

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: **January 20, 2011**
Time: **6:30 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 (December 16, 2010 and January 6, 2011)
5. Continued Public Hearings

**Note: The full ZBA packet is now available
on-line at: co.champaign.il.us.**

- Case 665-AT-10** 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 less than five acres in area in the AG-1 and AG-2 Zoning Districts.**
 - 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**
 - (2) On residential lots less than five acres in area in the AG 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.**

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

6. New Public Hearings
7. Staff Report
 - A. December, 2010 Monthly Report
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

5 **DATE:** December 16, 2010

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

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

8 Urbana, IL 61802

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

10 **MEMBERS ABSENT :** Roger Miller

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

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

13 **1. Call to Order**

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

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

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

17 **3. ZBA selection of Meeting Chairperson**

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

19 **4. Correspondence**

20 None

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

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

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

6. Continued Public Hearing

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.**

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.

Mr. Knight stated that there could be a possibility that the fence could exist along the rear line of the front yard in the AG-1 and AG-2 Zoning Districts.

1
2 Mr. Hall stated that the current approach is that the transparency requirement in the AG districts is only an
3 issue when it is on the line of the driveway between the driveway and the dwelling and then only within 25
4 feet of the dwelling therefore any fence that could be in the side yard is going to be further back on the
5 property. He said that this issue is only relevant if the Board is still entertaining the transparency
6 requirement.

7
8 Mr. Courson stated that he is against the transparency requirement. He said that he does not believe that any
9 visibility restrictions should be placed on the fence in any zoning district.

10
11 Mr. Hall stated that if the Board is still entertaining the transparency requirement then he would request that
12 the case be continued so that an illustration could be presented to the Board for review.

13
14 Mr. Thorsland asked Mr. Hall if Paragraph 4.3.3E. is the standard visibility requirement for fencing.

15
16 Mr. Hall stated yes. He noted that vegetation within the visibility triangle would have to be maintained
17 within the visibility triangle.

18
19 Mr. Thorsland stated that if the Board pursued Mr. Courson's proposal and the Board retained Subparagraph
20 4.3.3G 2(a) the front yard on lots five acres or less would have a six foot height requirement and the 50%
21 transparency over four feet would be omitted. He said that the visibility triangle requirement will be
22 maintained and the rear and side yards will remain at 8 feet 3 inches and the front yard would be 6 feet 3
23 inches. He said that this would solve a lot of the problems with the transparency on lots which are less than
24 five acres. He said that on some level he agrees with Mr. Courson in regards to the agricultural lots because
25 enforcement would be pretty much impossible, even with the visibility triangle requirement.

26
27 Mr. Hall stated that perhaps a permit should be required.

28
29 Mr. Thorsland stated that it is possible but he is not sure if he is inclined to require a permit for a fence.

30
31 Mr. Courson stated that most people in the community would construct a fence without a permit because
32 they do not realize that one is required.

33
34 Mr. Hall stated that the driveway visibility triangle is the one Zoning Ordinance requirement that has
35 immediate life, safety effects.

36
37 Mr. Courson stated that he believes that there should be more requirements on visibility triangles in the rural
38 areas along the roads.

39
40 Mr. Thorsland stated that he agrees with Mr. Courson and he would like to see the AG-1, AG-2, and CR
41 districts be consistent and enforce the visibility triangle requirement. He said that he would recommend the
42 6 foot fence in the front yard on a lot that is five acres or less with no transparency requirement because the
43 visibility triangle requirement is already being enforced. He said that the only difference between a lot that

1 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
2 said that this recommendation would simplify the amendment and staff's job.

3
4 Mr. Hall stated that currently a lot that is five acres or greater has no fence height requirement only the
5 visibility triangle.

6
7 Mr. Thorsland stated in regards to CR Subparagraph 4.3.3G.3.(b) could also be removed.

8
9 Mr. Hall stated that lots which are five acres or greater in the AG districts and CR the only fencing
10 requirement is for the visibility triangle.

11
12 Mr. Thorsland stated that the original goal was to simplify the fence ordinance. He said that he is
13 comfortable in omitting 4.3.3G.3(b) and changing the AG districts to allow a six foot height in the front yard
14 for fencing on lots which are less than five acres. He said that for lots which are five acres or greater there
15 would be no fence height requirement but the visibility triangle requirement would be enforced.

16
17 Ms. Capel asked if CR lots would have requirements.

18
19 Mr. Thorsland stated that CR lots only have the visibility requirement. He said that all of Subparagraph
20 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
21 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
22 regarding the gates.

23
24 Mr. Hall stated that Mr. Thorsland is correct in indicating that no reply has been received from the Sheriff
25 regarding the gates but the Sheriff did reply about the transparency requirement.

26
27 Mr. Hall read Item 11.B(3) as follows: Champaign County Sheriff Dan Walsh, in an email to Zoning
28 Administrator, John Hall, indicated he has the following concerns regarding fencing: (a) When responding to
29 a call (or even on routine patrol) it is always beneficial to be able to see "more."; and (b) Deputies will be
30 safer when responding to calls if they can observe dangerous conditions or persons and plan their response
31 and avenue of approach accordingly; and (c) Likewise, if on patrol a deputy can see a "bad situation" in a
32 front/side yard or front porch or even inside the house they can take action without a call from a citizen; and
33 (d) Access in an emergency response situation could also be problematic if there is a tall barrier and a locked
34 gate; and (e) The Sheriff's Department certainly respects a citizen's right of privacy and to be able to do
35 what they want with their own property; and (f) A solid barrier (fence or even vegetation in some cases)
36 height of 3-4 feet seems to be very normal in ordinances (for front and/or side yards) including C-U and
37 would reduce our concerns with regard to fencing.

38
39 Mr. Thorsland stated that on Page 7 of 13, Item #7.B.(2)(b) indicates that the City of Urbana allows fences
40 up to eight feet tall in side and rear yards and allows fences to be eight feet tall in front yards where the front
41 yard abuts a principal arterial street or a minor arterial street. He said that almost every street in the AG
42 districts is an arterial street therefore perhaps the Board should give the Sheriff one last opportunity to
43 comment.

1
2 Mr. Hall stated that within the City of Urbana ETJ not every section line road rises to a minor arterial street
3 therefore he would not expect to see eight feet tall fences being allowed along every section line road. He
4 said that he would never expect to see an eight foot tall fence in the front yard within the City of Champaign
5 ETJ.
6
7 Mr. Thorsland asked the Board if they had any thoughts regarding this case.
8
9 Mr. Palmgren requested a five minute break.
10
11 **Ms. Capel moved, seconded by Mr. Courson to recess the public hearing for a five minute break. The**
12 **motion carried by voice vote.**
13
14 The meeting recessed at 7:45 p.m.
15 The meeting resumed at 7:50 p.m.
16
17 Mr. Thorsland stated that the Board needs to either agree with omitting some of the proposed text or
18 honoring, on some level, the e-mail from the Sheriff.
19
20 Mr. Hall stated that he does believe that the Sheriff's comments are very non-committal.
21
22 Mr. Courson stated that Item #11.B(3)(e) could be interpreted as having no restrictions at all. He said that he
23 agrees with the Sheriff's comments in Item #11.B(3)(e) regarding the privacy rights of the property owner.
24
25 Mr. Thorsland suggested that a fence around a five acre parcel would be self-limiting anyway and most
26 people would not do it due to the cost.
27
28 Mr. Courson agreed.
29
30 Ms. Capel stated that the fence would not necessarily have to encompass the entire five acres.
31
32 Mr. Thorsland stated that a thought would be to draw a 25 foot line from the dwelling and if the fence
33 appears to come into that line on a lot that is less than five acres then the transparency requirement takes
34 effect. He said that he believes that this will be a rare occasion but it is possible and staff could construct
35 such text.
36
37 Mr. Hall stated that such text already exists.
38
39 Mr. Thorsland read Subparagraph 4.3.3G.2.c as follows: on lots five acres or greater in area, any portion of
40 a fence over four feet in height must be at least 50% transparent when located along the driveway between
41 the dwelling and the nearest point of the driveway visibility triangle as required by 4.3.3.F.2 within 25 feet of
42 the dwelling. He said that this is on lots which are five acres or more therefore he is inclined to disregard
43 this item.

1
2 Mr. Hall stated that any place where it discusses the transparency requirement the language about the nearest
3 point of the driveway visibility has been included, which is very confusing.

4
5 Mr. Thorsland stated that for lots that are less than five acres perhaps it could state that any portion of a
6 fence that is above four feet in height must be at least 50% transparent above four feet when located along
7 the driveway within 25 feet of the dwelling.

8
9 Mr. Hall stated that this is the text that was included on the September 10, 2010, Supplemental
10 Memorandum. He read the following text : Any portion of a fence over four feet in height must be at least
11 50% transparent when located between the dwelling and the driveway within 25 feet of the dwelling. He
12 said that this text was included on lots that are five acres or greater in area but at this point it appears that the
13 Board desires to delete it for those lots.

14
15 Mr. Thorsland stated that the text should be deleted for lots which are five acres or greater because the size
16 of the lot almost negates that from even being an issue.

17
18 Mr. Hall stated that in regards to residential lots in the AG and CR districts Subparagraph 4.3.3G.2(b) will
19 be modified to indicate the text included in the September 10th memorandum and Subparagraphs
20 4.3.3G.2(2)(c); and 4.3.3G.2.c; and 4.3.3G.3.b should be deleted.

21
22 Mr. Thorsland stated that the case should be continued to give staff time to include the modifications in a
23 version for review by the Board.

24
25 **Mr. Palmgren moved, seconded by Ms. Capel to continue Case 665-AT-10 to the January 6, 2011,**
26 **meeting. The motion carried by voice vote.**

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

32
33 Mr. Hall distributed a new Supplemental Memorandum dated December 16, 2010, to the Board for review.
34 He said that the Supplemental Memorandum includes two new items of evidence for the Finding of Fact,
35 regarding the adequacy of the legal ad for Case 666-AT-10, and the State's Attorney's determination
36 regarding protest rights in a County Board Special Use Permit Case. He said that the text amendment Case
37 634-AT-08, Part A was very specific in providing for County Board waivers for standard conditions and that
38 all wind farm requirements are standard conditions. He said that in terms of legal notice it was made very
39 clear and was very adequate. He said that within the same legal advertisement the changes to Subsection 6.1
40 were very explicit in making all standard conditions subject to waivers. He said that there is a separate
41 attachment which is the reformat of Subsection 6.1 which indicates how Subsection 6.1 was amended during
42 the text amendment and the proposed changes which are being proposed in Case 666-AT-10. He said that
43 the text included in the handout is from the new Zoning Ordinance and not the Zoning Ordinance that is on

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

26
27 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.

28
29 Mr. Thorsland called Mr. Herb Schildt to testify.

30
31 Mr. Herb Schildt, who resides at 398 County Road 2500N, Mahomet, IL, thanked Mr. Hall for obtaining the
32 State's Attorney's opinion relating to paragraph 6.1.4. confirming whether a variation requested through a
33 variance or a waiver is subject to township protest if the township has a plan commission. He said that the
34 advertisement for Case 634-AT-08, Part A also included a wind farm overlay district which did not make it
35 into the code therefore he is not sure if the legal advertisement for Case 634-AT-08 justifies the changes
36 requested in Case 666-AT-10. He emphasized that his point for bringing it up at the last hearing was as a
37 courtesy to the Board and to Mr. Hall because he believed that there was a deficiency. He said that there is
38 something in Case 666-AT-10 that requires clarification from Mr. Hall and it is driven by the phrase,
39 "amount or kind." He asked Mr. Hall if a waiver can waive something that a variance can not or in other
40 words are there restrictions on variances that might prevent a requirement from being subject to a variance
41 even though it could be waived with a waiver.

42
43 Mr. Hall stated that the way that the Ordinance is drafted the only things that are subject to a variance are

1 things that are not listed in Section 6.1 because everything in Section 6.1 is subject to a waiver and not a
2 variance. He said that someone could not ask for a variance from something that is a requirement in Section
3 6.1.

4
5 Mr. Schildt asked Mr. Hall if he is saying that for a Special Use Permit, which are the items listed under
6 Section 6.1, a variance could not be requested and the waiver process would have to be used.

7
8 Mr. Hall stated that to the extent that the standards of Section 6.1 exceed the other requirements of the
9 Ordinance then yes a waiver would have to be requested. Mr. Hall asked Mr. Knight if he agreed.

10
11 Mr. Knight stated that he agreed with Mr. Hall.

12
13 Mr. Schildt stated that in his mind the phrase “amount or kind” really ups the ante. He said that an Ethanol
14 Plant is listed in Table 6.1.3 and one of the requirements is that the petitioner must supply a water study on
15 the potential impacts of any ethanol production facility on the Mahomet Aquifer, etc. therefore could such a
16 requirement be waived by a variance or could it be waived with a waiver.

17
18 Mr. Hall stated that a waiver could waive that requirement.

19
20 Mr. Schildt stated that is troubling to him. He said that subparagraph 6.1.4.S(4) is in regards to the
21 application requirements. He said that his question is in regards to subparagraph 6.1.4.S.1(c) which states
22 the following: A site plan for the installation of all Wind Farm Towers indicating the following: (1) The
23 approximate planned location of each Wind Farm Tower, other Principal Structures, property lines, etc. He
24 said that his original question was if subparagraph 6.1.4.S.1(c) could be waived with a variance or waived
25 with a waiver although Mr. Hall has already indicated that a variance would not apply. Mr. Schildt asked
26 Mr. Hall if subparagraph 6.1.4.S.1(c), a procedural requirement, could be waived with a waiver.

27
28 Mr. Hall stated yes, it is a type of procedural requirement that is specific to Section 6.1 and is subject to
29 waiver and therefore township protest.

30
31 Mr. Schildt stated that subparagraph 6.1.4.A(2) of the Wind Farm Ordinance indicates three locations where
32 a wind farm shall not be located. He asked if a waiver could waive a prohibition.

33
34 Mr. Hall stated yes.

35
36 Mr. Schildt asked Mr. Hall if there is no limit to what can be waived with a waiver.

37
38 Mr. Hall stated yes, and this testimony is consistent with the testimony presented at the wind farm hearings.

39
40 Mr. Schildt stated that he reviewed the approved Finding of Fact for Case 855-AT-93 that was included as
41 an attachment to the March 19, 2010, Preliminary Memorandum for Case 666-AT-10. He said that Item #18
42 in the Finding of Fact for Case 855-AT-93 states, “Permitting the Zoning Board of appeals to waive special
43 standards to the extent they exceed the applicable standards of the district will ease the review of Special Use

1 cases and eliminate the filing of parallel variance cases.” He said that he read through the Finding of Fact
2 several times and he could not find any case where it somehow granted waivers more power than the
3 variance that they were replacing and it really looked like that it was simply making a procedural change to
4 simplify a process of applying in essence for a variance in combination of a special use permit. He said that
5 he does not understand how a waiver can waive things that a variance cannot because, according to
6 subparagraph 9.1.9B(3), variances are specifically prohibited from waiving procedural requirements. He
7 said that he was confused as to how a waiver can do something that a variance can’t.
8

9 Mr. Hall stated that procedural requirement is not defined and if he was asked to supply a list of all
10 procedural requirements he would not know what all would be included although the list would not include
11 anything that is a standard condition.
12

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

21 Mr. Hall stated that a procedural requirement is clearly anything in Section 9, but the minute that it is a
22 standard condition it is not a procedural requirement.
23

24 Mr. Thorsland asked Mr. Schildt to formulate his question and allow Mr. Hall to answer the question as best
25 he can rather than continuously asking the same question over and over.
26

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

39 Mr. Hall stated that what he actually stated was that a waiver applies to any standard condition. He said that
40 a procedural requirement, by definition, is not a standard condition. He said that it is obvious that he and
41 Mr. Schildt do not agree.
42

43 Mr. Schildt stated that he is trying to understand the implication that this change will make to the Zoning

1 Ordinance and it is not clear. He said that he has consistently addressed this Board indicating that there are
2 side effects created by these few words and he is trying to determine what those side effects are and if we do
3 not know what those side effects are then how could it be acted upon until there are answers as to what it
4 does.

5
6 Mr. Hall asked Mr. Schildt why it was so important if both are subject to protest.

7
8 Mr. Schildt stated it is important not to add ambiguity to the Ordinance. He said that Mr. Hall has put forth a
9 lot of effort in cleaning up some of the problems in the Ordinance and he truly respects his efforts. He said
10 that he is not convinced that the addition of the text, "amount or kind", will clean it up. He said that he only
11 wants a full picture of what this will do.

12
13 Mr. Hall stated that a procedural requirement is something that applies to all special use permits and a Wind
14 Farm Special Use Permit has the same procedural requirements as any other special use permit and in
15 addition to that a Wind Farm Special Use Permit has specific standard conditions that are required in Section
16 6.1 and are subject to waiver. He said that all of the procedural requirements that apply to all other special
17 use permits also apply to a County Board Special Use Permit.

18
19 Mr. Schildt stated that the State's Attorney's finding is a very important facet to the case. He asked Mr. Hall
20 if his understanding is correct in that only waivers can be applied to the provisions in Section 6.1 and not
21 variances.

22
23 Mr. Hall stated the waivers apply to the extent that the standards in Section 6.1 exceed the requirements in
24 the rest of the Ordinance.

25
26 Mr. Schildt stated that a waiver could only be used to do such and not a variance.

27
28 Mr. Hall stated that the only place where a variance would be used is when you are requesting a setback less
29 than what the Ordinance requires. He said that some special use permits have extra setback requirements
30 and if something less than what is normally required is requested then it is not just a waiver but a variance.

31
32 Mr. Schildt asked if a non-participating dwelling could ask for a variance for the setback from the turbine.

33
34 Mr. Hall stated that such a request would be by waiver.

35
36 Mr. Schildt asked if anything in Paragraph 6.1.4 is subject to a waiver.

37
38 Mr. Hall stated yes. He said that what is not subject to waiver is any procedural requirement that applies to
39 any special use permit. He said that an application, signatures from all the involved landowners, a public
40 hearing and final determination are required.

41
42 Mr. Schroeder excused himself from the meeting at 8:25 p.m.

43

1 Mr. Schildt asked if a hardship has to be demonstrated.

2

3 Mr. Hall stated that if a waiver applies the only things that have to be demonstrated are those things in
4 regards to waivers.

5

6 Mr. Schildt stated even though the State of Illinois Counties Code requires in cases where there are practical
7 difficulties or hardships.

8

9 Mr. Hall stated that Mr. Schildt raises a separate issue which he has never investigated and that is if the
10 County's requirements for standard conditions are consistent with the State of Illinois Counties Code.

11

12 Mr. Schildt stated that he would agree that such would probably not bear directly on the case.

13

14 Mr. Hall stated that based on the question that Mr. Schildt had this issue could be presented to the State's
15 Attorney's office.

16

17 Mr. Schildt thanked Mr. Hall for his time and efforts.

18

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

20

21 Mr. Hall stated that Mr. Schildt has the right to ask about the procedural requirements and those can be
22 found in subparagraph 9.1.7 Administrative Proceedings. He said that procedural requirements are standard
23 things that apply to all special use permits and they have been supplemented with standard conditions for a
24 wind farm to make sure that we get what we want but it is his view that those are not procedural
25 requirements but standard conditions.

26

27 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony in this
28 case and there was no one.

29

30 Mr. Thorsland closed the witness register.

31

32 Mr. Thorsland asked if there were any additions to the Finding of Fact.

33

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

40

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

43

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

3
4 Mr. Thorsland informed the petitioner that three Board members were absent from tonight’s meeting
5 therefore it is at his discretion to either continue Case 666-AT-10 until a full Board is present or request that
6 the present Board move forward to the Final Determination. He informed the petitioner that four affirmative
7 votes are required for approval.

8
9 Mr. Hall requested that Case 666-AT-10 be continued to January 6, 2011.

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

13
14

15 7. New Public Hearings

16
17 Case 675-AT-10 Petitioner: Zoning Administrator Amend the Champaign County Zoning Ordinance
18 as follows: Part A: 1. In the first four un-numbered paragraphs of Section 8 clarify that
19 nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as
20 authorized herein; and 2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots
21 or combination of lots and portions of lots that individually do not meet any dimensional, geometric,
22 lot access or other standards are brought into common ownership, that portions of said lots may be
23 used separately or conveyed to a different owner provided that a variance is granted. Part B: 1.
24 Revise paragraph 8.2.1 B. as follows: a. Limit applicability to the total expansion since October 10,
25 1973; and b. Revise the limit on expansion of a nonconforming single family dwelling as follows: (1) A
26 nonconforming single family dwelling which had less than 1,200 square feet of building floor area may
27 expand up to a total floor area of 1,500 square feet provided that a variance is required if there is
28 more than one principal use on the lot and the lot area is less than required in Section 4.3.4 and: (2) A
29 nonconforming single family dwelling which had more than 1,200 square feet of building floor area
30 may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided
31 that a variance is required if there is more than one principal use on the lot and the lot area is less
32 than required in Section 4.3.4; and (3) Eliminate the limit on the amount of accessory buildings; and
33 2. Revise paragraph 8.2.1C so that the limit on expansion applies to the total expansion since October
34 10, 1973; and 3. Revise subsection 8.2.2 to provide that nonconforming a nonconforming dwelling may
35 be moved on the lot as authorized in subsection 8.4.1; and 4. In subsection 8.2.3 clarify “ceases”. Part
36 C. 1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged if
37 authorized by variance; and 2. Revise subsection 8.3.3 to authorize that a nonconforming structure
38 may be moved without conforming to the regulations and standards of the district provided that the
39 new location is authorized by variance. Part D 1. Revise Subsection 4.4.1 as follows: a. Authorize that
40 a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 as provided that a
41 variance is required if there is more than one principal use on the lot and the lot area is less than
42 required in Section 4.3.4; and b. Authorize that a nonconforming dwelling may be reconstructed in
43 the existing location if authorized by zoning use permit or a different location if authorized by

1 variance provided that a variance is required if there is more than one principal use on the lot and the
2 lot area is less than required in Section 4.3.4; and c. Authorize that expansion of a nonconforming
3 dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction; and 2. In
4 Subsection 8.4.5 clarify “abandoned” and “discontinued”. Part E: 1. Revise Subsection 8.6 as
5 follows: a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection
6 8.2.1 or reconstructed as authorized in subsection 8.4.1; and b. Authorize that a nonconforming
7 dwelling has no limit on the value of repair or replacement that may occur within a 365 day period
8 and that may include bearing walls. Part F: 1. In paragraph 9.1.2C require that for a Zoning Use
9 Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning
10 district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide
11 notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in
12 general what types of principal uses are authorized as either business uses or industrial uses.

13
14 Mr. Hall stated that compared to the items that ELUC approved the ZBA has a much longer group of
15 amendments. He said that ELUC authorized action only on Part B, Item 1; Part D, Item 1.A. and Part E. He
16 said that after obtaining approval from ELUC to proceed he had one of a series of long conversations with
17 Mr. Tom Lemke, Wilber Heights’ resident, and Mr. Lemke convinced him that there are many important
18 things that had been left out of the amendment. Mr. Hall stated that many homes in Wilbur Heights are only
19 10’ x 50’ mobile homes therefore the addition of 200 square feet to a mobile home would be a nice increase
20 but it would not begin to match what the current expectation is for even a minimal addition to an existing
21 home. He said due to the size of the existing homes in Wilber Heights the proposed amendment has been
22 expanded from what ELUC originally authorized. He noted that the current amendment that is before the
23 Zoning Board of Appeals is only his recommendation and the ZBA is not obligated to recommend it to
24 ELUC and it can be changed in any way that the Zoning Board of Appeals desires.

25
26 Mr. Hall stated that Mr. Lemke indicated concern regarding the term “ceases” as it is indicated in Subsection
27 8.2.3., as it refers to ceasing the use of a dwelling. Mr. Hall stated that Mr. Lemke, who is a long term
28 resident of Wilber Heights, believes that he and the other residents of the area have not been treated very
29 well by the County therefore he is concerned if someone could lose their right to their dwelling if they went
30 away for a winter vacation. Mr. Hall stated that he has worked in the office for over 20 years and a situation
31 like what Mr. Lemke described has never been considered for someone losing their right to their
32 nonconforming dwelling therefore he added such clarification in Subsection 8.2.3, which is Part B, Item 4.
33 He said that the same thing goes for “abandoned” and “discontinued” in Subsection 8.5, which is Part D,
34 Item 2. He said that Mr. Lemke also recommended that the County Board allow property owners to rebuild
35 their homes in Wilber Heights and if such is allowed the County should make the property owners aware of
36 the fact that the area is not a residential district and they are doing that in light of continuing and growing
37 non-residential use in the neighborhood. Mr. Hall stated that he added Mr. Lemke’s request in Part B, Item
38 1.b(3).

39
40 Mr. Hall stated that some other items which have been added since ELUC authorized the first three items
41 came about between the time of the their authorization and the legal advertisement. He said that given the
42 small lot sizes that exist in an area such as Wilber Heights there may be a greater need for variances for
43 nonconforming structures or other related components of nonconformity therefore he added Part B, Item #3;

1 Part C. Items 1 and 2; and Part D. Items 1(b) and (c). He said that there have been some inappropriate
 2 variances granted in the past regarding nonconformities. He said that these inappropriate variances are not
 3 related to Wilber Heights but have occurred in areas such as Penfield and Seymour. He said that the first
 4 completed variance that he was involved in, indicated in tonight’s handout regarding Cases 334-V-02 and
 5 335-V-02 and Distribution of Property Size in the R-2 District in Penfield, turned out to be a prohibited
 6 variance. He said that the second page of the handout includes a diagram of Penfield which indicates very
 7 small lots for single family dwellings and that there is a lesser number which are moderately sized and only a
 8 few that are on very large lots. He said that the Zoning Ordinance says that if you are going to use parts or
 9 pieces of nonconforming lots of record the use has to meet or exceed the current standard. He said that in
 10 2002 a property owner had been given bad advice from the Planning and Zoning Department and sold
 11 property planning to add another dwelling and it was determined that they needed a variance. He said that
 12 the Zoning Administrator at the time did not make him aware of the fact that the proposed variance was
 13 actually prohibited and the variance was approved but only after the ZBA did a careful review of the septic
 14 system issues in Penfield. He said that the ZBA consulted with the Champaign County Department of
 15 Health and decided that in that instance the variances, one was a 34% variance for a lot that was 13,300
 16 square feet versus the required 20,000 square feet and the other was for only 14% for a lot that was 17,200
 17 square feet versus the required 20,000 square feet were granted. He said that most of us would agree that
 18 those were pretty moderate amounts for variances but it means that Penfield could obtain additional residents
 19 and best prime farmland is not taken out of production for those dwellings and he would argue that this
 20 would be more consistent with the County’s Land Use Policies provided that the ZBA can make sure the
 21 public health and safety are being protected. He said that he has no idea why variances like those in the
 22 previously mentioned cases have been prohibited therefore he is recommending Part A, Item 2 to the Board.
 23

24 Mr. Hall stated that the other changes come from the fact that even though Section 8 was amended in 1992
 25 no one bothered to make sure that the first four un-numbered paragraphs were completely updated because if
 26 the first four un-numbered paragraphs are reviewed and then the changes in Subparagraph 8.2.1 were
 27 reviewed it would be found that they are not consistent. He said that Part D, Item 2(b) had to be added to the
 28 legal description and was not included under the description on the agenda or the Supplemental
 29 Memorandum but will be added to both for the next meeting. He said that the new item is a minor deviation
 30 and does not trigger the need for re-advertisement. He said that there were only three changes in ELUC’s
 31 authorization and the ZBA is free to either leave those other changes out or revise them in any way that the
 32 Board desires. He noted that if the ZBA finds it necessary it is also free to change anything that ELUC
 33 authorized. He said that he still owes the ZBA a table of comparison with other counties but trying to
 34 summarize regulations which are this extensive in a group of eight counties is a challenge to get in to a table
 35 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
 36 is proposed for Subparagraph 8.4.1 and 8.4.2 will actually be adequate.
 37

38 Mr. Hall stated that after “except as otherwise herein provided” is said so many times it may start to lose its
 39 clarity. He said that there are two other things that he would like to make the Board aware of although he
 40 does not require direction at tonight’s meeting.
 41
 42

43 Mr. Hall returned to the issue of the Board’s consideration for a variance which includes parts and pieces of

1 nonconforming lots which do not meet the County's requirements. He said that the Board may agree that a
2 variance may be a reasonable thing to do provided that the ZBA always considers onsite waste water systems
3 and the Board may even believe that a minimum requirement needs to be added for such variances. He said
4 that he can not imagine someone making the findings for such a variance without considering that but if the
5 ZBA does not write it into the Ordinance it is always possible. He said that another situation that the Board
6 may want to consider is that the draft amendment states that the nonconformity of a nonconforming structure
7 can be increased. He said that an example of such would be that instead of having 20 feet of an exterior wall
8 within five feet of the property line it could be expanded to 40 feet of an exterior wall within five feet of the
9 property line. He said that before such could be approved the Board may want to make sure that the property
10 owners obtain approval from the fire protection district assuring that they are okay with it. He said that there
11 is a wide range of possible minimum requirements for these things dealing with the nonconformities that
12 may need to be added before the Board states that a variance could be obtained. He said that it may behoove
13 staff to supply a list of things like this for the Board to consider before the amendment is recommended to
14 the County Board. He said that instead of a blanket ability to authorize a variance the Board would be
15 making it more restrictive.

16
17 Mr. Hall stated that the Board realizes that there are five required findings for a variance and one of the
18 findings is that the petitioner did not trigger the actions that require the variance. He said that this is a
19 finding that has become more difficult because in recent cases this Board has been establishing a higher
20 standard than previously. He said that the mere fact that the Zoning Ordinance entertains the possibility that
21 a variance can be obtained for replacement of a nonconforming structure means that the authors envisioned
22 that if someone wanted to replace a nonconforming structure exactly like it currently exists then a variance
23 could be requested. He said that somehow such a variance would have to be dealt with in the finding
24 regarding whether or not the hardships result from the actions of the applicant because it is fair to say that
25 the applicant would never have to use the same footprint of the building unless they wanted to and the
26 Ordinance already provides for that. He said that when you expand the ability to ask for a variance related to
27 nonconformities you are expanding the number of times that the Board will have to make that finding and if
28 the Board believes that finding needs to have some provision for things like this it may be better to make it
29 clear at this time. He said that if the Board does not make such a change then the Board should keep this
30 issue in mind when it is faced with these types of variances because if the Board amends the Ordinance to
31 allow this it is suggesting that there will be a different standard in these cases and that would trigger the need
32 for a re-advertisement which does not necessarily have to slow down this case but if the Board believes that
33 it is a good idea then it can be included in the Board's recommendation.

34
35 Mr. Hall stated that these are the reasons why this case has gotten so much bigger since it received ELUC's
36 authorization. He said that in the future an asterisk will be placed beside the items which have been
37 authorized by ELUC so that when this amendment is before them again it will be clear what they saw before
38 versus what came to them after the public hearing. He said that staff will continue to work on a table of
39 comparison with other counties but he believes that Champaign County has one of the two most restrictive
40 zoning ordinances in regards to nonconformities and it has the most thorough consideration of
41 nonconformities.

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

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

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

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

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

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

Mr. Thorsland called Mr. Homer Kirby to testify.

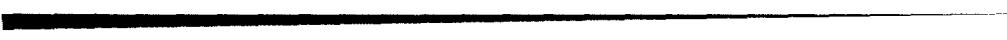
Mr. Homer Kirby, who resides at 312 Paul, Champaign, stated that he has lived in Wilber Heights since 1947. He said that a few years ago he recently found out that the area had been rezoned without notifying the existing residents. He asked the Board what they were supposed to do if their house was destroyed by fire and they were not allowed to rebuild it. He said that it appears that their area is being picked on because they are not allowed to replace their home or garage or improve their property. He said that things are pretty hard right now and he is getting pretty old therefore he came to the meeting to see if changes could be made to the current ordinance so that they could live in peace and not in an uproar.

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

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

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

Mr. Thorsland stated that the Board is at the point where Mr. Hall indicated that they had some work to complete. He said that Parts B.1, D.1(a) and (b) and (e) require additional work from the Board. He asked the Board if they wanted to re-advertise the case with what has been added to the amendment. He said that the Board should give input on minimal or maximum standards that should be included in the variance and whether or not the petitioner triggered the need for the variance. He asked the Board if there were any



1 additional questions for Mr. Hall or if the Board would like to begin working through all of the sections to
2 determine if changes should be made for the better.

3
4 Mr. Hall stated that he can appreciate that the information is very complicated and he encourages the Board
5 to take as much time as needed so that they can make sure that there are no loose ends hanging or that things
6 are not nailed down too much. He said that it would be a fine start to do no more than what has been done
7 thus far because this is perhaps the most difficult amendment to the Zoning Ordinance in the last couple of
8 years.

9
10 Mr. Palmgren asked Mr. Hall how much time is required for re-advertisement.

11
12 Mr. Hall stated that there is no need to re-advertise right now because the only thing that has been added that
13 was not included in the original advertisement was the item regarding 8.4.6. He said that the only thing that
14 might require re-advertisement is if the Board wants to add conditions for minimum or maximum
15 requirements for variances. He said that such a re-advertisement takes at least 15 days minimum and it
16 cannot be done more than 30 days ahead of the hearing. He said that he has described this hearing to
17 everyone who has asked as consisting of tonight, possibly December 30th or January 6th or both and one
18 meeting in February. He said that this would give enough time to obtain discussion from the Board and send
19 it out to the municipal staffs to find out if they see any red flags and then bring it back to the Board for
20 recommendation. He said that some opposition could be received from municipalities therefore he believes
21 that the case will be at the ZBA until February at a minimum.

22
23 Mr. Thorsland read Part D.2(b) to the Board as follows: In Subsection 8.4.6 provide for replacement of
24 nonconforming single family dwelling. 8.4.6: Where nonconforming use status applies to a premises,
25 removal or destruction of the structure shall eliminate the nonconforming use status of the land, except as it
26 may qualify as a nonconforming lot of record except as otherwise herein provided.

27
28 Mr. Hall stated that it is his intent that under each of these instances where we are relaxing the Ordinance
29 information could be included about why the current standard is unreasonable and how the new change will
30 not be a problem when the Board considers public health and safety during the finding, as they do in any
31 variance.

32
33 Ms. Capel asked how the finding would be changed.

34
35 Mr. Hall stated that the finding might say what it does currently with the addition of “except in the case of
36 variance for a nonconforming structure/nonconforming dwelling use.” He said that the statute does not
37 necessarily list the required findings therefore he isn’t sure if such a finding would even be necessary for this
38 kind of a variance.

39
40 Ms. Capel stated that it would make more sense to just omit the finding rather than changing the wording of
41 the finding therefore making it too complexed.

42
43 Mr. Hall stated that staff could investigate that with the State’s Attorney.

1
2 Mr. Thorsland asked the Board if there was any other direction for staff at this time.
3
4 Mr. Schroeder asked Mr. Hall how this amendment will affect the rural community.
5
6 Mr. Hall stated that the only place where he could envision this occurring in the rural areas is where a
7 property has two dwellings that have existed since October 10, 1973. He said that one of the dwellings is a
8 nonconforming use and the way that the amendment is written it would allow the property owner to continue
9 the nonconformity and to rebuild it if necessary.
10
11 Mr. Thorsland stated that in a way the Board will be attempting to apply standards to nonconformities. He
12 said that staff needs the Board's input regarding this issue.
13
14 Ms. Capel stated that some sort of wording should be included to assure that the Board considered public
15 health and safety during consideration of the variance.
16
17 Mr. Hall stated that the Board should consider such although that elevates the complexity of the case because
18 the Board takes the risk of locking itself into a certain situation that seemed reasonable at the time but may
19 prove to be too restrictive. He said that the Board should make a list of what types of things may be
20 important so that he can discuss them with the State's Attorney.
21
22 Ms. Capel asked if an additional finding could be added if the variance is regarding a nonconforming use.
23
24 Mr. Hall asked Ms. Capel if she had a specific finding in mind.
25
26 Ms. Capel stated that if there is a concern that public health and safety issues are only being flagged during
27 variances regarding nonconforming uses then perhaps there could be a specific finding that could be called
28 out.
29
30 Mr. Hall stated that having a finding that only applies in a nonconforming situation would be a way to make
31 it very clear that public health and safety was considered and that the Board went beyond its normal review.
32
33 Mr. Courson asked Mr. Hall if the lot size and setbacks are the main reason why these lots are considered
34 nonconforming.
35
36 Mr. Hall stated that what are being discussed are nonconformities of record that existed on October 10, 1973,
37 and not nonconformities that have happened since October 10, 1973. He said that generally we are
38 discussing anything that occurred prior to 1973 in which there were no zoning standards at all and many
39 times the structures are either too close to the road, side lot line, etc.
40
41 Mr. Knight stated that like the map in Penfield indicates this situation occurs many times on very small lots
42 which creates inadequate yards, lot area, lot coverage, etc.
43

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

7
8 Mr. Schroeder stated that he would rather continue the case to January 6th.

9
10 Mr. Hall stated that staff is not prepared to present any new information to the Board on December 30th.

11
12 **Mr. Palmgren moved, seconded by Ms. Capel to continue Case 675-AT-10 to the January 6, 2011,**
13 **meeting. The motion carried by voice vote.**

14
15 Mr. Hall informed the audience that if they signed the witness register they will be included in the mailing
16 for any new information regarding this case. He said that the mailing for this case will be one week prior to
17 the January 6th meeting.

18
19 Mr. Thorsland stated that the Board will now return to the original order of the agenda and hear Case 665-
20 AT-10.

21 22 **8. Staff Report**

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

24
25 Mr. Hall stated that the Board received copies of the October and November, 2010, Monthly Reports which
26 were presented to the County Board at their meeting last week. He said that the department had its third
27 lowest year in regards to zoning cases with a total of 23 although five were text amendments. He said that
28 since September staff has worked more diligently than ever in trying to get the post decision documentation
29 of cases wrapped up. He said that after the Board has made its decision staff has to finalize the
30 documentation in the case file but due to the modern day finding of fact and summary of evidence
31 procedures and the ZBA's two week cycle for meetings the workload of getting new cases to the Board
32 simultaneously while attempting to wrap up finished cases is almost impossible. He said that the modern
33 day finding of fact and summary of evidence dates from the early 90's therefore it is a very recent thing and
34 many counties don't bother with it and they do not complete ZBA minutes. He said that the Champaign
35 County Department of Planning and Zoning has a very different workload than any other county zoning
36 office. He said that the ZBA minutes are an expectation and requirement in Champaign County and the
37 finding of fact is an excellent requirement and he is glad that the court requires such. He said that life has
38 been pretty good in our office with fewer ZBA cases this year yet post decision documentation has been and
39 continues to be a challenge. He said that he isn't complaining and part of the charge when he was given his
40 position was to make sure that the public understands what staff does.

41
42 Mr. Hall stated that permitting continues to be down although a record number of zoning compliances has
43 been completed. He said that zoning compliance inspections have been a problem since the late 90's but last

1 year a record 853 zoning compliances were completed. He admitted that 250 of those compliances were
2 completed in an easy way that is not generally available to staff although, due to the hard work of the
3 Department's two Zoning Technicians, 600 of those compliances were completed the old fashioned way and
4 he appreciates their hard work. He said that the Department's Enforcement performance has really improved
5 over the past couple of years primarily due to the Department's Zoning Technicians taking over some of the
6 work load of the Department's Zoning Officer. He said that more enforcement cases were completed than
7 what was anticipated and the backlog continued to decline but it still exists. He said that this year he
8 anticipates having the Department's Zoning Technicians assisting with the backlog of the enforcement cases
9 but if an enforcement case is likely to end up in a court case then it is important that the Zoning Officer is
10 involved. He said that it will probably be found that most of the enforcement cases on the backlog no longer
11 exist therefore next year's report should look even better in regards to enforcement.

12
13 Mr. Courson asked Mr. Hall if he could be of assistance to staff in regards to the enforcement backlog.

14
15 Mr. Hall stated that he may take him up on his offer.

16 17 **9. Other Business**

18
19 A. 2011 Champaign County Planning and Zoning Calendar

20
21 **Ms. Capel moved, seconded by Mr. Courson to approve the 2011 Champaign County Planning and**
22 **Zoning Calendar as submitted. The motion carried by voice vote.**

23
24 B. December 30, 2010, ZBA Meeting

25
26 **Mr. Courson moved, seconded by Mr. Palmgren to cancel the December 30, 2010, ZBA meeting. The**
27 **motion carried by voice vote.**

28 29 **10. Audience Participation with respect to matters other than cases pending before the Board**

30
31 None

32 33 **11. Adjournment**

34
35 **Mr. Palmgren moved, seconded by Ms. Capel to adjourn the meeting. The motion carried by voice**
36 **vote.**

37
38 The meeting adjourned at 8:47 p.m.

39
40 Respectfully submitted

41
42
43 Secretary of Zoning Board of Appeals

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street

4 Urbana, IL 61801

5 **DATE:** January 6, 2011

6 **PLACE:** Lyle Shields Meeting Room
7 1776 East Washington Street

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

9 Urbana, IL 61802

10 **MEMBERS PRESENT:** Catherine Capel, Roger Miller, Melvin Schroeder, Eric Thorsland

11 **MEMBERS ABSENT :** Thomas Courson, Paul Palmgren

12 **STAFF PRESENT :** Connie Berry, John Hall

13 **OTHERS PRESENT :** Susie Roderick, Virgil Roderick, Christina Garrett, Derrick Garrett, Homer
14 Kirby, Mike Roderick, Herb Schildt, Sherry Schildt, Pam Dempsey, Stan
15 James, Steve Burdin

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22 **1. Call to Order**

23
24 The meeting was called to order at 6:35 p.m.

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

27
28 The roll was called and a quorum declared present with two members absent.

29
30 **3. Correspondence**

31
32 None

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34 **4. Approval of Minutes (December 16, 2010)**

35
36 Mr. Thorsland stated that at tonight's meeting a complete version of the December 16, 2010, minutes were
37 distributed to the Board for review. He said that the Board should have adequate time to review the
38 distributed minutes therefore he suggested that approval of the December 16, 2010, minutes be completed at
39 the January 20, 2011, public hearing.

40
41
42 **5. Continued Public Hearing**

43
44 **Case 665-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
45 **Ordinance by revising paragraph 4.3.3G. as follows: A. Increase the maximum fence height allowed**
46 **in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on**
47 **residential lots less than five acres in area in the AG-1 and AG-2 Zoning Districts; and B. Require**

1 fencing that is higher than four feet tall to be at least 50% transparent when located in the following
2 areas: (1) In Residential Zoning Districts, all fencing that is in the front yard; and (2) On residential
3 lots less than five acres in area in the AG Districts, only fencing between the dwelling and the
4 driveway within 25 feet of the dwelling. C. Increase the maximum allowed height of all fencing to
5 allow up to three inches of ground clearance.
6

7 Mr. Hall stated that this case was continued from the December 16, 2010, public hearing. He said that the
8 minutes for this case are attached to the Supplemental Memorandum dated December 30, 2010. He said that
9 also attached to the memorandum is an updated municipal comparison table of the municipal fence height
10 limits showing that transparency is required in the front yard, basically above three feet, for the City of
11 Champaign, City of Urbana, Village of Rantoul and the Village of St. Joseph. He said that based on a
12 reading of the minutes from the December 16, 2010, meeting staff revised the draft ordinance as best they
13 could. He recommended that Case 665-AT-10 be continued to the January 20, 2011, public hearing. He
14 said that hopefully there will be enough Board members at the January 20th meeting that the case can receive
15 final action.
16

17 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
18 regarding Case 665-AT-10 and there was no one.
19

20 Mr. Thorsland asked the Board if there were questions or comments for staff and there were none.
21

22 **Mr. Schroeder moved, seconded by Mr. Miller to continue Case 665-AT-10 to the January 20, 2011,**
23 **public hearing. The motion carried by voice vote.**
24
25

26 **Case 666-AT-10 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning**
27 **Ordinance by revising Subsection 6.1 and paragraph 9.1.11.D.1. to clarify that the standard**
28 **conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind**
29 **are subject to waiver by the Zoning Board of Appeals or County Board.**
30

31 Mr. Thorsland stated that at the December 16, 2010, public hearing Case 666-AT-10 was closed although a
32 motion is required to re-open the case so that the revised Finding of Fact attached to the December 30, 2010,
33 Supplemental Memorandum, can be approved.
34

35 **Ms. Capel moved, seconded by Mr. Miller to re-open Case 666-AT-10. The motion carried by voice**
36 **vote.**
37

38 Mr. Hall stated that this case was continued from the December 16, 2010, meeting because the petitioner
39 requested that a vote not be taken until a full Board was present. He said that the December 30, 2010,
40 Supplemental Memorandum included an updated and corrected Finding of Fact. He said that the updates
41 and corrections are indicated with underline. He said that the December 30, 2010, Supplemental
42 Memorandum is the last memorandum that will be required for this case and since the case has been re-
43 opened he would not want to request final action for the case at tonight's public hearing. He requested that

1 the case remain open and continued to the January 20, 2011, public hearing.

2
3 Mr. Thorsland asked the Board if there were questions or comments for Mr. Hall and there were none.

4
5 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
6 regarding Case 666-AT-10, and there was no one.

7
8 **Mr. Schroeder moved, seconded by Mr. Miller to continue Case 666-AT-10 to the January 20, 2011,**
9 **public hearing. The motion carried by voice vote.**

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11
12 **Case 675-AT-10 Petitioner: Zoning Administrator Amend the Champaign County Zoning Ordinance**
13 **as follows: Part A: 1. In the first four un-numbered paragraphs of Section 8 clarify that**
14 **nonconforming dwellings may be enlarged, expanded, extended, replaced, rebuilt, or relocated as**
15 **authorized herein; and 2. Revise subsection 8.1.2 to authorize that once two or more contiguous lots**
16 **or combination of lots and portions of lots that individually do not meet any dimensional, geometric,**
17 **lot access or other standards are brought into common ownership, that portions of said lots may be**
18 **used separately or conveyed to a different owner provided that a variance is granted. Part B: 1.**
19 **Revise paragraph 8.2.1 B. as follows: a. Limit applicability to the total expansion since October 10,**
20 **1973; and b. Revise the limit on expansion of a nonconforming single family dwelling as follows: (1) A**
21 **nonconforming single family dwelling which had less than 1,200 square feet of building floor area may**
22 **expand up to a total floor area of 1,500 square feet provided that a variance is required if there is**
23 **more than one principal use on the lot and the lot area is less than required in Section 4.3.4 and: (2) A**
24 **nonconforming single family dwelling which had more than 1,200 square feet of building floor area**
25 **may expand by up to 200 square feet or 25% of building floor area, whichever is greater provided**
26 **that a variance is required if there is more than one principal use on the lot and the lot area is less**
27 **than required in Section 4.3.4; and (3) Eliminate the limit on the amount of accessory buildings; and**
28 **2. Revise paragraph 8.2.1C so that the limit on expansion applies to the total expansion since October**
29 **10, 1973; and 3. Revise subsection 8.2.2 to provide that nonconforming a nonconforming dwelling may**
30 **be moved on the lot as authorized in subsection 8.4.1; and 4. In subsection 8.2.3 clarify “ceases”. Part**
31 **C. 1. Revise subsection 8.3.1 to authorize that a nonconforming structure may be enlarged if**
32 **authorized by variance; and 2. Revise subsection 8.3.3 to authorize that a nonconforming structure**
33 **may be moved without conforming to the regulations and standards of the district provided that the**
34 **new location is authorized by variance. Part D 1. Revise Subsection 4.4.1 as follows: a. Authorize that**
35 **a nonconforming dwelling may be expanded as authorized in subsection 8.2.1 as provided that a**
36 **variance is required if there is more than one principal use on the lot and the lot area is less than**
37 **required in Section 4.3.4; and b. Authorize that a nonconforming dwelling may be reconstructed in**
38 **the existing location if authorized by zoning use permit or a different location if authorized by**
39 **variance provided that a variance is required if there is more than one principal use on the lot and the**
40 **lot area is less than required in Section 4.3.4; and c. Authorize that expansion of a nonconforming**
41 **dwelling as authorized in subsection 8.2.1 may occur at the same time as reconstruction; and 2. In**
42 **Subsection 8.4.5 clarify “abandoned” and “discontinued”. Part E: 1. Revise Subsection 8.6 as**
43 **follows: a. Authorize that a nonconforming dwelling may be expanded as authorized in subsection**

1 8.2.1 or reconstructed as authorized in subsection 8.4.1; and b. Authorize that a nonconforming
2 dwelling has no limit on the value of repair or replacement that may occur within a 365 day period
3 and that may include bearing walls. Part F: 1. In paragraph 9.1.2C require that for a Zoning Use
4 Permit authorizing construction as authorized in Section 8 on a nonconforming dwelling in a zoning
5 district in which a dwelling is not an authorized principal use, the Zoning Administrator shall provide
6 notice that the zoning district does not authorize a dwelling as a principal use and shall indicate in
7 general what types of principal uses are authorized as either business uses or industrial uses.

8
9 Mr. Thorsland stated that by statute the repetitive citing of the lengthy description for Case 675-AT-10 is not
10 necessary at each public hearing. He said that the full description included on the agenda will be included in
11 the minutes.

12
13 Mr. Hall distributed a new Supplemental Memorandum dated January 6, 2011, for the Board's review. He
14 said that attached to the memorandum is a comparison table of the requirements for nonconformities with
15 those for McLean County, Peoria County, and Sangamon County. He said that these counties are the
16 counties that Champaign County generally compares itself. He said that he had considered obtaining
17 information from Rock Island County, Macon County, and Kankakee County but was unsuccessful at this
18 time and would like to know if the Board would like to see a comparison to those three counties. He said
19 that anytime a table like this is constructed it is hard for many people to understand therefore a summary was
20 included in the memorandum.

21
22 Mr. Hall stated that the memorandum reviews five comparisons that are relevant to Case 675-AT-10. He
23 noted that the Supplemental Memorandum dated December 30, 2010, had added accessory buildings to the
24 proposed amendment. He said that the additional text was a suggestion by Mr. Tom Lemke. Mr. Hall stated
25 that none of the other counties referred to in the table discuss accessory uses in regards to what can be done
26 with a nonconforming dwelling.

27
28 Mr. Hall stated that Champaign County does not currently allow nonconforming dwellings to be
29 reconstructed. The other three counties reviewed all allow nonconforming dwellings to be reconstructed to
30 some degree. He said that McLean County allows a nonconforming dwelling to be reconstructed for any
31 reason and without either a variance or a special use permit (see note M3 in the table) and Peoria County
32 requires a special use permit to allow a nonconforming dwelling to be reconstructed (see note P4 in the
33 table). He said that Sangamon County only allows nonconforming dwellings to be reconstructed if damaged
34 due to catastrophe and if the dwelling is owner occupied (see notes S4, S5 and S7 in the table). He said that
35 Champaign County is the most restrictive and McLean County is the least restrictive.

36
37 Mr. Hall stated that in regards to repair and remodeling of nonconforming dwellings Champaign County
38 currently limits the dollar value of remodeling authorized for nonconforming dwellings to no more than 10%
39 in any one year. He said that the other three counties reviewed do not limit the amount of repair authorized
40 on nonconforming dwellings. He said that McLean County does not limit the value of remodeling for a
41 nonconforming dwelling and does not require either a variance or a special use permit (see note M3). He
42 said that Peoria county does not limit the value of remodeling for a nonconforming dwelling provided that a
43 special use permit is granted (see note P4 in the table) and Sangamon County does not limit the value of

1 remodeling for a nonconforming dwelling and does not require either a variance or a special use permit (see
2 not S8). He said that both McLean County and Sangamon County do not have a limit on the amount of
3 repair authorized on nonconforming dwelling and no special approval is required although Peoria County
4 requires a special use permit.

5
6 Mr. Hall stated that in regards to expansion of nonconforming dwellings Champaign County currently limits
7 the expansion of nonconforming dwellings to 25%. He said that McLean County and Peoria County do not
8 limit the amount of expansion. He said that McLean County, which has the least restrictive approach, does
9 not limit the amount of expansion of a nonconforming dwelling provided that no additional dwelling or
10 lodging unit results and does not require either a variance or a special use permit (see not M3). He said that
11 Peoria County requires a special use permit to allow a nonconforming dwelling to expand but there is no
12 established limit on the expansion (see note P4 in the table). He said that Sangamon County requires a
13 variance to allow a nonconforming dwelling to expand and also limits the expansion to 25% of the area
14 occupied on the effective date of the Ordinance or amendment (see note S3). He said that Sangamon County
15 could be considered somewhat more restrictive than Champaign County because if the original dwelling was
16 a small home (or small mobile home) of no more than 800 square feet the 25% limit is comparable or less
17 than the current Champaign County limit of 200 square feet and the variance requires a public hearing
18 however, for nonconforming dwellings that were originally larger than 800 square feet this will result in a
19 greater square footage expansion than currently allowed by Champaign County.

20
21 Mr. Hall stated that in regards to prohibited variances for nonconformities the only nonconformity for which
22 the Champaign County Zoning Ordinance authorizes a variance is for a nonconforming structure. He said
23 that a variance is not permissible for any other nonconformity. He said that none of the other three county
24 ordinances appear to prohibit variances in this way but staff needs to verify such with each of the Zoning
25 Administrators. He said that reading someone else's zoning ordinance and understanding it absolutely
26 correctly is often a very difficult task. He said that the Champaign County Zoning Ordinance does not allow
27 variances for use and in many respects allowing a nonconforming use to expand could be considered a
28 variance for the use.

29
30 Mr. Hall stated that the Champaign County Zoning Ordinance definition of "nonconforming" simply refers
31 to anything which does not conform to the requirements of the Ordinance. He said that, as the Board knows,
32 many times a nonconforming lot, building or use occurred after the Ordinance was adopted and under the
33 terms of the Ordinance it is still simply nonconforming. He said that Section 8 of the Ordinance makes it
34 very clear that it is talking about nonconformities that arose on the date of adoption or amendment and in the
35 case of nonconforming lots it refers to those as nonconforming lots of record and not simply a
36 nonconforming lot. He said that his greatest fear is that if someone took the County to court over a
37 nonconforming use the court would look at the poor way that Section 8 is written and find that the use is
38 actually permissible. He said that it is his recommendation that the Board consider clarifying
39 "nonconforming" as part of the amendment and what would make most sense would be to amend the
40 Ordinance definition so that the definition of "nonconforming" simply refers to things that existed on the
41 effective date of the Ordinance or relevant amendment as being nonconforming and thus uses, buildings, or
42 lots which are created later and do not meet the Ordinance are not simply nonconforming but perhaps
43 noncompliant. He said that if the Board desires to include a change in the description then the case should

1 be re-advertised.

2
3 Mr. Hall stated that overall the comparison illustrates that the current Champaign County Zoning Ordinance
4 requirements for nonconformities are more restrictive than McLean, Peoria or Sangamon counties and the
5 McLean County ordinance will still be less restrictive than the proposed Champaign County ordinance based
6 on the text amendment because McLean County does not limit the expansion of nonconforming dwellings.
7 He said that if the Board believes that the amendment is not expansive enough then it could be changed and
8 included in the approved Finding of Fact so that is communicated to the County Board. He said that he
9 would hope to have a Draft Finding of Fact that refers to the comparisons included in the attached table so
10 that when the County Board reviews it they will not have to figure out the table on their own.

11
12 Mr. Thorsland asked the Board if there were questions or comments for Mr. Hall and there were none.

13
14 Mr. Thorsland called Mr. Michael Roderick to testify.

15
16 Mr. Michael Roderick, who resides at 201 Paul Avenue, Champaign, IL, stated that he, his dad and his
17 daughter were raised in the Wilber Heights area. He said that the City of Champaign exists on the back road
18 of the neighborhood, the County on the center road, and the State on the front road therefore anytime a repair
19 is requested on the roads no one wants to claim responsibility. He said that as a whole neighborhood, which
20 a large portion is elderly, they take care of their own area. He said that the Champaign-Urbana Mass Transit
21 District wanted to come into the area and it would take 500 votes to prevent it from happening. He said that
22 such prevention did not occur because there are less than 500 residents in the neighborhood of Wilber
23 Heights therefore the C-U MTD came in. He said that for many years he heard his parents complain about
24 paying taxes for city sewage without having the opportunity to connect. He said that if the neighborhood did
25 not stand together to take care of each other it would not exist. He said that he would agree that there are
26 a few places in the area which are not very good such as the property across from his home on which the State
27 of Illinois has seized the mobile home. He said that he and his brothers spent two days to clean up the
28 adjacent property, cutting trees and picking up trash, at no one else's expense but their own. He said that the
29 inside of the seized mobile home has a great accumulation of rubbish inside and rodents exist on the
30 property. He said that it appears that no one wants to assist the neighborhood but that needs to change
31 because it is time that someone stood up for Wilber Heights.

32
33 Mr. Hall asked Mr. Roderick if he has had an opportunity to review the proposed amendment.

34
35 Mr. Roderick stated that he has not reviewed the proposed amendment.

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

38
39 Mr. Homer Kirby, who resides at 312 Paul Avenue, Champaign, IL, stated that he had attended a meeting
40 with the City of Champaign and it was discussed that if the residents of Wilber Heights took in sewer lines
41 then the area would be annexed into the city limits. He said that this year, for the first time in many years,
42 the County fully plowed their roads off before he got out of bed and normally the County only removes the
43 slush from the road. He said that it appears that the City of Champaign desires to move north but are unable

1 to because of the existence of their neighborhood yet if the County moves more industrial uses in the area
2 then the County would receive more tax revenue. He said that years ago he spoke to one of the County road
3 employees while the road was being repaired and the employee indicated that the reason why the County
4 does not do anything in the area is because it doesn't receive enough revenue from the property taxes. Mr.
5 Kirby stated that he finds this odd because he pays his taxes every year. He said that it is his belief that the
6 City of Champaign and the County want to get rid of the neighborhood. He said that the City of Champaign
7 may come in and offer money for their properties to get them out of there and if they do not accept the offers
8 the City will condemn their property and take it anyway. He said that the value of the properties in the
9 neighborhood is going down because the homes and accessory buildings cannot be rebuilt or expanded. He
10 said that if the Zoning Board owned and lived on property in the Wilber Heights area they would agree with
11 the residents concerns. He said that he, like many of his neighbors, has no where else to go.

12
13 Mr. Hall asked Mr. Kirby if he has had the opportunity to review the proposed amendment or if he had any
14 suggestions as to how the amendment could be better.

15
16 Mr. Kirby stated that he has not reviewed the proposed amendment. He said that if a garage is destroyed by
17 fire then the County should allow the property owner to rebuild it. He said that no one is going to purchase
18 property in Wilber Heights if they are not able to rebuild a structure that is destroyed. He said that the
19 property owners in the neighborhood are in a no-win situation and it has been this way for years. He said
20 that no one wants to claim responsibility for the roads yet property taxes are collected for such services as
21 well as the C-U MTD collects a tax from property owners but does not offer services to the area.

22
23 Mr. Thorsland asked the audience if anyone else desired to sign the witness register to present testimony
24 regarding this case and there was no one.

25
26 Mr. Michael Roderick requested the opportunity to re-address the Board.

27
28 Mr. Thorsland called Mr. Roderick to testify.

29
30 Mr. Michael Roderick stated that the fire department exists on the road maintained by the State and it is in
31 such bad shape that the response time is slowed down because the fire trucks use the oil and chipped roads
32 for travel. He said that between the fire trucks and a trucking company, which utilizes the oil and chipped
33 pavement, the road's condition as deteriorated. He said that if the State would fix the road that they are
34 responsible for then the oil and chipped pavement would be saved. He said that this issue should be
35 addressed because there are a lot of lives at stake that depend on the services of the fire department.

36
37 Mr. Thorsland informed the audience that if they do not desire to speak at the public hearing but they do
38 have recommendations or concerns regarding the proposed amendment they are welcome to notify staff.

39
40 Mr. Thorsland asked the Board if there were any comments or questions for Mr. Hall.

41
42 Ms. Capel stated that the comparison table indicates that in Sangamon County the restriction is that the
43 property must be owner occupied. She asked what impact that would have if it were added to the proposed

1 amendment.

2

3 Mr. Hall stated that he would be at a loss in providing justification for such a limit.

4

5 Mr. Thorsland asked the Board if they would like to see further comparisons from other counties or is the
6 current table adequate.

7

8 Ms. Capel stated that she does not need to see any further comparisons.

9

10 Mr. Thorsland asked Mr. Hall where the new definition for “nonconforming” would appear.

11

12 Mr. Hall stated that the new definition would be included in Section 3 Definitions. He said that any time the
13 word “nonconforming” would appear in the Ordinance it would only refer to things that existed on October
14 10, 1973, or the date of the relevant amendment.

15

16 Mr. Thorsland stated that previous variances have been granted that were quite recent nonconformities
17 therefore he is not sure if he would want this Board to decide whether to make such a major change to the
18 definition. He said that the term “noncompliant” seems to be a lesser charge.

19

20 Mr. Hall stated that the Zoning Ordinance is inaccurate in Section 8 and currently the phrase that is used is
21 “illegally nonconforming” appears to leave the realm of zoning and refer to a more threatening situation. He
22 said that the County could stay with the current definition because no one has ever tried to use this definition
23 as a defense in an enforcement case.

24

25 Ms. Capel stated that staff’s recommendation regarding the term “nonconforming” provides alot of clarity
26 because there is a distinction which can be made between something that didn’t conform when the Zoning
27 Ordinance was adopted and something that has been created since that time.

28

29 Mr. Thorsland asked the Board if they were comfortable in directing Mr. Hall to work on the definitions. He
30 noted that the case will require re-advertisement.

31

32 Mr. Hall stated that the case should be re-advertised and the cost of re-advertisement is the only cost
33 involved and it will not slow down the case. He said that this issue is not important enough to be a separate
34 case but to a certain extent there is always the advertisement cost. He said that he believes that the current
35 Ordinance is defective but if the Board does not agree then so be it.

36

37 Mr. Thorsland stated that the small cost of re-advertisement is worth correcting a defective ordinance and he
38 is sensing that the rest of the Board agrees.

39

40 Mr. Hall requested that Case 675-AT-10 be continued to the February 3, 2011, public hearing. He said that
41 this time would give municipal staff the opportunity to submit feedback. He said that due to the lack of
42 staffing the turn-around time will be a little bit longer but he will try to keep it a short as possible.

43

1 Ms. Capel moved, seconded by Mr. Miller to continue Case 675-AT-10 to the February 3, 2011, public
2 hearing. The motion carried by voice vote.

3
4 Mr. Hall informed the audience that anyone who has signed the attendance sheet or witness record and has
5 provided their address will receive notice of the next meeting regarding this case.

6
7 **6. Staff Report**

8
9 None

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11 **7. Other Business**

12 **A. ZBA Agenda mailing protocols**

13
14 Mr. Thorsland stated that late receipt of the mailing packets has been discussed previously and it has been
15 suggested that perhaps the packets could be sent out earlier or the procedure for the receipt of the packets
16 could be changed. He said that perhaps staff could notify the Board that the packets have been posted on the
17 County website for review rather than sending out a full packet. He said that revenue would be saved if the
18 packets were viewed on-line and then a full hard copy of the packet would be distributed at the meeting. He
19 asked the Board to present comments regarding this issue.

20
21 Ms. Capel stated that she would like to be notified by e-mail that the full packet is available on the County
22 website. She said that at that point she has been reminded of the meeting and it is at her discretion whether
23 or not to download the packet or just view it on the computer.

24
25 Mr. Thorsland stated that staff suggested that only the agenda, which will include a notation that that the full
26 packet is available for viewing on the County website, would be mailed out and a follow-up e-mail would be
27 sent to the Board indicating the same.

28
29 Mr. Schroeder stated that at this time he would prefer that a hard copy be mailed to his residence although he
30 will discuss the option with his wife and will notify staff of his final decision.

31
32 Mr. Miller stated that he would prefer notification via e-mail.

33
34 Mr. Thorsland stated that he would also prefer notification via e-mail so that he could view the packet
35 electronically.

36
37 Mr. Thorsland requested that the Board supply their current e-mail address to staff for all notifications.

38
39 Mr. Thorsland informed the Board that the ZBA By-Laws indicate that only a request by a Board member
40 and not a motion is required for a recess during a public hearing.

41
42 **B. December, 2010 Monthly Report**

43

1 Mr. Hall stated that the December, 2010 Monthly Report is not ready for review therefore it should be
2 included on the January 20, 2011, agenda.

3

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

5

6 None

7

8 **9. Adjournment**

9

10 **Mr. Schroeder moved, seconded by Mr. Miller to adjourn the meeting. The motion carried by voice**
11 **vote.**

12

13 The meeting adjourned at 7:17 p.m.

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17

18 Respectfully submitted

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23 Secretary of Zoning Board of Appeals

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