

1
2
3 **MINUTES OF REGULAR MEETING**

5 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

6 **1776 E. Washington Street**

7 **Urbana, IL 61801**

8
9 **DATE: December 16, 2010**

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

10
11 **TIME: 6:30 p.m.**

Urbana, IL 61802

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

15
16 **MEMBERS ABSENT :** Roger Miller

17
18 **STAFF PRESENT :** Connie Berry, John Hall, J.R. Knight

19
20 **OTHERS PRESENT :** Herb Schildt, Sherry Schildt, Steve Burdin, Stephen Lemke, Susie Roderick,
21 Don Roderick, Peggy Roderick, Virgil Roderick Jr., Homer Kirby, Tina Bean

22
23
24 **1. Call to Order**

25
26 The meeting was called to order at 6:30 p.m. by John Hall, Zoning Administrator.

27
28 **2. Roll Call and Declaration of Quorum**

29
30 The roll was called and a quorum declared present with one member absent.

31
32 **3. ZBA selection of Meeting Chairperson**

33
34 **Mr. Schroeder moved, seconded by Ms. Capel to appoint Eric Thorsland as Acting Chair for the**
35 **December 16, 2010, meeting. The motion carried by voice vote.**

36
37 **4. Correspondence**

38
39 None

40
41 **5. Approval of Minutes (October 14, 2010)**

42
43 **Ms. Capel moved, seconded by Mr. Courson to approve the October 14, 2010, minutes as submitted.**
44 **The motion carried by voice vote.**

45
46 **Mr. Courson moved, seconded by Mr. Palmgren to re-arrange the agenda and hear Case 675-AT-10,**
47 **prior to Cases 665-AT-10 and 666-AT-10. The motion carried by voice vote.**

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 **6. Continued Public Hearing**

2
3 **Case 665-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3G. 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; and B. Require fencing that is higher than four feet tall to be at least 50% transparent when located in the following areas: (1) In Residential Zoning Districts, all fencing that is in the front yard; and (2) On residential lots in the AG-1, AG-2, and CR Zoning Districts, only fencing between the dwelling and the driveway within 25 feet of the dwelling. C. Increase the maximum allowed height of all fencing to allow up to three inches of ground clearance.**

12
13 Mr. Hall stated that on December 06, 2010, a third request was sent to the Sheriff regarding the Board's questions about transparency for gates but to date no comments have been received. Mr. Hall stated that he would assume that since no response has been received from the Sheriff it would mean that he has no concerns related to this case. Mr. Hall stated that nothing has changed since the last time that the Board reviewed this case and a fence in a residential district would retain a 6 foot maximum height in the front yard but those portions over four feet high must be at least 50% transparent, and in the residential districts that is for the entire front yard. He said that on side and rear yards the maximum height is being increased to 8 feet with a provision that when there is a question about whether it is located in the front or side yard then the transparency requirement applies there also and for all of the fence heights 3 inches of extra height is being added to accommodate changes in topography. He said that any place where there is a limit of 6 feet or 8 feet the actual limit at any point in the fence is 6 foot 3 inches or 8 foot 3 inches. He said that residential lots in the AG districts that are less than five acres in area will retain a maximum fence height of six feet in the front yard but will add a requirement for 50% transparency when located along the driveway between the dwelling and the driveway visibility triangle within 25 feet of the dwelling. He said that what this means is that a fence along the driveway within 25 feet of the dwelling has to be 50% transparent over four feet in height and then in the side and rear yard the allowable maximum height is 8 feet. He said that if there is a question whether the fence is in the side or front yard then the transparency requirement kicks in, although that doesn't seem to be needed unless it is along the driveway. He said that on lots that are five acres or greater the only restriction on fencing is for the transparency requirement within 25 feet of the dwelling on the line of the driveway between the driveway and the dwelling. He said that in the CR district where there are currently no requirements for fencing the transparency requirement is being added within 25 feet of the dwelling. He said that there are no height limits in the CR district but within 25 feet of the dwelling along the side of the driveway between the driveway and the dwelling the transparency requirement applies. He said that in the business and industrial zoning districts the only change is to add the three inch clearance to the existing height limit of 8 feet. He said that he had hoped that this case would be ready for final action at tonight's public hearing but he does not believe that Item #G.2(c) is necessary therefore he would like to continue the case while staff verifies that. He said that it was only decided this afternoon that this case merited making the draft ordinance to make sure that everyone was on the same page.

41
42 Mr. Knight stated that there could be a possibility that the fence could exist along the rear line of the front

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 yard in the AG-1 and AG-2 Zoning Districts.

2

3 Mr. Hall stated that the current approach is that the transparency requirement in the AG districts is only an
4 issue when it is on the line of the driveway between the driveway and the dwelling and then only within 25
5 feet of the dwelling therefore any fence that could be in the side yard is going to be further back on the
6 property. He said that this issue is only relevant if the Board is still entertaining the transparency
7 requirement.

8

9 Mr. Courson stated that he is against the transparency requirement. He said that he does not believe that any
10 visibility restrictions should be placed on the fence in any zoning district.

11

12 Mr. Hall stated that if the Board is still entertaining the transparency requirement then he would request that
13 the case be continued so that an illustration could be presented to the Board for review.

14

15 Mr. Thorsland asked Mr. Hall if Paragraph 4.3.3E. is the standard visibility requirement for fencing.

16

17 Mr. Hall stated yes. He noted that vegetation within the visibility triangle would have to be maintained
18 within the visibility triangle.

19

20 Mr. Thorsland stated that if the Board pursued Mr. Courson's proposal and the Board retained Subparagraph
21 4.3.3G 2(a) the front yard on lots five acres or less would have a six foot height requirement and the 50%
22 transparency over four feet would be omitted. He said that the visibility triangle requirement will be
23 maintained and the rear and side yards will remain at 8 feet 3 inches and the front yard would be 6 feet 3
24 inches. He said that this would solve a lot of the problems with the transparency on lots which are less than
25 five acres. He said that on some level he agrees with Mr. Courson in regards to the agricultural lots because
26 enforcement would be pretty much impossible, even with the visibility triangle requirement.

27

28 Mr. Hall stated that perhaps a permit should be required.

29

30 Mr. Thorsland stated that it is possible but he is not sure if he is inclined to require a permit for a fence.

31

32 Mr. Courson stated that most people in the community would construct a fence without a permit because
33 they do not realize that one is required.

34

35 Mr. Hall stated that the driveway visibility triangle is the one Zoning Ordinance requirement that has
36 immediate life, safety effects.

37

38 Mr. Courson stated that he believes that there should be more requirements on visibility triangles in the rural
39 areas along the roads.

40

41 Mr. Thorsland stated that he agrees with Mr. Courson and he would like to see the AG-1, AG-2, and CR
42 districts be consistent and enforce the visibility triangle requirement. He said that he would recommend the

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 6 foot fence in the front yard on a lot that is five acres or less with no transparency requirement because the
2 visibility triangle requirement is already being enforced. He said that the only difference between a lot that
3 is less than five acres and a lot that is five acres or more is the 6 feet versus the 8 feet in the front yard. He
4 said that this recommendation would simplify the amendment and staff's job.

5
6 Mr. Hall stated that currently a lot that is five acres or greater has no fence height requirement only the
7 visibility triangle.

8
9 Mr. Thorsland stated in regards to CR Subparagraph 4.3.3G.3.(b) could also be removed.

10
11 Mr. Hall stated that lots which are five acres or greater in the AG districts and CR the only fencing
12 requirement is for the visibility triangle.

13
14 Mr. Thorsland stated that the original goal was to simplify the fence ordinance. He said that he is
15 comfortable in omitting 4.3.3G.3(b) and changing the AG districts to allow a six foot height in the front yard
16 for fencing on lots which are less than five acres. He said that for lots which are five acres or greater there
17 would be no fence height requirement but the visibility triangle requirement would be enforced.

18
19 Ms. Capel asked if CR lots would have requirements.

20
21 Mr. Thorsland stated that CR lots only have the visibility requirement. He said that all of Subparagraph
22 4.3.3G.1 would remain the same and 4.3.3G.2 would be revised as follows: strike 4.3.3G. 2.b.(1)(b); and
23 4.3.3G.2.b.(2)(c); and 4.3.3G.2.c; and 4.3.3G.3.b. He said that no reply has been received from the Sheriff
24 regarding the gates.

25
26 Mr. Hall stated that Mr. Thorsland is correct in indicating that no reply has been received from the Sheriff
27 regarding the gates but the Sheriff did reply about the transparency requirement.

28
29 Mr. Hall read Item 11.B(3) as follows: Champaign County Sheriff Dan Walsh, in an email to Zoning
30 Administrator, John Hall, indicated he has the following concerns regarding fencing: (a) When responding to
31 a call (or even on routine patrol) it is always beneficial to be able to see "more."; and (b) Deputies will be
32 safer when responding to calls if they can observe dangerous conditions or persons and plan their response
33 and avenue of approach accordingly; and (c) Likewise, if on patrol a deputy can see a "bad situation" in a
34 front/side yard or front porch or even inside the house they can take action without a call from a citizen; and
35 (d) Access in an emergency response situation could also be problematic if there is a tall barrier and a locked
36 gate; and (e) The Sheriff's Department certainly respects a citizen's right of privacy and to be able to do
37 what they want with their own property; and (f) A solid barrier (fence or even vegetation in some cases)
38 height of 3-4 feet seems to be very normal in ordinances (for front and/or side yards) including C-U and
39 would reduce our concerns with regard to fencing.

40
41 Mr. Thorsland stated that on Page 7 of 13, Item #7.B.(2)(b) indicates that the City of Urbana allows fences
42 up to eight feet tall in side and rear yards and allows fences to be eight feet tall in front yards where the front

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 yard abuts a principal arterial street or a minor arterial street. He said that almost every street in the AG
2 districts is an arterial street therefore perhaps the Board should give the Sheriff one last opportunity to
3 comment.

4
5 Mr. Hall stated that within the City of Urbana ETJ not every section line road rises to a minor arterial street
6 therefore he would not expect to see eight feet tall fences being allowed along every section line road. He
7 said that he would never expect to see an eight foot tall fence in the front yard within the City of Champaign
8 ETJ.

9
10 Mr. Thorsland asked the Board if they had any thoughts regarding this case.

11
12 Mr. Palmgren requested a five minute break.

13
14 **Ms. Capel moved, seconded by Mr. Courson to recess the public hearing for a five minute break. The**
15 **motion carried by voice vote.**

16
17 The meeting recessed at 7:45 p.m.

18 The meeting resumed at 7:50 p.m.

19
20 Mr. Thorsland stated that the Board needs to either agree with omitting some of the proposed text or
21 honoring, on some level, the e-mail from the Sheriff.

22
23 Mr. Hall stated that he does believe that the Sheriff's comments are very non-committal.

24
25 Mr. Courson stated that Item #11.B(3)(e) could be interpreted as having no restrictions at all. He said that he
26 agrees with the Sheriff's comments in Item #11.B(3)(e) regarding the privacy rights of the property owner.

27
28 Mr. Thorsland suggested that a fence around a five acre parcel would be self-limiting anyway and most
29 people would not do it due to the cost.

30
31 Mr. Courson agreed.

32
33 Ms. Capel stated that the fence would not necessarily have to encompass the entire five acres.

34
35 Mr. Thorsland stated that a thought would be to draw a 25 foot line from the dwelling and if the fence
36 appears to come into that line on a lot that is less than five acres then the transparency requirement takes
37 effect. He said that he believes that this will be a rare occasion but it is possible and staff could construct
38 such text.

39
40 Mr. Hall stated that such text already exists.

41
42 Mr. Thorsland read Subparagraph 4.3.3G.2.c as follows: on lots five acres or greater in area, any portion of

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 a fence over four feet in height must be at least 50% transparent when located along the driveway between
2 the dwelling and the nearest point of the driveway visibility triangle as required by 4.3.3.F.2 within 25 feet of
3 the dwelling. He said that this is on lots which are five acres or more therefore he is inclined to disregard
4 this item.

5
6 Mr. Hall stated that any place where it discusses the transparency requirement the language about the nearest
7 point of the driveway visibility has been included, which is very confusing.

8
9 Mr. Thorsland stated that for lots that are less than five acres perhaps it could state that any portion of a
10 fence that is above four feet in height must be at least 50% transparent above four feet when located along
11 the driveway within 25 feet of the dwelling.

12
13 Mr. Hall stated that this is the text that was included on the September 10, 2010, Supplemental
14 Memorandum. He read the following text : Any portion of a fence over four feet in height must be at least
15 50% transparent when located between the dwelling and the driveway within 25 feet of the dwelling. He
16 said that this text was included on lots that are five acres or greater in area but at this point it appears that the
17 Board desires to delete it for those lots.

18
19 Mr. Thorsland stated that the text should be deleted for lots which are five acres or greater because the size
20 of the lot almost negates that from even being an issue.

21
22 Mr. Hall stated that in regards to residential lots in the AG and CR districts Subparagraph 4.3.3G.2(b) will
23 be modified to indicate the text included in the September 10th memorandum and Subparagraphs
24 4.3.3G.2(2)(c); and 4.3.3G.2.c; and 4.3.3G.3.b should be deleted.

25
26 Mr. Thorsland stated that the case should be continued to give staff time to include the modifications in a
27 version for review by the Board.

28
29 **Mr. Palmgren moved, seconded by Ms. Capel to continue Case 665-AT-10 to the January 6, 2011,**
30 **meeting. The motion carried by voice vote.**

31
32 **Case 666-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
33 **Ordinance by revising Subsection 6.1 and paragraph 9.1.11.D.1. to clarify that the standard**
34 **conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind**
35 **are subject to waiver by the Zoning Board of Appeals or County Board.**

36
37 Mr. Hall distributed a new Supplemental Memorandum dated December 16, 2010, to the Board for review.
38 He said that the Supplemental Memorandum includes two new items of evidence for the Finding of Fact,
39 regarding the adequacy of the legal ad for Case 666-AT-10, and the State's Attorney's determination
40 regarding protest rights in a County Board Special Use Permit Case. He said that the text amendment Case
41 634-AT-08, Part A was very specific in providing for County Board waivers for standard conditions and that
42 all wind farm requirements are standard conditions. He said that in terms of legal notice it was made very

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 clear and was very adequate. He said that within the same legal advertisement the changes to Subsection 6.1
2 were very explicit in making all standard conditions subject to waivers. He said that there is a separate
3 attachment which is the reformat of Subsection 6.1 which indicates how Subsection 6.1 was amended during
4 the text amendment and the proposed changes which are being proposed in Case 666-AT-10. He said that
5 the text included in the handout is from the new Zoning Ordinance and not the Zoning Ordinance that is on
6 the website. He said that the new version of Section 6 includes Subsection 6.1 Standards for Special Uses;
7 and paragraph 6.1.1. Standard Conditions that May Apply to Specific Special Uses; and paragraph 6.1.2
8 Standard Conditions for All Special Uses; and paragraph 6.1.3 Schedule of Requirements and Standard
9 Conditions; and paragraph 6.1.4 Wind Farm County Board Special Use Permit. He said that most of the
10 changes occurred in the wind farm text amendment and a copy of the legal advertisement is attached to the
11 Supplemental Memorandum dated December 16, 2010. He said that also attached to the Supplemental
12 Memorandum dated December 16, 2010, is an excerpt of the April 13, 2009, approved ELUC minutes which
13 includes testimony on Page 10, Line 1, from John Hall indicating that the standard conditions are just special
14 use permit special conditions therefore can be waived in any case or for any individual turbine, if the
15 justification is there. He said that more importantly, whether or not staff included everything in the legal
16 advertisements, the State's Attorney has determined that in regard to County Board Special Use Permits,
17 waivers of standard conditions are subject to protest by affected townships with plan commissions. He said
18 that standard waivers are quicker to do in making a determination but they are still legally considered a
19 variation and if a township has a plan commission and the township is affected by the wind farm then they
20 have a protest right on those waivers the same way as they have a protest right on variances that the County
21 Board approves in that township. He said that the following evidence will be added to the Finding of Fact as
22 a new Item #16.d.(4): The State's Attorney has determined that in regard to County Board Special Use
23 Permits, waivers of standard conditions are subject to protest by affected townships with plan commissions.
24 He said that also a new Item #2.A will be added to the Finding of Fact as follows: In Zoning Case 634-AT-
25 08, Part A (adding wind farm requirements), Item #15 of the amendment gave the County Board the
26 authority to waive any standard condition and since reclamation is a necessary component of wind farm
27 decommissioning, Item #13 made the necessary change to allow the County Board to waive site reclamation.
28 He said that Attachment A to the Supplemental Memorandum dated December 16, 2010, Draft Proposed
29 Change to Subsection 6.1 and paragraph 9.1.11D.1, dated March 19, 2010, indicates the revisions of
30 Subsection 6.1 and paragraph 9.1.11.D.1.

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

33
34 Mr. Thorsland called Mr. Herb Schildt to testify.

35
36 Mr. Herb Schildt, who resides at 398 County Road 2500N, Mahomet, IL, thanked Mr. Hall for obtaining the
37 State's Attorney's opinion relating to paragraph 6.1.4. confirming whether a variation requested through a
38 variance or a waiver is subject to township protest if the township has a plan commission. He said that the
39 advertisement for Case 634-AT-08, Part A also included a wind farm overlay district which did not make it
40 into the code therefore he is not sure if the legal advertisement for Case 634-AT-08 justifies the changes
41 requested in Case 666-AT-10. He emphasized that his point for bringing it up at the last hearing was as a
42 courtesy to the Board and to Mr. Hall because he believed that there was a deficiency. He said that there is

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 something in Case 666-AT-10 that requires clarification from Mr. Hall and it is driven by the phrase,
2 “amount or kind.” He asked Mr. Hall if a waiver can waive something that a variance can not or in other
3 words are there restrictions on variances that might prevent a requirement from being subject to a variance
4 even though it could be waived with a waiver.
5

6 Mr. Hall stated that the way that the Ordinance is drafted the only things that are subject to a variance are
7 things that are not listed in Section 6.1 because everything in Section 6.1 is subject to a waiver and not a
8 variance. He said that someone could not ask for a variance from something that is a requirement in Section
9 6.1.
10

11 Mr. Schildt asked Mr. Hall if he is saying that for a Special Use Permit, which are the items listed under
12 Section 6.1, a variance could not be requested and the waiver process would have to be used.
13

14 Mr. Hall stated that to the extent that the standards of Section 6.1 exceed the other requirements of the
15 Ordinance then yes a waiver would have to be requested. Mr. Hall asked Mr. Knight if he agreed.
16

17 Mr. Knight stated that he agreed with Mr. Hall.
18

19 Mr. Schildt stated that in his mind the phrase “amount or kind” really ups the ante. He said that an Ethanol
20 Plant is listed in Table 6.1.3 and one of the requirements is that the petitioner must supply a water study on
21 the potential impacts of any ethanol production facility on the Mahomet Aquifer, etc. therefore could such a
22 requirement be waived by a variance or could it be waived with a waiver.
23

24 Mr. Hall stated that a waiver could waive that requirement.
25

26 Mr. Schildt stated that is troubling to him. He said that subparagraph 6.1.4.S(4) is in regards to the
27 application requirements. He said that his question is in regards to subparagraph 6.1.4.S.1(c) which states
28 the following: A site plan for the installation of all Wind Farm Towers indicating the following: (1) The
29 approximate planned location of each Wind Farm Tower, other Principal Structures, property lines, etc. He
30 said that his original question was if subparagraph 6.1.4.S.1(c) could be waived with a variance or waived
31 with a waiver although Mr. Hall has already indicated that a variance would not apply. Mr. Schildt asked
32 Mr. Hall if subparagraph 6.1.4.S.1(c), a procedural requirement, could be waived with a waiver.
33

34 Mr. Hall stated yes, it is a type of procedural requirement that is specific to Section 6.1 and is subject to
35 waiver and therefore township protest.
36

37 Mr. Schildt stated that subparagraph 6.1.4.A(2) of the Wind Farm Ordinance indicates three locations where
38 a wind farm shall not be located. He asked if a waiver could waive a prohibition.
39

40 Mr. Hall stated yes.
41

42 Mr. Schildt asked Mr. Hall if there is no limit to what can be waived with a waiver.

12/16/10
ZBA

AS APPROVED JANUARY 20, 2011

1
2 Mr. Hall stated yes, and this testimony is consistent with the testimony presented at the wind farm hearings.

3
4 Mr. Schildt stated that he reviewed the approved Finding of Fact for Case 855-AT-93 that was included as
5 an attachment to the March 19, 2010, Preliminary Memorandum for Case 666-AT-10. He said that Item #18
6 in the Finding of Fact for Case 855-AT-93 states, "Permitting the Zoning Board of appeals to waive special
7 standards to the extent they exceed the applicable standards of the district will ease the review of Special Use
8 cases and eliminate the filing of parallel variance cases." He said that he read through the Finding of Fact
9 several times and he could not find any case where it somehow granted waivers more power than the
10 variance that they were replacing and it really looked like that it was simply making a procedural change to
11 simplify a process of applying in essence for a variance in combination of a special use permit. He said that
12 he does not understand how a waiver can waive things that a variance cannot because, according to
13 subparagraph 9.1.9B(3), variances are specifically prohibited from waiving procedural requirements. He
14 said that he was confused as to how a waiver can do something that a variance can't.

15
16 Mr. Hall stated that procedural requirement is not defined and if he was asked to supply a list of all
17 procedural requirements he would not know what all would be included although the list would not include
18 anything that is a standard condition.

19
20 Mr. Schildt stated that he finds it hard to believe that there is justification for a waiver to waive the
21 application requirements at all since they are requirements. He said that subparagraph 9.1.11.D(6) indicates
22 the following: Under no circumstances shall the Board or Governing Body grant a special use to allow a use
23 not permissible under the terms of this ordinance, in the District involved, or any use expressly or by
24 implication prohibited under the terms of this ordinance in said District, nor shall the Board or Governing
25 Body waive compliance with state or federal regulations incorporated into this ordinance. He asked Mr. Hall
26 if a prohibition could be waived.

27
28 Mr. Hall stated that a procedural requirement is clearly anything in Section 9, but the minute that it is a
29 standard condition it is not a procedural requirement.

30
31 Mr. Thorsland asked Mr. Schildt to formulate his question and allow Mr. Hall to answer the question as best
32 he can rather than continuously asking the same question over and over.

33
34 Mr. Schildt apologized. He said that there is a requirement in the Zoning Ordinance for any variation. He
35 said that the standard conditions specify two criteria in that it has to be in accordance with the general
36 purpose and intent of this ordinance and that it will not be injurious to the neighborhood or the public,
37 health, safety and welfare. He said that the State of Illinois County Code reads as follows: The regulation of
38 this division authorized may provide that the Zoning Board of Appeals may determine and vary their
39 application in harmony with the general purpose and intent and in accordance with general or specific rules
40 therein contained in cases where there are practical difficulties or particular hardship in the way of carrying
41 out the strict letter of the such regulations related to the use. He said that this language is located in the
42 variance language but it is not located in the language regarding a waiver. He said that from what Mr. Hall

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 previously stated waivers can do things that cannot be done by a variance because a procedural requirement
2 cannot be waived by a variance but it can be with a waiver.

3
4 Mr. Hall stated that what he actually stated was that a waiver applies to any standard condition. He said that
5 a procedural requirement, by definition, is not a standard condition. He said that it is obvious that he and
6 Mr. Schildt do not agree.

7
8 Mr. Schildt stated that he is trying to understand the implication that this change will make to the Zoning
9 Ordinance and it is not clear. He said that he has consistently addressed this Board indicating that there are
10 side effects created by these few words and he is trying to determine what those side effects are and if we do
11 not know what those side effects are then how could it be acted upon until there are answers as to what it
12 does.

13
14 Mr. Hall asked Mr. Schildt why it was so important if both are subject to protest.

15
16 Mr. Schildt stated it is important not to add ambiguity to the Ordinance. He said that Mr. Hall has put forth a
17 lot of effort in cleaning up some of the problems in the Ordinance and he truly respects his efforts. He said
18 that he is not convinced that the addition of the text, "amount or kind", will clean it up. He said that he only
19 wants a full picture of what this will do.

20
21 Mr. Hall stated that a procedural requirement is something that applies to all special use permits and a Wind
22 Farm Special Use Permit has the same procedural requirements as any other special use permit and in
23 addition to that a Wind Farm Special Use Permit has specific standard conditions that are required in Section
24 6.1 and are subject to waiver. He said that all of the procedural requirements that apply to all other special
25 use permits also apply to a County Board Special Use Permit.

26
27 Mr. Schildt stated that the State's Attorney's finding is a very important facet to the case. He asked Mr. Hall
28 if his understanding is correct in that only waivers can be applied to the provisions in Section 6.1 and not
29 variances.

30
31 Mr. Hall stated the waivers apply to the extent that the standards in Section 6.1 exceed the requirements in
32 the rest of the Ordinance.

33
34 Mr. Schildt stated that a waiver could only be used to do such and not a variance.

35
36 Mr. Hall stated that the only place where a variance would be used is when you are requesting a setback less
37 than what the Ordinance requires. He said that some special use permits have extra setback requirements
38 and if something less than what is normally required is requested then it is not just a waiver but a variance.

39
40 Mr. Schildt asked if a non-participating dwelling could ask for a variance for the setback from the turbine.

41
42 Mr. Hall stated that such a request would be by waiver.

12/16/10
ZBA

AS APPROVED JANUARY 20, 2011

1
2 Mr. Schildt asked if anything in Paragraph 6.1.4 is subject to a waiver.
3
4 Mr. Hall stated yes. He said that what is not subject to waiver is any procedural requirement that applies to
5 any special use permit. He said that an application, signatures from all the involved landowners, a public
6 hearing and final determination are required.
7
8 Mr. Schroeder excused himself from the meeting at 8:25 p.m.
9
10 Mr. Schildt asked if a hardship has to be demonstrated.
11
12 Mr. Hall stated that if a waiver applies the only things that have to be demonstrated are those things in
13 regards to waivers.
14
15 Mr. Schildt stated even though the State of Illinois Counties Code requires in cases where there are practical
16 difficulties or hardships.
17
18 Mr. Hall stated that Mr. Schildt raises a separate issue which he has never investigated and that is if the
19 County's requirements for standard conditions are consistent with the State of Illinois Counties Code.
20
21 Mr. Schildt stated that he would agree that such would probably not bear directly on the case.
22
23 Mr. Hall stated that based on the question that Mr. Schildt had this issue could be presented to the State's
24 Attorney's office.
25
26 Mr. Schildt thanked Mr. Hall for his time and efforts.
27
28 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt and there were none.
29
30 Mr. Hall stated that Mr. Schildt has the right to ask about the procedural requirements and those can be
31 found in subparagraph 9.1.7 Administrative Proceedings. He said that procedural requirements are standard
32 things that apply to all special use permits and they have been supplemented with standard conditions for a
33 wind farm to make sure that we get what we want but it is his view that those are not procedural
34 requirements but standard conditions.
35
36 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony in this
37 case and there was no one.
38
39 Mr. Thorsland closed the witness register.
40
41 Mr. Thorsland asked if there were any additions to the Finding of Fact.
42

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 Mr. Hall stated that the Documents of Record should be updated indicating Supplemental Memorandum for
2 Case 666-AT-10, dated December 10, 2010, and Supplemental Memorandum for Case 666-AT-10, dated
3 December 16, 2010, with attachments. He said that the first paragraph in the Finding of Fact should include
4 all of the meeting dates for Case 666-AT-10. He said that the two items of evidence, item #2.A and item
5 #16.D.(4), included in the Supplemental Memorandum dated December 16, 2010, should be added to the
6 Finding of Fact.

7
8 **Ms. Capel moved, seconded by Mr. Palmgren to adopt the Finding of Fact and Documents of Record**
9 **as amended. The motion carried by voice vote.**

10
11 **Mr. Palmgren moved, seconded by Ms. Capel to close the public hearing for Case 666-AT-10. The**
12 **motion carried by voice vote.**

13
14 Mr. Thorsland informed the petitioner that three Board members were absent from tonight's meeting
15 therefore it is at his discretion to either continue Case 666-AT-10 until a full Board is present or request that
16 the present Board move forward to the Final Determination. He informed the petitioner that four affirmative
17 votes are required for approval.

18
19 Mr. Hall requested that Case 666-AT-10 be continued to January 6, 2011.

20
21 **Mr. Courson moved, seconded by Ms. Capel to continue Case 666-AT-10 to January 6, 2011. The**
22 **motion carried by voice vote.**

23
24
25 **7. New Public Hearings**

26
27 **Case 675-AT-10 Petitioner: Zoning Administrator Amend the Champaign County Zoning Ordinance**
28 **as follows: Part A: 1. In the first four un-numbered paragraphs of Section 8 clarify that**
29 **nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as**
30 **authorized herein; and 2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots**
31 **or combination of lots and portions of lots that individually do not meet any dimensional, geometric,**
32 **lot access or other standards are brought into common ownership, that portions of said lots may be**
33 **used separately or conveyed to a different owner provided that a variance is granted. Part B: 1.**
34 **Revise paragraph 8.2.1 B. as follows: a. Limit applicability to the total expansion since October 10,**
35 **1973; and b. Revise the limit on expansion of a nonconforming single family dwelling as follows: (1) A**
36 **nonconforming single family dwelling which had less than 1,200 square feet of building floor area may**
37 **expand up to a total floor area of 1,500 square feet provided that a variance is required if there is**
38 **more than one principal use on the lot and the lot area is less than required in Section 4.3.4 and: (2) A**
39 **nonconforming single family dwelling which had more than 1,200 square feet of building floor area**
40 **may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided**
41 **that a variance is required if there is more than one principal use on the lot and the lot area is less**
42 **than required in Section 4.3.4; and (3) Eliminate the limit on the amount of accessory buildings; and**

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 **2. Revise paragraph 8.2.1C so that the limit on expansion applies to the total expansion since October**
2 **10, 1973; and 3. Revise subsection 8.2.2 to provide that nonconforming a nonconforming dwelling may**
3 **be moved on the lot as authorized in subsection 8.4.1; and 4. In subsection 8.2.3 clarify “ceases”. Part**
4 **C. 1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged if**
5 **authorized by variance; and 2. Revise subsection 8.3.3 to authorize that a nonconforming structure**
6 **may be moved without conforming to the regulations and standards of the district provided that the**
7 **new location is authorized by variance. Part D 1. Revise Subsection 4.4.1 as follows: a. Authorize that**
8 **a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 as provided that a**
9 **variance is required if there is more than one principal use on the lot and the lot area is less than**
10 **required in Section 4.3.4; and b. Authorize that a nonconforming dwelling may be reconstructed in**
11 **the existing location if authorized by zoning use permit or a different location if authorized by**
12 **variance provided that a variance is required if there is more than one principal use on the lot and the**
13 **lot area is less than required in Section 4.3.4; and c. Authorize that expansion of a nonconforming**
14 **dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction; and 2. In**
15 **Subsection 8.4.5 clarify “abandoned” and “discontinued”. Part E: 1. Revise Subsection 8.6 as**
16 **follows: a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection**
17 **8.2.1 or reconstructed as authorized in subsection 8.4.1; and b. Authorize that a nonconforming**
18 **dwelling has no limit on the value of repair or replacement that may occur within a 365 day period**
19 **and that may include bearing walls. Part F: 1. In paragraph 9.1.2C require that for a Zoning Use**
20 **Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning**
21 **district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide**
22 **notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in**
23 **general what types of principal uses are authorized as either business uses or industrial uses.**

24
25 Mr. Hall stated that compared to the items that ELUC approved the ZBA has a much longer group of
26 amendments. He said that ELUC authorized action only on Part B, Item 1; Part D. Item 1.A. and Part E. He
27 said that after obtaining approval from ELUC to proceed he had one of a series of long conversations with
28 Mr. Tom Lemke, Wilber Heights’ resident, and Mr. Lemke convinced him that there are many important
29 things that had been left out of the amendment. Mr. Hall stated that many homes in Wilbur Heights are only
30 10’ x 50’ mobile homes therefore the addition of 200 square feet to a mobile home would be a nice increase
31 but it would not begin to match what the current expectation is for even a minimal addition to an existing
32 home. He said due to the size of the existing homes in Wilber Heights the proposed amendment has been
33 expanded from what ELUC originally authorized. He noted that the current amendment that is before the
34 Zoning Board of Appeals is only his recommendation and the ZBA is not obligated to recommend it to
35 ELUC and it can be changed in any way that the Zoning Board of Appeals desires.

36
37 Mr. Hall stated that Mr. Lemke indicated concern regarding the term “ceases” as it is indicated in Subsection
38 8.2.3., as it refers to ceasing the use of a dwelling. Mr. Hall stated that Mr. Lemke, who is a long term
39 resident of Wilber Heights, believes that he and the other residents of the area have not been treated very
40 well by the County therefore he is concerned if someone could lose their right to their dwelling if they went
41 away for a winter vacation. Mr. Hall stated that he has worked in the office for over 20 years and a situation
42 like what Mr. Lemke described has never been considered for someone losing their right to their

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 nonconforming dwelling therefore he added such clarification in Subsection 8.2.3, which is Part B. Item 4.
2 He said that the same thing goes for “abandoned” and “discontinued” in Subsection 8.5, which is Part D.
3 Item 2. He said that Mr. Lemke also recommended that the County Board allow property owners to rebuild
4 their homes in Wilber Heights and if such is allowed the County should make the property owners aware of
5 the fact that the area is not a residential district and they are doing that in light of continuing and growing
6 non-residential use in the neighborhood. Mr. Hall stated that he added Mr. Lemke’s request in Part B. Item
7 1.b(3).
8

9 Mr. Hall stated that some other items which have been added since ELUC authorized the first three items
10 came about between the time of the their authorization and the legal advertisement. He said that given the
11 small lot sizes that exist in an area such as Wilber Heights there may be a greater need for variances for
12 nonconforming structures or other related components of nonconformity therefore he added Part B. Item #3;
13 Part C. Items 1 and 2; and Part D. Items 1(b) and (c). He said that there have been some inappropriate
14 variances granted in the past regarding nonconformities. He said that these inappropriate variances are not
15 related to Wilber Heights but have occurred in areas such as Penfield and Seymour. He said that the first
16 completed variance that he was involved in, indicated in tonight’s handout regarding Cases 334-V-02 and
17 335-V-02 and Distribution of Property Size in the R-2 District in Penfield, turned out to be a prohibited
18 variance. He said that the second page of the handout includes a diagram of Penfield which indicates very
19 small lots for single family dwellings and that there is a lesser number which are moderately sized and only a
20 few that are on very large lots. He said that the Zoning Ordinance says that if you are going to use parts or
21 pieces of nonconforming lots of record the use has to meet or exceed the current standard. He said that in
22 2002 a property owner had been given bad advice from the Planning and Zoning Department and sold
23 property planning to add another dwelling and it was determined that they needed a variance. He said that
24 the Zoning Administrator at the time did not make him aware of the fact that the proposed variance was
25 actually prohibited and the variance was approved but only after the ZBA did a careful review of the septic
26 system issues in Penfield. He said that the ZBA consulted with the Champaign County Department of
27 Health and decided that in that instance the variances, one was a 34% variance for a lot that was 13,300
28 square feet versus the required 20,000 square feet and the other was for only 14% for a lot that was 17,200
29 square feet versus the required 20,000 square feet were granted. He said that most of us would agree that
30 those were pretty moderate amounts for variances but it means that Penfield could obtain additional residents
31 and best prime farmland is not taken out of production for those dwellings and he would argue that this
32 would be more consistent with the County’s Land Use Policies provided that the ZBA can make sure the
33 public health and safety are being protected. He said that he has no idea why variances like those in the
34 previously mentioned cases have been prohibited therefore he is recommending Part A, Item 2 to the Board.
35

36 Mr. Hall stated that the other changes come from the fact that even though Section 8 was amended in 1992
37 no one bothered to make sure that the first four un-numbered paragraphs were completely updated because if
38 the first four un-numbered paragraphs are reviewed and then the changes in Subparagraph 8.2.1 were
39 reviewed it would be found that they are not consistent. He said that Part D, Item 2(b) had to be added to the
40 legal description and was not included under the description on the agenda or the Supplemental
41 Memorandum but will be added to both for the next meeting. He said that the new item is a minor deviation
42 and does not trigger the need for re-advertisement. He said that there were only three changes in ELUC’s

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 authorization and the ZBA is free to either leave those other changes out or revise them in any way that the
2 Board desires. He noted that if the ZBA finds it necessary it is also free to change anything that ELUC
3 authorized. He said that he still owes the ZBA a table of comparison with other counties but trying to
4 summarize regulations which are this extensive in a group of eight counties is a challenge to get in to a table
5 but staff is still working on it. He said that in regards to Part D. Item #1, it is not clear that the wording that
6 is proposed for Subparagraph 8.4.1 and 8.4.2 will actually be adequate.

7
8 Mr. Hall stated that after “except as otherwise herein provided” is said so many times it may start to lose its
9 clarity. He said that there are two other things that he would like to make the Board aware of although he
10 does not require direction at tonight’s meeting.

11
12
13 Mr. Hall returned to the issue of the Board’s consideration for a variance which includes parts and pieces of
14 nonconforming lots which do not meet the County’s requirements. He said that the Board may agree that a
15 variance may be a reasonable thing to do provided that the ZBA always considers onsite waste water systems
16 and the Board may even believe that a minimum requirement needs to be added for such variances. He said
17 that he can not imagine someone making the findings for such a variance without considering that but if the
18 ZBA does not write it into the Ordinance it is always possible. He said that another situation that the Board
19 may want to consider is that the draft amendment states that the nonconformity of a nonconforming structure
20 can be increased. He said that an example of such would be that instead of having 20 feet of an exterior wall
21 within five feet of the property line it could be expanded to 40 feet of an exterior wall within five feet of the
22 property line. He said that before such could be approved the Board may want to make sure that the property
23 owners obtain approval from the fire protection district assuring that they are okay with it. He said that there
24 is a wide range of possible minimum requirements for these things dealing with the nonconformities that
25 may need to be added before the Board states that a variance could be obtained. He said that it may behoove
26 staff to supply a list of things like this for the Board to consider before the amendment is recommended to
27 the County Board. He said that instead of a blanket ability to authorize a variance the Board would be
28 making it more restrictive.

29
30 Mr. Hall stated that the Board realizes that there are five required findings for a variance and one of the
31 findings is that the petitioner did not trigger the actions that require the variance. He said that this is a
32 finding that has become more difficult because in recent cases this Board has been establishing a higher
33 standard than previously. He said that the mere fact that the Zoning Ordinance entertains the possibility that
34 a variance can be obtained for replacement of a nonconforming structure means that the authors envisioned
35 that if someone wanted to replace a nonconforming structure exactly like it currently exists then a variance
36 could be requested. He said that somehow such a variance would have to be dealt with in the finding
37 regarding whether or not the hardships result from the actions of the applicant because it is fair to say that
38 the applicant would never have to use the same footprint of the building unless they wanted to and the
39 Ordinance already provides for that. He said that when you expand the ability to ask for a variance related to
40 nonconformities you are expanding the number of times that the Board will have to make that finding and if
41 the Board believes that finding needs to have some provision for things like this it may be better to make it
42 clear at this time. He said that if the Board does not make such a change then the Board should keep this

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 issue in mind when it is faced with these types of variances because if the Board amends the Ordinance to
2 allow this it is suggesting that there will be a different standard in these cases and that would trigger the need
3 for a re-advertisement which does not necessarily have to slow down this case but if the Board believes that
4 it is a good idea then it can be included in the Board's recommendation.
5

6 Mr. Hall stated that these are the reasons why this case has gotten so much bigger since it received ELUC's
7 authorization. He said that in the future an asterisk will be placed beside the items which have been
8 authorized by ELUC so that when this amendment is before them again it will be clear what they saw before
9 versus what came to them after the public hearing. He said that staff will continue to work on a table of
10 comparison with other counties but he believes that Champaign County has one of the two most restrictive
11 zoning ordinances in regards to nonconformities and it has the most thorough consideration of
12 nonconformities.
13

14 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.
15

16 Mr. Schroeder asked Mr. Hall when the Board will stop restricting and begin improving. He said that he
17 wants to be very careful in restricting and improving because if this area needs improvement then by all
18 means we should do it but many of the things that have been discussed tonight could go both ways. He said
19 that Champaign County is in an area which has had some growth but he does not believe that we have seen
20 anything yet.
21

22 Mr. Hall stated that Mr. Schroeder is correct but areas such as Wilber Heights should not get any worse than
23 they are currently in terms of its geographic extent. He said that anyone who takes the time to read Section 8
24 will find that it is very restrictive currently, unreasonably so, and it is a degradation of the neighborhood
25 which is counter to the Ordinance but consistent with the way that nonconforming uses are generally
26 considered. He said that the Board will be treading a fine line throughout the entire case.
27

28 Mr. Schroeder stated that the Board needs enough leeway to prove that the current ZBA made a consistent
29 and viable decision.
30

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

33 Mr. Thorsland stated that there were no names on the witness register for Case 675-AT-10, and asked the
34 audience if anyone desired to sign the witness register at this time to present testimony regarding this case.
35

36 Mr. Thorsland called Mr. Homer Kirby to testify.
37

38 Mr. Homer Kirby, who resides at 312 Paul, Champaign, stated that he has lived in Wilber Heights since
39 1947. He said that a few years ago he recently found out that the area had been rezoned without notifying
40 the existing residents. He asked the Board what they were supposed to do if their house was destroyed by
41 fire and they were not allowed to rebuild it. He said that it appears that their area is being picked on because
42 they are not allowed to replace their home or garage or improve their property. He said that things are pretty

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 hard right now and he is getting pretty old therefore he came to the meeting to see if changes could be made
2 to the current ordinance so that they could live in peace and not in an uproar.

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

5
6 Mr. Thorsland asked if staff had any questions for Mr. Kirby and there were none.

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

10
11 Mr. Thorsland stated that the Board is at the point where Mr. Hall indicated that they had some work to
12 complete. He said that Parts B.1, D.1(a) and (b) and (e) require additional work from the Board. He asked
13 the Board if they wanted to re-advertise the case with what has been added to the amendment. He said that
14 the Board should give input on minimal or maximum standards that should be included in the variance and
15 whether or not the petitioner triggered the need for the variance. He asked the Board if there were any
16 additional questions for Mr. Hall or if the Board would like to begin working through all of the sections to
17 determine if changes should be made for the better.

18
19 Mr. Hall stated that he can appreciate that the information is very complicated and he encourages the Board
20 to take as much time as needed so that they can make sure that there are no loose ends hanging or that things
21 are not nailed down too much. He said that it would be a fine start to do no more than what has been done
22 thus far because this is perhaps the most difficult amendment to the Zoning Ordinance in the last couple of
23 years.

24
25 Mr. Palmgren asked Mr. Hall how much time is required for re-advertisement.

26
27 Mr. Hall stated that there is no need to re-advertise right now because the only thing that has been added that
28 was not included in the original advertisement was the item regarding 8.4.6. He said that the only thing that
29 might require re-advertisement is if the Board wants to add conditions for minimum or maximum
30 requirements for variances. He said that such a re-advertisement takes at least 15 days minimum and it
31 cannot be done more than 30 days ahead of the hearing. He said that he has described this hearing to
32 everyone who has asked as consisting of tonight, possibly December 30th or January 6th or both and one
33 meeting in February. He said that this would give enough time to obtain discussion from the Board and send
34 it out to the municipal staffs to find out if they see any red flags and then bring it back to the Board for
35 recommendation. He said that some opposition could be received from municipalities therefore he believes
36 that the case will be at the ZBA until February at a minimum.

37
38 Mr. Thorsland read Part D.2(b) to the Board as follows: In Subsection 8.4.6 provide for replacement of
39 nonconforming single family dwelling. 8.4.6: Where nonconforming use status applies to a premises,
40 removal or destruction of the structure shall eliminate the nonconforming use status of the land, except as it
41 may qualify as a nonconforming lot of record except as otherwise herein provided.

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 Mr. Hall stated that it is his intent that under each of these instances where we are relaxing the Ordinance
2 information could be included about why the current standard is unreasonable and how the new change will
3 not be a problem when the Board considers public health and safety during the finding, as they do in any
4 variance.

5
6 Ms. Capel asked how the finding would be changed.

7
8 Mr. Hall stated that the finding might say what it does currently with the addition of “except in the case of
9 variance for a nonconforming structure/nonconforming dwelling use.” He said that the statute does not
10 necessarily list the required findings therefore he isn’t sure if such a finding would even be necessary for this
11 kind of a variance.

12
13 Ms. Capel stated that it would make more sense to just omit the finding rather than changing the wording of
14 the finding therefore making it too complexed.

15
16 Mr. Hall stated that staff could investigate that with the State’s Attorney.

17
18 Mr. Thorsland asked the Board if there was any other direction for staff at this time.

19
20 Mr. Schroeder asked Mr. Hall how this amendment will affect the rural community.

21
22 Mr. Hall stated that the only place where he could envision this occurring in the rural areas is where a
23 property has two dwellings that have existed since October 10, 1973. He said that one of the dwellings is a
24 nonconforming use and the way that the amendment is written it would allow the property owner to continue
25 the nonconformity and to rebuild it if necessary.

26
27 Mr. Thorsland stated that in a way the Board will be attempting to apply standards to nonconformities. He
28 said that staff needs the Board’s input regarding this issue.

29
30 Ms. Capel stated that some sort of wording should be included to assure that the Board considered public
31 health and safety during consideration of the variance.

32
33 Mr. Hall stated that the Board should consider such although that elevates the complexity of the case because
34 the Board takes the risk of locking itself into a certain situation that seemed reasonable at the time but may
35 prove to be too restrictive. He said that the Board should make a list of what types of things may be
36 important so that he can discuss them with the State’s Attorney.

37
38 Ms. Capel asked if an additional finding could be added if the variance is regarding a nonconforming use.

39
40 Mr. Hall asked Ms. Capel if she had a specific finding in mind.

41
42 Ms. Capel stated that if there is a concern that public health and safety issues are only being flagged during

12/16/10

AS APPROVED JANUARY 20, 2011

ZBA

1 variances regarding nonconforming uses then perhaps there could be a specific finding that could be called
2 out.

3
4 Mr. Hall stated that having a finding that only applies in a nonconforming situation would be a way to make
5 it very clear that public health and safety was considered and that the Board went beyond its normal review.

6
7 Mr. Courson asked Mr. Hall if the lot size and setbacks are the main reason why these lots are considered
8 nonconforming.

9
10 Mr. Hall stated that what are being discussed are nonconformities of record that existed on October 10, 1973,
11 and not nonconformities that have happened since October 10, 1973. He said that generally we are
12 discussing anything that occurred prior to 1973 in which there were no zoning standards at all and many
13 times the structures are either too close to the road, side lot line, etc.

14
15 Mr. Knight stated that like the map in Penfield indicates this situation occurs many times on very small lots
16 which creates inadequate yards, lot area, lot coverage, etc.

17
18 Mr. Thorsland stated that this is not just occurring in Wilber Heights but county wide and there are probably
19 a lot more nonconformities therefore if we put brackets on these situations we have to be careful not to make
20 them to tight because they could have an ill effect overall. He said that normally the Board would wait until
21 the end of the meeting to determine whether or not to hold a meeting at the end of December but since we
22 are working on this case the Board needs to make a decision now. He said that the Board could either
23 continue this case to December 30th or to the proposed January 6th meeting.

24
25 Mr. Schroeder stated that he would rather continue the case to January 6th.

26
27 Mr. Hall stated that staff is not prepared to present any new information to the Board on December 30th.

28
29 **Mr. Palmgren moved, seconded by Ms. Capel to continue Case 675-AT-10 to the January 6, 2011,**
30 **meeting. The motion carried by voice vote.**

31
32 Mr. Hall informed the audience that if they signed the witness register they will be included in the mailing
33 for any new information regarding this case. He said that the mailing for this case will be one week prior to
34 the January 6th meeting.

35
36 Mr. Thorsland stated that the Board will now return to the original order of the agenda and hear Case 665-
37 AT-10.

38
39 **8. Staff Report**

40 **A. October and November, 2010 Monthly Reports**

41
42 Mr. Hall stated that the Board received copies of the October and November, 2010, Monthly Reports which

ZBA
12/16/10

AS APPROVED JANUARY 20, 2011

1 were presented to the County Board at their meeting last week. He said that the department had its third
2 lowest year in regards to zoning cases with a total of 23 although five were text amendments. He said that
3 since September staff has worked more diligently than ever in trying to get the post decision documentation
4 of cases wrapped up. He said that after the Board has made its decision staff has to finalize the
5 documentation in the case file but due to the modern day finding of fact and summary of evidence
6 procedures and the ZBA's two week cycle for meetings the workload of getting new cases to the Board
7 simultaneously while attempting to wrap up finished cases is almost impossible. He said that the modern
8 day finding of fact and summary of evidence dates from the early 90's therefore it is a very recent thing and
9 many counties don't bother with it and they do not complete ZBA minutes. He said that the Champaign
10 County Department of Planning and Zoning has a very different workload than any other county zoning
11 office. He said that the ZBA minutes are an expectation and requirement in Champaign County and the
12 finding of fact is an excellent requirement and he is glad that the court requires such. He said that life has
13 been pretty good in our office with fewer ZBA cases this year yet post decision documentation has been and
14 continues to be a challenge. He said that he isn't complaining and part of the charge when he was given his
15 position was to make sure that the public understands what staff does.
16

17 Mr. Hall stated that permitting continues to be down although a record number of zoning compliances has
18 been completed. He said that zoning compliance inspections have been a problem since the late 90's but last
19 year a record 853 zoning compliances were completed. He admitted that 250 of those compliances were
20 completed in an easy way that is not generally available to staff although, due to the hard work of the
21 Department's two Zoning Technicians, 600 of those compliances were completed the old fashioned way and
22 he appreciates their hard work. He said that the Department's Enforcement performance has really improved
23 over the past couple of years primarily due to the Department's Zoning Technicians taking over some of the
24 work load of the Department's Zoning Officer. He said that more enforcement cases were completed than
25 what was anticipated and the backlog continued to decline but it still exists. He said that this year he
26 anticipates having the Department's Zoning Technicians assisting with the backlog of the enforcement cases
27 but if an enforcement case is likely to end up in a court case then it is important that the Zoning Officer is
28 involved. He said that it will probably be found that most of the enforcement cases on the backlog no longer
29 exist therefore next year's report should look even better in regards to enforcement.
30

31 Mr. Courson asked Mr. Hall if he could be of assistance to staff in regards to the enforcement backlog.
32

33 Mr. Hall stated that he may take him up on his offer.
34

35 **9. Other Business**
36

37 A. 2011 Champaign County Planning and Zoning Calendar
38

39 **Ms. Capel moved, seconded by Mr. Courson to approve the 2011 Champaign County Planning and**
40 **Zoning Calendar as submitted. The motion carried by voice vote.**
41

42 B. December 30, 2010, ZBA Meeting

12/16/10
ZBA

AS APPROVED JANUARY 20, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Mr. Courson moved, seconded by Mr. Palmgren to cancel the December 30, 2010, ZBA meeting. The motion carried by voice vote.

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

None

11. Adjournment

Mr. Palmgren moved, seconded by Ms. Capel to adjourn the meeting. The motion carried by voice vote.

The meeting adjourned at 8:47 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

□□□ //

DRAFT SUBJECT TO APPROVAL DRAFT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29

DRAFT SUBJECT TO APPROVAL DRAFT

□□□ //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21