re-address the *Ordinance* when such technology becomes available.

2

3 Mr. Hall stated that he is conservative in regards to the Board putting limits on itself and apparently Mr.
4 Thorsland does not trust himself to make that decision.

5

6 Mr. Thorsland stated that he did not exactly state such but there is a disconnect when items such as this gets
7 to ELUC and the County Board and the height issue is one of the things that people could shoot at and rather
8 than leave a hole in it perhaps the ZBA should send it with a fairly reasonable height limit.

9

10 Mr. Thorsland asked the Board for comment.

11 Mr. Hall recommended that any height limit should be bigger than 200 feet.

12

13 Mr. Thorsland stated that he is only playing the devil's advocate because he watched the wind farm
14 ordinance go through ELUC and the County Board and they do tend to spot things.

15

16 Mr. Courson stated that he would think that the rotor diameter would be a bigger deal than height.

17

18 Mr. Thorsland stated that a 75 feet rotor diameter gets limited by cash.

19

20 Mr. Courson stated that if someone wants to throw money away and build their tower at 500 feet then that is
21 their right as long as the tower will not fall on someone's house. He said that he would think that the rotor
22 diameter would raise more flags than the tower height.

23

24 Mr. Thorsland stated that at the moment there is a question about small wind turbines and the setbacks from
25 the yard and at the moment we do not have big setbacks on some of the small wind turbines.

26

27 Mr. Hall stated that in the AG districts the tower cannot be closer to the property line than 10 feet but after
28 that what is limiting is the separation to the neighbor's dwelling, utility line and right-of-way. He said that in
29 all other Illinois' counties the height is limited by the separation to the property line therefore Champaign
30 County is much different than anyone else.

31

32 Mr. Courson stated that he would be comfortable putting a 200 feet tower up 10 feet off the property line in a
33 subdivision.

34

35 Mr. Thorsland asked if this is something that the Board would like to work on because this would also fold
36 into the noise issue. He said that a rotor diameter limit for the noise could be set and if it is less than that
37 limit then it does not have to meet it because it will be setback to a certain level. He said that perhaps if the
38 rotor diameter gets to a certain size then it has to be setback further and Mr. Hall suggested a 700 to 900 feet
39 setback.

40

41 Mr. Courson stated that if too much of a setback is required then people will not be able to construct a wind
42 tower on their property.

43

11-12-09

AS APPROVED DECEMBER 17, 2009

ZBA

1 Mr. Hall stated that currently the ordinance states that in the AG districts the wind tower must be no less
2 than 10 feet from the property line but then provided that the tower is not closer than 90% to the neighbor's
3 dwelling, utility line or right-of-way and the fact that the wind tower may fall on the neighbor's property is
4 just another fact of life much like the sound of the wind turbine.
5

6 Mr. Courson stated that his personal wind turbine is 30 feet off of the property line and if his tower fell over
7 it would fall on the building located next door. He said that when the turbines fall from the tower they fall
8 straight down.
9

10 Mr. Thorsland called Herb Schildt to testify.
11

12 Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet stated that the legal advertisement indicates a
13 200 feet limit on the small wind turbine therefore would it be advisable to use as the limit on small wind.
14

15 Mr. Hall stated that the legal advertisement is indicating the allowable height by-right therefore going to 150
16 feet by-right is being more restrictive and neighbors would have less to be worried about. He said that
17 discussing a cap on a variance would also give neighbors less to be concerned about and his view would be
18 consistent.
19

20 Mr. Schildt asked if there was a determination of the cap.
21

22 Mr. Hall stated no.
23

24 Mr. Schildt stated that he is speaking personally and not as the Newcomb Township Planning Commission
25 Chair. He asked how a tower could be considered small wind if they are allowed to go up to 500 feet in
26 height.
27

28 Mr. Hall stated that the Board was discussing this issue only in the context of limiting the amount of
29 variance that could be requested and was not suggesting that someone should be able to build to 500 feet.
30

31 Mr. Schildt stated that as a landowner he would feel more comfortable if there was an absolute cap. He said
32 that he lives on 40 acres within the middle of the proposed wind farm and probably wouldn't be directly
33 affected in this regard although if someone put up a 500 feet tower you could probably see it from
34 Champaign. He said that he has been frustrated with the wind ordinance on one level because he does
35 support small wind and is in general support of it but it seems that the ordinance has been steered towards
36 the person who wants to put in the small wind without considering the potential impact on neighbors. He
37 read the purpose of zoning from the Illinois law which authorizes county zoning. He read the following text:
38 for the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the
39 values of property throughout the county, lessening or avoiding congestion in public streets and highways,
40 and lessening or avoiding the hazards of persons and damage to property resulting from a accumulation of
41 runoff of storm or flood waters, etc. He said that even though he is supportive and fascinated by small wind
42 he is also concerned about comfort and general welfare and is concerned that the ordinance has steered
43 towards allowing people to potentially put up a 75 feet rotor on a 150 feet overall height tower, by-right. He

1 said that he could imagine many situations where this would be fine but he can imagine situations as well
2 where it would be pretty unfortunate if you lived right next to such a tower. He said that if someone could
3 put a structure up that big and that high then potentially someone will get hurt and that would violate their
4 principal comfort and welfare as well as devalue the neighbor's property. He said that he would limit the
5 tower height to 100 feet with a rotor diameter of 24 feet. He said that it is his understanding that a neighbor
6 could sue if they could prove that the turbine violated the Illinois Pollution Control Board standard.
7

8 Mr. Hall stated that the neighbor would not have legal recourse against the County but they could sue the
9 owner of the turbine.
10

11 Mr. Schildt asked Mr. Hall by the County not having any noise standards would that rule out someone from
12 suing.
13

14 Mr. Hall stated no, the noise standards would still apply but the County would no longer be responsible for
15 their enforcement. He said that in the County's Nuisance Ordinance there is a very loose standard for noise
16 and at a certain point, even if the Pollution Control Board Standards were removed from the noise standard
17 in the Zoning Ordinance the County would still have its nuisance regulations that someone could base their
18 complaint about. He said that we have absolutely no objective standard in those regulations and it is just
19 something that is dealt with on a daily basis therefore someone would have some cause to complain under
20 our nuisance regulations.
21

22 Mr. Schildt urged everyone to take a little thought about the folks which are on the other side of this issue
23 and perhaps balance the ordinance a little better. He emphasized that on a three acre tract someone could
24 potentially have a 150 feet overall height with a 75 feet rotor.
25

26 Mr. Hall stated not within 622 feet of a dwelling.
27

28 Mr. Schildt stated that if he was neighbor that lived just outside of that limit he would feel fairly intruded
29 upon. He said that this would be a fairly large structure which will generate a significant amount of impact
30 around it and it is authorized by-right. He said that he cannot think of anything else that is authorized by-
31 right that has this kind of impact. He said that the County has set precedence at 100 feet because of antenna
32 towers and standing on that precedence is a strong position for this Board and the County to take and
33 variances could be allowed beyond the 100 feet. He said that his main issue is that it is allowed by-right and
34 he would urge everyone to place themselves on the receiving end of one of these turbine structures as
35 someone who may not enjoy technology but has a neighbor who constructs a wind tower structure
36 incorrectly and it is very loud or has a neighbor who does not maintain the structure.
37

38 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt.
39

40 Mr. Courson asked Mr. Schildt to indicate his justification for the 24 feet diameter rotor.
41

42 Mr. Schildt stated he just doubled what he thought would be the biggest. He said that Mr. Geil's rotor is 12
43 feet and it can be seen and heard from the road. He said that he is not indicating this in any sort of critical

1 way and when the structure first went up he drove by it to see what kind of impact it made to the area and he
2 thought that it was interesting and did not believe that it too loud. He said if he was writing the ordinance,
3 which he is not, it would seem that an antenna tower is allowed up to 100 feet and a 24 feet rotor is a little
4 bit of leeway in case someone wanted to do something experimental.
5

6 Mr. Courson asked Mr. Schildt if noise is his reasoning for recommending 24 feet.
7

8 Mr. Schildt stated overall impact is his reasoning.
9

10 Mr. Courson asked what overall impact.
11

12 Mr. Schildt stated that a moving object attracts someone's attention but a stationary object does not therefore
13 the larger the moving object the greater the overall impact on the surrounding area.
14

15 Mr. Courson stated that when a small wind generator is moving the blades cannot be seen.
16

17 Mr. Schildt stated that Mr. Courson is correct but as the wind generator becomes larger it slows down.
18

19 Mr. Courson reminded Mr. Schildt that the Board is discussing small wind.
20

21 Mr. Schildt stated that he was aware of the discussion but currently a small wind turbine can have up to a 75
22 feet rotor which will turn at approximately 50 rpm's. He said that he and his wife have attended a lot of
23 wind farm hearings and a common question is what right does the County have in telling someone that they
24 cannot place a wind turbine on their property. He said that relative to zoning law this is really the wrong
25 question to ask because zoning law is based on what right the County has to affect the quality of someone's
26 life that already has an existing use. He said that the County may have the right to do this but that is the
27 question because the person who is making the change into the environment is the one who has to justify
28 their actions. He said that it is not for him to be the bad guy in indicating that he is not going to let his
29 neighbor put in a 500 feet wind turbine. He said that the person who desires to put up the 500 feet wind
30 turbine should have to justify why he should be allowed that privilege because he is changing the
31 environment around his property.
32

33 Mr. Thorsland stated that the Board is working on the ordinance and there are parts of Mr. Schildt's
34 testimony that he agrees with and parts that he does not. He said that Mr. Schildt has stated many times that
35 he has parameters that he would not be comfortable with but should be in the ordinance. He said that the
36 Board has worked on the ordinance and if it is recalled as to where the Board started and where the Board is
37 currently it is obvious that alot of progress and improvements have been made. He said that there is a cap on
38 the rotor and other than the noise issues the Board has been discussing the height cap on the small wind
39 turbines. He said that variances are decided by the Board and he does not believe that any variances have
40 been allowed to become wildly out of control. He said that if there is anything out of the ordinary the
41 variances are approved with sensible conditions and nothing extraordinary has happened. He said that in
42 regard to the quality of the environment and additional traffic created someone could build several houses on
43 a piece of land and to think that such an act would not have a huge impact on everyone around that land for a

1 long time means that if we held completely to that zoning the County would do absolutely nothing. He said
2 that the wind structures are not as ordinary as houses and are not as unordinary as an elevator to space but
3 they do fall somewhere in between.
4

5 Mr. Schildt stated that he has stated repeatedly that in essence he does trust the ZBA and staff and feels that
6 he has been very complimentary over the last few years in that regard. He said that he does not doubt the
7 judgment of the ZBA in general but the ZBA is drafting an ordinance that is going to go well beyond
8 anyone's appointments on the Board and there has to be some parameters and tone set. He said that the
9 County is crafting a new secondary or accessory use that can go onto a property therefore it is important that
10 it is crafted correctly because it will set an expectation. He said that most people will only go up to 100 feet
11 in height but the person who wants to go beyond that point can apply for a variance. He said that a small
12 wind turbine which is 150 feet with a 75 feet rotor is a gigantic structure which could go in R-1 and CR. He
13 said that he is not present at tonight's meeting to be disruptive or argumentative because it this not his goal
14 and he does not have a strong agenda other than he feels that the ordinance is pulled to far in one direction
15 and it needs to be pulled back to balance the desires of the neighbor and the persons living there.
16

17 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt and there were none.
18

19 Mr. Thorsland asked if staff had any questions for Mr. Schildt and there were none.
20

21 Mr. Thorsland asked the Board if they desired to set a maximum height requirement or rely on the Board's
22 judgment through the variance process. He said that Mr. Hall suggested an increased setback to deal with
23 the noise issues for small wind. He asked the Board if there were any other issues that Board would like to
24 see staff further investigate or is the Board ready to take final action on this case tonight.
25

26 Mr. Hall stated that the Board should not feel pressured into making a final decision at tonight's hearing. He
27 said that the Finding of Fact must be crystal clear and document why there is a cap on rotor diameter. He
28 said that the Board has absolutely proved why a height of greater than 100 feet is justified. He said that if
29 the Board came through this process and lost the ability to, by-right, go over 100 feet it is his view that this
30 process would have failed.
31

32 Mr. Thorsland stated that he is comfortable with a height of 150 feet and that is not to upset anyone and he is
33 very comfortable with the idea of the variance. He said that he is not uncomfortable with the rotor variance
34 but he is concerned with the noise issue and he has not had time to review all of the documentation that was
35 received tonight. He said that Mr. Hall suggested either a separation distance or a certain size for small wind
36 and to not apply the Illinois Pollution Control Board's noise standards to the very small wind because it will
37 be assumed that if a leaf blower is being placed up on a pole then noise will be created and the private
38 lawyers can sort it out later. He said that problems like this can be rectified with a distance requirement and
39 he reminded the Board that at some level height can also be considered distance. He said that he can
40 imagine a scenario where someone, much like Mr. Geil who is located in a wooded area, desires to go higher
41 than 150 feet and has a good reason for desiring that height. He said that it appears that there is a real
42 problem in the construction industry because many times the Board has people who have constructed
43 something on the property line and suddenly require a variance therefore the Board has to approve the

1 variance because it is there, big and a problem. He said that if the County had more money for public
2 relations it would be good to have an advertisement regarding setbacks in all the different zoning districts.
3 He said that he does not know what the Board would have as a worry to have someone come in to request a
4 variance for a wind turbine that they have constructed which is more than 150 feet in height with a 75 feet
5 rotor diameter. He said that as the Ordinance is currently written and the visibility of such a structure it
6 would be pretty hard for someone to sneak such a structure onto their property without someone noticing it.
7 He requested that as the Board has additional time to review the noise documentation and staff has more
8 time to work on the noise issues that between the both a way could be found to fix the problem with the
9 small wind turbines and the noise created. He said that he would like to have additional time to consider the
10 option of a variance for the maximum height requirement because there is a de facto one now at 500 feet and
11 he is not sure if anyone is ever going to hit that height with a small wind unit.

12
13 Mr. Schroeder asked if the 100 feet height is on low ground or on a hill. He said that if someone desires to
14 put up a 100 feet tower and he puts it on a 50 feet hill then he has a 150 feet tower therefore the Board needs
15 to be very careful with the language. He said that indicating that the County will allow a 150 feet tower
16 appears to be a dangerous statement.

17
18 Mr. Hall stated that he does not believe that such a statement is dangerous and it has been absolutely proven
19 that people need the ability to go more than 100 feet by-right.

20
21 Mr. Schroeder asked how staff will confirm the height of a tower.

22
23 Mr. Hall stated that this is one of the unanswered questions. He said that it is unknown at this point how
24 staff will confirm that a 139 feet tower is 139 feet. He said that all staff really needs to do is to confirm that
25 the tower is not over 150 feet and that it meets all of the required separations.

26
27 Mr. Thorsland stated that there is technology available to measure such a structure.

28
29 Mr. Hall stated that technology may be available but it is not available in our office.

30
31 Mr. Palmgren asked Mr. Hall if the applicant could be asked during the permitting process as to why they
32 need a certain size tower.

33
34 Mr. Hall stated that staff cannot ask that if the tower is by-right.

35
36 Mr. Palmgren stated that if someone has the money to put up a taller tower than his neighbor then they could
37 apply for such. He said that he would like to see less 50 story man-made buildings in the rural area of the
38 County as possible. He asked how the County could limit someone just wanting a big wind turbine for
39 whatever reason even though it may not be necessary.

40
41 Mr. Hall stated that if the Board feels that the proliferation of 150 feet wind turbine towers is a problem then
42 the Board needs to be very clear that it should be lower than 150 feet.

43

1 Mr. Palmgren stated that he does not have a problem with the 150 feet and would prefer a lower height but
2 he does understand that if people are truly serious about achieving wind power they will need to have a
3 certain size and height to make it worth their while. He said that there is always going to be someone who
4 desires to put a huge tower out on the countryside, even it isn't being used, and there is no way to stop them.
5

6 Mr. Hall stated that this is the problem with zoning and the only way to stop this is to make it more difficult
7 for those people who may need it.
8

9 Ms. Capel asked Mr. Hall if he is asking the Board to withdraw from enforcing the Illinois Pollution Control
10 Board standards.
11

12 Mr. Hall stated yes, for the smallest class.
13

14 Ms. Capel if the standard for setbacks for small wind could be changed to the property line.
15

16 Mr. Hall stated yes.
17

18 Ms. Capel stated that she would feel more comfortable in changing the setback for small wind to the
19 property line rather than nearest dwelling.
20

21 Mr. Thorsland stated that a setback of 700 to 900 feet on a small lot would be too restrictive. He said that he
22 would not be uncomfortable with some sort of height formula for the stuff that is omitted from the sound.
23 He said that the County is not going to try to enforce the sound if data is not provided by the manufacturer
24 but if it is a 100 feet tower then it needs to be 100 feet from the property line to provide a sound distance
25 buffer. He said that this is not a complete effort but with the big wind there is a separation distance of 1.1
26 times the height of the turbine.
27

28 Ms. Capel stated that if someone is placing a wind turbine on a small lot then the chances are that the
29 property is within a subdivision with a bunch of small lots. She said that if one property owner is the first
30 person to build then they are essentially creating a noise situation for the other lots because they may not
31 have dwellings yet. She said that if the Board is concerned about protecting property values people will
32 choose other lots, which may they do any way. She said that if there is going to be a noise issue then solid
33 setbacks should be set, rather than using some sort of noise limits, to the property line rather than from the
34 nearest principal dwelling.
35

36 Mr. Hall asked Ms. Capel if she is talking about a height limit.
37

38 Ms. Capel stated no, she is talking about setbacks for small wind.
39

40 Mr. Hall asked Ms. Capel if she is talking about hundreds of feet.
41

42 Ms. Capel stated that Mr. Hall recommended 700 to 900 feet from the nearest principal dwelling. She said
43 that Mr. Hall indicated a proposed setback of 700 to 900 feet from the nearest principal dwelling. She said

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1 that it would make sense to her to set the setback at 700 to 900 feet from the property line because someone
2 else could presumably build a home within 10 feet from the property line but a noise situation has been
3 created that would make that an undesirable lot. She said that this is her thought regarding small wind and it
4 differs from the wind farm situation because we are talking about small lots.
5

6 Mr. Hall stated that he assumes that Ms. Capel is not thinking of applying that standard to all small wind
7 turbines.
8

9 Ms. Capel stated there has to be a way to differentiate such.
10

11 Mr. Thorsland asked if different setbacks could be proposed based on the different zoning districts.
12

13 Ms. Capel stated that the setbacks would need to be based on the noise level. She said that she is concerned
14 that in a matrix of small lots that a lot with a wind turbine upon it has created a noise situation for all of the
15 surrounding lots. She said that part of small wind is that it needs to be compatible within a community.
16

17 Mr. Thorsland stated that there is a provision where the neighbor could sign off.
18

19 Mr. Hall stated that such a provision was withdrawn.
20

21 Mr. Thorsland stated that he is a little reluctant to place too big of a setback in AG-1 and AG-2. He said that
22 he could see applying such a standard in an approved Rural Residential Overlay because the aim is for some
23 sort of density. He said that a lot of the situations that Ms. Capel is discussing will happen in the RRO's that
24 are already in existence. He asked Ms. Capel if she would like to set a different setback standard for the
25 small wind which just applies to the known dense or potentially approved dense areas and when an RRO is
26 approved the higher standard is enforced.
27

28 Ms. Capel stated that this would make sense.
29

30 Mr. Hall stated that Ms. Capel is concerned with applying the higher standard even in an already built up
31 area.
32

33 Mr. Thorsland stated that some of the RRO's are in the agricultural districts.
34

35 Mr. Hall noted that the Board should not forget that these rules will also apply in Penfield, Seymour, Dewey,
36 Foosland and Longview.
37

38 Mr. Thorsland asked if the variance process could be utilized.
39

40 Ms. Capel stated that there will be some people who desire to have a windmill on their land and by-gosh they
41 are going to build it regardless of the consequences to their neighbor. She said that she is not sure to what
42 extent the Board can protect the people around the windmill.
43

1 Mr. Thorsland stated that if the Board goes by the letter of the Ordinance and why we have zoning then the
2 Board is supposed to protect the public from a lot of things but if you go by Eric Thorsland's personal
3 comment every house that gets built in the County effects everyone within one mile of the property and those
4 newly constructed houses happen by-right with amazing and alarming frequency. He said that the Board has
5 continuously tried to write a better ordinance and it gets fought every time and he does not know if as many
6 people would become upset if a really tight restriction was placed on by-right wind power but there would be
7 some. He said that he is not sure how comfortable he would be in placing a super difficult restriction on the
8 by-right part.

9
10 Ms. Capel stated she does not believe that it needs to be a super difficult restriction but it may need to be a
11 restriction that is associated with density. She said that she would like to have more time to think about it.

12
13 Mr. Thorsland stated that someone could have a dramatic effect on the person next door by what kind of tree
14 they plant and how close it is placed to the property line and the County cannot do anything about it but for
15 some it doesn't matter and for others it could be dramatic.

16
17 Ms. Capel stated that to some extent the Board creates consequences.

18
19 Mr. Hall stated that staff can do more research on what has been done with urban standards. He said that he
20 has been trying to research such but has not had much success because the municipalities are just starting to
21 develop these standards. He said that the City of Champaign is thinking that the Illinois Pollution Control
22 Board rules make sense and they don't.

23
24 Mr. Schroeder stated that the Board must also consider how the municipalities are expanding out into the
25 rural areas because it is possible that eventually an approved wind tower that was once in the County could
26 be absorbed by a municipality.

27
28 Mr. Hall stated that this is why the State took that approval right away from the counties within one and one-
29 half miles of a municipality. He said that the municipalities have the right to set their own standards which
30 apparently is irritating some rural landowners that live within that one and one-half mile area.

31
32 Mr. Schroeder stated that someone who is currently five miles from a municipality could build a really nice
33 wind tower and suddenly become surrounded by homes.

34
35 Ms. Capel stated that the wind tower would be grandfathered and if the municipality desires to come locate
36 out by the tower then that is a different deal.

37
38 Mr. Schroeder stated that he would not want his neighbor to build a wind tower within 600 feet from his
39 home.

40
41 Mr. Thorsland stated that the Board's homework is to come up with some suggestions for small wind
42 regarding noise, height and property line setbacks versus principal dwelling setbacks. He said that the Board
43 must also consider a continuance date for this case.

1
2 Mr. Hall stated that the public hearing for December 3rd will take alot of time and staff will not have
3 adequate time to do the required research for answering some of the Board's questions.
4
5 Mr. Thorsland stated that if the Board has any suggestions or comments they should feel free to send staff an
6 e-mail. He said that the e-mail, which will be received outside of a public hearing, will be included in the
7 next mailing so that it is placed on record.
8
9 Mr. Hall stated that the Board could continue this case to February 11, 2010 or January 14, 2010. He said
10 that if the case was continued to January 14th it could be bumped back if required.
11
12 Mr. Courson stated that January 14th was reserved for the wind farm hearings.
13
14 Mr. Hall stated that in order for a wind farm case to be before the Board on January 14th the application must
15 be received by December 30th and he personally doubts that such an application will be received by that date.
16
17 Mr. Thorsland requested a motion for continuance.
18
19 **Ms. Capel moved, seconded by Mr. Palmgren to continue Case 634-AT-08, Part B. to January 14,**
20 **2009. The motion carried by voice vote.**
21
22 Mr. Palmgren stated that the noise issue has been batted around tonight and asked Mr. Hall what the Board
23 needs to do at this point.
24
25 Mr. Hall stated that the Board should not give up on worrying about noise at the lower end of the scale
26 because it is still there but if the Board worries about noise to the extent that it believes that the County
27 should enforce the Pollution Control Board standards then there will be no small wind.
28
29 Mr. Palmgren stated that the Board's dilemma is if the Pollution Control Board standards are followed then
30 small wind is eliminated unless there is data which proves that they are already beyond that. He asked if that
31 puts the Board in a situation that they are okay with higher noise (**I cannot hear his final statement**).
32
33 Mr. Hall stated that this is a decision that the County has to come to terms with.
34
35 Mr. Palmgren asked if the ZBA makes a final decision ELUC and the County Board could make changes.
36
37 Mr. Hall stated correct and the ZBA can only do the best they can.
38
39 Mr. Palmgren stated that his gut feeling is to go with the standards that are already set because they are set
40 for a reason although it is unfortunate that some of the wind turbines will not meet those standards. He said
41 that it is his guess that ELUC and the County Board will have the same problem that the ZBA has had
42 regarding the Pollution Control Board standards therefore they will probably change the Board's decision.
43 He asked if ELUC and the County Board does change the ordinance is it their problem to come up with the

1 enforcement or does it come back to the ZBA.

2
3 Mr. Hall stated that he will guarantee that the next group that reviews this will not be as familiar with it as
4 the ZBA therefore this is the only chance that the amendment will be thought through this carefully. He said
5 that the last time the wind farm amendment was carefully scrutinized was at the ZBA and then something
6 else happened to it later on.

7
8 Mr. Thorsland stated that there is a saying in research that you design with a computer, build it with a
9 hammer and install it with a crowbar. He said that the ZBA worked really hard and did a good job with the
10 wind farm ordinance at all ends of the issue and then the people with the hatchet got to it and reformed it
11 into their own dug out canoe and sent it on down the river to the County Board and it sailed just fine
12 although he believes that there were more cooks messing with the soup than was needed. He said that the
13 ZBA has to do a good job on Part B as well and then let it go.

14
15 Mr. Palmgren stated that the ZBA actually has three options: 1. apply the Pollution Control Board standards;
16 and 2. set standards of their own; and 3. apply no standards at all.

17
18 Mr. Schildt requested the opportunity to ask Mr. Hall a question.

19
20 Mr. Thorsland allowed Mr. Schildt the opportunity to address Mr. Hall.

21
22 Mr. Schildt stated that if there is a legal issue if the Pollution Control Board standards are law and the
23 ordinance states that those standards will not be enforced unless it is rated more than 10 kilowatts. He asked
24 if it raises a technical issue with the law if the County indicates that it is going to ignore the enforcement. He
25 said that he personally feels that the standards are there for good reason therefore they should be enforced.

26
27 Mr. Hall stated that there may be a legal concern if someone could prove that in fact small units are noisier
28 than the larger units and the County chose not to do anything about it. He said that he has previously said
29 that the noise created is part of the new reality because people are prepared to accept seeing wind turbines in
30 the air and hearing them in the air to know that the County is doing something about the energy problem. He
31 said that he gets the sense that there is a real tendency for that and the question is how much are people
32 willing to put up with to know that we are doing something about the energy problem.

33
34 Mr. Schildt stated that the purview of zoning does not deal with energy. He asked if the ordinance would
35 withstand the challenge on this point is when there is a distinction between agreeing with the Illinois
36 Pollution Control Board standards and not wanting them because the small wind units violates those
37 standards. He asked if it creates a problem that Mr. Hall has agreed that the small units violate the standards.

38
39 Mr. Hall stated that it doesn't create a problem if the County goes about doing it the right way.

40
41 Mr. Schildt stated that he does not fully share Mr. Hall's opinion although he does agree that there is general
42 support for small wind. He said that some cars have bad mufflers and are real loud and some cars don't
43 therefore just because some cars have bad mufflers should a standard be written to say that whatever the

1 worst case muffler is will be the standard. He said that if the County enforces the Illinois Pollution Control
2 Board standards then the County is stating that these are the standards and the County believes that those
3 standards can be met by some manufacturer on any unit.
4

5 Mr. Hall stated that if the Illinois Pollution Control Board standards are applied in situations that were
6 discussed by Ms. Capel then there will be no small wind turbines.
7

8 Mr. Schildt stated that perhaps those small wind units do not belong there.
9

10 Mr. Hall stated that this is a possibility.
11

12 Mr. Schildt stated that he does understand Mr. Hall’s motivation and in general there are some merits to that
13 distinction but in sitting here tonight it has raised a secondary question of the differential between these two.
14 He said that the Illinois Pollution Control Board standards are there for the general safety and well being of
15 the population.
16

17 Mr. Hall stated that the Illinois Pollution Control Board standards are not being enforced.
18

19 Ms. Capel stated that the Illinois Pollution Control Board standards are unenforceable and it is not the
20 purview of the County to take on the enforcement of a state law that the state won’t even enforce.
21

22 Mr. Schildt stated that he is not talking about enforcement but meeting the standards which Mr. Hall
23 proposed that anything of 10 kilowatts has to meet those standards and anything under does not.
24

25 Ms. Capel stated that she does not believe that it is the purview of the County to get involved in this conflict.
26 She said that the ZBA does the best they can in protecting their constituents.
27

28 Mr. Schildt asked if having no reference to the standards would prevent a neighbor from filing a complaint.
29 He said that what is nice about the Illinois Pollution Control Board standards is that if a neighbor feels
30 wronged then a noise specialist can be hired to come in and make that determination and after several years
31 have that complaint rectified therefore offering some recourse. He said that whether it is in the ordinance or
32 not does not stop that recourse but it does tell a person who installs small wind that if they meet that standard
33 then the County is acting in their benefit because if they meet that standard they will not get into trouble. He
34 requested clarification from Mr. Hall as to whether there is a technical issue involved.
35

36 Mr. Hall stated no.
37

38 **Ms. Capel moved, seconded by Mr. Palmgren to close the witness register. The motion carried by**
39 **voice vote.**
40

41 **6. New Public Hearings**
42

43 ***Case 657-V-09 Petitioner: Larry and Diane Lambright and Scott Lambright Request: Authorize the**

1 use of an existing two story detached accessory storage building with a second story deck with a side
 2 yard of three feet in lieu of the required ten feet side yard for accessory structures in the AG-2
 3 Agriculture Zoning District, and an average height of 16 feet in lieu of the maximum allowed 15 feet
 4 average height for residential accessory structures on lots less than one acre in area in the AG-2
 5 Agriculture Zoning District. Location: Lot 1 of Cook’s Replat of Tract B of the K.D. Headlee
 6 Subdivision in Section 14 of Mahomet Township and commonly known as the house at 206B Lake of
 7 the Woods, Mahomet.

8
 9 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows
 10 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show
 11 of hands for those who would like to cross examine and each person will be called upon. He requested that
 12 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
 13 those who desire to cross examine are not required to sign the witness register but are requested to clearly
 14 state their name before asking any questions. He noted that no new testimony is to be given during the cross
 15 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
 16 from cross examination.

17
 18 Mr. Hall distributed a Supplemental Memorandum dated November 12, 2009, and color photographs of the
 19 subject property, taken on November 9, 2009, by staff, to the Board for review. He said that the new
 20 supplemental memorandum includes two special conditions for approval. He read the conditions as follows:

21 A. The Zoning Administrator shall not approve a Zoning Compliance Certificate for the subject property
 22 until the violations that are part of Zoning Enforcement Case ZN-09-08/13 have been corrected.
 23 Specifically, as of November 12, 2009, the following violations still exist on the subject property: (1)
 24 Garbage for the business is stored outdoors without being screened by a 6 foot solid fence; and (2) Recycling
 25 barrels filled with materials from the contracting business are not stored inside a fully enclosed building; and
 26 (3) Without a current license plate the trailer constitutes a building and exceeds the limit of one detached
 27 accessory building for a Neighborhood Home Occupation and it must be removed. Mr. Hall noted that
 28 original item (3), as noted in the Supplemental Memorandum dated November 12, 2009, has been corrected
 29 and should not be included in the special condition therefore renumbering the special conditions will be
 30 required. Mr. Hall continued to read new item (3): If the construction trailer does have a current license
 31 plate then the pickup truck advertising the business must have the logo for the business covered up on both
 32 sides of the truck at all times while the truck is sitting on the property; and new item (4): The wooden rails
 33 that are currently being stored between the garage and the construction trailer must be stored inside a fully
 34 enclosed building; and new item (5): The yellow scaffolding, barricades, and wooden posts that are currently
 35 being stored between the stairs and the two story barn must be stored inside a fully enclosed building; and
 36 new item (6): The trusses, fencing, and angle iron that are currently being stored beside the metal shed must
 37 be stored inside a fully enclosed building. He said that the special conditions are necessary to ensure that all
 38 violations of the *Zoning Ordinance* on the subject property are corrected before the second story deck can be
 39 approved. Mr. Hall read special condition B as follows: The space underneath the second story deck shall
 40 not be fully or partially enclosed. The special condition is necessary to ensure the nonconformity of the
 41 reduced side yard will not be increased unless authorized by another variance.

42
 43 Mr. Hall stated that attached to the Supplemental Memorandum dated November 12, 2009, are two letters of

1 support from Robert E. Burack and Stephen Robinson and a letter of opposition from Ray Parkinson, owner
2 of 204 S. Lake of the Woods Road. He said that the Preliminary Memorandum dated November 6, 2009,
3 indicates that the requested variance is related to a number of violations on the property. He said that the
4 *Zoning Ordinance* prohibits the ZBA from approving any requests while there are outstanding violations on
5 the property and it also prohibits the Zoning Administrator from approving any zoning use permits or
6 compliance certificates while there are outstanding violations on the property. He said that the Summary of
7 Evidence does not include that part of the *Zoning Ordinance* therefore it needs to be added as an item of
8 evidence. He recommended that the Board not take final action on Case 657-V-09 at tonight's public
9 hearing because of the outstanding items. He said that staff has been working with Larry and Scott
10 Lambright since July 2009 in trying to get these violations resolved and given how most enforcement cases
11 go in our office this is not a terribly long time. He said that staff received a complaint in February 2008 and
12 it is the opinion of some neighbors that this case has been going on much too long.

13
14 Mr. Hall stated that the distributed color photographs taken by staff on November 9, 2009, indicate several
15 items related to enforcement. He said that Jamie Hitt, Zoning Officer visited the site today to verify that Mr.
16 Lambright had accurately measured the building and it appears that the amount of the variance is overstated
17 by approximately one-half foot, which is not an issue. He said that the variance could be reduced to make it
18 very clear that it is exactly for what the structure is currently but he prefers to leave a little leeway because he
19 does not like things depending on absolute correct measurement by anyone involved unless absolutely
20 necessary. He said that the variance is somewhat overstated and it is within the realm of an Administrative
21 Variance but since only one variance is dealt with in an Administrative Variance and there are two variances,
22 side yard and height, requested in this case a full variance is before the Board.

23
24 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

25
26 Mr. Palmgren asked Mr. Hall if the height was indicated on the original permit application for the building.

27
28 Mr. Hall stated that the indicated height on the Zoning Use Permit for the accessory building was 12 feet.

29
30 Mr. Palmgren asked if the shed was built at 16 feet in height instead.

31
32 Mr. Hall stated that the average height of the accessory structure turned out to be 16 feet and in fact it is 22
33 feet to the top of the peak.

34
35 Mr. Thorsland asked Mr. Hall to explain the formula for determining the average height.

36
37 Mr. Hall stated that staff averages the measurement from the ground to the top of the eave and the
38 measurement from the ground to the peak. He said that Jamie Hitt determined during her visit today that the
39 average height was 15 feet 6 inches.

40
41 Mr. Palmgren stated that there was some confusion as to whether the accessory building was taller than the
42 house.

43

1 Mr. Hall stated that the *Zoning Ordinance* does not limit the height of an accessory structure being taller
2 than the principal structure.

3
4 Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall and there were none.
5

6 Mr. Thorsland called Mr. Larry Lambright to testify.
7

8 Mr. Larry Lambright, who resides at 2110 East Pheasant Ridge Road, Mahomet stated that when he met with
9 Jamie Hitt he gave her some letters from the neighbors to the west which indicated that they had no issues
10 with the existing building. He said that the neighbor on the east side of the property, who does not border
11 the property, has indicated opposition to the existing building. He said that it was his understanding that the
12 building could not be taller than the existing two-story house and it is not. He said that the documentation
13 that he received from staff indicates that in the AG-2 zoning district the maximum building height is 50 feet.
14

15 Ms. Hitt clarified that the 50 feet maximum building height is for the principal structure.
16

17 Mr. Lambright stated that he would like to have the case continued to a later date so that he can correct the
18 remaining violations.
19

20 Mr. Thorsland asked the Board if there were any questions for Mr. Larry Lambright and there were none.
21

22 Mr. Thorsland asked staff if there were any questions for Mr. Larry Lambright and there were none.
23

24 Mr. Thorsland called Mr. Scott Lambright to testify.
25

26 Mr. Scott Lambright, who resides at 206B Lake of the Woods Road, Mahomet stated that he lives in the
27 house on the subject property and he was also under the misconception that the shed could not be taller than
28 the house. He said that he requires the indoor storage because he needs to move his items indoors and he
29 desired to eliminate one of the existing smaller structures.
30

31 Mr. Thorsland asked the Board if there were any questions for Mr. Scott Lambright and there were none.
32

33 Mr. Thorsland asked if staff had any questions for Mr. Scott Lambright.
34

35 Mr. Hall asked Mr. Scott Lambright if the two small sheds that are indicated on the site plan were used only
36 for personal storage.
37

38 Mr. Scott Lambright stated yes.
39

40 Mr. Thorsland called Mr. Kent Follmer to testify.
41

42 Mr. Kent Follmer, attorney representing Josh and Alicia Helmick stated he would like to address the Board
43 about certain circumstances that have not been discussed. He said that Mr. Lambright testified that he was

1 confused by the requirements of the *Zoning Ordinance* in regard to the allowable maximum height. He said
2 that Mr. Palmgren asked Mr. Hall to indicate the proposed height of the accessory structure as noted on the
3 zoning use permit and Mr. Hall stated 12 feet. Mr. Follmer stated that the application also stated that the
4 building would be a one-story, 12 feet building with no mention of a deck. He said that the distributed
5 photographs indicate that the structure that was constructed is much different than what was represented and
6 approved. He said that Lambrights claim that they misunderstood the *Ordinance* even though they are
7 contractors in Champaign County.

8
9 Mr. Follmer stated that there is a recorded shared well easement which encroaches very close to the location
10 of the structure. He said that the site plan which was submitted with the zoning use permit indicated that the
11 structure would be placed approximately 20 feet north of the well although it is his understanding that the
12 well opening is underneath the deck. He said that he did submit a copy of the recorded shared well
13 easement to staff and that easement allows access to his clients. He said that if it were not due to the
14 complaint regarding the construction debris, as indicated in the distributed photographs, the County may
15 have never been informed that the structure is in violation of two the County's Ordinances. He said that Mr.
16 Hall has indicated that no new permits or requests can be approved until the current violations are remedied.

17
18 Mr. Follmer stated that his clients live next door to the subject property and there are more problems which
19 exist between the Lambrights and the neighbors than what has been brought to the Board's attention. He
20 said that one of the variance's criteria, as indicated in the Preliminary Draft Summary of Evidence dated
21 November 12, 2009, Page 7 of 11, Item #9.A., indicates that generally regarding the *Zoning Ordinance*
22 requirement for a find that the special conditions, circumstances, hardships, or practical difficulties do not
23 result from the actions of the Applicant. He said that the Lambrights built a structure that is 22 feet in
24 height, even though they indicated on the zoning use permit application that it would only be 12 feet in
25 height, and that it would only be one-story when indeed it is a two-story structure with a two-story deck. He
26 said that he is not sure of the location of the water well but it is within the near vicinity of the two-story
27 deck. He said that the Lambrights have no defense because they built the structure, misrepresented their
28 intention and after two years they got caught because of the other violations that existed on the property. Mr.
29 Follmer distributed additional photographs of the subject property to the Board and submitted the
30 photographs as Documents of Record. Mr. Follmer discussed, with the aid of the distributed photographs,
31 the location of the Helmick's home versus the Lambright's home. He said that in 1984 there was only one
32 lot and the original owner divided the lot in 1994 with a recorded easement for the shared driveway to the
33 property by which the Helmicks reside. He said that there is no other way for the Helmicks to gain access to
34 their home than by the shared driveway and they have had problems with their ingress and egress. He said
35 that one of the photographs which was submitted as a Document of Record indicates a view from the top of
36 the Helmick's roof looking toward Lake of the Woods Rd to the north. He said that the photograph shows a
37 gate, wooden fence, boulders and propane tank. He said that the gate prohibits the Helmick's from turning
38 around in their drive. He said that he appreciates the fact that the purpose of this hearing is to determine
39 whether or not a variance should be granted for the east side of the subject property but if there are over a
40 half-a-dozen other violations then the variance should not be granted. He said that they are currently in
41 court, half way through the trial, trying to determine what the shared driveway easement actually means and
42 whether or not the post and gate needs to be removed. He said that it is their position that the post and gate
43 encroaches upon the driveway and it requires the Helmicks and their clients for the daycare operation to back

1 over 100 feet down the driveway.

2
3 Mr. Thorsland informed Mr. Follmer that the Board will only discuss issues related to zoning.

4
5 Mr. Follmer stated that he appreciates the Board's stand and he only desired to touch base on the other issues
6 which are occurring. He said that hopefully tomorrow the shared driveway issue will be concluded and he
7 will inform the County of the results. He said that in July 2009 his clients notified the County about the
8 construction debris that was being brought onto the property and that is what brought the issue of
9 misrepresentation of the zoning use permit approval to the County's attention. He said that the Lambrights
10 are contractors therefore they can reduce the size of the roof and deck, move the post and gates and the play
11 area. He asked the Board what type of message should be given to the Petitioner. He asked if the Board
12 should indicate that the Lambrights should conform because they are not above the law or should the
13 message be that an exception can be made because they are nice folks and only misunderstood the *Zoning*
14 *Ordinance*. He said that this situation has caused a severe hardship for his clients and it would be much
15 appreciated if the final decision could be made at tonight's hearing and that the decision would be a denial of
16 the request. He said that he does understand and appreciates the reasoning for not making any decisions and
17 deferring this case until all of the other violations are brought into compliance.

18
19 Mr. Thorsland asked the Board if there were any questions for Mr. Follmer and there were none.

20
21 Mr. Thorsland asked if staff had any questions for Mr. Follmer.

22
23 Mr. Hall stated that Mr. Follmer indicated that the only means of access to the Helmick property is through
24 the shared driveway easement. Mr. Hall said that the Helmick property is a flag lot that touches the street
25 therefore it actually has its own access strip to Lake of the Woods Road.

26
27 Mr. Follmer stated that there are trees and a water spigot located in the flag lot access strip which also has a
28 recorded utility easement for telephone and electrical service.

29
30 Mr. Hall asked Mr. Follmer if it is his position that the Helmick's lot does not have an access strip which is
31 20 to 30 feet wide.

32
33 Mr. Follmer stated that the flag lot strip is 20 feet wide and the east ten feet is subject to the easement and
34 the other ten feet does not have an easement but the main water line is located in that area.

35
36 Mr. Hall asked Mr. Follmer if the Helmicks could place a driveway along that access strip.

37
38 Mr. Follmer stated no. He said that the question before the court is not whether the Helmicks could or could
39 not place a driveway in the access strip but what is the meaning of a recorded easement which gives them the
40 allowance of ingress and egress on the existing driveway.

41
42 Mr. Hall stated that for the purpose of the Zoning Board of Appeals, which weighs all of the information
43 given at tonight's hearing, Mr. Follmer has indicated that the easement over the Lambright property is the

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1 only way for his clients to access Lake of the Woods Road. He asked Mr. Follmer if his client's property
2 touches Lake of the Woods Road by a 20 feet wide access strip.

3
4 Mr. Follmer stated yes.

5
6 Mr. Hall asked Mr. Follmer why his clients could not place a driveway on their own property along that
7 access strip.

8
9 Mr. Follmer stated that they could not because of the utility easements and the existing utilities in the
10 western 10 feet of the access strip. He said that in that western 10 feet easement there are no utility
11 easements but there is the main water line which feeds both properties.

12
13 Mr. Hall asked Mr. Follmer if both properties are fed by public water.

14
15 Mr. Follmer stated that he assumes that it is a public water line and he does have pictures of the water
16 hydrant. He said that this issue is currently before Judge Leonard and he anticipates a memorandum of
17 opinion and some of these facts may very well be included in that opinion.

18
19 Mr. Hall stated that Mr. Follmer was courteous enough to submit a copy of the recorded easement for the
20 well therefore staff can investigate these issues. Mr. Hall stated that the recorded easement indicates that the
21 easement only exists as long as the property owners need it and if they are connected to public water then
22 they would not need the well.

23
24 Mr. Follmer stated that the water well under the shed is currently being used by the Helmicks. He said that
25 they have a swimming pool behind their home and the interpretation and meaning of that easement and who
26 has what rights and who is responsible for maintenance has not been investigated.

27
28 Mr. Thorsland asked the Board if there were any questions for Mr. Follmer and there were none.

29
30 Mr. Thorsland asked the audience if anyone would like to cross examine Larry or Scott Lambright and there
31 was no one.

32
33 Mr. Larry Lambright requested the opportunity to add additional testimony.

34
35 Mr. Thorsland granted Mr. Lambright's request.

36
37 Mr. Larry Lambright stated that when he purchased the property it was his understanding that the well had
38 been abandoned and as far as he knows there is no electricity to the well. He said that he has witnessed the
39 Helmicks filling their swimming pool from a hydrant therefore he is not sure if the well is even working. He
40 said that he has no problem with the Helmicks using the shared driveway and has never denied them access
41 although he does not appreciate the Helmicks turning around in his yard. He said that it is very plainly stated
42 in the text of the easement as to where the easement is located. He said that the photographs indicate a
43 privacy fence, that is not located within the easement, and the material that is beside the fence is for the deck

1 which is being constructed to the back of the house.
2
3 Mr. Thorsland asked the Board if there were any questions for Mr. Lambright.
4
5 Mr. Courson asked Mr. Lambright if both properties were connected to the Sangamon Valley Water District.
6
7 Mr. Lambright stated yes.
8
9 Mr. Courson asked Mr. Lambright if his property was fueled by propane.
10
11 Mr. Lambright stated no, the propane tank has been removed.
12
13 Ms. Alicia Helmick requested the opportunity to sign the witness register to present testimony.
14
15 Mr. Thorsland called Ms. Alicia Helmick to testify.
16
17 Ms. Alicia Helmick, who resides at 206A Lake of the Woods Drive, Mahomet stated that her family lives
18 directly behind the subject property. She said that they do use the well and they supply the electricity to it
19 although currently they have the electricity shut off so that no one else can use it and the only time that it will
20 be turned back on is when they need to use it. She said that the previous owners only lived at the property
21 for seven months and they conveyed incorrect information to the Lambrights in regard to the well. She said
22 that the previous owners evidently did not know that the well was turned on. She said that they do use the
23 well to fill their pool.
24
25 Mr. Thorsland asked Ms. Helmick if her family was the only user of the well.
26
27 Ms. Helmick stated yes.
28
29 Mr. Courson asked Ms. Helmick if the well was to go bad would she go to the expense of replacing the well.
30
31 Ms. Helmick stated yes. She said that they use the well to water their flowers and fill their pool. She said
32 that they do not desire to pay for public water to fill their pool when they have their own well.
33
34 Mr. Courson stated that there is a substantial cost involved in drilling a new well and asked Ms. Helmick if
35 she would go to that expense and place the new well in the same location.
36
37 Ms. Helmick stated that if the pump or anything else goes wrong with the well then it is her family's
38 responsibility to have it fixed.
39
40 Mr. Courson asked Ms. Helmick if the existing well would go bad would she have a new well drilled.
41
42 Ms. Helmick stated that she could not answer Mr. Courson's question without consulting with her husband.
43

1 Ms. Helmick stated that if the well required maintenance then her husband would perform that maintenance
2 but with the deck over the well head it would be very difficult for any maintenance to be done.

3
4 Mr. Thorsland asked Ms. Helmick if the well was directly under the deck.

5
6 Ms. Helmick stated yes. She said that the shed is against the well and the deck is above it.

7
8 Mr. Thorsland asked if staff had any questions for Ms. Helmick and there were none.

9
10 Mr. Thorsland asked the Board if there were any questions for Ms. Helmick.

11
12 Ms. Capel asked Ms. Helmick if there was a spigot to the well located on her property.

13
14 Ms. Helmick stated yes.

15
16 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Helmick and there was no one.

17
18 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
19 regarding Case 657-V-09 and there was no one.

20
21 Mr. Thorsland requested a motion to close the witness register.

22
23 **Ms. Capel moved, seconded by Mr. Palmgren to close the witness register for Case 657-V-09. The**
24 **motion carried by voice vote.**

25
26 Mr. Thorsland stated that staff has recommended “no action” at tonight’s meeting to allow the Petitioner
27 time to correct the violations on the subject property.

28
29 Mr. Hall stated that, in the past, when the Board has been faced with variances for things that have been built
30 in a non-conforming location the Board has considered those things as if they did not exist. He said that in
31 those instances where the Board finds facts that would have been as valid before it was built as they are now
32 then the Board could certainly take those into consideration. He said that the Board is necessarily limited to
33 the fact that Mr. Lambright, without doubt, built the structure too tall and too close to the property line. He
34 said that the important thing for consideration is whether the Board can find facts that meet the criteria in the
35 *Ordinance* that would have existed at that time. He said that staff and the Petitioner would like to see the
36 case continued to a later date.

37
38 Mr. Thorsland asked Mr. Lambright if he had a timeframe as to when he could have the current violations
39 corrected.

40
41 Mr. Lambright stated that he could try to have the violations corrected tomorrow or at least within the next
42 week.

43

1 Mr. Courson moved, seconded by Ms. Capel to continue Case 657-V-09, Larry and Diane Lambright
2 & Scott Lambright to December 17, 2009. The motion carried by voice vote.

3

4 Mr. Thorsland stated that the Board will now hear Continued Case 634-AT-08, Part B.

5

6 **7. Staff Report**

7

8 None

9

10 **8. Other Business**

11 **A. Tentative 2010 Champaign County Planning and Zoning Calendar**

12

13 Mr. Hall stated that June and November will be another challenge in squeezing more than one meeting in for
14 the month. He said that even if the Board does not approve the calendar staff does not know what else can
15 be done.

16

17 Ms. Capel asked where the December 17, 2009, meeting will be held.

18

19 Mr. Thorsland stated that the meeting will be held in the John Dimit Meeting Room.

20

21 Mr. Hall stated that even though there are fewer County Board Committee meetings scheduled for 2010 it
22 was not any easier to put the 2010 ZBA calendar together.

23

24 **Ms. Capel moved, seconded by Mr. Palmgren to approve the tentative 2010 Planning and Zoning**
25 **Calendar as submitted. The motion carried by voice vote.**

26

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

28

29 None

30

31 **10. Adjournment**

32

33 The meeting adjourned at 8:47 p.m.

34

35

36

37 Respectfully submitted

38

39

40

41

42 Secretary of Zoning Board of Appeals

43

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