

1 *AS APPROVED FEBRUARY 16, 2012*

2
3 **MINUTES OF REGULAR MEETING**

4 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

5 **1776 E. Washington Street**

6 **Urbana, IL 61801**

7
8
9 **DATE: December 15, 2011**

PLACE: Lyle Shields Meeting Room
1776 East Washington Street

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

Urbana, IL 61802

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13 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Eric Thorsland, Paul Palmgren,
14 Brad Passalacqua

15
16 **MEMBERS ABSENT :** Roger Miller

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18 **STAFF PRESENT :** Connie Berry, John Hall, Jamie Hitt, Andrew Kass

19
20 **OTHERS PRESENT :** Edgar Hovel, Kelly Dillard, Ramona Dillard

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23 **1. Call to Order**

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25 The meeting was called to order at 6:33 p.m.

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

28
29 The roll was called and a quorum declared present with one member absent and one vacant seat.

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32 **3. Correspondence**

33
34 None

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36 **4. Approval of Minutes**

37 **A. Closed Session: July 28, 2011**

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39 **Ms. Capel moved, seconded by Mr. Courson to approve the Closed Session Minutes for July**
40 **28, 2011, and that the July 28, 2011, Closed Session minutes shall remain closed.**

41
42 **B. Open Session: July 14, 2011, August 11, 2011, November 3, 2011, and November 10,**
43 **2011.**

44
45 **Ms. Capel moved, seconded by Mr. Passalacqua to approve the July 14, 2011, August 11, 2011,**
46 **November 3, 2011, and November 10, 2011, minutes.**

47
48 Mr. Thorsland asked the Board if there were any corrections to the minutes.

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 2 Mr. Palmgren stated that the July 14, 2011, minutes should indicate a correction to Ms. Capel’s
 3 motion regarding the re-arrangement of the agenda. He said that the draft minutes indicate the
 4 following:

5 **Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear**
 6 **Case 693-S-11 prior to Cases 683-AT-11, 684-AT-11, and 695-AT-11. The motion**
 7 **carried by voice vote.**

8
 9 Mr. Palmgren stated that Ms. Capel’s motion should be corrected to indicate the following:

10 **Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear Case**
 11 **693-S- 11 prior to Cases 683-AT-11, 684-AT-11, and 685-AT-11. The motion carried by**
 12 **voice vote.**

13
 14 Mr. Thorsland asked the Board if there were any further corrections to the minutes and there were
 15 none.

16
 17 **The motion carried by voice vote.**

18
 19 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the
 20 witness register. He reminded the audience that when they sign the witness register they are
 21 signing an oath.

22
 23
 24 **5. Continued Public Hearing**

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 26 **Case 685-AT-11 Petitioner: Champaign County Zoning Administrator. Request to amend the**
 27 **Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions**
 28 **required for any County Board approved special use permit for a Rural Residential**
 29 **Development in the Rural Residential Overlay district as follows: (1) require that each**
 30 **proposed residential lot shall have an area equal to the minimum required lot area in the**
 31 **zoning district that is not in the Special Flood Hazard Area; (2) require a new public street to**
 32 **serve the proposed lots in any proposed RRO with more than two proposed lots that are each**
 33 **less than five acres in area or any RRO that does not comply with the standard condition for**
 34 **minimum driveway separation; (3) require a minimum driveway separation between**
 35 **driveways in the same development; (4) require minimum driveway standards for any**
 36 **residential lot on which a dwelling may be more than 140 feet from a public street; (5) require**
 37 **for any proposed residential lot not served by a public water supply system and that is located**
 38 **in an area of limited groundwater availability or over a shallow sand and gravel aquifer other**

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1 **than the Mahomet Aquifer, that the petitioner shall conduct groundwater investigations and**
2 **contract the services of the Illinois State Water Survey (ISWS) to conduct or provide a review**
3 **of the results; (6) require for any proposed RRO in a high probability area as defined in the**
4 **Illinois State Historic Preservation Agency (ISHPA) about the proposed RRO development**
5 **undertaking and provide a copy of the ISHPA response; (7) require that for any proposed**
6 **RRO that the petitioner shall contact the Endangered Species Program of the Illinois**
7 **Department of Natural Resources and provide a copy of the agency response.**

8
9 Mr. Hall stated that there are no updates for Case 685-AT-11. He said that he is still trying to
10 recover from the wind farm cases and a lot of non-zoning case work has been occupying a lot of his
11 time. He requested that Case 685-AT-11 be continued to the proposed January 12, 2012, meeting.
12 He said that if Case 691-S-11 takes up a lot of the meeting time then the Board could continue Case
13 685-AT-11 to a later date. He said that he is confident that he can have documentation for the
14 Board's review by January 12, 2012.

15
16 Mr. Thorsland entertained a motion to continue Case 685-AT-11 to the proposed January 12, 2012,
17 meeting.

18
19 **Mr. Palmgren moved, seconded by Mr. Passalacqua to continue Case 685-AT-11 to the**
20 **proposed January 12, 2012, meeting. The motion carried by voice vote.**

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22
23 **Case 695-I-11 Petitioner: Zoning Administrator Request: Determine if the requirement of**
24 **paragraph 7.1.2 E. limiting vehicles that may be used in a Rural Home Occupation is as**
25 **follows: (1) Considers a vehicle to be any motorized or non-motorized device used to carry,**
26 **transport, or move people, property or material either on road or primarily off road; or a**
27 **piece of mechanized equipment on which a driver sits; and (2) Limits the number of non-farm**
28 **vehicles to no more than 10 vehicles in total, including vehicles under 8,000 pounds gross**
29 **vehicle weight, including trailers and off-road vehicles but excluding patron or employee**
30 **personal vehicles; and (3) Limits the number of vehicles weighing more than 8,000 pounds**
31 **gross vehicle weight to no more than three self-propelled vehicles. Location: Lot 1 of Orange**
32 **Blossom Estates in Section 18 of Hensley Township and commonly known as the house and**
33 **shed at 700 County Road 2175N, Champaign.**

34
35 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the
36 witness register. He reminded the audience that when they sign the witness register they are
37 signing an oath.

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1 Mr. Thorsland asked the petitioner if they desired to make a statement outlining the nature of the
2 request.

3
4 Mr. Hall stated that interpretation cases do not have a Summary of Evidence, Finding of Fact and
5 Final Determination. He said that any previous interpretation cases have been determined by the
6 Board as documented in the minutes of the meeting. He said that he hopes that the Board can take
7 action on this case tonight. He encouraged the Board and whoever makes the final motion, that if
8 they believe that the minutes of the previous meetings and tonight's meeting adequately provide all
9 of the information necessary and the Board just wants to approve or deny it then that is all the Board
10 has to do. He said that to the extent that there may be some information or evidence that was
11 especially compelling since there is no written finding the Board may want to mention that
12 information or evidence but the Board is certainly not obligated to.

13
14 Mr. Hall read the Supplemental Memorandum dated December 15, 2011, as follows:

15 The minutes of the July 28, 2011, public hearing demonstrate that at that time the Board
16 agreed that the phrase "off road vehicles" was not defined and therefore it was not clear what
17 the Ordinance actually required.

18
19 Mr. Hall said that he had no doubts about the meaning of 7.1.2E. because he simply followed
20 the same course of action that had been followed since that amendment was added to the
21 Ordinance in 1993. He said that if he had been confused he could have referred to the same
22 minutes of adoption that were attached to the Preliminary Memorandum. He said that he
23 believes that those minutes support the actions that he has taken in this case.

24
25 Mr. Hall said that he believes that in light of the confusion in the Zoning Ordinance his
26 actions have been reasonable and appropriate including the decision to bring this issue to the
27 Board as an interpretation case rather than make Mr. Dillard pay the \$200 fee for an appeal
28 case.

29
30 Mr. Hall stated that it is now clear that the Zoning Ordinance needs to be amended so as to
31 remove the confusion about what should be required by paragraph 7.1.2E. He said that he
32 has added a new text amendment Case 704-AT-11 to the docket and will seek guidance from
33 the County Board in January 2012, however this case requires the Board to make a ruling on
34 the appropriateness of his actions regarding the Dillard property.

35
36 Mr. Hall said that this zoning case is unrelated to any other issue but there have been
37 allegations that his actions and the actions of the Department have resulted in Mr. Dillard
38 incurring costs for Zoning Ordinance compliance that should not have occurred. He said that

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1 he can assure the Board that his actions and the actions of the Department have not caused
2 Mr. Dillard to incur any unreasonable costs.

3
4 Mr. Hall read the Zoning Board Alternatives as indicated in the Supplemental Memorandum dated
5 December 15, 2011. He said that the alternatives for the Zoning Board of Appeals in this case
6 include the following:
7

8 **Uphold the Zoning Administrator’s interpretation of 7.1.2E.** If the Board believes that
9 Mr. Hall’s interpretation of the Ordinance was reasonable it may uphold his interpretation.
10 In upholding Mr. Hall’s interpretation the Board will not be ruling on anything related to the
11 Illinois Vehicle Code but simply whether his interpretation of this confusing part of the
12 Ordinance was reasonable and appropriate. If the Board upholds his interpretation any
13 further action against Mr. Dillard’s property will be halted because it is now clear that
14 paragraph 7.1.2E of the Zoning Ordinance needs to be amended and it would be
15 unreasonable to proceed with action against the Dillard property until paragraph 7.1.2E. is
16 clarified. If the Ordinance that is eventually adopted in Case 704-AT-11 does limit the
17 numbers of equipment in an RHO in the same way that it limits vehicles the Mr. Dillard will
18 have to decide whether to seek a variance for the RHO or a special use permit as a
19 contractor’s facility and that will lead to another zoning case but enforcement will be stayed
20 until the outcome of that case.
21

22 **Find in favor of Mr. Dillard.** If the Board believes that Mr. Hall’s interpretation of the
23 Ordinance was unreasonable it may find in favor of Mr. Dillard. He said that finding in favor
24 of Mr. Dillard will result in a Zoning Compliance Certificate being issued. Mr. Hall said that
25 even if the Board finds in favor of Mr. Dillard he will still seek direction from the County
26 Board regarding a text amendment of paragraph 7.1.2E of the Zoning Ordinance. He said
27 that if the Ordinance that is eventually adopted by the County Board limits the numbers of
28 equipment in an RHO in the same way that it limits vehicles then Mr. Dillard’s current
29 equipment would be nonconforming and allowed to remain in these numbers but not
30 increase. He said that at this time I assume that nonconforming right would also apply to
31 future replacement equipment.
32

33 Mr. Hall stated that he wants to make it clear that if the Board finds in favor of Mr. Dillard then they
34 are deciding that the numbers of equipment that Mr. Dillard has is in keeping with a reasonable
35 interpretation of the Ordinance and that would make them nonconforming in the event that the
36 Ordinance is amended. He said that if the Board finds in favor of the Zoning Administrator that it
37 was a reasonable interpretation then Mr. Dillard will continue on about his way until Case 704-AT-
38 11 is resolved. Mr. Hall stated that the earliest date that Case 704-AT-11 can be resolved will

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1 probably be in August of 2012, because it takes that much time to get direction from the County
2 Board, place the legal advertisement for the public hearing, send it back to the County Board, await
3 municipal protest and then determine the outcome. He said that he would not expect Case 704-AT-
4 11 to be a controversial case but one never knows and the only thing that he would seek direction
5 from the County Board on in Case 704-AT-11 is the limit on vehicles in 7.1.2.E. He said that at this
6 time there are no other issues that he needs County Board guidance for but he cannot rule out
7 something being brought up at the County Board. He said that as far as he is concerned getting this
8 issue clarified is probably the most pressing text amendment that the Board has. He said that it is
9 astounding how unclear 7.1.2.E. is and it would be best to get that resolved.

10
11 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.

12
13 Mr. Thorsland called Mr. Kelly Dillard to testify.

14
15 Mr. Kelly Dillard, who resides at 700 CR 2175N, Champaign, stated that he does not believe that the
16 Zoning Ordinance is hard to understand because the syntax is perfectly easy for him to understand.
17 He said that the Zoning Ordinance only refers to non-farm, Second Division vehicles. He said that
18 he reviewed the last meeting's minutes and Mr. Hall indicated that he did not want to discuss
19 anything about Second Division vehicles because it was too confusing. Mr. Dillard stated that it is
20 not confusing at all and each Board member had a copy of the definition of a Second Division motor
21 vehicle to review. He said that he found it odd that Mr. Hall continues to indicate that this issue is
22 hard to understand and yet his request is written in the same syntax that the Ordinance was written
23 in. Mr. Dillard stated that everything in Mr. Hall's request refers back to the first paragraph of
24 7.1.2.E. He said that it is very simple to look at 7.1.2.E and see that each item refers back to non-
25 farm, Second Division vehicles and also motor vehicles. He said that the only way that 7.1.2.E
26 would be hard to understand is if it does not say what you want it to say. He said that this is not
27 about what Mr. Hall wants it to say but what it does say which is the letter of the law.

28
29 Mr. Dillard stated that one of the things that he found disconcerting at the last meeting was that this
30 is obviously an issue of disagreement between himself and Mr. Hall. He said that during the Board's
31 discussion, after testimony, Mr. Hall was part of that discussion and Mr. Dillard had no ability to
32 rebut what Mr. Hall said during that discussion, even if it was incorrect information. Mr. Dillard
33 stated that everyone received a copy of Mr. DiNovo's memorandum with ZBA minutes attached
34 which discussed the Ordinance. Mr. Dillard stated that no one received minutes from the County
35 Board which discussed the Ordinance but it is obvious that during the amendment process that the
36 County Board did not agree with Mr. DiNovo then and they changed the Ordinance to be what it is
37 today. He said that the current Ordinance is not as far reaching as the Zoning Department would
38 like it to be because it only deals with second division motor vehicles. He said that whatever the

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1 Board's decision is tonight there is no such thing as a vehicle that is a farm vehicle for a farmer and
2 not a farm vehicle for him. He said that if the Board chooses to rule that a backhoe is a vehicle that
3 is included in this then that ruling will have a far reaching affect on all of the farmers that have
4 backhoes, bobcats and bulldozers of their own.

5
6 Mr. Dillard stated that the minutes from the last meeting indicate that Mr. Thorsland noted that Mr.
7 Hall stated the description of the case was more in line of what he thought 7.1.2.E should say and
8 that he took out Second Division vehicles and Mr. Hall indicated that Mr. Thorsland was correct.
9 Mr. Dillard stated that it is a little hard to take out Second Division vehicles when that is what the
10 entire Ordinance is about.

11
12 Mr. Dillard stated that Mr. Hall indicated in the new memorandum that staff did not cause Mr.
13 Dillard any undue costs because of the way that he has enforced this issue. Mr. Dillard stated that
14 Mr. Hall is not qualified to make such a statement because staff has cost Mr. Dillard a lot of money
15 in trying to take care of things that he should not have had to take care of.

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

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

20
21 Mr. Hall asked Mr. Dillard to indicate what things staff required him to do that the Ordinance does
22 not require.

23
24 Mr. Dillard stated that all of the outdoor storage, the trees and extra parking lot was not for anything
25 but the heavy equipment which is not covered in any section of the Ordinance at all.

26
27 Mr. Hall asked Mr. Dillard if he believes that outdoor storage does not need to be screened under the
28 Ordinance.

29
30 Mr. Dillard stated that he wouldn't because heavy equipment is not outdoor storage.

31
32 Mr. Hall stated that is not covered by paragraph 7.1.2.E.

33
34 Mr. Dillard stated that it isn't covered under any of the Ordinance.

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36 Mr. Courson stated that paragraph 7.1.2.I.(i) indicates the following: outdoor storage of any number
37 of unlicensed vehicles or more than two licensed vehicles awaiting automobile or truck repair is
38 prohibited.

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Mr. Dillard stated Mr. Courson is correct because the Ordinance is all one sentence and indicates that non-farm, Second Division vehicles as defined by the Illinois Vehicle Code, and used in any RHO shall be limited as follow and the three items after this statement all refer to Second Division vehicles. He said that all three items which follow Mr. Hall's request refer to the initial part of the request.

Mr. Courson stated that Mr. Dillard is correct but paragraph 7.1.2.I. indicates prohibited Rural Home Occupation activities shall include outdoor storage of any number of unlicensed vehicles.

Mr. Dillard stated that paragraph 7.1.2.I. is part of the same sentence as the first part because this is all one sentence beginning at 7.1.2.E. Non-farm, Second Division vehicles as defined.

Mr. Courson stated that the beginning of 7.1.2 indicates Rural Home Occupations and does not discuss Second Division vehicles until 7.1.2.E.

Mr. Dillard stated that Mr. Courson is correct.

Mr. Courson stated that paragraph 7.1.2.I. deals with 7.1.2. which has nothing to do with Second Division vehicles except for paragraph 7.1.2. E.

Mr. Dillard stated that he thought Mr. Courson was discussing paragraph 7.1.2.E.(i) and not paragraph 7.1.2.I.

Mr. Hall stated that paragraph 7.1.2.K on page 7-4 of the Zoning Ordinance indicates that outdoor STORAGE shall be limited to SIDE YARDS or to the REAR YARD and screened as provided in Section 7.6. He said that outdoor STORAGE is capitalized because it is a defined word. He said that STORAGE is defined as the presence of equipment, or raw materials or finished goods (packaged or bulk) including goods to be salvaged and items awaiting maintenance or repair and excluding the parking of operable vehicles. Mr. Hall stated that the items in question are equipment therefore keeping them outside is indeed outdoor storage and outdoor storage and/or outdoor operation screening requirements are indicated in Section 7.6 on page 7-16 of the Zoning Ordinance. He said that a Type-D Screen is an eight foot screen.

Mr. Dillard asked Mr. Hall if he indicated that in regards to storage that operable vehicles are excluded.

Mr. Hall stated that operable vehicles are not considered storage but are just parked.

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Mr. Dillard stated that if the heavy equipment is considered an operable vehicle then it too is excluded.

Mr. Hall stated that it is excluded from the definition of outdoor storage but there are other requirements in the Ordinance that require them to be screened depending on where they are located.

Mr. Dillard stated that the only thing that he is interested in is paragraph 7.1.2.E and does it only refer to non-farm, Second Division vehicles.

Mr. Passalacqua stated that he does not know if the Board can only rule on 7.1.2.E because we are talking about outdoor storage of these vehicles which makes 7.1.2.I apply.

Mr. Dillard stated that the issue at hand is the number of vehicles and there is nowhere else in the Ordinance that indicates a number of vehicles allowed. He said that the thing that will either rule in his favor or Mr. Hall's favor is does the number of allowed vehicles apply to Second Division vehicles.

Mr. Hall stated that what is issue is that given the plain language in paragraph 7.1.2.E were his actions appropriate. He said that the Board determined on July 28, 2011, that paragraph 7.1.2.E is unclear. He said that given that unclarity and a neighbor who is complaining which way should he error, he said that he decided to error with the neighbor however he was willing to bring this issue before the Board as an interpretation rather than making Mr. Dillard apply for an appeal. He said that he could have brought it before the Board as an interpretation case when the issue first came up but during his seventeen years of experience this is the procedure that had been exercised and this is the first time someone disagreed. He said that if he brought everything before the Board when someone disagreed the Board would never get cases done for people who paid the fee to obtain the Board's decision. He said that as the Zoning Administrator he is to exercise his judgment when necessary and that is what he did with this case. He said that he would appreciate a decision from this Board on this issue when the Board is ready.

Mr. Dillard stated that the only person that has ever said that paragraph 7.1.2.E is unclear is Mr. Hall because it is not unclear to Mr. Dillard at all. He said that the Board has not ruled that paragraph 7.1.2.E is unclear.

Ms. Capel stated that the literal interpretation of the words is not in keeping with the intent of the Ordinance. She said that Mr. Hall interpreted the Ordinance with the intent of the Ordinance as a guide and Mr. Dillard is using the literal words to justify his position which basically is not in

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1 keeping with the intent of the Ordinance.
2
3 Mr. Passalacqua stated that the page 21 of the approved July 28, 2011, minutes indicate that the
4 Board agreed that there needs to be a more specific definition.
5
6 Mr. Dillard stated that he has always been under the impression that a law is to be enforced under the
7 letter of the law and if it is wrong then the letter of the law should be changed. He said that there is
8 nothing that indicates what the County Board's intent was and only what Mr. DiNovo's intent was
9 and that is not who made the Ordinance. He said that the County Board made the Ordinance. He
10 said that he does not know where to obtain the County Board minutes to indicate what the County
11 Board said about this issue but obviously it was different than what Mr. DiNovo wanted it to be. He
12 said that the County Board's intent was different than what has been done with the Ordinance since
13 1993.
14
15 Mr. Hall asked Mr. Dillard if he read the memorandum dated February 9, 1993, from Mr. DiNovo to
16 the County Board.
17
18 Mr. Dillard stated that he did read Mr. DiNovo's memorandum but it is not the County Board
19 minutes.
20
21 Mr. Hall stated that Mr. DiNovo's memorandum is the memorandum on which the County Board
22 took action and there are minutes attached from the ZBA. He said that Mr. Dillard is correct in
23 indicating that the Board does not have County Board minutes to review but there have never been
24 County Board minutes ever provided during the history of Champaign County that actually put down
25 substantive discussions. He said that to claim that the County Board minutes indicate one thing or
26 another is not helpful. He said that all staff knows is that Mr. DiNovo's memorandum is the
27 document that the County Board reviewed prior to adopting the Ordinance.
28
29 Mr. Dillard stated that the County Board adopted a different Ordinance than what Mr. DiNovo asked
30 them to adopt.
31
32 Mr. Hall stated that this is the final version that went to the County Board that was adopted. He said
33 that the Ordinance was changed previously in 1992 but the Ordinance was adopted in 1993.
34
35 Mr. Dillard stated that he realizes that the Ordinance was changed previously but the request in the
36 memorandum from Mr. DiNovo, which included minutes, is not what was adopted.
37
38 Mr. Hall reaffirmed to the Board that what is at issue is given the admitted and agreed to confusion

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1 in the Ordinance, were his actions appropriate.

2
3 Mr. Dillard stated that his request before the Board is whether the Ordinance only applies to non-
4 farm, Second Division vehicles.

5
6 Mr. Hall stated that Mr. Dillard has not paid a fee therefore he has no request before the Board. He
7 said that the request is from the Zoning Administrator.

8
9 Mr. Thorsland stated that page 7-3 of the Zoning Ordinance indicates paragraph 7.1.2.E as follows:
10 Non-farm, Second Division vehicles are defined by the Illinois Vehicle Code, used in any
11 Rural Home Occupation shall be limited as follows:

- 12 i. no more than three self propelled vehicles over 8,000 lbs. gross vehicle weight shall
13 be permitted;
- 14 ii. no more than 10 vehicles in total, including vehicles under 8,000 lbs. gross vehicle
15 weight, trailers and off-road vehicle shall be permitted excluding patron or employee
16 personal vehicles;
- 17 iii. all Second Division vehicles shall be stored indoors or parked no less than 50 feet
18 from any lot line and no less than 100 feet from any off-site existing dwelling
19 conforming as to use.

20
21 Mr. Thorsland stated that the July 22, 2011, Preliminary Memorandum includes Mr. Dillard's
22 approved Zoning Use Permit, which is 73-07-01RHO, and the Special Conditions for 73-07-01RHO.
23 He said that Special Condition #2 clearly states that the limit of 10 non-personal vehicles also applies
24 to vehicles not intended for road use such as a trencher, an excavator, a backhoe, a bobcat, etc. He
25 said that there is also a list of the 17 vehicles that were present on the subject property on June 22,
26 2011, and 17 vehicles is more than the 10 allowed. He said that he would argue that all 17 of the
27 vehicles listed may not count. He said that what is implicit is that at the time of the issuance of 73-
28 07-01RHO, Mr. Dillard agreed to the Ordinance.

29
30 Mr. Thorsland stated that he has an RHO on his property and he farms therefore he may have more
31 than 10 vehicles on his property but his combine doesn't do anything other than harvest his corn and
32 beans. He said that he understands Mr. Dillard's position and he understands that it is staff's job to
33 take what the County has and deal with it. He said that presently he is leaning towards Alternative
34 #1 which is to uphold Mr. Hall's interpretation because the problem comes from the Second Division
35 definition included in the Illinois Vehicle Code, which is not something that the County produced.
36 He said that the County does have an Ordinance which indicates a limit of 10 vehicles in total and
37 that is something that the Board can address in Case 704-AT-11. He said that the new memorandum
38 dated December 15, 2011, from Mr. Hall spells out the Board's two alternatives for tonight and

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1 neither one has an immediate effect on Mr. Dillard's operation. He said that it may be a good
2 opportunity to finish the interpretation case for Mr. Hall and let it move forward and get 704-AT-11
3 in the works to get this issue resolved. He said that depending upon the outcome it is Mr. Dillard's
4 option to either come back with a different application or not increase the number of nonconforming
5 equipment. He said that Mr. Dillard could replace his existing equipment but his use would be
6 nonconforming. He said that the real task at hand is that the Board needs to decide tonight if Mr.
7 Hall's interpretation is reasonable. He said that he is leaning towards determining that Mr. Hall's
8 interpretation is a reasonable interpretation of the limited tool that is before the Board. He said that
9 he understands Mr. Dillard's position completely because Second Division vehicles are indicated in
10 the Ordinance. He said that he read Mr. DiNovo's memorandum again and that is what the County
11 Board received in order to make their determination. He said that Mr. Hall pointed out that the
12 County Board minutes are more of an outline rather than word for word. He said that the ZBA
13 minutes are more detailed and they do reflect the actual discussion.

14

15 Mr. Thorsland asked Mr. Dillard if he had any further comments.

16

17 Mr. Dillard stated that he does not have 10 Second Division vehicles.

18

19 Mr. Thorsland stated yes, but a condition of Mr. Dillard's permit indicated a limit of 10 non-personal
20 vehicles.

21

22 Mr. Dillard stated that the limit is 10 non-personal motor vehicles.

23

24 Mr. Thorsland stated that he owns a trencher, he uses it for farming, but he does own a trencher.

25

26 Mr. Dillard stated that part of the problem is that Mr. Hall is counting the trailers yet the Ordinance
27 specifically states that trailers are permitted.

28

29 Mr. Thorsland stated that he drives past Mr. Dillard's property every day and as far as he is
30 concerned the property looks normal. He said that the Ordinance needs to be fixed to include a
31 better set of definitions for Mr. Dillard, Mr. Hall and the future ZBA. He said that he appreciates
32 that Mr. Dillard and Mr. Hall brought this issue before the Board so that it can be worked out to
33 avoid future disagreements. He said that staff and the Board had given Mr. Dillard the benefit of not
34 having to pay a fee to clarify this manner. He said that regardless of the outcome of the Board's
35 ruling or Case 704-AT-11, his operation will not stop.

36

37 Mr. Dillard stated that he has a reasonable place located in the country and he does not have an
38 unreasonable amount of anything. He said that the Ordinance is what it is currently and what it is

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1 going to be amended to in the future is unknown. He requested that the Board rule in his favor and
2 when the Ordinance changes staff should administer the Ordinance as it changes.

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

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

7
8 Mr. Thorsland stated that the Board can rule Mr. Hall's interpretation as a reasonable or
9 unreasonable interpretation by ruling with one of the Zoning Board alternatives included in Mr.
10 Hall's December 15, 2011, memorandum. Mr. Thorsland stated that he would prefer that the ruling
11 be accompanied by an explanation as to why the Board ruled as it did tonight.

12
13 Mr. Thorsland stated that he believes that Mr. Hall's interpretation is a reasonable interpretation as
14 indicated in Alternative #1. He said that he would argue that some of the vehicles do not count but
15 as far as an interpretation of the Ordinance, without looking at the specific definition for vehicles, the
16 RHO is limited to 10 non-farm vehicles in total.

17
18 Mr. Courson stated that Alternative #1 is too vague because it is not specific as to motorized or non-
19 motorized vehicles. He asked Mr. Hall if he would consider a wheel barrow to be a non-motorized
20 vehicle.

21
22 Mr. Hall asked Mr. Courson to restate his question.

23
24 Mr. Courson stated that the definition of a vehicle is not consistent in the Ordinance. He said that
25 the definition of a vehicle as stated in the Ordinance could be a two-wheeled cart, wheel barrow,
26 lawnmower, etc. He asked Mr. Hall if he feels that a wheel barrow is a vehicle.

27
28 Mr. Hall stated no and he is sorry that Mr. Courson felt like he needed to ask him that question. He
29 said that he does not believe that a wheel barrow is a vehicle and he has not made an issue of wheel
30 barrows on Mr. Dillard's property.

31
32 Mr. Courson stated that he is not concerned about Mr. Dillard's property at this time but according to
33 the definition a wheel barrow would qualify because the definition is vague. He said that someone
34 could throw hundreds of different things in the definition that would not be considered a vehicle.

35
36 Mr. Hall stated that Mr. Courson was one Board member who agreed that in the Ordinance an off-
37 road vehicle was not defined therefore he did not know what to do with it.

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1 Mr. Courson stated that he still has not been able to discover what classifies as a Second Division
2 vehicle.

3
4 Mr. Hall stated that he understands what classifies as a Second Division but what he did with off-
5 road vehicles is what is described here in this interpretation. He said that what (1), (2), and (3) are
6 his attempt to indicate what he thought and that would include a bicycle or wheel barrow and
7 perhaps that did not obtain enough review and he will apologize for that but that is not what is at
8 issue. He said that what is at issue is that paragraph 7.1.2.E includes a phrase which makes it
9 unclear.

10
11 Mr. Courson stated that he will agree that paragraph 7.1.2.E is unclear.

12
13 Mr. Thorsland stated that a reasonable person would not consider a bicycle or wheel barrow as
14 something that this Ordinance is covering. He said that he did not believe at any time that anything
15 smaller than a tractor would be included and he did not even consider that a lawnmower would be
16 counted.

17
18 Mr. Courson stated that if the Board is going to use this as a legal definition then it must be clear.

19
20 Mr. Hall stated that we are not using it as a legal definition.

21
22 Mr. Passalacqua stated that as it pertains to the case at hand regarding the language of paragraph
23 7.1.2.E(2) which includes trailers and off-road vehicles but excluding patron or employee vehicles
24 then he would agree to the Zoning Administrator's interpretation and he would also note that the
25 Zoning Administrator has made every attempt to make this as easy as possible by not ensuing the
26 \$200 fee from Mr. Dillard for an appeal case. He noted that the Zoning Administrator is
27 accommodating Mr. Dillard at this time by not ensuing the appeal case and simply getting through
28 this hoop so that the Board can move on to the next one.

29
30 Mr. Thorsland asked Mr. Passalacqua if he would like to make a motion. He said that much care
31 was taken to prevent as much impact as possible to Mr. Dillard's current operation for his Rural
32 Home Occupation.

33
34 **Mr. Passalacqua moved, seconded by Ms. Capel to uphold the Zoning Administrator's**
35 **interpretation of 7.1.2.E.**

36
37 The roll was called:
38

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Courson-no	Miller-absent	Palmgren-yes
Passalacqua-yes	Capel-yes	Thorsland-yes

1
2
3
4 Mr. Hall thanked the Board. He said that the Board’s decision upholds the Zoning Administrator’s
5 interpretation of 7.1.2.E. and staff will proceed as outlined in the Supplemental Memorandum dated
6 December 15, 2011. He informed Mr. Dillard that if he has any questions he should feel free to call
7 the office to speak with staff. He said that staff will keep Mr. Dillard informed of the progress in
8 getting direction by the County Board and staff will notify as to when the public hearing will begin.
9 He said that Mr. Dillard will be copied any memorandums that will come before the Board for Case
10 704-AT-11.

11
12 Mr. Hall thanked Mr. Dillard.

13
14 **6. New Public Hearings**

15
16 **Case 681-S-11** Petitioner: **Kopmann Cemetery Request to authorize an expansion of a**
17 **nonconforming cemetery with waivers (variances) in related Case 682-V-11 in the AG-1**
18 **Zoning District. Location: A 4.45 acre tract in the Southwest Quarter of the Southeast**
19 **Quarter of Section 36 of Compromise Township and commonly known as the Kopmann**
20 **Cemetery at the Northwest corner of the intersection of CR 2400N and CR 2400E, St. Joseph.**

21
22 **682-V-11** Petitioner: **Kopmann Cemetery Request to authorize the following in the AG-1**
23 **District: A. Variance of setbacks for existing headstones along CR 2400E with a setback of 33**
24 **Feet in lieu of the required setback of 55 feet and setbacks for existing and proposed**
25 **headstones along CR 2400N with a setback of 37 feet in lieu of the required setback of 55 feet;**
26 **and B. Variance of setback for an existing shed with setbacks of 41 feet from CR 2400E and 37**
27 **feet from CR 2400N in lieu of the required setback of 55 feet; and C. Variance of maximum lot**
28 **size on best prime farmland for a total lot area of 4.45 acres in lieu of the maximum of 3 acres**
29 **allowed on best prime farmland; and D. Waiver (variance) of standard conditions for a lot**
30 **area of 4.45 acres in lieu of the required 10 acres for a cemetery; and a front yard setback of**
31 **33 feet from CR 2400E and 37 feet from CR 2400N in lieu of the required 100 feet; side yard**
32 **setback of 15 feet in lieu of the required 50 feet; and a rear yard setback of 25 feet in lieu of the**
33 **required 50 feet. Location: A 4.45 acre tract in the Southeast Quarter of the Southeast**
34 **Quarter of Section 36 of Compromise Township and commonly known as the Kopmann**
35 **Cemetery at the Northwest corner of the intersection of CR 2400N and CR 2400E, St. Joseph.**

36
37 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County
38 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will

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1 ask for a show of hands for those who would like to cross examine and each person will be called
2 upon. He requested that anyone called to cross examine go to the cross examination microphone to
3 ask any questions. He said that those who desire to cross examine are not required to sign the
4 witness register but are requested to clearly state their name before asking any questions. He noted
5 that no new testimony is to be given during the cross examination. He said that attorneys who have
6 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.

7
8 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the
9 witness register. He reminded the audience that when they sign the witness register they are
10 signing an oath.

11
12
13 Mr. Thorsland asked the petitioner if they desired to make a statement outlining the nature of the
14 request.

15
16 Mr. Ed Hovel, who resides at 408 Moraine Drive, Rantoul, stated that he has been a Board member
17 of the Kopmann Cemetery Association for 30+ years and he is the treasurer/secretary. He said that
18 Mr. Schluter, who is the caretaker, and Mr. Buhr, a Kopmann Cemetery Board member, are present
19 at tonight's meeting. He said that there is a need to expand the cemetery therefore they are before
20 this Board tonight for approval. He said that the existing portion of the cemetery has grave stones
21 which date from the early 1800's.

22
23 Mr. Hovel read a letter from Bill Scott, attorney for the petitioner, and submitted the letter as a
24 Document of Record. Mr. Hovel read Mr. Scott's letter as follows:

25
26 As part of this application, because of the way the cemetery has been laid out in the past, and
27 the way it will be laid out in the future, certain variances are required. We very much
28 appreciate the time that Mr. Hall and Mr. Kass have spent in preparing the report for the
29 Board.

30
31 It is Mr. Scott's purpose to explain why we believe that the special use permit should be
32 granted, with the variances that we are seeking. The Kopmann Cemetery was established by
33 the farming community for farmers in the 1800's. Since the time the cemetery was first
34 created in the late 1800's there have been four additions to that cemetery. Before the newly
35 created sixth addition to the cemetery the last addition was created in the 1980's.

36
37 The cemetery is bordered on the east and south by County roads and across those roads lies
38 farmland. The cemetery is bordered on the north and the west by farmland owned by the

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1 Kopmann family whose ancestors provided the first land for the creation of the cemetery.

2
3 It is our belief that with the grave sites contemplated with the sixth addition that we will be
4 able to provide cemetery plots for farming families for the next 50 years or more.

5
6 The shed at the southeast corner of the property was built at or around 1900 or before.

7
8 The setback line for the cemetery lots along CR 2400E was established when the initial
9 cemetery was created in the late 1800's and that setback line has continued for each of the
10 successive additions. That setback line is no less than 33 feet and the same is true with
11 respect to the setback line along 2400N. The initial cemetery was built with a setback line of
12 37 feet from CR 2400N. Now the cemetery addition proposes a setback line for the new
13 sixth addition of the same 37 feet so that the setback line from CR 2400 N would remain the
14 same. The west setback line would be 15 feet from the Kopmann farm and the north, or rear
15 setback line would be no less than 25 feet from the remaining Kopmann farm.

16
17 The cemetery is situated in an area which is categorized as best prime farmland by
18 Champaign County. No one wishes to preserve the farmland for use by farmers more than
19 the farming community especially the farming community in this area. The cemetery was
20 started by farmers and generations of farmers who are buried in the cemetery. The farming
21 community which surrounds this cemetery has a strong desire to continue the cemetery in its
22 present location and the cemetery must be expanded to allow for that.

23
24 The only adjoining use of the property is that of farm land and one residence to the south
25 some 400 feet from the cemetery. On multiple occasions the Kopmann family has sold the
26 cemetery land to the association. Obviously they do not believe that the use of their property
27 or the value of their property is negatively affected by the presence of the cemetery. We do
28 not believe the cemetery negatively affects property values of surrounding farms and we
29 believe it enhances the value because of the sense of community it promotes.

30
31 We understand that there are two sets of requirements, namely those of the AG-1 District and
32 those relating to the special use restrictions imposed on cemeteries. We believe that if the
33 Zoning Board of Appeals is of the opinion that the waivers or variances sought for the special
34 use for cemeteries are allowable, then the variances for the AG-1 District would be much
35 smaller in amount and would be justified.

36
37 Nothing in the use of this cemetery creates any visual barriers to surrounding property
38 owners. With the public roads on the south and east, there are effectively open areas of close

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1 to 100 feet to the east and to the south. The uses of the property to the east across CR 2400E
2 are agricultural. The use of the property to the south across CR 2400N is agricultural. Given
3 the nature and history of uses of this property, for generations to come, it is very likely all
4 this property will remain in agricultural production.
5

6 There is no lighting on the property. The cemetery is on two rural roads on which traffic is
7 extremely light. There is no air, noise, or dust pollution of any sort generated by the
8 cemetery. The cemetery creates no impact on the drainage of the property or surrounding
9 properties. There is no sanitary sewer system on the property and there will be no buildings
10 on the site. There are no present or planned uses on site which would create any risk of
11 flooding. The only time the cemetery is used for any number of people in excess of one car
12 is during funerals. Parking takes place within the cemetery and along the road. As these
13 roads carry local traffic this has never been a problem.
14

15 The risk of fire on site is non-existent.
16

17 We are seeking variance for setback lines and by comparison the setback lines for accessory
18 structures are 15 feet in the AG-1 District.
19

20 Mr. Hovel stated that Mr. Scott jokingly noted that we have asked the corn and beans what they
21 think of the addition and as best we can tell, they do not object.
22

23 Mr. Hovel stated that there are 48 parking spaces available on the cemetery's street. He said that
24 the shed which is located on the property was built during the horse and buggy days. He said that the
25 setbacks were established when the cemetery was created and the desire is to align the new grave
26 stones with the existing grave stones which are no less than 33 feet from CR 2400E and 37 feet from
27 CR 2400N.
28

29 Mr. Hall stated that these small rural cemeteries are an important part of the rural fabric and the
30 Zoning Ordinance has never found a way to accommodate them particularly since the recent
31 amendments regarding the use of best prime farmland. He said that Mr. Scott's letter describes this
32 issue perfectly. Mr. Hall stated that the County's standards for cemeteries, which staff can find no
33 justification for, merely serve to increase the amount of land that is necessary and if there were soils
34 which were not like the soils that we have the setbacks would make a lot of sense. He said that if
35 there were houses next to the cemetery a 50 foot side yard would make a lot of sense but in regards
36 to this cemetery the only neighbors are the corn and beans. He said that there is one house to the
37 south but it has a tremendous setback of its own.
38

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1 Mr. Hall stated that the task for cemeteries is to identify all of the variances and waivers that are
2 necessary because of the way that the Ordinance is written. He said that Board members might
3 observe that the Summary of Evidence is somewhat different than what has been done in the past.
4 He said that in the past these two requests would have been done as two completely different cases
5 but as a result of the recent wind farm special use permit staff has prepared one Summary of
6 Evidence with two separate determinations. He said that staff is doing this because staff wants to
7 make this the standard for doing these types of cases so that it will be better prepared when there is a
8 special use which might be controversial. He said that he does not expect to receive any protest from
9 the Compromise Township Plan Commission on these two cases but in order to minimize the risk of
10 any errors staff needs to do all special use permits in this manner, especially in townships where
11 there are plan commissions. He said that he believes that this procedure works out well because
12 there is less paperwork in front of the Board and the new memorandum that was prepared for tonight
13 makes the request very clear. He said that the Board can either review the new memorandum which
14 indicates the new items of evidence or they can follow the revised Summary of Evidence which has
15 all new items underlined. He said that new evidence has been added, much along the lines of what
16 Mr. Scott suggested in his letter, that all of the things that require waivers or variances are just things
17 which conspire to use more best prime farmland and the variance for the lot size is a variance. He
18 said that everything that has been requested is reasonable and staff has documented why these
19 requests should be approved. He said that staff called the attorney for the Compromise Township
20 Plan Commission in an attempt to find out if they had any comments although staff did not call the
21 plan commission members individually. Mr. Hall stated that he does not expect to have any protests
22 received regarding these requests but at a staff level a standard format should be achieved for special
23 use permits where plan commissions exist and that is a standard that he would recommend for the
24 Board as well. He said he would recommend that when there is a special use permit where there is a
25 township plan commission a response from the plan commission should be received before the
26 Board takes action. He said that there has been no response from the Compromise Township Plan
27 Commission to date therefore the case would need to be continued to a later meeting or the Board
28 could decide to move forward and take action on these two cases tonight and hope that no negative
29 comments are received from the plan commission.

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

32
33 Mr. Thorsland stated that he would like to receive comments from the Compromise Township Plan
34 Commission. He said that he would not be entirely uncomfortable in stating that the Board would
35 really like the precedence of having the township plan commission indicate if they had any protests
36 but he would not be afraid of moving forward with this case tonight. He asked the other Board
37 members to indicate their preference.

38

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1 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Hoveln or Mr. Hall at this
2 time and there was no one.

3
4 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
5 testimony regarding Cases 681-S-11 and 682-V-11 and there was no one.

6
7 Ms. Capel stated that at the risk of setting bad precedence she would like to complete these two cases
8 tonight.

9
10 Mr. Thorsland agreed with Ms. Capel.

11
12 Mr. Thorsland closed the witness register for Cases 681-S-11 and 682-V-11.

13
14 Mr. Thorsland noted that Item #9.E.(1) should be revised to indicate “serve” rather than “serves.”

15
16 Mr. Hall noted that the Kopmann Cemetery Association has been very patient with these cases. He
17 said that the wind farm kept these cases from coming forward before the Board. He said that staff
18 got these two cases to Board as soon as possible and he appreciates their patience regarding the
19 timing of these cases.

20
21 Mr. Thorsland stated that a new Item #7 should be added to the Documents of Record indicating the
22 following: Letter from Bill Scott, attorney for the petitioner, read and submitted at the December 15,
23 2011, public meeting by Ed Hoveln. Mr. Thorsland stated that Item #5 should be revised to indicate
24 Preliminary Memorandum dated December 9, 2011.

25
26 **Findings of Fact for Case 681-S-11:**

27
28 From the documents of record and the testimony and exhibits received at the public hearing for
29 zoning case 681-S-11 held on December 15, 2011, the Zoning Board of Appeals of Champaign
30 County finds that:

31
32 **1. The requested Special Use Permit IS necessary for the public convenience at this**
33 **location.**

34
35 Mr. Courson stated that the requested Special Use Permit IS necessary for the public convenience at
36 this location because it is an expansion of an existing facility which is located in a rural area with no
37 neighbors being impacted by the expansion.

38

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1 Ms. Capel stated that the requested expansion is required so that the cemetery can continue to serve
2 the community.

3
4 Mr. Thorsland stated that the cemetery has been serving the community for over 100 years.

5
6 **2. The requested Special Use Permit is so designed, located, and proposed to be**
7 **operated so that it WILL NOT be injurious to the district in which it shall be**
8 **located or otherwise detrimental to the public health, safety and welfare.**

9
10 **a. The street has ADEQUATE traffic capacity and the entrance location has**
11 **ADEQUATE visibility.**

12
13 Ms. Capel stated that the street has ADEQUATE traffic capacity.

14
15 Mr. Courson stated that the entrance location has ADEQUATE visibility.

16
17 **b. Emergency services availability is ADEQUATE.**

18
19 Mr. Passalacqua stated that emergency services availability is ADEQUATE.

20
21 **c. The Special Use will be designed to CONFORM to all relevant County**
22 **ordinances and codes, subject to requested variances and waivers.**

23
24 Ms. Capel stated that the Special Use will be designed to CONFORM to all relevant County
25 ordinances and codes, subject to required variances and waivers.

26
27 **d. The Special Use WILL be compatible with adjacent uses.**

28
29 Mr. Passalacqua stated that the Special Use WILL be compatible with adjacent uses.

30
31 **e. Surface and subsurface drainage will be ADEQUATE.**

32
33 Mr. Courson stated that surface and subsurface drainage will be ADEQUATE.

34
35 **f. Public safety will be ADEQUATE.**

36
37 Ms. Capel stated that public safety will be ADEQUATE.

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1 **h. The provisions for parking will be ADEQUATE.**

2
3 Mr. Passalacqua stated that the provisions for parking will be ADEQUATE.

4
5 Mr. Hall recommended that the Board amend Finding #2.c to include subject to required variances
6 and waivers.

7
8 The Board accepted Mr. Hall's recommendation.

9
10 Mr. Thorsland asked Mr. Courson if his determination of CONFORM is still accurate for Finding
11 #2.c.

12
13 Mr. Courson stated yes.

14
15 Ms. Capel stated that the requested Special Use Permit is so designed, located and proposed to be
16 operated so that it WILL NOT be injurious to the district in which it shall be located or otherwise
17 detrimental to the public health, safety and welfare.

18
19 **3a. The requested Special Use Permit DOES conform to the applicable regulations**
20 **and standards of the DISTRICT in which it is located.**

21
22 Ms. Capel stated that the requested Special Use Permit DOES conform to the applicable regulations
23 and standards of the DISTRICT in which it is located.

24
25 **3b. The requested Special Use Permit DOES preserve the essential character of the**
26 **DISTRICT in which it is located because:**

27
28 **a. The Special Use will be designed to CONFORM to all relevant County**
29 **ordinances and codes, subject to required variances and waivers.**

30
31 Mr. Thorsland stated that the Special Use will be designed to CONFORM to all relevant County
32 ordinances and codes, subject to requested variances and waivers.

33
34 **b. The Special Use WILL be compatible with adjacent uses.**

35
36 Mr. Courson stated that the Special Use WILL be compatible with adjacent uses.

37
38 **c. Public safety will be ADEQUATE.**

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Mr. Passalacqua stated that public safety will be ADEQUATE.

Mr. Courson stated that the requested Special Use Permit DOES preserve the essential character of the DISTRICT in which it is located.

4. The requested Special Use Permit IS in harmony with the general purpose and intents of the Ordinance because:

a. The Special Use is authorized in the District.

b. The requested Special Use Permit IS necessary for the public convenience at this location.

Mr. Courson stated that the requested Special Use Permit IS necessary for the public convenience at this location.

c. The requested Special Use Permit is so designed, located and proposed to be operated so that it WILL NOT be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety and welfare.

Mr. Passalacqua stated that the requested Special Use Permit is so designed, located and proposed to be operated so that it WILL NOT be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety and welfare.

d. The requested Special Use Permit DOES preserve the essential character of the DISTRICT in which it is located.

Mr. Courson stated that the requested Special Use Permit DOES preserve the essential character of the DISTRICT in which it is located.

Mr. Courson stated that the requested Special Use Permit IS in harmony with the general purpose and intent of the Ordinance.

5. The requested Special Use IS an existing nonconforming use and the requested Special Use Permit WILL make the existing use more compatible with its surroundings.

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1 The Board affirmed Finding #5.
2

3 **6. Regarding necessary waivers of standard conditions:**

4 **A. Regarding the requested waiver of the standard condition in Section 6.1.3 for**
5 **a cemetery for a lot area of 4.45 acres instead of the Standard Condition lot**
6 **area of 10 acres:**
7

8 **(1) The waiver IS in accordance with the general purpose and intent of**
9 **the Zoning Ordinance and WILL NOT be injurious to the**
10 **neighborhood or to the public health, safety and welfare.**
11

12 Ms. Capel stated that the waiver IS in accordance with the general purpose and intent of the Zoning
13 Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and
14 welfare.
15

16 **(2) Special conditions and circumstances DO exist which are peculiar to**
17 **the land or structure involved, which are not applicable to other**
18 **similarly situated land and structures elsewhere in the same district.**
19

20 Mr. Courson stated that special conditions and circumstances DO exist which are peculiar to the land
21 or structure involved, which are not applicable to other similarly situated land and structures
22 elsewhere in the same district.
23

24 **(3) Practical difficulties or hardships created by carrying out the strict**
25 **letter of the regulations sought to be varied WILL prevent**
26 **reasonable or otherwise permitted use of the land or structure or**
27 **construction.**
28

29 Mr. Courson stated that practical difficulties or hardships created by carrying out the strict letter of
30 the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land
31 or structure or construction.
32

33 **(4) The special condition, circumstances, hardships or practical**
34 **difficulties DO NOT result from actions of the applicant.**
35

36 Mr. Courson stated that the special condition, circumstances, hardships or practical difficulties DO
37 NOT result from actions of the applicant.
38

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1 **(5) The requested waiver IS the minimum variation that will make**
2 **possible the reasonable use of the land/structure.**

3
4 Mr. Courson stated that the requested waiver IS the minimum variation that will make possible the
5 reasonable use of the land/structure.
6

7 **B. Regarding the requested waiver of the standard condition in Section 6.1.3 for**
8 **a cemetery for a setback from the centerline of CR 2400N of 37 feet instead of**
9 **the Standard Condition setback from street centerline of 100 feet:**

10
11 **(1) The waiver IS in accordance with the general purpose and intent of**
12 **the Zoning Ordinance and WILL NOT be injurious to the**
13 **neighborhood or to the public health, safety and welfare.**

14
15 Mr. Passalacqua stated that the waiver IS in accordance with the general purpose and intent of the
16 Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety
17 and welfare.
18

19 **(2) Special conditions and circumstances DO exist which are peculiar**
20 **to the land or structure involved, which are not applicable to other**
21 **similarly situated land and structures elsewhere in the same**
22 **district.**

23
24 Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the land or
25 structure involved, which are not applicable to other similarly situated land and structures elsewhere
26 in the same district.
27

28 **(3) Practical difficulties or hardships created by carrying out the strict**
29 **letter of the regulations sought to be varied WILL prevent**
30 **reasonable or otherwise permitted use of the land or structure or**
31 **construction.**

32
33 Mr. Passalacqua stated that practical difficulties or hardships created by carrying out the strict letter
34 of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the
35 land or structure or construction.
36

37 **(4) The special conditions, circumstances, hardships, or practical**
38 **difficulties DO NOT result from actions of the applicant.**

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Mr. Courson stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant.

(5) The requested waiver IS the minimum variation that will make possible the reasonable use of the land/structure.

Mr. Courson stated that the requested waiver IS the minimum variation that will make possible the reasonable use of the land/structure.

C. Regarding the requested waiver of the standard condition in Section 6.1.3 for a cemetery for a setback from the centerline of CR 2400E of 33 feet instead of the Standard Condition setback from street centerline of 100 feet:

(1) The waiver IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

Mr. Courson stated that the waiver IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

(2) Special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district.

Mr. Passalacqua stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district.

(3) 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.

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.

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(4) The special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant.

Mr. Thorsland stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant.

(5) The requested waiver IS the minimum variation that will make possible the reasonable use of the land/structure.

Mr. Passalacqua stated that the requested waiver IS the minimum variation that will make possible the reasonable use of the land/structure.

D. Regarding the requested waiver of the standard condition in Section 6.1.3 for a cemetery for a side yard of 15 feet instead of the Standard Condition side yard of 50 feet:

(1) The waiver IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

Mr. Courson stated that the waiver IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and welfare.

(2) Special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district.

Mr. Thorsland stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district.

(3) 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.

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1 Mr. Courson stated that practical difficulties or hardships created by carrying out the strict letter of
2 the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land
3 or structure or construction.

4
5 **(4) The special conditions, circumstances, hardships, or practical**
6 **difficulties DO NOT result from actions of the applicant.**
7

8 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties
9 DO NOT result from actions of the applicant.

10
11 **(5) The requested waiver IS the minimum variation that will make**
12 **possible the reasonable use of the land/structure.**
13

14 Mr. Courson stated that the requested waiver IS the minimum variation that will make possible the
15 reasonable use of the land/structure.

16
17 **E. Regarding the requested waiver for the standard condition in Section 6.1.3**
18 **for a cemetery for a rear yard of 25 feet instead of the Standard Condition**
19 **rear yard of 50 feet:**

20
21 **(1) The waiver IS in accordance with the general purpose and intent of**
22 **the Zoning Ordinance and WILL NOT be injurious to the**
23 **neighborhood or to the public health, safety and welfare.**
24

25 Mr. Courson stated that the waiver IS in accordance with the general purpose and intent of the
26 Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety
27 and welfare.

28
29 **(2) Special conditions and circumstances DO exist which are peculiar to**
30 **the land or structure involved, which are not applicable to other**
31 **similarly situated land and structures elsewhere in the same district.**
32

33 Mr. Passalacqua stated that special conditions and circumstances DO exist which are peculiar to the
34 land or structure involved, which are not applicable to other similarly situated land and structures
35 elsewhere in the same district.

36
37 **(3) Practical difficulties or hardships created by carrying out the strict**
38 **letter of the regulations sought to be varied WILL prevent**

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1 **reasonable or otherwise permitted use of the land or structure or**
2 **construction.**

3
4 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
5 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
6 structure or construction.
7

8 **(4) The special conditions, circumstances, hardships, or practical**
9 **difficulties DO NOT result from actions of the applicant.**

10
11 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties
12 DO NOT result from actions of the applicant.
13

14 **(5) The requested waiver IS the minimum variation that will make**
15 **possible the reasonable use of the land/structure.**

16
17 Mr. Passalacqua stated that the requested waiver IS the minimum variation that will make possible
18 the reasonable use of the land/structure.
19

20 **7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED.**

21
22 **Findings of Fact for Case 682-V-11:**

23
24 From the documents of record and the testimony and exhibits received at the public hearing for
25 zoning case 682-V-11 held on December 15, 2011, the Zoning Board of Appeals of Champaign
26 County finds that:
27

28 **1. Special conditions and circumstances DO exist which are peculiar to the land or**
29 **structure involved, which are not applicable to other similarly situated land and**
30 **structures elsewhere in the same district.**

31
32 Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the land or
33 structure involved, which are not applicable to other similarly situated land and structures elsewhere
34 in the same district because the cemetery was originally laid out 100 years ago and the requested
35 variance allows less best prime farmland to be used for the expansion.
36

37 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
38 **regulations sought to be varied WILL prevent reasonable or otherwise**

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permitted use of the land or structure or construction.

Mr. Passalacqua 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 adhering to the strict letter of the setbacks would prevent the cemetery association from putting in as many extra plots as needed.

3. The special conditions, circumstances, hardships or practical difficulties DO NOT result from actions of the applicant.

Mr. Courson stated that the special conditions, circumstances, hardships or practical difficulties DO NOT result from actions of the applicant because this is an existing cemetery which has been operating for over 100-years and when it was created there was no restriction on the use of best prime farmland in the County.

4. The requested variance IS in harmony with the general purpose and intent of the Ordinance.

Mr. Thorsland stated that the requested variance IS in harmony with the general purpose and intent of the Ordinance because the variance will minimize impacts to farming and the use of farmland.

5. The requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Mr. Courson stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the road is sufficient for traffic, the entrance to the cemetery is adequate for traffic and emergency services are adequate for the area.

Ms. Capel stated that parking is also adequate.

6. The requested variance IS the minimum variation that will make possible the reasonable use of the land/structure.

Ms. Capel stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because it is the minimum variance that will allow the cemetery to be in conformance.

7. NO SPECIAL CONDITIONS ARE HEREBY IMPOSED.

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Mr. Courson moved, seconded by Mr. Passalacqua to adopt the Findings of Fact for Case 681-S-11 and 682-V-11, as amended. The motion carried by voice vote.

Mr. Capel moved, seconded by Mr. Courson to adopt the Summary of Evidence, Documents of Record and Finding of Facts as amended. The motion carried by voice vote.

Mr. Courson moved, seconded by Ms. Capel to move to the final determination for Cases 681-S-11 and 682-V-11. The motion carried by voice vote.

Mr. Thorsland informed the petitioner that a full Board is not present at tonight’s meeting therefore it is at the petitioner’s discretion whether to request that the present Board move to the Final Determination or request a continuance until a full Board is present.

Mr. Hoveln requested that the present Board move to the Final Determination.

Final Determination for Case 681-S-11:

Ms. Capel moved, seconded by Mr. Courson that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval of Section 9.1.11b. HAVE been met, and pursuant to the authority granted by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the Special Use requested in Case 681-S-11 is hereby GRANTED to the petitioner Kopmann Cemetery to authorize an expansion of Kopmann Cemetery as a Special Use Permit in the AG-1 Zoning District.

The roll was called:

Palmgren-yes	Thorsland-yes	Passalacqua-yes
Capel-yes	Courson-yes	Miller-absent

Final Determination for Case 682-V-11:

Mr. Courson moved, seconded by Ms. Capel that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C HAVE been met and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that the variance requested in 682-

12/15/11

1 **V-11 is hereby GRANTED to the petitioner Kopmann Cemetery to authorize a variance of**
 2 **setbacks, maximum lot size, as well as waivers (variance) of standard conditions for front yard**
 3 **setbacks, minimum lot size, rear yard setback and side yard setback to allow for an expansion**
 4 **of Kopmann Cemetery.**

5
 6 The roll was called:

8	Passalacqua-yes	Capel-yes	Courson-yes
9	Miller-absent	Palmgren-yes	Thorsland-yes

10
 11 Mr. Hall informed Mr. Hoveln that the two cases have been approved. He said that staff will send
 12 the final paperwork out within the next few weeks. He thanked Mr. Hoveln for his patience.

13
 14
 15 **7. Staff Report**

16
 17 None

18
 19 **8. Other Business**

20 **A. Review of ZBA Docket**

21
 22 The Board briefly reviewed the ZBA Docket.

23
 24
 25 **B. Cancellation of December 29, 2011, meeting**

26
 27 Mr. Passalacqua noted that he will be absent from the proposed January 12, 2012, ZBA meeting.

28
 29 **Mr. Courson moved, seconded by Mr. Palmgren to cancel the December 29, 2011, ZBA**
 30 **meeting. The motion carried by voice vote.**

31
 32 Mr. Thorsland stated that the ZBA will attempt to have a special meeting prior to the February 2,
 33 2012, regular meeting to honor retired Board member Melvin Schroeder. Mr. Thorsland stated that
 34 staff will contact Mr. Schroeder to confirm the date.

35
 36 **C. Review of 2012 ZBA Calendar**

37
 38 **Ms. Capel moved, seconded by Mr. Passalacqua to approve the 2012 ZBA Calendar as**

12/15/11

1 **submitted. The motion carried by voice vote.**

2

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D. October and November, 2011 Monthly Reports

4

5 Mr. Hall stated that the October and November, 2011 Monthly Reports are not available tonight for
6 review. He said that he said that his goal is to have the monthly reports ready for the Committee of
7 the Whole meeting in January. He said that he will send out the October and November, 2011
8 Monthly Reports to the Board as soon as they are complete.

9

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

12

13 None

14

15 **10. Adjournment**

16

17 **Ms. Capel moved, seconded by Mr. Passalacqua to adjourn the meeting. The motion carried**
18 **by voice vote.**

19

20 The meeting adjourned at 8:09 p.m.

21

22

23 Respectfully submitted

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28 Secretary of Zoning Board of Appeals

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