

AS APPROVED MARCH 15, 2012

**MINUTES OF REGULAR MEETING**

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**CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

**1776 E. Washington Street  
Urbana, IL 61801**

**DATE: February 16, 2012 PLACE: Lyle Shields Meeting Room  
1776 East Washington Street  
Urbana, IL 61802**

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

**MEMBERS ABSENT :** Roger Miller

**STAFF PRESENT :** Lori Busboom, John Hall, Andrew Kass

**OTHERS PRESENT :** Herb Schildt, Cameron Gordon, Thomas W. Mann, Don Wauthier,  
Judith C. Hummel, John Hummel, Chad May, Randy Brown, Randall  
Brown, R.J. Eaton, Les Cotton, Thomas Martin, Monica Martin, John  
O’Keefe, Alvin Christians, Clyde Jacobs, Bryan Bradshaw, Sherry  
Schildt, David Rogers, Timothy Heard, Matthew Savage, Brenda  
Rogers, Roy Cane, Jeff Tock, Mark Hummel, Steve Burdin, Carl  
Webber

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**1. Call to Order**

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

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

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

**3. Correspondence**

None

**4. Approval of Minutes (December 15, 2011 and February 2, 2012)**

**Ms. Capel moved, seconded by Mr. Courson to approve the December 15, 2011 and February 2, 2012, minutes as amended.**

Ms. Capel stated that Line 14 on page 17 of the December 15, 2011, minutes should be corrected to indicate the following: Mr. Hovel stated that there are 48 parking spaces available on the cemetery’s street. Ms. Capel stated that Line 33 on page 27 of the December 15, 2011, minutes

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1 should be corrected by removing the hyphen between “100 years.”

2  
3 **The motion carried by voice vote.**

4  
5 Mr. Thorsland requested a motion to re-arrange the agenda and hear Case 691-S-11 prior to Case  
6 701-AT -11.

7  
8 **Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear Case 691-S-11**  
9 **prior to Case 701-AT-11. The motion carried by voice vote.**

10  
11 **5. Continued Public Hearing**

12  
13 **Case 691-S-11 Petitioner: Pastor David L. Rogers and Apostolic Life UPC Church, LLC**  
14 **Request to authorize (1) The Apostolic Life UPC Church as a special use and (2) the**  
15 **establishment and use of a “Residential Recovery Center” as a second special use on the same**  
16 **land, in the AG-2 Agriculture Zoning District. Location: Lot 3 of the Almar First Subdivision**  
17 **in the Northeast Quarter of Section 3 of Urbana Township and commonly known as the**  
18 **Apostolic Life UPC Church located at 2107 High Cross Road, Urbana.**

19  
20 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County  
21 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will  
22 ask for a show of hands for those who would like to cross examine and each person will be called  
23 upon. He requested that anyone called to cross examine go to the cross examination microphone to  
24 ask any questions. He said that those who desire to cross examine are not required to sign the  
25 witness register but are requested to clearly state their name before asking any questions. He noted  
26 that no new testimony is to be given during the cross examination. He said that attorneys who have  
27 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.

28  
29 Mr. Thorsland requested that anyone with cell phones which generates a noise when a text, call or a  
30 reminder is received should place those phones on vibrate, mute or simply shut off them off during  
31 the public hearing.

32  
33 Mr. Thorsland asked if the Petitioner desired to make a statement outlining the nature of their  
34 request.

35  
36 Mr. Carl Webber, legal counsel for the petitioner, thanked staff and the Board for allowing Case 691-  
37 S-11 to be added to the agenda for tonight’s meeting. He said that the allowance of Case 691-S-11  
38 being on the agenda has encouraged the opportunity for himself and the petitioner to meet with the

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1 neighbor. He said that it is hoped that an agreement regarding the drainage will be completed in the  
2 very near future. He respectfully requested that he be able to present such an agreement to the Board  
3 at the next meeting. He said that if there are any questions or items which should be addressed he  
4 would appreciate it if the Board would indicate such so that those items may be presented at the next  
5 public hearing.

6  
7 Mr. Thorsland asked staff and the Board if there were any questions for Mr. Webber and there were  
8 none.

9  
10 Mr. Thorsland called Mr. John Hall to testify.

11  
12 Mr. John Hall, Zoning Administrator, stated that the Supplemental Memorandum dated February 14,  
13 2012, includes the summary sheets from Bryan Bradshaw's stormwater plan. Mr. Hall stated that the  
14 stormwater plan is only at a preliminary stage but it has been determined that it meets the Champaign  
15 County Stormwater Drainage Ordinance. He said that the new site plan which was received on  
16 January 10, 2012, indicates a different configuration of the basin than what was presented in  
17 November and that was the plan that accompanied the calculations that have been approved on a  
18 preliminary basis. He noted the Zoning Ordinance requires that the new parking area which is  
19 proposed for the dormitory be screened from the adjacent dwellings and that is around the west and  
20 south end west of the dormitory building and includes the little bit of parking along the east side of  
21 the dormitory building. He said that the screening is required and it would be good to have it added  
22 to the plan.

23  
24 Mr. Hall stated that he had hoped to have some explanation of what the various discharges and  
25 inflows and outflows means to the Hummel property. He said that he is glad to hear that the  
26 petitioner and neighbors are close to an agreement because explaining how much stormwater really  
27 gets to the Hummel property is more difficult than what is explained in the stormwater plan because  
28 the engineer was not required to address all of the area that drains to the Hummel property but there  
29 is a reduction in the amount as explained in Mr. Bradshaw's stormwater calculations.

30  
31 Mr. Hall stated that in September the Board had requested information on the existing septic system  
32 on the subject property and the petitioner provided copies of receipts from Gulliford Septic Service.  
33 He said that no one had ever analyzed the existing septic system for the church to determine whether  
34 or not it meets the existing standards for a church. He said that there is a record that the existing  
35 septic tank had been pumped three times within the last five years which is a pretty good record. He  
36 said that it is known that the existing septic tank is a 1,000 gallon tank therefore it is not a typical  
37 residential system but it is not known if it is a typical system for a church. He said that churches  
38 have a profile of occupancy that makes it very difficult to have a typical septic system therefore it is

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1 good that the existing tanks are being cleaned on a regular basis. He said that if the Board requires  
2 additional information then they need to reaffirm that tonight.  
3  
4 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.  
5  
6 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the  
7 witness register. He reminded the audience that when they sign the witness register they are  
8 signing an oath.  
9  
10 Mr. Thorsland called Bryan Bradshaw to testify.  
11  
12 Mr. Bryan Bradshaw, engineer for the petitioner, stated that he did not have any further information  
13 to add although he would address any questions posed by staff or the Board.  
14  
15 Mr. Thorsland called Pastor David Rogers to testify.  
16  
17 Pastor David Rogers stated declined to testify at this time.  
18  
19 Mr. Thorsland called John O'Keefe to testify.  
20  
21 Mr. John O'Keefe, representative for Christian Brothers Farm, stated that the Christian Brothers own  
22 and farm the property located east of High Cross Road. He said that they did not attend the previous  
23 meetings because they were either busy or farming but they are concerned about the water that is  
24 going to flow over to their farmland. He said that they already have a water problem on the farmland  
25 and no one other than Christian Brothers wants to take care of it. He said that there is a box culvert  
26 that goes across the road where the waterway stops and there is water bubbling out of the box culvert  
27 all of the time and the water comes from the west. He said that Christian Brothers are not going to  
28 spend any more money to fix the waterway because they just rebuilt it 15 years ago and if the  
29 waterway is going to be required to take on more water someone else is going to have to pay to  
30 install bigger tile.  
31  
32 Mr. Thorsland asked the Board if there were any questions for Mr. O'Keefe and there were none.  
33  
34 Mr. Thorsland asked if staff had any questions for Mr. O'Keefe.  
35  
36 Mr. Hall asked Mr. O'Keefe if he received a copy of the February 14, 2012, Supplemental  
37 Memorandum.  
38

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1 Mr. O'Keefe stated no.

2

3 Mr. Hall stated that staff can supply Mr. O'Keefe with a copy of the memorandum. He said that  
4 there are a series of tables which indicate that the culvert under High Cross Road will see less  
5 stormwater as a result of the proposed development. He suggested that Mr. O'Keefe contact Mr.  
6 Bradshaw for additional detail if required.

7

8 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. O'Keefe and there was no  
9 one.

10

11 Mr. Thorsland called Jeff Tock to testify.

12

13 Mr. Jeff Tock, attorney for Mr. and Mrs. Mark Hummel, stated that he would like to confirm Mr.  
14 Webber's comments that they are discussing an agreement to resolve the issues which concern Mr.  
15 and Mrs. Hummel and it is hoped that all of these issues will be worked out.

16

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

18

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

20

21 Mr. Thorsland called Mr. Randy Brown to testify.

22

23 Mr. Randall Brown, who resides at 2408 N. High Cross Road, Urbana, stated that again he is present  
24 tonight to oppose the establishment of a second special use on the church property. He said that it is  
25 his belief and many others who are opposed to the request that the use has been imposed upon their  
26 area and should be considered a spot zone even though it is defined as legal. He said that the  
27 recovery center has not been welcomed into the area and its existence was not reported to the County  
28 in a timely fashion. He said that many of the neighbors have spoken out in opposition of the  
29 proposed special use permit yet here we are still moving along on the case.

30

31 Mr. Brown stated that he believes that the interpretation of the accessory use for the Lifeline Connect  
32 business for donation has been overlooked. He said that should this case be approved there are many  
33 people who will have to live by Section 7 of the Zoning Ordinance which defines a Rural Home  
34 Occupation. He said that in this case there are people who will be moving into the neighborhood  
35 therefore why are there no rules to be implied for this type of residence versus another type of  
36 residence. He said that there is a business being run out of this church therefore why can't there be  
37 some sort of definition or rule which defines the accessory use of the property. He said that he does  
38 not understand why the use is being varied as a fundraiser for the church when in fact it is related to

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1 the second special use and not the church itself. He said that the Board should review the definition  
2 and how this should be handled because if it is allowed without the definition then the Board is  
3 imposing an “inequality” upon the other neighbors who are required to live under Section 7. He  
4 urged the Board to really think this request through before making a determination because everyone  
5 deserves equal protection under the law.

6  
7 Mr. Thorsland asked the Board if there were any questions for Mr. Brown.

8  
9 Mr. Courson asked Mr. Brown to indicate what activities, from a business standpoint, are occurring  
10 on the property.

11  
12 Mr. Brown stated that Lifeline Connect provides services to property owners such as yard work and  
13 roof repair. He said that the subject property is Lifeline Connect’s home base therefore they are  
14 running a business out of the church.

15  
16 Mr. Courson asked if the petitioner is storing vehicles.

17  
18 Mr. Brown stated that they have at least three vehicles.

19  
20 Mr. Courson stated that he is mainly concerned with what is going on within the boundaries of the  
21 subject property and not whether or not they are taking people off of the property to perform service  
22 work. He said that if someone owned an apartment building it would be expected that the tenants  
23 would leave for work every day to pay for their apartment.

24  
25 Mr. Brown stated that under the Rural Home Occupation there are only a certain number of cars  
26 allowed, required parking spaces, and hours for parking. He asked why these rules are not  
27 considered for this type of establishment as well because it isn’t fair for someone else who runs a  
28 business from their home.

29  
30 Mr. Courson stated that the petitioner has testified that the residents do not have vehicles and the  
31 only transportation available to them is by the center’s vans or public transportation. He said that he  
32 understands Mr. Brown’s concerns but the petitioner is not running a business out of this place they  
33 are only allowing people to sleep there.

34  
35 Mr. Brown stated that he interprets the use differently.

36  
37 Mr. Courson stated that a home occupation does not indicate that someone cannot go to work at 4:00  
38 a.m.

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1  
2 Mr. Brown stated that the number of cars which can be parked in the driveway at certain hours of the  
3 day is limited and the number of people which can congregate on the property. He said that by  
4 allowing 24 people to live in the dormitory on the subject property would be violating the home  
5 occupation guidelines as well.  
6  
7 Mr. Thorsland asked the Board if there were any additional questions for Mr. Brown and there were  
8 none.  
9  
10 Mr. Thorsland asked if staff had any questions for Mr. Brown.  
11  
12 Mr. Hall stated that he has been reviewing the previous meeting's minutes to find where Mr. Brown  
13 had questioned the petitioner on this very issue and the responses indicated a level of activity which  
14 is much lower than what Mr. Brown has indicated tonight. Mr. Hall stated that what the County  
15 Board has said that a church can do as another special use permit has no similarity and is not  
16 intended to be comparable in any way to what the County Board has said that an individual can do as  
17 a Rural Home Occupation.  
18  
19 Mr. Brown stated that they are similar in the fact that they are developing a residence in the County  
20 which is located in the AG-2 District and should conform to some sort of rules instead of being  
21 brushed under the carpet.  
22  
23 Mr. Hall stated that these issues were addressed in the adoption of Case 668-AT-10.  
24  
25 Mr. Brown stated that those issues were not addressed.  
26  
27 Mr. Thorsland asked the petitioner if they desired to cross examine Mr. Brown and the petitioner  
28 indicated that they did not.  
29  
30 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Brown and there was no  
31 one.  
32  
33 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present  
34 testimony in this case and there was no one.  
35  
36 Mr. Thorsland closed the witness register for tonight's meeting.  
37  
38 Mr. Thorsland stated that the Board agreed to place this case on the agenda so that the petitioner

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1 could be heard and the Board could address the submitted plan and he is encouraged that it appears  
2 that things are moving forward between the petitioner and the neighbors.

3  
4 Mr. Passalacqua stated that it appears that there is substantial improvement proposed to the discharge  
5 to the culvert.

6  
7 Mr. Hall stated that there is substantial improvement proposed however the plan does not tell the  
8 Board the total cubic feet per second that will still be going to the culvert therefore he cannot report  
9 what percentage of decrease of the total. He said that for the 4.6 acres which are indicated on the  
10 aerial the decrease is anywhere from 76% at the one year event to about a 47% decrease at the 100  
11 year event.

12  
13 Mr. Passalacqua asked if the 47% decrease is because there is so much surface water at the 100 year  
14 event that the numbers are not recorded.

15  
16 Mr. Brian Bradshaw stated that discharge rate is different because as the water rises the discharge  
17 changes.

18  
19 Mr. Thorsland asked Mr. Bradshaw if the actual numbers are available. He said that the Board  
20 would like to know what all of these numbers mean to the Hummel property.

21  
22 Mr. Bradshaw stated that for the 4.6 acres which drain to the Hummel property he can indicate that  
23 there is a 76% decrease in water.

24  
25 Mr. Passalacqua stated that it may be safe to say that the proposed plan may not improve the  
26 discharge under the road to the culvert but the 4.6 acres will not increase that flow.

27  
28 Mr. Bradshaw stated that it will improve the drainage which goes across High Cross Road as well.

29  
30 Ms. Capel asked Mr. Bradshaw if he has the information or data to provide the Board with a figure.

31  
32 Mr. Bradshaw stated that the overall drainage may be around 10 acres and he looked at 1/2 of that  
33 overall drainage area therefore it is fair to say that the overall reduction is about 50% of what is  
34 represented in the 4.6 acres.

35  
36 Mr. Capel stated that what Mr. Bradshaw didn't look at will not change and what he did look at will  
37 change.

38

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1 Mr. Bradshaw stated yes.

2

3 Mr. Courson stated that the latest design indicates that the drainage is not hooked into the drain tile  
4 which is headed to the north and to the west. He asked if this design was because those tiles were  
5 not able to handle the drainage.

6

7 Mr. Bradshaw stated that those drain tiles are under capacity therefore he wanted to take that matter  
8 off of the table for possible objection by the neighbors. He said that he proposed a surface discharge  
9 instead and that drainage area discharges to the east and eventually gets to the Hummel property  
10 therefore he is not changing the drainage pattern at all.

11

12 Mr. Courson stated that with this plan the same amount of water from one storm will run across the  
13 same area as it currently does but it is being slowed down into the holding pond where it can be  
14 slowly discharged.

15

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

18

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

20

21 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Bradshaw and there was  
22 no one.

23

24 Mr. Thorsland stated that he will personally look forward to seeing a complete drainage plan and an  
25 indication that the petitioner and neighbors have come to some sort of an agreement.

26

27 Mr. Hall asked the Board if the petitioner comes back with a signed agreement is the Board satisfied  
28 with the extent of detail on the stormwater engineering plan to-date.

29

30 Ms. Capel stated yes.

31

32 Mr. Thorsland stated that it may be advisable to include Mr. O'Keefe in any conversations.

33

34 Mr. Thorsland stated that the Board has a tentative date of March 1<sup>st</sup> for a Special ZBA Meeting if  
35 necessary. He asked Mr. Webber and Mr. Tock if an agreement could be finalized by March 1<sup>st</sup>.

36

37 Mr. Carl Webber, attorney for the petitioner, stated that they just met early this week and he got them  
38 a proposed agreement this afternoon. Mr. Webber stated that Mr. Tock was kind enough to review

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1 the proposed agreement and indicates that they were close to finalizing an agreement. Mr. Webber  
2 stated that he is not aware of any difficulties but he does know whether Mr. Tock would like to visit  
3 the site.

4  
5 Mr. Jeff Tock, attorney for the Hummels, stated that he did just receive the proposed agreement and  
6 if everyone can come to a quick agreement then March 1<sup>st</sup> may be possible but if there are some  
7 issues which require additional discussion then March 1<sup>st</sup> is not possible. He said that he does plan  
8 to be out of town between now and March 1<sup>st</sup> therefore his preference would be to continue this  
9 meeting to a later date than March 1<sup>st</sup> so that he can address any further issues that may arise with the  
10 proposed agreement while he is out of town.

11  
12 Mr. Thorsland entertained a motion for a continuance to March 15<sup>th</sup>. He said that if both sides have  
13 come to an agreement it should not take long to finalize this case therefore it could be the first case  
14 on the agenda.

15  
16 **Ms. Capel moved, seconded by Mr. Palmgren to continue Case 691-S-11 to the March 15<sup>th</sup>**  
17 **meeting. The motion carried by voice vote.**

18  
19 **Case 701-AT-11 Petitioner: Zoning Administrator Request to amend the Champaign County**  
20 **Zoning Ordinance as follows: Part A. Revise paragraph 6.1.4 D.1 to require that**  
21 **documentation of design compliance with applicable industry standards be submitted**  
22 **prior to receiving a Zoning Compliance Certificate for either a WIND FARM or for any single**  
23 **WIND FARM TOWER. Part B. Revise paragraph 6.1.4 F. as follows: 1. Revise**  
24 **subparagraph 6.1.4F.1 to require that agreements between the Applicant and the County**  
25 **Engineer shall not be forwarded to the County Board before the special use permit is**  
26 **forwarded and that all other agreements shall be executed prior to the close of the public**  
27 **hearing before the Board; and 2. Delete subparagraph 6.1.4F.1.u; and 3. Add new**  
28 **subparagraph 6.1.4F.3. to require at the time of decommissioning a Roadway Use and Repair**  
29 **Agreement with the appropriate highway authority. Part C. Revise paragraph 6.1.4J. to**  
30 **require the Applicant to submit a copy of the Agency Action Report or the Detailed Action**  
31 **Report, if applicable that is submitted to the Endangered Species Program of the IDNR as well**  
32 **as the response from IDNR. Part D. Add new subparagraph 6.1.4E.7. to require that a**  
33 **permanent soil erosion and sedimentation plan be submitted for all WIND FARM TOWER**  
34 **sites and access roads. Part E. Revise subparagraph 6.1.4S.1(c)(3) to authorize flexibility in**  
35 **the locations of WIND TOWERS from what is indicated on the site plan provided that the**  
36 **final locations comply with any required waivers or special conditions of approval. Part F.**  
37 **Strike the requirement for “reclamation agreement” for NON-ADAPTABLE STRUCTURES**  
38 **and WIND FARMS and replace with a requirement of “site reclamation plan” and add**

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1 certain other related requirements as follows: 1. In Section 3 revise the definition of “NON-  
2 ADAPTABLE STRUCTURE” to include a WIND TURBINE TOWER and a WIND FARM  
3 TOWER AS currently defined in Section 3; and 2. Make the following revisions to paragraph  
4 6.1.1A: a. Strike references to “reclamation agreement” and replace with “site reclamation  
5 plan.” b. Revise subparagraphs 6.1.1A.1 through 5 as follows: (1) Require a site reclamation  
6 plan for NON-ADAPTABLE STRUCTURES; and (2) Require the site reclamation plan to be  
7 binding upon all successors of title to the land and require reclamation work be performed  
8 and that a letter of credit be provided for financial assurance; and (3) Limit consideration of  
9 salvage value to be limited by Paragraph 6.1.4P. c. Revise subparagraph 6.1.1A.6 to strike  
10 “120 days” and replace with “180 days” and insert “or applicant” after “landowner.” d.  
11 Revise paragraph 6.1.1A to add other related requirements; and 3. Revise paragraph 6.1.4P as  
12 follows: a. Revise paragraph 6.1.4P to strike references to “reclamation agreement” and  
13 replace with “site reclamation plan.”; and b. Delete subparagraphs 6.1.4P.3.(d), (e), and (f)  
14 and add new subparagraphs to require the following: (1) At the time of decommissioning a  
15 Roadway Use and Repair Agreement; and (2) The depth of removal of foundation concrete  
16 below ground shall be a minimum of 54 inches and require that replacement soil shall meet  
17 specified minimum standards of soil quality; depth; compaction; and drainage; and c. Revise  
18 subparagraph 6.1.4P.4(a) to require an irrevocable letter of credit and an escrow account as  
19 financial assurance to be provided for the site reclamation plan; and d. Insert new  
20 subparagraph 6.1.4P.4(b) to require the following: (1) Authorize salvage value to be deducted  
21 from decommissioning costs, subject to meeting specified standards; and (2) Add requirements  
22 for determining estimated net salvage value based on the average salvage price of the past five  
23 years and including any deconstruction costs; and (3) Add a limit of 70% for the amount of  
24 estimated salvage value that may be deducted from estimated decommissioning costs; and (4)  
25 Require the site reclamation plan to provide for legal transfer of the STRUCTURE to the  
26 demolisher should the reclamation work be performed; and (5) Limit the maximum allowable  
27 credit for the salvage value of any WIND FARM TOWER to no more than the estimated  
28 decommissioning cost of removal of the above ground portions of that WIND FARM  
29 TOWER; and e. Renumber existing subparagraph 6.1.4P.4(b)(5) to become new  
30 subparagraph 6.1.4P.4.(d) and revise to require regular adjustment to the amount of financial  
31 assurance to ensure that it reflects current information by requiring an Illinois Professional  
32 engineer to provide an updated report of estimates of decommissioning costs and salvage  
33 values; and f. Revise paragraph 6.1.4P to add other related requirements.

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.

38

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

3  
4 Mr. Hall stated that one of the issues that was raised at the last hearing was whether or not the  
5 proposed amendment intends to obligate the landowner with the decommissioning costs as does the  
6 current Ordinance. He said that he checked with the State's Attorney and he confirmed that it is the  
7 intent of the Ordinance and the intent is to always indicate landowner or applicant in every instance.  
8 He said that the intent is still to have a landowner burdened with that so that if there ever is a  
9 problem, since the landowner is the signatory on the application, there will be no question that the  
10 decommissioning has to be done by somebody. He said that he spoke to the State's Attorney before  
11 this public hearing and he indicated that he would be happy to come to the meeting to answer any of  
12 the Board's questions if necessary although he is currently in his office working on other issues at  
13 this time.

14  
15 The Board indicated that they did not require the State's Attorney's presence at tonight's meeting.

16  
17 Mr. Hall requested that Mr. Kass call the State's Attorney indicating the Board's preference.

18  
19 Mr. Passalacqua asked Mr. Hall if Part E. is referring to the micro-siting that was previously  
20 discussed.

21  
22 Mr. Hall stated yes. He said that at the last meeting the Board had stricken the note about sound. He  
23 said that the Attachment A, Page A-2 of the Preliminary Memorandum includes language as it  
24 currently exists. He said that the second sentence of paragraph 6.1.4S.1.(c)(3) starts with the words,  
25 "Greater separation and somewhat different locations for WIND FARM structures may be provided  
26 in the approved site plan provided that the greater separation does not increase the noise impacts."  
27 He said that he knows what he was thinking when he originally wrote that sentence but when you  
28 read that sentence fresh it is not possible for truly greater separation to cause greater noise impacts  
29 because it is physically impossible unless you are also increasing the size of the turbine. He said he  
30 agrees with the concern that anytime you change locations you should be concerned about what is  
31 happening with noise but literally that sentence is nonsensical and that is why it was stricken.

32  
33 Mr. Hall stated that during the last meeting there was discussion regarding the update cycle after year  
34 13 on the Letter of Credit and he agreed with Mr. Courson's comments that it is easy to imagine an  
35 economic situation where a Letter of Credit might not be good for two years. Mr. Hall stated that he  
36 was thinking that a percent change could be specified which would trigger that update but the only  
37 way that staff could identify if it needs to be resubmitted is to go ahead and revisit it and if that is a  
38 concern of the Board then the easiest thing to do is to require an updated Letter of Credit every year

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1 after year 13 and if things haven't changed it won't require much work. He said that the poor Zoning  
2 Administrator will still have to do as much work but that is what he is here for therefore it is his  
3 recommendation that if the Board does not go with one year then there is always a chance that there  
4 will be a problem.

5

6 Mr. Courson asked Mr. Hall to indicate what he will actually do with the information.

7

8 Mr. Hall stated that it isn't that it is so much work but it is an absolute critical thing if we miss the  
9 update. He said that if we have a wind farm company who is on top of everything then they will  
10 send things to him on time and they will probably check with him as to when it will be placed on the  
11 agenda. He said that he will review the update when it arrives and staff will place it on the agenda  
12 and deal with any questions from Board members and follow through with the wind farm company.  
13 He said that it isn't going to take up all of his time but it is a high profile critical thing that will get  
14 his attention and to do it every year will make it as critical as the budget and it is somewhat  
15 inconvenient to have things such as this that have to be done every year but he can see that this is a  
16 reality of wind farms.

17

18 Ms. Capel asked Mr. Hall what will happen if there are five wind farms.

19

20 Mr. Hall stated that then he will be doing those five wind farm Letter of Credit updates in addition to  
21 the yearly budget.

22

23 Mr. Thorsland stated that all of these updates will not occur at the same time.

24

25 Mr. Courson stated that a deadline could be inserted in to the Ordinance indicating that the updated  
26 Letter of Credit must be submitted by June 1<sup>st</sup> of any given year.

27

28 Mr. Hall stated that a deadline could be inserted although such was not included in the legal  
29 advertisement. He said that such a deadline could be made a special condition and it would be nice  
30 to have all of the Letter of Credit updates on the same deadline so that staff could make sure that all  
31 are consistent. He said that theoretically the deadline will be driven by the date of the first Letter of  
32 Credit therefore it is unknown what the submission date should be.

33

34 Mr. Thorsland asked the Board if they were comfortable with the one year cycle.

35

36 Mr. Passalacqua stated yes.

37

38 Ms. Capel stated that in regard to the noise issue, if a turbine was placed further away but directly

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1 upwind from a house it could affect the noise.

2

3 Mr. Hall stated that if the turbine was technically not placed closer to the home but in a somewhat  
4 different orientation it could affect the noise.

5

6 Mr. Passalacqua stated that he thought that the Board stipulated that a new study would be required if  
7 a turbine was relocated.

8

9 Mr. Hall stated that a special condition would be required for a new study but that is what he would  
10 recommend. He said that the reason why he did not add that to the Ordinance is because he is  
11 presuming that such would be part of any flexibility that they are granted. He said that he does not  
12 know if we should assume that any flexibility would require a new noise study.

13

14 Ms. Capel asked if the County is requiring an actual noise study after the wind towers are in place.

15

16 Mr. Hall stated no. He said that Mr. Kass prepared and distributed a new Supplemental  
17 Memorandum dated February 16, 2012, to the Board for review. He said that the new memorandum  
18 includes the following proposed evidence to be added to item 17 regarding other relevant evidence:  
19 1. Clarification on what net estimated salvage value is in order to ensure that all demolition and/or  
20 recycling costs are considered when determining estimated net salvage value; and 2. A limit on the  
21 amount of estimated net salvage value that can be applied towards estimated decommissioning  
22 costs. This limit will add a factor of safety for the County that should minimize the possibility that  
23 estimated decommissioning costs ever exceed what the estimated net salvage value is.

24

25 Mr. Hall stated that he would revise proposed item 17.2 as follows: A limit on the amount of  
26 estimated net salvage value that can be applied towards estimated decommissioning costs. This limit  
27 will add a factor of safety for the County that should minimize the possibility that decommissioning  
28 costs exceed the estimated net salvage value and financial assurance. He said that what is important  
29 is does the decommissioning costs exceed the financial assurance.

30

31 Mr. Hall read proposed item 17.3 as follows: Change from the requirement for a reclamation  
32 agreement to a requirement for a site reclamation plan. Changing from the agreement to the plan is  
33 preferable because the plan is a more streamlined and efficient process than the agreement and there  
34 is no ambiguity with a plan.

35

36 Mr. Hall stated that staff calculated the amount of fill needed for the excavated sites and the  
37 information in the memorandum has not been presented as evidence at this time. He said that in  
38 terms of square feet it is 491 square feet, which is 1/3 of a typical basement, at a 54 inches. He said

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1 that the total cubic yards of soil needed is 82 and the amount of cubic yards of top soil, which is to be  
2 as good as what was originally removed, needed for the top one foot is 18. He said that 64 cubic  
3 yards of sub-soil, which can be a mixture of poor quality top soil, is needed below the top one foot.  
4 He said that this calculation is on a per turbine basis therefore it depends on how many turbines are  
5 proposed but it is a pretty modest amount of soil.  
6

7 Mr. Courson stated that he believes that staff's calculations are a little bit on the low end due to the  
8 gravel at the bottom of the turbines and the access roads. He said that he visited the wind turbines in  
9 McLean County and found that there is a lot of rock around the base of the towers which would be  
10 required to be cleaned up as well.  
11

12 Mr. Hall asked Mr. Courson if he would like staff to include the access roads and gravel around the  
13 turbines and recalculate the amount of soil required.  
14

15 Mr. Courson stated that he does not see how staff could include the access roads.  
16

17 Mr. Hall stated that staff would have to assume a specified distance such as 1,000 feet from the road.  
18  
19

20 Mr. Courson stated that if the estimates are for only the turbine then he would determine that the  
21 estimates are a little shy. He said that the access roads vary so much that between the turbines  
22 themselves and from the roads that it would be difficult to estimate.  
23

24 Mr. Hall stated that he could assume 1.1 times the turbine height which is 550 feet from the road,  
25 which is the bare minimum and a 20 foot width.  
26

27 Mr. Thorsland stated that there was testimony that some of the landowners may intend to keep the  
28 access roads intact and as private drives.  
29

30 Mr. Hall stated that he would assume that the access roads could be left if the landowner is in  
31 agreement.  
32

33 Mr. Courson stated that it is an issue that the valuable soil will be hauled off and thrown into a hole  
34 and covered up and when it is time for reclamation the dirt will have to be stolen off of some other field.  
35

36 Mr. Thorsland stated that when he had his waterways constructed he informed the excavator where  
37 he wanted the dirt placed therefore perhaps the landowner could do the same for the footings and the  
38 access roads.

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Mr. Hall thanked the Board for their input regarding this issue.

Mr. Courson stated that perhaps the wind farm company should have to purchase a property near the wind farm where they are required to store the valuable top soil therefore the material would be available for reclamation.

Mr. Thorsland stated that such a practice would be taking more farmland out of production.

Mr. Courson stated that if the concern was that great then there would not be any wind farms at all.

Mr. Hall stated that the way that the Ordinance is written it is a clear requirement and it is up to the wind farm to solve that problem. He said that the Finding of Fact is the first one that the Board has seen for this case.

Mr. Thorsland called Herb Schildt to testify.

Mr. Herb Schildt, who resides at 398 CR 2500N, Mahomet, stated that at the last meeting he recalled an exchange which occurred during the California Ridge public hearing between the ZBA and Mr. Blazer. He said that he had his wife, Sherry Schildt, go through the online approved minutes, which he assumes are accurate, and he found two occurrences referring to his recollection of the exchange.

Mr. Schildt stated that Line 11, on page 7 of the October 13, 2011, approved minutes, indicates the following: Mr. Courson asked if Invenergy goes under does the landowner have any obligation for decommissioning. Mr. Schildt stated that Mr. Blazer does give a lengthy answer although the last sentence of his response is as follows: He said that if at the end of the day if Invenergy disappears the County can tell the landowner to take it down because they are the one who is responsible. Mr. Schildt stated that the minutes indicate that Mr. Courson stated that the participating landowners could be on the hook to take the turbines down and Mr. Blazer stated yes.

Mr. Schildt stated that Line 16, on page 45 of the November 3, 2011, approved minutes, indicates that Ms. Capel asked if the obligation to decommission runs with a covenant on the land is there any situation under which the landowner would be obligated to decommission and Mr. Blazer stated in theory yes. Mr. Schildt stated that during Mr. Blazer's response to Ms. Capel he stated the following: He said that the obligation running with the land would in theory be enforced on the landowner himself but that obligation has been assumed by Invenergy.

Mr. Schildt stated that he would feel more comfortable with the noise clause placed back in

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1 paragraph 6.1.4S.1.(c)(3) because there are a couple of other situations which could occur such as  
2 topography. He said that if the turbine location is changed the topography relative to a non-  
3 participating dwelling there could be more noise. He said that we could end up with an additive  
4 situation even though the turbine is technically further away it may add to the noise of another  
5 turbine therefore adding greater noise to another non-participating landowner because the locations  
6 were changed. He requested that the noise clause be reinserted because it adds protection for  
7 everyone.

8  
9 Mr. Thorsland asked the Board if there were any questions for Mr. Schildt and there were none.

10  
11 Mr. Thorsland asked if staff had any questions for Mr. Schildt and there were none.

12  
13 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony  
14 in this case and there was no one.

15  
16 Mr. Thorsland closed the witness register for tonight's meeting.

17  
18 Mr. Thorsland asked the Board if there were any questions for Mr. Hall or Mr. Kass.

19  
20 Ms. Capel stated that paragraph 6.1.1A.1.5. indicates the following: The irrevocable letter of credit  
21 shall be in the amount of one hundred fifty percent (150%) of an independent engineer's cost  
22 estimate to complete the work described . She said that it was her understanding that the percentage  
23 was 210%.

24  
25 Mr. Hall stated that Ms. Capel's question is in reference to Section 6.1.1 which is the basic  
26 requirements for all non-adaptable structures. He said that the 210% is only for the wind farm which  
27 is 6.1.4P.

28  
29 Mr. Thorsland stated that Mr. Schildt referred to revised paragraph 6.1.4S.1.(c)(3) which is on page  
30 H-2, of Attachment H. on the February 2, 2012, Supplemental Memorandum. He asked Mr. Hall to  
31 refresh the Board as to why the noise clause was removed.

32  
33 Mr. Hall stated that page A-2, of Attachment A on the January 4, 2012, Preliminary Memorandum  
34 indicates revised paragraph 6.1.4S.1.(c)(3). He read the following sentence included in paragraph  
35 6.1.4S.1.(c)(3) as it is written in the Ordinance: Greater separation and somewhat different locations  
36 may be provided in the approved site plan for the Zoning Use Permit provided that the greater  
37 separation does not increase the noise impacts that were approved in the WIND FARM County  
38 Board SPECIAL USE Permit. Mr. Hall stated that when he reads the phrase "greater separation" it

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1 can mean only one thing which is in fact greater separation and there is no chance for additive  
2 effects. He said that an additive effect means that you are actually getting closer to someone and  
3 greater separation means that you are not getting closer to anyone, as in any principal building. He  
4 said that it appears to be a pretty simple thing and on the same hand he would recommend that if the  
5 Board provides flexibility in location of turbines that they require a new noise study although since  
6 we are not going to have the noise study reviewed by anyone who knows anything about noise we are  
7 not going to get a lot out of it but we will at least receive a new noise study.

8  
9 Mr. Passalacqua stated that he is in favor of a new noise study even if currently the County does  
10 not have someone to review it.

11  
12 Mr. Hall stated that the problem with that is that people ask how we know that a new noise study  
13 will always be required.

14  
15 Mr. Passalacqua stated that he is referring to the micro-siting and flexibility of the location of the  
16 turbines.

17  
18 Mr. Thorsland stated that if it were made a special condition then it would be made clear. He said  
19 that it would not be included in the main Ordinance but as the applications come in.

20  
21 Mr. Passalacqua stated that he could see instances where micro-siting could change the level of  
22 the sound.

23  
24 Mr. Hall asked Mr. Passalacqua if he is proposing to make it a requirement of the Ordinance.

25  
26 Mr. Passalacqua asked if a special condition would apply to every applicant.

27  
28 Mr. Hall stated that a special condition would apply to every applicant if the Board remembers to  
29 do so.

30  
31 Ms. Capel asked how the Board is supposed to remember to do all this stuff that is attached to  
32 special conditions.

33  
34 Mr. Thorsland stated that Mr. Hall's point is that greater means that as you are moving away from  
35 one person that you are not moving closer to another.

36  
37 Mr. Passalacqua stated that when the petitioners are given that flexibility they are going to be  
38 required to show the Board that it will not create negative effects because it is possible that the

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1 turbine could further away yet create more noise.

2

3 Ms. Capel stated that some people did testify that if the turbine was upwind from your house then  
4 it was significantly louder.

5

6 Mr. Courson stated that there could be a body of water, stand of trees, or a farm field which would  
7 reflect the sound differently.

8

9 Mr. Thorsland stated that the distances in which the wind farm companies can move the turbines  
10 are not that great.

11

12 Ms. Capel asked if the current standard is that once they do the model and model siting then that is  
13 the standard that the turbines have to remain at.

14

15 Mr. Hall stated that they only have to meet the Illinois Pollution Control Board standards but as we  
16 learned with California Ridge the petitioner submitted a layout of turbines and a noise study and they  
17 wanted absolute flexibility on the turbines and they were happy to provide a new noise study because  
18 they recognized that there would be questions.

19

20 Ms. Capel stated that we are discussing two things, one of which is the new noise study but the other  
21 is if in the event that the petitioner relocates the turbines will they be held to the standard of the  
22 Ordinance or will they be held to the standards that they imposed upon themselves with the first  
23 model.

24

25 Mr. Hall stated no, and that is what we are trying to get away from because the petitioner did not  
26 want to be held to that site plan standard like every other special use permit is held. He said that the  
27 petitioner only wanted to be held to the Illinois Pollution Control Board standard and that is how  
28 paragraph 6.1.4S.1.(c)(3) is written. He said that requiring a new noise study is not particularly  
29 onerous but it wasn't included in the legal advertisement.

30

31 Ms. Capel stated that she believes that requiring a new noise study is great and she would like to see  
32 the petitioner be required to submit an actual one after the wind farm is up and running.

33

34 Mr. Hall asked the Board if they are comfortable with requiring a new noise study even though it was  
35 not included in the original legal advertisement. He said that the original legal advertisement was  
36 very expensive because it included so much detail.

37

38 The Board agreed to include the new noise study requirement.

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1  
2 Mr. Palmgren asked Mr. Hall to clarify what is involved in the noise study. He asked if they just  
3 insert data until they obtain the numbers that they like. He agreed that a new noise study should be  
4 required for any relocation and after construction is complete.  
5  
6 Mr. Hall stated that requiring a new noise study after construction is completed was not advertised.  
7  
8 Mr. Passalacqua stated that perhaps it is over the top.  
9  
10 Mr. Hall stated that it isn't any more over the top than spending some of that big application money  
11 to hire someone that knows about noise.  
12  
13 Ms. Capel stated that Bureau County did it.  
14  
15 Mr. Thorsland stated that the County Board was asked by the ZBA to hire a noise professional and  
16 the ZBA was told, in no uncertain terms no, therefore perhaps the County Board is very good at  
17 measuring sound.  
18  
19 Mr. Courson asked who picks up the expense when there are noise complaints.  
20  
21 Mr. Hall stated that the wind company picks up that expense if they are truly in violation. He said  
22 that he frankly does not know what it would take to make the County Board spend money on a noise  
23 study.  
24  
25 Ms. Capel stated that we could just make the wind farm company do it rather than the County do it.  
26  
27 Mr. Hall stated that there is a certain amount of due diligence here in telling someone that they are in  
28 violation and that they have to verify that they are not.  
29  
30 Mr. Thorsland stated that the Board moved around some paragraphs, chose annual yearly updates for  
31 the financial assurance and reviewed the one task with noise. He asked the Board if there was  
32 anything else for the Board to review.  
33  
34 Ms. Capel stated that item 2.d, Revise subparagraph 6.1.1A.6 of the Preliminary Draft Finding of  
35 Fact dated February 16, 2012, should be revised to indicate landowner or applicant's.  
36  
37 Mr. Thorsland stated that the Board has a potential special meeting date by which the Board could  
38 continue this case.

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Ms. Capel asked if the Board could complete this case tonight.

Mr. Hall stated no.

Mr. Thorsland stated that for several reasons it appears that an appropriate continuance date for this case is March 29, 2012.

**Mr. Palmgren moved, seconded by Mr. Courson to continue Case 701-AT-11 to the March 29, 2012, meeting. The motion carried by voice vote.**

**6. New Public Hearings**

None

**7. Staff Report**

None

**8. Other Business**

**A. January 2012 Monthly Report**

Mr. Hall distributed the January 2012 Monthly Report to the Board for review. He said that January was a surprising month because January was the second month in a row that the department exceeded the five year averages that are normally reported. He said that he hopes that this trend will continue.

**B. Review of ZBA Docket**

Mr. Hall stated that the docket indicates that March 15<sup>th</sup>, March 29<sup>th</sup> are full meetings. He said that if the cases are ready for the April 12<sup>th</sup> meeting then that too will be a full meeting. He said that May 17<sup>th</sup> also appears to be a full meeting. He said that January 2012 is already ahead of January 2011 for the numbers of new cases received and that does not include the cases that came in this week therefore the Board can anticipate another busy year.

**C. March 1, 2012, Special Meeting Determination**

Mr. Thorsland stated that the Board determined that a special meeting on March 1<sup>st</sup> is not necessary.

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

3  
4 Mr. Schildt asked if the County Board is not willing to fund a noise study could a private citizen  
5 fund a noise study and if so what would such a study cost.

6  
7 Mr. Hall stated that he does have estimates for a noise study and they are not that expensive. He said  
8 that he would be happy to supply Mr. Schildt with that information.

9  
10 Mr. Schildt stated that he thought that affected citizens in a particular area might want to have a  
11 noise study completed under an authority. He said that it might be interesting to see if private  
12 citizens could fund a new noise study on behalf of the County and therefore it would have the  
13 authority of the County behind rather than just having a private study.

14  
15 Mr. Hall stated that he does not know if the County authority would mean anything if the County did  
16 not pay the fees for the noise study.

17  
18 Mr. Schildt stated that it could be charged as a grant.

19  
20 Mr. Hall stated that private citizens could always band together to pay for their own noise study.

21  
22 Mr. Schildt stated that if the County Board will not fund a noise study and a group of concerned  
23 citizens could charge a grant which would fund the noise study on behalf of the County.

24  
25 Mr. Hall stated that perhaps he is being too hard on the County Board but he thought it was amazing  
26 that this Board made a specific request after approving everything to provide for that and it was  
27 turned down. He said that any area where there is a wind farm and citizens are prepared to fund their  
28 own noise study is a lucky area.

29  
30 **10. Adjournment**

31  
32 **Ms. Capel moved, seconded by Mr. Passalacqua to adjourn the meeting. The motion carried**  
33 **by voice vote.**

34  
35 The meeting adjourned at 8:05 p.m.

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ZBA

*AS APPROVED MARCH 15, 2012*

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Respectfully submitted

Secretary of Zoning Board of Appeals

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*DRAFT SUBJECT TO APPROVAL DRAFT* ZBA //

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