

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: February 2, 2012**

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

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

**Urbana, IL 61802**

12  
13 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Eric Thorsland,

14  
15 **MEMBERS ABSENT:** Paul Palmgren, Brad Passalacqua

16  
17 **STAFF PRESENT:** Connie Berry, John Hall, Andrew Kass

18  
19 **OTHERS PRESENT:** Herb Schildt, Annie Murray, Jack Murray

20  
21  
22 **1. Call to Order**

23  
24 The meeting was called to order at 6:30 p.m.

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

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

30  
31  
32 **3. Correspondence**

33  
34 None

35  
36 **4. Approval of Minutes**

37  
38 None

39  
40 **5. Continued Public Hearing**

41  
42 None

43  
44 **6. New Public Hearings**

45  
46 **Case 701-AT-11 Petitioner: Zoning Administrator Request to amend the Champaign County**  
47 **Zoning Ordinance as follows: Part A. Revise paragraph 6.1.4 D.1 to require that**  
48 **documentation of design compliance with applicable industry standards be submitted**

2-2-12

1 prior to receiving a Zoning Compliance Certificate for either a WIND FARM or for any single  
2 WIND FARM TOWER. Part B. Revise paragraph 6.1.4 F. as follows: 1. Revise  
3 subparagraph 6.1.4F.1 to require that agreements between the Applicant and the County  
4 Engineer shall not be forwarded to the County Board before the special use permit is  
5 forwarded and that all other agreements shall be executed prior to the close of the public  
6 hearing before the Board; and 2. Delete subparagraph 6.1.4F.1.u; and 3. Add new  
7 subparagraph 6.1.4F.3. to require at the time of decommissioning a Roadway Use and Repair  
8 Agreement with the appropriate highway authority. Part C. Revise paragraph 6.1.4J. to  
9 require the Applicant to submit a copy of the Agency Action Report or the Detailed Action  
10 Report, if applicable that is submitted to the Endangered Species Program of the IDNR as well  
11 as the response from IDNR. Part D. Add new subparagraph 6.1.4E.7. to require that a  
12 permanent soil erosion and sedimentation plan be submitted for all WIND FARM TOWER  
13 sites and access roads. Part E. Revise subparagraph 6.1.4S.1(c)(3) to authorize flexibility in  
14 the locations of WIND TOWERS from what is indicated on the site plan provided that the  
15 final locations comply with any required waivers or special conditions of approval. Part F.  
16 Strike the requirement for “reclamation agreement” for NON-ADAPTABLE STRUCTURES  
17 and WIND FARMS and replace with a requirement of “site reclamation plan” and add  
18 certain other related requirements as follows: 1. In Section 3 revise the definition of “NON-  
19 ADAPTABLE STRUCTURE” to include a WIND TURBINE TOWER and a WIND FARM  
20 TOWER AS currently defined in Section 3; and 2. Make the following revisions to paragraph  
21 6.1.1A: a. Strike references to “reclamation agreement” and replace with “site reclamation  
22 plan.” b. Revise subparagraphs 6.1.1A.1 through 5 as follows: (1) Require a site reclamation  
23 plan for NON-ADAPTABLE STRUCTURES; and (2) Require the site reclamation plan to be  
24 binding upon all successors of title to the land and require reclamation work be performed  
25 and that a letter of credit be provided for financial assurance; and (3) Limit consideration of  
26 salvage value to be limited by Paragraph 6.1.4P. c. Revise subparagraph 6.1.1A.6 to strike  
27 “120 days” and replace with “180 days” and insert “or applicant” after “landowner.” d.  
28 Revise paragraph 6.1.1A to add other related requirements; and 3. Revise paragraph 6.1.4P as  
29 follows: a. Revise paragraph 6.1.4P to strike references to “reclamation agreement” and  
30 replace with “site reclamation plan.”; and b. Delete subparagraphs 6.1.4P.3.(d), (e), and (f)  
31 and add new subparagraphs to require the following: (1) At the time of decommissioning a  
32 Roadway Use and Repair Agreement; and (2) The depth of removal of foundation concrete  
33 below ground shall be a minimum of 54 inches and require that replacement soil shall meet  
34 specified minimum standards of soil quality; depth; compaction; and drainage; and c. Revise  
35 subparagraph 6.1.4P.4(a) to require an irrevocable letter of credit and an escrow account as  
36 financial assurance to be provided for the site reclamation plan; and d. Insert new  
37 subparagraph 6.1.4P.4(b) to require the following: (1) Authorize salvage value to be deducted  
38 from decommissioning costs, subject to meeting specified standards; and (2) Add requirements

2-2-12

1 **for determining estimated net salvage value based on the average salvage price of the past five**  
2 **years and including any deconstruction costs; and (3) Add a limit of 70% for the amount of**  
3 **estimated salvage value that may be deducted from estimated decommissioning costs; and (4)**  
4 **Require the site reclamation plan to provide for legal transfer of the STRUCTURE to the**  
5 **demolisher should the reclamation work be performed; and (5) Limit the maximum allowable**  
6 **credit for the salvage value of any WIND FARM TOWER to no more than the estimated**  
7 **decommissioning cost of removal of the above ground portions of that WIND FARM**  
8 **TOWER; and e. Renumber existing subparagraph 6.1.4P.4(b)(5) to become new**  
9 **subparagraph 6.1.4P.4.(d) and revise to require regular adjustment to the amount of financial**  
10 **assurance to ensure that it reflects current information by requiring an Illinois Professional**  
11 **engineer to provide an updated report of estimates of decommissioning costs and salvage**  
12 **values; and f. Revise paragraph 6.1.4P to add other related requirements. \*Note: The**  
13 **description of the request has been simplified from the legal advertisement. See the legal**  
14 **advertisement included with the memorandum.**

15  
16 Mr. Thorsland noted that the description of Case 701-AT-11 has been simplified on the agenda  
17 from the legal advertisement.

18  
19 Mr. Hall stated that Mr. Thorsland was correct in stating that the description included on the  
20 agenda is indeed a shortened version of the legal advertisement. He said that the reason that the  
21 description is so long is because staff is recommending changes to the existing ordinance and  
22 therefore every change has to be spelled out.

23  
24 Mr. Hall stated that the January 27, 2012, Preliminary Memorandum which was included in the  
25 mailing essentially had the revised draft amendment that the Committee of the Whole reviewed  
26 beginning in December and ending in January. He said that through the process at the  
27 Committee of the Whole the amendment became more complete and that is why it doesn't really  
28 match the legal advertisement. He said that the legal advertisement was written once the  
29 amendment was more or less complete and the new memorandum dated February 2, 2012,  
30 included Attachment H, which is a revised draft of the amendment. He said that there are very  
31 few revisions included in Attachment H but the draft amendment has been formatted to match  
32 the legal although Page H-7 does have some numbering errors.

33  
34 Mr. Hall stated that staff began working on this amendment during the second week of  
35 November while the wind farm special use was still at the County Board. He said that it isn't  
36 that staff enjoys working on wind farm things but staff knew that there were rumors that a new  
37 wind farm special use permit application would be received in February 2012. He said that staff  
38 desired to have the changes to the reclamation agreement done by February but that is obviously

2-2-12

1 not possible at this time. He said that the January 4, 2012, memorandum which was mailed to  
2 the Committee of the Whole included a short overview and made it very clear that five of the  
3 changes are in response to waivers that were required for the California Ridge Wind Farm. He  
4 said that one change makes the Erosion and Sedimentation Control Plan a permanent part of the  
5 Ordinance and most of the changes are related to the concept of changing the reclamation  
6 agreement requirement to a simple site reclamation plan requirement. He said that the concept  
7 which the State's Attorney is striving for is that there is no need for an agreement because the  
8 requirements will be sufficiently spelled out in the Ordinance and a plan will be required as part  
9 of the application. He said that staff will try to mock up a reclamation plan for the California  
10 Ridge Wind Farm so that the Board could see what they might expect for future wind farms. He  
11 said that just as important as changing the agreement to a simple requirement for a plan is the  
12 proposal to limit the amount that salvage value can be used in offsetting decommissioning costs.  
13

14 Mr. Hall distributed the February 2, 2012, Supplemental Memorandum with attachments to the  
15 Board as well as the following three separate attachments: 1. Approved Reclamation Agreement  
16 for Case 696-S-11; and 2. Joint Committee on Administrative Rules Administrative Code; and 3.  
17 Citizen's Guide to Farmland Reclamation. He said that the Board members can review the  
18 approved reclamation agreement for the California Ridge project recalling all of the long hours  
19 that they spent laboring over it and they can determine what the effect of limiting the salvage  
20 value of no more than 70% would have. He said that the thing that the Board has to be certain of  
21 is if they are comfortable with the idea of not spending the time to format a 15 page agreement so  
22 that everything is right there in 15 pages. He said that he is sure that requirements in the  
23 Ordinance which have to be met is a way that this could work but nothing beats having it all  
24 summed up in a 15 page document. He said that the State's Attorney is adamant that the County  
25 should get away from this type of an agreement because the County does not have specific  
26 authorization for the agreements in the statutes therefore there is some degree of risk. He said  
27 that in addition to the reclamation agreement is the excerpt from the Illinois Administrative Code  
28 regarding the Agency Action Report, which is a required submittal. He said that he has always  
29 operated off of the RRO requirement for an Agency Action Report and he has misunderstood  
30 what an Agency Action Report is. He said that the last handout is a Citizen's Guide to Farmland  
31 Reclamation which is a publication of the Illinois Department of Natural Resources, Office of  
32 Mines and Minerals, and it is a good overview of the kinds of issues that must be dealt with  
33 when trying to reclaim land. He said that reclaiming of land cannot be done very successfully  
34 and the good news is that the County is only trying to reclaim land on the excavations where the  
35 top 54 inches of the footing is torn out and it is not like trying to reclaim mined land but is close.  
36 He said that the current Ordinance does not prevent filling those excavated holes with nothing  
37 but clay and that is clearly not what we want.  
38

2-2-12

1 Mr. Hall stated that the February 2, 2012, Supplemental Memorandum includes a table which  
2 relates every portion of the proposed amendment back to the approval of Case 696-S-11  
3 indicating which waivers are being eliminated as well as eliminating the need for some special  
4 conditions. He said that Attachment D, Proposed Standards for Soil Backfill for Excavated  
5 Foundation, is the first draft of the standards for the soil which could be used to refill the  
6 excavated foundations. He said that he does not expect wind farm companies to set aside the  
7 native soils that they excavate in the beginning and hold the soil there for 25 years until they are  
8 ready to decommission. He said that the wind farm companies will try to obtain soil to place  
9 back into the holes if the need ever arises. He said that staff cannot report how many cubic yards  
10 of soil would be required to fill the excavated holes but it is a good pile of dirt that would be  
11 required and the soil should be of the type that would be of productive use. He said that  
12 Attachment D has been reviewed by a professional geologist. He said that he had hoped to  
13 obtain review from some engineers who have experience in reclaiming mined land before the  
14 hearings are over. He said that the idea of changing the reclamation agreement to the site  
15 reclamation plan came from the State's Attorney and it is a good idea if the Board is comfortable  
16 with it.

17  
18 Mr. Hall stated that another comment that occurred during the Committee of the Whole was to  
19 make it clear that discussion of salvage value is regarding net salvage value after deducting all of  
20 the costs for demolition and any preparation for transportation for reuse or recycling or for simple  
21 disposal and other costs and the language of subparagraph 6.1.4P.(4) is in such a way that  
22 nothing is left out. He said that the body of the memorandum has the proposed language for net  
23 estimated salvage value and staff is not trying to complicate this but it is not necessary to  
24 reinvent the wheel every time staff spends a lot of time with California Ridge trying to get the  
25 costs inserted that may have been there in the beginning but wasn't clear. He said subparagraph  
26 6.1.4P.(4) would have saved staff a lot of time on the California Ridge Wind Farm.

27  
28 Mr. Hall stated that the last comment from the Committee of the Whole was to increase the  
29 frequency of updating the financial assurance after year 13. He said that at least one Board  
30 member would like to see the frequency be on an annual basis. Mr. Hall said that he does not  
31 believe that an annual update is necessary because it is a cost to the wind farm company and the  
32 County. He said that he believes that every two years would be very adequate but staff  
33 advertised the amendment with the one year requirement and if the ZBA believes that one year is  
34 better than two years then they should feel free to recommend such. He said that Page H-9 of  
35 Attachment H, Revised Draft Amendment, staff has indicated that the Board needs to select one  
36 or two years. He said that if the Board believes that two years is adequate then the Board should  
37 be explicit as to why and if the Board believes that one year is necessary then the Board should  
38 be explicit as to why one year is necessary.

2-2-12

1  
2 Mr. Hall stated that Attachment A of the Reclamation Agreement for Case 696-S-11, California  
3 Ridge Wind Project-Base Decommissioning Cost Estimate, indicates the total decommissioning  
4 cost and the total salvage value and in the future it is hoped that the net salvage value total will  
5 be indicated. He said that the total salvage value for California Ridge was \$4,865,400 and  
6 subtracted from the \$5,771,500 total decommissioning cost resulting in a base decommissioning  
7 cost of \$906,100. He said that the base decommissioning cost of \$906,100 was multiplied by  
8 210% resulting in the \$1.9 million dollar total for the letter of credit. He said that in the  
9 proposed amendment the total salvage value figure, \$4,865,400, would be reduced by 30%  
10 resulting in \$3,405,780 and the base decommissioning cost would increase to \$2,365,720 which  
11 is 2.6 times what it was for California Ridge. He said that for California Ridge the letter of credit  
12 would have gone up from the \$1.9 million figure to \$4,968,012. He said that the letter of credit  
13 for California Ridge is set at a reasonable value but it would be better if it were set at \$4.9  
14 million but that is not the Ordinance that was set at the time. He said that the amount that the  
15 County ended up with on that project is more than any other wind farm in Illinois. He said that  
16 he does not know if the next wind farm company will find that the amendment which is being  
17 proposed would result in an unfeasible project but again the amendment is only proposing it to be  
18 limited to 70%. He said that the one thing that he learned during the California Ridge case was  
19 that you never know what is feasible until you ask for it and you don't give up until you get it and  
20 everything that the County asked for it got.

21  
22 Mr. Hall stated that he can walk through item by item of the amendment with the Board because  
23 staff is not trying to rush the Board and no final action will be requested tonight or the next  
24 meeting unless everyone agrees that they are ready for it. He said that staff will have a finding of  
25 fact to the Board for final action at the next meeting and when it comes time to review the docket  
26 staff will request that the Board schedule a special meeting on March 1<sup>st</sup>.

27  
28 Mr. Thorsland asked the Board if there were questions for Mr. Hall.

29  
30 Mr. Courson asked Mr. Hall if requiring the wind farm companies to have a road agreement in  
31 place before they decommission could give them a reason to stall decommissioning.

32  
33 Mr. Hall stated that one thing that was discovered in the last wind farm project was that the road  
34 agreement at that time should not be nearly as complicated as the road agreement in the  
35 beginning because the roads should already be improved. He said that the wind farm company  
36 does not have to provide the road agreement until they are ready to decommission. He said that  
37 if we only ever have a wind farm company doing the decommissioning then that would be great  
38 and the worse case would be if the County was doing the decommissioning. He said that he does

2-2-12

1 not believe that the requirement for the road agreement would be a reason for anyone to stall  
2 decommissioning and the fact of the matter is that the financial assurance has to be in place as  
3 long as the wind farm is up therefore the County would be covered to the extent that it would  
4 ever be covered.

5  
6 Mr. Courson stated that he is concerned that the wind farm company could force the County into  
7 doing the decommissioning because they could not obtain a road agreement.

8  
9 Mr. Hall stated that the Ordinance already requires the wind farm company to have the cost  
10 included in the financial assurance for the road improvements at that time although who knows  
11 how close that will be to reality.

12  
13 Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall and there were  
14 none.

15  
16 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the  
17 witness register. He reminded the audience that when they sign the witness register they are  
18 signing an oath. He asked the audience if anyone desired to sign the witness register at this time  
19 to present testimony.

20  
21 Mr. Thorsland called Herb Schildt to testify.

22  
23 Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet, Illinois stated that he had a couple of  
24 questions for staff regarding the proposed amendment. He said that Item #5. Revise paragraph  
25 6.1.4S.1.(c)(3), on page A-2 of Attachment A. Revised Draft Example Amendment, which is  
26 included as an attachment to the January 27, 2012, Preliminary Memorandum, has been modified  
27 on page H-2 of Attachment H. Revised Draft Amendment, which is included as an attachment to  
28 the February 2, 2012, Supplemental Memorandum. He asked Mr. Hall why the clause  
29 “greater separation does not increase the noise impacts” was removed from paragraph  
30 6.1.4S.1.(c)(3).

31  
32 Mr. Hall stated that he does not understand why the clause is to be removed because it is still a  
33 concern therefore he will double check the reasoning for its deletion.

34  
35 Mr. Schildt stated that it didn't seem to be harmful because obviously why would we want to  
36 have more noise. He said that his reading of the rewrite of the revised paragraph determined that  
37 the paragraph is now confusing. Mr. Schildt stated that the revised paragraph reads as follows:  
38 the separation of all WIND FARM structures from adjacent NON-PARTICIPATING

2-2-12

1 DWELLINGS OR PRINCIPAL BUILDINGS or uses shall be dimensioned on the approved site  
2 Plan and that dimension shall establish the effective minimum separation that shall be required  
3 for any Zoning Use Permit unless the Board authorizes a lesser separation in a special condition  
4 of approval or waiver, if required that is also consistent with any required waivers of paragraph  
5 6.1.4C. Mr. Schildt asked Mr. Hall to explain what the word “required” means because it has to  
6 be consistent with paragraph 6.1.4C. whether there are waivers or not. He said that being  
7 consistent with any required waivers could mean that it doesn’t have to be consistent with  
8 anything else. He said that a developer could jump to the conclusion that it has to be consistent  
9 with any required waivers but what about the ones that are not required. Mr. Schildt stated that  
10 he believes that the rewrite is ambiguous.

11  
12 Mr. Hall asked Mr. Schildt if he believes that the rewrite of paragraph 6.1.4S.1.(c)(3) is  
13 ambiguous even with the following sentence: Different locations for WIND FARM structures  
14 may be provided in the site plan for the Zoning Use Permit provided that the final locations of  
15 WIND FARM TOWERS comply with any authorized waivers or special conditions of approval  
16 of the WIND FARM County Board SPECIAL USE Permit.

17  
18 Mr. Schildt stated that the paragraph indicates that it has to comply to the waivers but it doesn’t  
19 say that it has to comply with the standard conditions.

20  
21 Mr. Hall stated that if it doesn’t comply with the standard condition then it needs a waiver.

22  
23 Mr. Schildt stated that he is only pointing out that, there is an implication that it is understood  
24 that compliance with 6.1.4C is required, but the way the language is written it actually states that  
25 you have to comply with any authorized waivers or standard conditions. He said that the  
26 language raises a conflict. He said that during the California Ridge special use permit there was  
27 discussion about conflicting paragraphs and which one needed to be followed and the revised  
28 paragraph appears to be one of those conflicting paragraphs.

29  
30 Mr. Hall stated that he appreciates Mr. Schildt’s comments and it did take a lot of effort to get  
31 this particular change past the State’s Attorney. He said that he would welcome any revision that  
32 Mr. Schildt would like to submit.

33  
34 Mr. Schildt stated that he will give this more thought. He said that the amendment states that it  
35 has to be consistent with any required waivers but what if there are no waivers does it still have  
36 to be consistent with paragraph 6.1.4C. He said that it is implied that it does but paragraph  
37 6.1.4S.1.(c)(3) can be read in an odd way. He recommended that the noise language be restored.

38

2-2-12

1 Mr. Hall stated that he will review the change but there may be a logical reason why it was  
2 redundant in the paragraph. He said that the immediate concern is that when you start moving  
3 locations around you are affecting noise impacts.

4  
5 Mr. Schildt stated that granting greater flexibility to the Zoning Administrator is also granting  
6 more flexibility to the wind farm developer. He said that he would personally like to see this  
7 balanced with greater protection for the landowners by creating greater separation distances of  
8 1,500 feet, which is what the ZBA originally recommended, and property value guarantees. He  
9 said that if there is no true impact on property values, as the wind farm developers have claimed,  
10 then there should be no problem with such a guarantee but if there is an impact then the County  
11 is stepping in and doing the right thing for the long time residents of the County. He said that he  
12 would see this as a balance in giving flexibility to the developer offset by protection to the  
13 landowners.

14  
15 Mr. Schildt noted that when he comes to the microphone to address staff and the Board he is not  
16 criticizing but requesting clarification. He said that paragraph 6.1.1A.2., under Item #20, Revise  
17 paragraphs 6.1.1A.1. through 5, indicates the following: The site reclamation plan shall be  
18 binding upon all successors of title to the land. Prior to the issuance of a SPECIAL USE Permit  
19 for such NON-ADAPTABLE STRUCTURES, the landowner shall also record a covenant  
20 incorporating the provisions of the site reclamation plan on the deed subject to the LOT,  
21 requiring that the reclamation work be performed and that a letter of credit be provided for  
22 financial assurance. Mr. Schildt stated that this does make the landowner responsible for site  
23 reclamation if all else fails.

24  
25 Mr. Hall stated that testimony during the California Ridge case indicated that there is an  
26 agreement between the wind farm company and the landowner that makes the wind farm  
27 company liable for reclamation.

28  
29 Mr. Thorsland stated that those agreements are private agreements.

30  
31 Mr. Schildt stated that someone who signs a lease agreement in Champaign County to have a  
32 turbine on their land is also potentially incurring a liability that could exceed the payments on  
33 their lease. He said that if for some reason all else fails and the landowner is forced to implement  
34 a reclamation plan they will incur a heavy expense. He said that paragraph 6.1.1A.2 confines this  
35 explicitly into law indicating that the landowner is, in fact, ultimately responsible for executing  
36 the reclamation plan.

37  
38 Mr. Hall stated that this is not the actual intent. He said that the intent is to always have

2-2-12

1 “landowner or applicant” because it must be made clear that the applicant is the one that will be  
2 held liable for reclamation but the landowner has to be willing to grant access to the property if  
3 decommissioning is required. He said that this is one thing that was specifically referenced in the  
4 reclamation agreement for California Ridge but he does not know if such needs to be put into the  
5 Ordinance anywhere because he is not sure how to compare the agreement to what needs to be in  
6 the Ordinance.

7  
8 Mr. Schildt stated that he specifically remembers someone asking Mr. Blazer if the landowner  
9 was ultimately responsible for reclamation and Mr. Blazer stated yes, and that ultimately the  
10 applicant only has a lease on the land and if everyone else takes a hike the landowner would  
11 indeed be responsible.

12  
13 Mr. Hall stated that he does not recall Mr. Blazer’s exact testimony.

14  
15 Mr. Schildt stated that he is not indicating that paragraph 6.1.1A.2 is wrong he is just trying to  
16 understand the text. He said that Item #23, revised paragraph 6.1.1A.12. on page A-10 of  
17 Attachment A. Revised Draft Example Amendment, of the January 27, 2012, Preliminary  
18 Memorandum, states the following: Upon transfer of any property subject to a letter of credit  
19 pursuant to this Section, the new owner of record shall submit a new irrevocable letter of credit  
20 of same or greater value to the Zoning Administrator, prior to legal transfer of title, and shall  
21 submit a new site reclamation plan, pursuant to Section 6.1.1A.4.a. and for WIND FARMS,  
22 Section 6.1.4.P. Once the new owner of record has done so, the letter of credit posted by the  
23 previous owner shall be released and the previous owner shall be released from any further  
24 obligations under the site reclamation plan. Mr. Schildt asked if “owner” is referring to the  
25 property or the wind farm and the towers. He asked if it is the landowner who is responsible for  
26 providing the letter of credit and site reclamation plan or the wind farm operator.

27  
28 Mr. Hall stated that the intention in paragraph 6.1.1.A. is to always have “landowner or  
29 applicant” and never have reference to the landowner only.

30  
31 Mr. Schildt stated that paragraph 6.1.1A.12 refers to property owner therefore he was curious  
32 who paragraph 6.1.1A.12 is referring to.

33  
34 Mr. Hall stated that he hopes to make it clear in the next version of the amendment.

35  
36 Mr. Schildt stated that these are just a few things that have popped out to him during his review.

37  
38 Mr. Hall stated that Mr. Schildt is probably going to have questions that he is not going to try to

2-2-12

1 answer although Mr. Schildt is welcome to pass his questions on to the State's Attorney. Mr.  
2 Hall stated that he would never present himself as an attorney therefore he will not try to answer  
3 some of Mr. Schildt's questions.

4  
5 Mr. Schildt stated that he appreciates Mr. Hall's comments.

6  
7 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to  
8 present testimony in this case and there was no one.

9  
10 Mr. Thorsland closed the witness register for tonight's meeting.

11  
12 Mr. Thorsland stated that the Board should review Attachment H. Revised Draft Amendment  
13 with staff. He asked the Board if there were any questions or comments regarding Attachment H.

14  
15 Mr. Hall stated that Item #2.d on page H-4 regarding subparagraph 6.1.1A.6 includes text  
16 indicating "or applicant." He said that there are other places where the same text needs to be  
17 inserted in Section 6.1.1.

18  
19 Mr. Thorsland asked if staff could request clarification from the State's Attorney that the  
20 statement in paragraph 6.1.4S.1.(c)(3) regarding noise impacts should be included or omitted.

21  
22 Mr. Hall stated that staff will check with the State's Attorney regarding the omitted text in the  
23 revision. Mr. Hall said that Mr. Joel Fletcher, Assistant State's Attorney sends his regrets to the  
24 Board for not attending tonight's meeting but he had a prior commitment. Mr. Hall stated that if  
25 the Board would like to have Mr. Fletcher attend the next meeting they should indicate such so  
26 that he can notify Mr. Fletcher. Mr. Hall stated that the State's Attorney's time is very limited  
27 and if his presence is not absolutely required he will not attend the next meeting so that he may  
28 continue to work on other County matters.

29  
30 Ms. Capel stated that Mr. Fletcher's presence is not required at the next meeting because if the  
31 Board does have any questions they can convey those questions to Mr. Hall for clarification by  
32 Mr. Fletcher.

33  
34 Mr. Courson, Mr. Thorsland and Mr. Miller agreed with Ms. Capel.

35  
36 Mr. Thorsland suggested that the Board read through Attachment H, Revised Draft Amendment,  
37 included on the February 2, 2012, Supplemental Memorandum, a few times prior to the next  
38 hearing for Case 701-AT-11. He directed the Board to page H-9, Item 3.g. for determination of

2-2-12

1 the frequency of updating the financial assurance for one or two years after year 13. Mr.  
2 Thorsland stated that he believes that the two year requirement is sufficient because compiling  
3 the data every year would lead to great expense. He said that the Board can wait until the next  
4 meeting to decide but he believes that staff would like to have an answer tonight.

5  
6 Mr. Hall stated that the Board does not need to make a decision tonight but if the Board gets a  
7 definite opinion by the next meeting he would appreciate it if the Board would write down some  
8 justifications for their determination.

9  
10 Mr. Courson stated that once the wind farm company had their variables listed out all they would  
11 have to do is insert the new cost estimates which should not be over burdensome for a company  
12 of this size. He said that the wind farm corporations are rather large and they employ a lot of  
13 people to do this type of stuff therefore it should not be tremendously expensive. He said that  
14 whether the frequency is one or two years is arbitrary because it is just a number that was plucked  
15 out of the air.

16  
17 Mr. Hall stated that he is not concerned so much about the costs for the wind farm company but  
18 he is concerned about the work load on the Zoning Administrator because this is not something  
19 for the rest of the zoning department but is something that the Zoning Administrator is going to  
20 have to be involved in and it will take priority.

21  
22 Mr. Courson stated that if the submitted estimates do not fluctuate by a large amount from the  
23 earlier submittals then there is no reason to increase the frequency but if there is a large  
24 fluctuation then perhaps a shorter frequency should be considered.

25  
26 Mr. Hall asked Mr. Courson if perhaps the County could require it every year if the conditions  
27 could be indentified to justify why such frequency is necessary.

28  
29 Mr. Courson stated that if they have a standard deviation off the average that is widely variable  
30 from time to time then it probably should be reviewed every year.

31  
32 Mr. Thorsland stated that perhaps a percentage that would trigger an annual review would be  
33 necessary.

34  
35 Mr. Hall stated that he has considered such a trigger but does not know how it should be  
36 specified.

37  
38 Mr. Courson stated that he understands the extra work load on the Zoning Administrator but if it

2-2-12

1 is not needed from past examples then the frequency could be every three years. He said that if  
2 each estimate comes in within 2% each time then it appears redundant to require it every year.

3  
4 Mr. Hall stated that as quickly as a year passes by three years becomes almost a lifetime because  
5 there have been times when there have been three different Zoning Administrators in three years  
6 time. He said that if we could identify the conditions under which one year would be warranted  
7 then it would just be an issue that it has to be done therefore the wind company will just have to  
8 do it but he does not know if those conditions can be identified.

9  
10 Mr. Thorsland requested the Board's preference.

11  
12 Mr. Courson stated that he is not a statistician so he could not tell the Board what percentage the  
13 County should be looking at for a deviation of a standard.

14  
15 Mr. Thorsland stated that the last big swing in salvage value was in 2008 to which it went very  
16 low but since then salvage value has incrementally trickled back up to well above what the value  
17 was before 2008.

18  
19 Mr. Courson stated that there are other variables that will be considered also such as labor rates.  
20 He said that if there is a stagnant labor wage that goes on for ten years or a building boom occurs  
21 or high inflation that pushes labor wages way up then a huge fluctuation could occur which  
22 would deviate the previous estimates.

23  
24 Mr. Thorsland asked the Board if there were any other questions regarding the revised  
25 amendment.

26  
27 Mr. Hall advised the Board that there are some numbering issues which must be corrected. He  
28 said that Item #3.c which is located at the bottom of page H-7 also incorporates Item #3.d. which  
29 is located on page H-8. He said that the bolded text for Item #3.d should be eliminated and the  
30 underlined text should remain and be absorbed into Item #3.c.

31  
32 Mr. Hall stated that new subparagraph 6.1.4P.4.(b)(4), located on page H-9, should be moved to  
33 page H-8 and the existing Items #6.1.4.P.4.(b)(4), #6.1.4.P.4.(b)(5) and #6.1.4.P.4.(b)(6) should  
34 be renumbered accordingly. He said that subparagraph 6.1.4P.4.(b)(4) was included in the legal  
35 like this therefore we can make that change. He said that existing Item #3.f on page H-9 is 3.e in  
36 the legal and 3.g. is 3.f in the legal and 3.h. is 3.g. in the legal and likewise on down. He said  
37 that once the changes are made in Attachment H. the text is accurately reflected in the legal  
38 advertisement. He said that Attachment G. is the clean version of proposed paragraph 6.1.1A.

2-2-12

1

2 Mr. Thorsland asked staff and the Board if they would like to continue Case 701-AT-11 to the  
3 February 16, 2012, meeting finalizing it on March 1<sup>st</sup> or would they prefer to reserve March 1<sup>st</sup>  
4 exclusively for this case.

5

6 Mr. Hall stated that he believes that the case should be continued to the February 16<sup>th</sup> meeting.  
7 He said that the question with Case 691-S-11 is whether it will be at the ZBA on February 16<sup>th</sup> or  
8 not and if it is that case will take most of the meeting although Case 701-AT-11 is more  
9 important than 685-AT-11 therefore he requested that the Board continue Case 701-AT-11 to the  
10 February 16<sup>th</sup> meeting. He said that the Board may not have any time to spend on Case 701-AT-  
11 11 at the February 16<sup>th</sup> meeting and it all depends on how Case 691-S-11 works out. He said that  
12 the March 15<sup>th</sup> meeting has a full agenda and likewise for March 29<sup>th</sup> and April 12<sup>th</sup> therefore  
13 staff has proposed a special meeting for March 1<sup>st</sup>. He said that if the special meeting would just  
14 be for Case 701-AT-11 the Board could wait to see what happens on February 16<sup>th</sup> and then  
15 decide whether or not a special meeting is warranted on March 1<sup>st</sup>. He said that staff has  
16 tentatively reserved the Lyle Shields Meeting Room for March 1<sup>st</sup>.

17

18 Mr. Thorsland asked Mr. Hall, the petitioner, if a continuance date for Case 701-AT-11 on  
19 February 16<sup>th</sup> was acceptable.

20

21 Mr. Hall stated yes.

22

23 Mr. Thorsland entertained a motion to continue Case 701-AT-11 to the February 16<sup>th</sup> meeting.

24

25 **Mr. Courson moved, seconded by Ms. Capel to continue Case 701-AT-11 to the February**  
26 **16, 2012, meeting. The motion carried by voice vote.**

27

28 **7. Staff Report**

29 None

30

31 **8. Other Business**

32 **A. October, November and December 2011 Monthly Report**

33

34 Mr. Hall distributed the October, November, December 2011 Monthly Reports for the Board's  
35 review. He said that if the Board has any questions he would be happy to address those questions.  
36 He said that the Summary Report for Fiscal Year 2011 indicates that 2011 was nearly identical to  
37 Fiscal Year 2010 but with one less new zoning case. He said that both years had a low number of  
38 cases and the fact that we now have an Associate Planner back on board means that even if we only

2-2-12

1 have 22 cases in Fiscal Year 2012 it is going to be a better year for the Zoning Administrator.

2  
3 Mr. Hall stated that the department goes through periods where it receives a lot of cases in one  
4 month and very few the next therefore it is difficult to see any trend. He said that permitting in 2011  
5 continued to be up from 2010 by 20% which is a meaningful difference. He said that 20% on cases  
6 would be a difference of four and that would be a big difference.

7  
8 **B. FOIA training**

9  
10 Mr. Thorsland noted that the website indicated on the handout which was included in the mailing  
11 packet for tonight's meeting is not a good website for access therefore staff e-mailed all Board  
12 members a new website for access to the FOIA training.

13  
14 Mr. Hall stated that the training goes fairly quickly and it should take less than an hour to complete.

15  
16 **C. Review of ZBA Docket**

17  
18 Mr. Thorsland requested that the Board notify staff of any future absences so that it may be noted on  
19 the docket.

20  
21 **9. Audience Participation with respect to matters other than cases pending before the**  
22 **Board**

23  
24 None

25  
26 **10. Adjournment**

27  
28 **Mr. Courson moved, seconded by Mr. Miller to adjourn the meeting. The motion carried by**  
29 **voice vote.**

30  
31 The meeting adjourned at 7:30 p.m.

32  
33  
34  
35  
36 Respectfully submitted

ZBA

AS APPROVED FEBRUARY 16, 2012

2-2-12

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3 Secretary of Zoning Board of Appeals  
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