

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61802

DATE: September 27, 2012

PLACE: Lyle Shields Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

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

MEMBERS ABSENT : Roger Miller, Eric Thorsland

STAFF PRESENT : Connie Berry, John Hall, Andrew Kass

OTHERS PRESENT : Phillip VanNess, Robert Mahrt, David Thies, Kerry Gifford, Michael Buzicky, Mike Smith, Mike Guthrie, Dale Masley, Kristine Masley, Bud Parkhill, Janet Parkhill, Paul Clinebell

1. Call to Order

The meeting was called to order at 7:00 p.m.

2. Roll Call and Declaration of Quorum

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

Mr. Hall informed the Board that due to the absence of Eric Thorsland, Chair of the Zoning Board of Appeals, the Board must appoint an Acting Chair for tonight's meeting.

Mr. Palmgren moved, seconded by Mr. Passalacqua to appoint Catherine Capel as the Acting Chair for the September 27, 2012, meeting. The motion carried by voice vote.

Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. She reminded the audience that when they sign the witness register they are signing an oath.

3. Correspondence

None

ZBA

1 **4. Approval of Minutes**

2
3 None

4
5
6
7 **5. Continued Public Hearing**

8
9 **Case 717-AM-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General**
10 **Manager and landowner Parkhill Enterprises. Request to amend the zoning Map to change the**
11 **district designation from the R-4 Multiple Family Residence Zoning District to the AG-2 Agriculture**
12 **Zoning District. Location: Approximately 2.9 acres of an approximately 3.6 acre tract located in the**
13 **South Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 12**
14 **of Mahomet Township and commonly known as the Sangamon Valley Public Water District**
15 **treatment plant at 709 North Prairieview Road, Mahomet and subject to the proposed Special Use**
16 **Permit in related Case 718-S-12 and the variance requested in related Case 719-V-12.**

17
18 **Case 718-S-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General**
19 **Manager and landowner Parkhill Enterprises. Request to authorize the following on land that is**
20 **proposed to be rezoned to the AG-2 Zoning District in related Case 717-AM-12 subject to the required**
21 **variance in related Case 719-V-12. Part A. Authorize expansion and use of a non-conforming water**
22 **treatment plant as a Special Use with waivers (variance) of standard conditions; and Part B.**
23 **Authorize the replacement of a non-conforming water treatment tower that is 131 feet in height as a**
24 **Special Use with waivers (variance) of standard conditions. Location: An approximately 3.6 acre tract**
25 **located in South Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of**
26 **Section 12 of Mahomet Township and commonly known as the Sangamon Valley Public Water**
27 **District treatment plant a 709 North Prairieview Road, Mahomet.**

28
29 **Case 719-V-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General**
30 **Manager and landowner Parkhill Enterprises. Request to authorize the following for expansion of a**
31 **non-conforming water treatment plant in related Case 718-S012 on land that is proposed to be**
32 **rezoned to the AG-2 Zoning District in related Case 717-AM-12: Part A. The expansion of a non-**
33 **conforming lot of record that does not abut and have access to a public street right of way and does**
34 **not abut a private accessway as required by Zoning Ordinance paragraph 4.2.1H; and Part B. The**
35 **use of a 3.6 acre lot on best prime farmland in lieu of the maximum lot size of 3 acres on best prime**
36 **farmland in the AG-2 District for the construction and use of a water treatment plant in related**
37 **Special Use Permit Case 718-S-12. Part C. Waiver (variance) of standard conditions for a lot area of**
38 **3.6 acres in lieu of the required 5 acres; a front yard of 17 feet in lieu of the required 55feet; a side**

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1 **yard of 46 feet in lieu of the required 50 feet; and Part D. Waiver (variance) for a elevated water**
2 **storage tank that is 131 feet in height in lieu of the maximum allowed 50 feet. Location: An**
3 **approximately 3.6 acre tract located in South Half of the Southwest Quarter of the Northwest Quarter**
4 **of the Southwest Quarter of Section 12 of Mahomet Township and commonly known as the Sangamon**
5 **Valley Public Water District treatment plant a 709 North Prairieview Road, Mahomet.**
6

7 Ms. Capel informed the audience that Cases 718-S-12 and 719-V-12 are Administrative Cases and as such
8 the County allows anyone the opportunity to cross examine any witness. She said that at the proper time she
9 will ask for a show of hands for those who would like to cross examine and each person will be called upon.
10 She requested that anyone called to cross examine go to the cross examination microphone to ask any
11 questions. She said that those who desire to cross examine are not required to sign the witness register but
12 are requested to clearly state their name before asking any questions. She noted that no new testimony is to
13 be given during the cross examination. She said that attorneys who have complied with Article 7.6 of the
14 ZBA By-Laws are exempt from cross examination.
15

16 Ms. Capel informed the audience that anyone wishing to testify for these public hearings tonight must
17 sign the witness registers. She reminded the audience that when they sign the witness register they are
18 signing an oath. She asked the audience if anyone desired to sign the witness registers at this time.
19

20 Mr. Courson informed the Board that approximately ten years ago he completed sewer and water main work
21 for the petitioners.
22

23 Ms. Capel asked the petitioners if they desired to make a statement outlining the nature of their request.
24

25 Mr. Kerry Gifford, General Manager for Sangamon Valley Public Water District, stated that the information
26 provided by staff explains why they are before the Board. He said that the expansion has to be done
27 therefore they will do whatever they need to do to comply with County's requirements. He said that they are
28 requesting a rezoning, special use permit and several variances.
29

30 Mr. Gifford stated that the water district serves approximately 4,500 people. He said that the current water
31 treatment plant was built in the 1960's and it is almost at its maximum capacity which affects the water
32 quality at times. He said that the EPA recommends that they build additional water storage therefore it is
33 vital as a health and safety issue that they get the project completed.
34

35 Ms. Capel asked the Board if there were any questions for Mr. Gifford.
36

37 Mr. Palmgren asked Mr. Gifford if he indicated that the current water treatment plant was built in the 1960's.
38

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1 Mr. Gifford stated that the district was formed on August 1, 1966. He said that originally the treatment plant
2 consisted of only a pressure tank and well but in 1972 a softener was added.

3
4 Mr. Palmgren asked Mr. Gifford what type of development was in the area in 1966.

5
6 Mr. Gifford stated that there were a few small subdivisions and a mobile home park. He said that the system
7 was never designed to handle what is required currently. He said that a large part of their customer base is
8 from the Village of Mahomet and not just the rural vicinity and it would be advantageous for the Village of
9 Mahomet to cooperate with this process.

10
11 Ms. Capel asked if staff had any questions for Mr. Gifford and there were none.

12
13 Ms. Capel called John Hall to testify.

14
15 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated September 27,
16 2012, for the Board's review. He said that the new memorandum traces the history of the tracts that leads us
17 up to today. He said that the history of development around the lots was reviewed and he does not know
18 what the Village of Mahomet's ordinances require for approving divisions on part of a property. He said that
19 if the Board will review the Sidwell map dated 2011 the Board will see the Quail Run Subdivision freshly
20 platted even though on the Sidwell map dated 2005 there is no Quail Run Subdivision but a .80 parcel that
21 was not authorized by the Village of Mahomet. He said that if the County's Zoning Ordinance had been in
22 effect there would not have been a Quail Run Subdivision until that unauthorized lot had been corrected. He
23 said that he does not know if the Village of Mahomet Ordinances are set up with as much forethought as the
24 County Ordinance but that is precisely why the County's Ordinance is set up the way that it is. He said that
25 it makes him wonder if municipalities do not care where a proposed parcel for development came to be and
26 whether everything was created properly. He said that the County's Ordinance is what it is and it requires
27 compliance with the village subdivision regulations and at some point the question will probably be asked as
28 to why the County cares more than a village and it isn't that the County cares more it is just that the Zoning
29 Ordinance is set up that way.

30
31 Mr. Hall stated that a letter dated January 14, 2003, which is attached to the September 27, 2012,
32 Supplemental Memorandum, is relevant to the issue of how the Village of Mahomet has continued to
33 approve plats when they knew that there was an illegal subdivision. He said that even though there had been
34 previous letters making requests, on January 14, 2003, the Village of Mahomet formally notified the
35 Sangamon Valley Public Water District that there had been an unlawful creation of a lot. He said that he
36 does not know how this date compares with Quail Run Subdivision but he does know that the Quail Run
37 Subdivision first appeared on the 2011 Sidwell map.

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1 Ms. Capel asked the Board if there were any questions for Mr. Hall.
2
3 Mr. Hall stated that in regards to conditions, the only condition that staff sees a need for is the condition
4 regarding compliance with the Village of Mahomet's Subdivision Regulations. He said that he would
5 suggest that the Board consider making that condition only a requirement for the map amendment. He said
6 that the Zoning Ordinance already requires it so technically there will be compliance and the Board does not
7 need to burden the Special Use Permit or the Variance with that but he would suggest burdening the map
8 amendment because it is the only part of these cases that goes to the County Board. He said that it would
9 make sense to have that condition, if it is adopted, but a condition that the County board has some control
10 over. He said that even if this is not made a condition it remains a requirement of the Ordinance.
11
12 Ms. Capel stated that if the Board does not specify it as a condition it could easily be ignored.
13
14 Mr. Passalacqua stated that if it is part of the Ordinance there is no need to cover it twice.
15
16 Mr. Hall stated that the Board is not obligated to make it a condition.
17
18 Ms. Capel asked if the map amendment would take place regardless.
19
20 Mr. Hall stated that the map amendment will only take place if there is no protest received from the Village
21 of Mahomet or if there are 21 affirmative County Board votes to over-ride any protest and if there is then the
22 map amendment happens and even if it isn't a condition it is still part of the Ordinance.
23
24 Mr. Passalacqua asked Mr. Hall if it sits better with the Village of Mahomet if it is a special condition.
25
26 Mr. Hall stated that he is sure that it does and staff always tries to include those conditions so that they
27 cannot be accused of letting it be overlooked. He said that he is only suggesting that it might be useful for
28 only the map amendment case that will be reviewed by the County Board. He said that there cannot be any
29 variance from that requirement because it is a procedural requirement that is in the Ordinance and the Board
30 does not need to include it in any case if the Board does not feel that it is needed.
31
32 Ms. Capel called Phillip VanNess to testify.
33
34 Mr. Phillip VanNess, attorney representing the Sangamon Valley Public Water District, stated that the Board
35 has already heard testimony from Mr. Gifford and if the Board has any technical questions for Mr. Gifford,
36 General Manager or Mike Buzicky, Consulting Engineer with Sodeman and Associates, he is sure that they
37 would be happy to address those questions. He said that also present tonight on behalf of the Sangamon
38 Valley Public Water District are Board members Bud Parkhill and Paul Clinebell. He said that his purpose

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1 is to urge the Board to approve these requests and the petitioners would prefer that the special condition is
2 not included in that approval. He said that this is going to be a legal issue and they are going to have to go to
3 the Village of Mahomet to hammer those things out therefore his suggestion to the ZBA is that subdivision
4 is completely different than zoning and the ZBA's concern is only zoning. He said that the ZBA has the
5 opportunity to avoid being involved in a legal issue that they do not have to get in to. He said that the Board
6 already has a copy of his letter to Mr. Hall which outlines the petitioner's legal argument and it is not
7 important for the ZBA to address those arguments. He urged that the Board review his letter and bide by Mr.
8 Hall's suggestion in not including a special condition because nothing that the ZBA would do or say would
9 vary the terms of the Ordinance and there is no reason for the ZBA to become involved in a legal battle
10 between the petitioner and the Village of Mahomet.

11
12 Mr. VanNess stated that when he was a young attorney he poked his nose into a more seasoned attorney's
13 case and became well over his head very quickly. He said that the seasoned attorney informed him that he
14 had the opportunity to stay out of the fight and should have taken it therefore he is now urging the ZBA to
15 take the opportunity to stay out of the fight between the water district and the Village of Mahomet and they
16 should take it.

17
18 Ms. Capel asked the Board if there were any questions for Mr. VanNess and there were none.

19
20 Mr. Hall asked Mr. VanNess to affirm that his client is well aware that the Champaign County Zoning
21 Ordinance requires compliance with the Village of Mahomet's Subdivision Regulations.

22
23 Mr. VanNess stated that his letter references a specific section in the Ordinance and he agrees that this is
24 what the Ordinance states although he does not agree that it is legal and this is not the place to determine
25 that. He said that the County Board is the only entity that has the authority to change the Ordinance at their
26 public hearing.

27
28 Mr. Hall stated that the County Board cannot change the Ordinance at the public hearing by itself.

29
30 Mr. VanNess stated that he realizes that he understands the entire process and was only short sheeting the
31 description of the process.

32
33 Ms. Capel called Robert Mahrt to testify.

34
35 Mr. Robert Mahrt, Village Planner for the Village of Mahomet, stated that he appreciates the opportunity to
36 speak at tonight's public hearing. He said that the Village of Mahomet is supportive of the quality services
37 that the Sangamon Valley Public Water District does provide to the citizens of the Mahomet community.
38 He said that the Village of Mahomet's Board and the Village of Mahomet's staff does have concerns

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1 regarding the proposed rezoning, special use and variances. He asked if the outline of the rezoning that they
2 received in June had changed since the legal advertisement.

3
4 Mr. Hall stated no.

5
6 Mr. Mahrt stated that he will first address Case 717-AM-12. He said that item #6.B(2) of the Draft Finding
7 of Fact indicates that the land on the south is in agricultural production and is zoned AG-2 Agriculture. He
8 said that this information is incorrect because the zoning to the south is actually under the Village of
9 Mahomet's jurisdiction and is zoned RU and R-2. He said that he would be happy to provide a Village of
10 Mahomet zoning map which will illustrate the Village of Mahomet's zoning in that location.

11
12 Mr. Hall asked Mr. Mahrt if some of the land this is in the Village of Mahomet is in agricultural production.

13
14 Mr. Mahrt stated that there is some row crop production in that area. He said that the Village of Mahomet
15 has preliminarily platted those tracts when the rezoning came into place and when the rezoning goes into
16 place it will allow for immediate development. He said that Quail Run is almost completely full and
17 discussions have taken place between the Village of Mahomet and the developer regarding further
18 development.

19
20 Mr. Mahrt stated that the proposed rezoning in Case 717-AM-12 would create essentially a spot zone
21 because an agricultural district would be placed in the heart of what is essentially surrounded by residential
22 zoning. He said that there is RU and R-2 zoning to the south and R-1 to the west and R-4 to the north. He
23 said that the Board would not consider placing a residential use in the center of an agriculture district
24 therefore why consider placing an agricultural district in the heart of a residential area. He said that the
25 statement of intent for the Agricultural District is intended to be for areas that are in the rural periphery of
26 the County and not necessarily in the urbanized areas of a municipality. He said that the Board needs to
27 consider the statement of intent of the district and its relationship to this particular property.

28
29 Mr. Mahrt stated that it is very likely that the Village of Mahomet's Board will consider a protest to the
30 rezoning request at its meeting on October 23, 2012. He said that if a continuance date for these cases is
31 prior to the Village of Mahomet's meeting then the Village will hold a special meeting to protest the
32 proposal.

33
34 Mr. Mahrt stated that in March the Village of Mahomet was approached for a request to expand the plant,
35 primarily on a property to the south which is within the Village of Mahomet's jurisdiction. He said that the
36 Village of Mahomet did provide correspondence in March to the Sangamon Valley Public Water District
37 identifying that they could proceed with the project under Village of Mahomet's Developmental Regulations
38 which would include a rezoning to the R-1 District and a Conditional Use Permit. He said that under the

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1 Village of Mahomet's Ordinance a government use is allowed in the R-1 District with a Conditional Use
2 Permit and in order to expand to the south SVPWD would have to do a subdivision to consolidate their
3 existing tracts and sign a petition for annexation. He said that a complete building permit application and site
4 plan with drainage detention provided is also required. He said that the Village of Mahomet is concerned
5 with the request to not include the provision of subdivision. He said that it may seem redundant in the
6 County's Ordinance and it may be asked why it should be put back in but the expanded lot which Mr. Hall is
7 calling a non-conforming lot of record or an illegal lot, the westerly lot has a building that was not permitted
8 by the County so how did the failings by the Village of Mahomet to proceed on a subdivision violation did
9 the County further moved forward to resolve the unauthorized construction of a building. He said that the
10 Village of Mahomet has correspondence from 2001 and 2003 and he does not know what caused the Village
11 Board at that time to not move forward on the enforcement of the Subdivision Ordinance but the current
12 Village of Mahomet Board is interested in continuing enforcement to get this matter resolved.

13
14 Mr. Mahrt stated that in relationship to Case 718-S-12 the proposed Special Use Permit request is counter to
15 the Village of Mahomet's established land use policy with the village and is inconsistent with the approved
16 Area General Plan for the Wood's Subdivision. He said that the Area General Plan for the Wood's
17 Subdivision was approved by the Village of Mahomet for the remainder of the tract with frontage on
18 Prairieview Road and the proposal would eliminate the extension of Middleton Drive without providing a
19 cul-de-sac for emergency services to move through that area. He said that the Village of Mahomet's main
20 concern is the deviation from the Area General Plan, the lack of public access for emergency services to the
21 area and the possible extension of Middleton Drive and no turn around. He said that these are the principal
22 concerns of the Village of Mahomet and he would like to encourage the Board to include the special
23 provision regarding subdivision and potentially move the provision on to securing required building permits
24 as applicable to the District. He said that in their previous correspondence in March with the SVPWD the
25 Village of Mahomet indicated that they could turn around the process within as little as 60 days and the
26 SVPWD would already be turning dirt if they had followed the Village of Mahomet's development standards
27 and he is not sure why they chose to go in the direction that they are going. He said that it is his opinion that
28 the SVPWD is asking the ZBA and the County Board to bend over backwards to meet their objectives when
29 they should be leaning toward cooperating with the Village of Mahomet.

30
31 Ms. Capel asked the Board if there were any questions for Mr. Mahrt and there were none.

32
33 Ms. Capel asked if staff had any questions for Mr. Mahrt.

34
35 Mr. Hall stated that the Wood's Subdivision Plat is attached to the Supplemental Memorandum dated
36 September 27, 2012. He said that the Village of Mahomet has already approved a street that dead ends
37 without a cul-de-sac. He said that the property on which the hoped for cul-de-sac is indicated and is owned
38 by the SVPWD and they clearly are not proposing townhomes as was proposed on the plat. He said that this

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1 is the SVPWD's property and that is not what they are proposing although he understands why the Village of
2 Mahomet may have an issue with a change from an Area General Plan but it was only an Area General Plan
3 that was approved in 1983. He said that Area General Plans change quite a bit, as far as he knows, and the
4 only real problem that this development would propose is that the northeast corner edges into the proposed
5 Middleton Drive and he would agree that he does not know why that was done but he would take issue that it
6 is as serious as Mr. Mahrt has indicated that it is.

7
8 Mr. Mahrt stated that it is obvious that Mr. Hall does not understand the Village of Mahomet's development
9 policy. He said that in the past they have allowed a dead end street that will terminate into a temporary turn-
10 around and in all likelihood that subdivision included the requirements for a temporary turn-around,
11 although he does not have that fact in front of him therefore he cannot verify that standard at that time. He
12 said that their Subdivision Ordinance was updated in 2000 and that was probably incorporated into the 2000
13 Ordinance as opposed to the subdivision approval at that time. He said that it is routine for the Village of
14 Mahomet to allow for a temporary dead end street with a future extension. He said that the Village of
15 Mahomet does require two entrances into a subdivision and their biggest concern there is the logical
16 extension of that street system. He said that people are buying land in the area with the intent of how the
17 Village of Mahomet is intending growth in the community and the Village of Mahomet can show them the
18 Area General Plan and how they intend to see that development track over time and providing this Board
19 with an Area General Plan, regardless of the age, shows the logical extension of what should be a street that
20 continues either further to the west or certainly to the north.

21
22 Mr. Hall stated that Mr. Mahrt called out the issue of spot zoning and the Finding of Fact for Case 717-AM-
23 12 reviewed the uses authorized in the zoning districts. He said that he would agree that this is an expansion
24 of spot zoning but the AG-2 already exists and the Village of Mahomet has gone on record that they support
25 the expansion of the plant.

26
27 Mr. Mahrt stated that the Village of Mahomet supports the efforts of the Sangamon Valley Public Water
28 District to provide quality public service to the citizens of Mahomet.

29
30 Mr. Hall stated that Mr. Mahrt also indicated that the Village of Mahomet also supports the expansion of the
31 plant as well. He said that in the Champaign County Zoning Ordinance a water plant is allowed in the AG-2
32 District or either one of the industrial districts. He said that the uses in AG-2 are compatible with the uses in
33 R-4. He said that it is spot zoning but it already exists and it is making it worse but it is to allow for a
34 needed public facility and even though he understands that the Village of Mahomet has a problem with this
35 being a County project but when it comes right down to it there is a certain logic that exists. He said that at
36 this point Mr. Mahrt is not debating the compatibility of AG-2 and R-4.

37
38 Mr. Mahrt stated that he is not debating the compatibility of AG-2 and R-4 but is indicating that this is

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1 something that is unique and does not necessarily meet the intent of the *LaSalle Factors*. He said that
2 regardless of the applicant if the County were to see a farmer come in with no purchase contract in hand and
3 request to rezone this property to agriculture any agricultural use could occur that is allowed in the AG-2
4 District.

5
6 Mr. Hall stated that this situation is already occurring on the property immediately to the north and Mr.
7 Mahrt admitted that currently there is agriculture occurring in the Village.

8
9 Mr. Mahrt asked Mr. Hall if livestock would be allowed in the R-4 District.

10
11 Mr. Hall stated yes, livestock is allowed in any of the County's zoning districts.

12
13 Mr. Mahrt stated that the Village of Mahomet, via this staff member, is indicating that they have
14 appropriately offered alternatives for the petitioner to move forward on their plant expansion in compliance
15 with the standards of the Village of Mahomet without having to go through the County Board approval
16 process and it could have been done in short order. He said that the petitioner's attorney has indicated that
17 they will be working with the Village of Mahomet and he is anxious to have that meeting at any time next
18 week along with the Village of Mahomet's Administrator and the Village of Mahomet's attorneys.

19
20 Mr. Hall asked Mr. Mahrt if the Village of Mahomet would prefer to have the opportunity to provide written
21 comments directly to the Zoning Board of Appeals or directly to the County Board.

22
23 Mr. Mahrt stated that he would need to speak to the Village of Mahomet's Board and their attorney. He said
24 that right now they are looking forward to a cooperative relationship with the petitioner during the proposed
25 meeting and he is not sure why they chose to not go through the Village of Mahomet's process to achieve
26 their goals and the Village of Mahomet's goals as well without significant variances and so forth.

27
28 Mr. Passalacqua asked if it is inappropriate to request that the petitioner and the Village of Mahomet meet
29 before this Board moves to final determination.

30
31 Mr. Hall asked Mr. Passalacqua if he would like the two parties to at least talk.

32
33 Mr. Passalacqua stated that the Board has suggested such to other applicants so that can discuss their
34 differences and attempt to work those differences out.

35
36 Mr. Hall stated that the Village of Mahomet provided correspondence regarding this issue in 2001 and in
37 2003, nine years ago, and the petitioner was properly notified that the property did not receive the proper
38 approvals. He said that perhaps a few more weeks would make a difference and it is the Board's time

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1 although the petitioner keeps affirming how critical this project is.

2

3 Mr. Passalacqua stated that if the Board wants to press on then that is fine.

4

5 Mr. Hall stated that he is only indicating the timeline that has occurred thus far. He said that suggesting that
6 the two parties meet is a customary practice of this Board.

7

8 Mr. Palmgren asked Mr. Passalacqua if he is suggesting that the parties meet.

9

10 Mr. Passalacqua stated that the Board has the Documents of Record and the testimony to base their decision
11 upon and it appears that there is a large separation between the two parties' testimony and he believes that
12 the Board could make more intelligent decisions if some of those differences are hashed out. He said that
13 the attorney pointed out that it is not the ZBA's place to be the attorney but if the testimonies are a little bit
14 closer together the Board could make a better decision.

15

16 Ms. Capel asked the audience if anyone desired to cross examine Mr. Mahrt regarding Cases 719-V-12 or
17 718-S-12.

18

19 Mr. Phillip VanNess asked Mr. Mahrt if the Village of Mahomet had a position regarding the public health
20 and safety needs that will be provided by the expansion of the plant.

21

22 Mr. Mahrt stated that the Village of Mahomet does have an understanding of the services that the Sangamon
23 Valley Public Water District provides.

24

25 Mr. VanNess asked Mr. Mahrt if the Village of Mahomet has a problem with the proposed expansion.

26

27 Mr. Mahrt stated no, but the expansion must meet the standards of the Village of Mahomet.

28

29 Mr. VanNess asked Mr. Mahrt if it is his position that the SVPWD could have gone through the Village of
30 Mahomet rather than through the County.

31

32 Mr. Mahrt stated yes.

33

34 Mr. VanNess asked Mr. Mahrt if he was aware that the County has exclusive zoning authority in that area.

35

36 Mr. Mahrt stated that if the petitioner were to make application with the Village of Mahomet they would be
37 rezoned upon annexation and subsequent subdivision would be under the jurisdiction of the Village of
38 Mahomet. He said that the Village of Mahomet does not make it a practice to have an annexation agreement

ZBA

1 with property that is not directly adjacent to the Village of Mahomet periphery and has always been
2 consistent in rezoning upon annexation directly adjacent to their Village limits.

3
4 Ms. Capel asked the audience if anyone else desired to cross examine Mr. Mahrt and there was no one.

5
6 Ms. Capel called Michael Buzicky to testify.

7
8 Mr. Michael Buzicky, engineer with Sodeman and Associates, stated that Sodeman and Associates was the
9 engineer of record for the attached site plan. He said that they briefly commented and made modifications to
10 the site plan per all of the written and expressed comments by the Board at their last meeting. He said that
11 he believed that he had covered all of the comments although if he missed anything he would appreciate it if
12 the Board would let him know. He said that they are proceeding with recommendations based on a facility
13 plan that is with the EPA at this time and the report indicates that water expansion at the SVPWD is urgent.
14 He said that a recommendation in that report was that the water plant be placed immediately at the existing
15 facility. He said that feasible and reasonable options were reviewed outside of the property and they did not
16 compare to placing a new plant adjacent to or on the same site as it currently is located. He said that a lot of
17 the questions that have surfaced are more engineering, site and area and utility type questions and not
18 governmental differences. He said that his company is trying to find a site for this new treatment plant and
19 earlier there was an option for a site to the south but that site also required replatting and rezoning and a
20 major Illinois Power line was located in the easement which could not moved. He said that the only
21 available land adjacent to the current facility is to the north and he would agree with Mr. Hall regarding the
22 Mahomet Area General Plan. He said that the current property owner has agreed to sell a portion of his land
23 to the Sangamon Valley Public Water District for the expansion and it is the property owner's plan or right
24 to do so.

25
26 Mr. Buzicky stated that the reason for the request to rezone to agriculture was for a recommendation from
27 the County Board because it is the only district for a water treatment plant with a special use. He said that
28 the water treatment plant has been in existence since the 1970's therefore they cannot go back and change
29 any of the locations. He said that the facility report did recognize that the subject property, for feasibility
30 reasons, is the best site to place expansion or upgrade for the water treatment plant.

31
32 Mr. Buzicky stated that the site plan does take into account that Middleton Drive can be extended and no one
33 is indicating that it could not be extended and it is expected that it will be. He said that the immediate reason
34 why they went to the north was due to the recommendation by their surveyors and that was just to gain
35 immediate access control to the water treatment plant. He said that everyone knows that there is heightened
36 security and control of public access to water treatment plants but there is intent to allow people to flow
37 through there and the setbacks have been indicated accordingly.

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- 1 Mr. Passalacqua asked Mr. Buzicky if the current facility is at capacity.
2
- 3 Mr. Buzicky stated yes, it is very close to capacity. He said that the report states that the water treatment
4 plant is only a few years away from going over its capacity.
5
- 6 Mr. Buzicky stated that if all of the houses are built on the proposed map they would not have access to
7 water without the expansion.
8
- 9 Mr. Buzicky stated that the expansion is needed to accommodate and serve growth in the area.
10
- 11 Mr. Hall asked Mr. Buzicky to review the access control considerations which lead to the decision to take
12 the property to the far side of Middleton Drive.
13
- 14 Mr. Buzicky stated that Middleton Drive could be expanded in the future but currently the map indicates
15 fencing for short term control of public access but no one is trying to block Middleton Drive. He said that
16 the Ordinance states that the minimum is five acres therefore they were trying to find a spot which was as
17 large as possible but one that would accommodate their needs.
18
- 19 Mr. Hall asked Mr. Buzicky if anyone had considered revising the layout of the fence and the berm so that if
20 Middleton Drive was extended those improvements would not have to be relocated.
21
- 22 Mr. Buzicky stated yes. He said that those are minor areas and there could be some modifications to the
23 berm without undue expense.
24
- 25 Mr. Hall stated that Mr. Kass received a phone call today from a person who indicated that they were calling
26 on behalf of the church which is located to the west of the subject property. He said that there may be a
27 request for some kind of screening towards the church side of the property.
28
- 29 Mr. Buzicky stated that they did plan for this concern and it was believed that the existing trees on the west
30 is a screen, per the Ordinance, and then there could be an opaque fence as well.
31
- 32 Mr. Hall stated that Mr. Buzicky is correct as long as the trees screen to the extent required.
33
- 34 Ms. Capel asked the audience if anyone desired to cross examine Mr. Buzicky and there was no one.
35
- 36 Ms. Capel called Mike Smith to testify.
37
- 38 Mr. Mike Smith, who resides at 492 CR 2675N, Mahomet, stated that he is present tonight to represent the

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1 church which is located to the west of the subject property. He said that he was going to request that the
2 berm that is located on the east side, as indicated on the map, to be extended across to the north end of the
3 boundary.

4

5 Mr. Capel asked the Board if there were any questions for Mr. Smith and there were none.

6

7 Ms. Capel asked Mr. Smith if he would prefer that the berm wrap around the entire boundary.

8

9 Mr. Smith stated that wrapping the berm around the entire boundary was going to be his original request but
10 after hearing testimony about the road and the expansion he does not believe that wrapping it around the
11 entire boundary is necessary. He said that perhaps something from the northwest corner to the east could be
12 a consideration.

13

14 Ms. Capel asked if staff had any questions for Mr. Smith.

15

16 Mr. Hall asked Mr. Smith if he has been asked by the church to make this request.

17

18 Mr. Smith stated yes.

19

20 Mr. Hall asked Mr. Smith if it would be possible for the church to submit their request in writing. He said
21 that if the Board takes action tonight then no written request would be necessary but if the case is continued
22 to a later date it would be ideal to have the request from the church in a written form for the file.

23

24 Mr. Smith stated that he will have the church send their request in written form.

25

26 Ms. Capel asked the audience if anyone desired to cross examine Mr. Smith and there was no one.

27

28 Ms. Capel asked the Board if they desired to continue these cases and suggest that the petitioners and the
29 Village of Mahomet meet to discuss their concerns.

30

31 Mr. Passalacqua stated that he could go either way.

32

33 Mr. Courson stated that it appears that this expansion will require legal action therefore he is comfortable
34 with moving forward tonight.

35

36 Mr. Palmgren stated that he has not received enough information to move forward to a final determination
37 therefore he would prefer to wait and continue the cases to a later date.

38

ZBA

1 Mr. Hall stated that even if the Board took action tonight it is not staff's intent to forward this to the
2 Committee of the Whole meeting on Tuesday, October 2nd, although it is technically possible under the
3 *Freedom of Information Act*. He said that forwarding the cases that the ZBA closed on at last Thursday's
4 meeting to Tuesday night's meeting is adequate promptness on cases therefore whether the ZBA took action
5 tonight or continued it to one of the two meetings for October is not going to make a difference as to when
6 this case is before the County Board. He said that the Board has received a request from Mike Smith
7 regarding the berm and staff has had to construct conditions on the spot, although it is not desirable. He said
8 that there has been testimony from Mr. Buzicky indicating that there is no intention to block the extension of
9 Middleton Drive which strikes him as fair grounds for a condition or maybe the testimony is sufficient to
10 establish that the plan is not intending to block Middleton Drive. He said that he would have a concern if the
11 Board took action on the submitted plan because in the future if someone looks at this plan and it says that it
12 does not plan to block Middleton Drive it may be blocking Middleton Drive. He said that a condition should
13 be constructed because this is likely to end up in court and the ZBA must make sure that their intentions are
14 clear. He said there have been a couple of things surface at tonight's hearing that he believes would be
15 sufficient grounds to continue this case to a later date. He said that there are two meetings in October by
16 which this case could be continued to and still have enough time to get to the County Board in the same time
17 frame that it would get if the Board took action tonight. He said that the new site plan is so much better than
18 the original site plan and the delay was well worth it because Mr. Buzicky has prepared a very good plan
19 with huge improvements.

20
21 Mr. Passalacqua stated that he agrees with Mr. Courson because the petitioners have a lot of details that they
22 have to work out on their own and he is comfortable with the condition that Middleton Drive is not
23 permanently blocked and consideration is given to the screening. He said that if the petitioner is comfortable
24 with the present Board making a determination then he would like to move forward.

25
26 Mr. Hall stated that there is no condition regarding berming on the north. He asked Mr. Passalacqua to
27 explain how he would like the site plan to be revised so that it will not block the extension of Middleton
28 Drive.

29
30 Mr. Passalacqua stated that he would be happy to have a notation regarding Middleton Drive put on the site
31 plan but he did not know what the notation should say.

32
33 Mr. Hall stated that how that notation should be constructed is a good question.

34
35 Mr. Passalacqua asked Mr. Hall if he is making the suggestion that the Board continue this case to another
36 date so that the site plan could be revised indicating the intent regarding the future extension of Middleton
37 Drive

38

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1 Ms. Capel stated that a continuance date would give staff time to construct the conditions in a logical
2 manner.

3
4 Mr. Hall stated that would be his preference. He said that there has been testimony received at tonight's
5 hearing therefore a continuance date would give staff time to enter that testimony in the finding. He said that
6 he wouldn't want to continue the case with the expectation of staff doing a whole lot of work but making
7 those two conditions clear and having an opportunity to review the minutes for critical testimony would be
8 appreciated. He said that the case could be continued to either meeting in October but both meetings are
9 already very full.

10
11 Mr. Passalacqua asked Mr. Hall if the east side of Middleton Drive currently exists.

12
13 Mr. Hall stated yes.

14
15 Mr. VanNess requested the opportunity to address the Board.

16
17 Ms. Capel granted Mr. VanNess' request.

18
19 Mr. VanNess stated that the petitioners are agreeable to any conditions that the Board may make regarding
20 Middleton Drive. He said that this matter is time sensitive therefore they would like to close this hearing
21 tonight.

22
23 Mr. Courson stated that he is concerned with the condition regarding Middleton Drive and any interference
24 with setbacks if it is extended.

25
26 Mr. Hall stated that it appears that the north line of the property is parallel with the line of some imagined
27 extension of Middleton Drive. He said that the site plan indicates a 55 foot separation that parallels that
28 therefore it appears that the site plan has been prepared as Mike Buzicky explained and Middleton Drive
29 could be extended and it would not make anything nonconforming. He said that to the extent that the
30 extension would reduce the lot area that would make the lot area further from the five acres but would bring
31 it more in line with the three acre maximum. He said that perhaps a condition may not be necessary so much
32 as simply a notation on the plan that the purpose of the plan is to not block Middleton Drive, but the location
33 of the berm and fencing may have to be moved in the future. He said that the Board cannot make the
34 condition or notation too much of a commitment because no one knows what is going to happen. He said
35 that whatever the Board does, needs to be as simple and as clear as possible and the Board would not want to
36 go too far with it and lock people in to something but this plan could accommodate that with the separations
37 that are shown.

38

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- 1 Mr. Passalacqua asked if Middleton Drive could actually border the proposed setback line on the plan.
2
- 3 Mr. Hall stated that only for some distance and if Middleton Drive were extended to follow the lot lines the
4 building would be too close to the right of way.
5
- 6 Mr. Kass stated yes. He said that for a water treatment plant the Ordinance requires a 50 feet side and rear
7 yard. He said that the site plan indicates that the northern side of the water treatment plant has a 37 feet
8 separation from the proposed 55 feet setback and if Middleton Drive is extended the building would be too
9 close.
10
- 11 Mr. Hall stated that if Middleton Drive curved to the north more like the approved Area General Plan there
12 would be no issues.
13
- 14 Mr. Kass stated probably not.
15
- 16 Mr. Passalacqua stated that it will still be noncompliant on the side.
17
- 18 Mr. Hall stated that the only things that do not meet the current Ordinance are the things that already exist.
19
- 20 Mr. Kass stated that the existing water tank does not meet the standard condition and one of the existing
21 small accessory buildings does not meet the standard condition. He said that the first site plan proposed new
22 structures that were not going to meet the standard conditions but that site plan has since been revised.
23
- 24 Mr. Hall stated that if the case is continued he finds it hard to believe that the Village of Mahomet's
25 requirements regarding an elevated water storage tank are merely a yard of 17 feet 11 inches. He said that he
26 has to believe that it will be as nonconforming inside the Village of Mahomet as it is in the County. He said
27 that the elevated water storage tank exists and he doubts that it is supposed to be that close to the lot line if it
28 were inside of the Village of Mahomet.
29
- 30 Ms. Passalacqua stated that perhaps the Board should work on language because he is prepared to move
31 forward tonight.
32
- 33 Ms. Capel asked Mr. Passalacqua if he had any suggestions for the text of the condition or notation. She
34 asked if the Board could craft a condition that will essentially allow for the extension of Middleton Drive
35 through the northeast corner of the property.
36
- 37 Mr. Passalacqua stated that he believes that it should be as Mr. Hall suggested previously and merely have a
38 notation on the plan that the plan is drawn with that intent. He said that he does not believe that a condition

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1 is necessary.

2
3 Mr. Hall stated that adding a note to the drawing should be treated the same way as a condition and the
4 petitioner should concur. He said that a note as follows could be added to the site plan received on August
5 16, 2012: locations of the proposed berm and proposed fence shall be adjusted or moved as required to
6 allow for the future extension of Middleton Drive consistent with required separations. He said that this
7 notation would not require the petitioner to make anything less than what the Ordinance requires.

8
9 Mr. Passalacqua stated that the petitioners have already agreed to the screen on the other corner therefore an
10 adjustment is required for that as well.

11
12 Mr. Mahrt stated that he is concerned about the notation and the level of enforcement that the County has to
13 maintain that standard in the future. He said that he is also concerned about the ownership being separated
14 from the parent tract and who is responsible for platting that extension of driveway and the cost of the
15 construction. He said that he is uncomfortable seeing this put on as a note on a site plan that will be
16 administratively approved and could be changed prior to final approval.

17
18 Mr. Hall stated that this will be a legal issue. He said that a notation on an approved site plan, in his view, is
19 no more or no less enforceable than a condition on a case Final Determination. He said that the notation
20 cannot be removed from the approved site plan.

21
22 Mr. Mahrt said that perhaps then a provision should be included in the approval that no deviation, once the
23 site plan is approved, is possible.

24
25 Ms. Capel stated that the provision is already part of the Ordinance.

26
27 Mr. Mahrt stated that he still voices his opposition of the notation on the site plan and not including a
28 condition being proposed as a resolution which would adopted by the County Board.

29
30 Mr. Hall stated that Mr. Mahrt's concerns cannot be addressed as long as any part of any land that is
31 necessary for the extension of Middleton Drive is included as part of the approved site plan. He said that
32 Mr. Mahrt does raise a good point. He said that the Board has received testimony about no intention of
33 blocking Middleton Drive and he would take that at face value however Middleton Drive cannot be extended
34 without the cooperation of the Public Water District and that would necessarily make any extension more
35 complicated.

36
37 Ms. Capel stated that she is concerned that in the Board's rush to finish this that they are not going to get it
38 done completely and properly because this is more complicated than some of the other conditions that the

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1 Board has invented on the wing. She said that this case deserves staff's and the Board's full consideration
2 because it will probably end up in court.

3
4 Mr. Hall stated that any extension of Middleton Drive that involves what the Board has approved for this
5 plan the Village of Mahomet will always see as a problem. He said that this Board works very hard to come
6 up with conditions to try to please all parties but that customary standard may not work with this case but he
7 is willing to work on it.

8
9 **Mr. Palmgren moved, seconded by Ms. Capel to continue Cases 717-AM-12, 718-S-12 and 719-V-12 to**
10 **the next available meeting or possibly a special meeting. The motion carried by voice vote.**

11
12 Mr. Courson stated that he would suggest that the petitioner add the screening from the church to the site
13 plan and indicate the future extension of Middleton Drive on the subject property. He said that if the site
14 plan is revised the Board will be able to determine if there are any concerns with the road going through the
15 property.

16
17 Mr. Hall stated that the extension of Middleton Drive could be indicated by dashed lines or lightly indicated
18 on the site plan.

19
20 Mr. Hall stated that due to staff error recognizing parts of Mr. Howard's variance, action cannot be taken on
21 Case 729-V-12 on October 11th and notices will be sent out to reschedule that case to October 24th. He said
22 that not all of the cases indicated on the docket for October 24th will be on the agenda. He said that Case
23 728-AM-12 will not be ready for final action on October 11th because there are required variances and staff
24 does not have a site plan to evaluate all of the variances that are required. He said that Case 728-AM-12 can
25 only be opened and request direction from the Board at the October 11th meeting. He said that it appears that
26 October 11th is probably going to have more time available for these cases than October 24th.

27
28 **Mr. Courson moved, seconded by Mr. Palmgren to continue Cases 717-AM-12, 718-S-12 and 719-V-12**
29 **to the October 11, 2012, meeting. The motion carried by voice vote.**

30
31 Mr. Courson stated that since these are time sensitive cases, if there is anything else that the Board would
32 like to see from the petitioners then now would be a good time to indicate such.

33
34 Mr. Passalacqua stated that he would like to see the changes on the site plan regarding the extension of
35 Middleton Drive and the proposed screening from the church. He said that if there is any communication
36 with the Village of Mahomet perhaps the petitioners could present the results of those discussions to the
37 Board.

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1 Ms. Capel called for a five minute recess.

2

3 **The Board recessed at 8:30 p.m.**

4 **The Board resumed at 8:35 p.m.**

5

6 **6. New Public Hearings**

7 **7.**

8 **Case 727-V-12 Petitioner: Dale Masley Request to authorize a variance in the AG-2, Agriculture**
9 **Zoning District for a residential accessory building with a height of 17.5 feet in lieu of the maximum**
10 **of 15 feet in height. Location: Lot 12 of Denhart's Second Subdivision in the Northwest Quarter of**
11 **Section 13 of St. Joseph Township and commonly known as the dwelling at 1408 Peters Drive, St.**
12 **Joseph.**

13

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

22

23 Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must
24 sign the witness register for that public hearing. She reminded the audience that when they sign the
25 witness register they are signing an oath.

26

27 Ms. Capel asked if the petitioner would like to make a statement outlining the nature of their request.

28

29 Mr. Dale Masley, who resides at 1408 Peters Drive, St. Joseph, stated that he started the project
30 approximately one and one-half years ago in the design stage and it was partially completed when he
31 received a letter from Mr. Hall indicating that his construction must stop because he had not obtained a
32 building permit for the structure. Mr. Masley stated that he had exceeded the maximum height requirement
33 because during his calculation he used a weighted average which was not the policy of the County. He
34 requested that the Board approve his variance request. He said that he has spoken with his neighbors about
35 the variance and they have all signed a letter indicating that they are not in opposition to the variance request.
36 He submitted the signed petition as a Document of Record.

37

38 Ms. Capel asked the Board if there were any questions for Mr. Masley.

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1
2 Mr. Palmgren asked Mr. Masley to indicate how long he has resided at his present address.
3
4 Mr. Masley stated that he has resided at his present address for almost thirty years.
5
6 Mr. Palmgren asked Mr. Masley if he built his home and was he aware of the County's permitting process.
7
8 Mr. Masley stated that yes, he built his home.
9
10 Mr. Palmgren asked Mr. Masley if he was under the assumption that he did not need a permit for this
11 structure.
12
13 Mr. Masley stated that he was under the assumption that he did not need a permit for the structure. He said
14 that he spoke to a local architect and he asked her if she believed that he required a permit for the structure
15 and she indicated that he did not.
16
17 Mr. Palmgren asked Mr. Masley how far was the construction before he stopped.
18
19 Mr. Masley stated that he had the structure framed up.
20
21 Mr. Palmgren asked Mr. Masley if the height of the building had already been determined in the framing.
22
23 Mr. Masley stated yes.
24
25 Ms. Capel asked if staff had any questions for Mr. Masley.
26
27 Mr. Hall asked Mr. Masley where the neighbors who signed the petition resided.
28
29 Mr. Masley stated that the neighbors reside across the street and adjacent to this property.
30
31 Mr. Kass asked Mr. Masley if he had a copy of the signed petition for his records.
32
33 Mr. Masley stated that he does not have a copy.
34
35 Mr. Kass stated that he will provide a copy for Mr. Masley's records.
36
37 Mr. Passalacqua asked Mr. Masley to explain the building's use.
38

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1 Mr. Masley stated that it is an accessory building which will serve two functions. He said that there is a
2 screened in porch and the rear and upper portion is for storage. He said that the building will also serve as a
3 playhouse for his grandson. He said that the window on the top is a working cupola/belvedere.

4
5 Mr. Passalacqua asked Mr. Masley to indicate the total square footage of the structure.

6
7 Mr. Masley stated that the structure consists of 500 square feet.

8
9 Mr. Kass stated that including the second story the total square footage of the structure is 480 square feet.
10 He said that the footprint of the structure is 385 square feet.

11
12 Mr. Hall stated that there is a second floor and having a full height second floor with a shingled roof and
13 a minimum slope means the structure will exceed 15 feet in height. He said that the wonderful window is a
14 cupola/belvedere and that continues the slope of the roof and this is the one thing where he is at a loss to find
15 justification for other than it is just beautiful. He said that he has always maintained that people can come to
16 the office and request a variance ahead of construction and in a case like this there is a lot of justification for
17 something higher than 15 feet. He said that as someone who came to planning from architecture he would
18 like to think that there is room within our system of zoning for beautiful objects especially when neighbors
19 are not opposed. He said that he would normally try to find some justification for the belvedere but it is just
20 so very exquisite and that may not be enough justification for the Board but certainly some degree of
21 variance can be justified just because of the height, the slopes, and the general nature of the building. He
22 said that it is too bad that there was not a permit prior to construction but these things were all known then
23 and the Board has always been advised to consider what if the person had come to the Board in the
24 beginning with this plan requesting approval and would the Board have approved it at that time. He said that
25 the Board is not required to approve the variance now because the structure is under construction although
26 the courts like to see a very good reason to make someone change something that is already built.

27
28 Mr. Courson stated that during his time on the Board there has been a variance request for height and at that
29 time the Board could not figure out why there was a 15 foot maximum for height and it was suggested that
30 perhaps it should be revised. He said that he is very confused as to why there is a 15 foot maximum height
31 for accessory structures and he believes that it should be reviewed.

32
33 Mr. Passalacqua stated that the height of an accessory structure is tied to the size of the lot.

34
35 Mr. Hall stated that one of the most controversial zoning cases in the history of zoning was an accessory
36 building which was more than 15 feet in height and was situated on a lot that was less than one acre in the
37 Mahomet ETJ. He said that on lots this size there is an eventual height where the neighbors are offended
38 and they do not want to see a building that tall. He said that he does not believe that the offending height is

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1 15 feet and one inch or 16 feet and one inch on a building like Mr. Masley's, especially when it has been
2 constructed so exquisitely but the typical big box accessory building is typically taller. He said that the
3 height for an accessory building on a lot that is larger than one acre is 24 feet and that is a height when
4 neighbors do voice their concern. He said that Mr. Masley's building is not 24 feet and his neighbors have
5 indicated that they have no issue with the requested variance.

6
7 Mr. Passalacqua asked Mr. Masley if the accessory structure is located near the trees.

8
9 Mr. Masley stated yes, and the trees are taller than the building.

10
11 Ms. Capel asked the audience if anyone desired to cross examine Mr. Masley and there was no one.

12
13 Ms. Capel asked the audience if anyone desired to sign the witness register to present testimony regarding
14 this case and there was no one.

15
16 Ms. Capel closed the witness register.

17
18 Mr. Hall stated that a new item 11.D should be added to the Summary of Evidence as follows: At the public
19 hearing on September 27, 2012, the petitioner, Dale Masely, submitted a letter signed by all neighbors with
20 adjacent property in the subdivision indicating that they are not opposed to the height of the building. He
21 said that a new item 5. should be added to the Documents of Record as follows: Letter submitted by Dale
22 Masley signed by neighbors submitted at the September 27, 2012, public hearing.

23
24 **Finding of Fact for Case 727-V-12:**

25
26 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
27 727-V-12 held on September 27, 2012, the Zoning Board of Appeals of Champaign County finds that:

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

32
33 Mr. Courson stated that special conditions and circumstances DO exist which are peculiar to the land or
34 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
35 same district because the subject property is located in a well established neighborhood with mature trees
36 which provide adequate screening for the structure therefore limiting the impact of the view from the
37 neighbors.

ZBA

1 Ms. Capel stated that the aesthetics of the building are such that the height is required for the design.

2
3 Ms. Capel asked the Board if they would prefer a roll call vote for each finding and the Board indicated no.

4
5 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
6 **regulations sought to be varied WILL prevent reasonable or otherwise permitted use of**
7 **the land or structure or construction.**

8
9 Mr. Passalacqua stated that practical difficulties or hardships created by carrying out the strict letter of the
10 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
11 or construction because the two-story design necessitates the variance for the height.

12
13 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT**
14 **result from actions of the applicant.**

15
16 Mr. Palmgren stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT
17 result from actions of the applicant because the petitioner completed his measurements incorrectly in using a
18 weighted height calculation.

19
20 Mr. Courson stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT
21 result from actions of the applicant because the design of the building itself necessitates the requested
22 height variance.

23
24 Mr. Palmgren agreed with Mr. Courson's recommendation for Finding #3.

25
26 **4. The requested variance IS in harmony with the general purpose and intent of the**
27 **Ordinance.**

28
29 Mr. Courson stated that the requested variance IS in harmony with the general purpose and intent of the
30 Ordinance because the design of the building is aesthetically pleasing to the eye and the neighbors have
31 indicated that they are not opposed to the accessory building.

32
33 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
34 **detrimental to the public health, safety or welfare.**

35
36 Mr. Passalacqua stated that the requested variance WILL NOT be injurious to the neighborhood or
37 otherwise detrimental to the public health, safety or welfare because: See submitted letter signed by
38 neighbors.

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38

Ms. Capel stated that the adjacent neighbors signed a petition indicating that they are not opposed to the building. She said that the building conforms to the Ordinance in every other way and it is adequately screened by mature trees.

Mr. Palmgren stated that the fire protection district was notified and no comments were received.

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

Mr. Passalacqua stated that the requested variance IS the minimum variance that will make possible the reasonable use of the land/structure because the variance sought is only for two and one-half feet in height.

Ms. Capel stated that the variance requested is the minimum that will allow the building to be built as designed.

7. No special conditions are hereby imposed.

Ms. Capel entertained a motion to adopt the Summary of Evidence, Documents of Record and Finding of Fact as amended.

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

Ms. Capel entertained a motion to move to the final determination.

Mr. Palmgren moved, seconded by Mr. Courson to move to the final determination.

Ms. Capel informed the petitioner that two Board seats were vacant therefore it is at his discretion to either continue Case 727-V-12 until a full Board is present or request that the present Board move forward to the Final Determination. She informed the petitioners that four affirmative votes are required for approval.

The petitioner requested that the present Board move forward to the Final Determination.

Final Determination for Case 727-V-12:

Mr. Passalacqua moved, seconded by Mr. Courson that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case,

ZBA

1 that the requirements for approval in Section 9.1.9.C HAVE been met and pursuant to the authority
2 granted by Section 9.1.6B. of the Champaign County Zoning Ordinance, the Zoning Board of Appeals
3 of Champaign County determines that the variance requested in Case 727-V-12 is hereby GRANTED
4 to the petitioner Dale Masley to authorize a residential building with a height of 17.5 feet in lieu of the
5 maximum height in the AG-2, Zoning District.
6

7 The roll was called:
8

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

11
12 Mr. Hall informed the petitioner that he has received an approval for his variance request. He said that staff
13 will contact him regarding finalizing the Zoning Use Permit.
14

15 **7. Staff Report**

16
17 None
18

19 **8. Other Business**

20 **A. Review of the docket**
21

22 Mr. Kass stated that the October 11th meeting will be a busy meeting. He said that staff has received no new
23 information from Denny Anderson. He said that K & S Property Management will not be ready for final
24 action at the October 11th meeting. He said that notices were mailed but no site plan has been received from
25 the petitioner and it is unknown as to the number of variances that may be required. He said that several
26 variances are requested for Frank Howard’s case due to conditions of the subdivision which was platted prior
27 to the adoption of zoning.
28

29 Mr. Kass stated that the meeting on Wednesday, October 24th will also be a busy night. He said that no
30 information has been received from Jed Swisher therefore no legal advertisement will be placed. He said
31 that he is has been in contact with Doug Gamble of the Capitol Development Board in obtaining clarification
32 for the accessibility requirement on Michael Boero’s case. He said that Dale Rapp’s case should be ready for
33 final action at this meeting although Frank Howard’s case will be advertised for the October 24th meeting
34 and final action should be possible at that meeting.
35

36 Mr. Kass stated that there are no meetings scheduled for November. He said that the December 13th meeting
37 includes the cases for Dr. Phil Jones and Daniel Williams. He said that staff has not received any new
38 information regarding Dr. Jones’ cases but there is still adequate time for that information to be submitted.

ZBA

1
 2 Mr. Hall stated that new notices will be sent out for the case for Frank Howard. He asked the Board if they
 3 preferred that staff send notices indicating that Frank Howard's will not be heard on October 11th therefore it
 4 will not take up docket space. He said that the case will be ready for final action on October 24th.

5
 6 Mr. Passalacqua stated that the case should be removed from the October 11th docket and notices mailed
 7 indicating such.

8
 9 Mr. Hall stated that staff will send out those notices.

10
 11 Mr. Hall stated that the petitioner for Case 728-AM-12 did not want to be placed on the October 11th docket
 12 date but the Zoning Administrator wanted to get the case to the ZBA and then wait for anything extra that the
 13 ZBA decides is necessary. He said that normal protocol would have not sent this case to the ZBA early but
 14 given the background it is better to get it to the Board.

15
 16 Mr. Hall asked the Board if anyone knew if Mr. Thorsland would be back in town to attend the Committee
 17 of the Whole meeting on Tuesday night. He said that if Mr. Thorsland is not available to attend the caucus
 18 and explain the vote for the LESA case he suggested that Ms. Capel may attend. He said that Mr. Kurtz,
 19 Chairman of the COW, has not requested that someone from the ZBA attend.

20
 21 Ms. Capel stated that she will attend if needed.

22
 23 Mr. Hall stated that he will let Ms. Capel know if her attendance is necessary.

24
 25 **B. October 24, 2012, ZBA meeting**

26
 27 Mr. Hall reminded the Board that the Wednesday, October 24, 2012, meeting will held in the Lyle Shields
 28 Meeting Room (Meeting Room One).

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

31
 32 None

33
 34 **10. Adjournment**

35
 36 The meeting adjourned at 9:12 p.m.

37
 38

9/27/12

AS APPROVED OCTOBER 24, 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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