

AS APPROVED: RECOMMENDED FOR ENACTMENT

773-AT-14

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: **RECOMMEND ENACTMENT**

Date: March 26, 2015

Petitioner: Zoning Administrator

Request:

Amend the Champaign County Storm Water Management and Erosion Control Ordinance that is the subject of a separate Zoning Case 769-AT-13, by adding the following:

- A. Add a requirement for a Grading and Demolition Permit for any grading or demolition that disturbs one acre or more of land or for any grading or demolition that is part of a larger common plan of development in which one acre or more of land disturbance will occur, and that is not related to any proposed construction.
- B. Add fees for Grading and Demolition Permits.
- C. Add required information to be provided in the application for a Grading and Demolition Permit.
- D. Add a requirement that any grading or demolition pursuant to a Grading or Demolition Permit shall comply with the Illinois Environmental Protection Agency's ILR10 General Storm Water Permit for Construction.
- E. Add a requirement that any demolition pursuant to a Demolition Permit shall comply with the Illinois Environmental Protection Agency's regulations enforcing the National Emission Standard for Hazardous Air Pollutants for regulated asbestos.
- F. Add prohibitions against changing the flow of water and blocking the flow of water.
- G. Add other requirements related to Grading and Demolition Permits.

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FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **May 29, 2014; June 12, 2014; July 13, 2014; September 11, 2014; December 11, 2014; January 15, 2015; February 26, 2015; March 12, 2015; and March 26, 2015**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

SUMMARY OF THE PROPOSED AMENDMENT

4. The proposed amendment is attached to this Finding of Fact as it will appear in the Zoning Ordinance.

GENERALLY REGARDING THE LRMP GOALS, OBJECTIVES, AND POLICIES

5. The *Champaign County Land Resource Management Plan* (LRMP) was adopted by the County Board on April 22, 2010. The LRMP Goals, Objectives, and Policies were drafted through an inclusive and public process that produced a set of ten goals, 42 objectives, and 100 policies, which are currently the only guidance for amendments to the *Champaign County Zoning Ordinance*, as follows:
 - A. The Purpose Statement of the LRMP Goals, Objectives, and Policies is as follows:

“It is the purpose of this plan to encourage municipalities and the County to protect the land, air, water, natural resources and environment of the County and to encourage the use of such resources in a manner which is socially and economically desirable. The Goals, Objectives and Policies necessary to achieve this purpose are as follows:”
 - B. The LRMP defines Goals, Objectives, and Policies as follows:
 - (1) Goal: an ideal future condition to which the community aspires
 - (2) Objective: a tangible, measurable outcome leading to the achievement of a goal
 - (3) Policy: a statement of actions or requirements judged to be necessary to achieve goals and objectives
 - C. The Background given with the LRMP Goals, Objectives, and Policies further states, “Three documents, the *County Land Use Goals and Policies* adopted in 1977, and two sets of *Land Use Regulatory Policies*, dated 2001 and 2005, were built upon, updated, and consolidated into the LRMP Goals, Objectives and Policies.

REGARDING LRMP GOALS

6. LRMP Goal 1 is entitled “Planning and Public Involvement” and states that as follows:

Champaign County will attain a system of land resource management planning built on broad public involvement that supports effective decision making by the County.

Goal 1 has 4 objectives and 4 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 1.

7. LRMP Goal 2 is entitled “Governmental Coordination” and states as follows:

Champaign County will collaboratively formulate land resource and development policy with other units of government in areas of overlapping land use planning jurisdiction.

Goal 2 has two objectives and three policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 2.

8. LRMP Goal 3 is entitled “Prosperity” and states as follows:

Champaign County will encourage economic growth and development to ensure prosperity for its residents and the region.

Goal 3 has three objectives and no policies. The proposed text amendment **WILL NOT IMPEDE** the achievement of Goal 3 in a similar manner as for the Purpose of the Zoning Ordinance. See item 16.B.

9. LRMP Goal 4 is entitled “Agriculture” and states as follows:

Champaign County will protect the long term viability of agriculture in Champaign County and its land resource base.

Goal 4 has 9 objectives and 22 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 4.

10. LRMP Goal 5 is entitled “Urban Land Use” and states as follows:

Champaign County will encourage urban development that is compact and contiguous to existing cities, villages, and existing unincorporated settlements.

Goal 5 has 3 objectives and 15 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 5 in general.

11. LRMP Goal 6 is entitled “Public Health and Safety” and states as follows:

Champaign County will ensure protection of the public health and public safety in land resource management decisions.

Goal 6 has 4 objectives and 7 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 6.

12. LRMP Goal 7 is entitled “Transportation” and states as follows:

Champaign County will coordinate land use decisions in the unincorporated area with the existing and planned transportation infrastructure and services.

Goal 7 has 2 objectives and 7 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 7.

13. LRMP Goal 8 is entitled “Natural Resources” and states as follows:

Champaign County will strive to conserve and enhance the County’s landscape and natural resources and ensure their sustainable use.

Goal 8 has 9 objectives and 36 policies and except as reviewed below will not be impeded by the proposed amendment. The proposed text amendment will **HELP ACHIEVE** Goal 8 for the following reasons:

- A. Objective 8.4 is entitled “Surface Water Protection” and states “**Champaign County will work to ensure that new development and ongoing land management practices maintain and improve surface water quality, contribute to stream channel stability, and minimize erosion and sedimentation.**”

The proposed text amendment will **HELP ACHIEVE** Objective 8.4 because of the following:

- (1) Objective 8.4 has 6 policies. Policies 8.4.1, 8.4.3, 8.4.4, and 8.4.6 are not directly relevant to the proposed text amendment.
- (2) Policy 8.4.2 states “**The County will require stormwater management designs and practices that provide effective site drainage, protect downstream drainage patterns, minimize impacts on adjacent properties and provide for stream flows that support healthy aquatic ecosystems.**”

The proposed text amendment will **HELP ACHIEVE** Policy 8.4.2 but **ONLY IF the Optional Minimum Standards in Section 6 of related Case 769-AT-13 are approved**, as follows:

- a. The “minimum erosion control and water quality standards” proposed in related Case 769-AT-13 in Sections 6.1, 6.4 and 6.5 are proposed to be required in the entire unincorporated area for any land disturbance and/or construction.
- b. If adopted, the minimum erosion control and water quality standards will authorize the Zoning Administrator to require actions to be taken for land disturbance pursuant to any Zoning Use Permit if that land disturbance causes erosion or sedimentation on adjacent land and thereby minimize impacts on adjacent properties.

- c. This Case 773-AT-14 proposes a requirement for Grading and/ or Demolition Permits outside of the MS4 Jurisdictional Area which if approved would provide an additional means to minimize impacts on adjacent properties.
- (3) Policy 8.4.5 states **“The County will ensure that non-point discharges from new development meet or exceed state and federal water quality standards.”**

The proposed text amendment will **NOT IMPEDE** the achievement of Policy 8.4.5, as follows:

- a. Item 13.A.(3) in the Finding of Fact for related Case 769-AT-13 establishes that the relevant non-point water quality standard for Champaign County applies only to that portion of the unincorporated area that is inside the MS4 Jurisdictional Area. The current MS4 Jurisdictional Area makes up only about 1% of non-urbanized (rural) Champaign County.
 - b. This Case 773-AT-14 is not required to meet the relevant non-point water quality standard for Champaign County.
- B. Objective 8.5 is entitled “Aquatic and Riparian Ecosystems” and states **“Champaign County will encourage the maintenance and enhancement of aquatic and riparian habitats.”**

The proposed text amendment will **NOT IMPEDE** the achievement of Objective 8.5 because of the following:

- (1) Objective 8.5 has 5 policies. Policies 8.5.3, 8.5.4, and 8.5.5 are not directly relevant to the proposed text amendment.
- (2) Policy 8.5.1 states, **“For discretionary development, the County will require land use patterns, site design standards and land management practices that, wherever possible, preserve existing habitat, enhance degraded habitat and restore habitat.”**

The proposed text amendment will **NOT IMPEDE** the achievement of Policy 8.5.1 because the grading and drainage permits required by this Case 773-AT-14 and the erosion and sedimentation controls required pursuant to related Case 769-AT-13 are not intended to preserve existing habitat, enhance degraded habitat, or restore habitat. The grading and drainage permits required by this Case 773-AT-14 and the erosion and sedimentation controls required pursuant to related Case 769-AT-13 will at the most minimize damage to habitat caused by erosion and sedimentation from adjacent property.

- (3) Policy 8.5.2 states, **“The County will require in its discretionary review that new development cause no more than minimal disturbance to the stream corridor environment.”**

The proposed text amendment will **NOT IMPEDE** the achievement of Policy 8.5.2 because the erosion and sedimentation controls required pursuant to related Case 769-AT-13 will probably only be required for the grading and drainage permits

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required by this Case 773-AT-14 when there is a complaint about erosion and sedimentation and it should not be assumed that will minimize erosion or sedimentation disturbance to the stream corridor environment.

- C. Objective 8.6 is entitled “Natural Areas and Habitat” and states “**Champaign County will encourage resource management which avoids loss or degradation of areas representative of the pre-settlement environment and other areas that provide habitat for native and game species.**”

The proposed text amendment will **NOT IMPEDE** the achievement of Objective 8.6 because of the following:

- (1) Objective 8.6 has 6 policies. Policies 8.6.3, 8.6.4, 8.6.5, and 8.6.6 are not relevant to the proposed text amendment.

- (2) Policy 8.6.1 states:
The County will encourage educational programs to promote sound environmental stewardship practices among private landowners.

The proposed text amendment will **NOT IMPEDE** the achievement of Policy 8.6.1 because the erosion and sedimentation controls required pursuant to related Case 769-AT-13 are only a very small part of sound environmental stewardship practices and will only be required when there is a complaint about erosion and sedimentation for the grading and drainage permits required by this Case 773-AT-14.

- (3) Policy 8.6.2 states:
- a. **“For new development, the County will require land use patterns, site design standards and land management practices to minimize the disturbance of existing areas that provide habitat for native and game species, or to mitigate the impacts of unavoidable disturbance to such areas.**
 - b. **With regard to by-right development on good zoning lots, or the expansion thereof, the County will not require new zoning regulations to preserve or maintain existing onsite areas that provide habitat for native and game species, or new zoning regulations that require mitigation of impacts of disturbance to such onsite areas.”**

The proposed text amendment will **NOT IMPEDE** the achievement of Policy 8.6.2 for the same reasons as for Policy 8.6.1 above.

14. LRMP Goal 9 is entitled “Energy Conservation” and states as follows:

Champaign County will encourage energy conservation, efficiency, and the use of renewable energy sources.

Goal 9 has 5 objectives and 5 policies. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 9.

15. LRMP Goal 10 is entitled “Cultural Amenities” and states as follows:

Champaign County will promote the development and preservation of cultural amenities that contribute to a high quality of life for its citizens.

Goal 10 has 1 objective and 1 policy. The proposed text amendment will **NOT IMPEDE** the achievement of Goal 10.

REGARDING THE PURPOSE OF THE ZONING ORDINANCE

16. The proposed text amendment appears to **HELP ACHIEVE** the purpose of the Zoning Ordinance as established in Section 2 of the Ordinance for the following reasons:

- A. Paragraph 2.0 (a) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to secure adequate light, pure air, and safety from fire and other dangers.

The proposed text amendment is only indirectly related to this purpose to the extent that preventing water pollution is part of securing safety from other dangers.

- B. Paragraph 2.0 (b) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY.

The proposed amendment will **HELP ACHIEVE** this purpose but only if **the Optional Minimum Standards in Section 6 of related Case 769-AT-13 are approved**. The Zoning Board of Appeals **HAS** included Sections 6.1, 6.4 and 6.5. in their recommendation to the County Board in related Case 769-AT-13. Regarding the Optional Minimum Standards in Section 6 of related Case 769-AT-13 and their relationship to this amendment:

- (1) From the Draft Finding of Fact for related Case 769-AT-13:
- a. The Optional Minimum Standards do not require erosion and sedimentation controls to be put in place until there is a valid complaint of erosion and/ or sedimentation on adjacent land.
 - b. The Optional Minimum Standards are not required for MS4 compliance or to achieve the LRMP goals and policies.
 - c. It is difficult to estimate the added construction costs because the minimum erosion control and water quality standards required by this Case 769-AT-13 in the 99% of the unincorporated area that is outside of the MS4 Jurisdictional Area will probably only be required when there is a complaint about erosion and sedimentation on adjacent property.
 - d. Any added costs will be directly related to minimizing damage to other property and therefore the costs will also be minimized.

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- (2) This Case 773-AT-14 proposes a requirement for Grading and/ or Demolition Permits outside of the MS4 Jurisdictional Area and if approved this amendment will only require require erosion and sedimentation controls to be put in place if there is a valid complaint of erosion and/ or sedimentation on adjacent land.
- (3) Regarding additional costs related to this Case 773-AT-14:
 - a. A fee of \$50 is proposed for the proposed Grading Permit and the proposed Demolition Permit. Regarding this proposed fee:
 - (a) This application fee is intended to be a minimal application fee and is not intended to recover all the costs related to the proposed Grading and/or Demolition Permits.
 - (b) This fee is proposed to be waived provided that an ILR Notice of Intent (NOI) will have been submitted to the IEPA and a copy of the NOI provided with the application. The application fee for the NOI is substantially greater than \$50 and preparation and submission of an NOI should reduce the amount of time required by Department of Planning and Zoning staff.
 - b. Any other added costs will be for any required erosion and sediment controls and therefore directly related to minimizing damage to other property and therefore the costs will be minimized under this proposed amendment.
- C. Paragraph 2.0 (c) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to lessen and avoid congestion in the public streets.

The proposed text amendment is not directly related to this purpose.
- D. Paragraph 2.0 (d) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to lessen and avoid hazards to persons and damage to property resulting from the accumulation of runoff of storm or flood waters.

The proposed text amendment is only indirectly related to this purpose to the extent that preventing erosion and sedimentation will help avoid hazard to persons and damage to property.
- E. Paragraph 2.0 (e) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to promote the public health, safety, comfort, morals, and general welfare.

The proposed amendment will **HELP ACHIEVE** this purpose but **ONLY IF the Optional Minimum Requirements in Section 6 of related Case 769-AT-13 are approved**, as follows:

- (1) From the Draft Finding of Fact for related Case 769-AT-13:
 - a. The Optional Minimum Standards do not require erosion and sedimentation controls to be put in place until there is a valid complaint of erosion and/ or sedimentation on adjacent land.

- b. The Optional Minimum Standards are not required for MS4 compliance or to achieve the LRMP goals and policies.
 - c. The intent of paragraph 6.1F. and subsection 6.4 and 6.5 is to authorize the Zoning Administrator to require actions to be taken for land disturbance pursuant to a Zoning Use Permit if that land disturbance causes erosion or sedimentation on adjacent land. Note that the Zoning Administrator is most likely to become aware of such erosion or sedimentation on adjacent land as a result of a complaint from a neighboring landowner.
 - d. The Department of Planning and Zoning does not receive many complaints related to erosion and sedimentation but it is not unusual for the Department to receive such complaints. The most common complaint about erosion and sedimentation is related to the tracking of sediment and nuisance soil onto the adjacent public street. Complaints about drainage changes and erosion and sedimentation are common enough that the County Board should consider requiring Grading and Demolition Permits.
 - e. Providing the authority to require erosion and sedimentation controls when there is a valid complaint of erosion and/ or sedimentation is in fact promoting the public health, safety, comfort, morals, and general welfare.
 - f. Not providing the authority to require erosion and sedimentation controls (i.e., not approving the Optional Minimum Requirements) when there is a valid need for such controls, in the context of adopting an Ordinance that specifically includes all of the necessary erosion and sedimentation controls, is not promoting the public health, safety, comfort, morals, and general welfare.
- (2) Adding a requirement for Grading and/ or Demolition Permits outside of the MS4 Jurisdictional Area could provide a means for more uniform enforcement of the “minimum erosion control and water quality requirements” in Case 769-AT-13 for all land disturbances and not just those required for a Zoning Use Permit or a Floodplain Development Permit. Therefore, approval of Case 773-AT-14 would also help further promote the public health, safety, comfort, morals, and general welfare.
- (3) Regulation of erosion control for grading and/ or demolition for one acre or more of land disturbance is already regulated by the IEPA under the ILR10 Permit and neighbors with complaints about erosion or sedimentation from adjacent grading or demolition can seek help from the IEPA.
- (4) Adding a requirement for Grading and/or Demolition Permits as proposed in this Case 773-AT-14 provides the following:
- a. Recourse for neighbors with complaints about erosion or sedimentation activities when there is less than one acre of land disturbance and no IEPA requirements apply.

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- b. The County Board will have the option of a comprehensive approach to erosion and sedimentation regulations that was not explicitly detailed in the legal advertisement for related Case 769-AT-13.

- F. Paragraph 2.0 (f) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to regulate and limit the height and bulk of buildings and structures hereafter to be erected.

The proposed text amendment is not directly related to this purpose.

- G. Paragraph 2.0 (g) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to establish, regulate, and limit the building or setback lines on or along any street, trafficway, drive or parkway.

The proposed text amendment is not directly related to this purpose.

- H. Paragraph 2.0 (h) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to regulate and limit the intensity of the use of lot areas, and regulating and determining the area of open spaces within and surrounding buildings and structures.

The proposed text amendment is directly related to this purpose to the same extent as paragraph 2.0 (e).

- I. Paragraph 2.0 (i) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to classify, regulate, and restrict the location of trades and industries and the location of buildings, structures, and land designed for specified industrial, residential, and other land uses.

The proposed text amendment is directly related to this purpose to the same extent as paragraph 2.0 (e).

- J. Paragraph 2.0 (j) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to divide the entire County into districts of such number, shape, area, and such different classes according to the use of land, buildings, and structures, intensity of the use of lot area, area of open spaces, and other classification as may be deemed best suited to carry out the purpose of the ordinance.

The proposed text amendment is directly related to this purpose to the same extent as paragraph 2.0 (e).

- K. Paragraph 2.0 (k) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to fix regulations and standards to which buildings, structures, or uses therein shall conform.

The proposed text amendment is directly related to this purpose to the same extent as paragraph 2.0 (e).

- L. Paragraph 2.0 (l) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prohibit uses, buildings, or structures incompatible with the character of such districts.

The proposed text amendment is directly related to this purpose to the same extent as paragraph 2.0 (e).

- M. Paragraph 2.0 (m) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to prevent additions to and alteration or remodeling of existing buildings, structures, or uses in such a way as to avoid the restrictions and limitations lawfully imposed under this ordinance.

The proposed text amendment is not directly related to this purpose.

- N. Paragraph 2.0 (n) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to protect the most productive agricultural lands from haphazard and unplanned intrusions of urban uses.

The proposed text amendment is not directly related to this purpose.

- O. Paragraph 2.0 (o) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to protect natural features such as forested areas and watercourses.

The proposed text amendment is directly related to this purpose. See the discussion of LRMP Objectives 8.5 and 8.6.

- P. Paragraph 2.0 (p) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to encourage the compact development of urban areas to minimize the cost of development of public utilities and public transportation facilities.

The proposed text amendment is not directly related to this purpose.

- Q. Paragraph 2.0 (q) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to encourage the preservation of agricultural belts surrounding urban areas, to retain the agricultural nature of the County, and the individual character of existing communities.

The proposed text amendment is not directly related to this purpose.

- R. Paragraph 2.0 (r) of the Ordinance states that one purpose of the zoning regulations and standards that have been adopted and established is to provide for the safe and efficient development of renewable energy sources in those parts of the COUNTY that are most suited to their development.

The proposed text amendment is not directly related to this purpose.

17. Regarding the purpose and intent of the proposed amendment in Case 773-AT-14 and its relationship to Zoning Case 769-AT-13:
 - A. Related Zoning Case 769-AT-13 is a proposed amendment to the Champaign County Zoning Ordinance and the Champaign County Stormwater Management Policy. Item 13.A.(3) in the Finding of Fact for Case 769-AT-13 reviews the history of that proposed amendment including the following:
 - (1) In 1987 Congress amended the Clean Water Act to require implementation of a two phase national program for addressing storm water discharges. The second phase (Phase II) regulations were published in the Federal Register on December 9, 1999. The Phase II Final Rule expanded the National Pollutant Discharge Elimination System (NPDES) storm water program to address storm water discharges from small municipal storm water sewer systems (MS4s) and construction sites of one to five acres.
 - (2) The Phase II Final Rule requires that a regulated small MS4 must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants to the maximum extent practicable to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act. Paragraph (b) of 40 CFR 122.34 requires that the storm water management program must at a minimum include six required control measures and one of those required measures is to develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.
 - (3) The Champaign-Urbana Urbanized Area was included in the list of Urbanized Areas in Appendix 3 to the Preamble of the Phase II Final Rule on p. 68805 of 64 Federal Register 235 (8 December 1999) and Champaign County was included in the list of Governmental Entities Located Fully or Partially Within an Urbanized Area in Appendix 6 to the Preamble of the Phase II Final Rule on p. 68812 of 64 Federal Register 235 (8 December 1999).
 - (4) The primary purpose of Zoning Case 769-AT-13 is to amend the existing Champaign County Stormwater Management Policy so that Policy will meet the relevant non-point water quality standard for Champaign County.
 - (5) As originally proposed in an ELUC Memorandum dated 10/29/13, Case 769-AT-13 also includes certain “minimum erosion control and water quality requirements” in Sections 6.1, 6.4 and 6.5 of the proposed Ordinance that are proposed to be required in the entire unincorporated area for any land disturbance and/or construction. These minimum erosion control requirements are not required for compliance with the NPDES requirements outside of the MS4 Jurisdictional Area but were proposed so as to provide some protection for neighbors that experience erosion or sedimentation from land disturbance activities on adjacent property. The Department of Planning and Zoning does not receive many complaints related to erosion and sedimentation but the Department has in the past received some complaints about erosion and sedimentation. ELUC authorized Case 769-AT-13 to proceed to a public hearing with the proposed “minimum erosion control and water quality requirements” but with no guarantee of final approval.

- B. During the public hearing for Case 769-AT-13 the Zoning Administrator realized that the legal advertisement for Case 769-AT-13 did not mention any requirement for a Grading Permit or a Demolition Permit and that adding a requirement for Grading and/ or Demolition Permits outside of the MS4 Jurisdictional Area could provide a means for more uniform enforcement of the “minimum erosion control and water quality standards” for all land disturbances and not just those required to get a Zoning Use Permit or a Floodplain Development Permit. With that realization the Zoning Administrator initiated Case 773-AT-14 to add requirements for Grading and Demolition permits outside of the MS4 Jurisdictional Area because the legal advertisement for this small zoning case was much cheaper than re-advertising Case 769-AT-13.
 - C. Cases 769-AT-13 and 773-AT-14 are related by virtue of the “minimum erosion control and water quality standards” and should proceed together to the County Board. However, if the County Board does not adopt the “minimum erosion control and water quality standards” included in Case 769-AT-13 in Sections 6.1, 6.4 and 6.5 of the Draft *Storm Water Management and Erosion Control Ordinance* dated 12/5/14, there would be little benefit in approving Case 773-AT-14.
 - D. The revised amendment in Case 773-AT-14 dated 1/09/15 does not presume or require that the Grading or the Demolition permit will be compliant with the Illinois Environmental Protection Agency’s ILR10 General Stormwater Permit. Compliance with the ILR10 is an option for the County Board to require in Case 769-AT-13 and the revised amendment in Case 773-AT-14 dated 1/09/15 will work with or without ILR10 compliance being required in Case 769-AT-13.
18. Statutory (legal) authority for the adoption of Case 773-AT-14 is the same as that for related Case 769-AT-14. Provided that the recommendations for statutory authority in related Case 769-AT-14 are adopted there are no additional requirements necessary for the statutory authority to adopt Case 773-AT-14.

SUMMARY FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **May 29, 2014; June 12, 2014; July 13, 2014; September 11, 2014; December 11, 2014; January 15, 2015, February 26, 2015; March 12, 2015; and March 26, 2015**, the Zoning Board of Appeals of Champaign County finds that:

1. Regarding the effect of the proposed text amendment on the Land Resource Management Plan (LRMP):
 - A. **Regarding Goal 8 Natural Resources:**
 - **IF the Optional Minimum Standards in Related Case 769-AT-13 are approved, It WILL HELP ACHIEVE** Objective 8.4 that states “Champaign County will work to ensure that new development and ongoing land management practices maintain and improve surface water quality, contribute to stream channel stability, and minimize erosion and sedimentation.” because it **WILL HELP ACHIEVE** the following:
 - Policy 8.4.2 that states “The County will require stormwater management designs and practices that provide effective site drainage, protect downstream drainage patterns, minimize impacts on adjacent properties and provide for stream flows that support healthy aquatic ecosystems.”
 - Based on achievement of the above Objectives and Policies and because it will either not impede or is not relevant to the other Objectives and Policies under this goal, the proposed map amendment will **HELP ACHIEVE Goal 8 Natural Resources**.
 - B. The proposed text amendment will **NOT IMPEDE** the following LRMP goal(s):
 - **Goal 1 Planning and Public Involvement**
 - **Goal 2 Governmental Coordination**
 - **Goal 3 Prosperity**
 - **Goal 4 Agriculture**
 - **Goal 5 Urban Land Use**
 - **Goal 6 Public Health and Safety**
 - **Goal 7 Transportation**
 - **Goal 9 Energy Conservation**
 - **Goal 10 Cultural Amenities**
 - C. Overall, **IF the Optional Minimum Standards in Related Case 769-AT-13 are approved**, the proposed text amendment will **HELP ACHIEVE** the Land Resource Management Plan.
2. The proposed Zoning Ordinance text amendment will **HELP ACHIEVE** the purpose of the Zoning Ordinance but only **IF the Optional Minimum Standards in Related Case 769-AT-13 are approved**, because:
 - The proposed text amendment will **HELP** conserve the value of land, BUILDINGS, and STRUCTURES throughout the COUNTY (Purpose 2.0 (b); see Item 16.B.).
 - The proposed text amendment will **HELP** promote the public health, safety, comfort, morals, and general welfare (Purpose 2.0 (e); see Item 16.E.).

DOCUMENTS OF RECORD

1. Preliminary Memorandum dated May 23, 2014, with Attachment:
 - A Proposed Amendment
2. Supplemental Memorandum dated January 9, 2015, with Attachments:
 - A Revised Amendment
 - B Preliminary Finding of Fact
3. Supplemental Memorandum for Case 769-AT-13 dated May 23, 2014, with Attachments (* = Attachments lettered consecutively from the Preliminary Memorandum):
 - A Case Description from Legal Advertisement
 - *BB Minutes of 3/13/14 public hearing for Case 769-AT-13 (included separately)
 - *CC Proposed Requirements for Typical Land Disturbance Under Proposed Ordinance in Addition to Existing Requirements ¹ *REVISED* 5/23/14
4. Supplemental Memorandum for Case 769-AT-13 dated May 29, 2014, with Attachments (* = Attachments lettered consecutively from the Preliminary Memorandum):
 - A Case Description from Legal Advertisement
 - *DD Revised Draft Storm Water Management and Erosion Control Ordinance dated 5/29/14 (with new or changed text indicated with double underlining)
5. Table of Public Comments Received on the Draft Ordinance for Case 769-AT-13 dated June 12, 2014 (handout at the June 12, 2014, public hearing; Tab EE in consecutive lettering of attachments)
6. Supplemental Memorandum for Case 769-AT-13 dated September 11, 2014, with Attachments (* = Attachments lettered consecutively from the Preliminary Memorandum):
 - A Case Description from Legal Advertisement
 - *FF Excerpt of Minutes for Cases 769-AT-14† and 773-AT-14 from the of the Approved Minutes of May 29, 2014 (included separately)
 - *GG Excerpt of Minutes for Cases 769-AT-14† and 773-AT-14 from the of the Approved Minutes of June 12, 2014 (included separately)
 - *HH. Draft Evidence Regarding Achievement of Policy 8.4.5
 - *II. Draft Evidence Regarding Cost Impact
 - *JJ. Draft Illustration of Example Zoning Use Permit Site Plan for a New Home on a Typical Rural Lot (included separately)
 - *KK Draft Illustration of Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot (Example 1. Grass already established) (included separately)
 - *LL Draft Illustration of Example Erosion and Sediment Control Plan (ESCP) for a New Home on a Typical Rural Lot (Example 2. All soil disturbed on property) (included separately)

† The correct case number is 769-AT-13

7. Draft Handout *Erosion Control Requirements in Champaign County* for Case 769-AT-13 (handout at the September 11, 2014, public hearing; Tab MM in consecutive lettering of attachments)
8. Supplemental Memorandum for Case 769-AT-13 dated December 5, 2014, with Attachments (* = Attachments lettered consecutively from the Preliminary Memorandum):
 - A Case Description from Legal Advertisement
 - *NN Excerpt of Minutes for Cases 769-AT-14† and 773-AT-14 from the of the Approved Minutes of June 12, 2014
 - *OO Excerpt of Minutes for Cases 769-AT-14† and 773-AT-14 from the of the Approved Minutes of September 11, 2014
 - *PP. Revised Section 4.1 Applicability
 - *QQ. Revised Sections 5.2 Authorizations and 5.3 Project Termination
 - *RR. Revised Section 6.1 General Requirement
 - *SS. Revised Paragraphs 6.4A. and 6.4D. Minimum Erosion Control and Water Quality Requirements
 - *TT Draft Evidence Regarding Cost Impact Related to Staffing
 - *UU Draft Evidence Regarding Statutory Authority
 - *VV Draft Evidence Regarding County Board Options
 - *WW. Draft Evidence Regarding Public Outreach
 - *XX. Revised First Page of the Draft Handout *Erosion Control Requirements in Rural Champaign County*
 - *YY. Champaign County Zoning Use Permit Application Form (current version; included separately)
 - *ZZ. Draft Champaign County Land Disturbance and Zoning Use Permit Application
 - *AAA. Revised Draft *Storm Water Management and Erosion Control Ordinance* dated 12/5/14 (with annotations; included separately)

† The correct case number is 769-AT-13

9. Supplemental Memorandum for Case 769-AT-13 dated January 9, 2015, with Attachments (* = Attachments lettered consecutively from the Preliminary Memorandum):
- A Case Description from Legal Advertisement
 - *BBB Case 769-AT-14† Proposed Requirements for Typical Land Disturbance Under Proposed Ordinance in Addition to Existing Requirements 1 REVISED 12/11/14
 - *CCC Revised Draft Handout Erosion Control Requirements in Rural Champaign County
 - *DDD Case 769-AT-14† Summary of Proposed Amendment Benefits and Costs DRAFT 12/11/14
 - *EEE Preliminary Finding of Fact
10. Supplemental Memorandum for Case 773-AT-14 dated January 9, 2015, with Attachments:
- A Revised Amendment
 - B Case 773-AT-14 Proposed Requirements for Typical Land Disturbance Under Proposed Ordinance in Addition to Existing Requirements and Related Case 769-AT-13¹ REVISED 12/11/14
 - C Preliminary Finding of Fact
11. Supplemental Memorandum for Case 769-AT-13 dated January 15, 2015, with Attachments:
- A Case Description from Legal Advertisement
 - *FFF Revised Appendix D Technical Manual Minor Land Disturbance Erosion Control Permit (included separately with Appendices E and F)
 - *GGG Revised Appendix E Technical Manual Major Land Disturbance Erosion Control Permit (included separately with Appendices D and F)
 - *HHH Appendix F Standard Details (included separately with Appendices D and E)
 - *III Miscellaneous Minor Edits
 - *JJJ. Revised Requirement for Stockpiles
12. Supplemental Memorandum for Case 769-AT-13 dated March 6, 2015, with Attachments:
- A Case Description from Legal Advertisement
 - *BBB Case 769-AT-13 Proposed Requirements for Typical Land Disturbance Under Proposed Ordinance in Addition to Existing Requirements REVISED 12/11/14 (corrected March 6, 2015)
 - *KKK Excerpt of Minutes for Cases 769-AT-13 and 773-AT-14 from the of the Approved Minutes of January 15, 2015
 - *LLL Case 769-AT-13 Summary of Proposed Amendment Benefits and Costs REVISED DRAFT 3/6/15
 - *MMM Corrected (and Updated) Documents of Record

† The correct case number is 769-AT-13

13. Supplemental Memorandum for Case 773-AT-14 dated March 6, 2015, with Attachments:
 - A Revised Amendment
 - B Case 773-AT-14 Summary of Proposed Amendment Benefits and Costs DRAFT 3/06/15
14. Supplemental Memorandum for Case 773-AT-14 dated March 12, 2015, with Attachments:
 - A Revised Amendment
15. Supplemental Memorandum for Case 773-AT-14 dated March 20, 2015, with Attachments:
 - A Revised Amendment
 - B Excerpt of 77 IAC 920.10 (definition of “abandoned well”)
 - C 77 IAC 920.120 Abandoned Wells
 - D IEPA Handout “Abandoned Wells”
 - E IEPA Handout “Asbestos in My Building”
 - F IEPA Handout “Asbestos in House or Apartment”
 - G 77 IAC 905.40 (septic tanks)
 - H Excerpt regarding “Clean Construction and Demolition Debris” from the Environmental Protection Act (415 ILCS 5)
16. Revised Draft *Storm Water Management and Erosion Control Ordinance* dated 3/6/15 (with annotations)

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Text Amendment to amend the Storm Water Management and Erosion Control Ordinance requested in **Case 773-AT-14** should **BE ENACTED** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Eric Thorsland, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

Proposed Amendment

1. Add the following to Sec. 3 Definitions of the Champaign County Storm Water Management and Erosion Control Ordinance:

DEMOLITION PERMIT: A permit for DEMOLITION activities that are planned for areas outside of the MS4 JURISDICTIONAL AREA.

GRADING PERMIT: A permit for GRADING activities that are planned for areas outside of the MS4 JURISDICTIONAL AREA.

2. Add the following to Sec. 4. of the Champaign County Storm Water Management and Erosion Control Ordinance:

4.5 GRADING and DEMOLITION PERMIT Exemptions

All GRADING and DEMOLITION meeting the following conditions are exempt from the requirement for a GRADING PERMIT and/or a DEMOLITION PERMIT:

- A. Any GRADING or DEMOLITION pursuant to any of the exempted activities listed in Section 4.2.
- B. GRADING and/or DEMOLITION that is not part of or related to other CONSTRUCTION and that will result in less than one acre of LAND DISTURBANCE and that is not part of a larger COMMON PLAN OF DEVELOPMENT OR SALE OF RECORD.
- C. GRADING and/or DEMOLITION that is related to and authorized in a ZONING USE PERMIT or a Floodplain Development Permit or a LDEC PERMIT.

3. Add the following to 5.2 of the Champaign County Storm Water Management and Erosion Control Ordinance:

5G. Approval of any required GRADING PERMIT or DEMOLITION PERMIT outside of the MS4 JURISDICTIONAL AREA.

4. Add the following to Sec. 6 of the Champaign County Storm Water Management and Erosion Control Ordinance:

6.6 DEMOLITION PERMIT and GRADING PERMIT

- A. DEMOLITION or GRADING that will result in one acre or more of LAND DISTURBANCE or that is part of a larger COMMON PLAN OF DEVELOPMENT OR SALE OF RECORD which will disturb one acre or more of land, and that is not part of or related to other CONSTRUCTION and that is not located in the Champaign County MS4 JURISDICTIONAL AREA shall be subject to the requirement for either a DEMOLITION PERMIT or a GRADING PERMIT, whichever is applicable.
- B. Paragraph 6.6A. notwithstanding, the requirements of paragraph 6.1F., Section 6.4, Section 6.5, and paragraph 6.6 J. shall apply to any GRADING or DEMOLITION even though no DEMOLITION PERMIT or GRADING PERMIT may be required based on the amount of LAND DISTURBANCE.

- C. GRADING that is related to DEMOLITION shall be authorized as part of a DEMOLITION PERMIT.
- D. Application for a DEMOLITION PERMIT or a GRADING PERMIT shall be filed in written form with the ZONING ADMINISTRATOR on such forms as the ZONING ADMINISTRATOR prescribes and shall include the following information:
1. Name and address of the OWNER, the APPLICANT, contractor, engineer and architect when applicable;
 2. Location, including township and section, street number, lot block and or tract comprising the legal description of the site;
 3. Permanent Index Number (PIN);
 4. LOT Area;
 5. ZONING DISTRICT;
 6. Special Flood Hazard Area, if applicable;
 7. USE of existing property and structures;
 8. Proposed USE and any proposed structures;
 9. Estimated cost of proposed construction, GRADING, and/or DEMOLITION;
 10. SITE PLAN indicating all existing and proposed USES and structures, water well, septic tank, septic tank leach field;
 11. Extent and nature of proposed LAND DISTURBANCE including a description of any proposed FILL and indication of the general location of any proposed FILL on the SITE PLAN.
- E. Any abandonment of a water well and/or septic tank (or anything similar to a septic tank) shall be in compliance with the Champaign County Health Ordinance and the Illinois Water Well Construction Code (415 ILCS 30) and/or the Illinois Private Sewage Disposal Code (77 ILCS 905.40).
- F. Any abandonment of an underground storage tank shall be in accordance with all applicable laws. This requirement shall not apply to any septic tank.
- G. Any permit for DEMOLITION of a PRINCIPAL BUILDING (as defined in the Champaign County Zoning Ordinance) not related to other CONSTRUCTION shall document the following:
1. Whichever of the following is applicable regarding the presence of a water well on the LOT:
 - a. a written statement that no water well exists on the LOT; or
 - b. a written statement that no water well on the LOT will be abandoned as defined in the Illinois Water Well Construction Code (415 ILCS 30) and the Champaign County Health Ordinance; or
 - c. in the event that a water well on the LOT will be abandoned, a copy of the Water Well Sealing Form pursuant to Public Act 85-0863 shall be submitted.
 2. Whichever of the following is applicable regarding the presence of a septic tank or other similar thing on the LOT:

AS APPROVED: RECOMMENDED FOR ENACTMENT

- a. a written statement that no septic tank, cesspool, pit privy, aerobic treatment unit, or seepage pit exists on the LOT; or
 - b. a written statement certifying that a septic tank or aerobic treatment unit (or both) or a cesspool or pit privy or seepage pit exists on the LOT and will remain in use; or
 - c. a written statement certifying that a septic tank or aerobic treatment unit (or both), or a cesspool or pit privy or seepage pit exists on the LOT and will no longer be in use and shall be made to comply with the Illinois Private Sewage Disposal Code (77 ILCS 905.40) and the Champaign County Health Ordinance.
- H. Any permit for DEMOLITION of anything other than a privately owned home or ACCESSORY BUILDING or related STRUCTURE or a multi-family DWELLING with four or less dwelling units and/or any ACCESSORY BUILDING shall provide the following to document compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP):
1. a written statement by a qualified inspector that regulated removal of asbestos containing material is not necessary; or
 2. if a qualified inspector has determined that regulated removal of asbestos containing material is necessary, a copy of the completed State of Illinois Demolition/Renovation/Asbestos Project Notification Form. All DEMOLITION authorized under a DEMOLITION PERMIT or pursuant to a LDEC PERMIT shall comply with the Illinois Environmental Protection Agency's regulations enforcing the National Emission Standard for Hazardous Air Pollutants for regulated asbestos.
- I. The Applicant for any DEMOLITION is responsible for ending and turning off any relevant utility service prior to DEMOLITION.
- J. Any Zoning Use Permit or Floodplain Development Permit or LDEC PERMIT and all GRADING or DEMOLITION shall comply with the following:
1. All DEMOLITION debris shall be disposed of lawfully and no CONSTRUCTION or DEMOLITION debris may be buried on the LOT other than as follows:
 - a. Clean CONSTRUCTION or DEMOLITION debris consisting of uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or DEMOLITION activities may be used as a FILL material provided as follows:
 - (a) FILL that includes clean CONSTRUCTION or DEMOLITION debris shall not be placed within any well setback zone established under the Illinois Groundwater Protection Act (415 ILCS 55/1).
 - (b) FILL that includes clean CONSTRUCTION or DEMOLITION debris shall be placed no higher than the adjacent ground elevation that existed prior to the DEMOLITION.

- (c) The Zoning Administrator may inspect any FILL prior to final grading and must inspect all FILL that is placed inside the MS4 JURISDICTIONAL AREA pursuant to a LDEC PERMIT.
 - (d) FILL that includes clean CONSTRUCTION or DEMOLITION debris shall be covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of placing the FILL.
 - (e) FILL that includes clean CONSTRUCTION or DEMOLITION debris shall be in compliance with all other requirements of 415 ILCS 5/3.160 and 415 ILCS 5/22.51 or as authorized by the IEPA.
- 2. All other general CONSTRUCTION or DEMOLITION debris shall be removed from the LOT and taken to a duly approved disposal facility or reused in conformance with 415 ILCS 5/3.160 and 415 ILCS 5/22.51 or as otherwise authorized by the IEPA.
- 3. The requirements of paragraph 6.6 G.1. and 6.6 G.2. notwithstanding, uncontaminated broken concrete without protruding metal bars may be used for erosion control consistent with all other standards of this Ordinance.
- 4. No DEMOLITION debris shall be burned on the LOT unless all necessary approvals are received from the IEPA in which case a copy of said approval shall be provided with the application.
- 5. Fugitive dust shall be minimized during GRADING or DEMOLITION activities.
- 6. No open excavation or open basement or foundation more than four feet deep shall be left unfenced at any time and within 90 days shall be removed or filled in conformance with the requirements of this Ordinance so as to be less than four feet deep.
- K. At the time the application is filed for a DEMOLITION PERMIT or a GRADING PERMIT a fee of \$50 shall be paid except that this fee shall be waived provided that a Notice of Intent shall have been submitted to the IEPA and a copy of the Notice of Intent is submitted with the application.
- L. The Applicant for any DEMOLITION PERMIT or any LDEC PERMIT for DEMOLITION not related to other CONSTRUCTION shall notify the Zoning Administrator when the DEMOLITION has been completed and the Zoning Administrator shall inspect the DEMOLITION for compliance with this Ordinance.
- M. EROSION and SEDIMENT controls required by the ZONING ADMINISTRATOR pursuant to an enforcement action shall remain in place and shall be properly maintained in conformance with Section 12.8 until the DEMOLITION or GRADING has achieved FINAL STABILIZATION or until the EROSION and SEDIMENT controls are no longer needed. The ZONING ADMINISTRATOR shall then provide a letter documenting the achievement of FINAL STABILIZATION or that the EROSION and SEDIMENT control

are no longer needed. EROSION and SEDIMENT controls required pursuant to the ILR10 shall remain in place until a NOTICE OF TERMINATION has been submitted to the IEPA and the County.

- N. In the event that DEMOLITION or GRADING occurs with no application having been made for a DEMOLITION PERMIT or a GRADING PERMIT, no DEMOLITION PERMIT or GRADING PERMIT shall be required after FINAL STABILIZATION.