

# CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **May 13, 2010**  
Time: **7:00 P.M.**  
Place: **Lyle Shields 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 (March 25, 2010 and April 15, 2010)
5. Continued Public Hearings

**Case 665-AT-10**      Petitioner: **Champaign County Zoning Administrator**  
Request: **Amend the Champaign County Zoning Ordinance by revising  
paragraph 4.3.3G. to increase the maximum fence height allowed  
in side and rear yards from six feet to eight feet for fences in  
Residential Zoning Districts and on residential lots in the AG-1  
and Ag-2 Zoning Districts.**

**\*Case 667-S-10**      Petitioner: **Leslie Cooperband and Wesley Jarrell, d.b.a. Prairie Fruits Farm**  
Request: **Authorize a Major Rural Specialty Business in the AG-2 District with  
waivers of standard conditions including, but not limited to, the  
prohibition of sales of alcohol not produced on the premises.**  
Location: **Lot 1 of Jamestown Subdivision in the Northeast Quarter of the Southeast  
Quarter of Section 29 of Somer Township and commonly known as  
Prairie Fruits Farm at 4410 North Lincoln Avenue, Champaign.**

6. New Public Hearings
7. Staff Report
  - A. Monthly Report for April (*to be distributed at meeting*)
8. Other Business
9. Audience Participation with respect to matters other than cases pending before the Board
10. Adjournment

**\* Administrative Hearing. Cross Examination allowed.**

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

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7 **DATE:** March 25, 2010 **PLACE:** Lyle Shields Meeting Room  
8 **TIME:** 7:00 p.m. **Urbana, IL 61802**

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11 **MEMBERS PRESENT:** Doug Bluhm, Catherine Capel, Thomas Courson, Melvin Schroeder, Eric  
12 Thorsland, Paul Palmgren

14 **MEMBERS ABSENT :** Roger Miller

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

18 **OTHERS PRESENT :** Herb Schildt, Sherry Schildt, Jed Gerdes

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21 **1. Call to Order**

23 The meeting was called to order at 7:00 p.m.

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

27 The roll was called and a quorum declared present with one member absent.

29 **3. Correspondence**

31 None

33 **4. Approval of Minutes**

35 None

37 **5. Continued Public Hearing**

39 None

41 **6. New Public Hearings**

43 **Case 664-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign**  
44 **County Zoning Ordinance as follows: 1. Delete paragraph 6.1.4 A.1(c); and 2. Revise paragraph**  
45 **9.1.7E.1 to change the required number of concurring votes needed for ZBA decisions from five to**  
46 **four to make the Zoning Ordinance consistent with state law.**

48 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said

**SUBJECT TO APPROVAL**  
**DRAFT**

1 that the new memorandum includes new information for the Finding of Fact. He said that the following  
 2 should be added at the end of the last sentence in Item #7.A: except for the Second Industrial Land Use  
 3 Goal. He said that a new Item #7.B should be added as follows: The Second Industrial Land Use Goal  
 4 appears to be relevant to the proposed amendment. The Second Industrial Land Use Goal is: Location and  
 5 design of industrial development in a manner compatible with nearby non-industrial uses. The proposed  
 6 amendment appears to {ACHIEVE} the Second Industrial Land Use Goal because it will make clear that a  
 7 wind farm developer is required to provide mitigation for shadow flicker for land that receives more than 30  
 8 hours of shadow flicker in a given year. He said that the following should be added as new Item 9: None of  
 9 the Land Use Regulatory Policies appear to be relevant to the proposed amendment.

10  
 11 Mr. Hall stated that the Board has seen part of this amendment during Zoning Case 658-AT-09 however  
 12 after the public hearing it was discovered that Part 1 of this amendment was not included in Case 658-AT-  
 13 09. He said that Part 2 of this case updates the *Zoning Ordinance* in regards to the number of Board  
 14 members required for a vote. He said that for some time the *Zoning Ordinance* has required five even  
 15 though the statutes require four. He said that it is the opinion of the State’s Attorney is that if the state  
 16 statutes only require four affirmative votes then the County cannot require a greater number. He said that the  
 17 County has been operating with the understanding that only four affirmative votes are required and now staff  
 18 has time to run the text amendment to get it clarified in the Ordinance. He said that since 2003 the By-laws  
 19 have only required four affirmative votes and when the By-laws were amended in 2002 staff believed that  
 20 they had completed all of the amendments that were needed but this item in the Ordinance was overlooked.

21  
 22 Mr. Hall stated that for relatively minor amendments such as this staff searched through the Land Use Goals  
 23 and Policies and the Land Use Regulatory Policies trying to identify anything that would be relevant to the  
 24 proposed amendment and it was determined that the Second Industrial Land Use Goal and the Fifth General  
 25 Land Use Goal were relevant. He said that the two other text amendments that are on tonight’s agenda also  
 26 have evidence which includes some common sense things but staff was hard pressed to find any common  
 27 sense justification for the two amendments included in 664-AT-10, Part 1 and Part 2 that would include  
 28 relevant evidence that wasn’t already included under the Fifth General Land Use Goal and Second Industrial  
 29 Land Use Goal. He said that the even though it appears that this case is ready for final action it would not be  
 30 unreasonable to continue this case to a second meeting to allow time for comment from municipalities. He  
 31 said that he doubts that the municipalities are interested in this case but as a courtesy the Board could  
 32 continue the case.

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

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 36 Mr. Bluhm asked Mr. Hall if he knew what kind of timeframe the municipalities were working on.

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 38 Mr. Hall stated that since the municipalities have not contacted staff it is unknown. He said that before the  
 39 ZBA makes a recommendation the best thing for the Board to do is to make sure that staff does not see any  
 40 glaring problems. He said that staff does not know what the municipalities position will be until the ZBA  
 41 makes a recommendation therefore if the Board is comfortable then there is no reason not to take final action  
 42 at tonight’s meeting.

1 Mr. Bluhm asked Mr. Hall if the municipalities will still have plenty of time to submit any comments  
2 regarding the text amendment.

3  
4 Mr. Hall stated yes. He said that text amendments are held at the Committee of the Whole for one month to  
5 provide the municipalities time to react to ELUC's recommendation before it goes to the County Board.

6  
7 Mr. Bluhm stated that it appears that the municipalities have ample time to submit comments therefore it  
8 appears that there is no reason to continue this case to a second meeting.

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10 Mr. Bluhm stated that there are no signatures on the witness register at this time and asked the audience if  
11 anyone desired to sign the witness register to present testimony regarding Case 664-AT-10 and there was no  
12 one.

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14 Mr. Bluhm closed the witness register.

15  
16 Mr. Bluhm requested a consensus of the Board regarding whether to continue Case 664-AT-10 to a later date  
17 or move forward to the final determination at tonight's public hearing. He reminded the Board that the  
18 municipalities will have ample time to present comments to the County Board regarding this case.

19  
20 **The consensus of the Board was to move forward to the final determination at tonight's public**  
21 **hearing.**

22  
23 Mr. Hall stated that a new Item #5 should be added to the Documents of Record as follows: Supplemental  
24 Memorandum for Case 664-AT-10, dated March 25, 2010.

25  
26 **Mr. Thorsland moved, seconded by Mr. Courson that the proposed amendment appears to ACHIEVE**  
27 **the fifth General Land Use Goal because it will make the *Zoning Ordinance* more consistent and clear,**  
28 **as follows: (a) Deletion of paragraph 6.1.4 A.1(c) will make the *Zoning Ordinance* more internally**  
29 **consistent; and (b) The proposed change to paragraph 9.1.7 E. 1. will make the *Zoning Ordinance***  
30 **consistent with state statute. The motion carried by voice vote.**

31  
32 Mr. Hall noted that ELUC gave their approval of all three text amendments during the March Committee of  
33 the Whole meeting therefore he would take that approval as a good sign.

34  
35 **Mr. Palmgren moved, seconded by Mr. Schroeder to adopt the Summary of Evidence, Documents of**  
36 **Record and Finding of Fact as amended. The motion carried by voice vote.**

37  
38 **Mr. Thorsland moved, seconded by Mr. Courson to close the public hearing for Case 664-AT-10. The**  
39 **motion carried by voice vote.**

40  
41 Mr. Bluhm informed Mr. Hall that one Board member is absent from tonight's meeting therefore it is at his  
42 discretion to either continue Case 664-AT-10 until a full Board is present or request that the present Board  
43 move forward to the Final Determination. He informed Mr. Hall that four affirmative votes are required for

1 approval.

2  
3 Mr. Hall requested that the present Board continue to the final determination.

4  
5 **Final Determination for Case 664-AT-10:**

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7 **Mr. Courson moved, seconded by Mr. Thorsland that pursuant to the authority granted by Section**  
8 **9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign county**  
9 **determines that the Zoning Ordinance Amendment requested in Case 664-AT-10 should BE**  
10 **ENACTED by the County Board in the form attached hereto.**

11  
12 The roll was called:

13			
14	<b>Capel-yes</b>	<b>Courson-yes</b>	<b>Miller-absent</b>
15	<b>Palmgren-yes</b>	<b>Schroeder-yes</b>	<b>Thorsland-yes</b>
16	<b>Bluhm-yes</b>		

17  
18 **Case 665-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign**  
19 **County Zoning Ordinance by revising paragraph 4.3.3G to increase the maximum fence height**  
20 **allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and**  
21 **on residential lots in the AG-1 and AG-2 Zoning Districts.**

22  
23 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said  
24 that the new memorandum includes new information for the Finding of Fact as follows: Items #9: None of  
25 the Land Use Regulatory Policies appear to be relevant; and Item #10: Increasing the allowable fence height  
26 will provide landowners in the unincorporated area as much freedom in regards to fencing as property  
27 owners in municipalities; and Item #11: Increasing the allowable fence height to eight feet will reduce the  
28 need for variances which will reduce the costs of the County’s zoning program.

29 Mr. Hall noted that during Mr. Bluhm’s reading of the description of the case there was no mention of a  
30 three inch clearance. He said that the Supplemental Memorandum dated March 19, 2010, included a  
31 provision in 4.3.3G as follows: The height of the fences shall be measured from the highest adjacent  
32 GRADE. There may be up to three inches of clearance between the highest adjacent GRADE and the bottom  
33 of the fence panels. He said that anytime there is a variance on a fence there is an issue about the ground not  
34 being level and if the fence is placed on the surface of the ground it will rot prematurely therefore the fence  
35 is raised a little bit it will need to be cut off to comply with the six foot height requirement. He said that  
36 Item #12.A is the justification for the three inch ground clearance. He read new Item #12: Regarding the  
37 economic soundness of the proposed amendment: A. The proposed three inch ground clearance is reasonable  
38 in regards to pre-manufactured fence panels for the following reasons: (1) Pre-manufactured fence panels  
39 are available in standard six-foot high panels; and (2) Adding the proposed three inch clearance to ground  
40 means that standard six-foot high pre-manufactured fence panels can be installed above the surface of the  
41 ground without the need to cut off any of the fence panel; and (3) Three inches is an arbitrary amount for the  
42 ground clearance but it allows the fence to be at least one-inch above the highest point of a ground surface  
43 that could vary by as much as two inches; and B. The proposed three-inch ground clearance is reasonable in

1 regards to custom made fence panels for the following reasons: (1) Eight-foot high fences are generally  
2 custom built; and (2) Eight feet is a standard increment of length for lumber; and (3) Adding the proposed  
3 three inch clearance to ground means that custom made eight-foot high fencing can be installed above the  
4 surface of the ground without the need to cut off and waste so much of the lumber; and (4) Three inches is an  
5 arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest  
6 point of a ground surface that could vary by as much as two inches. He repeated that the three inch clearance  
7 was not included in the legal advertisement and the time could be taken to re-advertise the case to include  
8 the clearance but in his mind it is a small deviation and a re-advertisement is not necessary. He said that he  
9 is comfortable with proceeding but if the Board believes that the case should be re-advertised then it is  
10 certainly worth the time. He said that the Table Comparing Residential Fence Height Limits in Champaign  
11 County Zoning Ordinance to Larger Local Municipalities is included as an attachment to the Preliminary  
12 Memorandum dated March 19, 2010. He said that as far as staff knows municipalities do not have any  
13 formal clearance like the three inches that is being proposed in this amendment. He asked Mr. Knight if any  
14 calls have been received from municipalities regarding this case.

15

16 Mr. Knight stated no.

17

18 Mr. Hall stated that perhaps since the three inch clearance was not included in the legal advertisement would  
19 be reason enough to continue this case to see if municipal staff objects to the three inches.

20

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

22

23 Mr. Bluhm asked Mr. Hall if an eight foot fence would be allowed in the front yard.

24

25 Mr. Hall stated no, the eight foot fence would only be allowed in the side and rear yards.

26

27 Mr. Bluhm asked Mr. Hall if the fence in the front yard could be a solid fence.

28

29 Mr. Hall stated yes, except in the area of the visibility triangle.

30

31 Mr. Bluhm stated that the City of Champaign and the City of Urbana require that fences in front yards be at  
32 least 50% open. He asked Mr. Hall if staff has considered requiring something similar to the City of  
33 Champaign and the City of Urbana. He said that he is concerned about a solid eight foot fence being  
34 allowed around the property and up to the driveway because if emergency services or the sheriff's office are  
35 called to the property they cannot see what is going on until they get inside of the property. He said that if  
36 there is a domestic dispute the deputy would not be able to see anything until he actually entered the  
37 driveway.

38

39 Mr. Hall stated that the *Zoning Ordinance* does require a visibility triangle of 15 feet for a driveway although  
40 the requirement does not limit the fence size.

41

42 Mr. Bluhm stated that at first he was not concerned about the text amendment but as he further considered it  
43 he became concerned about a deputy that might be called out to a property in the middle of the country



1  
2 Mr. Hall stated that Mr. Knight noticed that there are no height limits in the CR district. He said that this  
3 requirement only applies to the agricultural districts on lots less than five acres in area therefore if someone  
4 owns a property that is more than five acres and it is located in the agricultural districts there would be no  
5 height limit on a fence.

6  
7 Mr. Bluhm asked the audience if anyone else desired to sign the witness register to present testimony  
8 regarding this case and there was no one.

9  
10 Mr. Bluhm closed the witness register.

11  
12 **Mr. Thorsland moved, seconded by Ms. Capel to continue Case 665-AT-10 to April 29, 2010. The**  
13 **motion carried by voice vote.**

14  
15 Mr. Bluhm asked the Board if they desired to have the case re-advertised to include the three inch clearance.

16  
17 Mr. Thorsland asked Mr. Hall to indicate how much re-advertisement would cost.

18  
19 Mr. Hall stated that the cost would be approximately \$75.

20  
21 **The consensus of the Board was to re-advertise Case 665-AT-10.**

22  
23 Ms. Capel stated that it might be a good idea to contact the Sheriff's office prior to the re-advertisement  
24 because he may have additional changes that need to be included in the new legal advertisement.

25  
26 **Case 666-AT-10 Petitioner: Champaign County Zoning Administrator Request: Amend the Champaign**  
27 **County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11D.1 to clarify that the**  
28 **standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either**  
29 **amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

30  
31 Mr. Hall distributed a Supplemental Memorandum dated March 25, 2010, to the Board for review. He said  
32 that the new memorandum includes new information for the Finding of Fact. He said that the items that are  
33 on pages 4 and 7 of the Draft Finding of should be renumbered to allow for the new items of evidence which  
34 are included in the memorandum. He said that new Item #8.A(7) should read as follows: Easing the review  
35 of special use permit cases and eliminating the filing of parallel variance cases will help keep the costs of the  
36 County zoning program lower than it would be otherwise and reduce the application costs to applicants and  
37 leave applicants more freedom and flexibility in developing their special use. He said that new Item #9  
38 should read as follows: None of the Land Use Regulatory Policies appear to be relevant. He said that the  
39 Board had previously seen part of this case in the previous text amendment and when that amendment got to  
40 the County Board there were objections made by the public. He said that at that time it was his position that  
41 while he disagreed completely with the public's objections the fact that there were objections was sufficient  
42 reason to redo the text amendment trying as much as possible to eliminate any basis for disagreement in  
43 regards to standard conditions. He said that the County Board agreed and the text amendment was re-

1 advertised and the new phrase, pursuant to the objections that were raised at the County Board, was inserted  
 2 as follows: “in either amount or kind.” He said that this phrase makes it very clear that the standard  
 3 conditions which are subject to waiver are any standard condition of any kind that is not in Section 5.3. He  
 4 said that what needs to be done during this public hearing is, at least amongst everyone in the room, make  
 5 sure that everyone agrees that the new language removes any ambiguity about what a standard condition is.  
 6 He said that in his view there is no ambiguity at the present time but comments have been made at the  
 7 County Board and the Zoning Board of Appeal’s task is to make the language perfectly clear.

8  
 9 Mr. Hall distributed a handout which includes new items of evidence for the Finding of Fact which can be  
 10 added as new Items #10; #11; #12; and #13. He said that the new items of evidence should only be added if  
 11 the Board believes that it would add clarity to the text amendment. He read the new proposed items of  
 12 evidence as follows: #10: A special use permit is not required by statute to have standards. Standards are a  
 13 convenience for both the County and the special use applicant; and #11: Whether or not a special use permit  
 14 has standards that are subject to a variance or standard conditions that are subject to a waiver, applicants can  
 15 in either case make a request for something less than is otherwise required by the Ordinance; and #12: A  
 16 special use should always be in accordance with the general purpose and intent of the ordinance and should  
 17 never be injurious to the neighborhood or to the public health, safety or welfare whether or not that special  
 18 use permit has standards that are subject to a variance or standard conditions that are subject to a waiver; and  
 19 #13: Maintaining standard conditions that are subject to a waiver rather than standards that are subject to a  
 20 variance should result in quicker and easier public hearings at the Zoning Board of Appeals (and County  
 21 Board when relevant); lower overall costs of the zoning program; and lower application costs for special use  
 22 permit applicants.

23  
 24 Mr. Hall stated that the Board can do this either way because we do not have to have standards. He said that  
 25 this is a true policy issue and staff’s recommendation to the County Board is that the best policy is to  
 26 maintain the greatest degree of freedom for both the applicant, ZBA, and County Board. He said that either  
 27 way the special use permit has to be consistent with the general purpose and intent of the Ordinance and it  
 28 cannot be injurious to the neighborhood. He said that he would like to add evidence to Item #8(2)(c) as  
 29 follows: These two findings are essentially the same as two of the required criteria for variances found in  
 30 subparagraph 9.1.9C.1.d. and 9.1.9C.1.e. which addresses injury to the neighborhood, public health, safety  
 31 and welfare and harmony and purpose of Ordinance. He said that a new Item #8(2)(d) should read as  
 32 follows: The other criteria required for a variance are not related to either injury to the neighborhood, public  
 33 safety and welfare or to the purpose or intent of the Ordinance. He said that the point is that the other criteria  
 34 for a variance have nothing to do with injury to the district and purpose and intent of the Ordinance. He said  
 35 that both the variance and special use permit have to meet those common things and that is the reasoning  
 36 why standard conditions were introduce back in 1993 and that is why they have been there for 17 years and  
 37 why they should continue to stay that way. He said that with the new evidence that was included in the  
 38 handout as new items #10; #11; #12; and #13. He said that if it appears that staff is working very hard to  
 39 make sure that this case gets adopted then that would be correct. He said that changing from standard  
 40 conditions to standards would be a terrible setback.

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 42 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.

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Mr. Palmgren asked Mr. Hall to give an example of the differences.

Mr. Hall stated that the only difference would be that instead of the Board doing a single special use case, which it has done for the past 17 years, it would do a special use plus a variance case for any variance from the standard. He said that under the special use case there would be seven findings and under the special use and the variance cases there would be 10 findings. He said that the petitioner would have to pay two application costs and staff would have to prepare memorandums, legal notices and legal advertisements for two cases. He said that in both cases the Board would have to make sure that the request is not injurious to the district, injurious to the public health, safety and welfare and meets the purpose and intent of the Ordinance.

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

Mr. Hall stated that his response to Mr. Palmgren’s question might be good evidence to add to the Finding of Fact.

Mr. Palmgren stated that it appears that there will be an increased workload for staff.

Mr. Bluhm stated that perhaps new Item #13 could be expanded.

Mr. Bluhm called Mr. Herb Schildt to testify.

Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet distributed a written statement dated March 25, 2010, to the Board for review and as a Document of Record. Mr. Schildt read his statement. He said that tonight he is expressing his opinions as well as his wife’s. He strongly recommended that the Board not adopt Case 666-AT-10 because it will make all of the regulations contained in the wind farm amendment (Section 6.1.4) subject to waiver. He said that it is clear to him that, as the zoning code is currently written, the wind farm regulations cannot be waived. Therefore, adopting this amendment will cause a very significant change to the zoning code, and he opposes it. He said that the Board knows that he believes the wind farm amendment adopted last year is seriously flawed. He said that he also has a problem with the substantial changes made to the amendment after the close of ZBA hearings and furthermore he is troubled that the legal notice for the wind farm amendment included an overlay district, but this district requirement was not part of the final amendment. He said that the wind farm regulations provide at least a baseline of protection for the residents of the County and they also set expectations about where a wind farm can or cannot be located. He said that these minimum standards should not be subject to waiver and as the zoning code is currently written they are not subject to a waiver and this is as it should be. He said that no changes to the zoning code in this regard are needed.

Mr. Schildt stated that it is useful to point out why he believes that the wind farm provisions are not currently subject to waiver. He said that Section 9.1.11D.1 defines situations in which a standard condition for a special use permit can be waived and it specifically refers to the special uses enumerated in Section 6.1.3. He quoted a portion of Section 9.1.11D.1 as follows: “Any other provision of this ordinance not withstanding, the Board or Governing Body, in granting any Special Use, may waive upon application any



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Mr. Bluhm asked the Board if there were any questions for Mr. Schildt and there were none.

Mr. Bluhm asked if staff had any questions for Mr. Schildt.

Mr. Hall asked Mr. Schildt if he was aware that all of the requirements for wind farms are labeled as standard conditions from the very beginning and were in fact advertised as such in the legal advertisement.

Mr. Schildt stated that he is aware that several places in the law refer to the requirements as standard conditions.

Mr. Hall asked Mr. Schildt if he was aware that, as indicated in Item #1 Attachment A of the March 19, 2010, Preliminary Memorandum, if the parts that have strikeout are ignored everything else is as the ordinance exists today. He said that the ordinance as it exists today Subsection 6.1 indicates the following: the standards listed for the specific special uses which exceed the applicable district standards in Section 5.3, and which are not specifically required under another County ordinance, state regulation, federal regulation, or other authoritative body having jurisdiction, to the extent that they exceed the standards of the district, shall be considered standard conditions which the Board is authorized to waive upon application as provided in Section 9.1.11 D.1 on an individual basis. He asked Mr. Schildt if he understood that Subsection 6.1.4 is a subsection of 6.1 therefore the ordinance as it stands today makes it very clear both at the beginning of Section 6.1 and at Subsection 6.1.4, that all of the requirements for wind farms are standard conditions.

Mr. Schildt stated that he lost the question. He said that the last portion of Section 6.1, as it currently stands in the ordinance, indicates that the following: shall be considered standard conditions which the Board is authorized to waive upon application as provided in Section 9.1.11 on an individual basis. He said that the current version of Paragraph 9.1.11.D.1 indicates the following: Any other provision of this ordinance not withstanding, the Board or Governing Body, in granting any Special Use, may waive upon application any standard or requirement for the specific Special Use enumerated in Section 6.1.3. He said that there is circularity here in that Section 6.1 refers to Paragraph 9.1.11.D.1 and Paragraph 9.1.11.D.1 says that it can only be in Section 6.1.3.

Mr. Hall stated that his point was that Section 6 is very clear that everything in Subsection 6.1 could be a standard condition.

Mr. Schildt stated that he and Mr. Hall have had many discussions and he would never question Mr. Hall's understanding of the zoning code but in this regard he does disagree. He said that Subsection 6.1 specifically states that the standards listed for specific special uses which exceed the applicable District standards in Section 5.3. He said that Subsection 6.1 eventually indicates that those standards can be waived if they meet the criteria in Section 9.1.11. He said that he reads both sections unambiguously. He said that he reads 9.1.11D.1. as only those standard conditions enumerated in 6.1.3 can be waived and Subsection 6.1 further specifies which standard conditions can be waived and those are standard conditions with equivalent requirements in Section 5.3. He said that this is his clear understanding of what the law is stating.

1 Mr. Hall asked Mr. Schildt to indicate his understanding of what it means when Section 6.1.4 begins every  
2 paragraph referring to everything in that paragraph as a standard condition.

3  
4 Mr. Schildt stated that it says standard condition but it doesn't say anywhere that they are subject to waiver  
5 except for the fact that there are private waivers. He said that we are not talking about the private waivers  
6 that are within the ordinance that have nothing to do with the County. He said that he has studied this with a  
7 focus on the wind farm but what about the mobile home parks included in Section 6.2. He said that there is  
8 also the issue of decommissioning which is under Section 6.1.

9  
10 Mr. Hall asked Mr. Schildt what he would make of the fact, that what he is proposing would result in the  
11 Zoning Ordinance having everything under the wind farm being labeled as a standard condition. He asked  
12 Mr. Schildt if he believes that it would be consistent to have those standard conditions not subject to waiver.

13  
14 Mr. Schildt stated that it is important to go back to what the law indicates. He said that the law states that  
15 the only standard conditions which can be waived are those included in Section 6.1.3 and clearly the law can  
16 be changed. He said that he does not want the law to be changed but there are a couple of clauses in Section  
17 6.1.4 which do not use the term "standard condition" and he is not sure if that is staff's intent. He said that  
18 standard condition is not a defined term in the ordinance. He said that Item Q only indicates the following:  
19 Complaint hotline. He said that Item Q does not say standard condition for it.

20  
21 Mr. Hall agreed.

22  
23 Mr. Schildt stated that he has the same issue with Item S: Application requirements.

24  
25 Mr. Hall stated that the intent of the drafter was that everything in Section 6.1.4 was a standard condition and  
26 those two items are probably not a significant issue. He asked Mr. Schildt if he included in his written  
27 statement what his understanding is of what are waivable standard conditions for all other special uses at this  
28 time.

29  
30 Mr. Schildt indicated that he does not believe that he made an explicit statement like that but the law  
31 indicates such. He said that the law states, "any other provision of this ordinance notwithstanding the Board  
32 or Governing Body, in granting any Special Use, may waive upon application any standard or requirement  
33 for the specific Special Use enumerated in Section 6.1.3 Schedule of Requirements and Standard Conditions,  
34 to the extent that they exceed the minimum standards of the District..."

35  
36 Mr. Hall asked Mr. Schildt if it is his position, in reference to the phrase "in either amount or kind" is not  
37 necessary because Section 9 makes it clear that everything in Section 6.1.3 is a standard condition that can be  
38 waived.

39  
40 Mr. Schildt stated that he has been focused strictly on the issue concerning the provisions in Section 6.1.4.  
41 He said that, in general, he does not feel that this text amendment is needed but if the Board is going to move  
42 forward with the text amendment and if the phrase is needed for the other issues then he does not have an  
43 opinion on the phrase at this time. He said that the big change is being generated by making the wind farm

1 special conditions subject to waiver. He said that if the Board believes that the text amendment cleans up  
2 the language in some sense relative to other special uses then he has no opinion one way or the other but his  
3 sole concern is the change in making the wind farm provision subject to waiver.  
4

5 Mr. Hall stated that the reason why he agreed to re-advertise this case was because at the County Board  
6 meeting Mr. Schildt made the argument that nothing in Section 6.1.3 was subject to a waiver except things  
7 that had the same requirement in Section 5.3. He said that he is glad that he and Mr. Schildt have come to an  
8 agreement on this subject although it is unfortunate that the case has been re-advertised.  
9

10 Mr. Schildt stated that he was responding to the possibility of the change being made. He said that clearly  
11 the language of the law is very specific and he made the point at the County Board meeting that it doesn't  
12 have anything to do with the vast majority of things in the wind farm amendment and the unaltered language.  
13 He said that his point was that there is not concept of noise in Section 5.3 therefore there is no applicable  
14 standard in Section 5.3 to exceed. He said that his main concern is strictly the issue of the change to the  
15 wind farm standards making them subject to waiver. He said that if the recommended changes are enacted  
16 then the standards would be subject to waiver and he does not believe that such a change should be made  
17 therefore he offered his two alternatives.  
18

19 Mr. Hall asked Mr. Schildt if he understood that if the Board went with the direction that he is  
20 recommending that all of the wind farm standards could still be subject to a variance.  
21

22 Mr. Schildt stated that the standard for a variance is higher because it has to meet five criteria.  
23

24 Mr. Hall stated that the variance has to meet five criteria three of which are not related to injury to the  
25 district, or to public health, safety or welfare or the purpose and intent of the ordinance.  
26

27 Mr. Schildt stated that new Item #8.A.(7) states that, easing the review of special use cases and eliminating  
28 the filing of parallel variance cases will help keep the costs of the County zoning program lower than it  
29 would be otherwise and reduce the application costs to applicants and leave applicants more freedom and  
30 flexibility in developing their special use. He said that he does not know if the wind farm standard  
31 conditions are subject to variances. He said that he has reviewed this section in the zoning code and it is not  
32 under discussion tonight except indirectly because of Mr. Hall's question. He said that it is not clear to him  
33 that the standard conditions are subject to variance, as the code is written, but hypothetically if they were  
34 subject to variance they would have to meet additional criteria. He said that he and Mr. Hall are seeing this  
35 issue a little bit differently and he totally respects Mr. Hall's point of view and no matter how this turns out it  
36 is not the first time that they have butted heads and it probably won't be the last time but in all honesty when  
37 Mr. Hall states, "leave applicants more freedom," it suggests that waivers are easier to obtain than variances.  
38 He said that this supports his concern regarding wind farms. He said that wind farms will be the biggest  
39 change to Champaign County since the swamps were drained and it is a really big deal and he believes that  
40 the standards should be extraordinarily high. He said that he does not believe that there should be any  
41 waivers or variances for wind farms at all.  
42

43 Mr. Bluhm asked the Board and staff if there were any additional questions for Mr. Schildt and there were

1 none.

2  
3 Mr. Bluhm called Mr. Jed Gerdes to testify.

4  
5 Mr. Jed Gerdes, who resides at 1448 CR 2700E, Ogden asked Mr. Hall if he is determined to get this text  
6 amendment adopted.

7  
8 Mr. Hall stated that the text amendment needs to be done.

9  
10 Mr. Gerdes stated that it is his understanding that staff believes that it is important to be able to give waivers  
11 out to wind farms for basic criteria. He asked Mr. Hall why it is so necessary to be able to grant these  
12 waivers.

13  
14 Mr. Hall stated that if there are no standard waivers the County will end up spending more money in trying  
15 to get to the same result although it is a policy issue.

16  
17 Mr. Gerdes stated that it is a policy issue. He said that he finds it interesting that this issue never came up  
18 until his case regarding a requested restricted landing area was heard. He asked Mr. Hall what is actually  
19 being waived. He said that if the wind farm desires to place a turbine closer to a non-participating  
20 landowner so they could squeeze in one more turbine they could obtain a waiver and not abide by the  
21 standards. He asked why the non-participating landowner does not deserve the same protection as the  
22 participating landowner; and why should there be dual standards; and why should this be on a case-by-case  
23 basis. He said that this is not a typical variance such as the height of a fence because the height of the fence  
24 basically only affects the petitioner and the people next door are not asked if they will be affected by the  
25 height. He said that the Board decides for those neighbors as to what will be done. He said that it could  
26 create a situation where someone has a \$1 million dollar home and they desire to not have a wind turbine  
27 more than 1,200 feet away from their home and another neighbor, who is a poor, single mom with a couple  
28 of kids who lives in a shack that probably won't be in existence much longer, can be crowded by the turbine  
29 because the wind company gets a waiver to only have a 1,000 foot setback from the shack. He said that such  
30 a situation puts everything up for guessing and it also leads to corruption because it leaves everything up for  
31 grabs. He said that it just isn't for this Board but for future ZBA members.

32  
33 Mr. Hall requested that Mr. Gerdes address the Board and not staff.

34  
35 Mr. Gerdes stated that it appears that the text amendment will put everything up for grabs. He said that he  
36 has to address Mr. Hall about his next comment because he is the one that did it.

37  
38 Mr. Hall informed Mr. Gerdes that he did not do anything other than his job.

39  
40 Mr. Gerdes stated that Mr. Hall stated at the last RLA meeting that the Gerdes' were exempt as an  
41 agricultural use and that they could go ahead and install their RLA. Mr. Gerdes said that a wind farm  
42 representative came to him and said that the wind farm company would like his family to get rid of the RLA  
43 or the company will go talk to the County. Mr. Gerdes said that two weeks later Mr. Hall wrote a letter to

1 his family indicating that the RLA is only okay if Robert Gerdes puts in the RLA and that Jed Gerdes could  
2 not use it because at that point the RLA would be considered a commercial RLA. Mr. Gerdes stated that his  
3 family has taken this issue to court and Mr. Hall has now determined that the RLA is not exempt at all which  
4 is a total flip from his previous determination. He said that Mr. Hall previously stated that it is not a concern  
5 of the County, when zoning rules for safety are being developed, as to how many tax dollars are coming in  
6 and late Mr. Hall stated that it is a concern.

7  
8 Mr. Bluhm requested that Mr. Gerdes address the Board and only give testimony which is relevant to this  
9 case.

10  
11 Mr. Gerdes stated that he believes that it is very dangerous if the whole thing is put up for grabs because it  
12 puts individuals at risk currently and in the future.

13  
14 Mr. Bluhm asked the Board if there were any questions for Mr. Gerdes and there were none.

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

17  
18 Mr. Schildt requested the opportunity to address the Board.

19  
20 Mr. Bluhm granted Mr. Schildt a quick opportunity to address the Board.

21  
22 Mr. Schildt asked the ZBA to take their time with this because it really merits a lot of thought about the  
23 downstream ramifications of this text amendment.

24  
25 Mr. Bluhm asked the audience if anyone desired to sign the witness register at this time to present testimony  
26 regarding this case.

27  
28 Mr. Bluhm called Ms. Sherry Schildt to testify.

29  
30 Ms. Sherry Schildt, who resides at 398 CR 2500N, Mahomet stated that if someone were to apply for a  
31 variance there are five criteria and the petitioner must demonstrate that all of the five criteria for that  
32 variance are met. She said that Section 9.1.9.C(d) and (e) of the Zoning Ordinance are similar to the criteria  
33 for giving waivers. She said that to get a variance you have to prove the following (a) that special conditions  
34 and circumstances exist which are peculiar to the land or structure involved which are not applicable to other  
35 similarly situated land or structures elsewhere in the same zoning district; and (b) that practical difficulties  
36 or hardships created by carrying out the strict letter of the regulations sought to be varied prevent reasonable  
37 and otherwise permitted use of the land or structures or construction on the lot; and (c) that the special  
38 conditions, circumstances, hardships, or practical difficulties do not result from actions of the applicant. She  
39 said that a variance is a higher standard to meet than a waiver. She said that if the Board does delay a  
40 determination at this meeting she would suggest that the Board review the section in the Zoning Ordinance  
41 regarding variances.

42  
43 Ms. Schildt stated that the handout distributed by Mr. Hall, which was to provide clarity for the text



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Ms. Schildt stated that she is going by what the current ordinance states right now and what Mr. Hall stated about standard conditions versus standards. She stated that she stands by her testimony.

Mr. Bluhm asked the Board if there were any questions for Ms. Schildt and there were none.

Mr. Bluhm asked if staff had any questions for Ms. Schildt and there were none.

Mr. Schildt requested an opportunity to re-address the Board.

Mr. Bluhm granted Mr. Schildt a brief opportunity to re-address the Board.

Mr. Schildt stated that when Mr. Hall was speaking about variances Mr. Hall was referring specifically to the wind farm ordinance but Mr. Hall just stated that because they are listed as standard conditions they are not subject to variance and only to waiver. He asked Mr. Hall if that was correct.

Mr. Hall stated yes.

Mr. Schildt stated that if the text amendment is not approved and there is no waiver or a variance on the wind farm requirements then they are the rules, not guidelines, and they are as they stand. He asked Mr. Hall if this was correct.

Mr. Hall stated that he does not see how that would ever be correct. He said that this text amendment is being proposed because there is a disagreement or contradiction in the ordinance.

Mr. Schildt asked Mr. Hall to clarify that wind farm standard conditions are subject to waiver and not to variance so therefore if this change is made they would become subject to waiver and not variance but if this change isn't made then they are explicitly not subject to waiver and they are also not subject to variance. He said that the handout that Mr. Hall distributed indicates that standard conditions are not subject to variance they are subject to waiver. Mr. Schildt asked Mr. Hall if this was correct.

Mr. Hall stated that perhaps he misspoke. He said that the only things that are not subject to a variance are the things that are listed in Section 9.1.9B. as prohibited variances.

Mr. Schildt asked if the wind farm provisions are not made subject to waiver are they are still subject to variance.

Mr. Hall stated that in his mind they are subject to waiver right now and the text amendment is only correcting an error in the ordinance.

Mr. Schildt stated that he appreciates Mr. Hall's clarification. He said that at any point he does not believe that the wind farm provisions should be subject to waiver and he is not convinced that they are subject to variance. He said that the newly introduced comments from Mr. Hall would prove cause for the Board to go



1 knows those criteria very well. He said that no standard condition has ever been allowed to be waived to the  
2 extent that the use would be injurious to the neighborhood or would have any implications upon public  
3 health, safety or welfare. He said that the Board worked very hard on the ordinance and he is very  
4 comfortable with the language of the proposed text amendment. He said that regardless whether it is the  
5 present Board or a future Board none of those members are willing to give up the concept of health, safety or  
6 welfare of the public. He said that currently some of the variance cases that have come before this Board  
7 have been worked to death so that everyone is as happy as possible. He said that he is willing to move  
8 forward with the text amendment because if there was much concern from the public the meeting room  
9 would have been full.

10  
11 Mr. Schroeder stated that he agrees with Mr. Thorsland. He said that he has been on the Board for a very  
12 long time and the Board has worked very hard on the wind farm ordinance. He said that normally when the  
13 Board makes a mistake there are over 300 people in the meeting room willing to make them aware of such  
14 but he does not believe that any more time and energy could have been put towards this ordinance than what  
15 was done. He said that society will require future energy for the public and toes may get stepped on from  
16 time to time. He said that he appreciates the comments from the public but it is up to this Board to move  
17 ahead and see the overall picture as to what has to be done for the community for future energy  
18 requirements. He said that he is also willing to move forward with the text amendment.

19  
20 Mr. Bluhm asked the Board if there were any other comments.

21  
22 Mr. Palmgren asked Mr. Hall if the proposed text amendment is a clarification or a change in the language.

23  
24 Mr. Hall stated that it is his view that the proposed text amendment is a clarification or correction. He said  
25 that everything in the wind farm case was presented with standard conditions which are subject to waiver  
26 and after that case was completed it was discussed that this error existed in the ordinance. He said that he is  
27 only the Zoning Administrator and he does not have perfect knowledge but this is his position which is  
28 supported by the State's Attorney. He said that even if the text amendment was a change in the language the  
29 Board would have the right to make such a change.

30  
31 Mr. Bluhm stated that he missed a couple of the wind farm meetings but it is his recollection that the wind  
32 farm case was presented with standard conditions which were subject to waiver.

33  
34 Mr. Thorsland agreed. He said that the Zoning Board has always been very generous with their time and at  
35 the wind farm hearings the Board listened to testimony from people who were not even residents of  
36 Champaign County. He said that during those very long hearings the ZBA gave a level of freedom for  
37 testimony that other meetings would not have allowed.

38  
39 Mr. Bluhm stated that just because a standard condition is subject to waiver does not mean that it will be  
40 easy to obtain.

41  
42 Mr. Thorsland stated that the Board worked very hard on the ordinance to try to balance the opinions of  
43 those who did and did not want it. He said that at the time when the Board was considering the ordinance



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Mr. Courson asked Mr. Hall if it would be a small change and a huge savings if the wind farm was excluded from the text amendment.

Mr. Hall stated that he would be opposed to excluding the wind farm.

Mr. Courson asked Mr. Hall to explain why he would be opposed.

Mr. Hall stated that such an exclusion would not be a small change but would be a big change. He said that he prefers to receive direction from the County Board before he makes any big changes. He said that he is pretty confident that the County Board would not support such a change and he is opposed to it. He said that he previously ran the three text amendment by the County Board and they agreed to move forward. He said that in his tenure as Zoning Administrator he ran two amendments without receiving direction from the County Board and neither one of them were successful therefore this case is based on experience. He said that if the Board desires they can make such a request to the County Board and we can wait to see how they respond in May.

Mr. Courson stated that he understands that the County Board is pro-wind.

Mr. Hall asked the Board if they would prefer to wait until the County Board has taken final action on Case 664-AT-08 before they take final action on this case.

Mr. Schroeder indicated that he was thinking the same thing.

Mr. Hall stated that it might prevent overload.

Mr. Thorsland stated that he would not be uncomfortable in waiting until the County Board adopted Case 664-AT-08. He said that ZBA does not have a full Board present at tonight's meeting either so the petitioner could choose to request a continuance.

Mr. Hall stated that, as the petitioner, he would be comfortable with the present Board's decision.

**Ms. Capel moved to continue Case 666-AT-10. The motion failed due to the lack of a second.**

Mr. Hall stated that Case 664-AT-08 will be before the County Board on May 4<sup>th</sup> and will stay at the Committee of the Whole until June 8<sup>th</sup> and move forward to the full County Board on June 24<sup>th</sup> therefore Case 666-AT-10 could return to the ZBA on July 15<sup>th</sup>. He said that the July 15<sup>th</sup> continuance date would be beyond the 100 day limit for a continuance therefore a motion would need to be made to suspend the by-laws. He said that this Board many want to provide comments to the County Board regarding the Committee of the Whole approach. He said that the Committee of the Whole approach has resulted in ELUC having less time for Planning and Zoning issues. He said that the COW has also resulted in more County Board members becoming aware of Planning and Zoning issues which is a good thing but it has put a real cramp on the amount of items which can be placed on the COW agenda.

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**Mr. Courson moved, seconded by Mr. Palmgren to suspend the by-laws for the 100-day continuance date. The motion carried by voice vote.**

**Ms. Capel moved, seconded by Mr. Courson to continue Case 666-AT-10 to the July 15, 2010, meeting. The motion carried by voice vote.**

**7. Staff Report**

None

**8. Other Business**

**A. October 28, 2010, Meeting**

Mr. Hall stated that the Treasurer’s office has contacted staff indicating that they are having the County’s real estate tax sale on October 29, 2010, and the Lyle Shields Meeting Room will be set up for that sale on October 28<sup>th</sup>. He said that it is his recommendation to cancel the October 28, 2010, meeting. He said that he has received information that staff should expect a wind farm application in the fall of 2010 therefore the ZBA could have a wind farm hearing going on and no access to the Lyle Shields Meeting Room. He said that an alternative date could be set but his advice would be to cancel the meeting.

**Mr. Thorsland moved, seconded by Mr. Schroeder to cancel the October 28, 2010, ZBA meeting. 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 8:55 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

1 **MINUTES OF REGULAR MEETING**  
2  
3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**  
4 1776 E. Washington Street  
5 Urbana, IL 61801  
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7 **DATE:** April 15, 2010 **PLACE:** Lyle Shields Meeting Room  
8 1776 East Washington Street  
9 **TIME:** 7:00 p.m. **Urbana, IL 61802**

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10 **MEMBERS PRESENT:** Doug Bluhm, Catherine Capel, Thomas Courson, Eric Thorsland, Paul  
11 Palmgren  
12

13  
14 **MEMBERS ABSENT :** Roger Miller, Melvin Schroeder  
15

16 **STAFF PRESENT :** Lori Busboom, John Hall, J.R. Knight, Christina Papavasiliou (Assistant  
17 State’s Attorney)  
18

19 **OTHERS PRESENT :** Lisa Karcher, Jeff Tock, Jim Heimburger, Gene Ziegler, Mary Ziegler,  
20 Harold Scharlau, Janet Scharlau, Billy Ziegler, Virginia Ziegler, Carl Smith,  
21 Leslie Cooperband, Wes Jarrell, Kathy Dyson, Sherry Schildt  
22

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23  
24 **1. Call to Order**  
25

26 The meeting was called to order at 7:04 p.m.  
27

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

30 The roll was called and a quorum declared present with two members absent.  
31

32 **3. Correspondence**  
33

34 None  
35

36 **4. Approval of Minutes (March 11, 2010)**  
37

38 Mr. Thorsland moved, seconded by Mr. Courson to approve the March 11, 2010, minutes as  
39 submitted. The motion carried by voice vote.  
40

41 Mr. Thorsland moved, seconded by Mr. Courson to re-arrange the docket and hear new Case 663-V-  
42 10, Dan and Debra Johnson prior to Case 645-S-09, Robert and Barbara Gerdes and Case 667-S-10,  
43 Leslie Cooperband and Wesley Jarrell. The motion carried by voice vote.  
44

45 **5. Continued Public Hearing**  
46

47 Case 645-S-09 Petitioner: Robert and Barbara Gerdes Request to authorize the construction and use  
48 of a “Restricted Landing Area” as a Special Use in the AG-1 Agriculture Zoning District. Location:

**DRAFT**  
**SUBJECT TO APPROVAL**



1 and the new information regarding the newly planted trees he would like the opportunity to present new  
2 evidence regarding those issues.

3  
4 Mr. Bluhm asked the Board if there were any questions for Mr. Tock and there were none.

5  
6 Mr. Bluhm asked if staff had any questions for Mr. Tock and there were none.

7  
8 Mr. Bluhm stated that there is a possible cancellation for the May 13, 2010, meeting. He asked Mr. Tock if  
9 he would like a continuance to May 13, 2010, or if he would prefer a continuance to May 27, 2010.

10  
11 Mr. Tock stated that he would prefer a continuance to May 27, 2010.

12  
13 **Mr. Palmgren moved, seconded by Mr. Thorsland to continue Case 645-S-09, Robert and Barbara**  
14 **Gerdes to the May 27, 2010, meeting. The motion carried by voice vote.**

15  
16 **6. New Public Hearings**

17  
18 **Case 663-V-10 Petitioner: Dan and Debra Johnson Request to authorize the following variances in**  
19 **the R-3, Two Family Residence Zoning District: A. Replacement and use of an existing dwelling with**  
20 **the following variances: 1. A front yard of 16 feet, six inches and a setback of 36 feet, six inches in**  
21 **lieu of the minimum required front yard of 25 feet and minimum setback of 55 feet in regard to**  
22 **Carroll Avenue, a minor street; and 2. A rear yard of 12 feet, six inches in lieu of the minimum**  
23 **required 20 feet rear yard; and 3. Lot coverage of 36% in lieu of the maximum allowed 30% lot**  
24 **coverage. B. Replacement and use of an existing detached garage with side and rear yards of zero**  
25 **feet in lieu of the minimum required side and rear yards of five feet for detached accessory buildings,**  
26 **Location: An approximately 5,000 square foot lot that is the North 47 feet of the South 241 feet of Lot**  
27 **46 of Fred C. Carroll's Subdivision of the East Half of the Northwest Quarter of Section 9, Township**  
28 **19 North, Range 9 East of the Third Principal Meridian and commonly known as the manufactured**  
29 **home at 1507 Carroll Avenue, Urbana.**

30  
31 Mr. Bluhm stated that on April 12, 2010, Mr. Johnson submitted a request to withdraw Case 663-V-10.

32  
33 **Case 667-S-10 Petitioner: Leslie Cooperband and Wesley Jarrell, d.b.a. Prairie Fruits Farm. Request:**  
34 **Authorize a Major Rural Specialty Business in the AG-2 District with waivers of standard conditions**  
35 **including, but not limited to, the prohibition of sales of alcohol not produced on the premises.**  
36 **Location: Lot 1 of Jamestown Subdivision in the Northeast Quarter of the Southeast Quarter of**  
37 **Section 29 of Somer township and commonly known as Prairie Fruits at 4410 North Lincoln Avenue,**  
38 **Champaign.**

39  
40 Mr. Bluhm informed the audience that this is an Administrative Case and as such the County allows anyone  
41 the opportunity to cross examine any witness. He said that at the proper time he will ask for a show of hands  
42 for those who would like to cross examine and each person will be called upon. He requested that anyone  
43 called to cross examine go to the cross examination microphone to ask any questions. He said that those

1 who desire to cross examine are not required to sign the witness register but are requested to clearly state  
2 their name before asking any questions. He noted that no new testimony is to be given during the cross  
3 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt  
4 from cross examination.

5  
6 Mr. Thorsland stated that he would like to disclose that Prairie Fruits Farm, on occasion, is a customer of his  
7 farm and he is, on occasion, present at the subject property although he has no financial interest in the  
8 outcome of this case therefore he believes that he can serve without bias.

9  
10 Mr. Hall distributed a Supplemental Memorandum dated April 15, 2010, which includes an e-mail which  
11 staff received from William Bates on April 12, 2010, to the Board for review. He said that the memorandum  
12 also includes some very bad black and white reproductions of photographs which were included with Mr.  
13 Bates' e-mail. Mr. Hall said that at each of the Board member's tables there are color photographs which are  
14 somewhat intelligible. He said that Mr. Bates stated in his e-mail that he is concerned about how the manure  
15 is handled on the subject property and the parking along North Lincoln Avenue.

16  
17 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.

18  
19 Mr. Bluhm asked Mr. Hall if photographs #2 and #3 are indicating the manure pile.

20  
21 Mr. Hall stated yes.

22  
23 Mr. Bluhm called Mr. Wes Jarrell to testify.

24  
25 Mr. Wes Jarrell, who resides at 4410 North Lincoln Avenue, Champaign distributed a handout dated April  
26 15, 2010, which addresses the concerns expressed in the Preliminary Memorandum dated March 5, 2010.  
27 He said that they have had breakfasts at the farm that have resulted in many more customers than they  
28 initially intended therefore they were not prepared in getting all of those customers directed off the road and  
29 onto their property. He said that he was not aware that parking along the side of the road for a brief period of  
30 time was an issue therefore in the future he intends to place "No Parking" signs temporarily, if acceptable,  
31 along the side of the road so that there is no confusion. He said that part of the problem was that once  
32 someone began parking along the side of the road others followed suit and it got out of control. He said that  
33 they will issue parking instructions to their clients and place signs along their driveway and in areas where  
34 parking is acceptable. He said that for the farm dinners they typically have 45 to 50 guests along with guest  
35 farmers who provide part of the produce that is served and for any one point in time they feel that they have  
36 about 100 people at the very most. He said that staff took up some of the available parking spaces because  
37 they were not expecting the crowd that was received although staff will be instructed to park elsewhere on  
38 the property. He referred to Figure 1. of the handout that was distributed to the Board at tonight's meeting  
39 during his discussion of parking. He said that there are a number of ways that parking could be handled  
40 because the driveway is graveled and the lawn is covered in turf and is well drained. He said that he  
41 measured parking areas at the mall and at the University of Illinois and found that he would be very generous  
42 in allowing 10 foot per vehicle in width. He said that if parking was angled on the north side of the driveway  
43 at the allowance of 10 foot per vehicle there could be a total of 20 cars at that location. He said that if

1 parallel parking was utilized on the south side of the driveway allowing 18 foot per vehicle a total of 10 cars  
2 could be in that location. He said that if head-in parking was utilized on the south side of the barn at 10 foot  
3 per vehicle 8 vehicles could be generously placed in one direction facing to the south and 5 vehicles could be  
4 placed facing the east. He said that with this kind of spacing 43 vehicles could be located on the property  
5 and if overflow parking is required the grassy field portion of their property, next to the Dyson property,  
6 could be easily utilized for parking allowing three rows of 10 vehicles each with a total of 30 vehicles. He  
7 said that a parking attendant will be on the site directing vehicles assuring that there will be no parking  
8 issues with vehicles along the side of the road. He said that no one came to them to complain about the  
9 presence of the vehicles along the road therefore he was very surprised to read Mr. Bates' complaint. He  
10 said that there was no farm equipment that was stopped during the time of their events unless they were  
11 forced to turn around before he could see them.

12  
13 Mr. Jarrell stated that there were concerns about the type and amount of lighting that was used during the  
14 events. He said that the events are held during the day or inside the dining area and as it gets dark they use  
15 candles or oil lamps. He said that normally the events end before it gets too dark because it would not be  
16 practical to manage such an event in the dark. He said that there is a question about the display or dining  
17 area. He said that this area is located in a room in the barn which has a cement floor, sheetrock on the walls  
18 and a lofted ceiling and is about 1,000 square feet in area. He said that everything is at ground level  
19 therefore handicap accessibility is not an issue and there are two cement parking spaces next to the barn  
20 which are available for those clients. He said that they have had clients in wheelchairs at the farm and have  
21 not had any issues raised. He said that in 2005 when they got started on the farm, dairy, cheese plant and  
22 kitchen they contracted with J & S Waste Water Systems to install three 1,500 gallon tanks and those tanks  
23 are to accommodate the water that comes out of the system to the drain field. He said that they only have a  
24 very small amount of actual impermeable surface, other than roof tops, on the entire farm. He said that they  
25 applied for and received a zoning use permit for the dinners in 2008 and 2009 and understands that the  
26 reason that they currently need a special use permit is because they desire to increase the frequency of the  
27 dinners. He said that staff requested copies of the permits for the kitchen therefore he provided copies,  
28 included in the handout, of all of the permits that they have been granted.

29  
30 Mr. Jarrell stated that he considers himself as a water quality expert who has worked in Wisconsin, Oregon  
31 and here in Illinois on water quality issues. He said that his wife is a compost expert therefore they are very  
32 careful with their compost pile assuring that they do things right. He said that Mr. Bates' letter indicates his  
33 immediate concerns about the compost pile. Mr. Jarrell stated that they prefer to call their manure pile a  
34 compost pile because it is not just thrown out there and left. He said that they do keep track of it and they  
35 turn it so that organic compost is produced. He said that organic compost means that there are specific  
36 requirements for the frequency of turning and maintaining the temperature and records must be kept of each  
37 process. He said that the material is handled very carefully and water has not run off more than three or four  
38 feet from the base of the pile because it is almost dead flat in the area of the pile. He said that the compost  
39 pile is over 200 yards from the Saline Branch. He said that Figure 2 of the handout indicates a photograph of  
40 the compost pile over two years ago because since then a pasture of hay, prairie grass and alfalfa has been  
41 planted therefore creating a 700 foot buffer. He said that in Wisconsin manure is piled much closer on  
42 steeper hills to water resources. He said that a couple of photos have been included for the Board indicating  
43 that the compost is turned and as soon as it is ready they spread it on the fruit and vegetable fields and on

1 their pasture crops.

2  
3 Mr. Bluhm asked the Board if there were any questions for Mr. Jarrell.

4  
5 Mr. Courson asked Mr. Jarrell if the compost is sold or only used for the farm’s agricultural purposes.

6  
7 Mr. Jarrell stated that the compost is not sold because there is not enough of it and they use it on their  
8 organic farm.

9  
10 Mr. Thorsland stated that as a fellow certified organic farmer he is aware that every movement of the pile  
11 must be documented.

12  
13 Mr. Courson asked if the compost pile is considered exempt because it is agriculture.

14  
15 Mr. Bluhm stated yes and no.

16  
17 Mr. Courson asked if the Board is going to manage every compost pile in the County.

18  
19 Mr. Hall stated that the Board is not going to manage every compost pile in the County but he would  
20 recommend with this special use permit that if there is a protocol that is used for compost that the Board  
21 know what that protocol is so that it is clearly established. He said that he assumes that the compost pile is  
22 in full compliance with the Livestock Management Act.

23  
24 Mr. Jarrell stated yes but they are very small in comparison to other livestock facilities. He said that he can  
25 supply staff with the protocol that they are required to follow as organic farmers.

26  
27 Mr. Bluhm stated that such information would be ideal. He asked Mr. Jarrell if goats are buried on the  
28 property.

29  
30 Mr. Jarrell stated that dead livestock, goats, are one of the elements of their compost pile. He said that  
31 because of the dairy permit and the cheese processing plant permit the Illinois Department of Health does  
32 require that they indicate how they handle the livestock so that there is no potential for contamination. He  
33 said that they are under the microscope more than a typical farmer would be and they are inspected twice a  
34 year.

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

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

39  
40 Mr. Hall asked Mr. Jarrell if there may be as many as 100 vehicles at one time for an event.

41  
42 Mr. Jarrell stated that he has not had time to count the number of vehicles at the events but he believes that  
43 100 vehicles at one time is an exaggeration. He said that he would guess that there are probably 60 or 70

1 vehicles at any given time.

2  
3 Mr. Hall stated that at the time of permitting, if the Board approves the special use permit, a change of use  
4 permit will be required changing the designation of the use from a home occupation to a full major rural  
5 specialty business. He said that at the time of permitting it will need to be documented that not only are the  
6 handicap accessibility requirements being accommodated but that the facility is in compliance with the State  
7 of Illinois Accessibility Code. He said that at the end of the meeting he will be happy to give Mr. Jarrell the  
8 contact name and number for the Illinois Capital Development Board, which are requirements not set by the  
9 County, for full compliance. He said that this is only the fourth use where there are a lot of outdoor activities  
10 therefore handicap accessibility is a challenge. He said that he assumes that they will continue to plan to  
11 only prepare and serve the dinner onsite.

12  
13 Mr. Jarrell stated yes. He said that a major part of the dinner's ambiance is to connect people to their food  
14 therefore they use food that they grow or purchase from smaller farms. He said that the preparation is a big  
15 part of dinner and they have a full-time cheese maker/chef who is well trained and he would not want any of  
16 the food to be prepared or served anywhere other than onsite.

17  
18 Mr. Hall asked Mr. Jarrell if the previously mentioned display area which consists of 1,000 square feet is  
19 used for the dinners during inclement weather.

20  
21 Mr. Jarrell stated that they do prefer to hold the dinners outside under the shade cover but at times they  
22 cannot count on the weather therefore they have to move the dinner to the inside. He said that any event that  
23 will be held in the evening will also be held in the display area.

24  
25 Mr. Hall asked Mr. Jarrell to identify the number of people that could be in the display area at one time.

26  
27 Mr. Jarrell stated that he would estimate that at an absolute maximum there may be 60 to 70 people.

28  
29 Mr. Hall requested that Mr. Jarrell obtain such information for the record so that there are no concerns with  
30 safety. He said that he would also like to have the number of doors that are available for life and safety  
31 concerns. He said that the County does not have a building code therefore the Board generally follows the  
32 State Fire Marshall's Life/Safety Code. He said that he would like to receive information from the  
33 petitioners indicating that they are following the state regulations.

34  
35 Mr. Jarrell stated that he will obtain whatever information the Board requires regarding life and safety.

36  
37 Mr. Thorsland asked Mr. Jarrell if there is a big roll-up door on the barn.

38  
39 Mr. Jarrell stated yes. He said that the roll-up door is approximately 14 feet tall and 12 feet wide and takes  
40 up 2/3rds of one wall. He said that there are also three other man doors.

41  
42 Mr. Bluhm asked Mr. Jarrell if there were restrooms in the barn.



1 Mr. Bluhm asked the Board if there were any additional questions for Mr. Jarrell and there were none.

2  
3 Mr. Bluhm asked if staff had any additional questions for Mr. Jarrell and there were none.

4  
5 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Jarrell and there was no one.

6  
7 Mr. Bluhm called Mr. Jim Heimbürger to testify.

8  
9 Mr. Jim Heimbürger, who resides at 2934 Stone Creek Boulevard, Urbana indicated that he had no  
10 comments at this time.

11  
12 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding  
13 this case.

14  
15 Mr. Bluhm called Mr. Harold Scharlau to testify.

16  
17 Mr. Harold Scharlau, who resides at 3610 North Lincoln Avenue, Champaign stated that his property is  
18 approximately one-quarter of a mile from the subject property. He said that he can probably speak for 5 of  
19 the 8 houses that are between Oaks Road and the subject property and they fully support the petitioner's  
20 project. He said they have noticed the vehicles but there have not been any problems and at times there are  
21 fewer cars on the road during an event at the subject property than when the neighbors have garage sales. He  
22 said that Mr. Jarrell's effort to remedy the parking would be appreciated and they fully support Mr. Jarrell  
23 and Ms. Cooperband with their project.

24  
25 Mr. Bluhm asked the Board if there were any questions for Mr. Scharlau and there were none.

26  
27 Mr. Bluhm asked if staff had any questions for Mr. Scharlau.

28  
29 Mr. Hall asked Mr. Scharlau if there is a problem with fast traffic on North Lincoln Avenue.

30  
31 Mr. Scharlau stated no. He said that from Oaks Road on up the road there is a 90 degree turn followed by a  
32 70 degree turn and then within about 400 yards there is another turn therefore there is no speeding in this  
33 area.

34  
35 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Scharlau and there was no one.

36  
37 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding  
38 this case.

39  
40 Mr. Bluhm called Mr. Bill Ziegler to testify.

41  
42 Mr. Bill Ziegler, who resides at 4704 N. Willow Road, Urbana stated that the farm that he and his brother  
43 owns backs up to the west side of Mr. Jarrell's property. He said that the Saline Branch is located on the

1 west side of their farm and it is on the east side of Prairie Fruits Farm therefore their properties are  
2 contiguous. He said that he has been a farmer all of his life and the Champaign County Soil and Water  
3 Conservation District, and the USDA offer programs for filter strips. He said that the minimum width for a  
4 filter strip is 30 foot with a maximum width of 66 feet. He said that the purpose of the filter strip is to filter  
5 out any sediment, chemical or fertilizer runoff from the fields. He said that there is 66 feet to accomplish  
6 filtering any field that is contiguous or butts up to the Saline Drainage Ditch. He said that the Saline Ditch is  
7 right next to the end of Mr. Jarrell's property however they have 200 yards of grass land and alfalfa in  
8 between the compost pile and the Saline Drainage Ditch to filter out anything that might runoff of the  
9 compost pile. He said that any concern regarding runoff from the compost pile going directly into the Saline  
10 Ditch is not applicable in this case.

11  
12 Mr. Bluhm asked the Board if there were any questions for Mr. Ziegler and there were none.

13  
14 Mr. Bluhm asked if staff had any questions for Mr. Ziegler and there were none.

15  
16 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Ziegler and there was no one.

17  
18 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding  
19 this case.

20  
21 Mr. Bluhm called Mr. Jim Heimbürger to testify.

22  
23 Mr. Jim Heimbürger, who resides at 2934 Stone Creek Boulevard, Urbana stated that he owns the ground  
24 which is directly south of the subject property. He asked if it is the final word of this Board that parking  
25 along the road will be prohibited.

26  
27 Mr. Hall stated yes, parking along the road will be prohibited. He said that staff will recommend a condition  
28 to the Board regarding parking. He said that this case will be continued to a later date therefore the actual  
29 final word will not be presented at tonight's hearing.

30  
31 Mr. Bluhm explained that generally the Board prohibits any on-street parking and that all parking must be on  
32 the subject property. He said that no final determination will be taken tonight so that comments can be  
33 received from the road commissioner as well as any other requested information. He said that he anticipates  
34 a condition indicating that on-street parking will be prohibited.

35  
36 Mr. Heimbürger stated that he does not object to request in this case but he does believe that parking does  
37 need to be contained on the property and not along the road.

38  
39 Mr. Bluhm stated that he can understand the concern with the parking issue especially at dusk.

40  
41 Mr. Heimbürger stated that he has no problem with the compost pile.

42  
43 Mr. Bluhm asked the Board if there were any questions for Mr. Heimbürger and there were none.

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Mr. Bluhm asked if staff had any questions for Mr. Heimburger and there were none.

Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Heimburger and there was no one.

Mr. Bluhm closed the witness register.

Mr. Bluhm requested a continuance date for Case 667-S-10.

Mr. Thorsland stated that perhaps Mr. Jarrell could indicate how much time it will take him to collect the additional information that was discussed at tonight's meeting.

Mr. Bluhm informed Mr. Jarrell that the information must be submitted to staff within one week prior to a meeting so that it can be reviewed and included in the mailing.

Mr. Thorsland stated that later during this meeting the Board will consider cancelling the April 29, 2010, meeting therefore this case could be continued to the May 13, 2010, meeting.

Mr. Hall agreed although the requested information should be submitted to staff no later than two weeks prior to a meeting for review.

Mr. Bluhm asked Mr. Jarrell if he agreed to a continuance date of May 13, 2010.

Mr. Jarrell stated yes.

**Mr. Thorsland moved, seconded by Mr. Palmgren to continue Case 667-S-10 to the May 13, 2010, meeting. The motion carried by voice vote.**

#### **7. Staff Report**

Mr. Hall apologized to the Board for not preparing a monthly report for the Board's review. He said that there was an article in the newspaper indicating that recently there has been an increase in home construction and staff has noticed that permitting has increased slightly.

#### **8. Other Business**

##### **A. Cancellation of April 29, 2010, meeting**

**Ms. Capel moved, seconded by Mr. Palmgren to move Case 665-AT-10, Zoning Administrator to the May 13, 2010, meeting. The motion carried by voice vote.**

**Ms. Capel moved, seconded by Mr. Thorsland to cancel the April 29, 2010, meeting. The motion carried by voice vote.**



# CASE NO. 665-AT-10

Champaign County  
Department of  
PLANNING &  
ZONING

SUPPLEMENTAL MEMORANDUM

May 7, 2010

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**  
Zoning Administrator  
**J.R. Knight**  
Associate Planner

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

Request: **Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:**

(217) 384-3708

- A. **Increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.**
- B. **Require all fencing that is in the front yard and that is higher than four feet tall to be at least 50% transparent in Residential Zoning Districts and on residential lots in the AG-1, AG-2, and CR Zoning Districts.**
- C. **Increase the maximum allowed height of all fencing to allow for up to three inches of ground clearance.**

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## STATUS

This is the second meeting for this case. This case was discussed at the April 15, 2010, ZBA meeting when the Board voted to cancel the April 29, 2010, meeting. Since the previous meeting on March 25, 2010, the case has been re-advertised to include a requirement for fences in the front yard that are over four feet tall to be 50% transparent over the four foot mark and the three inch ground clearance that was discussed at the March 25 meeting.

The Finding of Fact has been updated to include the new requirements.

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## NEW EVIDENCE FOR FINDING OF FACT

**1. The following should be added as new Items 8.A.(3)(c) and 8.A.(3)(d) on pages 4 of 8 and 5 of 8, as follows:**

- (c) The proposed amendment requires all fencing in a front yard that is over four feet in height to be 50% transparent.
- (d) Champaign County Sheriff Dan Walsh, in an email to Zoning Administrator, John Hall, indicated he has the following concerns regarding fencing:
  - i. When responding to a call (or even on routine patrol) it is always beneficial to be able to see "more."
  - ii. Deputies will be safer when responding to calls if they can observe dangerous conditions or persons and plan their response and avenue of approach accordingly.

- 
- iii. Likewise, if on patrol a deputy can see a “bad situation” in a front/side yard or front porch or even inside the house they can take action without a call from a citizen.
  - iv. Access in an emergency response situation could also be problematic if there is a tall barrier and a locked gate.
  - v. The Sheriff’s Department certainly respects a citizen’s right of privacy and to be able to do what they want with their own property.
  - vi. A solid barrier (fence or even vegetation in some cases) height of 3-4 ft. seems to be very normal in ordinances (for front and/or side yards) including C-U and would reduce our concerns with regard to fencing.

#### ATTACHMENTS

- A Revised Draft Proposed Change to Paragraph 4.3.3 G.
- B Revised Draft Summary of Evidence for Zoning Case 665-AT-10

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

(Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

G. Fences

1. Fences in R Zoning Districts and on residential lots less than five acres in the AG Districts shall not exceed the following height limits, not including any clearance authorized in subparagraph 4.3.3 G.4.: ~~six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.~~
  - a. Fences located in required FRONT YARDS shall meet the following requirements:
    - (2) Shall not exceed six feet in HEIGHT provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3 E. of this ordinance; and
    - (3) Any portion of a fence over four feet in HEIGHT must be at least 50% transparent.
  - b. In required SIDE and REAR YARDS fences shall not exceed eight feet in HEIGHT.
2. Fences in the CR Districts that are located in a required FRONT YARD must be at least 50% transparent for any portion of such fence that is over four feet in HEIGHT.
23. Fences in B and I Zoning Districts shall not exceed eight feet in HEIGHT not including any clearance authorized in subparagraph 4.3.3 G.4., except that any barbed wire security barrier ~~which~~ may be up to an additional two feet in HEIGHT. Fences may be located in the required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
34. The HEIGHT of fences shall be measured from the highest adjacent GRADE and may be in addition to up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence. No minimum clearance is required by this Ordinance, and further, the fence HEIGHT may be increased by any portion of the allowable three inches of clearance to GRADE that is not used as clearance.



*REVISED DRAFT MAY 7, 2010*

**665-AT-10**

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

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Final Determination: *{RECOMMEND ENACTMENT / RECOMMEND DENIAL}*

Date: May 7, 2010

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. as follows:

- A. Increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.
- B. Require all fencing that is in the front yard and that is higher than four feet tall to be at least 50% transparent in Residential Zoning Districts and on residential lots in the AG-1, AG-2, and CR Zoning Districts.
- C. Increase the maximum allowed height of all fencing to allow for up to three inches of ground clearance.

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**FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010, and May 13, 2010**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
  - A. In October 2007 and April 2008 the Zoning Board of Appeals (ZBA) heard variance cases regarding fence height in the City of Champaign one and one-half mile extraterritorial jurisdiction.
  - B. Later in 2008, the Department was approached by another person who desired to build an eight foot fence in the County's jurisdiction. At the time staff was contemplating this text amendment and so the Zoning Administrator approved the fence provided the petitioner was willing to abide by the outcome of this proposed text amendment or any variance that may be required.

- C. These cases revealed that the maximum fence height limit of six feet for lots in the R Zoning Districts and residential lots in the AG districts is more restrictive than most municipalities in the county.
  - D. Note that the County's fence height limits do not, apparently, apply to residential lots in the AG Districts that are five acres or greater in area or lots in the CR District. The Department has never received a complaint regarding a situation like this nor has it received any request to build an unusually tall fence in the AG or CR Districts.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

**GENERALLY REGARDING THE EXISTING ZONING REGULATIONS**

4. Existing Zoning regulations regarding the separate parts of the proposed amendment are as follows:
- A. Maximum fence height for Residential Zoning Districts and residential lots less than five acres in area in the AG Districts are established in Subparagraph 4.3.3 G.1, as follows:
    - Fences in R Zoning DISTRICTS and on residential lots less than five acres in the AG DISTRICTS shall not exceed six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
  - B. The following definitions from the *Zoning Ordinance* are especially relevant to this amendment (capitalized words are defined in the Ordinance):
    - (1) "BOARD" shall mean the Zoning Board of Appeals of the COUNTY
    - (2) "GOVERNING BODY" shall mean the County Board of Champaign County, Illinois.
    - (3) "HEIGHT" as applied to an enclosed or unenclosed STRUCTURE:

STRUCTURE, DETACHED: The vertical measurement from the average level of the surface of the ground immediately surrounding such STRUCTURE to the uppermost portion of such STRUCTURE.

STRUCTURE, ATTACHED: Where such STRUCTURE is attached to another STRUCTURE and is in direct contact with the surface of the ground, the vertical measurement from the average level of the surface of the ground immediately adjoining such STRUCTURE to the uppermost portion of such STRUCTURE shall be HEIGHT. Where such STRUCTURE is attached to another STRUCTURE and is not in direct contact with the surface of the ground, the vertical measurement from the lowest portion of such STRUCTURE to the uppermost portion shall be the HEIGHT.

- (4) "STRUCTURE" is anything CONSTRUCTED or erected with a fixed location on the surface of the ground or affixed to something having a fixed location on the surface of the ground. Among other things, STRUCTURES including BUILDINGS, walls, fences, billboards, and SIGNS.

**SUMMARY OF THE PROPOSED AMENDMENT**

5. The proposed amendment is summarized here as it will appear in the Zoning Ordinance, as follows: (Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

G. Fences

1. Fences in R Zoning Districts and on residential lots less than five acres in the AG Districts shall not exceed the following height limits, not including any clearance authorized in subparagraph 4.3.3 G.3.: six feet in HEIGHT and may be located in required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
  - a. In required FRONT YARDS fences shall not exceed six feet in HEIGHT provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3 E. of this ordinance.
  - b. In required SIDE and REAR YARDS fences shall not exceed eight feet in HEIGHT.
2. Fences in R Zoning Districts and on residential lots less than five acres in the AG and CR Districts that are located in a required FRONT YARD must be 50% transparent for any portion of such fence that is over four feet in HEIGHT.
23. Fences in B and I Zoning Districts shall not exceed eight feet in HEIGHT not including any clearance authorized in subparagraph 4.3.3 G.3., except that any barbed wire security barrier ~~which~~ may be up to an additional two feet in HEIGHT. Fences may be located in the required front yards provided they meet the requirements of the triangle of visibility as defined by Section 4.3.3.E of this ordinance.
34. The height of fences shall be measured from the highest adjacent GRADE, except that there may be up to three inches of clearance between the highest adjacent GRADE and the bottom of the fence panels.

**GENERALLY REGARDING RELEVANT LAND USE GOALS AND POLICIES**

6. The *Land Use Goals and Policies* (LUGP) were adopted on November 29, 1977, and were the only guidance for amendments to the *Champaign County Zoning Ordinance* until the *Land Use Regulatory Policies- Rural Districts* were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR) and subsequently revised on September 22, 2005. The relationship of the Land Use Goals and Policies to the Land Use Regulatory Policies is as follows:

- A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
- B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.

**REGARDING SPECIFICALLY RELEVANT LAND USE GOALS AND POLICIES**

- 7. There are goals and policies for agricultural, commercial, industrial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment.

**REGARDING THE GENERAL LAND USE GOALS AND POLICIES**

- 8. Regarding the General Land Use Goals and Policies:
  - A. Regarding the General Land Use Goals, the First and Fourth General Land Use Goals appear to be relevant to the proposed amendment, as follows:
    - (1) The First General Land Use Goal is:

Promotion and protection of the health, safety, economy, convenience, appearance and general welfare of the County by guiding the overall environmental development of the County through the continuous comprehensive planning process.
    - (2) The Fourth General Land Use Goal is:

Arrangement of land use patterns designed to promote mutual compatibility.
    - (3) The proposed amendment appears to *{ACHIEVE}* the First and Fourth General Land Use Goals because of the following:
      - (a) The allowance for clearance between fence panels and the surface of the ground is intended to provide some flexibility for fence installers who must account for the natural fluctuations in the surface of the ground.
      - (b) The proposed amendment will be consistent with the ordinances of the larger local municipalities, as reviewed in Item 8.B.
      - (c) The proposed amendment requires all fencing in a front yard that is over four feet in height to be 50% transparent.

- (d) Champaign County Sheriff Dan Walsh, in an email to Zoning Administrator, John Hall, indicated he has the following concerns regarding fencing:
- i. When responding to a call (or even on routine patrol) it is always beneficial to be able to see “more.”
  - ii. Deputies will be safer when responding to calls if they can observe dangerous conditions or persons and plan their response and avenue of approach accordingly.
  - iii. Likewise, if on patrol a deputy can see a “bad situation” in a front/side yard or front porch or even inside the house they can take action without a call from a citizen.
  - iv. Access in an emergency response situation could also be problematic if there is a tall barrier and a locked gate.
  - v. The Sheriff’s Department certainly respects a citizen’s right of privacy and to be able to do what they want with their own property.
  - vi. A solid barrier (fence or even vegetation in some cases) height of 3-4 ft. seems to be very normal in ordinances (for front and/or side yards) including C-U and would reduce our concerns with regard to fencing.

- B. Only the Second General Land Use Policy appears to be relevant to the proposed amendment. The Second General Land Use Policy states:

The County Board, the Environmental and Land Use Committee and the Board of Appeals will establish communication and coordination processes among local units of government in order to address and resolve similar or overlapping development problems.

The proposed amendment appears to *{ACHIEVE}* the Second General Land Use Policy because a staff review of zoning and development ordinances of select municipalities from around the County found that all residential fence height limits were greater than six feet except for one, as follows:

- (1) The City of Champaign allows fences to be eight feet tall in side and rear yards, and does allow six feet fences in front yards so long as they are chain link, wire mesh, or a similar type of transparent fencing.
- (2) The City of Urbana allows fences up to eight feet tall in side and rear yards and allows fences to be eight feet tall in front yards where the front yard abuts a principal arterial street or a minor arterial street.
- (3) The Village of Mahomet allows fences up to seven feet tall in side and rear yards.

- (4) The Village of Rantoul allows fences up to eight feet tall in side and rear yards.
  - (5) The Village of Savoy allows fences to be up to six feet tall in side and rear yards. Note that staff was unable to find a maximum fence height in the Savoy ordinances, but was advised of the fence height limit by Village staff.
  - (6) The Village of St. Joseph allows fences up to eight feet in height in side and rear yards so long as the top two feet are more than 50% open construction.
9. Increasing the allowable fence height will provide landowners in the unincorporated area as much freedom in regards to fencing as property owners in municipalities.
  10. Increasing the allowable fence height to eight feet will reduce the need for variances which will reduce the costs of the County's zoning program.
  11. Regarding the economic soundness of the proposed amendment:
    - A. The proposed three-inch ground clearance is reasonable in regards to pre-manufactured fence panels for the following reasons:
      - (1) Pre-manufactured fence panels are available in standard six-foot high panels.
      - (2) Adding the proposed three inch clearance to ground means that standard six-foot high pre-manufactured fence panels can be installed above the surface of the ground without the need to cut off any of the fence panel.
      - (3) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.
    - B. The proposed three-inch ground clearance is reasonable in regards to custom made fence panels for the following reasons:
      - (1) Eight-foot high fences are generally custom built.
      - (2) Eight feet is a standard increment of length for lumber.
      - (3) Adding the proposed three-inch clearance to ground means that custom made eight-foot high fencing can be installed above the surface of the ground without the need to cut off and waste so much of the lumber.
      - (4) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.

**DOCUMENTS OF RECORD**

1. Memo to the Champaign County Board Committee of the Whole, dated, February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a proposed Zoning Ordinance text amendment changing fence height limits
2. Application for Text Amendment from Zoning Administrator, dated March 3, 2010
3. Preliminary Memorandum for Case 665-AT-10, dated March 19, 2010, with attachments:
  - A Table Comparing Residential Fence Height Limits in Champaign County Zoning Ordinance to Larger Local Municipalities
  - B Draft Proposed Change to Paragraph 4.3.3 G.
  - C Draft Finding of Fact for Case 665-AT-10

**FINAL DETERMINATION**

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

The Zoning Ordinance Amendment requested in **Case 665-AT-10** should *{BE ENACTED / NOT BE ENACTED}* by the County Board in the form attached hereto.

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

SIGNED:

Doug Bluhm, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

# CASE NO. 667-S-10

SUPPLEMENTAL MEMORANDUM

May 7, 2010

Petitioners: **Leslie Cooperband and Wesley Jarrell**

Request: **Authorize a Major Rural Specialty Business in the AG-2 District with waivers of standard conditions including, but not limited to, the prohibition of sales of alcohol not produced on the premises**

Site Area: **approx. 7 acres**

Time Schedule for Development:  
N/A

Location: **Lot 1 of Jamestown Subdivision in the Northeast Quarter of the Southeast Quarter of Section 29 of Somer Township and commonly known as Prairie Fruits Farm at 4410 North Lincoln Avenue, Champaign**

Champaign  
County  
Department of

**PLANNING &  
ZONING**

**Brookens**

**Administrative Center**

1776 E. Washington Street  
Urbana, Illinois 61802

(217) 384-3708

Prepared by: **J.R. Knight**  
Associate Planner  
**John Hall**  
Zoning Administrator

---

## STATUS

This is the second meeting for this case. Staff sent the petitioners a detailed request for additional evidence on April 22, 2010, and the petitioners submitted a response on May 4, 2010. The petitioners' response is included along with the supplemental material submitted at the April 15, 2010, meeting.

New evidence has been added throughout the Summary of Evidence.

---

## ATTACHMENTS

- A Supplemental materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on April 15, 2010
- B Additional materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on May 4, 2010
- C Revised Draft Summary of Evidence for Case 667-S-10



Prairie Fruits Farm  
4410 N. Lincoln Ave  
Champaign, IL 61822  
Wes Jarrell and Leslie Cooperband

(27277032)  
CITY OF CHAMPAIGN  
PERMIT

Parking Plan and other information for Special Use Permit, Champaign County  
April 15, 2010

1. Dinner attendance: from 45 – 50 guests  
Peak attendance for other events (farm open houses in spring): 100 people
2. Staff parking in far east section of lot.
3. Three NO PARKING signs placed along front of property, on east side of road
4. Cars parked as shown in Fig. 1:
  - a. Angled on north side of driveway, 10 ft per car, total of 20 cars (240')
  - b. Parallel parking on south side of driveway, 18 feet per car, 10 cars (180')
  - c. Head- in parking on south side of barn, 10 feet per car
    - i. 8 cars facing south (84')
    - ii. 5 cars facing east (68')
  - d. Overflow lot on northwest corner of property capable of three rows of 10 cars each, total of 30 cars

Totals, main area:  $20 + 10 + 8 + 5 = 43$  spaces (sufficient for **129 guests** at peak attendance)

Total including overflow lot:  $43 + 30 = 73$  potential spaces (sufficient for **219 guests** at peak attendance)

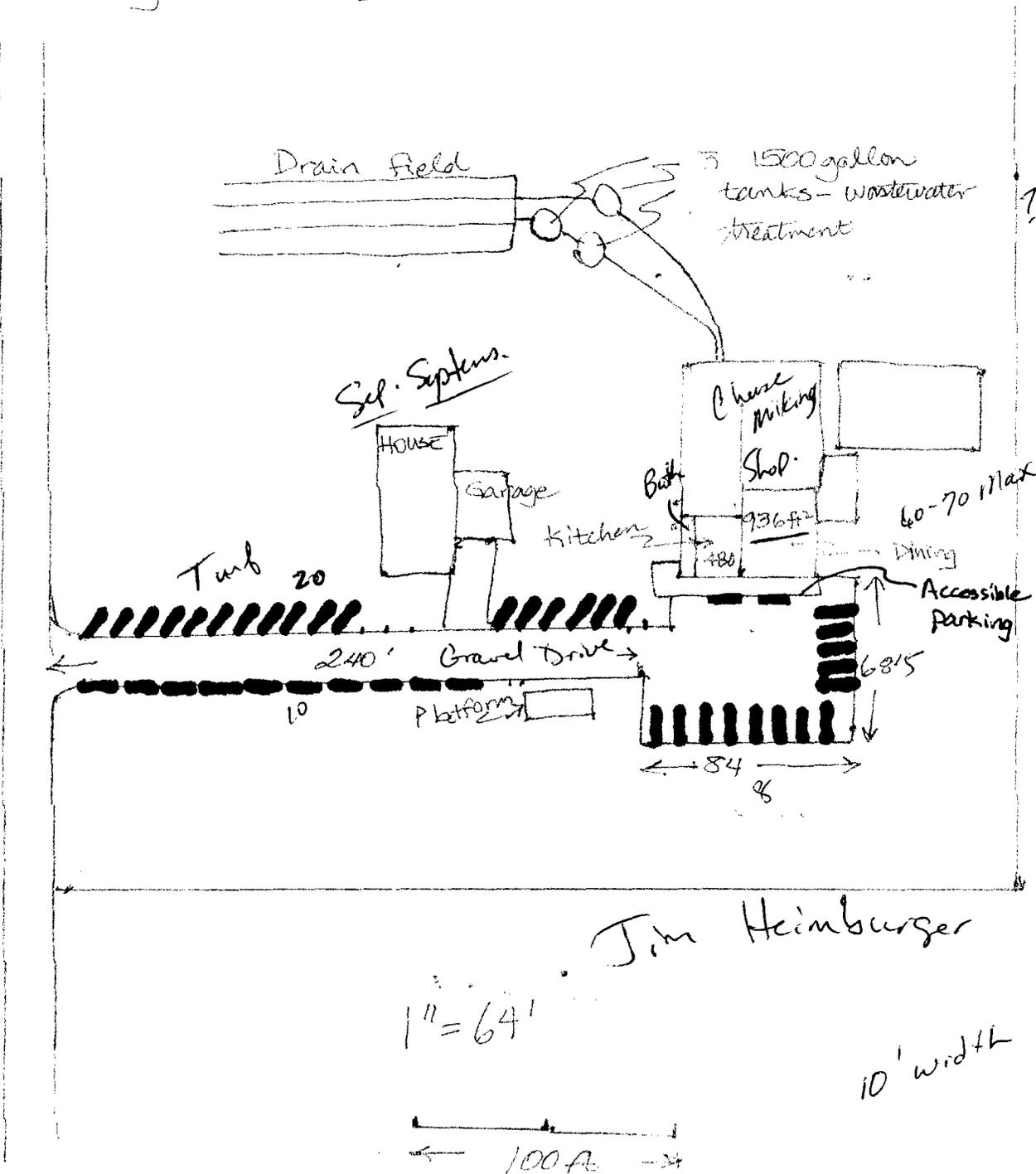
Accessibility parking: **2 spaces** next to cement pad outside dining area

Lighting: Candle light and oil lamps at dusk for outdoor dinners; no other lighting is required.

Other information:

1. Total dining/display area: 936 ft<sup>2</sup>
2. Wastewater treatment: three 1500 gallon tanks as septic system, installed by J and S Waste Water Systems in 2005.
3. Stormwater management: all but small space near garage in permeable surface; Barn and house/garage runoff all infiltrates on site, short distance from downspout.
4. Pt. 11, p. 16: We applied for an received temporary special use permits for dinners in 2008 and 2009; we understand that we now need a permanent Special Use Permit because we are having events more frequently than 5 per three month period.

Figure 1. Parking pattern on lot.



PRAIRIE FRUITS FARM  
 410 N. LINCOLN AVE.  
 CHAMPAIGN, IL

RECEIVED

CHAMPAIGN, ILLINOIS

Google maps

30-40 Cars

To see all the details that are visible on the screen, use the "Print" link next to the map.

Get Directions

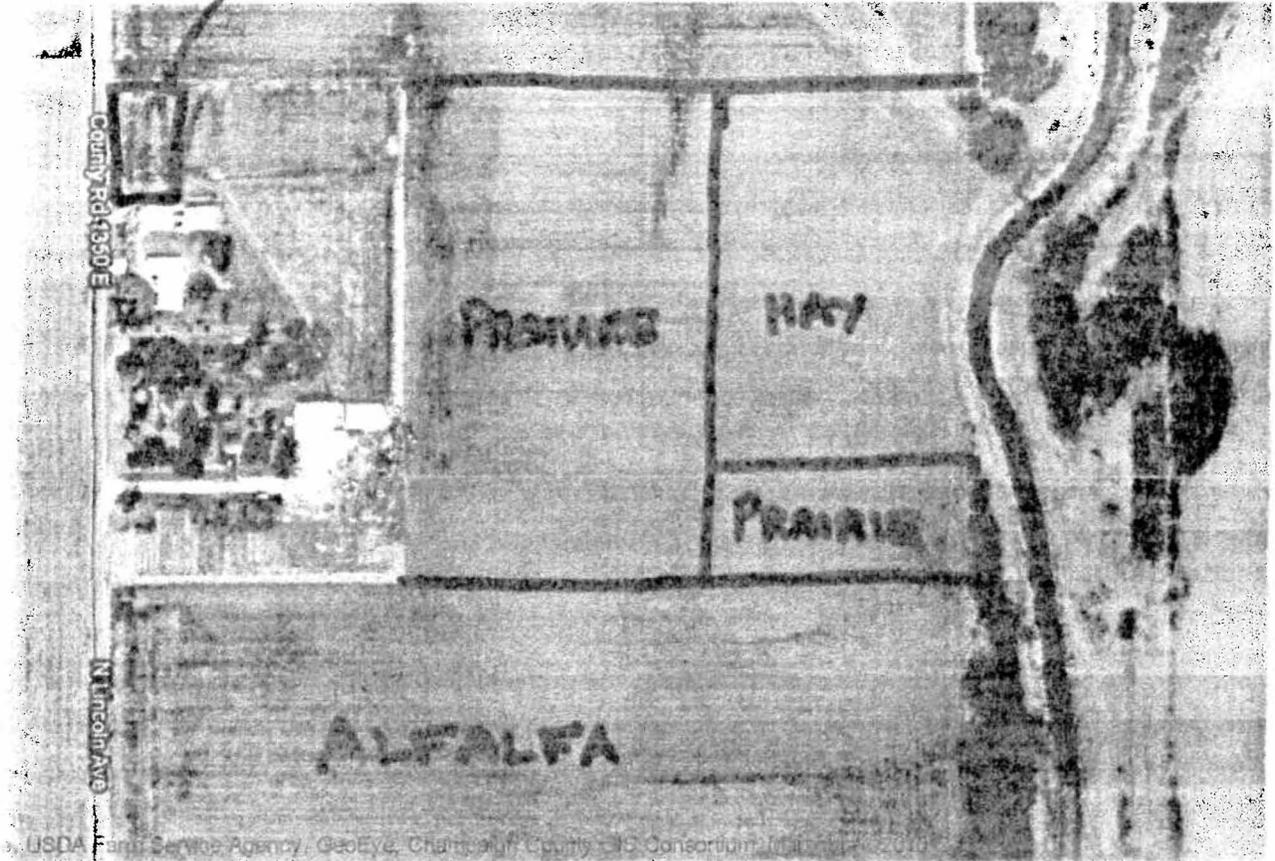
My Maps

**OVERFLOW PARKING**

Print

Send

Link



USDA Farm Service Agency, GeoEye, Champain County GIS Consortium, Inc. 2010

Fig. 2

1" = 228'

3" = 684'

0 200 400  
0 200 400

# CHAMPAIGN COUNTY PUBLIC HEALTH DEPARTMENT

THIS CERTIFIES THAT A

# PERMIT

IS ISSUED TO

Establishment Prairie Fruits Farm

No. C-1263

Address 4410 N. Lincoln Ave., Champaign

Owner/Operator

*Leslie Cooperbard*

IN ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF THE ORDINANCES OF THE CHAMPAIGN COUNTY (ILLINOIS)  
PUBLIC HEALTH DEPARTMENT AS APPROPRIATE TO THE LOCATION HEREIN LICENSED.  
**PERMIT NOT VALID IN CORPORATE LIMITS OF CHAMPAIGN OR URBANA. PERMIT IS NOT TRANSFERABLE.**

2010

Issued by

*Jim Roberts*

, Director of Environmental Health



**PERMIT EXPIRES NOVEMBER 30, 2010**

Phone: (217) 363-3269 / [www.c-uphd.org](http://www.c-uphd.org)

CHAMPAIGN COUNTY PUBLIC HEALTH DEPARTMENT

REC-10

CHAM

RTMENT



State of Illinois 1745618  
Department of Public Health

LICENSE, PERMIT, CERTIFICATION, REGISTRATION

The person, firm or corporation whose name appears on this certificate has complied with the provisions of the Illinois Statutes and/or rules and regulations and is hereby authorized to engage in the activity as indicated below.

ERIC E. WHITAKER, M.D.  
DIRECTOR

Issued under the authority of  
The State of Illinois  
Department of Public Health

EXPIRATION DATE	CATEGORY	IQ NUMBER
03/28/2011	055	01353730

ALISA A DEMARCO  
IS CERTIFIED IN FOOD SERVICE  
SANITATION BY EXAM ON 03/28/06

ISSUED 05/06/06

BUSINESS ADDRESS

ALISA A DEMARCO  
1007 W HILL ST  
CHAMPAIGN IL 61821

The face of this license has a colored background. Printed by Authority of the State of Illinois • 4/97 •

Establishment

Address 4410

2009

Issued by

*[Signature]*

-1263  
PERBAN



EMBER 30, 201

GRADE A DAIRY FARM PERMIT

003508

State Permit Number \_\_\_\_\_

Dairy farm of Prairie Fruits Farm  
(Full Legal Name)

address is 4410 N. Lincoln Ave. Champaign  
(City)

Illinois 61822 Champaign  
(State) (Zip Code) (Township) (County)

ig address 4410 N. Lincoln Ave. Champaign  
(City)

Illinois 61822  
(State) (Zip Code)

hereby approved for the production of Grade A Raw Milk for pasteurization in accordance with the Grade A Pasteurized Milk And Milk  
 Acts Act of the State Of Illinois.

BTU Name And Number:

Prairie Fruits Farm Goat Dairy BTU 102137  
8/05/2005

Lawrence R Terando  
Sanitarian  
Illinois Department of Public Health

Construction and equipment of this dairy farm meet the standards for Grade A Milk production. Proper maintenance and  
 operation are the responsibility of the dairyman.

2-0214

09/

DO NOT WRITE IN THESE SPACES  
CHAMPAIGN, ILLINOIS

# State of Illinois



## DEPARTMENT OF PUBLIC HEALTH

A Dairy Products plant owned by Prairie Fruits Farm, L.L.C. located at (city)Champaign (county)Champaign (state)Illinois having complied with the provision of Acts regulating the handling, processing, labeling and distribution of Dairy Products is issued this -

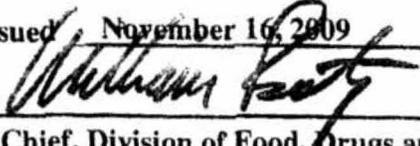
### ILLINOIS CERTIFICATE OF APPROVAL NO. 17-532

GRADE A -  MANUFACTURED -

Expiration Date - December 31, 2010

The Illinois Department of Public Health considers that the construction and equipment of this Dairy Plant is such that with proper maintenance and operation, the Dairy Products processed and handled in this plant will be safe for human consumption.

Date Issued November 16, 2009

  
Acting Chief, Division of Food, Drugs and Dairies

Photos of our Compost Pile



Compost, not manure—contains bedding and manure from our goat barn



Compost windrow located along the fence row to our pasture. 200 yards uphill from Saline Branch.



We manage our compost piles by turning with a skid loader, every couple of weeks. Our land is certified organic, and we must keep records about how we manage our compost piles.

RECEIVED

MAY 10 2010

CHAMPAIGN CO. P & Z DEPARTMENT

May 2, 2010

To: Champaign County Department of Planning and Zoning  
Brookens Administrative Center  
1776 E. Washington St.  
Urbana, IL 61802

From: Leslie Cooperband and Wes Jarrell, Co-Owners, Prairie Fruits Farm  
4410 N. Lincoln Avenue  
Champaign, IL 61822

RE: Response to letter dated April 22, 2010 regarding "Additional Information for Zoning Case 667-S for May 13, 2010 Public Hearing"

1. On-site Parking. One of the additional issues raised relates to adequate space on our property for emergency vehicle turnaround as well as the location of handicapped accessible parking spaces in relation to parking for fire-fighting operations. In the event of a fire or other emergency requiring assistance from the fire department or other emergency response entity, we would have guests either move their vehicles to our overflow lot on the north side of our property or have the guests leave prior to the arrival of the emergency vehicles. This should clear the way for any emergency response vehicles such as fire trucks, ambulances, etc to enter our driveway quickly and easily and have ample room to turn around in the parking area to the south of the pole barn. We have tried to contact Mike Kobel, Eastern Prairie Fire Protection District, but got no answer. We will try again before our hearing date of May 13<sup>th</sup>.

2. Life Safety Questions

a) How many man-doors are there providing access to the indoor dining area? How wide are they?

We have one 36" door directly to the outside, one 12' wide door to the outside, one set of double doors (36" wide each) to the kitchen, and one double set of doors (36" wide each) to the back of the barn.

Are they equipped with the appropriate panic hardware?

We have added two 10-lb multi-purpose fire extinguishers. Each extinguisher is rated 4A-80:BC and will greatly exceed the needs, based on the square footage of our facility.

b) Have illuminated exit signs been installed in the indoor dining area?

Yes. We have installed lighted "EXIT" signs above the North man door of the dining room as well as above the south sliding barn door. The sliding barn door will be left open when the weather permits and is ALWAYS unlocked at all times.

3. Site accessibility

Important note: we ask if there are any handicapped needs for individuals coming to our dinners, so know in advance if there is a need to specially serve them.

What are the dimensions of the accessible parking spaces? 10' wide x 20' long

Are the accessible parking spaces paved with cement or asphalt?

Cement

Are the accessible parking spaces marked with proper signage and markings? We find this unnecessary since we are always present when guests come and can direct individuals to the sites personally.

Is there a paved path from the accessible parking to the location where the dinners are served?

If we are inside, yes. If we are outside, no, but the surface is packed gravel and grass, and we are always present to assist, and have had no trouble with previous visitors in wheelchairs.

The platform function is to keep the guests out of the soil and mud. It is approximately 8" high. There is no railing because it is not high. With assistance (we are always present when guests are present) it is easy to move the wheelchair onto the platform by tipping it back, placing the front wheels on the platform, and lifting the chair onto the platform.

### **Agricultural Activities**

How many goats does Prairie Fruits Farm own?

We normally have about 85 on the premises, except during kidding season when we have approximately twice that number until the young are sold. We do NOT intend to expand beyond this number.

What rules do you follow regarding your composting activities?

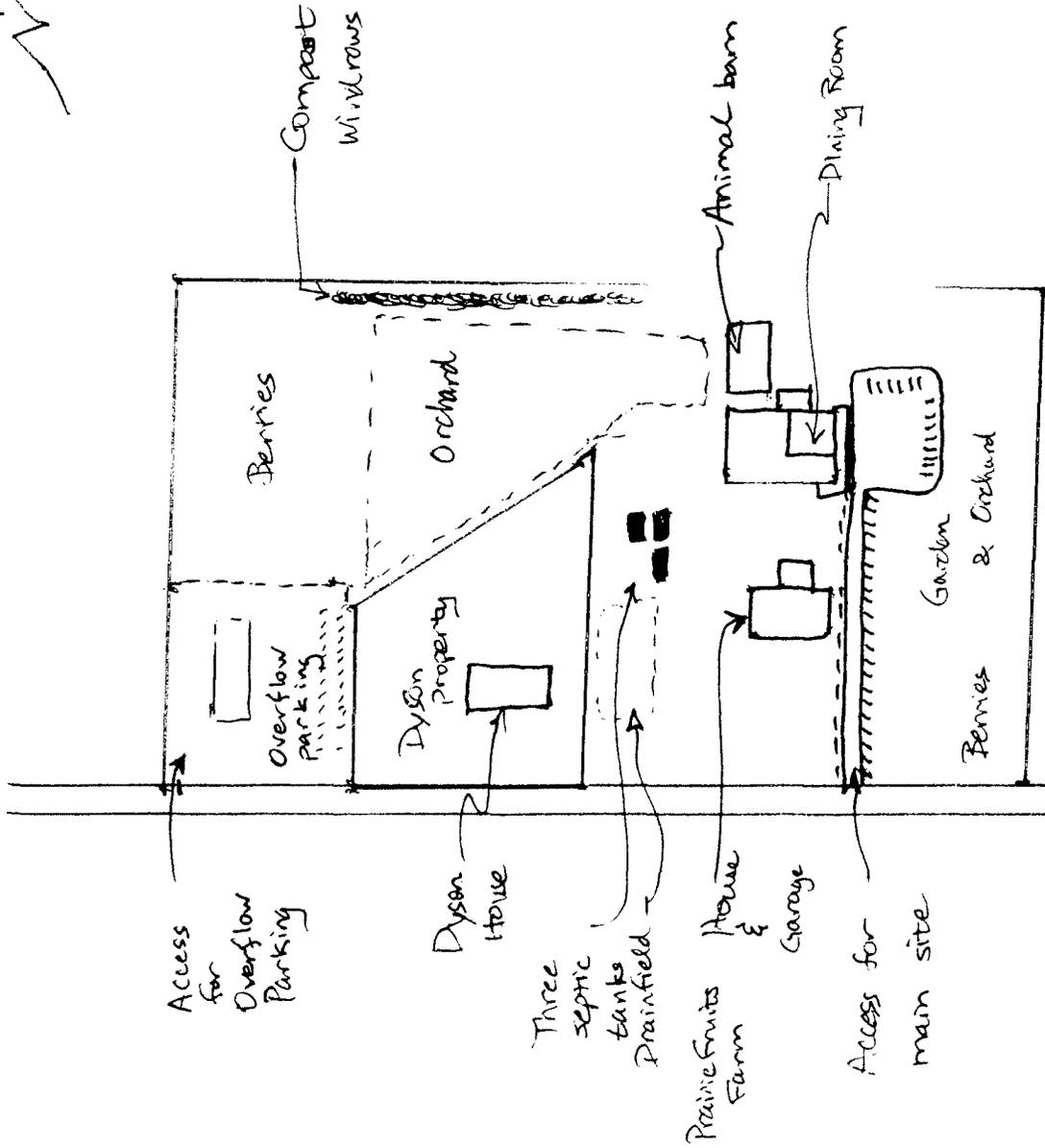
USDA Certified Organic rules

What organization enforces those rules?

We were certified organic by USDA National Organic Program (NOP) using the Ohio Ecological Food and Farm Association (OEFFA) as our third party certifier. We have chosen to not certify this year because our fruit production has been so small (less than the \$5,000 limit on sales that require third party certification), but we will renew in 2011. We continue to manage our land and our compost according to the USDA NOP rules. For more information, you can visit the USDA-National Organic Program website: <http://attra.ncat.org/attra-pub/farmcompost.html#nop> .

### **Site plan and floor plan**

Please see attached documents.



100 feet

Lincoln Ave

Saline Branch here

RECEIVED

CHATHAM CO. P & Z DEPARTMENT

20'

1



2 3' doors  
to shop & rest  
of barn

PRAIRIE FRUITS FARM  
INDOOR DINING AREA

44'

2 3' doors  
to kitchen

12' sliding shed door

3' man door

10 feet

RECEIVED

APR 10 2010

CHAMPAIGN CO. P & Z DEPARTMENT

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To see all the details that are visible on the screen use the "Print" link next to the map.

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11/11/10

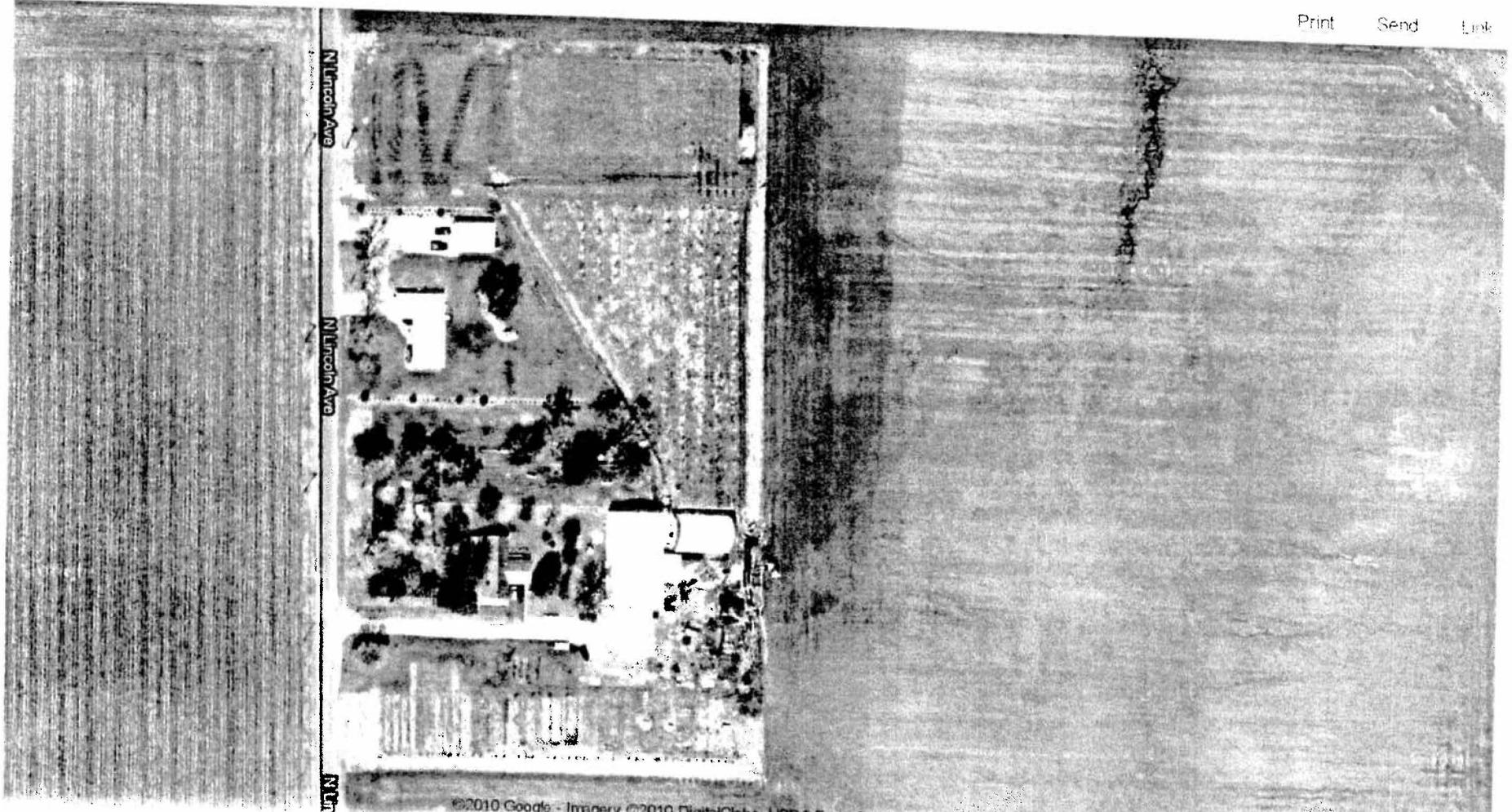
CHAMPAIGN COUNTY GIS CONSORTIUM

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REVIEWED

12-01-10

CHAMPAIGN COUNTY DEPARTMENT



*REVISED DRAFT MAY 7, 2010*

667-S-10

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

---

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

Date: May 7, 2010

Petitioners: Leslie Cooperband and Wesley Jarell d.b.a. Prairie Fruits Farm

Request: Authorize a Major Rural Specialty Business in the AG-2 District with waivers of standard conditions including, but not limited to, the prohibition of sales of alcohol not produced on the premises

---

**SUMMARY OF EVIDENCE**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **April 15, 2010, and May 13, 2010** the Zoning Board of Appeals of Champaign County finds that:

1. The petitioners, Leslie Cooperband and Wesley Jarell, own the subject property.
2. The subject property is Lot 1 of Jamestown Subdivision in the Northeast Quarter of the Southeast Quarter of Section 29 of Somer Township and commonly known as Prairie Fruits Farm at 4410 North Lincoln Avenue, Champaign.
3. The subject property is located within the one-and-one-half mile extraterritorial jurisdiction (ETJ) of the City of Urbana. 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. No comment has been received from the City as yet.

***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-2 Agriculture and is in use as Prairie Fruits Farm.
  - B. Land on all sides of the subject property is zoned AG-2 Agriculture, and is in use as agriculture.
  - C. On the west side of the subject property there is a smaller parcel that is bordered by the subject property on three sides. That parcel is zoned AG-2 Agriculture and is in use as a single family dwelling.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

**GENERALLY REGARDING THE PROPOSED SPECIAL USE**

5. Regarding site plan and operations of the proposed Major Rural Specialty Business:
- A. The subject property is a 7.2002 acre lot created in Jamestown Subdivision No. 1. The proposed site plan shows the area of the subject property that is used for the dinners, as follows:
- (1) The subject property accesses Lincoln Avenue, and the driveway is also proposed to be used as the parking area.
  - (2) There is a single family dwelling located east of Lincoln Avenue.
  - (3) A barn located east of the dwelling that contains a kitchen and dining area.
  - (4) A platform where the farm dinners are served is located across the driveway from the barn in an area indicated to be planted with berries, fruit trees, and vegetables.
- B. Information regarding the operations of Prairie Fruits Farm is provided on their website ([www.prairiefruitsfarm.com](http://www.prairiefruitsfarm.com)), and is summarized as follows:
- (1) They offer farm dinners of four to five courses prepared with local ingredients prepared by Alisa DeMarco, a Culinary Institute of America-trained chef.
  - (2) The 2010 dinner season starts on May 22, and they are hosting 14 farm dinner events throughout the year.
  - (3) Most of the dinners are held on Saturdays.
  - (4) Guests arrive at 4 PM when hors d'oeuvres are served, and a farm tour is given at 4:30.
  - (5) Dinner is served at 5 PM and service is completed at 8 PM.
  - (6) The meal is served outdoors and guests are advised that the subject property is a farm with occasional odors, insects, wind, and dirt.
  - (7) In case of inclement weather the dinner is either served in a tent or inside the pole barn dining area.
  - (8) Guests are invited to bring the alcoholic beverage of their choice because Prairie Fruits Farm does not have a license to sell or serve alcohol.
  - (9) 2010 is their second season of hosting Saturday morning "Farm Open Houses."
  - (10) In 2010 the open houses start on March 22, 2010, and run until the end of April.
  - (11) The hours are from 9 AM to noon.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

ITEM 5.B. CONTINUED

- (12) Other farms sell products at the open houses.
- (13) Breakfasts include three to four items chosen from a selection that is varied at each given open house.

C. A more complete site plan was received on May 4, 2010, and indicates the following:

- (1) The subject property surrounds the property of neighbors Stephen & Kathleen Dyson, and a portion of the property is north of the Dyson lot, east of the Dyson lot, and south of the Dyson lot.
- (2) The northern portion of the subject property is illustrated as follows:
  - (a) An overflow parking area, taking up the area directly north of the Dyson lot. The parking area is accessed by an entrance at the northwest corner of the subject property. No capacity is indicated for the parking area, but there are 25 hash marks that seem to indicate parking spaces.
  - (b) There is an unlabeled rectangle located in the middle of the overflow parking area.
  - (c) The remainder of the northern portion of the subject property is labeled as Berries.
- (3) The portion of the subject property east of the Dyson lot is illustrated as follows:
  - (a) This entire portion of the subject property is labeled as an orchard.
  - (b) Along the east lot line of the subject property is the location of the petitioner's compost windrows.
- (4) The southern portion of the subject property is illustrated as follows:
  - (a) This portion of the subject property is accessed by a gravel drive that is approximately 150 feet from the south lot line.
  - (b) Parking appears to be indicated along the gravel drive by hash marks on either side of the drive.
  - (c) On the north side of the drive parallel parking seems to be indicated with 11 spaces.
  - (d) On the south side of the drive angle parking appears to be indicated with 21 spaces.

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

ITEM 5.C.(4) CONTINUED

- (e) At the end of the drive is a rectangular paved area that is approximately 90 feet by 120 feet, and hash marks indicate 14 parking spaces around the perimeter of this paved area.
- (f) The house and garage of co-petitioners Wesely Jarrell and Leslie Cooperband is located north of the gravel drive.
- (g) The pole barn that contains Prairie Fruits Farm's kitchen, milking parlor, cheese plant, and dining room is located north of the rectangular paved area. There appears to be an area paved with concrete just outside the southern entrance of the pole barn.
- (h) East of the pole barn is a structure indicated to be the animal barn.
- (i) South of the gravel drive is an area with more berries and a garden and orchard.
- (5) Regarding handicapped accessibility:
  - (a) The petitioners indicated that they ask if their guests have any handicapped accessibility needs so that they can be prepared to meet those needs.
  - (b) The platform that the dinners are served on is indicated to be eight inches above ground level and does not include any ramp or handrails.
  - (c) No accessible path from the accessible parking spaces to the platform is indicated.
- (6) There are illuminated exit signs above the north man doors and sliding barn doors leading out of the dining room.
- (7) The sliding barn door will be left open, weather permitting.

**GENERALLY REGARDING SPECIFIC ORDINANCE REQUIREMENTS**

- 6. Regarding authorization for a Major Rural Specialty Business as a Special Use in the AG-2 Agriculture Zoning District in the *Zoning Ordinance*:
  - A. Section 5.2 authorizes Major Rural Specialty Business as a Special Use only in the CR, AG-1, and AG-2 Zoning Districts, and by-right in the B-1, B-3 and B-4 Zoning Districts.
  - B. Footnote 8 to Section 5.2 indicates that a Rural Specialty Business (RSB) shall only be considered a Minor RSB if meets the following conditions:
    - (1) The total area of the site occupied by any part of the business not otherwise qualifying as AGRICULTURE shall not exceed one acre;

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

Based on the current site plan the proposed use does not appear to exceed this limit.

- (2) The total sales DISPLAY area shall not exceed 2,000 square feet, no more than half of which may be indoors;

Based on the current site plan the proposed use does not appear to exceed this limit.

- (3) No business may include a food service establishment except food stores as defined by Section 5.4.6 of the Champaign County Health Ordinance;

The proposed use does meet the definition of a food service establishment in the Champaign County Health Ordinance, and would be considered a Major Rural Specialty Business.

- (4) Businesses located in the CR, AG-1, or AG-2 Districts shall not ACCESS STREETS located within a recorded SUBDIVISION;

The subject property accesses North Lincoln Avenue, which is not located within a subdivision.

- (5) Alcoholic beverages not produced on the PREMISES shall not be sold; and

No alcoholic beverages are sold on the premises.

- (6) No outdoor entertainment requiring the use of sound amplification equipment shall be permitted unless a Temporary Use Permit and Entertainment and Recreation License shall have been obtained.

The petitioners have not indicated any outdoor entertainment requiring sound amplification equipment on their website.

- C. Subsection 6.1 contains standard conditions that apply to all SPECIAL USES, standard conditions that may apply to all SPECIAL USES, and standard conditions for specific types of SPECIAL USES. Relevant requirements from Subsection 6.1 are as follows:

- (1) Paragraph 6.1.2 A. indicates that all Special Use Permits with exterior lighting shall be required to minimize glare on adjacent properties and roadways by the following means:
  - (a) All exterior light fixtures shall be full-cutoff type lighting fixtures and shall be located and installed so as to minimize glare and light trespass. Full cutoff means that the lighting fixture emits no light above the horizontal plane.
  - (b) No lamp shall be greater than 250 watts and the Board may require smaller lamps when necessary.

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- (c) Locations and numbers of fixtures shall be indicated on the site plan (including floor plans and building elevations) approved by the Board.
  - (d) The Board may also require conditions regarding the hours of operation and other conditions for outdoor recreational uses and other large outdoor lighting installations.
  - (e) The Zoning Administrator shall not approve a Zoning Use Permit without the manufacturer's documentation of the full-cutoff feature for all exterior light fixtures.
- (2) Subsection 6.1.3 indicates the following standard conditions for Major Rural Specialty Businesses:
- (a) Minimum Lot Area of five acres;
  - (b) The total BUILDING AREA devoted to sales DISPLAY or recreational commercial USE shall not exceed 5,000 square feet;
  - (c) Outdoor entertainment requiring the use of sound amplification equipment shall be permitted not more often than 5 consecutive or non-consecutive days in any three month period and only if a Recreation and Entertainment License shall have been obtained as provided in Champaign County Ordinance No. 55 Regulation of Businesses Offering Entertainment and/or Recreation;
  - (d) The site shall not be located within 500 feet of a Residential zoning District;
  - (e) Businesses located in the CR, AG-1, or AG-2 Zoning Districts shall not ACCESS STREETS located within a recorded SUBDIVISION; and
  - (f) Alcoholic beverages not produced on the PREMISES shall not be sold.
- D. 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.
- E. The following definitions from the *Zoning Ordinance* are especially relevant to the requested Special Use Permit (capitalized words are defined in the Ordinance):
- (1) "ACCESS" is the way MOTOR VEHICLES move between a STREET or ALLEY and the principal USE or STRUCTURE on a LOT abutting such STREET or ALLEY.

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- (2) “ACCESSORY STRUCTURE” is a STRUCTURE 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, subordinate to and USED for purposes customarily incidental to the MAIN OR PRINCIPAL STRUCTURE or the main or principal USE.
- (3) “AGRICULTURE” is the growing, harvesting and storing of crops including legumes, hay, grain, fruit and truck or vegetable crops, floriculture, horticulture, mushroom growing, orchards, forestry and the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, pony and horse production, fur farms, and fish and wildlife farms; farm BUILDINGS used for growing, harvesting and preparing crop products for market, or for use on the farm; roadside stands, farm BUILDINGS for storing and protecting farm machinery and equipment from the elements, for housing livestock or poultry and for preparing livestock or poultry products for market; farm DWELLINGS occupied by farm OWNERS, operators, tenants or seasonal or year-round hired farm workers. It is intended by this definition to include within the definition of AGRICULTURE all types of agricultural operations, but to exclude therefrom industrial operations such as a grain elevator, canning or slaughterhouse, wherein agricultural products produced primarily by others are stored or processed. Agricultural purposes include, without limitation, the growing, developing, processing, conditioning, or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds.
- (4) “DISPLAY” is the placement or arrangement of products or materials for sale or lease excluding items which are being stored while awaiting maintenance, or repair or other STORAGE.
- (5) “RURAL SPECIALTY BUSINESSES” are establishments that sell, principally at retail, agricultural products, foods or traditional handicrafts produced on the PREMISES together with ACCESSORY recreational or educational activities and which may also sell related goods produced off of the PREMISES provided that sale of such goods constitute less than 50 percent of the total gross business income, that such goods constitute less than 50 percent of the total stock in trade, that less than 50 percent of the total LOT AREA is devoted to commercial BUILDING AREA, parking or loading areas or outdoor sales DISPLAY.
- (6) “SPECIAL CONDITION” is a condition for the establishment of a SPECIAL USE.
- (7) “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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- (8) "SUBDIVISION" is any division, development, or re-subdivision of any part, LOT, area, or tract of land by the OWNER or agent, either by LOTS or by metes and bounds, into LOTS two or more in number, for the purpose, whether immediate or future, of conveyance, transfer, improvement, or sale, with the appurtenant STREETS, ALLEYS, and easements, dedicated or intended to be dedicated to public use or for the use of the purchasers or OWNERS within the tract subdivided. The division of land for AGRICULTURAL purposes not involving any new STREET, ALLEY, or other means of ACCESS, shall not be deemed a SUBDIVISION for the purpose of the regulations and standards of this ordinance.
- F. 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.
- G. 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, "**We host on farm sales before farmer's market season begins. We host farm dinners from late May thru December as part of our farm business.**"

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- B. The proposed Major Rural Specialty Business has been an existing business on the subject property for four years.
- C. At the April 15, 2010, public hearing Harold Scharlau, 3610 North Lincoln Avenue, Champaign, testified that he supported the proposed Major Rural Specialty Business, and that he could speak for 5 of the 8 houses between Oaks Road and the subject property.
- D. At the April 15, 2010, public hearing Jim Heimbürger, 2934 Stone Creek Boulevard, Urbana, testified that he owns the ground that is immediately south of the subject property and he does not object to the proposed Major Rural Specialty Business.

**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, **“Having our customers be able to visit the farm to purchase products and enjoy an outdoor farm meal prepared in an licensed commercial kitchen.”**
  - B. Regarding surface drainage:
    - (1) The subject property is located in Jamestown Subdivision No. 1 which was approved on December 30, 2002. The drainage statement for the subdivision is as follows:

To the best of my knowledge and belief, the drainage of surface waters will not be changed by the construction of Jamestown Subdivision No. 1 or any part thereof, or, if such surface water drainage will be changed adequate provisions have been made for the collection and diversion of surface waters into public areas, or drains which the subdivider has the right to use, and that such surface waters will not be deposited on the property of adjoining land owners in such concentrations as may cause damage to the adjoining property because of the construction of Jamestown No. 1.
    - (2) William Bates submitted an email on April 12, 2010, and indicated he was concerned regarding the following:
      - (a) Runoff from the compost piles that goes into the Saline Branch Creek which runs under the freeway, into the Urbana County Club and into Crystal Lake Park and beyond; and

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REVISED DRAFT MAY 7, 2010

- (b) The water wells in the area could be contaminated with goat feces, veterinary medicines used on the goats, and if goats are buried on the property it would amplify the situation; and
- (c) There are piles of goat manure in the distance that are at least five feet high and run for 40-50 feet.
- (3) At the April 15, 2010, public hearing Wesley Jarrell, co-petitioner, testified as follows:
  - (a) He considers himself a water quality expert who has worked in Wisconsin, Oregon and here in Illinois on water quality issues.
  - (b) He said that the compost material is handled very carefully and water has not run off more than three or four feet from the base of the pile because it is almost dead flat in the area of the pile.
  - (c) He said that the compost pile is over 200 yards from the Saline Branch.
  - (d) He said that Figure 2 of the supplemental material submitted on April 15, 2010, indicates a photograph of the compost pile over two years ago because since then a pasture of hay, prairie grass and alfalfa has been planted therefore creating a 700 foot buffer.
- (4) At the April 15, 2010, public hearing Bill Ziegler, 4704 North Willow Road, testified, as follows:
  - (a) The farm that he and his brother owns backs up to the west side of Mr. Jarrell's property.
  - (b) He said that the Saline Branch is located on the west side of their farm and it is on the east side of Prairie Fruits Farm therefore their properties are contiguous.
  - (c) He said that he has been a farmer all of his life and the Champaign County Soil and Water Conservation District, and the USDA offer programs for filter strips.
  - (d) He said that the minimum width for a filter strip is 30 feet with a maximum width of 66 feet. He said that the purpose of the filter strip is to filter out any sediment, chemical or fertilizer runoff from the fields.
  - (e) He said that the Saline Ditch is right next to the end of Mr. Jarrell's property however they have 200 yards of grass land and alfalfa in between

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the compost pile and the Saline Drainage Ditch to filter out anything that might runoff of the compost pile.

(f) He said that any concern regarding runoff from the compost pile going directly into the Saline Ditch is not applicable in this case.

C. The subject property is accessed from North Lincoln Avenue on the west side of the property. Regarding the general traffic conditions on North Lincoln Avenue at this location and the level of existing traffic and the likely increase from the proposed Special Use:

(1) The Illinois Department of Transportation (IDOT) measures traffic on various roads throughout the County and determines the annual average 24-hour traffic volume for those roads and reports it as Annual Average Daily Traffic (AADT). The AADT of North Lincoln Avenue was last measured in 2006, and is 400 where it passes the subject property.

(2) North Lincoln Avenue is indicated as a Minor Arterial Street by the Urbana Comprehensive Plan.

(3) The Township Highway Commissioner has been notified of this case, ~~but no comments have been received as yet.~~ In a phone call with J.R. Knight, Associate Planner, on April 8, 2010, Rick Wolken, Somer Township Highway Commissioner, indicated that he had concerns regarding parking in the right-of-way occurring at the subject property, and he would prefer that no parking take place in the right-of-way.

(4) At the April 15, 2010, public hearing Harold Scharlau, 3610 North Lincoln Avenue, Champaign, testified that there is no fast traffic along this section of Lincoln Avenue because from Oaks Road on up the road there is a 90 degree turn followed by a 70 degree turn and then within about 400 yards there is another turn.

(5) At the April 15, 2010, public hearing Jim Heimburger, 2934 Stone Creek Boulevard, Urbana, testified that he believes that parking should be contained on the property and not take place on the road.

(6) William Bates submitted an email on April 12, 2010, indicating the following:

(a) A line of cars was present at the subject property extending for approximately one-half mile on North Lincoln Avenue, which is a Township road with no centerline or shoulder.

(b) There were close to 150 cars on the property and on the road.

(c) No farm equipment was able to come around the curve to get into their fields. This is the most important time of the year for getting the seed in the ground.

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(d) This is deliberately and defiantly being done without receiving a special permit, and, in itself is a violation.

D. Regarding fire protection of the subject property:

(1) The subject property is within the protection area of the Eastern Prairie Fire Protection District and is located approximately 4.5 road miles from the fire station. The Fire Protection District Chief has been notified of this request, but no comments have been received at this time.

(2) The petitioners testified in additional information submitted on May 4, 2010, as follows:

(a) They indicated that in the event of a fire or other emergency requiring assistance from the fire department or other emergency response entity, they would have guests either move guest vehicles to the overflow lot on the north side of their property or have the guests leave prior to the arrival of the emergency vehicles.

(b) They indicated that this should clear the way for any emergency response vehicles such as fire trucks, ambulances, etc to enter their driveway quickly and easily and have ample room to turn around in the parking area to the south of the pole barn.

(c) They also indicated they have tried to contact Chief Mike Kobel, Eastern Prairie Fire Protection District, but received no response.

(3) At a minimum, the gravel drive providing access to the subject property should be kept clear for a width of at least 24 feet along its entire width, and an all-weather turnaround for emergency vehicles should be provided at the end of the gravel drive.

E. The subject property is not located within a Special Flood Hazard Area, as indicated by the Surveyor's Declaration on the Final Plat of Jamestown Subdivision No. 1.

F. Regarding outdoor lighting on the subject property, ~~there is no information on the current site plan regarding outdoor lighting for any purpose. It is unclear whether any outdoor lighting will be required~~ the petitioners testified in their supplemental material submitted on April 15, 2010, that the only outdoor lighting they use is candle light and oil lamps at dusk for outdoor dinners.

G. Regarding subsurface drainage, the subject property does not appear to contain any agricultural field tile.

H. The hours of operation of the proposed Special Use Permit are described on the website for Prairie Fruits Farm (<http://www.prairiefruitsfarm.com>) as follows:

(1) The farm sales and farm breakfasts that take place from March to April are indicated as beginning at 9 AM and continuing until noon.

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- (2) The farm dinners are held May through December and begin at 4 PM, concluding around 8 PM.
- I. Regarding wastewater treatment and disposal on the subject property:
- (1) ZUPA 262-08-02 indicates that all existing buildings on the subject property use septic systems for wastewater treatment and disposal.
- (2) At the April 15, 2010, public hearing Wesley Jarrell, co-petitioner, testified as follows:
- (a) He said that in 2005 when they got started on the farm, dairy, cheese plant and kitchen they contracted with J & S Waste Water Systems to install three 1,500 gallon tanks and those tanks are to accommodate the water that comes out of the system to the drain field.
- (b) He said that the three 1,500 gallon tanks serve only the dairy and the cheese plant and the residence has a separate system.
- J. Regarding parking for proposed Major Rural Specialty Business, see Item 9.B.(2)
- K. Regarding food sanitation and public health considerations related to the proposed Special Use:
- (1) The petitioners included a copy of their Champaign County Public Health Department food sanitation permit for 2010 with the supplemental material submitted on April 15, 2010.
- (2) They included a copy of the Illinois Department of Public Health (IDPH) food service sanitation certification for Alisa A. Demarco, Prairie Fruits Farm head chef with the supplemental materials submitted on April 15, 2010.
- (3) They included a copy of Prairie Fruits Farm's IDPH Grade A Dairy Farm Permit.
- (4) They included a copy of the IDPH Certificate of Approval for the Dairy Products plant for 2010.
- (5) At the April 15, 2010, public hearing, Wesley Jarrell, co-petitioner, testified that they are required by IDPH to have one restroom that is handicapped accessible for the public and that is located inside the barn behind the dining area.
- L. 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

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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.

- (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. There is no information regarding the cost of the pole barn that is used to house the farm dinners in inclement weather, so it is unclear if that will trigger the requirements of the IEBA.
- (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

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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 is provided and that they have the required exterior configuration. This means that other aspects of building design and construction necessary to provide a safe means of egress from all parts of the building are not checked.
- (k) ~~The proposed use of the pole barn as a location for the farm dinners raises some concerns regarding life safety.~~ A review of the 1991 National Fire Protection Association (NFPA) Life Safety Code appears to indicate that the dining room inside the pole barn meets the requirements for number and capacity of exits.
- (l) The 1991 NFPA Life Safety Code also indicates that the capacity of the dining room is 62 persons.
- (m) Despite the review by planning staff, a review by the Eastern Prairie Fire Protection District should still be obtained to ensure there are no life safety issues on the subject property.

M. Regarding whether the waiver of the standard condition in Section 6.1.3 requiring Major Rural Specialty Businesses prohibiting the sale of alcoholic beverages not produced on the premises will be injurious to the District:

- (1) The information on Prairie Fruits Farm website regarding the farm dinners indicates, “We ask you to bring your own wine or alcoholic beverage of your choice since we don’t have a license to sell or serve alcoholic beverages on the farm.”
- (2) There is no evidence that allowing consumption of alcoholic beverages on the subject property is injurious to the District.

N. Other than as reviewed elsewhere in this Summary of Evidence, there is no evidence to suggest that the proposed Special Use will generate either nuisance conditions such as odor, noise, vibration, glare, heat, dust, electromagnetic fields or public safety hazards such as fire, explosion, or toxic materials release, that are in excess of those lawfully permitted and customarily associated with other uses permitted in the zoning district.

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

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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.”
- B. Regarding compliance with the *Zoning Ordinance*:
- (1) Major Rural Specialty Business is authorized only by Special Use Permit in the AG-2 Agriculture Zoning District.
- (2) Regarding parking on the subject property:
- (a) Paragraph 7.4.1 C.3.c. requires that retail establishments for the sale of food and/or beverages to be consumed on the premises provide one off-street parking space for every 100 square feet of floor area or portion thereof. However, the farm dinners are not generally served in an indoors area.
- (b) Paragraph 7.4.1 C.3.b.ii. requires that places of infrequent public assembly that are outdoors or in non-permanent structures used for exhibit, educational, entertainment, recreational, or other purpose involving assemblage of patrons provide one parking space per three patrons based on the estimated number of patrons during peak attendance.
- (c) ~~There is no information regarding the maximum number of attendees for either the farm breakfasts or farm dinners.~~ At the April 15, 2010, public hearing Wesley Jarrell, co-petitioner, testified that the maximum number of guests at their farm dinners is 45-50.
- (d) ~~A staff parking analysis based on an aerial photograph of the subject property will be available at the meeting.~~ Based on a maximum attendance of 50 guests at farm dinners, the petitioners would be required to provide 16 spaces. The current site plan appears to indicate that 16 spaces could be provided by the gravel drive and paved area in front of the pole barn.
- (e) During the farm open houses, the petitioners have testified that they may have as many as 100 people at one time. Based on that attendance the petitioners would be required to provide 34 parking spaces. A preliminary staff review of the petitioners parking proposal submitted with supplemental materials on April 15, 2010, indicates that there should be adequate area along the gravel drive, but that the proposed overflow parking will help ensure that no parking related to the Special Use takes place in the right-of-way. A more detailed analysis will be available at the meeting.

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- (f) Although staff analysis indicates there should be adequate area to provide required parking spaces, the current site plan submitted on May 4, 2010, does not indicate the capacity of the proposed parking areas, and it is slightly different than the parking proposal submitted on April 15, 2010, so some clarification from the petitioners may be warranted.
- (3) The definition of a Rural Specialty Business in Section 3.0 of the *Zoning Ordinance* (see Item 6.D.(6), above) states that a Rural Specialty Business must primarily sell goods that are produced on the premises. It lists three requirements that an operation which sells goods not produced on the premises must meet if it can be considered a Rural Specialty Business and granted a Special Use Permit:
- (a) Any goods not produced on the premises must constitute less than 50 percent of the total gross business income;
  - (b) Any goods not produced on the premises must constitute less than 50 percent of the total stock in trade; and
  - (c) Less than 50 percent of the total lot area shall be devoted to commercial building area, parking or loading areas, or outdoor sales display.
  - (d) The proposed Major Rural Specialty Business appears to sell a very limited amount of items that are produced off-site. The main products, farm produce and farm dinners, are produced on site.
- (4) Regarding compliance with standard conditions of approval for Major Rural Specialty Businesses indicated in Section 6.1.3, as follows:
- (a) The total BUILDING AREA devoted to sales DISPLAY or recreational commercial USE shall not exceed 5,000 square feet.  
  
~~It is not clear if a waiver of this standard condition is necessary because there is no information regarding the total building area devoted to sales display. A waiver of this standard condition does not appear to be necessary based on the petitioners' testimony that their indoor dining area is less than 1,000 square feet in area.~~
  - (b) Outdoor entertainment requiring the use of sound amplification equipment shall be permitted not more often than five consecutive or non-consecutive days in any three-month period and only if a Recreation & Entertainment License shall have been obtained as provided in the Champaign County Ordinance No. 55 *Regulation of Business Offering Entertainment and/or Recreation*.

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A waiver of this standard condition does not appear to be necessary because the Petitioners have not proposed any outdoor entertainment which requires sound amplification equipment.

- (c) The site shall not be located within 500 feet of a residential zoning district.

A waiver of this standard condition does not seem to be necessary because there is no land in any R districts within 500 feet of the subject property.

- (d) Businesses located in the CR, AG-1, or AG-2 Districts shall not access streets located within a recorded subdivision.

A waiver of this standard condition does not appear necessary because the subject property is accessed from North Lincoln Avenue, which is not located within a platted subdivision.

- (e) Alcoholic beverages not produced on the premises shall not be sold.

A waiver of this standard condition ~~may not be necessary because~~ is included despite the fact that the petitioners have never and do not propose to sell alcohol so that there is no question that alcohol is allowed on the premises. Current practice is to allow customers to bring their own alcoholic beverage. However, a Liquor License may still be required.

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

- (1) Regarding the requirement of stormwater detention, there is a limited amount of impervious area on the subject property, and no stormwater detention appears to be necessary.
- (2) Regarding the requirement to protect agricultural field tile, there does not appear to be any field tile on the subject property.

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 is located in the City of Urbana subdivision jurisdiction.

E. Regarding the requirement that the Special Use preserve the essential character of the AG-2 Agriculture Zoning District, the proposed use is a Rural Specialty Business, which is defined as an establishment that sells agricultural products and trade on a rural ambience.

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.

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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. ~~There is no indication of any accessible parking on the site plan. However, the outdoor nature of the proposed use makes it unclear what may be required to comply with the Illinois Accessibility Code.~~ The petitioners indicated two accessible parking spaces on their parking proposal submitted on April 15, 2010. However, it is unclear if these spaces actually meet the requirements for accessibility. The petitioners were asked to contact the Illinois Capital Development Board to obtain a determination of what would be required for them to comply with the Illinois Accessibility Code. No information regarding that determination has been received so far.

- G. Regarding compliance with the Illinois Livestock Management Facilities Act (510 ILCS 77/):
- (1) All new livestock management facilities and livestock waste handling facilities constructed after May 21, 1996, must comply with the Illinois Livestock Management Facilities Act (510 ILCS 77/). "Livestock management facility" is defined in the Act as any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area.
  - (2) The Act is implemented by the Livestock Management Facility Regulations in 8 Illinois Administrative Code 900.
  - (3) The livestock waste management component of the proposed special use is an agricultural activity that is exempt from County zoning. Evidence regarding the management of livestock waste is as follows:
    - (a) At the public hearing on April 15, 2010, co-petitioner Wesley Jarrell testified as follows regarding management of livestock waste at the proposed special use:
      - i. The goat manure is composted in piles.
      - ii. Co-petitioner Ms Cooperband is a compost expert.
      - iii. The manure compost is handled very carefully and turned and maintained so as to produce organic compost.
      - iv. A pasture of hay has been established that acts as a 700 feet buffer between the compost pile and the Saline Branch.
      - v. When it is finished, the compost is spread on the fruit and vegetable fields and on their pasture crops.
    - (b) In a letter dated May 2, 2010, the petitioners testified that composting is done according to the United States Department of Agriculture Certified Organic rules.

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- (4) The livestock waste management component of the proposed special use appears to conform with the Livestock Management Facility Regulations in 8 Illinois Administrative Code 900 as follows:
- (a) Section 900.103 includes the following definitions:
- i. “animal unit” defines a goat as equal to .1 animal unit.
  - ii. “livestock waste” is defined as livestock excreta and associated feed losses, bedding, wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock.
- (b) Section 900.202 exempts livestock management facilities and livestock waste handling facilities with less than 50 animal units from any minimum required setback in the Livestock Management Facilities Act but such facilities are subject to rules promulgated by the Illinois Environmental Protection Act. Thus, a facility with as many as 494 (49.4 animal units) goats is exempt from the setback requirements. The proposed special use typically has 85 goats (8.5 animal units) and there is no waste handling facility and is exempt from the setback requirements but is subject to rules promulgated by the Illinois Environmental Protection Act.
- (c) Section 900.901 requires a livestock waste handling facility with 300 or greater animal units to be operated under the supervision of a certified livestock manager. The proposed special use typically has 85 goats (8.5 animal units) and is exempt from the requirement for a certified livestock manager.
- (d) Section 900.503 establishes requirements for a livestock waste handling facility, other than a livestock waste lagoon, that is not subject to the public informational meeting process outlined in Section 12 of the Livestock Management Facilities Act. Section 12 of the Livestock Management Facilities Act requires a public informational meeting process for any new livestock waste handling facility serving more than 1,000 animal units or any livestock waste handling facility proposing to utilize a lagoon. A livestock waste handling facility is defined as any immovable construction or device used for collecting, pumping, treating, or disposing of livestock waste. The proposed special use has no livestock waste handling facility and is exempt from these requirements.
- (e) Section 900.802 exempts livestock management facilities and livestock waste handling facilities with less than 1,000 animal units from the Illinois Livestock Management Facilities Act requirement for a waste management plan. The proposed special use typically has 85 goats (8.5 animal units) and is exempt from the waste management plan requirement.

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*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. Major Rural Specialty Businesses may be authorized in the AG-2 Agriculture Zoning District as a Special Use provided all other zoning requirements and standard conditions are met or waived.
- B. Regarding whether the proposed Special Use Permit is in harmony with the general intent of the Zoning Ordinance:
- (1) Subsection 5.1.14 of the Ordinance states the general intent of the AG-2 District and states as follows (capitalized words are defined in the Ordinance):
- The AG-2, Agriculture DISTRICT is intended to prevent scattered indiscriminate urban development and to preserve the AGRICULTURAL nature within areas which are predominately vacant and which presently do not demonstrate any significant potential for development. This DISTRICT is intended generally for application to areas within one and one-half miles of existing communities in the COUNTY.
- (2) The types of uses authorized in the AG-2 District are in fact the types of uses that have been determined to be acceptable in the I-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 appears to be in compliance with those requirements.
- (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, it is unclear what impact the proposed SUP will have on the value of nearby properties.
- (b) With regard to the value of the subject property, without the Special Use Permit authorization the current use is not in conformance with the Zoning Ordinance because the business involves more than simply a "FOOD STORE" as defined in Section 5.4.6 of the Champaign County Health Ordinance.

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- (3) Paragraph 2.0 (c) of the Ordinance states that one purpose of the Ordinance is lessening and avoiding congestion in the public STREETS.

It is unlikely that the limited public access to the subject property will contribute to congestion on North Lincoln Avenue. However, there should be no parking related to the proposed SUP in the public right-of-way.

- (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.

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 and the proposed site plan appears to be in compliance with those limits.

- (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

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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.

This purpose is not relevant to the proposed Special Use Permit because it relates to nonconforming buildings, structures, or uses that existed on the date of the adoption of the Ordinance and none of the current structures or the current use existed on the date of adoption.

- (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 subject property is located in the AG-2 Agriculture District and is, by definition, a rural use.

- (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.

The subject property does not contain any natural features and there are no natural features in the vicinity of the subject property.

- (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.

The subject property is located in the AG-2 Agriculture District and is, by definition, a rural use.

- (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

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retain the AGRICULTURAL nature of the COUNTY, and the individual character of existing communities.

The subject property is located in the AG-2 Agriculture District and is, by definition, a rural use.

**GENERALLY REGARDING WHETHER THE SPECIAL USE IS AN EXISTING NONCONFORMING USE**

11. The proposed Special Use is an existing NONCONFORMING USE because it is an existing business that has been in operation without all necessary approvals. The Petitioner has testified on the application, "N/A"

**GENERALLY REGARDING PROPOSED SPECIAL CONDITIONS OF APPROVAL**

12. Regarding proposed special conditions of approval:
- A. The parking requirements for the proposed use are not clearly defined by the Zoning Ordinance, however, there should be no parking related to the Special Use in the public right-of-way and the following condition makes that clear.

**The petitioners shall ensure that no parking related to the special use permit shall occur in any public right-of-way.**

The above special condition is necessary to ensure the following:

**There is no unreasonable risk to public safety caused by on street parking.**

- B. The proposed use is subject to County Ordinances other than the Zoning Ordinance, and the following condition makes it clear that the proposed use must continue to be operated so as to conform to the requirements of those Ordinances:

**The proposed Major Rural Specialty Business shall conform to all relevant Champaign County Ordinances including the following:**

- (1) The Champaign County Health Ordinance, including, but not limited to, any required licenses for the food service portion of the use, and any required permits for onsite wastewater treatment and disposal.**
- (2) The Champaign County Liquor Ordinance, including any required liquor license.**
- (3) The Champaign County Recreation and Entertainment Ordinance, including any required Recreation and Entertainment License.**

The above stated special condition is necessary to ensure the following:

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**The Major Rural Specialty Business conforms to all relevant Champaign County Ordinances.**

- C. The Major Rural Specialty Business in this case is authorized by Special Use Permit, and must be operated in accordance with the approved site plan and testimony given in this case. The following condition makes that clear.

**Any non-agricultural building or use must be fully consistent with the approved site plan, testimony, and evidence give in this public hearing, as required by Section 9.1.11 B.6. of the Zoning Ordinance.**

The above stated special condition is necessary to ensure the following:

**The Major Rural Specialty Business conforms to the approved site plan, testimony, and evidence given in the public hearing for Case 667-S-10.**

- D. The proposed Major Rural Specialty Business must comply with the Illinois Environmental Barriers Act and the Illinois Accessibility Code and the following condition makes that clear.

**The Zoning Administrator shall not authorize a Zoning Use Permit for the proposed Special Use without documentation of compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code.**

The above stated special condition is necessary to ensure the following:

**The proposed Special Use complies with state accessibility requirements.**

- E. The petitioners propose to use the paved area south of the pole barn to provide parking for the proposed Special Use. The following condition makes it clear that no parking in that area should be allowed to interfere with emergency vehicle access to the subject property.

**No parking, including accessible spaces shall be allowed south of the pole barn without a letter from Chief Mike Kobel, Eastern Prairie Fire Protection District, that he is satisfied that it will not interfere emergency vehicle access to the subject property or fire-fighting operations on the subject property.**

The above stated special condition is necessary to ensure the following:

**Emergency vehicle access and fire-fighting operations on the subject property are not impeded by parking south of the pole barn.**

- F. The subject property is accessed by an gravel drive off Lincoln Avenue. The following condition makes it clear that emergency vehicle use of that drive should not be impeded.

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The Zoning Administrator shall not approve the Change of Use Permit for the proposed Special Use until the petitioners submit a letter from Chief Mike Kobel of Eastern Prairie Fire Protection District stating that he is satisfied with the accommodations for public safety in regards to the following:

- (1) The gravel drive must be kept clear of obstructions, including parked vehicles for a minimum width of 24 feet for its entire length; and
- (2) An adequate turnaround for emergency vehicles at the end of the gravel drive.

The above stated special condition is necessary to ensure the following:

The gravel drive provides adequate emergency vehicle access to the subject property.

- G. The existing business has not been permitted and the following condition makes clear the requirement to complete a Change of Use for the property.

The petitioner shall submit a Zoning Use Permit Application for a Change of Use with fees and a revised site plan that indicates all changes required to comply with the special conditions of approval within 30 days of the Zoning Board of Appeals approval of Case 667-S-10.

The special condition stated above is required to ensure the following:

The Major Rural Specialty Business complies with the approval in Case 667-S-10 in a reasonable and timely manner and the petitioners submit a complete site plan.

**DOCUMENTS OF RECORD**

1. Special Use Permit Application from Leslie Cooperband received on March 10, 2010
2. Site plan of area where farm dinners take place and information from <http://www.prairiefruits.com>, received on March 12, 2010
3. Preliminary Memorandum for Case 667-S-10, with attachments:
  - A Case Maps (Location, Land Use, Zoning)
  - B Site plan received on March 12, 2010
  - C Annotated site plan
  - D Information regarding Farm Dinners and Farm Open Houses from [www.prairiefruitsfarm.com](http://www.prairiefruitsfarm.com)
  - E Draft Summary of Evidence, Finding of Fact, and Final Determination for Case 662-S-10
4. Supplemental Memorandum for Case 667-S-10, dated April 15, 2010, with attachments:
  - A Email from William Bates, received on April 12, 2010
  - B Photographs (numbered 1-6 by staff) submitted by William Bates on April 12, 2010
5. Supplemental materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on April 15, 2010
6. Additional materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on May 4, 2010
7. Supplemental Memorandum for Case 667-S-10, dated May 7, 2010, with attachments:
  - A Supplemental materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on April 15, 2010
  - B Additional materials submitted by petitioners Wesley Jarrell and Leslie Cooperband on May 4, 2010
  - C Revised Draft Summary of Evidence for Case 667-S-10

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**FINDINGS OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case **667-S-10** held on **April 15, 2010, and May 13, 2010**, 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 NOT / WILL}*** 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'}***: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - 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'}***: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - e. Surface and subsurface drainage will be ***{ADEQUATE / INADEQUATE} {because'}***: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - f. Public safety will be ***{ADEQUATE / INADEQUATE} {because'}***: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - h. The provisions for parking will be ***{ADEQUATE / INADEQUATE} {because'}***: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - i. *(Note the Board may include other relevant considerations as necessary or desirable in each case.)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 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.

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1. The Board may include additional justification if so desired, but it is not necessary.
- 3b. The requested Special Use Permit *{SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN} {DOES / DOES NOT}* preserve 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}*.
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 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* preserve the essential character of the DISTRICT in which it is located.
5. The requested Special Use *{IS/ IS NOT}* an existing nonconforming use.
6. *{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}*
  - a. **The petitioner shall submit a Zoning Use Permit Application for a Change of Use with fees within 30 days of the Zoning Board of Appeals approval of Case 667-S-10.**

The special condition stated above is required to ensure the following:

**The Major Rural Specialty Business complies with the approval in Case 667-S-10 in a reasonable and timely manner.**

- b. **The petitioners shall ensure that no parking related to the special use permit shall occur in any public right-of-way.**

The above special condition is necessary to ensure the following:

**There is no unreasonable risk to public safety caused by on street parking.**

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- c. **The proposed Major Rural Specialty Business shall conform to the following Champaign County Ordinances:**
- (1) The Champaign County Health Ordinance, including, but not limited to, any required licenses for the food service portion of the use, and any required permits for onsite wastewater treatment and disposal.**
  - (2) The Champaign County Liquor Ordinance, including any required liquor license.**
  - (3) The Champaign County Recreation and Entertainment Ordinance, including any required Recreation and Entertainment License.**

The above stated special condition is necessary to ensure the following:

**The Major Rural Specialty Business conforms to all relevant Champaign County Ordinances.**

- d. **Any non-agricultural building or use must be fully consistent with the approved site plan, testimony, and evidence give in this public hearing, as required by Section 9.1.11 B.6. of the Zoning Ordinance.**

The above stated special condition is necessary to ensure the following:

**The Major Rural Specialty Business conforms to the approved site plan, testimony, and evidence given in the public hearing for Case 667-S-10.**

- e. **The Zoning Administrator shall not authorize a Zoning Use Permit for the proposed Special Use without documentation of compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code.**

The above stated special condition is necessary to ensure the following:

**The proposed Special Use complies with state accessibility requirements.**

- f. **No parking, including accessible spaces shall be allowed south of the pole barn without a letter from Chief Mike Kobel, Eastern Prairie Fire Protection District, that he is satisfied that it will not interfere emergency vehicle access to the subject property or fire-fighting operations on the subject property.**

The above stated special condition is necessary to ensure the following:

**Emergency vehicle access and fire-fighting operations on the subject property are not impeded by parking south of the pole barn.**

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- g. **The Zoning Administrator shall not issue a Compliance Certificate for the proposed Special Use until the petitioners submit a letter from Chief Mike Kobel of Eastern Prairie Fire Protection District stating that he is satisfied with the accommodations for public safety in regards to the following:**
- (1) The gravel drive must be kept clear of obstructions, including parked vehicles for a minimum width of 24 feet for its entire length; and**
  - (2) An adequate turnaround for emergency vehicles at the end of the gravel drive.**

The above stated special condition is necessary to ensure the following:

**The gravel drive provides adequate emergency vehicle access to the subject property.**

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**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 667-S-10 is hereby *{ GRANTED / GRANTED WITH SPECIAL CONDITIONS / DENIED }* to the petitioners **Leslie Cooperband and Wesley Jarrell** to authorize a **Major Rural Specialty Business in the AG-2 District with waivers of standard conditions including, but not limited to, the prohibition of sales of alcohol not produced on the premises.**

*{SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:}*

- a. **The petitioner shall submit a Zoning Use Permit Application for a Change of Use with fees within 30 days of the Zoning Board of Appeals approval of Case 667-S-10.**
- b. **The petitioners shall ensure that no parking related to the special use permit shall occur in any public right-of-way.**
- c. **The proposed Major Rural Specialty Business shall conform to the following Champaign County Ordinances:**
  - (1) **The Champaign County Health Ordinance, including, but not limited to, any required licenses for the food service portion of the use, and any required permits for onsite wastewater treatment and disposal.**
  - (2) **The Champaign County Liquor Ordinance, including any required liquor license.**
  - (3) **The Champaign County Recreation and Entertainment Ordinance, including any required Recreation and Entertainment License.**
- d. **Any non-agricultural building or use must be fully consistent with the approved site plan, testimony, and evidence give in this public hearing, as required by Section 9.1.11 B.6. of the Zoning Ordinance.**
- e. **The Zoning Administrator shall not authorize a Zoning Use Permit for the proposed Special Use without documentation of compliance with the Illinois Environmental Barriers Act and the Illinois Accessibility Code.**
- f. **No parking, including accessible spaces shall be allowed south of the pole barn without a letter from Chief Mike Kobel, Eastern Prairie Fire Protection District, that he is satisfied that it will not interfere emergency vehicle access to the subject property or fire-fighting operations on the subject property.**

Underline text indicates evidence to be added.

~~Strikeout~~ text indicates evidence to be removed.

- g. **The Zoning Administrator shall not issue a Compliance Certificate for the proposed Special Use until the petitioners submit a letter from Chief Mike Kobel of Eastern Prairie Fire Protection District stating that he is satisfied with the accommodations for public safety in regards to the following:**
- (1) The gravel drive must be kept clear of obstructions, including parked vehicles for a minimum width of 24 feet for its entire length; and**
  - (2) An adequate turnaround for emergency vehicles at the end of the gravel drive.**

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