

1 **MINUTES OF REGULAR MEETING**
2
3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**
4 **1776 E. Washington Street**
5 **Urbana, IL 61801**
6

7 **DATE:** September 29, 2011 **PLACE:** Lyle Shields Meeting Room
8 **TIME:** 6:00 p.m. **Urbana, IL 61802**

11 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Melvin Schroeder,
12 Eric Thorsland, Paul Palmgren, Brad Passalacqua
13

14 **MEMBERS ABSENT :** None
15

16 **STAFF PRESENT :** Connie Berry, Lori Busboom, John Hall, Jamie Hitt
17

18 **OTHERS PRESENT :** Greg Leuchtman, Michael Blazer, Michael Jarboe, Sherry Schildt,
19 Kim Schertz, Deanne Sims, Kevin Parzyck, Gary Maxwell, Roy
20 Johnson, Marsha S. Gates, Trish Gale, Steve Burdin, Deb Griest,
21 James Rusk, Tom Gordon, Loyd Wax, Daniel Fitzsimmons, Mary
22 Mann, Herb Schildt, Harold Hovel, Kay Fiscus, John Fiscus, Al
23 Kurtz, Steve O'Conner, Patsi Petri

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

27 The meeting was called to order at 6:01 p.m.
28

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

30 The roll was called and a quorum declared present.
31

32 **3. Correspondence**

33 None
34

35 **4. Approval of Minutes (September 1, 2011 and September 8, 2011)**
36

37 **Mr. Schroeder moved, seconded by Mr. Palmgren to approve the September 1, 2011 and**
38 **September 8, 2011, minutes as submitted. The motion carried by voice vote.**
39

40 **5. Continued Public Hearing**
41

42 **Case 696-S-11 Petitioner: California Ridge Wind Energy LLC and the participating**
43 **landowners listed in the legal advertisement. California Ridge Wind Energy LLC is**
44 **wholly owned by Invenegy Wind North America LLC, One South Wacker Drive,**
45 **Suite 1900, Chicago, IL, with corporate officers as listed in the legal advertisement.**
46 **Request: Authorize a Wind Farm with consists of 30 Wind Farm Towers (wind**
47 **turbines) in total with a total nameplate capacity of 48 megawatts (MW) of which**
48 **28 Wind Farm Towers with a total nameplate capacity of 45 MW are proposed in**

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1 **Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate**
 2 **capacity of 3 MW are proposed in Ogden Township (Part B), and including access**
 3 **roads, wiring, and public road improvements, and including the waivers of**
 4 **standard conditions in Section 6.1.4 as listed in the legal advertisement. Location:**
 5 **In Compromise Township the following sections are included with exceptions as**
 6 **described in the legal advertisement: Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33 of**
 7 **T21N, R14W of the 2nd P.M.; and Section 24, 25, and 36 of T21N, R10E of the 3rd**
 8 **P.M.; and Fractional Sections 30 and 31 of T21N, R11E of the 3rd P.M. In Ogden**
 9 **Township the following sections are included with exceptions as described in the**
 10 **legal advertisement: Fractional Section 6, T20N, R11E of the 3rd P.M.; and**
 11 **Fractional Sections 4, 5, 6 and 7 of T20N, R14W of the 2nd P.M.; and Sections 8, 9,**
 12 **and 16 of T20N, R14W of the 2nd P.M.**

13
 14 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the
 15 witness register. He reminded the audience that when they sign the witness register they are
 16 signing an oath.

17
 18 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County
 19 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will
 20 ask for a show of hands for those who would like to cross examine and each person will be called
 21 upon. He requested that anyone called to cross examine go to the cross examination microphone to
 22 ask any questions. He said that those who desire to cross examine are not required to sign the
 23 witness register but are requested to clearly state their name before asking any questions. He noted
 24 that no new testimony is to be given during the cross examination. He said that attorneys who have
 25 complied with Article 6.5 of the ZBA By-Laws are exempt from cross examination.

26
 27 Mr. Thorsland asked the Petitioner if he or his representative would like to make a statement
 28 outlining the nature of the request prior to introducing new evidence.

29
 30 Mr. Michael Blazer, legal counsel for Invenergy, stated that at the last public hearing there were
 31 two outstanding issues, the road agreements and the reclamation agreement. He said that in
 32 regards to the township road agreements, a letter from Sheryl Kuzma, dated September 29, 2011,
 33 indicates that more progress on the road agreements has been made in the last few weeks than has
 34 been made in the past two years. He said that even more progress has been accomplished since
 35 Ms. Kuzma constructed this letter and from Invenergy’s perspective the only issue to address is a
 36 final version for review, approval and signatures.

37
 38 Mr. Blazer stated that in regards to the County Road Agreement, Mr. Blue had previously
 39 informed the Board that all of the material terms of that agreement have been finalized and Mr.

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1 Blue has the final version in his hands. Mr. Blazer stated that it is his understanding that the
2 agreement has been cleared by the State's Attorney.

3
4 Mr. Blazer stated that in regards to the Reclamation Agreement there have been discussions back
5 and forth with the State's Attorney and as of yesterday the State's Attorney has the latest version
6 in his hands for review. He said that also a large amount of time was spent with Mr. Hall
7 reviewing the proposed conditions to make sure that they are the same page with the language and
8 all of those concerns have been addressed as well. He said that he and Greg Leuchtman are
9 prepared to answer any questions that the Board may have.

10
11 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer.

12
13 Mr. Miller stated that Mr. Blazer indicated that the Board has a letter dated September 29, 2011,
14 from Sheryl Kuzma. He said that he has not seen this letter.

15
16 Mr. Blazer stated that the letter from Sheryl Kuzma to John Hall is attached to the Supplemental
17 Memorandum dated September 29, 2011.

18
19 Mr. Miller stated that Mr. Blazer indicated that he was prepared to meet with the road commissioners
20 to get the agreements signed. He asked Mr. Blazer if the road commissioners had reviewed the final
21 agreement yet.

22
23 Mr. Blazer stated that he assumes that the road commissioners have seen the letter because in effect
24 the letter from Ms. Kuzma is also signed by Mr. Johnson and Mr. Frerichs. He said that some very
25 extensive negotiations have taken place in the last few days and after several e-mails from Ms.
26 Kuzma this morning there was only one outstanding issue. He said that all of the technical issues
27 and road use issues have been worked out because the road commissioners and the construction
28 company, that will perform the road work, spent hours working through the issues.

29
30 Mr. Miller asked Mr. Blazer if the road agreement for the township in Vermilion County has been
31 finalized.

32
33 Mr. Blazer stated that the road agreements for all three townships were negotiated at the same time
34 and the only differences between the agreements are the locations of the roads. He said that basically
35 there is one master agreement with alternative provisions where there are differences related to
36 Ogden versus Compromise or Pilot and vice versa. He said that when he discusses the road
37 agreement he is basically speaking about all three. He said that the Vermilion County Road
38 Agreement was discussed with Douglas Staske, Vermilion County Highway Engineer and Jim

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1 Harvey, Vermilion County State's Attorney and he expects to see the final draft road agreement very
2 soon.

3
4 Mr. Miller asked Mr. Blazer if it is his opinion that three road commissioners are on board.

5
6 Mr. Blazer stated yes. He said that he has not spoken with the individual road commissioners but he
7 has spoken with their attorney and he was very pleased when he saw Ms. Kuzma's letter.

8
9 Mr. Passalacqua asked Mr. Blazer if the Reclamation Agreement had real numbers included about
10 the amount that the Letter of Credit will cover.

11
12 Mr. Blazer stated that the percentages are based on actual estimates that are included in an exhibit,
13 Attachment A, of the Reclamation Agreement. He said that the Reclamation Agreement speaks in
14 terms of percentages but refers to the exhibit which has the actual dollar projections.

15
16 Mr. Passalacqua stated that the version of Attachment A that was distributed to the Board does not
17 include any amounts.

18
19 Mr. Hall stated that the color version of the Reclamation Agreement has the amounts and the clean
20 version was intentionally left blank so that the Board could insert the amounts desired.

21
22 Mr. Palmgren stated that Marvin Johnson, Compromise Township Highway Commissioner, testified
23 at a previous hearing that he did not want the Board to take up the issue of the requested waiver. He
24 said that it appears that a lot of progress has been made but it does not appear that anything is ready
25 for signatures.

26
27 Mr. Blazer stated that the final township road agreement does not have to be submitted to anyone
28 because the road commissioners are independently elected therefore they have the authority to sign
29 the road agreement without their township board's approval. He said that Mr. Blue does not have the
30 authority to sign the road agreement therefore the agreement must be approved by the County Board.
31 He said that in all due respect the road commissioners are not asking for the Board's permission to
32 sign their road agreement with Invenergy because they do not need the Board's permission to do so.

33
34 Mr. Palmgren stated that Invenergy had requested a waiver that requires a signed Roadway Upgrade
35 and Maintenance Agreement prior to the close of the public hearing before the ZBA. He said that
36 Mr. Johnson had advised the Board to not take action on this case until the Board and the public
37 could review the road agreements.

38
39 Mr. Blazer stated that in reading the letter that Mr. Johnson and Mr. Frerichs sent today it appears

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1 that they are satisfied with the final agreements. He said that he has only discussed this matter with
2 Ms. Kuzma and not with Mr. Johnson or Mr. Frerichs.

3
4 Mr. Hall stated that the last sentence in the body of the letter indicates that they do expect all of the
5 outstanding issues can be resolved so that they can advise the board when it meets next week that
6 they, at long last, have agreements with Invenergy.

7
8 Mr. Palmgren stated that if this came before the Board tonight then it will be postponed to next
9 week.

10
11 Mr. Hall stated that the letter indicates that the road commissioners appear to be very pleased with
12 the progress although there are no final versions of the road agreements for the townships or the
13 County for the Board's review.

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

17
18 Mr. Thorsland asked if staff had any questions for Mr. Blazer and there were none.

19
20 Mr. Thorsland asked Mr. Leuchtmann if he had any new information to add at this time and Mr.
21 Leuchtmann stated that he did not.

22
23 Mr. Thorsland requested an update from staff regarding Case 696-S-11.

24
25 Mr. Hall distributed a Supplemental Memorandum dated September 29, 2011, to the Board for
26 review. He said that the last attachment to the memorandum is a letter from the Compromise and
27 Ogden Township Highway Commissioners. He said that Attachment B is a letter dated September
28 23, 2011, from Attorney Glenn Stanko on behalf of Mary Mann. Mr. Hall stated that Mr. Stanko's
29 letter recommends a condition in regards to permitting of the wind farm towers. He said that Mr.
30 Stanko's letter is briefly reviewed on the second page of the memorandum and at the same time the
31 Board has a Champaign County landowner making a request to actually go beyond what was sent out
32 in the memorandum dated September 22nd. He said that with discussions with Invenergy,
33 Attachment G of the September 29th memorandum backs off and lowers the restrictions that were
34 proposed in the September 22nd memorandum. He said that there are conflicting requests before the
35 Board.

36
37 Mr. Hall apologized to the Board for the amount of information distributed tonight but it is his
38 understanding that the Petitioner would like to have a final decision at tonight's hearing although he

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1 has advised the Petitioner that he does not believe that a final decision at tonight's hearing would be
2 in their best interest.

3
4 Mr. Hall stated that Attachment C, Draft Reclamation Agreement received September 28, 2011, to
5 tonight's memorandum is included separately. He said that the Board received a color copy that
6 showed the strike outs and additions as compared to the version that the State's Attorney was sent
7 last Friday. He said that the Board also has a clean copy of the Reclamation Agreement which is
8 easier to read although it is not as informative. He said that Attachment D is the Revised
9 Assessment of Compliance regarding the Reclamation Agreement. He apologized for the length of
10 Attachment D but there are County Board members who are following the development of the
11 Reclamation Agreement and he knows that they are going to have questions when it gets to the
12 County Board. He said that he tried to answer all of the questions that he could in the Summary of
13 Evidence but given the complexities of the Reclamation Agreement there are nine pages for its
14 review. Mr. Hall stated that on page D-8, of Attachment D of the Supplemental Memorandum dated
15 September 29, 2011, there is a summary of the issues that staff sees about the Reclamation
16 Agreement and those issues being either the waiver that was requested in the beginning and is still
17 needed. He said that there are several parts of the Reclamation Agreement that the
18 Ordinance gives flexibility for but flexibility requires specific language in the final determination.
19 He said that the State's Attorney has not provided comments on the version that staff received at
20 3:00 p.m. on Wednesday afternoon.

21
22 Mr. Hall stated that there has been a lot of discussion about the salvage value in the Reclamation
23 Agreement and the Ordinance does not prohibit salvage value from being used in establishing the
24 costs of decommissioning. He said that Page 10 and 11, Paragraph 14, in the version of the
25 Reclamation Agreement that is before the Board tonight indicates items added, indicated with
26 underlining, and items which have been stricken. He said that the item which was added reads as
27 follows: Security interest granted to Champaign County equal to the Salvage Value of the Project
28 shall be subordinate to other security interests granted to debtors and financiers of the project. He
29 said that he does not know what security interest is although he does know who debtors and
30 financiers are and when the interests of Champaign County are subordinate to those he believes that
31 they are in line first. He said that staff is left wondering how much of the salvage value will be seen
32 by Champaign County, if any.

33
34 Mr. Hall stated that Attachment E to the Supplemental Memorandum dated September 29, 2011, is
35 the Revised Table of Required Waivers. He said that Attachment E revises the table which was sent
36 out in the mailing and the only way that the Board could take action on this case tonight would be to
37 approve Waiver #6 even though the Board has not seen a township highway agreement. He said that
38 he attempted to draft a finding for that waiver but was not able to do so and he has not been able to
39 draft a finding for the waiver regarding the Reclamation Agreement primarily due to the other issues

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1 surrounding the Reclamation Agreement. He said that requesting a waiver from the Ordinance
2 requirement to provide 210% of the assurance up front makes sense if it is updated very often but
3 there are other things that are at issue. He said that the Ordinance states that if the County Board
4 wants the Letter of Credit in increments that can be protected under FDIC limits then they have the
5 right to ask for that but this was something that was stricken in the Reclamation Agreement. He said
6 that there is a condition before the Board tonight that goes along with the idea that this is an
7 Ordinance requirement if the County Board wants it but no one in this room knows what the County
8 Board wants therefore it is not an issue yet. He said that if later the County Board does decide that it
9 would be a good idea to have a Letter of Credit or multiple Letters of Credit which are eligible for
10 FDIC protection they have the right to ask for it. He said that if the developer is not willing to
11 cooperate then the case must be re-advertised because that is an Ordinance requirement. He said that
12 re-advertisement will require a new public hearing.

13
14 Mr. Hall stated that Attachment G to the Supplemental Memorandum dated September 29, 2011,
15 discusses Revised Special Conditions of Approval. He said that he spoke to Mr. Leuchtmann and
16 Mr. Blazer about some mistakes that were made on the draft of special conditions and when the
17 Board is ready he will indicate those mistakes and correct them. He said that another thing that was
18 received today was a revised portion of the site plan which eliminates the concerns about the CR
19 District and the Village of Royal. He said that there are four conditions that are now spelled out in
20 regards to the Reclamation Agreement and they go back to those things where the Ordinance gives
21 flexibility but when the Ordinance gives flexibility those things have to be made very specific. He
22 said that a totally new condition is indicated on Page G-7 under M.4. He said that the condition is
23 proposed on behalf of the concerns voiced by Champaign County landowners at the public hearing.
24 He said that one concern that was expressed by Ms. Sims stated that the Ordinance only requires the
25 posting of the complaint hotline telephone number at the maintenance building for the wind farm and
26 the portion of the wind farm in Champaign County is so small that there is no maintenance building
27 located in Champaign County. He said that the proposed condition requires that the Zoning
28 Administrator has verified that informational signs have been erected at each wind farm accessway
29 as follows: (a.) the purpose of the signs shall be to publicize the telephone number of the wind farm
30 complaint hotline required by 6.1.4 A; and (b.) the minimum size of each sign shall be 2 feet by 2
31 feet. He said that the condition would not require concerned landowners to leave Champaign County
32 to obtain the hotline number to call in their complaint. He said that the Board can require the
33 number of signs required in the project area.

34
35 Mr. Hall stated that attached to the Supplemental Memorandum dated September 29, 2011, is a
36 revised map dated September 21, 2011, indicating the Conservation Recreation Zoning District and
37 Incorporated Municipality Setback Compliance. He said that the map indicates the turbines and
38 wiring and it is clear that no part of either of those are within either of those separations. He noted

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1 that the Board does not have a copy of the County Highway Agreement to review and Mr. Blue is not
2 present tonight because he cannot distribute a copy of the draft agreement.

3

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

5

6 Mr. Thorsland requested that Mr. Blazer or Mr. Leuchtman address the concerns regarding the
7 salvage value and whether or not Champaign County is subordinate.

8

9 Mr. Leuchtman stated that when they go through their financing for a wind farm such as this their
10 lender requires a security interest for the turbines because they are the owners of the turbines. He
11 said that if the decommissioning was approached and they would have to go through that process the
12 lender would need to be first in line for the security interest to understand how to handle the
13 decommissioning of the project. He said that if the lender was behind Champaign County or some
14 other entity Invenergy would not be able to finance the project. He said that since the lender is the
15 first lender they would have the first interest which is not different than a bank that would hold a
16 mortgage on a home. He said that the bank would want to be able to foreclose on the house before
17 the County would foreclose on the house. He said that this is the way that it has worked in the
18 financial markets and the salvage for the County would be secondary. He said that since the lender
19 will be first in line for the security interest they will have the discretion to determine what is the best
20 course of action either removing the turbines or repowering and re-permitting, will be for Champaign
21 County and it provides them the ability to go through that rather than Champaign County stating that
22 they want the turbines decommissioned. He said that decommissioning may not be the best course
23 of action for extracting the most value for the turbines at hand.

24

25 Mr. Leuchtman stated that banks provide Letters of Credits for escrow accounts for cash accounts
26 but they do not provide FDIC insurance on a Letter of Credit. He said that in regards to the
27 Reclamation Agreement and the percentage, the 125% came back to Invenergy from the State's
28 Attorney's office therefore it was inserted into the draft. He said that they understand that the Board
29 does not have a signed road agreement for the County Highway for review for the reclamation and
30 they understand that the road agreement has to go before the County Board for approval. He said
31 that Invenergy is moving forward with the agreements and they are going to work through any issues
32 with the County Board. He said that it is obvious that they will not have a special use permit in place
33 until those issues are finalized.

34

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

36

37 Mr. Thorsland asked if staff had any questions for Mr. Leuchtman.

38

39 Mr. Hall asked Mr. Leuchtman if there was a problem early in the project and the turbines were still

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1 all pristine and it is a good functioning wind farm would it be possible that someone with resources
2 may take over the wind farm. He asked if the financiers would be motivated to find someone to take
3 over the wind farm and carry on in case something happens to Invenergy.
4

5 Mr. Leuchtmann stated absolutely. He said that if a project has a power purchase agreement for 20
6 years that security would be an attractive investment for another financier and they would not come
7 in and tear it down just because Invenergy is not operating the wind farm any more. He said that
8 wind farm will still be a power plant that will be attractive to financiers and investors. He noted that
9 the security interest has nothing to do with the Letters of Credit or escrow account that would be
10 associated with this and that section only has to do with the salvage value and the turbines. He said
11 that the Letter of Credit will still be in the name of Champaign County and the escrow account is still
12 in Champaign County's name and that can be drawn upon with a bank. He said that if the
13 abandonment comes to fruition what happens is that the County will take the draw request to the
14 bank and if the abandonment is proven the money is dispensed.
15

16 Mr. Hall stated that it depends on how much money there is without the salvage value of just the
17 turbines or everything.
18

19 Mr. Leuchtmann stated that the amount takes into account what the decommissioning report from the
20 engineers has indicated and other issues to get the project going. He said that that is why they have
21 always said that it is a net profit when the salvage value is included. He said the Letter of Credit is
22 included in the total amount of decommissioning costs because it is a net positive. He said that it is
23 more than those costs because it covers those other issues but some of that is what they want to
24 present to the ZBA and be able to discuss with the County Board so that something can be agreed to.
25 He said that they know that they are not going to have a signed Reclamation Agreement at this
26 meeting but they would like to be able to agree to some terms that are going to be agreeable to the
27 Board, themselves and comply with the Zoning Ordinance.
28

29 Mr. Hall clarified that the State's Attorney was not recommending 125% but it was only a question.
30 He said that he does not want the Board to believe that the State's Attorney recommended 125%.
31

32 Mr. Passalacqua stated that the County has people in front of them with respect to salvage value
33 which in Invenergy's figures is in excess of 80% of the decommissioning expense.
34

35 Mr. Leuchtmann stated that he does not have that information in front of him.
36

37 Mr. Passalacqua stated that the spreadsheet indicates that the expense for decommissioning is
38 \$5,692,500 and the salvage value is \$4,863,060 which leaves a base decommissioning expense, after

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1 salvage value, of \$829,440. He said that 80% of these numbers is salvage value and there are
2 financiers and debtors in front of the County for the \$829,440.

3
4 Mr. Leuchtmann stated yes.

5
6 Mr. Passalacqua asked if the Letter of Credit and escrow account will only amount to \$829,440 or
7 \$5,692,500.

8
9 Mr. Leuchtmann stated that the Letter of Credit and escrow account would be for the \$829,440 times
10 the financial assurance that is finalized in the Reclamation Agreement.

11
12 Mr. Passalacqua asked if the Letter of Credit would apply if the wind farm becomes obsolete and
13 Invenergy was still a viable company.

14
15 Mr. Leuchtmann stated yes. He said that there is a list in the Reclamation Agreement of how it gets
16 abandoned.

17
18 Mr. Passalacqua stated that he is aware of the list but the Letter of Credit is based on the fact that
19 Invenergy is still building wind farms and somehow making money. He said that if Invenergy is
20 gone then the Letter of Credit is worthless.

21
22 Mr. Leuchtmann stated no, because the Letter of Credit is with a bank and not with Invenergy. He
23 said that they are the ones that have to vie for the Letter of Credit and not Invenergy. He said that for
24 those Letters of Credit it depends on the bank and the institution but Invenergy has to put up the
25 collateral to get that kind of assurance and credit.

26
27 Mr. Passalacqua stated that the money exists whether Invenergy does or not.

28
29 Mr. Leuchtmann stated yes.

30
31 Mr. Thorsland asked the Board if there were any additional questions for Mr. Leuchtmann and there
32 were none.

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

35
36 Mr. Hall stated that he will do everything he can to make sure that the record is as clear as possible
37 regarding the Reclamation Agreement. He said that when the County Board discussed the wind farm
38 amendment there was a concern that a wind farm company could go bankrupt and the Letter of
39 Credit would not be used until it was too late and become void before the County could do anything.

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1 He asked Mr. Leuchtmann if he is indicating that such an occurrence is impossible.

2
3 Mr. Leuchtmann stated that he is not saying that anything is not possible but the Letter of Credit is
4 with a bank and not with Invenergy. He said that the question was if Invenergy went bankrupt would
5 the Letter of Credit still be viable. He said that under the terms of the Letter of Credit it gets
6 renewed or it exists for a term of one year, three years or five years and is determined when the
7 project is put into operation. He said that if Invenergy was bankrupt the Letter of Credit would still
8 exist and that is based on the way that the Letter of Credit is written.

9
10 Mr. Hall stated that the Reclamation Agreement requires that the County be notified if Invenergy
11 would file a notice of bankruptcy. He asked if such notice was filed and the County was notified
12 does the Letter of Credit stay good and how long does the County have to draw against the Letter of
13 Credit once Invenergy has begun bankruptcy proceedings.

14
15 Mr. Leuchtmann stated that he does not know.

16
17 Mr. Hall stated that this information would be good for the Board to know.

18
19 Mr. Blazer stated that one of the fundamental purposes of a Letter of Credit with a third party rated
20 bank is to protect the County from the potential effects of a bankruptcy. He said that routinely the
21 filing of a bankruptcy petition by the underlying obligated party, Invenergy, is itself a triggering
22 event for the Letter of Credit. He said that when a bankruptcy petition is filed by the party who
23 provided the Letter of Credit, the Letter of Credit does not lose any validity because the Letter of
24 Credit is between the bank and the County and Invenergy is out of the picture. He said that when the
25 bankruptcy is filed that event actually triggers the County's ability to draw on the Letter of Credit
26 and it doesn't void it, limit it or affect it and it is meant to protect the party that you intended to
27 protect from the possibility that the person that you entered the agreement with goes out of business.

28
29 Mr. Passalacqua asked what funds the Letters of Credit.

30
31 Mr. Blazer stated that the bank is paid a percentage of the face value of the Letter of Credit. He said
32 that they are also secured just like any other debt instrument. He said that the lender is secured but at
33 the end of the day from the County's perspective they don't care because it is the bank's problem.
34 He said that if the bank pays on the Letter of Credit they have to go chase whoever they need to
35 chase to get paid.

36
37 Mr. Hall stated that another concern from the County Board was the solvency of the bank itself. He
38 asked what happens if the bank goes under and would the County receive any prior notice so that the

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1 County can inform Invenergy that they need to provide a new Letter of Credit.

2

3 Mr. Blazer stated that under the bankruptcy code when any entity files a bankruptcy petition they are
4 required to notify all interested parties of the filing of that petition which would include the
5 beneficiaries of Letters of Credit. He said that under the Federal Bankruptcy Code the County would
6 receive notice if JPMorgan/Chase filed bankruptcy and the County would have the opportunity to go
7 to Invenergy and notify them that they have to find a new a replacement immediately. He said that in
8 event of potential insolvency or insecurity with the Letter of Credit the code would give the County
9 rise to go to Invenergy and tell them to replace it.

10

11 Mr. Courson asked if the loans from the third party banks are loans that are generally guaranteed by
12 the federal government to be repaid.

13

14 Mr. Blazer stated that a Letter of Credit is not a loan.

15

16 Mr. Courson stated that he is talking about the banks which are investing in Invenergy and will be on
17 the hook for the Letters of Credit.

18

19 Mr. Blazer stated that the financing for the construction of the project is secured principally by the
20 Power Purchase Agreement which has now been signed. He said that whoever the group of banks
21 that ends up financing the construction of the project their security is the 20-year Power Purchase
22 Agreement and to a lesser extent the salvage value of the turbines.

23

24 Mr. Courson stated that they are not typically backed up by the federal government and in case there
25 is a bankruptcy they will not guarantee the loans.

26

27 Mr. Blazer stated no. He said that the primary thing that the banks are looking for is that there is an
28 agreement worth a significant amount of money over a 20-year period which then allows them to
29 amortize the cost of the financing over that same period. He said that the government does not get
30 involved.

31

32 Mr. Passalacqua asked if the Board is privy to the Power Purchase Agreement or does the Board just
33 get to know that you have one.

34

35 Mr. Blazer stated that unfortunately they are not there yet. He said that the Power Purchase
36 Agreement has been signed but one of the issues that the power company wants to see is Invenergy's
37 ability to move forward before the agreement can go public. He said that he wished he could share it
38 with the Board but he can't.

39

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1 Mr. Thorsland asked if the Board or staff had any further questions for Mr. Blazer and there were
2 none.

3
4 Mr. Thorsland asked if the Board or staff had any further questions for Mr. Leuchtmann and there
5 were none.

6
7 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Leuchtmann.

8
9 Mr. Thorsland reminded the audience that they can only ask questions regarding Mr. Leuchtmann's
10 testimony.

11
12 Mr. Herb Schildt stated that he has two questions. He said that his first question is in regards to the
13 Letter of Credit and the second question is in regard to previous testimony. He asked Mr. Thorsland
14 if he is allowed to ask both questions at this time.

15
16 Mr. Thorsland stated that he would prefer if any questions referred to Mr. Leuchtmann's testimony
17 tonight.

18
19 Mr. Schildt asked Mr. Thorsland when he will be able to ask the second question.

20
21 Mr. Thorsland stated that he can bring Mr. Leuchtmann up later during the meeting for the second
22 question.

23
24 Mr. Schildt asked Mr. Leuchtmann if the Letter of Credit renews periodically.

25
26 Mr. Leuchtmann stated that it depends on the way that the Letter of Credit is written.

27
28 Mr. Schildt asked if Invenergy's finances at the time of renewal could be such that the Letter of
29 Credit could be denied therefore leaving the County without the ability to have a Letter of Credit
30 even though Invenergy sought to obtain one.

31
32 Mr. Leuchtmann stated that he is unable to answer Mr. Schildt's question. He said that the Letter of
33 Credit is based on this project therefore if the project is successful the Letter of Credit would be
34 renewed.

35
36 Mr. Schildt asked Mr. Leuchtmann if Invenergy has the ability to demand the Letter of Credit or is it
37 at the discretion of the bank.

38

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1 Mr. Leuchtmann stated that Invenergy puts up collateral and they pay to have a Letter of Credit in
2 place.

3
4 Mr. Thorsland informed Mr. Schildt that he will allow his second question at this time.

5
6 Mr. Schildt stated that his second question is in regards to the separation distances from a non-
7 participating dwelling. He said that Section 6.1.4 C.2 of the Champaign County Zoning Ordinance
8 reads as follows: At least 1,200 feet separation from the exterior above-ground base of a wind farm
9 tower to any existing non-participating dwelling or principal building provided that the noise level
10 caused by the wind farm at the particular building complies with the applicable Illinois Pollution
11 Control Board regulations and provided that the separation distance meets or exceeds any separation
12 recommendations of the manufacturer of the wind turbine used on the wind farm tower. He asked
13 Mr. Leuchtmann to indicate where in their Special Use Permit Application the data could be found
14 which indicates the recommended separation distance for the GE 1.6-100 turbine and documents that
15 Invenergy meets or exceeds that separation.

16
17 Mr. Leuchtmann asked Mr. Schildt if the Ordinance is requesting a certain distance.

18
19 Mr. Schildt stated yes.

20
21 Mr. Leuchtmann stated that the distance is defined by what the noise requirements are for the County
22 or State. He said that GE does not have a published setback distances from their turbines.

23
24 Mr. Schildt asked if Invenergy documented in their application that GE does not have a published
25 separation distance.

26
27 Mr. Leuchtmann stated no.

28
29 Mr. Schildt asked how the County will know that Invenergy is meeting the requirement.

30
31 Mr. Leuchtmann stated that if there are no published separation distances from the manufacturer then
32 there is nothing to comply with.

33
34 Mr. Schildt stated that if it is not documented in the application then how can the County obtain that
35 information.

36
37 Mr. Thorsland stated that Mr. Leuchtmann answered Mr. Schildt's question although he assumes Mr.
38 Schildt is not satisfied with the response. He said that GE does not recommend a specific separation
39 and the Ordinance indicates any separation and in lieu of that we have a sound distance.

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1
2 Mr. Hall stated that he appreciates Mr. Schildt's concern and what would be good for the record is a
3 copy of the published recommendations. He said that no manufacturer sends out any product
4 without a published and printed set of recommendations for that product.

5
6 Mr. Leuchtmann stated that he does not know how to prove that GE does not have any published
7 recommendations.

8
9 Mr. Hall stated that a copy of any recommendations from GE or a letter from someone at GE in the
10 turbine manufacturing division who could state that GE does not have any minimum separation
11 recommendations and such separations are up to the governing jurisdiction. He said that the County
12 has to have this documentation unless Mr. Leuchtmann has the authority to state that the GE 1.6-100
13 turbine is a new turbine and there are no recommended separation distances.

14
15 Mr. Leuchtmann stated that at this point he does not have that.

16
17 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Leuchtmann at this
18 time and there was no one.

19
20 Mr. Passalacqua asked Mr. Leuchtmann if the UL approval has been issued because it was
21 previously stated that it would be issued prior to the start of the project.

22
23 Mr. Leuchtmann stated no and a waiver has been requested regarding that issue.

24
25 Mr. Passalacqua asked that he understands that a waiver has been requested but has the turbine been
26 certified by UL.

27
28 Mr. Leuchtmann stated no but GE is currently going through the certification process.

29
30 Mr. Hall stated that the County is not waiting for a UL approval. He said that the Ordinance requires
31 certificates of design compliance from Underwriters Laboratories ("UL") or equivalent third party
32 and he hopes that the Board does not leave it up to him to determine if it is equivalent. He said that
33 Mr. Leuchtmann did mention who they are going to obtain the certification from and he suggested
34 that such information be entered into the record. He said that he recommends that Mr. Leuchtmann
35 indicates, for the record, the identity of the third party.

36
37 Mr. Leuchtmann, stated that the third party is TUV NORD which is a German company who goes
38 through the design compliance methodology using the International Electrical Code for the

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1 compliance information. He said that TUV NORD has the ability to go through the proper
2 certification for the turbines and that is the one that is used. He said that since TUV NORD is
3 following the proper International Electrical Code for that certification process then that is equivalent
4 design compliance.

5
6 Mr. Hall asked Mr. Leuchtmann if they believe it is an equivalent design compliance because they
7 are both using the same code.

8
9 Mr. Leuchtmann stated yes.

10
11 Mr. Thorsland asked if there were any additional questions for Mr. Leuchtmann and there were none.

12
13 Mr. Thorsland called Mr. Michael Jarboe to testify.

14
15 Mr. Michael Jarboe, who resides at 2792 CR 2400N, Penfield, Illinois, stated that he and his wife
16 reside in Section 33 of Compromise Township which is in the middle of this project. He said that he
17 would like to address Waiver #2 which waives the standard condition of 6.1.4 a.2.(b) that requires a
18 wind farm to be a minimum of one mile from the CR District to allow wind farm wiring to be less
19 than one mile from the CR District. He said that the CR area is located at 2682 CR 2400N which is
20 about two miles northeast of Royal and is privately owned farmland. He said that the he does not
21 remember the CR District, as shown on Attachment B of the Supplemental Memorandum dated
22 August 17, 2011, or the woods being that large because the southern two-thirds of the property has
23 been farmland for the past 50 years. He said that the map is somewhat outdated because it does not
24 show reconfigured CR 2200N which was done about 45 years ago. He said that the CR District, as
25 indicated on the map, is such a large area and it restricts him from being included in the project.

26
27 Mr. Jarboe submitted a photograph of the land that is included in the CR District. He said that the
28 photograph indicates the bridge at CR 2682 and CR 2400N. He said that there are a few trees which
29 may be left over from the time when the land was heavily wooded but the rest of the property is
30 reclaimed farmland. He said that for the County to call this area CR is a bit of a stretch and he does
31 not know how hard it would be to rezone but it is his belief that the setback could be less for that
32 area. He said that the valley formed by the stream is a southwest facing valley and he believes that
33 high yielding winds would come up that valley. He said that the photograph indicates a residence
34 which is owned by Sam Buck. He said that the wooded area was taken out and the land is in
35 cultivation and the stream was channelized therefore it looks more like farmland anymore than CR.

36
37 Mr. Jarboe stated that the one-mile setback area is 3.14 square miles or over 2,000 acres therefore at
38 80 acres per turbine there is a potential of 25 turbines in that area at \$14,400 per turbine in taxes
39 there is potential of \$360,000 per year in new taxes and our schools and townships will receive about

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1 half of that. He said that he realizes that there will not be that many turbines in that area but at one
2 time there were three turbines proposed in the area and according to the map many of the turbines are
3 on the edge of that so it is hard to tell what could be there with a smaller setback. He said that a
4 more logical setback would be 1,000 feet and if that is not possible perhaps the Board could consider
5 stating that any proposed turbines and wiring in the CR District would most likely be approved by
6 the Board. He said that all of this is too late for Phase 1 but if there is a proposed Phase 2 the
7 landowners in the CR area would like to be considered for the turbines because this is a once in a
8 lifetime opportunity to get some of these turbines and for the taxing districts. He said that most of
9 the people in the area are excited about the project, especially about the funding for the schools. He
10 said that Armstrong School District might include the entire project area and the school needs to be
11 replaced and this project could allow that construction to happen.

12
13 Mr. Jarboe stated that he would equate the turbines to oil wells because they are harvesting the
14 natural energy source from our land with the added benefit of being non-polluting. He said that oil
15 and wind harvesting are a little inconvenient but the positive always outweighs the negatives. He
16 said that at all of the hearings that he has attended there has always been a parade of nay-sayers but
17 this is proven technology. He said that he visited California in 1999 and there was a wind farm of
18 1,500 turbines between Redlands and Palm Springs and it was very impressive and he knows of no
19 complaints and with the wind farm being in California there would have been plenty if the
20 complaints were warranted. He said that the wind farm should be given a chance and during
21 negotiations the County should get all it can but don't kill the project.

22
23 Mr. Thorsland asked the Board if there were any questions for Mr. Jarboe.

24
25 Mr. Passalacqua asked Mr. Jarboe if the property indicated in the photograph was his property.

26
27 Mr. Jarboe stated no. He said that the photograph indicates the land located in the CR District. He
28 said that he was standing on County Highway 22 facing to the south and looking at how the land that
29 is included in the CR District appears today.

30
31 Mr. Passalacqua asked Mr. Jarboe if his property is included in the project area.

32
33 Mr. Jarboe stated that only part of his property is located in the project area. He said that he lives in
34 the south half of Section 33 which is only one mile down the road therefore the one-mile setback
35 basically takes out his whole farm. He said that he has another farm over by where his daughter lives
36 and there is a proposed turbine on that farm. He said at one time there was a turbine proposed near
37 his farm and at the time he was not aware of the setback requirement. He said during their first
38 meeting at Rantoul they indicated it on the map and he could not believe it and thought that they had

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1 it drawn incorrectly because there is a small patch of woods south of Royal. He said that he assumed
2 that the error would be caught although he should have been more attentive on this. He said that
3 there has been some discussion about placing wires in the CR area and he does not believe that
4 anyone would have any issues with that placement.

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

7
8 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Jarboe. He reminded the
9 audience that they can only ask questions regarding Mr. Jarboe's testimony.

10
11 Ms. Kim Schertz asked Mr. Jarboe to indicate who owns the land in the CR District.

12
13 Mr. Jarboe stated that he is not 100% sure but he believes that Mr. Bill Britt owns the land.

14
15 Ms. Schertz asked Mr. Jarboe if he had positive things to say about the wind project near Palm
16 Springs.

17
18 Mr. Jarboe stated yes and it was very impressive to see 1,500 turbines.

19
20 Ms. Schertz asked Mr. Jarboe if this is the type of project that should be located in his area.

21
22 Mr. Jarboe stated that if there were no complaints in the Palm Springs area then he would not
23 imagine that there would be any complaints here either.

24
25 Ms. Schertz asked Mr. Jarboe if it is possible that the reason why there were no complaints in the
26 Palm Springs area is because there are no turbines within one mile of a residence due to enacted
27 setbacks.

28
29 Mr. Thorsland informed Ms. Schertz that she is asking Mr. Jarboe to speculate.

30
31 Ms. Schertz stated that Mr. Jarboe speculated that there were no problems with the Palm Springs
32 wind project and the Board allowed it.

33
34 Mr. Thorsland stated that Mr. Jarboe's statement was part of his testimony and not cross-
35 examination.

36
37 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Jarboe and there was
38 no one.

39

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1 Mr. Thorsland called Ms. Deanne Sims to testify.

2
3 Ms. Deanne Sims, who resides at 2765 CR 2500N, Penfield, Illinois, stated that on Page 18, Line 5,
4 of the September 8th minutes indicated that she stated that the trucking facility was one-half mile
5 from her home although it is actually three miles from her home. She said that also on Page 18, Line
6 9 of the September 8th minutes indicated that she stated that the bridge is also one-half mile from her
7 home although it too is actually three miles from her home.

8
9 Mr. Thorsland stated that staff will correct the minutes.

10
11 Ms. Sims stated that the new map dated September 21, 2011, only indicates 20 of the 30 proposed
12 turbines in Champaign County and is only to show the CR District and Royal setback compliance.
13 She said that the turbines on the map that was included in Invenegy's application appear to have
14 been moved or eliminated and therefore are there still 30 turbines proposed in Champaign County.

15
16 Mr. Thorsland stated that later during the meeting he will call Mr. Leuchtmann back to the stand and
17 Ms. Sims can ask Mr. Leuchtmann to indicate the number of turbines that are proposed for
18 Champaign County.

19
20 Ms. Sims stated that at the last hearing Mr. Leuchtmann stated that the Ordinance required Invenegy
21 to put the money into an escrow account although such a requirement would pose a financial
22 hardship on their company. She said that if an escrow account for 30 turbines would pose a financial
23 hardship what will happen for all 134 turbines in the entire project.

24
25 Ms. Sims stated that the Vermilion County website has a map which indicates the entire project area
26 and it is worth reviewing because of all the maps that she has seen only that map indicates the 30
27 turbines proposed in Champaign County.

28
29 Mr. Thorsland asked the Board if there were any questions for Ms. Sims and there were none.

30
31 Mr. Thorsland asked if staff had any questions for Ms. Sims.

32
33 Mr. Hall stated that he is not sure if Ms. Sims was present when he discussed the proposed condition
34 requiring a 2 feet by 2 feet informational sign publicizing the hotline telephone number at each
35 accessway for the wind farm. He asked Ms. Sims if she believes that the signs would be useful and
36 is there only one prominent location where the sign should be posted. He asked Ms. Sims if posting
37 the signs at every accessway is required.

38

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1 Ms. Sims stated that she does not know if a sign is required at each accessway but a few would be
2 good although one would not be sufficient. She said that if there is inclement weather someone
3 could program the number in their phone.

4
5 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Sims and there was no
6 one.

7
8 Mr. Thorsland asked Mr. Leuchtmann to come back to the witness stand. He asked Mr. Leuchtmann
9 to address Ms. Sims' question regarding the number of turbines proposed for Champaign County.

10
11 Mr. Leuchtmann stated that since the application was submitted a few turbines have been moved for
12 adjustments based on landowner input. He said that they are looking to permit the parcels included
13 in the special use permit and the locations of the turbines would most likely stay where they are and
14 the exact location completely identified during application for the Zoning Use Permit. He said that
15 turbines #20 and #21 were the two main turbines which were moved to a different parcel due to the
16 landowner's request. He said that in terms of other adjustments they have been slight for the overall
17 region.

18
19 Mr. Thorsland asked Mr. Leuchtmann to indicate the overall number of turbines proposed in
20 Champaign County.

21
22 Mr. Leuchtmann stated 30 turbines are proposed for Champaign County.

23
24 Mr. Thorsland asked Ms. Sims if she had any further questions for Mr. Leuchtmann and she
25 indicated that she did not.

26
27 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Leuchtmann regarding
28 his brief testimony and there were none.

29
30 Mr. Thorsland called Ms. Sherry Schildt to testify.

31
32 Ms. Sherry Schildt, who resides at 398 CR 2500N, Mahomet, Illinois, stated that she had a few
33 questions for Mr. Hall prior to giving testimony. She said that included on Page E-4, Item (2) of the
34 Supplemental Memorandum dated September 22, 2011, is the language: this is the first wind farm
35 reviewed under the provisions of 6.1.4 and no other wind farm will have that burden. She said that
36 this language is also included on Page E-9 and E-14. She asked Mr. Hall to clarify what this
37 language means.

38
39 Mr. Hall stated that on Page E-4 is the waiver for the signed road agreements and in this process it

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1 has been discovered that the Ordinance is not aware of the protocol regarding signatures for
2 agreements or it anticipates a wind farm application sitting at the ZBA while the County Road
3 Agreement goes to the County Board for approval and returns to the ZBA. He said that at a previous
4 hearing an alternative arrangement was discussed that makes more sense at this time therefore he
5 believes that this issue is a burden that he hopes can be corrected and he also hopes that no other
6 wind farm has this glitch.

7
8 Ms. Schildt asked if there is a decision made at this hearing then the interpretation of this language
9 would be that the decision made at this hearing would set precedence for decisions at all future
10 hearings.

11
12 Mr. Hall stated that every decision that the ZBA makes can set precedence but it is fair to say that the
13 ZBA has never been presented with two identical cases but there is always that concern. He said his
14 concern as the Zoning Administrator is that he considers this case as a dry run. He said that there are
15 a lot of things that we need to correct in the adopted wind farm amendment and we know about those
16 corrections now because Invenergy took it for a ride and we found out that some things don't work
17 very well.

18
19 Ms. Schildt asked if precedence would be set for future hearings if the waiver is granted regarding
20 the need not to have signed road agreements before the end of this ZBA hearing.

21
22 Mr. Hall stated that the whole issue of precedence is pre-supposed upon having two identical cases
23 and it is physically impossible to have two identical cases but the concern about precedence still
24 exists.

25
26 Ms. Schildt asked if another wind company came to Champaign County and requested an identical
27 waiver would the decision from this Board for this hearing set a precedence for the decision at that
28 future hearing.

29
30 Mr. Hall stated that he cannot answer Ms. Schildt's question.

31
32 Ms. Schildt stated that if that were the case then this hearing is heavily weighted because any
33 decisions that are made with this pending case will have implications county wide for future wind
34 farm cases.

35
36 Ms. Schildt stated that Waiver #4 (originally #8) requests that the noise measurement be taken at the
37 residence rather than any part of the residence's yard. She said that Page 6, Lines 9 thru 11 of the
38 September 8, 2011, minutes indicates the following testimony from Mr. Blazer: the Ordinance

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1 requires compliance with the IPCB noise regulations and those regulations require the measurement
2 to be at the residence and not at the property line. Ms. Schildt stated that she would take exception to
3 that statement because the code that the Ordinance requires compliance with is the IPCB regulations
4 35 *Illinois Administrative Code* Subtitle H: Noise Parts 900, 901, 910. She said that Part 901.102,
5 Sound emitted to Class A land, states that the noise cannot exceed any allowable octave band sound
6 pressure levels specified in the following table, when measured at any point within such receiving
7 Class A land. She said that the code does not say anything about a residence but Class A land and
8 that is for both daytime and night time. She said that 910.105 of the IPCB Code regarding
9 measurement techniques and site selection states that measurements may be taken at one or more
10 microphone positions within the appropriate receiving land. Measurement instruments must be set
11 up outdoors within the boundaries of the receiving land for the purpose of determining whether a
12 noise source is in compliance with *Illinois Administrative Code* 901. She said that it doesn't say that
13 the measurement must be taken at the residence therefore she would say that Mr. Blazer's assertion is
14 inaccurate unless she has missed something in the code and Mr. Blazer can supply additional
15 testimony as to where that is requirement is specified.
16

17 Ms. Schildt stated that the memorandum dated August 26, 2011, from Mr. Blazer to Mr. Hall
18 discusses the *Knox v Turris Coal Co.* case. Mr. Blazer's memorandum states that the IPCB
19 confirmed the foregoing in the *Knox* case in which the IPCB held that a farm dwelling was Class A
20 land, but the remainder of the property was Class C and for ease of reference, he has highlighted
21 some of the relevant portions of the opinions. Section 6.1.4 I of the Champaign County Wind Farm
22 Ordinance require compliance with the applicable IPCB regulations. Under the circumstances, a
23 requirement of measurement from the parcel boundary, rather than at the residential land use, is
24 inconsistent with Illinois law and the IPCB regulations. Ms. Schildt stated that she also takes
25 exception to Mr. Blazer's statement because the Ordinance doesn't say that the measurement has to
26 be taken at the land boundary but does state that the measurement has to comply with the IPCB
27 regulations. She said that the classification of the land is not up to the County to determine. She
28 said that since the whole argument is based on the *Knox* case she would like to read a few items from
29 that complaint. She said that there were two parts to the complaint and the Knox family had a
30 complaint against the coal company that the fan was too loud and violated nuisance and numeric
31 standards. She said that the Board's findings that no noise violations occurred were based on the fact
32 that the noise measurements were made at a pond and not at the house or the yard. She said that
33 Page 11 of the opinion indicates the following: The north edge of the duck pond is located
34 approximately 345 feet south of the house. The wharf where the measurements were taken is
35 approximately 393 feet south of the house and between the duck pond and the complainants'
36 residence are two steel sheds that Mr. Knox uses for storage and repair of machinery and farm
37 equipment and supplies. Mr. Knox is compensated financially for the welding work he does out of
38 one of the sheds and the Board finds that the sheds are properly classified as Class C used for
39 agricultural and related activities. Ms. Schildt stated that in this case Class C land, which would be

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1 the turbine, can do whatever it wants to do to other Class C land. Ms. Schildt continued to read the
2 opinion as follows: the duck pond is effectively separated from the complainants' residence by the
3 sheds. Ponds are not specifically provided for in the SLUCM code, however, the classification that
4 best describes the duck pond is code 939, other water areas therefore the Board finds that the duck
5 pond is Class U. The noise measurements upon which the alleged violations were based were taken
6 at the duck pond, an unclassified property. Since the duck pond is not a classified property, the
7 alleged numeric violations do not apply. Accordingly the Board finds no numeric violations as
8 alleged in the complainant. Ms. Schildt stated that the opinion stated nothing regarding whether the
9 house and yard are Class A or whether the house is Class A.

10
11 Ms. Schildt submitted a copy of the partial transcript of the *Knox v Turris Coal Co.* hearing as a
12 Document of Record. She said that the complainants had a noise expert, Gregory Zach, who was
13 being examined by the attorney for the complainant. She said that Gregory Zach is retired from the
14 Illinois EPA and now has his own consulting service and consults for wind companies. Mr. Zach
15 testified that he has been involved in thousands of cases and has testified in hundreds of hearings.

16
17 Ms. Schildt stated that she hopes that the Board will read the transcript because there is a lot of
18 pertinent information enclosed. She said what exactly Class A land is and what it isn't was never
19 decided in this case therefore it is completely irrelevant to the case before this Board tonight. She
20 read that cross examination of Mr. Zach by the attorney as follows: He is not trying to be redundant
21 but there are a few things that I must find out. Have you ever indicated to Wally or someone else at
22 the mine that where you are talking about defining a residential area that generally they are given a
23 100 foot buffer around the home. Mr. Zach stated that he may have indicated something along those
24 lines but he probably used the standard example that he uses for a situation involving a farm because
25 that question comes up all of the time because people ask me if there are one thousand acres where is
26 the measurement taken. He said that he would usually say that the measurement is taken within
27 about 100 feet of the residence and the example that he would give them is about a farmer who was
28 complaining about a power plant and he wanted a measurement taken at his mailbox, which was one-
29 half mile from his house but still on his land. And he, obviously, spent very little time at the mailbox
30 and it was a little unreasonable for him to want the measurement at the mailbox, close to the power
31 plant, when he was really being disturbed in the area around his residence. Now there have been a
32 number of cases where the distance may be considerably more than 100 feet and he could think of
33 another case where a fella had, not really a farm, but he had four or five acres and a garden are there
34 that was his hobby. It was closer to the noise source than his home was and in that particular case
35 the measurements were taken at the garden because he was able to establish that the spent a
36 significant amount of time per week at the garden. Ms. Schildt stated that there is more testimony
37 regarding Class A and Class C land and nothing was decided definitively as to where Class A land
38 begins and ends.

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Ms. Schildt stated that granting of the waiver will put the County in the position of going beyond their jurisdiction because the County does not have the authority or responsibility to classify land or waive a requirement of Illinois law. She said that the burden of proof as to whether someone’s back yard is Class A land or Class C land should be on the wind developer and not the County. She requested that the Board not grant the waiver.

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

Mr. Thorsland asked if staff had any questions for Ms. Schildt.

Mr. Hall stated that he agrees with Ms. Schildt but he would like to know what Ms. Schildt thinks about the fact that we have a defective Ordinance because it weighs too heavily on another defective code. He said that he would recommend that the Board approve the waiver because even if we wanted to enforce the noise standard at the property line we do not know what the noise levels are at the property line therefore the whole noise study would have to be started all over again. He asked Ms. Schildt if she had done analysis to determine how much of the noise for any of the octave bands would be reduced over a distance of 1,200 feet and then compare that to how it would be reduced over a distance of 100 feet.

Ms. Schildt stated that she has not completed that math but she would say that it doesn’t matter because Class A land is Class A land and the County cannot be in the position of determining whether it is or not. She said that the wind developer should have the burden of making that determination because it is of no business to the County.

Mr. Hall asked Ms. Schildt that given the County, in its Ordinance, has accepted the responsibility for enforcing a set of regulations therefore doesn’t that give the County some measure of discretion regarding this issue.

Ms. Schildt stated that if the County wants to take that responsibility on then the County is going to be liable if the landowner states that their four acres around their house is residential and they may file a lawsuit against the County. She said that the Zoning Ordinance is in place to protect the existing landowners, their property values and their quiet enjoyment of their property and the waiver seems to be bending over backwards to instead help out a company that is coming in from the outside and it doesn’t seem right. She said that the County should give first concern to the people who have been living in the County for twenty or thirty years and have paid their property taxes, been good citizens, etc. She said that there is the question of the law and the law is that Class A property cannot receive a certain amount and where that begins and ends isn’t the County’s purview, in her opinion.

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1
2 Mr. Hall thanked Ms. Schildt.
3
4 Mr. Thorsland asked the Board and staff if there were any additional questions for Ms. Schildt and
5 there were none.
6
7 Mr. Thorsland asked the audience if they desired to cross examine Ms. Schildt and there was no one.
8
9 Mr. Thorsland called Ms. Kim Schertz to testify.
10
11 Ms. Kim Schertz, who resides at Hudson, Illinois, submitted a Document of Record titled, "*Eight*
12 *Million Dollars-What Each wind Job in Illinois Costs Taxpayers.*" Ms. Schertz stated that the
13 submitted document reinforces Mr. Ingram's testimony regarding job creation for each wind job in
14 Illinois. She said that in the case of the Camp Grove Wind Farm an environmental attorney filed a
15 *Freedom of Information Act* request to DECO. She said that there have been wind farms in Illinois
16 since 2001 or 2002 and if they promise jobs they are required to file a quarterly report saying what
17 those jobs were and the submitted document is a four page press release that the environmental
18 attorney released. Ms. Schertz stated that in the case of Camp Grove it was the worst one because
19 for the amount of federal subsidies received they created four or five permanent jobs and that cost
20 was \$8 million dollars per job. She said that the Chinese firm which is building a wind farm in Lake
21 County is promising 12 jobs which is a bargain because those jobs will cost \$5 million each but if
22 they follow the track record of every other wind farm in Illinois averaging 3 to 6 jobs those jobs will
23 be \$10 million dollars each.
24
25 Ms. Schertz stated that regarding the Letter of Credit, everything that she has heard Mr. Leuchtman
26 state tonight is that it is up to Invenegy to get the renewal on the Letter of Credit. She said that Mr.
27 Leuchtman stated that, if we put the money in the bank or if we are still doing well we will get that
28 renewed. She asked what happens if you are at the end of the three-year Letter of Credit
29 commitment and only one week is left on it when Invenegy files for bankruptcy. She asked the
30 Board to step back and think about what is being proposed because she feels like she needs wading
31 boots to walk in to this room every night. She asked the Board how many contracts indicate what
32 will happen when the company goes bankrupt.
33
34 Ms. Schertz stated that Palm Springs is a prime example of better zoning than anything else that we
35 have here because they have fancy, multi-million dollar houses and they want to protect their citizens
36 therefore they enacted a one-mile setback from any residence. She said that the setback is why there
37 were no complaints but the problem was that the turbines were getting older and abandoned so
38 within the last five years they were forced to enact legislation for decommissioning. She said that

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1 Palm Springs is not a perfect picture.

2

3 Ms. Schertz stated that the noise is the number one issue and she has studied this for five years. She
4 said that this Board must protect its citizens and not let the wind companies push the Board over.
5 She said that if the Board grants 11 waivers it will become the law of the land and the next wind
6 company will threaten a lawsuit if the same advantages are not provided to them that was provided to
7 Invenergy. She said the 11 waivers will not just be in regard to this one wind farm but will be the 11
8 waivers for all wind farms which come to Champaign County.

9

10 Ms. Schertz stated that on Tuesday night she attended a seminar where Keith Shanks spoke on wind
11 turbine effects on wildlife and it was mostly about the bird and bat kill. She said that Mr. Shanks
12 reiterated that there are absolutely no noise studies done on the effect of animals and wildlife and this
13 is key to protecting your resident's use of their private property for livestock which is why the Board
14 needs to keep the waiver from the property line. She said that she has heard of llamas in the area and
15 she assumes that there are other animals that are used for recreational use and this is key and it is not
16 a matter that it is a bad ordinance therefore we need to bend over backwards to Invenergy and give
17 them what they want. She said that this will set precedence for the entire County. She said that she
18 has gone across the state and has participated in approximately 16 different zoning cases and
19 afterwards the citizens that the county did not protect are looking to move out of that county and are
20 looking for a county that is turbine free. She said that a study regarding economic development
21 should be done if Champaign County was the one county that did not have a wind farm because it is
22 absolutely amazing. She said that she does not believe that Greg Zach, a paid noise expert, should be
23 allowed to define for people in your county the definition of what their yard is because it is clear as
24 day that Class A is Class A and Class C is Class C. She said that any piece of ground with a
25 residence on it automatically becomes Class A and the measurement is supposed to be taken within
26 30 feet of the property line. She said that there is not enough room to put in these turbines therefore
27 they are wanting to take everybody's yard as their noise buffer and it is up to this Board to not let
28 them do that. She said that she is concerned about the bigger turbines coming in and what land mass
29 is going to be taken because at first they were saying 80 acres per turbine but she believes that this is
30 for 1.5 and 1.65 but she has recently heard numbers of up to 160 acres. She said that the Board
31 needs to ask what is the land mass that is going to be needed for the new sized turbines. She said
32 that she agrees with Ms. Schildt totally because the number one important issue is not allowing the
33 waiver. She said that if the Board approves a waiver which allows them to violate the IPCB
34 standards then the Board is setting a precedence that will never go back and the Board should not be
35 discussing this tonight. She said that this seems to be a rammed through job again tonight because
36 how many documents did staff receive within the last 24 hours that the Board hasn't had time to
37 review yet they want you to give a final decision tonight. She encouraged the Board to stand firm
38 and do their homework, not be bullied and pressured in to Invenergy's time line because this is going
39 to be in your County for the rest of your lives and the rest of your grandchildren's lives. She said

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1 that she has seen this full-court press in every county hearing in Illinois that she has attended and this
2 is how these bad laws are passed and she would encourage the Board to not let Invenergy do it.

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

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

7
8 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Schertz and there was no
9 one.

10
11 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
12 regarding this case tonight and there was no one.

13
14 Mr. Thorsland closed the witness register for tonight's meeting.

15
16 Mr. Thorsland stated that at this time the Board will recess for a five minute break.

17
18 **The Board recessed at 7:40 p.m.**

19 **The Board resumed at 7:47 p.m.**

20
21 Mr. Thorsland stated that the Board can review the waivers and the proposed conditions tonight
22 although he does not anticipate completing all of them tonight. He thanked the audience for being
23 brief with their testimony. He said that the Board has been fair to the witnesses and would like to be
24 as fair to the applicant in giving as much time as the Board can for review of the case. He asked the
25 Board if there were any questions regarding the proposed waivers and conditions.

26
27 Mr. Thorsland directed the Board to the Supplemental Memorandum dated September 22, 2011,
28 Page E-1. He read Waiver #1 as follows: Waive the standard condition of 6.1.4 D.1 (a) that requires
29 certificates of design compliance from Underwriters Laboratories ("UL") or equivalent third party.
30 He said that Mr. Leuchtmann indicated that the equivalent third part is TUV NORD and Mr.
31 Leuchtmann understands the operation cannot begin until the certificate of design compliance is
32 submitted.

33
34 Mr. Palmgren asked if the entire unit will be certified or just the generator.

35
36 Mr. Hall stated that "UL" does electrical kinds of certifications and a certain limited number of other
37 kinds of certifications. He said that the Ordinance requires a structural certification, by an Illinois
38 Professional Engineer, at the time of permitting and this certification which is the electrical design

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1 compliance with international standards.
2
3 Mr. Palmgren asked if there is a noise rating included.
4
5 Mr. Hall stated that the noise data was provided by GE to Tim Casey for the noise study.
6
7 Mr. Palmgren asked if the County had a copy of the relevant stamp.
8
9 Mr. Hall stated that the County could not afford them.
10
11 Mr. Thorsland asked Mr. Palmgren if he would like to ask Mr. Leuchtmann what TUV NORD will
12 be certifying.
13
14 Mr. Leuchtmann stated that the TUV NORD will be certifying design compliance for the entire
15 tower.
16
17 Mr. Passalacqua asked if Invenergy can begin operation prior to providing the setback specification
18 information from GE.
19
20 Mr. Thorsland stated no, Invenergy cannot begin operation until the documentation has been
21 provided.
22
23 Mr. Passalacqua stated that it was his understanding that the Board wanted to know if setback
24 specification information was available from the manufacturer and if it is he would like to review it.
25
26 Mr. Thorsland requested that Mr. Passalacqua remind him again prior to the end of this meeting so
27 that Mr. Leuchtmann can indicate if such information is available and if it is not explain why.
28
29 Mr. Thorsland stated that the Board will review the 4 required findings for Waiver #1. He read
30 required finding (1) as follows: The waiver, subject to a special condition, IS/IS Not in accordance
31 with the general purpose and intent of the Zoning Ordinance and WILL/WILL NOT be injurious to
32 the neighborhood or to the public health, safety, and welfare because the certificate of design
33 compliance is not certification of structural integrity but is related to product safety that is an
34 operational concern rather than a structural concern and a special condition has been proposed that
35 will require submittal of the certificate of design compliance before the wind farm goes into
36 commercial operation.
37
38 Mr. Thorsland stated that this finding requires revision because it is the overall tower that will be
39 certified.

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1
2 Mr. Hall stated that it is news to him that the certification does have to do with the structural
3 integrity of the wind tower. He said that a certification of structural integrity will be received before
4 a permit is issued therefore the Board will know that it is structurally sound before the tower is built.
5 He said that when this certification is submitted at the time of compliance the Board will have extra
6 assurance that the tower is structurally sound plus all the other assurances.

7
8 Mr. Thorsland stated that perhaps finding (1) should not be revised.

9
10 Mr. Hall stated that finding (1) could read as follows: The waiver, subject to the special condition,
11 IS/IS NOT in accordance with the general purpose and intent of the Zoning Ordinance and
12 WILL/WILL NOT be injurious to the neighborhood or to the public health, safety and welfare
13 because the certificate of design compliance is not the only certification of structural integrity but is
14 related to product safety that is an operational concern rather than structure concern and an additional
15 structural certification will be submitted before the permit is approved.

16
17 **Ms. Capel stated that the waiver, subject to the special condition, IS in accordance with the**
18 **general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the**
19 **neighborhood or to the public health, safety and welfare because the certificate of design**
20 **compliance is not the only certification of structural integrity but is related to product safety**
21 **that is an operational concern rather than structure concern and an additional structural**
22 **certification will be submitted before the permit is approved.**

23
24 **Five members of the Board agreed with Ms. Capel's statement with one opposed.**

25
26 Mr. Thorsland read required finding (2) as follows: Special conditions and circumstances DO/DO
27 NOT exist which are peculiar to the land or structure involved, which are not applicable to other
28 similarly situated land and structures elsewhere in the same district because the turbine that is
29 proposed for the use in the wind farm, the GE 1.6-100 wind turbine, is a relatively new wind turbine
30 and the manufacturer is still completing the design certification process.

31
32 **Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the**
33 **land or structure involved, which are not applicable to other similarly situated land and**
34 **structures elsewhere in the same district because the turbine that is proposed for the use in the**
35 **wind farm, the GE 1.6-100 wind turbine, is a relatively new wind turbine and the**
36 **manufacturer is still completing the design certification process.**

37
38 **Five members of the Board agreed with Ms. Capel's statement with one opposed.**

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Mr. Thorsland read required finding (3) as follows: Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL/WILL NOT prevent reasonable or otherwise permitted use of the land or structure or construction because the wind farm has been designed around the GE 1.6-100 wind turbine and waiting to approve the special use permit until the certificate of compliance is available will delay wind farm construction.

Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction because the wind farm has been designed around the GE 1.6-100 wind turbine and waiting to approve the special use permit until the certificate of compliance is available will delay wind farm construction.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Ms. Capel's statement with three opposed.

Mr. Thorsland read required finding (4) as follows: The special conditions, circumstances, hardships, or practical difficulties DO/DO NOT result from actions of the applicant because the applicant is not involved in the design certification process.

Ms. Capel stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant because the applicant is not involved in the design certification process.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Ms. Capel's statement with three opposed.

Mr. Thorsland read required finding (5) as follows: The requested waiver, subject to the proposed special condition, IS/IS NOT the minimum variation that will make possible the reasonable use of the land/structure because it will allow the wind farm to move ahead under construction but will not go into commercial operation without the certification of design compliance.

Ms. Capel stated that the requested waiver, subject to the proposed special condition, IS the minimum variation that will make possible the reasonable use of the land/structure because it will allow the wind farm to move ahead under construction but will not go into commercial operation without the certification of design compliance.

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- 1 Mr. Courson asked how the County will allow the wind farm to be under construction if a certificate
2 is not received.
3
- 4 Mr. Thorsland stated that a structural certificate has been received before the permit is granted to
5 begin construction. He said that Invenergy cannot dig a hole until staff verifies where the footings
6 are going to be located and an engineering study regarding the structural integrity must be received
7 before construction can begin. He said that the certificate of design assures the County that the
8 turbine is advertised to last for 25 years.
9
- 10 Mr. Hall stated that Invenergy will not receive a compliance certificate to go into commercial
11 production if they do not submit the certificate.
12
- 13 Mr. Palmgren stated that Invenergy could begin construction for the entire project but cannot
14 function until the certification of design compliance has been submitted.
15
- 16 Mr. Hall stated that they can do testing to make sure that everything works but they cannot start
17 commercial operation until they submit this certification.
18
- 19 Mr. Courson asked if the wind farm was completed and ready to go but the compliance certificate is
20 not issued and it goes past the time limit on decommissioning would this trigger the
21 decommissioning process to begin removal of the wind farm.
22
- 23 Mr. Hall stated that the third factor under abandonment in the definitions of the Draft Reclamation
24 Agreement reads as follows: A delay in the construction of any component part of the project of
25 more than 6 months after construction on that component begins and the owner is not diligently
26 working to continue construction activities.
27
- 28 Mr. Courson stated that it should be made clear to the applicant that if they receive the special use
29 permit then they can build the wind farm but if they do not obtain the required certificates then the
30 County can require that they tear it down.
31
- 32 Mr. Hall stated that failure to receive the certification is non-compliance with the special use permit
33 and during draft versions of the reclamation agreement non-compliance with the special use permit
34 was grounds for decommissioning but it is not clear if this language is in this new version.
35
- 36 Mr. Passalacqua stated that verification is required.
37
- 38 Ms. Capel agreed because the wind farm could sit there forever.

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Mr. Courson asked Mr. Hall if there is no text in the reclamation agreement regarding violations of the special use permit. He said that they should not be able to violate the special use permit with no repercussions.

Mr. Hall stated that this is one thing that was removed in this version of the reclamation agreement.

Mr. Courson stated that for the protection of the County, if they violate the special use requirements the County should be able to require decommissioning for enforcement.

Mr. Hall stated that he is having a difficult time in finding the same information twice in the reclamation agreement but he does know that this language was one of the items that was stricken from the current version. He informed the Board that if they would like the language put back in then they should ask the Petitioner why it could not be done.

Mr. Thorsland asked Mr. Blazer to address this issue.

Mr. Blazer stated that from a legal prospective, whether it is in the reclamation agreement or not, if they have not complied with the special use permit and the Zoning Ordinance then they are a non-conforming use and the County can request that the wind farm be removed. He said that suspenders and a belt would be to try to address it in the reclamation agreement and add a failure after a certain amount of time to obtain the design certification as part of the definition of abandonment.

Ms. Capel asked if it could be part of a special condition.

Mr. Hall stated that if a concern of the Board is a GE 1.6-100 turbine sitting on 300 foot towers not being used then the concern is that they need to be removed therefore it must be in the reclamation agreement. He said that at the bottom of Page 2 of the draft reclamation agreement the text regarding violations of any local ordinances has been stricken. He said that this is what he would consider this to be a violation of the special use permit and someone does not want the reclamation agreement to be used for that purpose.

Mr. Blazer stated that this could be included with the definition of abandonment within a reasonable time frame of six to eight months.

Mr. Thorsland stated that the Board would appreciate that addition to the definition of abandonment in the reclamation agreement. He said that the Board can review this addition during the next meeting.

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1 Mr. Blazer stated that it will be added and re-circulated.

2
3 Mr. Courson stated that he could see this same issue with the funding of the decommissioning. He
4 said that if there is not sufficient funding for decommissioning and the generators do not work after
5 construction then there must be some money there for decommissioning. He said that he wants to
6 make sure that the County is protected.

7
8 Mr. Blazer stated that the funding is a fundamental element of the reclamation agreement. He said
9 that it was decided earlier that they would address this concern by reassessing the salvage value in
10 three years instead of five year increments.

11
12 Mr. Thorsland stated that the most defined time for estimating salvage value and how much it will
13 take to remove it will be right after the turbines are constructed. He suggested that after
14 determination of finding (5) the Board should review the reclamation agreement.

15
16 Mr. Thorsland requested that the Board indicate their vote for finding (5) by a show of hands.

17
18 **Four members of the Board agreed with Ms. Capel's statement with three opposed.**

19
20 Mr. Thorsland asked the Board if they would like to review the reclamation agreement at this time.

21
22 Mr. Hall stated that Board members are not required to state why they are voting a certain way but if
23 we continue to only get four Board members supporting waivers and staff does not find out what the
24 Petitioner can do to improve their proposal then no progress is being made.

25
26 Mr. Courson stated that this is the Zoning Board of Appeals for Champaign County and a lot of
27 testimony has been received from citizens of the County and that testimony is taken into account
28 during his decisions. He said that his position on the Board is not to do whatever he can do to help
29 someone, especially someone who is outside of Champaign County, to do whatever they want to do.
30 He said that outsiders do not live in the community and they do not know the neighborhoods
31 therefore when he sees a lot of opposition on a project he has to give that opposition a lot of weight.
32 He said that he feels that his job on the Board is to protect the citizens of Champaign County and he
33 understands the concerns about taxes and jobs but he also understands that it is his job to protect
34 property values and people's rights in Champaign County. He said that the proposed project is a
35 massive project that eats up a lot of valuable farm ground and Champaign County has some of the
36 best farm ground in the world.

37
38 Mr. Hall stated that the project takes up 30 acres.

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Mr. Courson stated that this Board should be concerned with just 30 acres in Champaign County and 100 or more in Vermilion County. He said that by the time the project is done in Illinois there could be tens of thousands of acres total being taken out of production. He said that he has been to County Board meetings and several other meetings and he hears a lot about the protection of our valuable farm ground and he does not know why the wind companies cannot place these projects upon something other than farm ground.

Mr. Hall stated that the Zoning Ordinance does not prohibit the taking of best prime farmland for a residence.

Mr. Courson stated that he has heard members on the County Board discuss the preservation of farmland and he has heard testimony from property owners in the proposed project area and he must take all of the factors in to account while he is making his decision.

Mr. Hall stated that he would like to provide any information that he can in order for Mr. Courson to make his decision. He said that if Mr. Courson thinks that there is a chance that the wind farm might affect property values then he could distribute information from a national study which indicates that the wind farm will have no effects on property values. He said that he hasn't distributed this information to the Board because he has to parcel his time very carefully although if this is a concern of the Board then he will provide this evidence. He said that most of the testimony given at the public hearings has not been from residents of Champaign County although a few residents have discussed their concerns. He said that the Board has addressed two of those resident's concerns as much as possible but if the Board has concerns other than property value then staff must be alerted so that pertinent information can be distributed to the Board to address those concerns. He said that if the Board is being swayed by the testimony of those who have testified then those concerns should be investigated. He said that Ms. Schertz presented a lot of evidence regarding decommissioning and he sent Mr. Leuchtmann eight specific questions but to date no response has been received. He said that when the Board has time to review the reclamation agreement finding that was distributed the Board will see that a lot of the questions raised by Ms. Schertz are still questions which have not been answered. He said that Ms. Schertz provided a lot of information regarding noise but he did not see anything that he needed to follow up on although if the Board did then he will happy to do so.

Mr. Passalacqua stated that he has no problem in changing the wording for the some of the conditions but these are huge machines that are due to hit the ground in 2012 which have predecessors which are very similar and have been "UL" rated therefore he does not understand the hold up. He said that if the machines are due to hit the ground in 2012 then why are they not already certified. He said this just feels like a full court press to beat the clock therefore he is casting his vote that these need to be certified before they are constructed.

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- 1
2 Mr. Hall stated thank you.
3
4 Mr. Thorsland stated that he is not advocating for either side but, Mr. Palmgren can confirm, when a
5 small change is made on an airplane it must be re-certified regardless of the change. He said that
6 there is evidence that the 1.6-100 is not much different than 1.5-100 other than the output. He said
7 that the re-certification for an airplane can take years and years to obtain although there is no clear
8 reason why.
9
10 Mr. Passalacqua stated that he can't believe that testing has just begun for a machine that is set to hit
11 the ground in 2012.
12
13 Mr. Schroeder stated that he has not been convinced that there is a real need for this project at this
14 location.
15
16 Mr. Thorsland stated that the Board has requested the addition to the definition of abandonment in
17 the reclamation agreement. He asked the Board if there was any additional information that the
18 Board would like to request of the Petitioner for the reclamation agreement. He said that he has no
19 intention to address the waivers for the reclamation agreement at tonight's meeting.
20
21 Mr. Courson questioned item #2(a)vi on Page2 of the reclamation agreement. He said that item vi.
22 indicates that the principal's existence as a corporate entity is dissolved. He said that it was his
23 understanding that Invenergy was an LLC not a company.
24
25 Mr. Capel stated that corporate is an antonym that is non-specific to a corporation.
26
27 Mr. Hall asked Mr. Courson to indicate his question.
28
29 Mr. Courson stated that he would like some schematics as to whether the wording should indicate
30 corporate or LLC. He said that Invenergy could say that the clause could not be held because they
31 are not a corporation but an LLC. He said that he has been in legal confrontations and wording has
32 meaning.
33
34 Mr. Thorsland stated that the State's Attorney has not given any comments regarding the reclamation
35 agreement.
36
37 Mr. Blazer stated that under Illinois law a limited liability company is a corporate entity.
38

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1 Mr. Passalacqua stated that it was mentioned that the 125% Initial Financial Assurance amount was a
2 recommendation by the State's Attorney.

3

4 Mr. Hall stated that the 125% was not a recommendation by the State's Attorney.

5

6 Mr. Passalacqua stated that the 125% is an arbitrary number at this point. He asked if the 125% is a
7 number that Invenergy has proposed.

8

9 Mr. Hall stated yes.

10

11 Mr. Passalacqua stated that there was previous conversations regarding the removal of below ground
12 concrete and item 2(m) on Page 4 is very vague about this issue.

13

14 Mr. Hall stated that it would be proper for the reclamation to be vague about such an issue. He said
15 that this Board has to decide if they want the foundations removed to only 3 feet below grade, as is
16 his understanding of what is described in the decommissioning report, which is what Vermilion
17 County accepted. He said that he has been speaking with Bruce Stickers at the Soil and Water
18 Conservation District and in looking at other counties in Illinois most of those counties require
19 removal to four feet. He said that the decommissioning costs are based on removal of three feet but
20 the most important thing is what the Board believes the requirement should be and to make sure that
21 it is made as right as possible. He said that he would recommend foundation removal of four feet.

22

23 Mr. Passalacqua agreed. He said that he would lean more towards someone who knows more about
24 agriculture and what depth is required to support agricultural land that is brought back into
25 production for cropland.

26

27 Mr. Hall stated that no one knows if that will actually happen and people who do not like wind farms
28 will say that it will never work. He said that who the Board is supposed to believe is unknown but
29 the removal of four feet of concrete sounds a lot better than three feet.

30

31 Mr. Palmgren stated that the concrete that is left in the ground will show up sometime in the future.

32

33 Mr. Thorsland stated that the suggested condition is four feet.

34

35 Mr. Leuchtmann stated that they have discussed this issue with Jim Booty, Decommissioning
36 Engineer, and going from three feet to four feet is an inconsequential increase. He said that the
37 lower part of the foundation is used to support the tower although the landowner can farm right up to
38 the pedestal.

39

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- 1 Mr. Passalacqua asked what the depth tapers down to beyond the pedestal.
2
- 3 Mr. Leuchtmann stated that it gets to a point where it is five to seven feet.
4
- 5 Mr. Thorsland asked how much soil is above the inverted mushroom.
6
- 7 Mr. Leuchtmann stated that he believes three feet.
8
- 9 Mr. Palmgren asked if it is inconsequential to take out another foot how inconsequential would it be
10 to take all of the concrete out.
11
- 12 Mr. Leuchtmann stated that it would be very consequential.
13
- 14 Mr. Thorsland stated that he has spent a lot time going back and forth on Route 47 and he watched
15 the wind farm being constructed in Livingston County. He said that the assembly area consisted of
16 approximately five acres with structures and when they were finished they removed everything and a
17 very nice crop of soybeans is being grown upon that land.
18
- 19 Mr. Leuchtmann stated that part of that had to do with the fact that during construction the top soil
20 was peeled back and replaced so that the top soil remained in use.
21
- 22 Mr. Thorsland stated that this process is explained in the special use permit application.
23
- 24 Mr. Passalacqua asked if it is or is not prudent to put that number in this agreement.
25
- 26 Mr. Hall stated that it is prudent. He referred the Board to Page G-5 of the Supplemental
27 Memorandum dated September 29, 2011. He said that one of the many things that the Board should
28 specify about the reclamation agreement includes that depth of removal.
29
- 30 Mr. Leuchtmann stated that this is something that they can add to the next version when he submits it
31 to the State's Attorney for review.
32
- 33 Mr. Courson stated that item 3 on Page 4 of the reclamation indicates that the financial assurance
34 does not need to be provided until they begin generating electricity.
35
- 36 Mr. Hall stated that they have to submit a signed reclamation agreement before one permit is issued.
37
- 38 Mr. Courson stated that his statement is in reference to the financial assurance.

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Mr. Hall stated that it has to be in place before they receive the first permit.

Mr. Courson stated that the wording indicates that they do not need to provide it until they begin generating electricity.

Mr. Hall stated that, to him, the wording indicates that it remains in place 25 years after they first begin producing electricity but it is actually in place for sometime before that happens because they are not going to get a permit until it is submitted. He said that when the County Board finally signs off on this all of the words are set with a few blanks for people to sign and when that first permit comes in those blanks need to be signed. He said that every word that was there at the County Board approval has to be there then and no more.

Mr. Palmgren asked if the salvage value could be done in the form of a bond to stabilize the numbers.

Mr. Thorsland stated that he does not know because he is not an expert in bonding.

Mr. Passalacqua asked if there was a conflict with regards to the line of debtors for salvage value when we start talking about Champaign County taking the abandoned project and having the right, at their discretion, to take down and haul off the salvage. He said that the Board was previously told that the salvage value first goes to the financiers.

Mr. Hall stated that there was a reasonable explanation as to why there is a long line of people.

Mr. Passalacqua stated that he does not doubt that explanation but there is wording that indicates that if the project becomes abandoned then Champaign County can take it down and recover its expenses.

Mr. Leuchtman stated that this is part of the some of the changes that they are trying to sit down with the State's Attorney to discuss to make sure that they can still properly finance the project and move forward but also make sure that the County has a way to get that salvage value in the case of abandonment. He said that all of the issues must be accounted for in the agreement but this is language that must be discussed with the State's Attorney. He said that if there are things in the agreement that the Board questions or has concerns about he would invite the Board to send those comments to Mr. Hall so that he can then forward those to him so that they can address them.

Mr. Passalacqua stated that on one hand it states that if there is abandonment there are debtors who will take value from the salvage but on the other it states that if the project is abandoned the County, at its discretion, can take the value from the salvage.

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1
2 Mr. Leuchtmann stated that the debtors are not going to pull out just because they had money in the
3 infrastructure because there is still money in the power purchase agreement which is securing the
4 project.

5
6 Mr. Passalacqua stated that previously it was stated that if for some unforeseen reason there should
7 be some failure that the salvage value first satisfies the debtors but the paragraph in the reclamation
8 agreement states that if Invenergy walks away and the turbines are still sitting there that it is at the
9 County's discretion. He asked which scenario applies.

10
11 Mr. Leuchtmann stated that they need to get with the State's Attorney to make sure that this is
12 addressed in an agreement that they both agree on for submittal to the Board. He said that they
13 understand that the County has the need to get salvage value and to realize that cost and benefit but
14 simultaneously they have lenders who have a requirement that they get first say because they are
15 putting up the money. He said that they need to satisfy both parties to make sure that everyone is
16 covered. He said that in the case of abandonment the financial lender has the right of salvage value
17 and they are required to decommission the project and create an obligation thru the agreement which
18 requires them to do something as well.

19
20 Mr. Passalacqua stated that he understands that this is a language issue but to him it seems like two
21 different people wrote two different scenarios and it appears that if this happens at the same time
22 which one would apply. He understands that the financiers have to be able to get their money back
23 and this is one tool to do that and that the County still has some security but the way that it is written
24 it is two completely two different scenarios. He said that he is referring to Page 8 item 9(f) as
25 follows: Should principal abandon the project and fail to exercise its right to remove components of
26 the project under the reclamation agreement, any components remaining may, at Champaign
27 County's sole discretion, be deemed forfeited to Champaign County and may be sold by Champaign
28 County to recover any costs of performing the reclamation work. He said that based on previous
29 testimony it appears that the County will never get to that point.

30
31 Mr. Leuchtmann stated that he understands Mr. Passalacqua's concern and it will be made clear.

32
33 Mr. Courson asked why this agreement could not be tied to the creditors as well because they are
34 working with Invenergy to get this project built. He said that the creditors should be held
35 accountable for taking these down also.

36
37 Mr. Leuchtmann stated that Invenergy is the developer and the creditors are the lender. He said that
38 the lender wants certain assurances that they get to a certain point.

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1
2 Mr. Courson stated that he understands that Invenergy is the developer and the creditors are the
3 financiers but Champaign County is the land that it is being built upon.
4
5 Mr. Leuchtman stated that the reclamation agreement is tied to a third party that is putting up the
6 Letter of Credit in addition to the escrow.
7
8 Mr. Thorsland stated that the State's Attorney has the current reclamation agreement for review and
9 once the revised copy is received he would like the Board to receive an e-mail with that new
10 agreement attached.
11
12 Mr. Courson stated that he would like to ask the State's Attorney why this cannot be tied to the
13 creditors as well.
14
15 Mr. Hall stated that he does not know if that is a question for the State's Attorney. He said that the
16 State's Attorney is a good State's Attorney but as far as having a lot of in depth knowledge about
17 issues like this they are struggling like everyone else because they handle civil cases.
18
19 Mr. Passalacqua stated that he is looking for a timeline for when it will be the County's turn to re-
20 coop costs through the salvage value. He asked that if everyone packs up and leaves town does the
21 County have the right to go in and sell it for value but when does the other debtors not count.
22
23 Mr. Thorsland stated that Attachment A of the clean copy of the reclamation agreement has blanks
24 but the strike out version has figures inserted. He said that he believes that Invenergy is looking for
25 the Board to insert numbers into the blanks.
26
27 Mr. Passalacqua stated that the Board does not have the resources to go out and do these studies on
28 their own other than look up scrap value on websites.
29
30 Mr. Thorsland stated that currently the local value for scrap steel is \$250 dollars per ton.
31
32 Mr. Courson asked if the decommissioning report included transportation costs. He said that he does
33 not believe that scrap steel in rural Champaign County will yield \$323 dollars per ton locally
34 therefore they must be hauling it to Chicago.
35
36 Mr. Hall asked Mr. Courson if it is possible for the five year average to be much lower than it is
37 today. He said that perhaps we should not use the five year average and use what the price is today
38 for scrap steel.
39

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1 Mr. Courson stated that it is hard to forecast what the rates will be in the future.

2
3 Mr. Hall stated that all we can do is call the local scrap yards to see what they are paying at the time.

4
5 Mr. Courson asked if the decommissioning numbers include transportation costs and administrative
6 costs.

7
8 Mr. Passalacqua stated that the five foot sections cannot just be cut out and placed on a truck for
9 scrap because it needs to be separated. He said that he does believe that the Board is qualified to do
10 the study but he also does not believe that it is prudent to just insert a number.

11
12 Mr. Hall stated that Mr. Passalacqua is correct in that no one here is qualified and the County does
13 not have the money to hire someone who is qualified but these questions can be asked. He said that
14 he does not know how to evaluate what we are told but on the other hand we are trying to get this
15 thing completed.

16
17 Mr. Passalacqua stated that perhaps this will drive us to look at the 125% number.

18
19 Mr. Hall stated that the 210% can be criticized for a belt and suspenders approach where everything
20 is duplicated but one good thing about this is that we will have a lot to work with when you need to.
21 He said that if it is reduced to 125% there is less room for all the uncertainties but again our current
22 Ordinance is far too safe because we are not going to get a wind farm that complies with our current
23 requirements because he has looked at some of the numbers and it is very expensive to have an
24 escrow account that is 210% of what the costs of decommissioning are. He said that this is what it
25 took for the County Board to feel safe when they adopted the Ordinance and who knows what it will
26 take to make them feel safe now because the ZBA is asking questions that seem to indicate that
27 125% does not provide for much uncertainty.

28
29 Mr. Passalacqua stated that he does not hate wind power but he does hate it if it does not work. He
30 said that when we are talking about placing such a project in our County it should not be considered
31 a slam dunk because the permit fees are going to help close the gap in the County's budget. He said
32 that there may be folks at the other meeting that believes it will be really cool to get this pushed
33 through because of the benefit of the fees but that is not the right reason. He said that if the wind
34 turbines will be spinning at 95% and people will not go nuts in their own home then they should be
35 placed down every road but that is not the case.

36
37 Mr. Thorsland asked Mr. Passalacqua if he is suggesting that we should look at the 125%.

38

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- 1 Mr. Passalacqua stated that he prefers the 210%. He said that the 210% may be a little extreme but it
2 is very uncertain and the County should stick to it.
3
- 4 Mr. Thorsland stated that he would assume that Invenergy would submit a counter offer.
5
- 6 Mr. Passalacqua stated that he would entertain a counter offer.
7
- 8 Mr. Thorsland asked the Board if they were comfortable with the 125%.
9
- 10 Mr. Courson stated that he would prefer the 210%. He said that he would like to see a breakdown of
11 the costs for decommissioning.
12
- 13 Mr. Hall stated that this Board has more details than most other counties have on decommissioning
14 costs. He said that the Board can always ask for more.
15
- 16 Mr. Courson stated that he would like to see a spreadsheet which indicated the numbers in the
17 decommissioning estimate.
18
- 19 Mr. Thorsland asked Mr. Courson if he would like Invenergy to provide this information.
20
- 21 Mr. Courson stated that if Invenergy is willing to do everything they can to get this approved then
22 yes he would like the spreadsheet provided for review.
23
- 24 Mr. Thorsland asked Mr. Courson if he would prefer to leave the 125% or raise it to 210%.
25
- 26 Mr. Courson stated that he agrees with Mr. Passalacqua regarding the 210% requirement until he
27 sees some numbers or a counter offer.
28
- 29 Mr. Passalacqua stated that he has scrapped steel and it is a lot of work for a little return. He said
30 that the numbers that are proposed are the sunniest day numbers that could be proposed because this
31 is a sales pitch. He said that for the County's protection he would like to see realistic numbers.
32
- 33 Mr. Thorsland suggested that the developers come back with a number higher than 125% and
34 provide a breakdown on how they got the salvage value numbers. He said that this information
35 should be available when the revised reclamation agreement gets to the Board. He said that this will
36 not be finished tonight and when the numbers are presented to the Board we will have this same
37 discussion again next week and hopefully we will be able to get things pinned down.
38
- 39 Mr. Thorsland stated that the Board will now review Waiver #5, on Page E-11 of the Supplemental

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1 Memorandum dated September 22, 2011. He read Waiver #5 as follows: Waive the standard
2 condition of 6.1.4 J. that requires the application to contain a copy of the Agency Action Report from
3 the Illinois Department of Natural Resources Endangered Species Program. He said that Invenergy
4 completed this process by letter rather than by the required form and both sides are comfortable in
5 not doing anything further. He said that the Ordinance is being tested for the first time in this regard
6 and we are finding that there are things which are completed differently in the real world. He said
7 that he would revise finding (3) to indicate the following: Practical difficulties or hardships created
8 by carrying out the strict letter of the regulations sought to be varied WILL/WILL NOT prevent
9 reasonable or otherwise permitted use of the land or structure or construction because if the waiver is
10 not granted the applicant will have to request that IDNR staff take time to prepare and Agency
11 Action Report and the resulting delay could be significant enough to pose an undue financial burden
12 for the construction of the wind farm even though no public benefit would result and IDNR would
13 incur greater cost.

14

15 Mr. Thorsland asked the Board if there were any questions regarding this waiver.

16

17 Mr. Palmgren stated there was a suggestion by IDNR but they did make a recommendation therefore
18 the County has the opportunity to indicate no.

19

20 Mr. Hall stated that once a response is received from IDNR it is not good for ever but only two years
21 and this December will end the two years. He said that something did not go right with the timing
22 therefore they went back and got a new recommendation which is just part of the process except that
23 the new recommendation was not on the correct form.

24

25 Mr. Palmgren stated that a study was required for mortality.

26

27 Mr. Hall stated that the study has been completed but the suggestion was that they should do more.
28 He said that he has not prepared a condition to require an additional study because the Ordinance is
29 pretty restrictive already and they have already completed what the Ordinance requires.

30

31 Mr. Passalacqua asked if there was a continuing count for bird kill and what is an acceptable number
32 or is it just for information.

33

34 Mr. Hall stated that the results will be reported to ELUC and if ELUC determines that it is a problem
35 then they will have to do something.

36

37 Mr. Passalacqua stated that ELUC would be the governing body to administer the requirements.

38

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1 Mr. Hall stated yes.

2

3 Mr. Thorsland stated that the Ordinance is very restrictive and Invenergy has met all of the
4 requirements and IDNR is happy although they have suggested other things.

5

6 Mr. Hall stated that this is part of the problem because IDNR suggested it so generally that no one
7 knows what will fulfill that requirement.

8

9 Mr. Thorsland stated that one of the courses of action was to do nothing. He said that the secondary
10 study is not waived and Invenergy has to complete it.

11

12 Mr. Thorsland read required finding (1) for Waiver #5 as follows: The waiver IS/IS NOT in
13 accordance with the general purpose and intent of the Zoning Ordinance WILL/WILL NOT be
14 injurious to the neighborhood or to the public health, safety, and welfare. He noted that in order to
15 utilize the Board’s time as much as possible he is not going to read each finding in its entirety.

16

17 **Ms. Capel stated that the waiver IS in accordance with the general purposed and intent of the**
18 **Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health,**
19 **safety and welfare.**

20

21 **Six members of the Board agreed with Ms. Capel’s statement with one opposed.**

22

23 Mr. Thorsland read required finding (2) for Waiver #5 as follows: Special conditions and
24 circumstances DO/DO NOT exist which are peculiar to the land or structure involved, which are not
25 applicable to other similarly situated land and structures elsewhere in the same district because the
26 applicant has consulted fully with the IDNR and it was more convenient for the IDNR to replay with
27 a written letter rather than an Agency Action Report.

28

29 **Ms. Capel stated that the special conditions and circumstances DO exist which are peculiar to**
30 **the land or structure involved which are not applicable to other similarly situated land and**
31 **structures elsewhere in the same district because the applicant has consulted fully with the**
32 **IDNR and it was more convenient for the IDNR to reply with a written letter rather than an**
33 **Agency Action Report.**

34

35 **Five members of the Board agreed with Ms. Capel’s statement with one opposed.**

36

37 Mr. Thorsland read finding (3) for Wavier #5 as follows: Practical difficulties or hardships created
38 by carrying out the strict letter of the regulations sought to be varied WILL/WILL NOT prevent
39 reasonable or otherwise permitted use of the land or structure or construction because if the waiver is

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1 not granted the applicant will have to request that IDNR staff take time to prepare an Agency Action
2 Report and the resulting delay could be significant enough to pose an undue financial burden for the
3 construction of the wind farm even though no public benefit would result and IDNR would incur
4 greater cost.

5
6 **Mr. Thorsland stated that practical difficulties or hardships created by carrying out the strict**
7 **letter of the regulations sought to be varied WILL prevent reasonable or otherwise permitted**
8 **use of the land or structure or construction because if the waiver is not granted the applicant**
9 **will have to request that IDNR staff take time to prepare an Agency Action Report and the**
10 **resulting delay could be significant enough to pose an undue financial burden for the**
11 **construction of the wind farm even though no public benefit would result and IDNR would**
12 **incur greater cost.**

13
14 **Five members of the Board agreed with Mr. Thorsland's statement with two opposed.**

15
16 Mr. Thorsland read finding (4) for Waiver #5 as follows: The special conditions, circumstances,
17 hardships or practical difficulties DO/DO NOT result from actions of the applicant because the
18 applicant consulted with the IDNR and the approach used in the IDNR review was the approach that
19 IDNR wanted to use.

20
21 **Mr. Thorsland stated that the special conditions, circumstances, hardships or practical**
22 **difficulties DO NOT result from actions of the applicant because the applicant consulted with**
23 **the IDNR and the approach used in the IDNR review was the approach that IDNR wanted to**
24 **use.**

25
26 **Six members of the Board agreed with Mr. Thorsland's statement with one opposed.**

27
28 Mr. Thorsland read finding (5) for Waiver #5 as follows: The requested waiver IS/IS NOT the
29 minimum variation that will make possible the reasonable use of the land/structure because the
30 IDNR has made it clear that the letter that was provided to Champaign County substitutes for an
31 Agency Action Report.

32
33 **Ms. Capel stated that the requested waiver IS the minimum variation that will make possible**
34 **the reasonable use of the land/structure because the IDNR has made it clear that the letter that**
35 **was provided to Champaign County substitutes for an Agency Action Report.**

36
37 **The full Board agreed with Ms. Capel's statement.**

38

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1 Mr. Thorsland stated that Waiver #2, regarding the waiver of the standard condition of 6.1.4 F.1 is
2 included on Pages E-3 and E-4. He said that Mr. Blue has testified that he cannot sign the County
3 Roadway Upgrade and Maintenance Agreement because the County Board must vote upon the
4 agreement. He said that the road agreement is not before the Board for review.

5
6 Mr. Hall stated that the State's Attorney has reviewed the County Road Agreement and it is his
7 understanding that the agreement continues to be revised.

8
9 Mr. Blazer stated that as of September 28, 2011, Mr. Blue does have the final version. He said that
10 there was one issue regarding some language that Ms. Kuzma had left out regarding wheel rutting
11 and the draft needed revision.

12
13 Mr. Thorsland stated that he would be more comfortable if the Board had the agreement in their
14 hands for review. He said that the Board will work on Waiver #2 at the next public hearing. He
15 said that Waiver #3 cannot be finalized tonight because the Board does not have the final township
16 road agreement to review.

17
18 Mr. Thorsland stated that Waiver #4 is indicated on Pages E-8, E-9 and E-10. He read Waiver #4 as
19 follows: Waive the standard condition 6.1.4 I.1. that requires the noise level of each wind farm
20 tower and wind farm to be in compliance with the Illinois Pollution Control Board regulations at the
21 residential property line rather than to be compliance just at the dwelling. He said that the Board has
22 heard testimony regarding the measurement being taken at the dwelling and at the property line.

23
24 Ms. Capel stated that there is the issue of Class A and Class C land. She asked if there was anything
25 in the Ordinance that would prevent the measurement being taken at the property line of an 80 acre
26 parcel that is non-participating.

27
28 Mr. Hall stated that since this is the ZBA he would be comfortable in saying that the only thing that
29 would prevent him from doing that is common sense.

30
31 Ms. Capel agreed. She said that based on what Ms. Schildt stated about the *Knox* case it is not clear
32 where the measurement should be taken at therefore the Board will need to provide clarity as to what
33 it is trying to accomplish. She asked Mr. Hall if he constructed a condition regarding this issue.

34
35 Mr. Hall asked Ms. Capel what kind of condition would be useful for this issue.

36
37 Ms. Capel stated that she does not have the language. She said that if someone decided that
38 gardening was a legitimate residential activity as opposed to commercial then she can understand the
39 need to have a buffer as to where the sound is measured. She said that there are a lot of non-

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1 participating landowners who will have towers very close to their property.

2
3 Mr. Courson stated that it was placed at the property line because there may not be a residence on an
4 80 acre parcel currently but there may be in the future. He said that a parcel owner could have a
5 house on one end of the 80 acre parcel and propose a house on the other end in the future and the
6 placement of a turbine 200 feet from a non-participating residence takes away some of the use of the
7 property. He said that the Board spaced it out from the non-participating property line.

8
9 Mr. Thorsland asked Mr. Courson if he is referring to the actual tower itself. He said that this Board
10 wanted the spacing from a non-participating landowner from the border of their property and that
11 was reduced.

12
13 Mr. Hall stated that this was more relevant to the separations and the land that has to be part of the
14 special use permit. He said that another part of the land that has to be part of the special use permit
15 is any land that receives noise in excess of what should be going on to Class A. He said that he
16 agrees that farmland is Class C in fact as the Zoning Administrator he would be hard pressed to call a
17 garden anything other than Class C but as the Zoning Administrator it is clear to him that this is
18 talking about land. He said that it is not known what it is at the property line and we could not
19 enforce that if we wanted to because we haven't asked for that information. He said that all
20 calculations were taken at the residence. He said that the only thing that diminishes noise is distance
21 and if you look at how much the noise values decrease over 1,200 feet it could be averaged as to how
22 much per 100 feet it would decrease and he does not believe that there are any problems. He said
23 that Tim Casey pointed out that there are two receptors that are within 1 dB of the limit.

24
25 Mr. Thorsland asked if the two receptors were participating or non-participating.

26
27 Mr. Hall stated that it is unknown if the two receptors are participating or non-participating.

28
29 Mr. Passalacqua stated that the Ordinance does not give different levels of acceptance to
30 participating and non-participating properties. He said that there is data which is mostly modeled
31 and testimony questioning the sampling locations.

32
33 Mr. Hall stated that he can give the Board testimony which does not question the sampling locations
34 but he has not gone to the trouble to do so.

35
36 Mr. Passalacqua stated that from what he has heard and read it appears that the noise is one of the
37 killer issues for participating and non-participating property owners.

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1 Mr. Thorsland stated that the Ordinance requested the noise measurements at the residence and
2 Invenergy provided that data. He said that the modeling was based on the Ordinance.

3
4 Mr. Hall stated that the Ordinance did not specify whether the measurement should be taken at the
5 property line or the dwelling but is how he believed the rules should be understood. He said that
6 when you are dealing with a small residential property the measurement should be at the property
7 line which is how he advised the Board and is why he provided the waiver. He said that there were
8 260 receptors and most of those are located in the Village of Royal and not in the rural area and of
9 the 260 receptors 251 were more than 6dB lower than the highest therefore it is not possible that
10 there is a problem with at least 251. He said that of those 9 all of those but 2 were more than 2dB
11 lower than the maximum and for a small residential property it is not logical that there could be a
12 noise problem at the property line for all but two properties. He said that on the basis that we have a
13 company here that has done this in many counties and this is how they have always done it without
14 anyone raising any issue about it. He said that it is fair to say that there is a dispute here and there is
15 no one that the County can call therefore to act like we have this tremendous insight is unreasonable
16 and he believes that this is a fair waiver. He said that if every property was right at the limit based on
17 the dwelling then it would be known for a fact that it did not meet it at the property line but that is
18 not what we have in this instance. He said that there is no dwelling that is at the limit at the dwelling
19 because they are within 1dB but if the Board is uncomfortable with the waiver then the Board needs
20 to indicate such.

21
22 Mr. Passalacqua stated that the Board really does not know how much noise the turbine will generate
23 in real time.

24
25 Mr. Hall stated that if the Board does not trust the methods that were used to analyze the noise then
26 we might as well give up. He said that once Champaign County takes on the responsibility to
27 enforce these regulations then the County can add more detail to the Ordinance so that everyone
28 understands it in the beginning and the Board will not have to always deal with this waiver. He said
29 that he would like to develop more specific guidelines in the future but for now this wind farm has
30 this situation.

31
32 Mr. Courson stated that during the modeling two dwellings were within 1dB at the residence
33 therefore they would be in compliance at the property line.

34
35 Mr. Hall stated that we do not know which residences therefore we do not know how large the lots
36 are.

37
38 Mr. Courson stated that their study indicated that at the residence there were none out of compliance.

39

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1 Mr. Hall stated yes.

2
3 Mr. Courson stated that if they were not out of compliance at the residence then they wouldn't be out
4 of compliance at the property line.

5
6 Mr. Passalacqua stated that it would be louder at the property line.

7
8 Mr. Hall stated that it will be louder but the lots are so small that over that short distance this is a
9 safe waiver and the Board will not be approving violations although he cannot prove it because he
10 does not know which noise levels apply to which properties.

11
12 Mr. Courson asked why they would need a waiver for this unless they can identify a large parcel of
13 property where they believe there might be a problem. He said that rather than a general blanket of
14 the County he would like to see the specific addresses and request a waiver for those properties. He
15 said that there may not be a need for the waiver.

16
17 Mr. Blazer stated that they did not believe that there was a need for this waiver either. He said that
18 during discussions with Mr. Hall there was some question whether the Ordinance required the
19 measurement at the property line or at the principal residence. He said that it was decided that the
20 measurement should be taken at the principal residence therefore that is the data which was provided
21 to the County. He said that even with the two out of 260 properties that were within 1 dB the
22 methodology that was used was very conservative and in all likelihood the numbers are much greater
23 but they tried to error as much as possible to achieve the loudest reading as possible. He said that in
24 terms of real data the amount of noise that the hub generates was provided by GE and it was plugged
25 in to the model. He said that the model relates to how that noise will spread over a distance and from
26 top to bottom.

27
28 Mr. Hall stated that the Ordinance does not talk about property lines and only talks about the IPCB
29 standards. He said that it is his understanding that the Board agrees with Sherry Schildt that the
30 IPCB standards do apply to the property line for small residential properties. He said that he has
31 explained that he believes that the properties are actually in compliance even though the data was not
32 submitted which is why the waiver is required because we are sort of doing our best guess rather than
33 requiring a new noise study. He said that a general waiver for this one instance is appropriate. He
34 said that he still believes that it applies to the property line.

35
36 Mr. Blazer stated that the IPCB is the body who creates these regulations and is ultimately the
37 enforcing body and it indicates the measurement to the residence and not the property line. He said
38 that with all due respect to Ms. Schildt the testimony that she discussed from Mr. Zach was rejected

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1 by the IPCB because he was using the residential Class A numbers for the measurement at the pond.
2 He said that the IPCB pointed out that he could not use the residential number at the pond because
3 the pond was not classified as a Class A use but an unclassified use.
4

5 Mr. Palmgren asked what distance was used for the measurement.
6

7 Mr. Blazer stated that there were several distances at the various 260 measurement points. He said
8 that the closer you are the louder you might perceive it and that is some of the conservative factors
9 that were built into the model. He said that they were looking for the loudest conceivable noise that
10 could ever possibly happen at the closest distance. He said that the bottom line requirement is if they
11 exceed the IPCB regulations which are what the Ordinance states and in no single instance did that
12 occur.
13

14 Mr. Thorsland stated that the reason why we want the waiver is because things are not clear and we
15 want to make sure that they are made clear. He said that the real fact is that the best effort made to
16 quantify the noise at the receptors indicates that there are no violations, which then makes it appear
17 that the waiver is not required but there is some issue about where the measurement was taken.
18

19 Mr. Hall stated that the petitioner only reported the sound at the dwelling and if this Board believes
20 that those rules actually apply to the property line then the Board needs to either have a waiver or
21 deny the request or require another sound study.
22

23 Mr. Thorsland asked the Board if they would like to continue through this waiver or stop at this
24 point.
25

26 Mr. Hall stated that Page G-4, Special Condition I of the Supplemental Memorandum dated
27 September 29, 2011, attempts to respond to the request made by Mary Mann however we are
28 obligated to respond to the demands of the petitioner. He said that this Board knows that in every
29 special use permit what is seen on the ground in the future is what is on the approved site plan which
30 is the basic requirement of a special use permit. He said that we do not have any actual dimensions
31 of where any turbine is proposed therefore this is a little hard to enforce. He said that Mary Mann
32 would like to require that where ever the turbines are indicated on the site plan as of now that is
33 where they have to be in the future and the petitioner is not willing to agree to the requirement
34 because they require flexibility. He said that Item 1 of Special Condition I indicates that he has
35 already backed off the requirement that if the tower is within 1,500 of a non-participating dwelling
36 that it cannot be moved more than 125 feet. He said that a normal special use permit requirement
37 would be that what is built is exactly what is on the plan and what is being requested with this is that
38 if they are closer than 1,325 feet the turbine cannot be moved more than 125 feet but it can be moved
39 by whatever down to 1,325 feet. He said that a presumption is that what is built on the ground has to

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1 comply with the noise standard therefore a new noise study could be required which makes him
2 really uncomfortable. He said that he is comfortable with the old standard which is what is on the
3 ground is what is on the approved site plan although you can always go further away from any
4 principal structure but what the Board approves is what will be expected on the ground. He said that
5 the Board is free to change that however they desire but the petitioner is asking for ultimate freedom
6 up to 1,325 feet proximity. He said that if you are a neighbor and the closest turbine is 1,500 feet it
7 may be as close as 1,325 feet by this condition provided that the noise standard is still being met.
8

9 Mr. Passalacqua asked if the petitioner has not done enough engineering or surveying to realize that
10 they are not going to be in the middle of the road or something. He said that these do not sound like
11 very plausible reasons to have that kind of flexibility and he would like to take a moment to agree
12 with Mr. Hall in stating that he would like to stick to the letter of the law and place the turbine where
13 it is designed to be placed. He said that if footings are going to be dug at the magnitude then such
14 requires a lot of surveying and engineering and frankly this is getting more and more like a full court
15 press and he is not for it.
16

17 Mr. Hall stated that the petitioner has to agree to all special conditions.
18

19 Mr. Leuchtmann stated that there have been numerous engineering studies completed and they do
20 Geotech the center of the location for the turbine. He said that they are trying to get in line with the
21 Zoning Ordinance because it states 1,200 feet from a non-participating and they understand that it is
22 a special use permit and there is an estimate of what it should be but they did not believe that it
23 should be an increase of 25% over that value. He said that they were trying to get something that
24 was more in line with a 10% difference and believed that this was reasonable.
25

26 Ms. Capel stated that when a site plan is approved then that is what the Board expects to see
27 constructed with no deviation. She said that Invenergy is indicating that their site plan is not
28 necessarily accurate therefore they are requesting a 10% deviation.
29

30 Mr. Leuchtmann stated that the site plan would be finalized during the zoning use permit application.
31

32 Mr. Passalacqua stated that this does not go well for the non-participating properties. He said that he
33 knows that with GPS technology the construction people are qualified enough to hit the mark
34 therefore he does not believe that Invenergy needs 125 feet of slop. He said that with all of the
35 ultimate wisdom and technology this project can be designed without a 10% deviation.
36

37 Mr. Leuchtmann stated that he understands Mr. Passalacqua's concern but with experience from
38 other projects there are instances that do arise which require the deviation.

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1
2 Mr. Passalacqua stated that if they can't hit the mark then they had better come up with a new spot.

3
4 Mr. Blazer stated that the Ordinance mandates a minimum separation of 1,200 feet and they are not
5 requesting that the Board reduce that minimum. He said that the problem with these, unlike a regular
6 development of a building, is that there are 30 individual structures which may need moved
7 somewhat to accommodate drain tile or any number of potential conditions. He said that they are not
8 indicating that the turbines need moved from one county to another or one section to another but they
9 need to have the ability to micro-site the towers. He said that they are not asking the Board to
10 deviate from the requirements of the Ordinance in any way but there is a site plan which is not
11 unique to these types of projects that ultimately is an estimate because they are not down to the inch
12 or the foot or 10% of the feet because they do not know yet. He said that under no circumstances
13 will it ever be less than what the Ordinance requires nor will it ever be worse than what the IPCB
14 regulations require because once the turbines are micro-sited they re-run the noise model.

15
16 Mr. Thorsland stated that each foundation is not excavated until Mr. Hall a designee of Mr. Hall goes
17 to the site to make sure that it is in the right place.

18
19 Mr. Passalacqua asked why is Invenenergy is requesting the 10%.

20
21 Mr. Thorsland stated that a normal site plan would have the exact location but because they micro-
22 site the turbines they need to be able to wiggle them around a little bit without violating the setback.

23
24 Mr. Hall stated that the there is the minimum separation but the Ordinance is very clear about the site
25 plan. He said that the minimum is what is shown on the site plan in the first place.

26
27 Mr. Courson stated that he would be in support of the waiver if they did not get any closer to the
28 dwelling.

29
30 Mr. Hall stated that he would do without the waiver but that is not what is being proposed.

31
32 Mr. Leuchtmann stated that a lot of the times they know what the Geotech is going to look like for
33 the soils and whether they will have a regular or buoyant foundation. He said that when they get
34 down to a certain point with the landowner they may indicate that they want the turbine moved over
35 50 feet therefore it protects the landowner's rights as well as keeping them in line with the IPCB
36 requirements.

37
38 Mr. Miller stated that the same situation exists during construction of terraces. He said that
39 sometimes they are modeled so that there is no overlap.

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1
2 Mr. Thorsland stated that they talked about lining up with existing field patterns with GPS so that
3 they are not in the middle of someone's road and they will not know that until they get out there.

4
5 Mr. Thorsland stated that he understands that it will be a hardship for some to be present at next
6 week's meeting although a full Board's presence is very important.

7
8 Mr. Hall asked the Board to indicate what time they would like to meet next week.

9
10 **Mr. Palmgren moved, seconded by Mr. Courson to begin the October 6, 2011, public hearing**
11 **at 6:00 p.m. The motion carried by voice vote.**

12
13 **Mr. Courson moved, seconded by Mr. Passalacqua to continue Case 696-S-11 to the October 6,**
14 **2011, public hearing. The motion carried by voice vote.**

15
16 **6. New Public Hearings**

17
18 None

19
20 **7. Staff Report**

21
22 Mr. Hall stated that the new Associate Planner should start on October 11, 2011.

23
24 **8. Other Business**

25 **A. Review of Docket**

26
27 Mr. Thorsland stated that the Board has already reviewed the docket.

28
29 Mr. Courson asked if full cut-off lighting should be considered as a waiver for the wind farm.

30
31 Mr. Hall stated that the lighting for the wind turbines is regulated by the FAA and the County cannot
32 over ride their requirements.

33
34 **9. Audience Participation with respect to matters other than cases pending before the**
35 **Board**

36
37 None

38

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1 **10. Adjournment**

2
3 **Mr. Courson moved, seconded by Mr. Palmgren to adjourn the meeting. The motion carried**
4 **by voice vote.**

5
6 The meeting adjourned at 10:00 p.m.

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16 Respectfully submitted

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21 Secretary of Zoning Board of Appeals

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DRAFT SUBJECT TO APPROVAL DRAFT

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