

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **December 17, 2009**
Time: **6:30 P.M.**
Place: **John Dimit Meeting Room
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802**

**Note: NO ENTRANCE TO BUILDING
FROM WASHINGTON STREET PARKING
LOT AFTER 4:30 PM.
Use Northeast parking lot via Lierman Ave.,
and enter building through Northeast
door.**

*If you require special accommodations please notify the Department of Planning & Zoning at
(217) 384-3708*

EVERYONE MUST SIGN THE ATTENDANCE SHEET – ANYONE GIVING TESTIMONY MUST SIGN THE WITNESS FORM

AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes (November 12, 2009 and December 3, 2009)
5. Continued Public Hearings

***Case 655-S-09** Petitioner: **Judith K. and Gerald T. Warmbier**

Request: **Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for:**
(1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use; and
(2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet

Location: **A five acre tract in the East Half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR 750E, Champaign.**

***Case 657-V-09** Petitioner: **Larry Lambright**

Request: **Authorize the use of an existing two story detached accessory storage building with a second story deck with a side yard of three feet in lieu of the required ten feet side yard for accessory structures in the AG-2 Agriculture zoning district, and an average height of 16 feet in lieu of the maximum allowed 15 feet average height for residential accessory structures on lots less than one acre in area in the AG-2 Agriculture zoning district.**

Location: **Lot 1 of Cook's Replat of Tract B of the K.D. Headlee Subdivision in Section 14 of Mahomet Township and commonly known as the house at 206B Lake of the Woods, Mahomet.**

6. New Public Hearings
7. Staff Report

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street

4 Urbana, IL 61801

5 **DATE:** November 12, 2009

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

7 **TIME:** 6:30 p.m.

8 Urbana, IL 61802

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

10 **MEMBERS ABSENT :** Doug Bluhm, Roger Miller

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

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

13 **1. Call to Order**

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

15 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.

16 **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.**

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

18 The roll was called and a quorum declared present.

19 **3. Correspondence**

20 None

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

22 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.

23 **Ms. Capel moved, seconded by Mr. Palmgren to approve the October 29, 2009, minutes as submitted. The motion carried by voice vote.**

DRAFT

24

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

3
4 Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear Case 657-V-09, Larry
5 Lambright prior to Case 634-AT-08, Part B. Zoning Administrator. The motion carried by voice vote.
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8 **5. Continued Public Hearing**

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

34 Mr. Hall distributed Supplemental Memorandum A dated November 12, 2009, and Supplemental
35 Memorandum B dated November 12, 2009, to the Board for review. He said that the Supplemental
36 Memorandum dated November 6, 2009, included a prohibition on variances for rotor diameters of small
37 wind turbines. He said that the Board needs to be very careful when it prohibits a variance on something
38 because it could shut off a path for someone to correct a problem and it is very rare that staff would ever
39 propose a prohibited variance. He said that the reason why staff proposed it in this case is because going the
40 variance approach we are dealing with a height greater than 150 feet everything else will be subject to a
41 variance therefore someone could propose a 300 feet tall small turbine with a 100 feet diameter rotor which
42 are physical parameters that would closely match a big wind turbine. He said that a small wind turbine is
43 prohibited in certain districts therefore it would be a way to skirt that use prohibition in Table 5.2. He said

1 that it is improper to grant variances on use therefore staff believes that it is well founded in this case to
 2 propose a prohibitive variance. He noted that this is not a small thing and it will get the attention of those
 3 County Board members who have served on the Zoning Board in the past and they will be very sensitive to
 4 such a prohibition. He said that he believes that such a prohibition is warranted and is not a bad thing.

5
 6 Mr. Hall stated that the clarification of the definitions meets the Board’s goals discussed at the last meeting
 7 and they remove any ambiguity making the intention as clear as possible. He said that clarification of the
 8 relations of the *Zoning Ordinance* standard for EMT versus FCC compliance indicates that the County has a
 9 standard for the *Zoning Ordinance* only and FCC compliance must be met individually.

10
 11 Mr. Hall stated that Supplemental Memorandum A dated November 12, 2009, does not add any new
 12 evidence but simply reviews the moraine of evidence that has been given during this case. He said that the
 13 memorandum principally adds to the Finding of Fact any relevant evidence about the American Wind
 14 Association’s Small Wind Ordinance, which was the starting point, and it also adds what staff found in their
 15 review of other selected Illinois county zoning ordinances. He said that McLean County has a 150 feet
 16 maximum height on lots that are 5 acres or larger and every other county requires a minimum separation to
 17 the property line which is the key difference between this draft ordinance at this point and the other county
 18 ordinances that were reviewed. He said that this ordinance does not require any minimum separation from
 19 the property line, per say, other than the minimum side yard for accessory structures. He said that this
 20 ordinance has limits on rotor diameters and there is only one other county ordinance that has a limit on rotor
 21 diameter. He said that the draft ordinance is more liberal in terms in height but in all other respects it is
 22 more restrictive.

23
 24 Mr. Hall stated that he feels that he needs to apologize to the Board for indicating in one of the earlier
 25 hearings that even though there was a noise standard in the Ordinance he didn’t think that many
 26 manufacturers provided noise data and Mr. Courson agreed with that statement. He said that in doing the
 27 background work that he has been doing lately for ELUC in trying to substantiate the hiring of a noise
 28 consultant for the wind farm review he has become aware of some of the legal cases in the northern part of
 29 the state related to suits for noise produced by small wind turbines. He said that he did some checking on
 30 what was known about the noise levels of small wind turbines and distributed two separate attachments from
 31 Supplemental Memorandum B dated November 12, 2009, for the Board’s review. He said that one handout
 32 includes manufacturer’s data and there are at least 10 manufacturers represented in the document and of that
 33 there are only three which mention noise and typically it is in reference to a single decibel level and the
 34 Pollution Control Board noise standard divides noise up into eight relevant frequencies. He said that the
 35 Swift Wind Turbine indicates a statement of less than 35 decibels for all wind speeds and the Jacob’s
 36 handout includes some charts that actually give a single decibel rating up to 300 feet away from the turbine
 37 both up wind and down wind. He said that this is by far the most extensive data available from a
 38 manufacturer, at least available on the internet, and perhaps if the time was taken to contact each individual
 39 manufacturer more data could be made available. He said that in regard to the Northwind 100, one of the
 40 brands carried by Arends Brothers, it is a 100 kilowatt rated unit and the chart indicates less than 55 dBA at
 41 the base of the tower for apparent noise level which is an interesting rating considering that this is one of the
 42 turbines that NREL (National Renewable Energy Laboratory) reviewed in their acoustic tests for their 2004
 43 conference. He said that NREL’s measurement for the Northern wind turbine was that it was about 93.8

1 decibels at the base of the wind turbine.
2

3 Mr. Hall stated that the handout of manufacturers includes a document from *Bergey Windpower News* where
4 they review the NREL study and they report a sound power level and a different wind speed. He said that
5 the study reports the Northern Power brand, a 100kW model, with a sound power level of 95.1 dB, Atlantic
6 Orient Corporation, a 50kW model, with a sound power level 101.9 dB which is what a wind farm turbine is.
7 He said that when he read this data the hair stood up on the back of his neck because according to this data,
8 at least for the larger small wind turbines, they appear to have noise characteristics almost identical to wind
9 farm turbines yet there is no suggestion that they should have a 1,000 feet separation from the nearest
10 dwelling. He said that the draft ordinance by virtue of the separation for large rotor diameters, for example,
11 the Northwind 100 would require a 600 feet separation which is more than one-half of the 1,000 feet
12 separation required for wind farms. He said that to a certain extent when a turbine has a large rotor the draft
13 ordinance requires a greater separation and he does not believe that this separation would ensure compliance
14 with the Pollution Control Board standard but he is more concerned about smaller units. He said that the
15 *Bergey Windpower News* article indicates the top four units, a 400 watt unit, a 900 watt unit, a 1,000 watt
16 unit and a 10kw unit, the type of unit that is located on Phillip Geil's property, in the given chart. He said
17 that for the first three units the lowest sound power level is 75 decibels therefore if 100 decibels for a wind
18 farm unit and 48 decibels being the sound rating for the Pollution Control Board night time noise level there
19 is span of 52 decibels yet the small Bergey unit is at 75 decibels which is half way to the Pollution Control
20 Board Standards with a 100 foot separation. He said the County would not be meeting the Pollution Control
21 Board Standards if the separation distance is set at 150 feet therefore he does believe that the draft ordinance
22 is really very good when it actually gives neighbors the right to complain when their neighbor's small wind
23 turbine tower does not meet the Pollution Control Board standard because staff already knows that it won't
24 meet those standards and this is a problem. He said that some counties have inserted a decibel rate of 60 dB
25 but that doesn't do any good if noise data is not available from the manufacturer. He said that he would like
26 the Board to consider whether they want the Pollution Control Board standard to apply to some subset of the
27 smallest small wind turbines because personally he believes this could be justified. He said that to a certain
28 degree the sound of wind turbines will be a permanent feature of life in America for the foreseeable future.
29 He said that everyone wants to be protected from the most outrageous kinds of wind turbine noise although
30 he is not sure if there is any difference between a 100 kW unit and a 1 megawatt unit.
31

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

39 Mr. Hall asked Mr. Courson if his small wind turbine is the Whisper500.
40

41 Mr. Courson stated yes.
42

43 Mr. Hall stated that there is a manufacturer's data sheet in the packet and it does not provide any information

1 about sound level.

2
3 Mr. Courson stated that the manufacturer advertises the Whisper500 as a quiet unit. He said that the sound
4 produced is not annoying but it can be heard. He said that when his unit was not in operation his neighbors
5 did indicate that they noticed the quiet.

6
7 Mr. Hall stated that Mr. Geil installed a 10kW Bergey unit and staff has not received any complaints
8 regarding noise.

9
10 Mr. Courson stated that Mr. Geil's property is heavily wooded which cuts down the noise.

11
12 Mr. Hall stated that he is presenting the idea of perhaps exempting the smallest units from noise standards
13 but for the larger units either requiring manufacturer's data or requiring a greater separation. He said that he
14 is proposing the range of greater separation at 700-900 feet. He said that 900 feet should be close to
15 reaching the Pollution Control Board standard although not at 700 feet but there may be less noise from the
16 smaller units. He said that some people may question the reasoning for treating some units differently than
17 others but his concern is that if everything is held to the Pollution Control Board standard it could eventually
18 come back to bite the County. He said that staff did check with the City of Champaign and the City of
19 Urbana, the staff person who is working on their wind ordinance was gone this week, and the City of
20 Champaign staff was up front that they will follow the Pollution Control Board standard and if it is found out
21 later that those standards were not followed the owner may be required to shut down their turbine and this is
22 not a situation that the County should get into. He said that he apologizes for springing this topic on the
23 Board so late in the process and the available information indicates that you can hardly hear the noise
24 generated by small wind turbines over the wind, which is a good thing, but the Pollution Control Board
25 standard indicates that at night time the decibels cannot be over 48dB. He said that a lot of manufacturers
26 indicate that their unit puts out a noise less than 55dB, which is good, but is not less than 48dB. He said that
27 in his mind this is such an important issue therefore if it merits continuing the case to a later date then so be
28 it but if in the Board's mind it knows where it wants to go then the issue is settled.

29
30 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

31
32 Mr. Thorsland stated that the height limit on big wind turbines is 499 feet therefore does the small wind
33 turbine fall into that limit.

34
35 Mr. Hall stated that 500 feet is the same threshold for a variance on a small wind turbine as it is a threshold
36 for a standard condition on a big wind turbine. He said that anything beyond 500 feet requires FAA approval
37 and a waiver of that standard condition can be requested as part of a variance.

38
39 Mr. Thorsland stated that physically there is a limit governed by the FAA at 500 feet.

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41 Mr. Palmgren stated that he thought that 200 feet was the limit.

42
43 Mr. Hall stated that the 200 feet limit is only within 4 miles of an airport.

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Mr. Thorsland stated that the Board started with a 200 feet limit and changed it to 150 feet and anything beyond that would require a variance. He said that the Board did not determine a maximum height limit. He asked Mr. Hall if the Board could apply a different maximum height limit, somewhat like the FAA standards, to a variance.

Mr. Hall stated that the Board could make it a prohibition because the Board has identified the level beyond which it does not trust itself to make that decision.

Mr. Thorsland stated that the Board was pretty comfortable with the prohibition of above a 75 feet rotor diameter for a small wind turbine. He asked if the Board would be comfortable with a prohibition of a height limit on a variance.

Mr. Courson stated yes.

Mr. Palmgren requested clarification of the difference between small and big wind.

Mr. Hall referred to Attachment J. of the Supplemental Memorandum dated November 6, 2009. He said that the table indicates the limit on physical size of turbine tower for a small wind turbine tower, big wind turbine tower and wind farm and wind farm tower. He said that the wind farm tower has a 500 feet maximum height which is a standard condition which a developer could request a waiver. He said that a big wind turbine tower also has a 500 feet maximum height. He said that the current draft ordinance has a 150 feet maximum height limitation on a small wind turbine tower but there is no cap on what a variance could be requested for.

Mr. Palmgren asked if the rotor diameter would limit the height.

Mr. Thorsland stated no.

Mr. Palmgren asked how large of a rotor could be placed on a 500 feet wind tower.

Mr. Hall stated that a 300 to 330 feet rotor is typical.

Mr. Palmgren stated that the rotor diameter would probably limit the height of the tower.

Mr. Thorsland stated that he would not be uncomfortable with a height limit on a small wind tower regardless of the variance but he is not sure where to stop. He said that he does not believe there will be a situation in Champaign County where someone needs a 24 feet rotor at 500 feet. He said that he does not believe that there will be any harm in placing a reasonable limit on the height and that anyone will be upset about such a limit plus it will probably help make the *Ordinance* a tighter package. He asked what will happen if, at some point, the County finds out that it is very easy to personally construct a 900 feet tower with a small rotor because they are super-light weight, quiet and very productive. He asked if the County will box itself out or re-address the *Ordinance* when such technology becomes available.

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

3
4 Mr. Thorsland stated that he did not exactly state such but there is a disconnect when items such as this gets
5 to ELUC and the County Board and the height issue is one of the things that people could shoot at and rather
6 than leave a hole in it perhaps the ZBA should send it with a fairly reasonable height limit.

7
8 Mr. Thorsland asked the Board for comment.

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

10
11 Mr. Thorsland stated that he is only playing the devil's advocate because he watched the wind farm
12 ordinance go through ELUC and the County Board and they do tend to spot things.

13
14 Mr. Courson stated that he would think that the rotor diameter would be a bigger deal than height.

15
16 Mr. Thorsland stated that a 75 foot rotor diameter gets limited by cash.

17
18 Mr. Courson stated that if someone wants to throw money away and build their tower at 500 feet then that is
19 their right as long as the tower will not fall on someone's house. He said that he would think that the rotor
20 diameter would raise more flags than the tower height.

21
22 Mr. Thorsland stated that at the moment there is a question about small wind turbines and the setbacks from
23 the yard and at the moment we do not have big setbacks on some of the small wind turbines.

24
25 Mr. Hall stated that in the AG districts the tower cannot be closer to the property line than 10 feet but after
26 that what is limiting is the separation to the neighbor's dwelling, utility line and right-of-way. He said that in
27 all other Illinois' counties the height is limited by the separation to the property line therefore Champaign
28 County is much different than anyone else.

29
30 Mr. Courson stated that he would be comfortable putting a 200 foot tower up 10 feet off the property line in a
31 subdivision.

32
33 Mr. Thorsland asked if this is something that the Board would like to work on because this would also fold
34 into the noise issue. He said that a rotor diameter limit for the noise could be set and if it is less than that
35 limit then it does not have to meet it because it will be setback to a certain level. He said that perhaps if the
36 rotor diameter gets to a certain size then it has to be setback further and Mr. Hall suggested a 700 to 900 foot
37 setback.

38
39 Mr. Courson stated that if too much of a setback is required then people will not be able to construct a wind
40 tower on their property.

41
42 Mr. Hall stated that currently the ordinance states that in the AG districts the wind tower must be no less
43 than 10 feet from the property line but then provided that the tower is not closer than 90% to the neighbor's

1 dwelling, utility line or right-of-way and the fact that the wind tower may fall on the neighbor's property is
2 just another fact of life much like the sound of the wind turbine.

3
4 Mr. Courson stated that his personal wind turbine is 30 feet off of the property line and if his tower fell over
5 it would fall on the building located next door. He said that when the turbines fall from the tower they fall
6 straight down.

7
8 Mr. Thorsland called Herb Schildt to testify.

9
10 Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet stated that the legal advertisement indicates a
11 200 feet limit on the small wind turbine therefore would it be advisable to use as the limit on small wind.

12
13 Mr. Hall stated that the legal advertisement is indicating the allowable height by-right therefore going to 150
14 feet by-right is being more restrictive and neighbors would have less to be worried about. He said that
15 discussing a cap on a variance would also give neighbors less to be concerned about and his view would be
16 consistent.

17
18 Mr. Schildt asked if there was a determination of the cap.

19
20 Mr. Hall stated no.

21
22 Mr. Schildt stated that he is speaking personally and not as the Newcomb Township Planning Commission
23 Chair. He asked how a tower could be considered small wind if they are allowed to go up to 500 feet in
24 height.

25
26 Mr. Hall stated that the Board was discussing this issue only in the context of limiting the amount of
27 variance that could be requested and was not suggesting that someone should be able to build to 500 feet.

28
29 Mr. Schildt stated that as a landowner he would feel more comfortable if there was an absolute cap. He said
30 that he lives on 40 acres within the middle of the proposed wind farm and probably wouldn't be directly
31 affected in this regard although if someone put up a 500 feet tower you could probably see it from
32 Champaign. He said that he has been frustrated with the wind ordinance on one level because he does
33 support small wind and is in general support of it but it seems that the ordinance has been steered towards
34 the person who wants to put in the small wind without considering the potential impact on neighbors. He
35 read the purpose of zoning from the Illinois law which authorizes county zoning. He read the following text:
36 for the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the
37 values of property throughout the county, lessening or avoiding congestion in public streets and highways,
38 and lessening or avoiding the hazards of persons and damage to property resulting from a accumulation of
39 runoff of storm or flood waters, etc. He said that even though he is supportive and fascinated by small wind
40 he is also concerned about comfort and general welfare and is concerned that the ordinance has steered
41 towards allowing people to potentially put up a 75 feet rotor on a 150 feet overall height tower, by-right. He
42 said that he could imagine many situations where this would be fine but he can imagine situations as well
43 where it would be pretty unfortunate if you lived right next to such a tower. He said that if someone could

1 put a structure up that big and that high then potentially someone will get hurt and that would violate their
2 principal comfort and welfare as well as devalue the neighbor's property. He said that he would limit the
3 tower height to 100 feet with a rotor diameter of 24 feet. He said that it is his understanding that a neighbor
4 could sue if they could prove that the turbine violated the Illinois Pollution Control Board standard.

5
6 Mr. Hall stated that the neighbor would not have legal recourse against the County but they could sue the
7 owner of the turbine.

8
9 Mr. Schildt asked Mr. Hall by the County not having any noise standards would that rule out someone from
10 suing.

11
12 Mr. Hall stated no, the noise standards would still apply but the County would no longer be responsible for
13 their enforcement. He said that in the County's Nuisance Ordinance there is a very loose standard for noise
14 and at a certain point, even if the Pollution Control Board Standards were removed from the noise standard
15 in the Zoning Ordinance the County would still have its nuisance regulations that someone could base their
16 complaint about. He said that we have absolutely no objective standard in those regulations and it is just
17 something that is dealt with on a daily basis therefore someone would have some cause to complain under
18 our nuisance regulations.

19
20 Mr. Schildt urged everyone to take a little thought about the folks which are on the other side of this issue
21 and perhaps balance the ordinance a little better. He emphasized that on a three acre tract someone could
22 potentially have a 150 feet overall height with a 75 feet rotor.

23
24 Mr. Hall stated not within 622 feet of a dwelling.

25
26 Mr. Schildt stated that if he was neighbor that lived just outside of that limit he would feel fairly intruded
27 upon. He said that this would be a fairly large structure which will generate a significant amount of impact
28 around it and it is authorized by-right. He said that he cannot think of anything else that is authorized by-
29 right that has this kind of impact. He said that the County has set precedence at 100 feet because of antenna
30 towers and standing on that precedence is a strong position for this Board and the County to take and
31 variances could be allowed beyond the 100 feet. He said that his main issue is that it is allowed by-right and
32 he would urge everyone to place themselves on the receiving end of one of these turbine structures as
33 someone who may not enjoy technology but has a neighbor who constructs a wind tower structure
34 incorrectly and it is very loud or has a neighbor who does not maintain the structure.

35
36 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt.

37
38 Mr. Courson asked Mr. Schildt to indicate his justification for the 24 feet diameter rotor.

39
40 Mr. Schildt stated he just doubled what he thought would be the biggest. He said that Mr. Geil's rotor is 12
41 feet and it can be seen and heard from the road. He said that he is not indicating this in any sort of critical
42 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
43 thought that it was interesting and did not believe that it too loud. He said if he was writing the ordinance,

1 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
2 bit of leeway in case someone wanted to do something experimental.

3
4 Mr. Courson asked Mr. Schildt if noise is his reasoning for recommending 24 feet.

5
6 Mr. Schildt stated overall impact is his reasoning.

7
8 Mr. Courson asked what overall impact.

9
10 Mr. Schildt stated that a moving object attracts someone's attention but a stationary object does not therefore
11 the larger the moving object the greater the overall impact on the surrounding area.

12
13 Mr. Courson stated that when a small wind generator is moving the blades cannot be seen.

14
15 Mr. Schildt stated that Mr. Courson is correct but as the wind generator becomes larger it slows down.

16
17 Mr. Courson reminded Mr. Schildt that the Board is discussing small wind.

18
19 Mr. Schildt stated that he was aware of the discussion but currently a small wind turbine can have up to a 75
20 feet rotor which will turn at approximately 50 rpm's. He said that he and his wife have attended a lot of
21 wind farm hearings and a common question is what right does the County have in telling someone that they
22 cannot place a wind turbine on their property. He said that relative to zoning law this is really the wrong
23 question to ask because zoning law is based on what right the County has to affect the quality of someone's
24 life that already has an existing use. He said that the County may have the right to do this but that is the
25 question because the person who is making the change into the environment is the one who has to justify
26 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
27 neighbor put in a 500 feet wind turbine. He said that the person who desires to put up the 500 feet wind
28 turbine should have to justify why he should be allowed that privilege because he is changing the
29 environment around his property.

30
31 Mr. Thorsland stated that the Board is working on the ordinance and there are parts of Mr. Schildt's
32 testimony that he agrees with and parts that he does not. He said that Mr. Schildt has stated many times that
33 he has parameters that he would not be comfortable with but should be in the ordinance. He said that the
34 Board has worked on the ordinance and if it is recalled as to where the Board started and where the Board is
35 currently it is obvious that alot of progress and improvements have been made. He said that there is a cap on
36 the rotor and other than the noise issues the Board has been discussing the height cap on the small wind
37 turbines. He said that variances are decided by the Board and he does not believe that any variances have
38 been allowed to become wildly out of control. He said that if there is anything out of the ordinary the
39 variances are approved with sensible conditions and nothing extraordinary has happened. He said that in
40 regard to the quality of the environment and additional traffic created someone could build several houses on
41 a piece of land and to think that such an act would not have a huge impact on everyone around that land for a
42 long time means that if we held completely to that zoning the County would do absolutely nothing. He said
43 that the wind structures are not as ordinary as houses and are not as unordinary as an elevator to space but

1 they do fall somewhere in between.

2
3 Mr. Schildt stated that he has stated repeatedly that in essence he does trust the ZBA and staff and feels that
4 he has been very complimentary over the last few years in that regard. He said that he does not doubt the
5 judgment of the ZBA in general but the ZBA is drafting an ordinance that is going to go well beyond
6 anyone's appointments on the Board and there has to be some parameters and tone set. He said that the
7 County is crafting a new secondary or accessory use that can go onto a property therefore it is important that
8 it is crafted correctly because it will set an expectation. He said that most people will only go up to 100 feet
9 in height but the person who wants to go beyond that point can apply for a variance. He said that a small
10 wind turbine which is 150 feet with a 75 feet rotor is a gigantic structure which could go in R-1 and CR. He
11 said that he is not present at tonight's meeting to be disruptive or argumentative because it this not his goal
12 and he does not have a strong agenda other than he feels that the ordinance is pulled to far in one direction
13 and it needs to be pulled back to balance the desires of the neighbor and the persons living there.

14
15 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt and there were none.

16
17 Mr. Thorsland asked if staff had any questions for Mr. Schildt and there were none.

18
19 Mr. Thorsland asked the Board if they desired to set a maximum height requirement or rely on the Board's
20 judgment through the variance process. He said that Mr. Hall suggested an increased setback to deal with
21 the noise issues for small wind. He asked the Board if there were any other issues that Board would like to
22 see staff further investigate or is the Board ready to take final action on this case tonight.

23
24 Mr. Hall stated that the Board should not feel pressured into making a final decision at tonight's hearing. He
25 said that the Finding of Fact must be crystal clear and document why there is a cap on rotor diameter. He
26 said that the Board has absolutely proved why a height of greater than 100 feet is justified. He said that if the
27 Board came through this process and lost the ability to, by-right, go over 100 feet it is his view that this
28 process would have failed.

29
30 Mr. Thorsland stated that he is comfortable with a height of 150 feet and that is not to upset anyone and he is
31 very comfortable with the idea of the variance. He said that he is not uncomfortable with the rotor variance
32 but he is concerned with the noise issue and he has not had time to review all of the documentation that was
33 received tonight. He said that Mr. Hall suggested either a separation distance or a certain size for small wind
34 and to not apply the Illinois Pollution Control Board's noise standards to the very small wind because it will
35 be assumed that if a leaf blower is being placed up on a pole then noise will be created and the private
36 lawyers can sort it out later. He said that problems like this can be rectified with a distance requirement and
37 he reminded the Board that at some level height can also be considered distance. He said that he can
38 imagine a scenario where someone, much like Mr. Geil who is located in a wooded area, desires to go higher
39 than 150 feet and has a good reason for desiring that height. He said that it appears that there is a real
40 problem in the construction industry because many times the Board has people who have constructed
41 something on the property line and suddenly require a variance therefore the Board has to approve the
42 variance because it is there, big and a problem. He said that if the County had more money for public
43 relations it would be good to have an advertisement regarding setbacks in all the different zoning districts.

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

10
11 Mr. Schroeder asked if the 100 feet height is on low ground or on a hill. He said that if someone desires to
12 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
13 to be very careful with the language. He said that indicating that the County will allow a 150 feet tower
14 appears to be a dangerous statement.

15
16 Mr. Hall stated that he does not believe that such a statement is dangerous and it has been absolutely proven
17 that people need the ability to go more than 100 feet by-right.

18
19 Mr. Schroeder asked how staff will confirm the height of a tower.

20
21 Mr. Hall stated that this is one of the unanswered questions. He said that it is unknown at this point how
22 staff will confirm that a 139 feet tower is 139 feet. He said that all staff really needs to do is to confirm that
23 the tower is not over 150 feet and that it meets all of the required separations.

24
25 Mr. Thorsland stated that there is technology available to measure such a structure.

26
27 Mr. Hall stated that technology may be available but it is not available in our office.

28
29 Mr. Palmgren asked Mr. Hall if the applicant could be asked during the permitting process as to why they
30 need a certain size tower.

31
32 Mr. Hall stated that staff cannot ask that if the tower is by-right.

33
34 Mr. Palmgren stated that if someone has the money to put up a taller tower than his neighbor then they could
35 apply for such. He said that he would like to see less 50 story man-made buildings in the rural area of the
36 County as possible. He asked how the County could limit someone just wanting a big wind turbine for
37 whatever reason even though it may not be necessary.

38
39 Mr. Hall stated that if the Board feels that the proliferation of 150 feet wind turbine towers is a problem then
40 the Board needs to be very clear that it should be lower than 150 feet.

41
42 Mr. Palmgren stated that he does not have a problem with the 150 feet and would prefer a lower height but
43 he does understand that if people are truly serious about achieving wind power they will need to have a

1 certain size and height to make it worth their while. He said that there is always going to be someone who
2 desires to put a huge tower out on the countryside, even it isn't being used, and there is no way to stop them.

3
4 Mr. Hall stated that this is the problem with zoning and the only way to stop this is to make it more difficult
5 for those people who may need it.

6
7 Ms. Capel asked Mr. Hall if he is asking the Board to withdraw from enforcing the Illinois Pollution Control
8 Board standards.

9
10 Mr. Hall stated yes, for the smallest class.

11
12 Ms. Capel if the standard for setbacks for small wind could be changed to the property line.

13
14 Mr. Hall stated yes.

15
16 Ms. Capel stated that she would feel more comfortable in changing the setback for small wind to the
17 property line rather than nearest dwelling.

18
19 Mr. Thorsland stated that a setback of 700 to 900 feet on a small lot would be too restrictive. He said that he
20 would not be uncomfortable with some sort of height formula for the stuff that is omitted from the sound.
21 He said that the County is not going to try to enforce the sound if data is not provided by the manufacturer
22 but if it is a 100 foot tower then it needs to be 100 feet from the property line to provide a sound distance
23 buffer. He said that this is not a complete effort but with the big wind there is a separation distance of 1.1
24 times the height of the turbine.

25
26 Ms. Capel stated that if someone is placing a wind turbine on a small lot then the chances are that the
27 property is within a subdivision with a bunch of small lots. She said that if one property owner is the first
28 person to build then they are essentially creating a noise situation for the other lots because they may not
29 have dwellings yet. She said that if the Board is concerned about protecting property values people will
30 choose other lots, which may they do any way. She said that if there is going to be a noise issue then solid
31 setbacks should be set, rather than using some sort of noise limits, to the property line rather than from the
32 nearest principal dwelling.

33
34 Mr. Hall asked Ms. Capel if she is talking about a height limit.

35
36 Ms. Capel stated no, she is talking about setbacks for small wind.

37
38 Mr. Hall asked Ms. Capel if she is talking about hundreds of feet.

39
40 Ms. Capel stated that Mr. Hall recommended 700 to 900 feet from the nearest principal dwelling. She said
41 that Mr. Hall indicated a proposed setback of 700 to 900 feet from the nearest principal dwelling. She said
42 that it would make sense to her to set the setback at 700 to 900 feet from the property line because someone
43 else could presumably build a home within 10 feet from the property line but a noise situation has been

1 created that would make that an undesirable lot. She said that this is her thought regarding small wind and it
2 differs from the wind farm situation because we are talking about small lots.
3
4 Mr. Hall stated that he assumes that Ms. Capel is not thinking of applying that standard to all small wind
5 turbines.
6
7 Ms. Capel stated there has to be a way to differentiate such.
8
9 Mr. Thorsland asked if different setbacks could be proposed based on the different zoning districts.
10
11 Ms. Capel stated that the setbacks would need to be based on the noise level. She said that she is concerned
12 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
13 surrounding lots. She said that part of small wind is that it needs to be compatible within a community.
14
15 Mr. Thorsland stated that there is a provision where the neighbor could sign off.
16
17 Mr. Hall stated that such a provision was withdrawn.
18
19 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
20 he could see applying such a standard in an approved Rural Residential Overlay because the aim is for some
21 sort of density. He said that alot of the situations that Ms. Capel is discussing will happen in the RRO's that
22 are already in existence. He asked Ms. Capel if she would like to set a different setback standard for the
23 small wind which just applies to the known dense or potentially approved dense areas and when an RRO is
24 approved the higher standard is enforced.
25
26 Ms. Capel stated that this would make sense.
27
28 Mr. Hall stated that Ms. Capel is concerned with applying the higher standard even in an already built up
29 area.
30
31 Mr. Thorsland stated that some of the RRO's are in the agricultural districts.
32
33 Mr. Hall noted that the Board should not forget that these rules will also apply in Penfield, Seymour, Dewey,
34 Foosland and Longview.
35
36 Mr. Thorsland asked if the variance process could be utilized.
37
38 Ms. Capel stated that there will be some people who desire to have a windmill on their land and by-gosh they
39 are going to build it regardless of the consequences to their neighbor. She said that she is not sure to what
40 extent the Board can protect the people around the windmill.
41
42 Mr. Thorsland stated that if the Board goes by the letter of the Ordinance and why we have zoning then the
43 Board is supposed to protect the public from a lot of things but if you go by Eric Thorsland's personal

1 comment every house that gets built in the County effects everyone within one mile of the property and those
2 newly constructed houses happen by-right with amazing and alarming frequency. He said that the Board has
3 continuously tried to write a better ordinance and it gets fought every time and he does not know if as many
4 people would become upset if a really tight restriction was placed on by-right wind power but there would be
5 some. He said that he is not sure how comfortable he would be in placing a super difficult restriction on the
6 by-right part.

7
8 Ms. Capel stated she does not believe that it needs to be a super difficult restriction but it may need to be a
9 restriction that is associated with density. She said that she would like to have more time to think about it.

10
11 Mr. Thorsland stated that someone could have a dramatic effect on the person next door by what kind of tree
12 they plant and how close it is placed to the property line and the County cannot do anything about it but for
13 some it doesn't matter and for others it could be dramatic.

14
15 Ms. Capel stated that to some extent the Board creates consequences.

16
17 Mr. Hall stated that staff can do more research on what has been done with urban standards. He said that he
18 has been trying to research such but has not had much success because the municipalities are just starting to
19 develop these standards. He said that the City of Champaign is thinking that the Illinois Pollution Control
20 Board rules make sense and they don't.

21
22 Mr. Schroeder stated that the Board must also consider how the municipalities are expanding out into the
23 rural areas because it is possible that eventually an approved wind tower that was once in the County could
24 be absorbed by a municipality.

25
26 Mr. Hall stated that this is why the State took that approval right away from the counties within one and one-
27 half miles of a municipality. He said that the municipalities have the right to set their own standards which
28 apparently is irritating some rural landowners that live within that one and one-half mile area.

29
30 Mr. Schroeder stated that someone who is currently five miles from a municipality could build a really nice
31 wind tower and suddenly become surrounded by homes.

32
33 Ms. Capel stated that the wind tower would be grandfathered and if the municipality desires to come locate
34 out by the tower then that is a different deal.

35
36 Mr. Schroeder stated that he would not want his neighbor to build a wind tower within 600 feet from his
37 home.

38
39 Mr. Thorsland stated that the Board's homework is to come up with some suggestions for small wind
40 regarding noise, height and property line setbacks versus principal dwelling setbacks. He said that the Board
41 must also consider a continuance date for this case.

42
43 Mr. Hall stated that the public hearing for December 3rd will take alot of time and staff will not have

1 adequate time to do the required research for answering some of the Board's questions.

2
3 Mr. Thorsland stated that if the Board has any suggestions or comments they should feel free to send staff an
4 e-mail. He said that the e-mail, which will be received outside of a public hearing, will be included in the
5 next mailing so that it is placed on record.

6
7 Mr. Hall stated that the Board could continue this case to February 11, 2010 or January 14, 2010. He said
8 that if the case was continued to January 14th it could be bumped back if required.

9
10 Mr. Courson stated that January 14th was reserved for the wind farm hearings.

11
12 Mr. Hall stated that in order for a wind farm case to be before the Board on January 14th the application must
13 be received by December 30th and he personally doubts that such an application will be received by that date.

14
15 Mr. Thorsland requested a motion for continuance.

16
17 **Ms. Capel moved, seconded by Mr. Palmgren to continue Case 634-AT-08, Part B. to January 14,**
18 **2009. The motion carried by voice vote.**

19
20 Mr. Palmgren stated that the noise issue has been batted around tonight and asked Mr. Hall what the Board
21 needs to do at this point.

22
23 Mr. Hall stated that the Board should not give up on worrying about noise at the lower end of the scale
24 because it is still there but if the Board worries about noise to the extent that it believes that the County
25 should enforce the Pollution Control Board standards then there will be no small wind.

26
27 Mr. Palmgren stated that the Board's dilemma is if the Pollution Control Board standards are followed then
28 small wind is eliminated unless there is data which proves that they are already beyond that. He asked if that
29 puts the Board in a situation that they are okay with higher noise **(I cannot hear his final statement)**.

30
31 Mr. Hall stated that this is a decision that the County has to come to terms with.

32
33 Mr. Palmgren asked if the ZBA makes a final decision ELUC and the County Board could make changes.

34
35 Mr. Hall stated correct and the ZBA can only do the best they can.

36
37 Mr. Palmgren stated that his gut feeling is to go with the standards that are already set because they are set
38 for a reason although it is unfortunate that some of the wind turbines will not meet those standards. He said
39 that it is his guess that ELUC and the County Board will have the same problem that the ZBA has had
40 regarding the Pollution Control Board standards therefore they will probably change the Board's decision.
41 He asked if ELUC and the County Board does change the ordinance is it their problem to come up with the
42 enforcement or does it come back to the ZBA.

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

5
6 Mr. Thorsland stated that there is a saying in research that you design with a computer, build it with a
7 hammer and install it with a crowbar. He said that the ZBA worked really hard and did a good job with the
8 wind farm ordinance at all ends of the issue and then the people with the hatchet got to it and reformed it into
9 their own dug out canoe and sent it on down the river to the County Board and it sailed just fine although he
10 believes that there were more cooks messing with the soup than was needed. He said that the ZBA has to do
11 a good job on Part B as well and then let it go.

12
13 Mr. Palmgren stated that the ZBA actually has three options: 1. apply the Pollution Control Board standards;
14 and 2. set standards of their own; and 3. apply no standards at all.

15
16 Mr. Schildt requested the opportunity to ask Mr. Hall a question.

17
18 Mr. Thorsland allowed Mr. Schildt the opportunity to address Mr. Hall.

19
20 Mr. Schildt stated that if there is a legal issue if the Pollution Control Board standards are law and the
21 ordinance states that those standards will not be enforced unless it is rated more than 10 kilowatts. He asked
22 if it raises a technical issue with the law if the County indicates that it is going to ignore the enforcement. He
23 said that he personally feels that the standards are there for good reason therefore they should be enforced.

24
25 Mr. Hall stated that there may be a legal concern if someone could prove that in fact small units are noisier
26 than the larger units and the County chose not to do anything about it. He said that he has previously said
27 that the noise created is part of the new reality because people are prepared to accept seeing wind turbines in
28 the air and hearing them in the air to know that the County is doing something about the energy problem. He
29 said that he gets the sense that there is a real tendency for that and the question is how much are people
30 willing to put up with to know that we are doing something about the energy problem.

31
32 Mr. Schildt stated that the purview of zoning does not deal with energy. He asked if the ordinance would
33 withstand the challenge on this point is when there is a distinction between agreeing with the Illinois
34 Pollution Control Board standards and not wanting them because the small wind units violates those
35 standards. He asked if it creates a problem that Mr. Hall has agreed that the small units violate the standards.

36
37 Mr. Hall stated that it doesn't create a problem if the County goes about doing it the right way.

38
39 Mr. Schildt stated that he does not fully share Mr. Hall's opinion although he does agree that there is general
40 support for small wind. He said that some cars have bad mufflers and are real loud and some cars don't
41 therefore just because some cars have bad mufflers should a standard be written to say that whatever the
42 worst case muffler is will be the standard. He said that if the County enforces the Illinois Pollution Control
43 Board standards then the County is stating that these are the standards and the County believes that those

1 standards can be met by some manufacturer on any unit.

2

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

5

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

7

8 Mr. Hall stated that this is a possibility.

9

10 Mr. Schildt stated that he does understand Mr. Hall's motivation and in general there are some merits to that
11 distinction but in sitting here tonight it has raised a secondary question of the differential between these two.

12 He said that the Illinois Pollution Control Board standards are there for the general safety and well being of
13 the population.

14

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

16

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

19

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

22

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

25

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

33

34 Mr. Hall stated no.

35

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

38

39 **6. New Public Hearings**

40

41 ***Case 657-V-09 Petitioner: Larry and Diane Lambright and Scott Lambright Request: Authorize the**
42 **use of an existing two story detached accessory storage building with a second story deck with a side**
43 **yard of three feet in lieu of the required ten feet side yard for accessory structures in the AG-2**

1 Agriculture Zoning District, and an average height of 16 feet in lieu of the maximum allowed 15 feet
 2 average height for residential accessory structures on lots less than one acre in area in the AG-2
 3 Agriculture Zoning District. Location: Lot 1 of Cook’s Replat of Tract B of the K.D. Headlee
 4 Subdivision in Section 14 of Mahomet Township and commonly known as the house at 206B Lake of
 5 the Woods, Mahomet.

6
 7 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows
 8 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show
 9 of hands for those who would like to cross examine and each person will be called upon. He requested that
 10 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
 11 those who desire to cross examine are not required to sign the witness register but are requested to clearly
 12 state their name before asking any questions. He noted that no new testimony is to be given during the cross
 13 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
 14 from cross examination.

15
 16 Mr. Hall distributed a Supplemental Memorandum dated November 12, 2009, and color photographs of the
 17 subject property, taken on November 9, 2009, by staff, to the Board for review. He said that the new
 18 supplemental memorandum includes two special conditions for approval. He read the conditions as follows:

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

40
 41 Mr. Hall stated that attached to the Supplemental Memorandum dated November 12, 2009, are two letters of
 42 support from Robert E. Burack and Stephen Robinson and a letter of opposition from Ray Parkinson, owner
 43 of 204 S. Lake of the Woods Road. He said that the Preliminary Memorandum dated November 6, 2009,

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

11
12 Mr. Hall stated that the distributed color photographs taken by staff on November 9, 2009, indicate several
13 items related to enforcement. He said that Jamie Hitt, Zoning Officer visited the site today to verify that Mr.
14 Lambright had accurately measured the building and it appears that the amount of the variance is overstated
15 by approximately one-half foot, which is not an issue. He said that the variance could be reduced to make it
16 very clear that it is exactly for what the structure is currently but he prefers to leave a little leeway because he
17 does not like things depending on absolute correct measurement by anyone involved unless absolutely
18 necessary. He said that the variance is somewhat overstated and it is within the realm of an Administrative
19 Variance but since only one variance is dealt with in an Administrative Variance and there are two variances,
20 side yard and height, requested in this case a full variance is before the Board.

21
22 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

23
24 Mr. Palmgren asked Mr. Hall if the height was indicated on the original permit application for the building.

25
26 Mr. Hall stated that the indicated height on the Zoning Use Permit for the accessory building was 12 feet.

27
28 Mr. Palmgren asked if the shed was built at 16 feet in height instead.

29
30 Mr. Hall stated that the average height of the accessory structure turned out to be 16 feet and in fact it is 22
31 feet to the top of the peak.

32
33 Mr. Thorsland asked Mr. Hall to explain the formula for determining the average height.

34
35 Mr. Hall stated that staff averages the measurement from the ground to the top of the eave and the
36 measurement from the ground to the peak. He said that Jamie Hitt determined during her visit today that the
37 average height was 15 feet 6 inches.

38
39 Mr. Palmgren stated that there was some confusion as to whether the accessory building was taller than the
40 house.

41
42 Mr. Hall stated that the *Zoning Ordinance* does not limit the height of an accessory structure being taller than
43 the principal structure.

1
2 Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall and there were none.
3
4 Mr. Thorsland called Mr. Larry Lambright to testify.
5
6 Mr. Larry Lambright, who resides at 2110 East Pheasant Ridge Road, Mahomet stated that when he met with
7 Jamie Hitt he gave her some letters from the neighbors to the west which indicated that they had no issues
8 with the existing building. He said that the neighbor on the east side of the property, who does not border
9 the property, has indicated opposition to the existing building. He said that it was his understanding that the
10 building could not be taller than the existing two-story house and it is not. He said that the documentation
11 that he received from staff indicates that in the AG-2 zoning district the maximum building height is 50 feet.
12
13 Ms. Hitt clarified that the 50 feet maximum building height is for the principal structure.
14
15 Mr. Lambright stated that he would like to have the case continued to a later date so that he can correct the
16 remaining violations.
17
18 Mr. Thorsland asked the Board if there were any questions for Mr. Larry Lambright and there were none.
19
20 Mr. Thorsland asked staff if there were any questions for Mr. Larry Lambright and there were none.
21
22 Mr. Thorsland called Mr. Scott Lambright to testify.
23
24 Mr. Scott Lambright, who resides at 206B Lake of the Woods Road, Mahomet stated that he lives in the
25 house on the subject property and he was also under the misconception that the shed could not be taller than
26 the house. He said that he requires the indoor storage because he needs to move his items indoors and he
27 desired to eliminate one of the existing smaller structures.
28
29 Mr. Thorsland asked the Board if there were any questions for Mr. Scott Lambright and there were none.
30
31 Mr. Thorsland asked if staff had any questions for Mr. Scott Lambright.
32
33 Mr. Hall asked Mr. Scott Lambright if the two small sheds that are indicated on the site plan were used only
34 for personal storage.
35
36 Mr. Scott Lambright stated yes.
37
38 Mr. Thorsland called Mr. Kent Follmer to testify.
39
40 Mr. Kent Follmer, attorney representing Josh and Alicia Helmick stated he would like to address the Board
41 about certain circumstances that have not been discussed. He said that Mr. Lambright testified that he was
42 confused by the requirements of the *Zoning Ordinance* in regard to the allowable maximum height. He said
43 that Mr. Palmgren asked Mr. Hall to indicate the proposed height of the accessory structure as noted on the

1 zoning use permit and Mr. Hall stated 12 feet. Mr. Follmer stated that the application also stated that the
2 building would be a one-story, 12 feet building with no mention of a deck. He said that the distributed
3 photographs indicate that the structure that was constructed is much different than what was represented and
4 approved. He said that Lambrights claim that they misunderstood the *Ordinance* even though they are
5 contractors in Champaign County.

6
7 Mr. Follmer stated that there is a recorded shared well easement which encroaches very close to the location
8 of the structure. He said that the site plan which was submitted with the zoning use permit indicated that the
9 structure would be placed approximately 20 feet north of the well although it is his understanding that the
10 well opening is underneath the deck. He said that he did submit a copy of the recorded shared well
11 easement to staff and that easement allows access to his clients. He said that if it were not due to the
12 complaint regarding the construction debris, as indicated in the distributed photographs, the County may
13 have never been informed that the structure is in violation of two the County's Ordinances. He said that Mr.
14 Hall has indicated that no new permits or requests can be approved until the current violations are remedied.

15
16 Mr. Follmer stated that his clients live next door to the subject property and there are more problems which
17 exist between the Lambrights and the neighbors than what has been brought to the Board's attention. He
18 said that one of the variance's criteria, as indicated in the Preliminary Draft Summary of Evidence dated
19 November 12, 2009, Page 7 of 11, Item #9.A., indicates that generally regarding the *Zoning Ordinance*
20 requirement for a find that the special conditions, circumstances, hardships, or practical difficulties do not
21 result from the actions of the Applicant. He said that the Lambrights built a structure that is 22 feet in
22 height, even though they indicated on the zoning use permit application that it would only be 12 feet in
23 height, and that it would only be one-story when indeed it is a two-story structure with a two-story deck. He
24 said that he is not sure of the location of the water well but it is within the near vicinity of the two-story
25 deck. He said that the Lambrights have no defense because they built the structure, misrepresented their
26 intention and after two years they got caught because of the other violations that existed on the property. Mr.
27 Follmer distributed additional photographs of the subject property to the Board and submitted the
28 photographs as Documents of Record. Mr. Follmer discussed, with the aid of the distributed photographs,
29 the location of the Helmick's home versus the Lambright's home. He said that in 1984 there was only one
30 lot and the original owner divided the lot in 1994 with a recorded easement for the shared driveway to the
31 property by which the Helmicks reside. He said that there is no other way for the Helmicks to gain access to
32 their home than by the shared driveway and they have had problems with their ingress and egress. He said
33 that one of the photographs which was submitted as a Document of Record indicates a view from the top of
34 the Helmick's roof looking toward Lake of the Woods Rd to the north. He said that the photograph shows a
35 gate, wooden fence, boulders and propane tank. He said that the gate prohibits the Helmick's from turning
36 around in their drive. He said that he appreciates the fact that the purpose of this hearing is to determine
37 whether or not a variance should be granted for the east side of the subject property but if there are over a
38 half-a-dozen other violations then the variance should not be granted. He said that they are currently in
39 court, half way through the trial, trying to determine what the shared driveway easement actually means and
40 whether or not the post and gate needs to be removed. He said that it is their position that the post and gate
41 encroaches upon the driveway and it requires the Helmicks and their clients for the daycare operation to back
42 over 100 feet down the driveway.

43

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

2
3 Mr. Follmer stated that he appreciates the Board's stand and he only desired to touch base on the other issues
4 which are occurring. He said that hopefully tomorrow the shared driveway issue will be concluded and he
5 will inform the County of the results. He said that in July 2009 his clients notified the County about the
6 construction debris that was being brought onto the property and that is what brought the issue of
7 misrepresentation of the zoning use permit approval to the County's attention. He said that the Lambrights
8 are contractors therefore they can reduce the size of the roof and deck, move the post and gates and the play
9 area. He asked the Board what type of message should be given to the Petitioner. He asked if the Board
10 should indicate that the Lambrights should conform because they are not above the law or should the
11 message be that an exception can be made because they are nice folks and only misunderstood the *Zoning*
12 *Ordinance*. He said that this situation has caused a severe hardship for his clients and it would be much
13 appreciated if the final decision could be made at tonight's hearing and that the decision would be a denial of
14 the request. He said that he does understand and appreciates the reasoning for not making any decisions and
15 deferring this case until all of the other violations are brought into compliance.

16
17 Mr. Thorsland asked the Board if there were any questions for Mr. Follmer and there were none.

18
19 Mr. Thorsland asked if staff had any questions for Mr. Follmer.

20
21 Mr. Hall stated that Mr. Follmer indicated that the only means of access to the Helmick property is through
22 the shared driveway easement. Mr. Hall said that the Helmick property is a flag lot that touches the street
23 therefore it actually has its own access strip to Lake of the Woods Road.

24
25 Mr. Follmer stated that there are trees and a water spigot located in the flag lot access strip which also has a
26 recorded utility easement for telephone and electrical service.

27
28 Mr. Hall asked Mr. Follmer if it is his position that the Helmick's lot does not have an access strip which is
29 20 to 30 feet wide.

30
31 Mr. Follmer stated that the flag lot strip is 20 feet wide and the east ten feet is subject to the easement and
32 the other ten feet does not have an easement but the main water line is located in that area.

33
34 Mr. Hall asked Mr. Follmer if the Helmicks could place a driveway along that access strip.

35
36 Mr. Follmer stated no. He said that the question before the court is not whether the Helmicks could or could
37 not place a driveway in the access strip but what is the meaning of a recorded easement which gives them the
38 allowance of ingress and egress on the existing driveway.

39
40 Mr. Hall stated that for the purpose of the Zoning Board of Appeals, which weighs all of the information
41 given at tonight's hearing, Mr. Follmer has indicated that the easement over the Lambright property is the
42 only way for his clients to access Lake of the Woods Road. He asked Mr. Follmer if his client's property
43 touches Lake of the Woods Road by a 20 feet wide access strip.

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Mr. Follmer stated yes.

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

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

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

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

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

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

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

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

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

Mr. Thorsland granted Mr. Lambright's request.

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

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

1

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

3

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

5

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

7

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

9

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

11

Ms. Helmick stated yes.

13

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

15

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

18

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

20

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

23

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

26

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

35

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

38

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

41

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

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

7. Staff Report

None

8. Other Business

A. Tentative 2010 Champaign County Planning and Zoning Calendar

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

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

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

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

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

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

None

10. Adjournment

The meeting adjourned at 8:47 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street

4 Urbana, IL 61801

5 **DATE:** December 3, 2009

6 **PLACE:** Lyle Shields Meeting Room

7 1776 East Washington Street

8 Urbana, IL 61802

9 **TIME:** 6:30 p.m.

10 **MEMBERS PRESENT:** Doug Bluhm, Catherine Capel, Thomas Courson, Roger Miller, Eric
11 Thorsland, Paul Palmgren

12 **MEMBERS ABSENT :** Melvin Schroeder

13 **STAFF PRESENT :** Connie Berry, John Hall, Christina Papavasiliou (Assistant State's Attorney)

14 **OTHERS PRESENT :** Terry Ladage, John Fulton, Jeff Tock, Paul Cole, Rick Reed, Neal Toler,
15 Phyllis Benschneider, Ken Little, Jed Gerdes, Barbara Gerdes, Robert Gerdes,
16 Shawn Walker, Sherry Schildt, Carl Smith, Jay Hageman, Afton Kolbe

17 **1. Call to Order**

18 The meeting was called to order at 6:38 P.M.

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

20 The roll was called and a quorum declared present with two members absent.

21 **3. Correspondence**

22 None

23 **4. Approval of Minutes (July 30, 2009 and October 15, 2009)**

24 **Mr. Thorsland moved, seconded by Ms. Capel to approve the July 30, 2009 and October 15, 2009,**
25 **minutes as submitted. The motion carried by voice vote.**

26 Mr. Courson arrived at 6:42 P.M.

27 **5. Continued Public Hearing**

28 **Case 645-S-09 Petitioner: Robert and Barbara Gerdes Request to authorize the construction and use**
29 **of a "Restricted Landing Area" as a Special Use in the AG-1 Agriculture District Location: An**
30 **approximately 83 acre tract that is approximately the West Half of the Southwest Quarter of Section**
31 **33 of Ayers Township and commonly known as the farm at 52 CR 2700E, Broadlands.**

DRAFT

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

9
10 Mr. Hall distributed a Supplemental Memorandum dated December 3, 2009, to the Board for review. He
11 said that the new memorandum proposes new Summary of Evidence items for the information that was
12 included in the mailing from Attorney Paul Cole. He said that a new special condition of approval which
13 simply documents that if the RLA is approved operation must continue in compliance with the I.D.O.T.
14 Division of Aeronautics' requirement. He said that attached to the new memorandum are the minutes of
15 March 28, 1991, which is when the last RLA was approved, for the Board's review of what kind of findings
16 were included with that approval. He said that also attached to the new memorandum is the updated version
17 of the Revised Wind Farm Separations in the Vicinity of the Gerdes Property illustrating the separations that
18 are anticipated and the effects of the Village of Allerton's one and one-half mile jurisdiction as well as the
19 Douglas County jurisdiction. He suggested that the Board begin with testimony from Jeff Tock, Attorney for
20 Mr. Gerdes.

21
22 Mr. Bluhm called Mr. Jeff Tock to testify and requested that he sign the witness register prior to giving
23 testimony.

24
25 Mr. Jeff Tock, Attorney representing Jed Gerdes and Robert and Barbara Gerdes, stated that the Gerdes
26 family requested that he review the case and due to his familiarity with zoning issues and the State statute
27 authorizing the County to implement zoning he was aware of the limitation that the County has no zoning
28 authority over agricultural use. He said that the RLA is supposed to be for agricultural use only which is the
29 way that the information is set forth in the application was indicated by Mr. and Mrs. Gerdes. He said that
30 the RLA is to be strictly for aircraft that will be using the grass runway to apply herbicides, pesticides and
31 seed on the land that is farmed by the Mr. and Mrs. Gerdes and their son Jed. He said that the limitation on
32 the use of the runway is so that it is strictly agricultural and given that restriction he believes that the County
33 has no zoning authority or jurisdiction to require a special use permit for this particular RLA. He said that
34 this being the case there is no point in moving forward with the petition because of the lack of the authority
35 of the ZBA to grant the special use permit due to it is a matter of right for the Gerdes family to operate the
36 RLA with the limitation that it is only for agricultural use. He said that he has been in contact with the
37 State's Attorney's office and it is his understanding, through his conversation with Mr. Hall, that the State's
38 Attorney has reviewed the information that he provided as well as the State statute and concurs with the
39 understanding that the RLA is limited to the property that is used by the Gerdes family for their farming
40 operation and since this is an agricultural use the County has no jurisdiction. He said that this would also
41 apply to no limitations or waivers as to any setback from the RLA to wind turbine towers that may be set
42 forth in the wind farm ordinance that has been adopted by the County. He said that Mr. Hall has indicated
43 that he would like to have the opportunity to put everything in writing in a letter to the Gerdes family setting

1 forth the understanding of the limitation that this is a landing strip which is only to be used for the Gerdes
2 family's agricultural purposes for the land that they farm and not to be used as a commercial landing strip
3 where the Gerdes' air operator can utilize the airstrip to service other landowners. He said that the Gerdes
4 family does agree to the limitations. He said that it is his understanding that Case 645-S-09 will be
5 continued to a later date so that the material gathered and if acceptable the public hearing will be terminated
6 with no finding.

7
8 Mr. Bluhm asked the Board if there were any questions for Mr. Tock.

9
10 Mr. Palmgren asked if the setbacks adopted in Case 634-AT-08, Part A. would apply to the RLA.

11
12 Mr. Tock stated that the 3500 feet does apply and it is not reduced by a waiver.

13
14 Mr. Bluhm asked the Board if there were additional questions for Mr. Tock and there were none.

15
16 Mr. Bluhm asked if staff had any questions for Mr. Tock and there were none.

17
18 Mr. Hall stated that it would be entirely valid to consider this an agricultural RLA but he would like the
19 opportunity to indicate such in writing for Mr. Gerdes so that he can see the actual limitations and then he
20 could use this information as evidence for I.D.O.T. that the RLA complies with Champaign County zoning
21 therefore obtaining his I.D.O.T. Certificate of Approval. He recommended that the Board continue Case
22 645-S-09 to January 14, 2010, to give staff a month to get all the information distributed, reviewed and
23 agreed upon. He said that his recommendation would be that as soon as Mr. Gerdes agrees with the
24 limitations in the letter he could submit a written letter withdrawing Case 645-S-09. He said if the letter of
25 withdrawal is submitted for the case it would not need to come back to the Board because the Board would
26 not need to dismiss the case and those who are interested in the case would not need to go out in the middle
27 of January for a night meeting.

28
29 Mr. Bluhm stated that since the case will be continued to a later date there is no need for public testimony
30 tonight because it appears that the approval is out of the Board's hands. He said that if the case, for some
31 reason, is continued and brought back before this the Board new testimony will be accepted regarding this
32 case.

33
34 **Mr. Thorsland moved, seconded by Mr. Miller to continue Case 645-S-09 to January 14, 2010. The**
35 **motion carried by voice vote.**

36
37 Mr. Hall informed the audience that anyone who has signed the witness or attendance record regarding this
38 case will receive notice in the mail if the case has been withdrawn or will be continued to January 14th.

39
40 **6. New Public Hearings**

41
42 None

1 7. Staff Report

2
3 Mr. Hall informed the Board that Case 520-AM-05, Gene Bateman was before the County Board last week
4 and any amendment to the Zoning Ordinance has to be approved by a majority of all elected Board members,
5 which in Champaign County’s case is 14, and at that meeting the case failed on a vote of 12 affirmative
6 votes and 11 no votes. He said that a majority voted for approval but not a majority of all elected Board
7 members and there were more than two elected members who did not attend the meeting. He said that it was
8 conceivable that if the case had been deferred to a full County Board meeting that a different outcome could
9 have occurred but since this was not the case the request did fail.

10
11 Mr. Hall stated that at the November 30th ELUC meeting the request for the hiring of professional
12 consultants for review of certain technical studies for Wind Farm County Board Special Use Permits was
13 denied. He said that ELUC did discuss this item for a period of time and there was support for and against
14 the request.

15
16 8. Other Business
17 A. Docketing of anticipated California Ridge Wind Farm

18
19 Mr. Hall stated that according to information given at the November 30th ELUC meeting the ZBA should not
20 be concerned about receiving a wind farm application until Spring 2010 therefore the Board may decide to
21 eliminate the wind farm case from the docket until such time that an application is received. He said that he
22 can mail a letter to the wind farm developers indicating such and stressing that six weeks after receipt of a
23 full application will be required prior to a hearing for the wind farm.

24
25 **Mr. Courson moved, seconded by Mr. Thorsland to remove the wind farm case from the docket. The**
26 **motion carried by voice vote.**

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

29
30 None

31
32 10. Adjournment

33
34 The meeting adjourned at 6:54 P.M.

35
36
37 Respectfully submitted

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42 Secretary of Zoning Board of Appeals

**EXCERPT OF APPROVED OCTOBER 12, 2009, MINUTES
REGARDING CASE 655-S-09**

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5. Continued Public Hearing

None

6. New Public Hearings

Case 655-S-09 Petitioner: Judith K. and Gerald T. Warmbier Request: Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for: (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use; and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet. Location: A five acre tract in the East Half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR 750E, Champaign.

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

Mr. Hall distributed a Supplemental Memorandum dated October 26, 2009, and a three page collection of web pages from www.petfinder.com regarding Prairieland Anti-Cruelty Spay/Neuter Program for the Board's review. He said that the Supplemental Memorandum dated October 26, 2009, contain better copies of the photos which were included in the October 23, 2009, Preliminary Memorandum.

Mr. Hall stated that on April 9, 2007, staff received a complaint about the subject property regarding the presence of approximately 100 cats on the property. He said that during this time staff did notice advertisements for a new dog kennel located between Mahomet and Champaign but did not have a chance to follow up on it. He said that on December 22, 2008, another complaint was received indicating that the property owners were apparently running a kennel on the subject property and staff attempted to contact the property owners. He said that staff was able to contact the property owners in February and informed them that a Special Use Permit was required for their operation and the appropriate information and application was sent out that same day.

Mr. Hall stated that the petitioners submitted their application for a Special Use Permit on August 19, 2009, and after several attempts to get accurate descriptions for the public hearing and staff finally advertised the case. He said that after the advertisement was

**EXCERPT OF APPROVED OCTOBER 12, 2009, MINUTES
REGARDING CASE 655-S-09**

1 submitted staff realized that there were some outstanding questions as to if this was a
2 kennel, veterinary facility, or a rescue facility and hopefully that information can be
3 addressed tonight. He said that attached to the October 23, 2009, Preliminary
4 Memorandum is a letter from the closest neighbors, who did not submit the complaint,
5 indicating that they had no complaints and supported the Warmbier's operation. He said
6 that other missing information relates to the amount of remodeling that was necessary to
7 turn an agricultural building into the kennel facility. He said that the degree of the
8 *Environmental Barriers Act* is based on the dollar value of remodeling as a percentage of
9 the replacement cost of the structure. He said that it may be that all of the remodeling
10 was made completely accessible but at this time it is unknown. He said that the
11 accessibility code is not a County ordinance but is a State of Illinois requirement and the
12 County cannot waive any portion of it. He said that the Zoning Administrator is
13 responsible for its enforcement therefore it is something that is taken very seriously. He
14 said that the accessibility information and compliance does not have to be received at
15 tonight's meeting but it will need to be submitted prior to the issuance of a Zoning Use
16 Permit.

17
18 Mr. Hall distributed the color photos submitted by the Petitioners, black and white copies
19 were included in the memorandums, for the Board's review.

20
21 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.

22
23 Mr. Hall noted that somehow staff overlooked sending out notice for this case to nearby
24 landowners and relevant jurisdictions until October 19, 2009, which is less than the 15
25 days required by the *Zoning Ordinance* so no final action should be taken at this meeting.
26 He said that the subject property is within the one and one-half mile extraterritorial
27 jurisdiction of the Village of Mahomet and the Village has been notified but no
28 comments have been received. He said that the Village does not have protest rights, but
29 their comments are welcome. He said that the subject property is also in Hensley
30 Township which has a plan commission. He said that townships with plan commissions
31 do not have protest rights on SUP cases but they are invited to provide comment. He said
32 that Hensley Township has been notified of this request but no comments have been
33 received to date.

34
35 Mr. Bluhm called Ms. Judy Warmbier to testify.

36
37 Mr. Judy Warmbier, who resides at 2173 CR 750E, Mahomet stated that they are
38 basically a spay/neuter service for low income people. She said that she has been
39 involved in this service for over 30 years with the same veterinarian. She said that they
40 have three different veterinarians that assist with the operation and a surgical room has
41 been set up in the structure that used to be a flower shop. She said that the veterinarians
42 are not at the facility on a daily basis but may only be present once every two weeks,
43 depending upon the schedule and number of animals present at that time and they also
44 utilize clinics. She said that the operation will never get rich working with low income
45 customers and waiting on donations. She said that she lived in Mahomet for 25 years and
46 had four runs where she boarded dogs and kept very busy and she did not realize that she

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1 needed approval to operate her program at the current subject property. She said that
2 since she is not very knowledgeable about computers she couldn't think of anything to do
3 to make extra money for the program so she decided that she could board animals and
4 turn 1/3rd of the agricultural building into a kennel. She said that there are nine, 5' x 15'
5 runs attached to the building and there are volunteers who come to the facility during the
6 day to assist her in keeping the facility clean. She noted that heated floors have been
7 installed for the dogs comfort.

8
9 Mr. Bluhm asked the Board if there were any questions for Ms. Warmbier.

10
11 Mr. Palmgren asked Ms. Warmbier to indicate what other types of animals, other than
12 dogs, are dealt with at the facility.

13
14 Ms. Warmbier stated that they service cats and dogs.

15
16 Mr. Palmgren asked Ms. Warmbier if there were truly 100 cats present at the facility.

17
18 Ms. Warmbier stated that she does have approximately 50 cats currently at the facility.
19 She said that she is licensed with the State of Illinois and has been for many years
20 without a violation. She said that they do not allow the cats to multiply and when a
21 mother and kittens are brought to the facility they spay and neuter the kittens when they
22 weigh two pounds. She said that she has found that people will spend more money on
23 their dogs, being willing to put down a co-payment, than people with cats and many
24 times the cat owners are not even interested in having their cat spayed or neutered. She
25 said that she does not just service Champaign County but travels to Newman and Villa
26 Grove to pick up cats.

27
28 Mr. Thorsland asked Ms. Warmbier to indicate how many volunteers would be present at
29 the facility at one time.

30
31 Ms. Warmbier stated that generally there is only one volunteer at the facility at a time
32 unless the hours overlap a little. She said that in the early hours of the morning they take
33 animals to other clinics for service and when they return they begin cleaning the facility.

34
35 Mr. Bluhm asked the Board if there were any additional questions for Ms. Warmbier and
36 there were none.

37
38 Mr. Bluhm asked if staff had any questions for Ms. Warmbier.

39
40 Mr. Hall asked Ms. Warmbier to indicate if there are clinics held at the property.

41
42 Ms. Warmbier stated that they spay and neuter the animals at the clinic which is located
43 in the structure that used to be a flower shop. She said that there are three different
44 veterinarians who offer their services for each clinic.

45
46 Mr. Hall asked Ms. Warmbier to indicate how often the spay/neuter clinics are held.

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1
2 Ms. Warmbier stated that normally the clinics are held once every couple of weeks. She
3 said that sometimes there may be a shorter period in between clinics if there is an animal
4 that has medical issues that need attending.
5
6 Mr. Hall asked Ms. Warmbier to indicate if the servicing veterinarian brings an assistant
7 with them.
8
9 Ms. Warmbier stated that sometimes an assistant will accompany the veterinarian.
10
11 Mr. Hall asked Ms. Warmbier to indicate if Adopt-a-thons are held at the subject
12 property.
13
14 Ms. Warmbier stated that she does not generally hold Adopt-a-thons at the subject
15 property. She said that one of the companies that really assists their project is Pet Smart
16 and she does not believe that the public is aware of their commitment to non-profit
17 organizations. She said that two or three times per year Pet Smart donates money to her
18 program and every other month they offer the program space for Adopt-a-thons.
19
20 Mr. Hall asked Ms. Warmbier if Dr. Duffee is still involved with the program.
21
22 Ms. Warmbier stated no, other veterinarians assist with the program.
23
24 Mr. Hall asked Ms. Warmbier if any of the assisting veterinarians have ownership in the
25 facility.
26
27 Ms. Warmbier stated no.
28
29 Mr. Hall asked Ms. Warmbier if the veterinarians volunteer their time or are they paid.
30
31 Ms. Warmbier stated that they do pay one of the veterinarians and the others are
32 volunteers. She said that the one veterinarian that they pay has volunteered at the
33 program for many years and even though she is not going to get rich from the program
34 they have decided to reimburse her for her services.
35
36 Mr. Hall stated that the floor plan of the studio only shows simple rectangles and
37 indicates that one of the rooms is a surgical room.
38
39 Ms. Warmbier stated that surgeries are performed on one side of the studio and surgery
40 preparations are done on the other side.
41
42 Mr. Hall recommended that the Board requests a more detailed floor plan of the studio.
43
44 Ms. Warmbier stated that the small side, indicated on the floor plan, is the surgical room.
45
46 Mr. Hall asked Ms. Warmbier if any plumbing was present at the studio.

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1
2 Ms. Warmbier stated yes, there is a toilet and a tub.
3
4 Mr. Hall asked Ms. Warmbier if she also has a facility in Oakwood.
5
6 Ms. Warmbier stated no.
7
8 Mr. Hall informed Ms. Warmbier that the dogs that are boarded at her facility are lucky
9 in that they have heated floors.
10
11 Ms. Warmbier stated that she is aware that some facilities only offer wood floors and no
12 elevated space for the animals to lie on. She said that if anyone spends much time on
13 concrete they will find that it never gets warm and she decided that her facility would
14 have heated floors for the animals.
15
16 Mr. Hall asked Ms. Warmbier if the kennel building originally consisted of a white rock
17 floor or was there a concrete floor when it was purchased.
18
19 Ms. Warmbier stated that a mud type floor existed in the pole barn. She said that she
20 visited many facilities to gain an idea of what she would like to have. She said that she
21 has placed a plastic wallboard on the walls of the facility for easily cleaning and used
22 removable tongue and grooved slats for the runs.
23
24 Mr. Hall asked Ms. Warmbier if the kennel building had a bathroom.
25
26 Ms. Warmbier stated yes.
27
28 Mr. Hall asked Ms. Warmbier if the bathroom was connected to the existing septic
29 system for the home.
30
31 Ms. Warmbier stated yes.
32
33 Mr. Hall asked Ms. Warmbier to indicate the use of the trench beside the dog runs which
34 is indicated in the floor plan of the kennel.
35
36 Ms. Warmbier stated that she picks up the solid waste located in the runs and then she
37 cleans and rinses the runs.
38
39 Mr. Hall asked Ms. Warmbier if the trench drain is connected to the existing septic
40 system for the home.
41
42 Ms. Warmbier stated yes.
43
44 Mr. Hall asked Ms. Warmbier if the existing septic system existed when she purchased
45 the home or did she have a new septic system installed.
46

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1 Ms. Warmbier stated that the existing septic system was there when they purchased the
2 property.
3
4 Mr. Bluhm asked Ms. Warmbier to indicate the disposal process for the solid waste.
5
6 Ms. Warmbier stated that the solid waste is bagged and placed in garbage cans at the
7 kennel and once full the cans are emptied into a dumpster that is kept besides the studio
8 building and picked up by a disposal service.
9
10 Mr. Hall stated that Ms. Warmbier indicated that she has flexible hours for pickup and
11 drop-offs. He asked Ms. Warmbier if she prefers that people call before they pickup or
12 drop-off.
13
14 Ms. Warmbier stated that she does prefer that people call before they pickup or drop-off
15 because she does not want to be at the facility 24 hours per day. She said that when you
16 deal with the public at an operation that is located on your property the public believes
17 that since you are home you are available for any services that they require.
18
19 Mr. Bluhm asked the Board if there were any additional questions for Ms. Warmbier and
20 there were none.
21
22 Mr. Bluhm asked the audience if there were any questions for Ms. Warmbier and there
23 were none.
24
25 Mr. Bluhm called Mr. Steve Burdin to testify.
26
27 Mr. Burdin stated that he erroneously signed the witness register for this case and is only
28 in attendance to address Addendum Item #8.A.
29
30 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present
31 testimony regarding Case 655-S-09 and there was no one.
32
33 Mr. Bluhm closed the witness register for Case 655-S-09.
34
35 Mr. Hall requested that Ms. Warmbier return to the witness stand for additional
36 questions.
37
38 Mr. Hall stated that the last two goals of the Anti-Cruelty Program indicate that they
39 desire to educate people in appropriate care and the importance of spaying and neutering
40 their animals. He asked Ms. Warmbier if she does this education when people bring their
41 animals to the facility or are classes conducted at the facility.
42
43 Ms. Warmbier stated that they do not hold classes at the facility. She said that the
44 education is done on a one-to-one basis. She said that her son has developed a game that
45 can be modified to different age groups educating them about appropriate care of their
46 animals. She said that they deal with so many people at Pet Smart and even though those

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1 folks are there to purchase pet supplies they also require education about their pets.

2
3 Mr. Hall asked Ms. Warmbier to indicate if only one-half of the kennel building is
4 utilized for kennel space and the remaining one-half is used for storage.

5
6 Ms. Warmbier stated that Mr. Hall was correct. She said that the area for storage is filled
7 with crates, dog traps and other supplies. She said that the storage area has shelving and
8 is organized and all of the items in storage are used for the facility.

9
10 Mr. Hall asked Ms. Warmbier if she had any exterior signs.

11
12 Ms. Warmbier stated no. She said that after she received the notice of violation she was
13 afraid to install any signs for fear she would get in further trouble.

14
15 Mr. Hall informed Ms. Warmbier that if she desired to install a sign in the future then it
16 should be indicated on the site plan along with dimensions and placement. He said that
17 staff can provide the sign requirements for Ms. Warmbier's information.

18
19 Ms. Warmbier stated that she will consider this information.

20
21 Mr. Hall stated that Ms. Warmbier's application indicated breeding and he requested that
22 she indicate whether she intends to breed at the facility or did she only indicate such
23 because of the definition of a kennel.

24
25 Ms. Warmbier stated that she did not indicate that she intends to do any breeding at the
26 facility and she finds it hard to believe that she would indicate such. She said that if the
27 application indicates such then it is incorrect. She said that at one time she owned some
28 of the top German Shepherds in the nation and she is not against people that breed quality
29 dogs but she is against the breeding of purebred dogs with the dog across the street just
30 because they can. She said that she has bred a couple of litters of shepherds and she does
31 own a few shepherds but she did not purchase the building for breeding.

32
33 Mr. Bluhm asked the Board if they had any questions that they would like answered at
34 the next public hearing.

35
36 Mr. Thorsland asked Mr. Hall if it is important to know the estimated capacity of the
37 existing septic system since three buildings are being dumped into one existing system.

38
39 Mr. Hall stated that he is not aware of how many bedrooms exist in the home but if it was
40 a four bedroom septic system originally and the only people who currently live in the
41 home are Mr. and Mrs. Warmbier then even with the kennel activities it is possible that
42 the septic system is experiencing less loading than it should have been seeing. He asked
43 if the Board would like staff to clarify if the system is being used at an appropriate level.
44 He said that staff's discussion with Mr. Jeff Blackford, Champaign County Public Health
45 Department, indicated that this is an issue for the Health Department because they are
46 using the existing home's septic system for the kennel. He said that the only way to

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1 really know if this will result in a problem is to have the Health Department investigate it
2 or the Board could impose a condition that if a septic system problem develops the
3 owners will need to work with the Health Department to put in an adequately sized
4 appropriate system.

5
6 Mr. Thorsland agreed with such a proposed condition. He said that he passes the
7 property many times and he has never seen a backhoe on the property.

8
9 Ms. Warmbier stated that there is a backhoe on the property currently because they are
10 trying to remove a concrete step on the property.

11
12 Mr. Bluhm stated that if the solids are being picked up and disposed of the water influent
13 is the only thing that is traveling to the septic system.

14
15 Ms. Warmbier stated that she also picks up any hair that travels to the drains because she
16 does not want the hair to cause any issues with the septic system.

17
18 Mr. Hall stated that the Board should request a site plan that indicates the outdoor runs
19 with dimensions because the photograph illustrates some really nice dog runs yet they are
20 not indicated on the submitted plan. He said that he would also recommend that parking
21 spaces, possible location of a future sign and the septic system also be indicated on the
22 revised site plan.

23
24 Mr. Bluhm asked Mr. Hall if there is anything specified in the submitted information
25 regarding a quarantine area.

26
27 Mr. Hall stated no.

28
29 Ms. Warmbier stated quarantined animals are regulated under the Illinois Department of
30 Agriculture and they do not have a quarantined area at the facility. She said that sick
31 animals are taken to the veterinarian's facility.

32
33 Ms. Capel asked Mr. Hall if he still had concerns regarding accessibility.

34
35 Mr. Hall stated that he does still have concerns regarding accessibility. He said that he
36 will speak with Mr. and Mrs. Warmbier prior to the next public hearing and review the
37 thresholds in the *Environmental Barriers Act*. He said that at the most it would involve
38 investigating if the existing door into the kennel was the door that was there originally
39 and is it accessible. He said that the *Environmental Barriers Act* may indicate that the
40 door must be accessible.

41
42 Ms. Capel asked Mr. Hall if the bathroom must be accessible.

43
44 Mr. Hall stated yes, because the bathroom is all brand new. He said that it appears that
45 there has been some significant remodeling done at the property therefore staff will need
46 to make an appointment with Mr. and Mrs. Warmbier to investigate whether or not the

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1 bathroom and the rest of the facility are accessible. He said that it is his understanding
2 that the dogs are kept in at night and he would recommend that this be made a condition.
3 He said that the number of animals that can be taken care of is presumably limited by the
4 amount of space that Mr. and Mrs. Warmbier have to do it in and that space is fixed by
5 what is indicated on the plans before the Board. He said that the space cannot be
6 enlarged without obtaining a new special use permit and staff must make sure that Mr.
7 and Mrs. Warmbier understand this information. He said that any expansion would be
8 unauthorized and would be a violation. He said that a classic problem with any special
9 use permit is to make it big enough to accommodate any foreseeable needs but do not
10 make it so big that it is hard to obtain approval. He said that if nine dog runs is all that
11 will be required for the foreseeable future then that is a pretty modest number and the cat
12 room may also be adequate. He said that if any addition space is required for the cat
13 room then it needs to be included on the current plans.

14
15 Ms. Capel asked if it would be feasible to discuss a limit on the number of cats at the
16 facility at one time.

17
18 Mr. Hall stated that it is up to the Board.

19
20 Ms. Capel stated that it makes sense to limit the number of cats that can be on the
21 property at any given time.

22
23 Mr. Hall asked Ms. Warmbier how many cats are normally in the cat room and is there a
24 maximum that she desires currently.

25
26 Mr. Palmgren asked Ms. Warmbier if the cats in the cat room are running free or are they
27 in cages.

28
29 Ms. Warmbier stated that she has no plans to add on. She said that some of the cats are
30 caged and some of them run free and they have a 20' x 20' concrete run to the outside
31 that they can access. She said that she would desire to only have 10 cats but that is not a
32 feasible number therefore she would imagine that 50 or 60 cats would be a good
33 maximum. She said that some of the cats go to Pet Smart every month and it may take a
34 year before they are found a home. She said that she will not say that she does not
35 believe in euthanasia and some groups will tell you that they never euthanize an animal,
36 which in her opinion, is a bunch a bologna. She said that no one likes to euthanize an
37 animal but sometimes they have to do it. She said that it doesn't take very many mother
38 cats to have a litter of kittens and just last night she traveled to Newman where she
39 received six kittens and two adult cats. She said that they are licensed as a shelter and it
40 is hard to be in the animal business and tell someone that the facility is full.

41
42 Mr. Thorsland asked Ms. Warmbier if the licensing process limits the number of animals
43 that can be at the facility.

44
45 Ms. Warmbier stated yes. She said that the inspector investigates the facility to make
46 sure that all records are present and current and that all of the animals are as healthy as

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1 possible.

2

3 Mr. Thorsland asked Ms. Warmbier if she is below the limit.

4

5 Ms. Warmbier stated that she would say that she is probably right at the limit. She said
6 that she has been licensed for years and has also been a licensed investigator therefore
7 she tries to stay within the limits.

8

9 Mr. Hall asked Ms. Warmbier if the inspections were annual.

10

11 Ms. Warmbier stated that a facility is not notified by the inspectors as to when they are
12 going to arrive for an inspection. She said that she has had one person constantly
13 complain about the facility and this person has contacted everyone that they can think of
14 to investigate the property and they have with no findings. She said that they are not a
15 big facility and she does not desire to get any bigger.

16

17 Mr. Bluhm asked Ms. Warmbier if there is a disposal service that picks up the euthanized
18 animals.

19

20 Ms. Warmbier stated yes.

21

22 Ms. Capel stated that she believes that 75 cats would be a reasonable number present at
23 the facility at one time.

24

25 Ms. Warmbier stated that she agrees with a limit of 75 cats.

26

27 Mr. Bluhm asked Ms. Warmbier to indicate the fee charged for the adoption of a cat.

28

29 Ms. Warmbier stated that the fee for a kitten is \$115 and the fee includes spaying or
30 neutering, distemper shots, worming, blood work, etc. She said that a normal veterinary
31 clinic would charge \$200 for everything that the kittens will have had at \$115.

32

33 Mr. Hall stated that pertinent information was received tonight regarding how big the
34 veterinarian activities are in comparison to the boarding and he is relieved to know that
35 Adopt-a-thons are not being held at the subject property. He said that if the Board does
36 not include a condition about no Adopt-a-thons does the Board have any concerns about
37 any events that might occur on the property. He reminded the Board that this is a use that
38 will be there even when the Warmbiers are gone and they have already put in a
39 significant investment into the property but any conditions that are imposed will constrain
40 any future owners.

41

42 Mr. Courson asked Mr. Hall if since the Warmbiers live on the subject property could the
43 facility be considered a home based business therefore qualifying for a home occupation
44 permit

45

46 Mr. Hall stated that the special use becomes the principal use and the dwelling becomes

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1 the accessory use. He said that the basic perimeter is that the number of the dog runs, the
2 size of the cat room, the number of cats will be affixed to the special use and any
3 expansion would require new approval. He said that perhaps it is at the point that the
4 Board believes that there will not be any problems with someone buying the kennel and
5 operating it in the same manner with nine dog runs, the same sized cat room and the same
6 number of cats.

7
8 Mr. Schroeder would like to be assured that Ms. Warmbier can sell the facility without
9 going through this process again.

10
11 Mr. Hall stated that as a special use permit if Mr. and Mrs. Warmbier wanted to they
12 could just live on the subject property and have someone else run and operate the kennel.

13
14 Mr. Courson asked Mr. Hall how many employees could be on the property at any one
15 time.

16
17 Mr. Hall stated that the Board has not set any limit on the number of
18 volunteers/employees that can be present at the facility at any given time. He said that it
19 appears that Mr. and Mrs. Warmbier have more than several volunteers although the
20 number of volunteers that are present at the facility at any one time is limited. He said
21 that given that the size is limited he could not imagine any benefit from having 10 or 20
22 employees in some kind of future arrangement and does not foresee that as becoming
23 problem.

24
25 Ms. Capel asked Mr. Hall if there is a special use permit could Mr. and Mrs. Warmbier
26 apply for a license to have special events or can the special use permit be set up in such a
27 manner to allow special events.

28
29 Mr. Hall stated that it is his opinion that once a special use permit is approved a
30 temporary use permit is no longer an option because if those temporary uses are not part
31 of the special use permit then they are by definition an expansion. He said that this is
32 why staff encourages applicants to think about any future large events that would not
33 match their normal events included in the special use permit so that they can obtain the
34 Board's approval for those large events. He said that it appears that Mr. and Mrs.
35 Warmbier do not have this need at this time.

36
37 Mr. Bluhm requested a continuance date.

38
39 Mr. Hall stated that it appears that the December 17th meeting is the next available date
40 for a continuance. He reminded the Board that the December 17th meeting will be held in
41 Meeting Room 2 and it is also a meeting that the Board has considered cancelling.

42
43 **Mr. Thorsland moved, seconded by Mr. Palmgren to continue Case 655-S-09, Judith**
44 **and Gerald Warmbier to the December 17, 2009, meeting. The motion carried by**
45 **voice vote.**

CASE NO. 655-S-09

SUPPLEMENTAL MEMORANDUM

December 11, 2009

Champaign
County
Department of



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

(217) 384-3708
FAX (217) 328-2426

Petitioners: **Judith and Gerald Warmbier**

Site Area: **approx. 5 acres**

Time Schedule for Development:
N/A (Already Developed)

Prepared by:
John Hall
Zoning Administrator

Request: **Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet.**

Location: **A five acre tract in the East Half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR750E, Champaign.**

STATUS

This case was continued from the October 29, 2009, meeting. The minutes of that case are included separately and have already been approved. Relevant testimony has been excerpted and summarized where relevant in the Summary of Evidence.

Special conditions of approval are proposed and included below.

SPECIAL CONDITIONS OF APPROVAL

The following proposed special conditions of approval are including in the Summary of Evidence:

- A. The following condition is necessary to fully document that the special use permit has been approved and is necessary to ensure compliance with all other special conditions of approval:

The petitioner shall apply for a Change of Use Permit within 30 days of the approval of the special use permit.

The above condition is necessary to ensure the following:

Compliance with the Zoning Ordinance within a reasonable time frame.

- B. The following condition recognizes there is a practical limit on the number of cats that can be rescued at this special use:

The cat population at the special use shall be limited to no more than 75 cats of any age

The above condition is necessary to ensure the following:

The petitioner can achieve their mission of animal rescue while preserving the essential character of and not being injurious to the district.

- C. Compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code is required and the County cannot waive these requirements. Compliance requires the following:

If not already installed, the petitioner shall install an accessible entrance in conformance with the Illinois Accessibility Code at both the kennel building and the studio building within one year of the approval of the special use permit, unless this requirement is waived by the Capitol Development Board

The above condition is necessary to ensure the following:

The safety and welfare of the public and that the special use is readily accessible to and usable by environmentally limited persons.

- D. The neighbors state that the animals on the subject property do not present a problem or nuisance to them because the dogs are placed inside every evening to prevent any problems with the neighboring property. The following condition requires the owner of the kennel to ensure that this practice continues:

The kennel shall be managed to ensure that the dogs do not have free access to the exterior from dusk to dawn.

The above condition is necessary to ensure the following:

The kennel does not become injurious to the district.

- E. The existing septic system is being used for a purpose that was not originally intended but the actual loading of the system may be within allowable limits. Any repair or replacement that will eventually be required should receive any necessary approval and permitting from the proper authority as required by the following special condition:

Any repair or replacement of the septic system shall be in conformance with and approved by either the Champaign County Health Department or the Illinois Department of Agriculture, whichever agency has proper jurisdiction depending upon the type of repair that is required or the type of replacement system that is installed.

The above condition is necessary to ensure the following:

Protection of public health.

ATTACHMENTS

- A Approved minutes for Case 655-S-09 from the October 29, 2009, meeting
B Revised Summary of Evidence and Draft Finding of Fact
-

REVISED DRAFT

655-S-09

**SUMMARY OF EVIDENCE, FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: **{GRANTED / GRANTED WITH CONDITIONS / DENIED}**

Date: December 17, 2009

Petitioners: Judith and Gerald Warmbier

Request: Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet.

SUMMARY OF EVIDENCE

From the documents of record and the testimony and exhibits received at the public hearing conducted on **October 29, 2009**, and **December 17, 2009**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioners, Judith and Gerald Warmbier, own the subject property.
2. The subject property is a five acre tract in the East Half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR750E, Champaign.
3. Regarding municipal and township jurisdiction:
 - A. The subject property is located within the one-and-one-half mile extraterritorial jurisdiction (ETJ) of the Village of Mahomet. Municipalities with zoning do not have protest rights on Special Use Permits within their ETJ, however they do receive notice of such cases and they are invited to comment.
 - B. The subject property is located in Hensley Township, which has a plan commission. Townships with plan commissions do not have protest rights on Special Use Permits located in their townships, however they do receive notice of such cases and they are invited to comment.

GENERALLY REGARDING LAND USE AND ZONING IN THE IMMEDIATE VICINITY

4. Land use and zoning on the subject property and in the vicinity are as follows:
 - A. The subject property is zoned AG-1 Agriculture and is in use as a single family dwelling and Prairieland Dog Boarding, an unauthorized, nonconforming kennel, and Prairieland Anti-Cruelty Program, an unauthorized animal rescue operation, that is the subject of this case.
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Item 4. (continued)

- B. Land on all sides of the subject property is zoned AG-1 Agriculture.
- C. Land to the west of the subject property is in use as a single family dwelling.
- D. Land to the north, east, and south of the subject property is in use as farmland.

GENERALLY REGARDING THE PROPOSED SPECIAL USE

- 5. Regarding the proposed site plan and operations of Prairieland Anti-Cruelty Program, there are three buildings that make up the proposed Special Use, as follows:
 - A. The kennel building appears to be a metal clad former agriculture-related building that is approximately 40 feet by 65 feet and is located on the southern lot that makes up the subject property. It has one overhead door and one regular door both located on north side of the building and another regular door on the west side of the building. The interior of the building was remodeled and converted to a kennel sometime after 2001, as follows:
 - (1) There is an office just inside the north door that leads into the rest of the kennel.
 - (2) A four foot wide hallway grants access to the rest of the kennel. The dog runs are on the west side of the hallway and there are four rooms on the east side of the hallway that serve multiple purposes, as follows:
 - (a) There is a bathroom.
 - (b) There is a utility room with the furnace, a washer/dryer, a tub, and a water heater.
 - (c) There is a cat room. The capacity of this cat room is not indicated.
 - (d) The final room is a storage room.
 - (3) There is a note indicating that there are nine dog runs that are five feet by five feet inside, but are advertised to extend outside the building as well. There seems to be some discrepancy between the note and the way the kennels are drawn on the floor plan. The kennels are advertised to have heated concrete floors.
 - (4) There is no indication what is done with the rest of the kennel building outside the area used as a kennel.
 - (5) There is no information regarding whether or not there is a septic system that serves the kennel building and if there is whether or not it is a new system that serves only the kennel or a pre-existing system that serves the kennel and any of the other buildings on the subject property, such as the house.

Item 5.A. (continued)

- (6) At the October 29, 2009, public hearing co-petitioner Judy Warmbier testified as follows regarding the improvements made in the kennel building:
- (a) She said that there are nine, 5' x 15' runs attached to the building .
 - (b) She stated that a mud type floor existed in the pole barn but they have installed that heated floors for the dogs comfort.
 - (c) She said that she has placed a plastic wallboard on the walls of the facility for easily cleaning and used removable tongue and grooved slats for the runs.
 - (d) She said that the dog runs have a trench drain that is connected to the existing septic system for the home.
 - (e) She said the kennel building has a bathroom that is connected to the existing septic system for the home.
 - (f) She stated that only one-half of the kennel building is utilized for kennel space and the remaining one-half is used for storage. She said that the area for storage is filled with crates, dog traps and other supplies. She said that the storage area has shelving and is organized and all of the items in storage are used for the facility.
 - (g) She said that some of the cats in the cat room are caged and some of them run free and they have a 20' x 20' concrete run to the outside that they can access.
- B. There is a second building on the southern lot that is labeled as a dog run, but no other information regarding this building is available at this time.
- C. Near the home on the northern lot is a building labeled as a studio that is 18 feet by 30 feet overall and it too was remodeled and is separated into two rooms, as follows:
- (1) One of the rooms in the building is 18 feet by 19 feet and the other room is 11 feet by 18 feet.
 - (2) The petitioners have indicated that activities which take place in the studio building include an office for record keeping, spaying and neutering, vaccinations, and animal bathing. There is no indication on the floor plan which activities take place in which room, nor is there any explanation of when the spaying, neutering and vaccination services are provided nor whether those services are provided by a licensed veterinarian.
 - (3) At the October 29, 2009, public hearing co-petitioner Judy Warmbier testified as follows regarding the improvements made in the studio building:
 - (a) She stated that surgeries are performed on one side of the studio and surgery preparations are done on the other side.
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Item 5.C.(3) (continued)

(b) She stated that the small side, indicated on the floor plan, is the surgical room.

(c) She stated that there is a toilet and a tub in the Studio building.

D. Regarding the operations of Prairieland Anti-Cruelty Program:

- (1) The proposed Special Use appears to include elements of a kennel, veterinary hospital, and animal rescue.
- (2) The petitioners have indicated they have no employees, but their website indicates they use volunteers for many of their day to day operations.
- (3) The petitioners have indicated they dispose of solid animal waste in airtight bags that are placed in a dumpster before being removed from the property. Liquid waste is indicated to go to a septic tank.
- (4) The petitioners indicate that dogs and cats will be kept, boarded, bred, or retained for compensation.
- (5) The petitioners indicate they are in compliance with all state and local requirements they are aware of.

E. At the October 29, 2009, public hearing co-petitioner Judy Warmbier testified as follows regarding the operations of the proposed kennel:

- (1) She said that she lived in Mahomet for 25 years and had four runs where she boarded dogs and kept very busy.
- (2) She couldn't think of anything to do to make extra money for the program so she decided that she could board animals and turn 1/3rd of the agricultural building into a kennel.
- (3) She said that she is licensed with the State of Illinois and has been for many years without a violation. Regarding the licensing:
 - (a) She said that the licensing process limits the number of animals that can be at the facility.
 - (b) She said that the inspector investigates the facility to make sure that all records are present and current and that all of the animals are as healthy as possible.
 - (c) She stated that a facility is not notified by the inspectors as to when they are going to arrive for an inspection.
 - (d) She said that she is probably right at the limit for animals at this facility.

Item 5.E.(3) (continued)

- (e) She said that she has been licensed for years and has also been a licensed investigator therefore she tries to stay within the limits.
- (f) She said that they are not a big facility and she does not desire to get any bigger.
- (4) She stated that she did not realize that she needed approval to operate her program at the current property.
- (5) She said that she does not just service Champaign County but travels to Newman and Villa Grove to pick up cats. She said that in the early hours of the morning they take animals to other clinics for service and when they return they begin cleaning the facility.
- (6) She stated that they service cats and dogs.
- (7) She stated there are volunteers who come to the facility during the day to assist her in keeping the facility clean. She stated that generally there is only one volunteer at the facility at a time unless the hours overlap a little.
- (8) She prefers that people call before they pickup or drop-off dogs to be boarded.
- (9) Regarding cleaning of the dog runs:
 - (a) She stated that the solid waste is bagged and placed in garbage cans at the kennel and once full the cans are emptied into a dumpster that is kept besides the studio building and picked up by a disposal service.
 - (b) After picking up the solid waste in the runs and she cleans and rinses the runs into the trench drain that is connected to the existing septic system for the home.
 - (c) She also picks up any hair that travels to the drains because she does not want the hair to cause any issues with the septic system. She stated that water is the only thing that is traveling to the septic system.
- (10) She said that she has bred a couple of litters of shepherds and at one time she owned some of the top German Shepherds in the nation and she does own a few shepherds but she did not purchase the building for breeding.
- (11) Regarding the number of cats and cats in general:
 - (a) She stated she has approximately 50 cats currently at the facility.
 - (b) She said that she would desire to only have 10 cats but that is not a feasible number therefore she would imagine that 50 or 60 cats would be a good maximum.

Item 5.E.(11) (continued)

- (c) She said that some of the cats go to Pet Smart every month and it may take a year before they are found a home.
 - (d) She said that no one likes to euthanize an animal but sometimes they have to do it.
 - (e) She stated that there is a disposal service that picks up the euthanized animals.
 - (f) She said that they do not allow the cats to multiply and when a mother and kittens are brought to the facility they spay and neuter the kittens when they weigh two pounds.
 - (g) She said that she has found that people will spend more money on their dogs, being willing to put down a co-payment, than people with cats and many times the cat owners are not even interested in having their cat spayed or neutered.
 - (h) She stated that the fee for a kitten is \$115 and the fee includes spaying or neutering, distemper shots, worming, blood work, etc. She said that a normal veterinary clinic would charge \$200 for everything that the kittens will have had at \$115.
 - (i) She believes that 75 cats would be a reasonable number present at the facility at one time.
 - (j) Ms. Warmbier stated that they do not hold classes at the facility. She said that the education is done on a one-to-one basis. She said that her son has developed a game that can be modified to different age groups educating them about appropriate care of their animals. She said that they deal with so many people at Pet Smart and even though those folks are there to purchase pet supplies they also require education about their pets.
 - (k) She stated that she does not generally hold Adopt-a-thons at the subject property. She said that one of the companies that really assists their project is Pet Smart and two or three times per year Pet Smart donates money to her program and every other month they offer the program space for Adopt-a-thons.
- (12) Regarding veterinary services performed at the kennel:
- (a) She stated they are basically a spay/neuter service for pets for low income people.
 - (b) She said that she has been involved in this service for over 30 years with the same veterinarian.
 - (c) She said that they have three different veterinarians that assist with the operation and a surgical room has been set up in the structure that used to be a flower shop.
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Item 5.E.(12) (continued)

- (b) She said that the veterinarians are not at the facility on a daily basis but may only be present once every two weeks, depending upon the schedule and number of animals present at that time and they also utilize clinics.
- (e) She said that sometimes there may be a shorter period in between clinics if there is an animal that has medical issues that need attending.
- (f) She stated that sometimes an assistant will accompany the veterinarian.
- (g) She stated that none of the assisting veterinarians have any ownership in the facility.
- (h) She stated that they do pay one of the veterinarians and the others are volunteers. She said that the one veterinarian that they pay has volunteered at the program for many years and even though she is not going to get rich from the program they have decided to reimburse her for her services.
- (i) She said that sick animals are taken to the veterinarian's facility.

F. The petitioners provided a letter from neighbors Kevin and Christina Mitchaner who live at 745 CR 2175N who state that the animals on the subject property are well cared for and do not present a problem or nuisance to them. The dogs are placed inside every evening to prevent any problems with the neighboring property.

G. The petitioners have also provided a copy of their license from the Illinois Department of Agriculture Bureau of Animal Health and Welfare. It states the petitioners have met the requirements of the Illinois Animal Welfare Act and it expires annually on June 30.

GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS

- 6. Regarding authorization for a Kennel as a Special Use in the AG-1 Agriculture Zoning District in the *Zoning Ordinance*:
 - A. Section 5.2 authorizes Kennels as a Special Use in the CR, AG-1, AG-2, and B-4 Districts.
 - B. Section 6.1.3 establishes the following standard conditions for any Kennel:
 - (1) A minimum Lot Area of one acre.
 - (2) Enclosed KENNELS shall not permit animals to be kept either temporarily or permanently outside the KENNEL.
 - (3) One SINGLE FAMILY DWELLING may be permitted on the site provided it is for occupancy by the OWNER or employee of the KENNEL.

Item 6.B. (continued)

- (4) KENNELS where animals are kept either temporarily or permanently outside of the KENNEL shall adhere to the following requirements:
 - (a) Provide a six foot wire mesh fence to encompass outdoor animal exercise and/or training area.
 - (b) Any outdoor animal exercise and/or training area shall be 200 feet from any adjacent residential STRUCTURE and/or USE and shall have a noise buffer of evergreen shrubs or trees a minimum of four feet in HEIGHT installed separating the exercise and/or training area from any adjacent residential STRUCTURE and/or USE.
 - (5) Maintain a SIDE YARD setback and a REAR YARD setback of 200 feet.
- C. Paragraph 9.1.11.D.1. states that a proposed Special Use that does not conform to the standard conditions requires only a waiver of that particular condition and does not require a variance. Waivers of standard conditions are subject to findings (1) that the waiver is in accordance with the general purpose and intent of the ordinance and (2) will not be injurious to the neighborhood or to the public health, safety, and welfare.
- D. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Special Use Permit (capitalized words are defined in the Ordinance):
- (1) "ACCESSORY BUILDING" is a BUILDING on the same LOT with the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE, either detached from or attached to the MAIN or PRINCIPAL STRUCTURE, and subordinate to and used for purposes customarily incidental to the MAIN or PRINCIPAL STRUCTURE, or the main or principal USE.
 - (2) "DWELLING UNIT" is one or more rooms constituting all or part of a DWELLING which are used exclusively as living quarters for one FAMILY, and which contains a bathroom and kitchen.
 - (3) "KENNEL" is a LOT or PREMISES on which six or more dogs or six or more cats (or any combination thereof) at least six months of age are kept, boarded, bred, or retained for compensation; or a LOT or PREMISES on which dogs and/or cats are raised and offered for sale, adoption, or exchange, with or without compensation.
 - (4) "LOT" is a designated parcel, tract or area of land established by PLAT, SUBDIVISION or as otherwise permitted by law, to be used, developed or built upon as a unit.
 - (5) "SPECIAL CONDITION" is a condition for the establishment of the SPECIAL USE.
 - (6) "SPECIAL USE" is a USE which may be permitted in a DISTRICT pursuant to, and in compliance with, procedures specified herein.
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Item 6. D. (continued)

- (7) "STRUCTURE, MAIN or PRINCIPAL" is the STRUCTURE in or on which is conducted the main or principal USE of the LOT on which it is located.
 - (8) "VETRINARY HOSPITAL" is a place where animals or pets are given medical or surgical treatment by a licensed veterinarian. Use as a KENNEL shall be limited to short term boarding and shall only be incidental to a veterinary hospital use.
- E. Section 9.1.11 requires that a Special Use Permit shall not be granted by the Zoning Board of Appeals unless the public hearing record and written application demonstrate the following:
- (1) That the Special Use is necessary for the public convenience at that location;
 - (2) That the Special Use is so designed, located, and proposed as to be operated so that it will not be injurious to the DISTRICT in which it shall be located or otherwise detrimental to the public welfare;
 - (3) That the Special Use conforms to the applicable regulations and standards of and preserves the essential character of the DISTRICT in which it shall be located, except where such regulations and standards are modified by Section 6.
 - (4) That the Special Use is in harmony with the general purpose and intent of this ordinance.
 - (5) That in the case of an existing NONCONFORMING USE, it will make such USE more compatible with its surroundings.
- F. Paragraph 9.1.11.D.2. states that in granting any SPECIAL USE permit, the BOARD may prescribe SPECIAL CONDITIONS as to appropriate conditions and safeguards in conformity with the Ordinance. Violation of such SPECIAL CONDITIONS when made a party of the terms under which the SPECIAL USE permit is granted, shall be deemed a violation of this Ordinance and punishable under this Ordinance.

GENERALLY REGARDING WHETHER THE SPECIAL USE IS NECESSARY FOR THE PUBLIC CONVENIENCE AT THIS LOCATION

7. Generally regarding the *Zoning Ordinance* requirement that the proposed Special Use is necessary for the public convenience at this location:
- A. The Petitioner has testified on the application, **"The public has expressed a need of a kennel. We used to board in a different location and many of our old customers are coming back to us."**
 - B. The proposed use is located in a rural area with a low density of residential uses.
 - C. The proposed use appears to include much more than a simple boarding kennel and includes the Prairieland Anti-Cruelty Program which has the following goals:

Item 7.C. (continued)

- (1) To improve the welfare of animals whose owners have limited funds and resources.
- (2) To assist in the spaying/neutering of these pets to prevent unwanted litters that contribute to the problems of pet overpopulation.
- (3) To educate people about the appropriate care of animals through proper nutrition, shelter, and veterinary care.
- (4) To educate people about the importance of spaying/neutering in population control, because unwanted animals never receive adequate care.

GENERALLY REGARDING WHETHER THE SPECIAL USE WILL BE INJURIOUS TO THE DISTRICT OR OTHERWISE INJURIOUS TO THE PUBLIC WELFARE

8. Generally regarding the *Zoning Ordinance* requirement that the proposed Special Use be designed, located, and operated so that it will not be injurious to the District in which it shall be located, or otherwise detrimental to the public welfare:
 - A. The Petitioner has testified on the application, **“Our kennel will be kept in a sanitary manner. We remove solid waste, bagging it in airtight bags and putting it into a dumpster. Liquid waste goes into a septic tank.”**
 - B. Regarding surface drainage, the subject property is not located in a low area. The amount of impervious area on the subject property does not trigger any requirement for stormwater detention under the *Champaign County Stormwater Management Policy*.
 - C. The subject property is accessed from CR 750E (Lindsey Road) on the east side of the property and is located between 1.5 and two miles from US 150. Regarding the general traffic conditions on CR 750E at this location and the level of existing traffic and the likely increase from the proposed Special Use:
 - (1) The Illinois Department of Transportation measures traffic on various roads throughout the County and determines the annual average 24-hour traffic volume for those roads and reports it as Average Daily Traffic (ADT). The most recent ADT data, in the vicinity of the subject property, is from 2006, as follows:
 - (a) Along CR 750E where it passes the subject property the ADT is 500 trips.
 - (b) CR 2175N is the nearest cross street to CR 750E and it has 650 ADT where it passes the subject property.
 - (c) It is difficult at this time to estimate the amount of increase from the proposed use because of the diversity of proposed uses.
 - (2) The Township Road Commissioner has been notified of this case, but no comments have been received as of yet.

Item 8. (continued)

- D. Regarding fire protection of the subject property, the subject property is within the protection area of the Cornbelt Fire Protection District and is located approximately 5.5 road miles from the fire station. The fire protection district has been notified of this request, but no comments have been received at this time.
- E. The subject property is not located within a Special Flood Hazard Area.
- F. Regarding outdoor lighting on the subject property, there is no information on the current site plan regarding outdoor lighting for any purpose. However, in one of the photographs of the kennel building submitted by the petitioners there appears to be a light pole located near the northwest corner of the kennel building.
- G. Regarding subsurface drainage, the subject property does not appear to contain any agricultural field tile.
- H. There is no information about the hours of operation of the proposed Special Use Permit.
- I. Regarding wastewater treatment and disposal on the subject property:
 - (1) There is no information available at this time regarding the kennel's wastewater treatment system.
 - (2) The northern lot appears to be comprised mainly of Parr silt loam (map unit 221B) which has a high soil potential index rating of 100.
 - (3) The southern lot appear to be comprised mainly of Raub silt loam (map unit 481A) which has a medium soil potential index rating of 79.
 - (4) There is also no information on the site plan regarding where the waste containers that will store solid waste from animals are being kept.
- J. Neighbors Kevin and Christina Mitchaner, 745 CR 2175N, submitted a letter to the petitioners who submitted to staff on September 28, 2009. The letter states that the animals on the subject property are well cared for and do not present a problem or nuisance to them. The dogs are placed inside every evening to prevent any problems with the neighboring property
- K. It is difficult to evaluate whether the proposed Special Use will generate either nuisance conditions such as noise, vibration, glare, heat, dust, electromagnetic fields or public safety hazards such as fire, that are in excess of those lawfully permitted and customarily associated with other uses permitted in the zoning district due to a lack of information regarding the following:
 - (1) The actual number and types of animals that are present on the subject property at any one time.

Item 8. K. (continued)

- (2) The actual services offered and the number of customers on busy days.
- (3) The number of volunteers required to operate and the hours of operation for the actual services offered.
- (4) Other relevant missing information is discussed elsewhere in the Summary of Evidence.

GENERALLY REGARDING WHETHER THE SPECIAL USE CONFORMS TO APPLICABLE REGULATIONS AND STANDARDS AND PRESERVES THE ESSENTIAL CHARACTER OF THE DISTRICT

9. Generally regarding the *Zoning Ordinance* requirement that the proposed Special Use conform to all applicable regulations and standards and preserve the essential character of the District in which it shall be located, except where such regulations and standards are modified by Section 6 of the Ordinance:
 - A. The Petitioner has testified on the application, **“Yes, our kennel plans fit well within the uses as outlined in the Champaign Standards outlined in the Champaign County Zoning Ordinance, Section 6.”**
 - B. Regarding compliance with the *Zoning Ordinance*:
 - (1) The proposed use appears to meet the definition of a KENNEL in the *Zoning Ordinance* and also includes some elements of a VETERINARY HOSPITAL, both of which are allowed in the AG-1 Zoning District by Special Use Permit.
 - (2) The proposed Special Use complies with all area and placement requirements for the AG-1 District in Section 5.3. However, Subsection 6.1.3 has greater requirements for side and rear yard and separation to the nearest residential structure which are reviewed below in Item 9.B.(4).
 - (3) Regarding parking on the subject property,
 - (a) In previous Zoning Cases regarding kennels it has been established that the parking requirements for a kennel are the same as for a boarding stable. Subparagraph 7.4.1C.3.h requires that riding stables provide one off-street parking space per three horses boarded, one for each horse trailer, and one for each employee.
 - (b) Regarding minimum required parking for the kennel building:
 - i. The floor plan of the kennel building indicates there are nine dog runs which would require three parking spaces.
 - ii. There is also a cat room, but there is no information regarding the capacity of the cat room. It is not clear that clients will visit the property to adopt cats but if so it would be reasonable to require at least one parking space for the cat room.

Item 9.B.(3)(b) (continued)

- iii. Although there are no paid employees that work on the site the website indicates that the proposed use does have volunteer workers. ~~There is no information regarding how many volunteers may be present on the subject property at one time.~~ Petitioner Judy Warmbier testified on November 12, 2009, there is generally one volunteer at the facility at a time unless the hours overlap a little. Thus, two employee spaces are required.
 - iv. The kennel requires a minimum of five to six parking spaces.
- (c) Regarding the minimum required parking for the veterinary services that are offered:
- i. Section 7.4.1 C. 3.g. establishes the minimum parking requirements for animal hospitals and clinics of one space for each employee plus three parking spaces for each visiting physician.
 - ii. There is only one surgical room in the proposed kennel and the petitioner has testified that the attending veterinarian sometimes has an assistant so the surgical room requires a minimum of four parking spaces.
- (d) The site plan shows two driveways on the subject property. One of the drives is for the house on the subject property. The other driveway serves the studio and kennel building and appears to be approximately 2900 square feet in area.
- (e) According to the *Zoning Ordinance* standard of 300 square feet for each parking space, which includes parking spaces and maneuvering area, the second driveway could provide up to nine spaces by parking cars along the sides and in areas that aren't necessary for maneuvering. The driveway does serve the kennel building and it is unclear what purpose the area on the other side of the overhead door inside the kennel building serves so it may be possible that some vehicles could be parked inside the kennel building. In dry weather vehicles can also park on the grass.
- (4) Regarding compliance with standard conditions of approval for KENNELS indicated in Section 6.1.3, as follows:
- (a) A minimum Lot Area of one acre.

A waiver of this standard condition does not appear to be necessary because the subject property is five acres in area.
 - (b) Enclosed KENNELS shall not permit animals to be kept either temporarily or permanently outside the KENNEL.

Item 9.B.(4)(b) (continued)

A waiver of this standard condition is not necessary because the proposed KENNEL is not fully enclosed.

- (c) One SINGLE FAMILY DWELLING may be permitted on the site provided it is for occupancy by the OWNER or employee of the KENNEL.

A waiver of this standard condition does not appear to be necessary because there is only one single family dwelling on the subject property.

- (d) For KENNELS that have animals kept either temporarily or permanently outside, provide a six foot wire mesh fence to encompass outdoor animal exercise and/or training area.

It is unclear at this time whether a waiver of this standard condition is necessary. The photographs submitted by the petitioners seem to indicate fencing around the outdoor dog runs along the west side of the kennel building. However, there is no fencing indicated on either the site plan or the floor plan of the kennel building.

- (e) For KENNELS that have animals kept either temporarily or permanently outside,, any outdoor animal exercise and/or training area shall be 200 feet from any adjacent residential STRUCTURE and/or USE and shall have a noise buffer of evergreen shrubs or trees a minimum of four feet in HEIGHT installed separating the exercise and/or training area from any adjacent residential STRUCTURE and/or USE.

A waiver of this standard condition is necessary because the ~~house residential property~~ residential property of Kevin and Christina Mitchaner, ~~which is located on the adjacent residential property to the west of the subject property is located less than 200~~ approximately 100 feet from the outdoor dog runs on the west side of the kennel building.

- (f) Maintain a SIDE YARD setback and a REAR YARD setback of 200 feet.

A waiver of this standard condition is necessary because the kennel building has only a 165 feet side yard on the south side and only a 150 feet rear yard to the west.

C. Regarding compliance with the *Stormwater Management Policy*:

- (1) Regarding the requirement of stormwater detention, the subject property has very little impervious surface and is exempt from this requirement.
- (2) Regarding the requirement to protect agricultural field tile, there does not appear to be any field tile on the subject property.

Item 9. (continued)

- D. Regarding the Special Flood Hazard Areas Ordinance and Subdivision Regulations:
- (1) The subject property is not located in the Special Flood Hazard Area.
 - (2) The subject property complies with the Subdivision Regulations.
- E. Regarding the requirement that the Special Use preserve the essential character of the AG-1 Zoning District:
- (1) The subject property is located less than 1.5 miles from the Village of Mahomet and only 1.5 miles from US Route 150. This location minimizes non-farm traffic on rural roads that is incompatible with farm traffic. ~~The appropriateness of this location for a kennel/animal rescue operation is difficult to evaluate at this time.~~
 - (2) Kennels are authorized in the AG-1 District.
 - (3) The exterior of the buildings remains unchanged and they appear to be farm buildings.
- F. The proposed Special Use must comply with the Illinois Accessibility Code which is not a County ordinance or policy and the County cannot provide any flexibility regarding that Code. A Zoning Use Permit cannot be issued for any part of the proposed Special Use until full compliance with the Illinois Accessibility Code has been indicated in drawings. The Petitioners have not as yet provided any information regarding accessibility for the kennel or studio building or the cost of all of the remodeling that has been done for the kennel facilities. Relevant considerations related to the Illinois Accessibility Code are as follows:
- (1) Section 5(d) of the Illinois Environmental Barriers Act requires a Statement of Compliance by a licensed architect or engineer to be filed with the local administrative authority if the cost of construction or alteration is more than \$50,000.
 - (2) The Illinois Accessibility Code (71 Illinois Administrative Code Ch. I, sec. 400.510, subchapter b) requires that when existing public facilities are altered, the degree of alteration determines the necessary degree of compliance with the Accessibility Code, as follows:
 - (a) If the alteration costs 15% or less of the reproduction cost of the public facility, the element or space being altered shall comply with the applicable requirements for new construction.
 - (b) If the alteration costs more than 15% but less than 50% of the reproduction cost of the public facility and less than \$100,000, the element or space being altered shall comply with the applicable requirements for new construction and the entrance and a means of egress for the general public shall also comply.

Item 9.F.(2) (continued)

- (c) If the alteration costs more than 15% but less than 50% of the reproduction cost of the public facility and more than \$100,000, the element or space being altered shall comply with the applicable requirements for new construction and the entrance and a means of egress for the general public shall also comply and other spaces and elements necessary to provide accessible routes between the entrance and means of egress and the space being altered
 - (d) If the alteration costs more than 50% of the reproduction cost of the public facility, the entire facility shall comply with the applicable requirements for new construction.
 - (3) The Illinois Accessibility Code (71 Illinois Administrative Code 400) also requires that if any new parking is provided at the public facility, accessible parking needs to be provided including an accessible route to the entrance. There appears to be ample parking space already onsite and no new parking spaces are required.
 - (4) Regarding compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code:
 - (a) If the fair market remodeling cost was more than \$50,000 a Statement of Compliance by a licensed architect or engineer must be filed with the Department of Planning and Zoning.
 - (b) The remodeled interiors of both the kennel and the studio must be accessible (particularly the bathrooms) but the County does not enforce interior accessibility.
 - (c) An accessible entrance is required for both the kennel and the studio and a special condition is required if not already installed during the initial remodeling. An accessible entrance includes a door with a minimum 2'-8" clear opening width and an opening force of no more than 8.5 pounds; a threshold of not more than 1/2 inch height; and lever hardware mounted at the proper height.
- G. Regarding life safety considerations related to the proposed Special Use:
- (1) Champaign County has not adopted a building code. Life safety considerations are considered to a limited extent in Champaign County land use regulation as follows:

 - (a) The Office of the State Fire Marshal has adopted the Code for Safety to Life from Fire in Buildings and Structures as published by the National Fire Protection Association (NFPA 101) 2000 edition, Life Safety Code, as the code for Fire Prevention and Safety as modified by the Fire Prevention and Safety Rules, 41 Ill. Adm Code 100, that applies to all localities in the State of Illinois.
-

Item 9.G.(1) (continued)

- (b) The Office of the State Fire Marshal is authorized to enforce the Fire Prevention and Safety Rules and the code for Fire Prevention and Safety and will inspect buildings based upon requests of state and local government, complaints from the public, or other reasons stated in the Fire Prevention and Safety Rules, subject to available resources.
- (c) The Office of the State Fire Marshal currently provides a free building plan review process subject to available resources and subject to submission of plans prepared by a licensed architect, professional engineer, or professional designer that are accompanied by the proper Office of State Fire Marshal Plan Submittal Form.
- (d) Compliance with the code for Fire Prevention and Safety is mandatory for all relevant structures anywhere in the State of Illinois whether or not the Office of the State Fire Marshal reviews the specific building plans.
- (e) Compliance with the Office of the State Fire Marshal's code for Fire Prevention and Safety is not required as part of the review and approval of Zoning Use Permit Applications.
- (f) The Illinois Environmental Barriers Act (IEBA) requires the submittal of a set of building plans and certification by a licensed architect that the specific construction complies with the Illinois Accessibility Code for all construction projects worth \$50,000 or more and requires that compliance with the Illinois Accessibility Code be verified for all Zoning Use Permit Applications for those aspects of the construction for which the Zoning Use Permit is required.
- (g) The Illinois Accessibility Code incorporates building safety provisions very similar to those of the code for Fire Prevention and Safety.
- (h) The certification by an Illinois licensed architect that is required for all construction projects worth \$50,000 or more should include all aspects of compliance with the Illinois Accessibility Code including building safety provisions very similar to those of the code for Fire Prevention and Safety.
- (i) When there is no certification required by an Illinois licensed architect, the only aspects of construction that are reviewed for Zoning Use Permits and which relate to aspects of the Illinois Accessibility Code are the number and general location of required building exits.
- (j) Verification of compliance with the Illinois Accessibility Code applies only to exterior areas. With respect to interiors, it means simply checking that the required number of building exits are provided and that they have the required exterior configuration. This means that other aspects of building design and

Item 9.G.(1) (continued)

construction necessary to provide a safe means of egress from all parts of the building are not checked. The current review is only sufficient to verify life safety for small and simple buildings.

- H. Regarding public health concerns related to onsite wastewater treatment and disposal, in a phone conversation with John Hall, Zoning Administrator, on October 21, 2009, Jeff Blackford with the County Health Department, indicated that he had no record of a new septic system being installed on the subject property. He also indicated that if the petitioners had installed a new system for the kennel that system would fall under the jurisdiction of either the state Department of Agriculture or state EPA. He said that if the petitioners were using an existing residential system that would fall under the jurisdiction of the County Health Department.

GENERALLY REGARDING WHETHER THE SPECIAL USE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE

10. Regarding the *Zoning Ordinance* requirement that the proposed Special Use is in harmony with the general intent and purpose of the Ordinance:

A. KENNELS may be authorized in the AG-1 Agriculture Zoning District as a Special Use provided all other zoning requirements and standard conditions are met or waived. However, it is not yet clear that the proposed use is just a KENNEL.

B. Regarding whether the proposed Special Use Permit is in harmony with the general intent of the Zoning Ordinance:

(1) Subsection 5.1.8 of the Ordinance states the general intent of the AG-1 District and states as follows (capitalized words are defined in the Ordinance):

The AG-1 Agriculture DISTRICT is intended to protect the areas of the COUNTY where soil and topographic conditions are best adapted to the pursuit of AGRICULTURAL USES and to prevent the admixture of urban and rural USES which would contribute to the premature termination of AGRICULTURAL pursuits.

(2) The types of uses authorized in the AG-1 District are in fact the types of uses that have been determined to be acceptable in the AG-1 District. Uses authorized by Special Use Permit are acceptable uses in the district provided that they are determined by the ZBA to meet the criteria for Special Use Permits established in paragraph 9.1.11 B. of the Ordinance.

C. Regarding whether the proposed Special Use Permit is in harmony with the general purpose of the Zoning Ordinance:

(1) Paragraph 2 .0 (a) of the Ordinance states that one purpose of the Ordinance is securing adequate light, pure air, and safety from fire and other dangers.

(a) This purpose is directly related to the limits on building coverage and the minimum yard requirements in the Ordinance and the proposed site plan is in partial compliance with those requirements. The side yard for the kennel building

Item 10.C.(1)(a) (continued)

meets the minimum requirements for the AG-1 District, but not the standard conditions for a KENNEL in Subsection 6.1.3.

- (2) Paragraph 2.0 (b) of the Ordinance states that one purpose of the Ordinance is conserving the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.
 - (a) In regards to the value of nearby properties, the effect the proposed Special Use Permit will have is difficult to evaluate at this time.
 - (b) With regard to the value of the subject property, the effect the proposed Special Use Permit will have is difficult to evaluate at this time.
- (3) Paragraph 2.0 (c) of the Ordinance states that one purpose of the Ordinance is lessening and avoiding congestion in the public STREETS.

The current IDOT traffic count is from 2006, and indicates that CR 750E has 500 AADT. However, the impact of the proposed use on this number is difficult to evaluate due to the lack of information

- (4) Paragraph 2.0 (d) of the Ordinance states that one purpose of the Ordinance is lessening and avoiding the hazards to persons and damage to PROPERTY resulting from the accumulation of runoff from storm or flood waters.

The requested Special Use Permit complies with the *Champaign County Stormwater Management Policy* and is outside of the Special Flood Hazard Area and there are no special drainage problems that appear to be created by the Special Use Permit.

- (5) Paragraph 2.0 (e) of the Ordinance states that one purpose of the Ordinance is promoting the public health, safety, comfort, morals, and general welfare.
 - (a) In regards to public safety, this purpose is similar to the purpose established in paragraph 2.0 (a) and is in harmony to the same degree.
 - (b) In regards to public comfort and general welfare, this purpose is similar to the purpose of conserving property values established in paragraph 2.0 (b) and is in harmony to the same degree.
- (6) Paragraph 2.0 (f) states that one purpose of the Ordinance is regulating and limiting the height and bulk of BUILDINGS and STRUCTURES hereafter to be erected; and paragraph 2.0 (g) states that one purpose is establishing, regulating, and limiting the BUILDING or SETBACK lines on or along any STREET, trafficway, drive or parkway; and paragraph 2.0 (h) states that one purpose is regulating and limiting the intensity of the USE of LOT AREAS, and regulating and determining the area of OPEN SPACES within and surrounding BUILDINGS and STRUCTURES.

Item 10.C.(6) (continued)

These three purposes are directly related to the limits on building height and building coverage and the minimum setback and yard requirements in the Ordinance.

- (7) Paragraph 2.0 (i) of the Ordinance states that one purpose of the Ordinance is classifying, regulating, and restricting the location of trades and industries and the location of BUILDINGS, STRUCTURES, and land designed for specified industrial, residential, and other land USES; and paragraph 2.0 (j.) states that one purpose is dividing the entire COUNTY into DISTRICTS of such number, shape, area, and such different classes according to the USE of land, BUILDINGS, and STRUCTURES, intensity of the USE of LOT AREA, area of OPEN SPACES, and other classification as may be deemed best suited to carry out the purpose of the ordinance; and paragraph 2.0 (k) states that one purpose is fixing regulations and standards to which BUILDINGS, STRUCTURES, or USES therein shall conform; and paragraph 2.0 (l) states that one purpose is prohibiting USES, BUILDINGS, OR STRUCTURES incompatible with the character of such DISTRICT.

Harmony with these four purposes requires that the special conditions of approval sufficiently mitigate or minimize any incompatibilities between the proposed Special Use Permit and adjacent uses, and that the special conditions adequately mitigate nonconforming conditions.

- (8) Paragraph 2.0 (m) of the Ordinance states that one purpose of the Ordinance is preventing additions to and alteration or remodeling of existing BUILDINGS, STRUCTURES, or USES in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

The kennel building has been remodeled since the adoption of zoning without a permit, and it is possible that remodeling has been done on the other buildings as well.

- (9) Paragraph 2.0 (n) of the Ordinance states that one purpose of the Ordinance is protecting the most productive AGRICULTURAL lands from haphazard and unplanned intrusions of urban USES.

The types of uses authorized in the AG-1 District are in fact the types of uses that have been determined to be acceptable in the AG-1 District. Uses authorized by Special Use Permit are acceptable uses in the district provided that they are determined by the ZBA to meet the criteria for Special Use Permits established in paragraph 9.1.11 B. of the Ordinance.

- (10) Paragraph 2.0 (o) of the Ordinance states that one purpose of the Ordinance is protecting natural features such as forested areas and watercourses.

This proposed Special Use Permit does not propose any construction in natural areas.

Item 10.C. (continued)

- (11) Paragraph 2.0 (p) of the Ordinance states that one purpose of the Ordinance is encouraging the compact development of urban areas to minimize the cost of development of public utilities and public transportation facilities.

This purpose is not relevant to the proposed Special Use Permit because the AG-1 District is not for urban development. However, the subject property is located well within the Village of Mahomet extraterritorial jurisdiction area.

- (12) Paragraph 2.0 (q) of the Ordinance states that one purpose of the Ordinance is encouraging the preservation of AGRICULTURAL belts surrounding urban areas, to retain the AGRICULTURAL nature of the COUNTY, and the individual character of existing communities.

The types of uses authorized in the AG-1 District are in fact the types of uses that have been determined to be acceptable in the AG-1 District. Uses authorized by Special Use Permit are acceptable uses in the district provided that they are determined by the ZBA to meet the criteria for Special Use Permits established in paragraph 9.1.11 B. of the Ordinance.

GENERALLY REGARDING WHETHER THE SPECIAL USE IS AN EXISTING NONCONFORMING USE

11. The proposed Special Use is not an existing NONCONFORMING USE because the proposed Special Use is an expansion of the Rural Home Occupation authorized in Zoning Use Permit 279-98-02. The Petitioner has testified on the application, **“Yes, people who board dogs enjoy the knowledge that their dogs and cats are in the country.”**
- A. The proposed Special Use is an existing non-permitted use that will be brought into conformance with the *Zoning Ordinance* by obtaining a Special Use Permit.

GENERALLY REGARDING THE REQUESTED WAIVERS OF STANDARD CONDITIONS

12. The petitioner has requested the following waivers of standard conditions in Section 6.1.3:
- A. A waiver of the minimum separation of 200 feet between any outdoor animal exercise area and any adjacent residential use for a separation of approximately 100 feet. Relevant evidence is summarized as follows:

- (1) Regarding accordance with the general purpose and intent of the ordinance:

The petitioners have provided a letter from the neighbors whose residential property is only 100 feet away, Kevin and Christina Mitchaner who live at 745 CR 2175N, who state that the animals on the subject property are well cared for and do not present a problem or nuisance to them.

Item 12.A. (continued)

- (2) Regarding whether or not this waiver will be injurious to the neighborhood or to the public health, safety and wefare:

For the same reason that the waiver is in accordance with the general purpose and intent of the Ordinance (see above).

- B. A waiver of the minimum 200 feet for required side and rear yards for a side yard of 165 feet side yard on the south side and only a 150 feet rear yard to the west. Relevant evidence is summarized as follows:

- (1) Regarding the general purpose and intent of the ordinance:

- (a) The subject property borders farmland to the south and to the west and a kennel is compatible with farmland and the farmer has not objected.
- (b) The subject property also borders residential property to the west and the petitioners have provided a letter from the neighbors whose residential property is only 100 feet away, Kevin and Christina Mitchaner who live at 745 CR 2175N, who state that the animals on the subject property are well cared for and do not present a problem or nuisance to them.

- (2) Regarding whether or not this waiver will be injurious to the neighborhood or to the public health, safety and wefare:

For the same reason that the waiver is in accordance with the general purpose and intent of the Ordinance (see above).

GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL

13. The following special conditions of approval seem to be necessary as follows:

- A. The following condition is necessary to fully document that the special use permit has been approved and is necessary to ensure compliance with all other special conditions of approval:

The petitioner shall apply for a Change of Use Permit within 30 days of the approval of the special use permit.

The above condition is necessary to ensure the following:

Compliance with the Zoning Ordinance within a reasonable time frame.

Item 13. (continued)

B. The following condition recognizes there is a practical limit on the number of cats that can be rescued at this special use:

The cat population at the special use shall be limited to no more than 75 cats of any age

The above condition is necessary to ensure the following:

The petitioner can achieve their mission of animal rescue while preserving the essential character of and not being injurious to the district.

C. Compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code is required and the County cannot waive these requirements. Compliance requires the following:

If not already installed, the petitioner shall install an accessible entrance in conformance with the Illinois Accessibility Code at both the kennel building and the studio building within one year of the approval of the special use permit, unless this requirement is waived by the Capitol Development Board

The above condition is necessary to ensure the following:

The safety and welfare of the public and that the special use is readily accessible to and usable by environmentally limited persons .

D. The neighbors state that the animals on the subject property do not present a problem or nuisance to them because the dogs are placed inside every evening to prevent any problems with the neighboring property. The following condition requires the owner of the kennel to ensure that this practice continues:

The kennel shall be managed to ensure that the dogs do not have free access to the exterior from dusk to dawn.

The above condition is necessary to ensure the following:

The kennel does not become injurious to the district.

E. The existing septic system is being used for a purpose that was not originally intended but the actual loading of the system may be within allowable limits. Any repair or replacement that will eventually be required should receive any necessary approval and permitting from the proper authority as required by the following special condition:

Item 13. (continued)

Any repair or replacement of the septic system shall be in conformance with and approved by either the Champaign County Health Department or the Illinois Department of Agriculture, whichever agency has proper jurisdiction depending upon the type of repair that is required or the type of replacement system that is installed.

The above condition is necessary to ensure the following:

Protection of public health.

DOCUMENTS OF RECORD

1. Special Use Permit Application from Judith and Gerald Warmbier, received on August 19, 2009, with attachments:
 - A Legal Description of subject property
 - B Aerial photograph based site plan of the subject property
 - C Photographs of existing kennel building (5 pages)
 - D Floor plan of kennel building

 2. [Petitioner] Response to September 18, 2009, letter from Zoning Office received September 28, 2009, with attachments:
 - A Floor plan for kennel
 - B State of Illinois Department of Agriculture Bureau of Animal Welfare Prairieland Anti-Cruelty Program license for Animal Shelter
 - C Letter from Kevin and Christina Mitchaner

 3. Preliminary Memorandum for Case 655-S-09, with attachments:
 - A Zoning Case Maps (Location, Land Use, Zoning)
 - B Proposed site plan received August 19, 2009
 - C Annotated site plan w/annotations on separate sheet
 - D Floor plan of kennel building received on September 28, 2009
 - E Petitioner photographs of kennel building received on August 19, 2009
 - F Letter from J.R. Knight to Judy Warmbier dated, September 18, 2009
 - G Petitioner response to staff letter dated September 18, 2009
 - H State of Illinois Department of Agriculture Bureau of Animal Welfare Prairieland Anti-Cruelty Program license for Animal Shelter
 - I Letter from neighbors Kevin and Christina Mitchaner, received September 28, 2009
 - J Annotated IDOT Traffic Map of vicinity of subject property
 - K Soil Potential Worksheets for Parr and Raub silt loams
 - L Prairieland Anti-Cruelty/Prairieland Spay/Neuter Program website
 - M Gypsybug Banner Ad for Prairieland Dogboarding
 - N Preliminary Draft Summary of Evidence for Case 655-S-09

 4. Supplemental Memorandum for Case 655-S-09 dated October 26, 2009, with attachments:
 - A Proposed site plan received August 19, 2009
 - B Annotated site plan w/ annotations on a separate sheet
 - C Floor plan of kennel building received on September 28, 2009
 - D Petitioner photographs of kennel building received on August 19, 2009

 5. Supplemental Memorandum for Case 655-S-09 dated December 11, 2009, with attachments:
 - A Approved minutes for Case 655-S-09 from the October 29, 2009, meeting
 - B Revised Summary of Evidence and Draft Finding of Fact
-

FINDINGS OF FACT

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 655-S-09 held on **October 29, 2009**, and **December 17, 2009**, the Zoning Board of Appeals of Champaign County finds that:

1. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN } { IS / IS NOT }* necessary for the public convenience at this location because: _____

2. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN }* is so designed, located, and proposed to be operated so that it *{ WILL / WILL NOT }* be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare because:
 - a. The street has *{ ADEQUATE / INADEQUATE }* traffic capacity and the entrance location has *{ ADEQUATE / INADEQUATE }* visibility.
 - b. Emergency services availability is *{ ADEQUATE / INADEQUATE }* *{because:¹}* _____

 - c. The Special Use will be designed to *{ CONFORM / NOT CONFORM }* to all relevant County ordinances and codes.
 - d. The Special Use *{ WILL / WILL NOT }* be compatible with adjacent uses *{because:¹}* _____

 - e. Surface and subsurface drainage will be *{ ADEQUATE / INADEQUATE }* *{because:¹}* _____

 - f. Public safety will be *{ ADEQUATE / INADEQUATE }* *{because:¹}* _____

 - g. The location *{ IS / IS NOT }* suitable for the proposed onsite wastewater system *{because:¹}* _____

 - h. (Note: The Board may include other relevant considerations as necessary or desirable in each case.)

1. The Board does not need to include supporting information in every case, only where desirable or necessary.

Findings of Fact (continued)

- 3a. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN } { DOES / DOES NOT }* conform to the applicable regulations and standards of the DISTRICT in which it is located.
- 3b. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN } { DOES / DOES NOT }* preserves the essential character of the DISTRICT in which it is located because:
- a. The Special Use will be designed to *{ CONFORM / NOT CONFORM }* to all relevant County ordinances and codes.
 - b. The Special Use *{ WILL / WILL NOT }* be compatible with adjacent uses.
 - c. Public safety will be *{ ADEQUATE / INADEQUATE }*.
 - d. *(Note: The Board may include other relevant considerations as necessary or desirable in each case.)*
-
4. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN } { IS / IS NOT }* in harmony with the general purpose and intent of the Ordinance because:
- a. The Special Use is authorized in the District.
 - b. The requested Special Use Permit *{ IS / IS NOT }* necessary for the public convenience at this location.
 - c. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN }* is so designed, located, and proposed to be operated so that it *{ WILL / WILL NOT }* be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare.
 - d. The requested Special Use Permit *{ SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN } { DOES / DOES NOT }* preserves the essential character of the DISTRICT in which it is located.
 - e. *(Note: The Board may include other relevant considerations as necessary or desirable in each case.)*
-
5. The requested Special Use *{ IS / IS NOT }* an existing nonconforming use.
6. Regarding the requested waivers of standard conditions:
- A. The requested waiver of the standard condition in Section 6.1.3 for a minimum separation of 200 feet between any outdoor animal exercise area and any adjacent residential use, for an actual separation of approximately 100 feet is *(WARRANTED/ NOT WARRANTED)* because of the following:
 - a. The waiver *{ IS / IS NOT }* in accordance with the general purpose and intent of this ordinance because

Findings of Fact (continued)

and

b. The waiver {WILL/ WILL NOT} be injurious to the neighborhood or to the public health, safety and welfare because

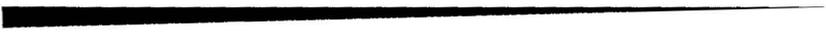
B. The requested waiver of the standard condition in Section 6.1.3 for a waiver of the minimum 200 feet for required side and rear yards for an actual side yard of 165 feet for the side yard on the south side and only a 150 feet rear yard to the west is (WARRANTED/ NOT WARRANTED) because of the following:

a. The waiver {IS / IS NOT} in accordance with the general purpose and intent of this ordinance because

and

b. The waiver {WILL/ WILL NOT} be injurious to the neighborhood or to the public health, safety and welfare because

7. ***{ NO SPECIAL CONDITIONS ARE HEREBY IMPOSED / THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED TO ENSURE COMPLIANCE WITH THE CRITERIA FOR SPECIAL USE PERMITS AND FOR THE PARTICULAR PURPOSES DESCRIBED BELOW: }***



FINAL DETERMINATION

The Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.11B. *{HAVE / HAVE NOT }* been met, and pursuant to the authority granted by Section 9.1.6 B. of the Champaign County Zoning Ordinance, determines that:

The Special Use requested in Case **655-S-09** is hereby *{GRANTED/ GRANTED WITH SPECIAL CONDITIONS/DENIED}* to the petitioners **Judith and Gerald Warmbier** to authorize a **Kennel as a Special Use Permit in the AG-1 Zoning District with the following waivers of standard conditions:**

- A. Waiver of the standard condition in Section 6.1.3 for a minimum separation of 200 feet between any outdoor animal exercise area and any adjacent residential use, for an actual separation of approximately 100 feet.**

- B. Waiver of the standard condition in Section 6.1.3 for a waiver of the minimum 200 feet for required side and rear yards for an actual side yard of 165 feet for the side yard on the south side and only a 150 feet rear yard to the west.**

{SUBJECT TO THE FOLLOWING SPECIAL CONDITION(S) OF APPROVAL:}

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

SIGNED:

Doug Bluhm, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

CASE NO. 657-V-09

SUPPLEMENTAL MEMORANDUM

December 11, 2009

Champaign
County
Department of



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

(217) 384-3708
FAX (217) 328-2426

Petitioners: **Larry & Diane
Lambright; and Scott Lambright**

Site Area: **approx. 27,000 feet**

Time Schedule for Development:
N/A

Prepared by: **John Hall
Zoning Administrator**

Request: **Authorize the use of an existing two story detached accessory storage building with a second story deck with a side yard of three feet in lieu of the required ten feet side yard for accessory structures in the AG-2 Agriculture zoning district, and an average height of 16 feet in lieu of the maximum allowed 15 feet average height for residential accessory structures on lots less than one acre in area in the AG-2 Agriculture Zoning District.**

Location: **Lot 1 of Cook's Replat of Tract B of the K.D. Headlee Subdivision in Section 14 of Mahomet Township and commonly known as the house at 206B Lake of the Woods Road, Mahomet.**

STATUS

This case was continued from the November 12, 2009, public hearing. Those minutes are included separately for approval.

The Zoning Officer inspected the subject property on December 1, 2009, and found that except for the matters in this variance, all of the violations identified in the Final Notice appear to have been resolved. However, complaints have been received that the petitioner is not fully complying with all of the requirements. See the attached letter. The Zoning Officer is continuing to work with the petitioner to secure more complete compliance and more information should be available at the meeting.

ATTACHMENTS

A Letter to the petitioner from Jamie Hitt, Zoning Officer, dated December 4, 2009

FILE COPY

Champaign
County
Department of

**PLANNING &
ZONING**

December 4, 2009

Larry Lambright
2110 Pheasant Ridge
Mahomet, Illinois 61853

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

Scott Lambright
206B South Lake of the Woods Road
Mahomet, Illinois 61853

(217) 384-3708
FAX (217) 328-2426

RE: Resolution of Violations of the Neighborhood Home Occupation (NHO) Regulations that Existed on Property on Lot 1 of Cook's Replat of Tract B of the K.D. Headlee Subdivision, Section 14, Mahomet Township, with an Address of 206B South Lake of the Woods Road, Mahomet, Permanent Index No. 15-13-14-176-007.

Dear Msrs. Lambright:

On Tuesday, December 1, 2009, I inspected your property described above and found that the violations that were discussed in a letter to you dated November 12, 2009, have been resolved with one exception. The exception being that at the time of inspection the blue Ford F-350, 4 x 4 pick up truck with Illinois License 41752B, that advertises Lambright Maintenance and Construction Inc., that Scott Lambright drives back and forth to work each day was not on the property therefore, I was unable to confirm that the advertising logo on both sides of the truck is completely covered with opaque magnets at all times when the truck is on the property.

Additionally the following was also noted:

1. No outdoor storage of contracting business garbage was noted on the property at the time of inspection. I did note a garbage can by the fence on the east side of the house and I noted a small rollaway garbage can on wheels out by the road for apparent garbage pickup; and
2. Two or three recycling barrels were noted on the property, however, the contents of the barrels appeared to contain personal recycling and no contracting business recycling was noted; and
3. The construction trailer had a current license sticker so the ladders on top of the construction trailer can continue to be stored in their current location; and
4. The wooden truck rails that were being stored between the garage and the construction trailer have been removed and are not seen anywhere on the property; and
5. The yellow scaffolding, barricades and wooden posts that were being stored between the stairs and the two-story barn have been removed and are not seen anywhere on the property; and

6. The trusses, fencing, and angle iron that were being stored beside the metal shed have been removed, and the fencing is currently being used on the south side of the property; and
7. The propane tank has been completely removed from the property.

There is a new concern I have that must be resolved that was not previously discussed with you. There is a white Z71 Chevrolet club cab pickup truck with Illinois license number 92413J (B) that has been sitting on the property the past few times I have been there. I have checked the registration of this vehicle and find that it is registered to Larry and Diane Lambright. Since this vehicle is not registered to Scott Lambright, for zoning purposes it is considered an employee vehicle, therefore it can only remain on the property between the hours of 8:00 a.m. and 6:00 p.m. It **cannot** remain on the property 24 hours a day, 7 days a week. You must find an alternate location for this vehicle, however, it can remain on the property between the hours of 8 a.m. and 6 p.m. each day. You must inform me where you will locate this vehicle and it **must be resolved prior to the December 17, 2009**, continued public hearing in Case 657-V-09.

At the current time it appears that the violations cited in Case ZN-09-18/13 have been resolved with the exception of confirming that the advertising logo on the blue pick up truck is completely covered on both sides at all times while the truck is on the property. Although you intend to construct a six foot solid fence around your property and **as long as you operate Lambright Maintenance and Construction Inc., and as long as the construction trailer advertising Lambright Maintenance and Construction Inc., is kept on the subject property, the advertising logo on the blue pick up truck must be completely covered on both sides at all times when the truck is on the property.**

We have already received complaints with photographs that the advertising logo is not always completely covered on both sides when the truck is sitting on the property. If future complaints are made about the advertising logo not being covered when the blue truck is on the property another enforcement action will be initiated. Furthermore, as I indicated above the white Z71 Chevrolet club cab pickup truck cannot remain on the property all the time and must be relocated on or before **December 17, 2009**.

I appreciate your cooperation in this matter and if you have any questions or if I may be of any other assistance to you please contact me at 384-3708.

Sincerely,



Jamie Hitt
Zoning Officer