

1 **MINUTES OF REGULAR MEETING**

3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

4 **1776 E. Washington Street**

5 **Urbana, IL 61801**

7 **DATE: August 3, 2017**

PLACE: John Dimit Meeting Room

1776 East Washington Street

Urbana, IL 61802

10 **TIME: 7:00 p.m.**

11 **MEMBERS PRESENT:** Catherine Capel, Frank DiNovo, Debra Griest, Brad Passalacqua, Eric
12 Thorsland

14 **MEMBERS ABSENT:** Marilyn Lee, Jim Randol

16 **STAFF PRESENT:** Connie Berry, Susan Burgstrom, John Hall

18 **OTHERS PRESENT:** Sara Kunde, David Kunde, Sue Brockman, Jones Brockman, Brian Wattles,
19 Phil Fiscella, Josie Fiscella, Jessica Wattles, Joel Wattles, Mark Thornsborough

22 **1. Call to Order**

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

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

28 The roll was called and a quorum declared present with two members absent.

30 **3. Correspondence**

32 None

34 **4. Approval of Minutes**

36 None

38 **5. Continued Public Hearing**

40 None

42 **6. New Public Hearings**

44 **Case 877-V-17 Petitioner: Illini FS, a division of Growmark, Inc., via agent Matt Busby, and including**
45 **the Illini FS Board of Directors: Jim Young, President; Chris Hausman, Vice-President; Cory Green,**
46 **Secretary; Jason Hansens; Scott Kesler, Steve Ludwig; Brian Macke; Gary Romoser; and Mark**
47 **Shepard. Request: Authorize a variance from the Zoning Ordinance on a property in the I-1, Light**
48 **Industry Zoning District: Part A: Authorize a setback for an existing principal building of 84 feet**
49 **from the street centerline of a state highway in lieu of the minimum required 85 feet, per Section 5.3 of**
50 **the Zoning Ordinance. Part B: Authorize a side yard for an existing principal building of 9.82 feet in**

1 **lieu of the minimum required 10 feet per Section 5.3 of the Zoning Ordinance. Part C: Authorize a**
2 **rear yard of 12 feet 4 inches for an existing accessory structure in lieu of the minimum required 20**
3 **feet, per Section 5.3 of the Zoning Ordinance. Part D: Authorize 5 wall mounted signs that occupy**
4 **27% of the wall surface not on a frontage (west) in lieu of the maximum allowed 3 wall mounted signs**
5 **that occupy no more than 15% of the wall surface on a frontage, per Section 7.3.6 of the Zoning**
6 **Ordinance. Location: A 7.38-acre tract in part of the Northwest Quarter of the Northwest Quarter of**
7 **Section 2, Township 21N, Range 8 East of the Third Principal Meridian in Condit Township and**
8 **commonly known as the Illini FS Dewey Facility, 1009 CR 3000N, Dewey.**

9
10 Mr. Thorsland informed the audience that this is an Administrative Case and as such, the County allows
11 anyone the opportunity to cross-examine any witness. He said that at the proper time he will ask for a show
12 of hands for those who would like to cross-examine and each person will be called upon. He requested that
13 anyone called to cross-examine go to the cross-examination microphone to ask any questions. He said that
14 those who desire to cross-examine are not required to sign the witness register but are requested to clearly
15 state their name before asking any questions. He noted that no new testimony is to be given during the cross
16 examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are exempt
17 from cross examination.

18
19 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.

20
21 Mr. Mark Thornsborough, General Manager for Illini FS, who resides at 5008 Sand Cherry, Champaign,
22 stated that the Dewey location was a property that was purchased by Growmark, owners of Illini FS., in 2000
23 from Terra Industries. He said that the Shields family originally owned the subject property and operated
24 their own family business until they sold it to Terra Industries. He said that when Illini FS applied for a
25 Land Disturbance and Zoning Use Permit for an addition to a building on the subject property, they found
26 out that there was an issue with the buildings being too close to the property lines and that the liquid
27 fertilizer tank was also too close to the property line. He said that the west side of one of the buildings had a
28 very large Illini FS sign and they were told that they were not in compliance, with the Zoning Ordinance. He
29 said that having known that the large sign was not in compliance they had new signs made, costing
30 approximately \$6,000, and in order to obtain a permit for placement of the new signs they needed to request
31 the variances for the current violations. He said that that the buildings have been at their current location for
32 a long time and it would be cost prohibitive to move them or purchase adjacent land. He said that they are
33 good stewards to the community and they want to make sure that they do comply with the rules and
34 regulations of the local, state and federal governments.

35
36 Mr. Thorsland asked Mr. Thornsborough if Illini FS realized that the buildings were too close to the property
37 lines when they purchased the property.

38
39 Mr. Thornsborough stated that they did not know that the buildings were too close to the property lines and
40 were only informed when they applied for a building permit for the addition.

41
42 Mr. Thorsland stated that Parts A and B are for the existing buildings, and if granted, they could be rebuilt in
43 their current location.

44
45 Mr. Thornsborough stated that they changed their logo and they were trying to place something on the
46 building that was more to their new theme. He said that they have put a lot of money into the facility and

1 wanted to update the facility so that it was pleasing to the community. He said that the signs are currently
2 located at the Decatur sign shop and they are ready to install if the variance and permits are granted. He said
3 that the signs will look nice and they will not be overwhelming. He said that if the variance for the signs is
4 not granted, they would not install the signs because they want to follow the guidelines of the local
5 government.

6
7 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Thornsborough.

8
9 Mr. DiNovo asked Mr. Thornsborough if he had spoken with the Shields family regarding purchasing
10 additional land.

11
12 Mr. Thornsborough stated that he had not.

13
14 Mr. DiNovo asked Mr. Thornsborough if he knew what it would cost to move the liquid fertilizer tank.

15
16 Mr. Thornsborough stated that this is a tank with an inner liner, and in order to move the tank it would have to
17 be dismantled, and dismantling and relocating a large tank that had been there for several years would be like
18 putting a new tank up. He said that the cost of a project such as moving that tank would be in the range of
19 seven figures.

20
21 Mr. DiNovo asked Mr. Thornsborough to indicate how many Illini FS facilities were in Champaign County.

22
23 Mr. Thornsborough stated that there were seven facilities in Champaign County: Tolono, Leverette, Dewey,
24 Sadorus, Dailey, Rising Road, and Urbana.

25
26 Mr. Thorsland asked Mr. Thornsborough if all the facilities have large fertilizer tanks.

27
28 Mr. Thornsborough stated no. He said that they have various 30,000 gallon tanks at the smaller facilities, but
29 this tank is approximately 750,000 gallons and is licensed and inspected by the State of Illinois. He said that
30 when they installed a liner, they hired their own engineering group to assure that they followed all the
31 parameters of the state and that there were no environmental issues.

32
33 Mr. DiNovo asked Mr. Thornsborough if the new signs could be used at another facility.

34
35 Mr. Thornsborough stated yes, and ignorance of the Zoning Ordinance is not an excuse, but the existing signs
36 came from one of Growmark's larger seed plants in Piper City and they were very antiquated and did not
37 look how he wanted them to portray an image of their company. He said that they had a company prepare a
38 design for Growmark and Monsanto and once they are applied, the cost is approximately \$10,000. He said
39 that they could put the signs at a different location, but they have an image campaign where they upgrade
40 each facility one at a time. He said that they have painted and attempted to upgrade the facility, and the new
41 signs will not overwhelm the side of the building and will make it stand out with the company logo and
42 highlight the companies that they represent. He said that that they should have known the rules regarding
43 signs, but the current signs have been there for a long time and as far as they know, no one has complained
44 about them. He said that when they applied for the permit for the building addition, they were told that the
45 signs were out of compliance with the Zoning Ordinance, so they immediately removed the signs. He said
46 that the sign maker has the signs and they are paid for, but if the ZBA denies their request for placement of

1 the signs, they will try to use them at one of their other facilities. He said that they are trying to follow the
2 rules and create a new image. He said that he will not come in and apply for a variance for a sign at another
3 facility and will follow the rules regarding signage and building placement. He said that the cost would be
4 astronomical in trying to move the large fertilizer tank.

5
6 Mr. Thorsland asked the Board and staff if anyone had any additional questions for Mr. Thornsborough and
7 there were none.

8
9 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Thornsborough and there was no
10 one.

11
12 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony and
13 there was no one.

14
15 Mr. DiNovo asked Mr. Hall if we know how much of the outdoor storage is nonconforming, in terms of the
16 screening requirement.

17
18 Mr. Hall stated that generally, staff will look at the 1973 and 1988 aerials regarding nonconforming outdoor
19 storage, but he would assume that the outdoor storage may have increased in the same proximity to the
20 highway.

21
22 Mr. DiNovo stated that a good part of it is probably nonconforming. He asked Mr. Hall when the 7.38 acres
23 was conveyed.

24
25 Mr. Hall stated 1995.

26
27 Mr. DiNovo stated that the 7.38 acres was conveyed before the fertilizer tank was built. He said that aerial
28 photograph in the memorandum indicates that the fertilizer tank was installed with permit 78-02-03.

29
30 Mr. Hall stated that a note indicates that permit 78-02-03 replaced an existing tank.

31
32 Mr. Thorsland asked Mr. Thornsborough if there was an existing tank on the property when it was conveyed.

33
34 Mr. Thornsborough stated that he does not know, but there could have been an anhydrous tank at one point in
35 time.

36
37 Mr. Hall stated that the 1988 aerial indicates a same sized tank at this location.

38
39 Mr. Thorsland stated that the Board could now review the proposed special condition. He read Special
40 Condition A. as follows:

- 41
42 **A. Within 90 days of approval of Case 877-V-17, all outdoor storage and operations**
43 **Visible from adjacent residences, including stockpiles and equipment, must be screened**
44 **with a Type D Screen to obscure or conceal any part of any yard used for outdoor**
45 **storage and/or outdoor operations.**
46

1 The special condition stated above is required to ensure the following:

2 **That outdoor storage and operations are in compliance with Section 7.6 of the**
3 **Zoning Ordinance.**

4
5 Mr. Thorsland asked Mr. Thornsborough if he agreed with Special Condition A.

6
7 Mr. Thornsborough asked if they had to install a screen.

8
9 Mr. Hall stated that a Type D Screen can be an 8 feet tall vegetative screen, or a wall or berm. He said that if
10 any of the neighbors within 1,000 feet of the facility are okay without a screen and they sign a statement
11 indicating such, then the screening can be waived administratively.

12
13 Ms. Burgstrom stated that page 4 of Attachment G. of the Preliminary Memorandum indicates that the
14 nearest residential property, behind the trees, is totally screened from the east access drive of the facility by
15 evergreens. She said that she did not get a photograph of the second residence.

16
17 Mr. Hall stated that he could not recall how long the outdoor screening has been a requirement of the
18 Ordinance. He said that the outdoor storage has existed since at least 1988.

19
20 Mr. DiNovo stated that he cannot recall it either, but he believes that it was in the 1990's.

21
22 Mr. Hall stated that the ZBA could amend the special condition and exclude the screening requirement for
23 any outdoor storage.

24
25 Mr. DiNovo stated that the neighbor's waiver of the screening does not waive the screening from the
26 highway, unless the outdoor storage is nonconforming.

27
28 Mr. Thorsland stated that if the petitioner could get the two neighbors to sign waivers regarding the
29 screening then the Board could reword the special condition.

30
31 Mr. Passalacqua asked if the Special Condition if even necessary. He said that the facility and the signs have
32 been there for a very long time with no complaints.

33
34 Mr. Thorsland entertained a motion to strike Special Condition A.

35
36 **Mr. Passalacqua moved, seconded by Ms. Capel to strike Special Condition A. The motion carried by**
37 **voice vote.**

38
39 Mr. Thornsborough thanked the Board, because he was trying to decide how they were going to hide the tank
40 with trees.

41
42 Mr. DiNovo stated that the screening requirement did not apply to the tank, but for things such as equipment
43 and anhydrous tanks.

1 **FINDINGS OF FACT FOR CASE 877-V-17:**

2 **From the documents of record and the testimony and exhibits received at the public hearing for**
3 **zoning case 877-V-17 held on August 3, 2017, the Zoning Board of Appeals of Champaign County**
4 **finds that:**

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

8 Mr. Passalacqua stated that special conditions and circumstances DO exist which are peculiar to the land or
9 structure involved, which are not applicable to other similarly situated land and structures because the
10 storage tank was nonconforming and it existed before the purchase of the current owner.

11 Mr. DiNovo stated that Mr. Passalacqua's statement is not accurate. He said that the lot is a legal lot except
12 that the property line is too close to the tank. He said that the tank is non-compliant.

13 **2. Practical difficulties or hardships created by carrying out the strict letter of the regulations**
14 **sought to be varied WILL prevent reasonable or otherwise permitted use of the land or**
15 **structure or construction.**
16

17 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
18 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
19 or construction because it is cost prohibitive to move the tank; the signs are made and ready to be put on the
20 building, and are not overly obnoxious. She said that the proposed signs are located where previous signs
21 were; and the location of those signs off CR 1000E makes the large size appropriate.
22

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

25 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties DO
26 NOT result from actions of the applicant, because the tank was already at that location, and the signs replace
27 existing large signs on a similar wall area.

28 **4. The requested variance IS in harmony with the general purpose and intent of the Ordinance.**
29

30 Ms. Capel stated that the requested variance IS in harmony with the general purpose and intent of the
31 Ordinance because it allows Illini FS to continue to serve the Dewey area, and there is no fundamental
32 difference of the use if the variance is granted.
33

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

36 Mr. Thorsland stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
37 detrimental to the public health, safety, or welfare, because there have been no negative comments from
38 adjacent neighbors and no change to the existing use.

39 **6. The requested variance IS the minimum variation that will make possible the reasonable use of**

1 **the land/structure.**

2 Ms. Griest stated that the requested variance IS the minimum variation that will make possible the
3 reasonable use of the land/structure, because no new construction will occur as a result of these variances.

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

5 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings
6 of Fact, as amended.

7 **Mr. Passalacqua moved, seconded by Ms. Griest, to adopt the Summary of Evidence, Documents of**
8 **Record and Findings of Fact, as amended. The motion carried by voice vote.**

9 Mr. Thorsland entertained a motion to move to the Final Determination.

10 **Ms. Capel moved, seconded by Mr. Passalacqua, to move to the Final Determination for Case 877-V-**
11 **17. The motion carried by voice vote.**

12 Mr. Thorsland stated that currently the Board has two members absent; therefore, it is at the petitioners'
13 discretion to either continue Cases 878-V-17 and 882-V-17 until a full Board is present or request that the
14 present Board move to the Final Determination. He informed the petitioner that four affirmative votes are
15 required for approval.

16
17 Mr. Thornsborough requested that the present Board move to the Final Determination for Case 877-V-17.

18
19 **FINAL DETERMINATION FOR CASE 877-V-17:**

20 **Mr. Passalacqua moved, seconded by Ms. Griest, that the Champaign County Zoning Board of**
21 **Appeals finds that, based upon the application, testimony, and other evidence received in this case,**
22 **that the requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority**
23 **granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals**
24 **of Champaign County determines that:**

25 **The Variances requested in Case 877-V-17 are hereby GRANTED to the petitioner, Illini FS, a**
26 **division of Growmark, Inc., via agent Matt Busby, and including the Illini FS Board of Directors: Jim**
27 **Young, President; Chris Hausman, Vice-President; Cory Green, Secretary; Jason Hansens; Scott**
28 **Kesler; Steve Ludwig; Brian Macke; Gary Romoser; and Mark Shepherd., to authorize the following**
29 **variance in the I-1 Light Industry Zoning District:**

30
31 **Part A: Authorize a setback for an existing principal building of 84 feet from the street**
32 **centerline of a state highway in lieu of the minimum required 85 feet, per Section 5.3 of the**
33 **Zoning Ordinance.**

34
35 **Part B: Authorize a side yard for an existing principal building of 9.82 feet in lieu of the**
36 **minimum required 10 feet per Section 5.3 of the Zoning Ordinance.**

37
38 **Part C: Authorize a rear yard of 12 feet 4 inches for an existing accessory structure in lieu of**
39 **the minimum required 20 feet, per Section 7.2.3 A.3. of the Zoning Ordinance.**

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Part D: Authorize 5 wall mounted signs that occupy 27% of the wall surface not on a frontage (west) in lieu of the maximum allowed 3 wall mounted signs that occupy no more than 15% of the wall surface on a frontage, per Section 7.3.6 of the Zoning Ordinance.

Mr. Thorsland requested a roll call vote.

The roll was called as follows:

Lee – absent	Passalacqua – yes	Randol – absent
Capel – yes	DiNovo – yes	Griest – yes
Thorsland – yes		

Mr. Hall informed Mr. Thornsborough that he has received an approval for his request and staff will be in contact with the final paperwork. He noted that Mr. Thornsborough should contact staff with any questions.

Mr. DiNovo stated that, obviously, this concern was not enough to determine his vote, but he is concerned to the extent that the sign variance decision hinged on the Board’s opinion of the aesthetics. He said that it is not proper for the Board to make that judgement and it is the County Board’s authority to decide the proper standards for signs and it is only this Board’s responsibility to determine if there is such a hardship for the landowner that the standards that the County Board decided on should be waived in the interest of the landowner. He said that it would be best if this matter were brought to the attention of the County Board, because at some point they are going to have to reconsider their sign standards. He cannot remember a time when this Board has denied a sign variance and what this Board has been doing for the past 20 years is amending the Zoning Ordinance in respect to signs. He said that it is time for the County Board to look at the sign standards, because if the ZBA is going to grant a sign variance every time one is requested, then the sign standards do not mean anything. He said that the County Board needs to decide what proper signage looks like and not the ZBA.

Mr. Thornsborough thanked the Board for granting the requested variances.

Cases 878-V-17 Petitioner: Philip Fiscella Request to authorize the use of a proposed lot in the CR Conservation Recreation Zoning District with an average lot width of 141 feet in lieu of the required minimum 200 feet, and with a minimum lot area 0.5 acre in lieu of the minimum required 1 acre, per Section 5.3 of the Zoning Ordinance. Location: The west 150 feet of Lot 8 in Wildwood Acres Subdivision in Section 36, Township 21 North, Range 7 East of the Third Principal Meridian in Newcomb Township.

Case 883-V-17 Petitioner: Philip Fiscella Request to authorize a proposed division of a lot less than five acres in area on a property in the CR Conservation Recreation Zoning District, per Section 5.4.2 A.3 of the Zoning Ordinance. Location: Lot 9 in Wildwood Acres Subdivision in Section 36, Township 21 North, Range 7 East of the Third Principal Meridian in Newcomb Township.

Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows anyone the opportunity to cross-examine any witness. He said that at the proper time he will ask for a show of hands for those who would like to cross-examine and each person will be called upon. He requested that

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

7 Mr. Thorsland called John Hall to testify.
8

9 Mr. John Hall, Zoning Administrator, distributed Supplemental Memorandum #1, dated August 3, 2017, to
10 the Board for review. He said that the memorandum includes an email received July 25, 2017, from Carol
11 Brockman, daughter of adjacent neighbors J.R. and Sue Brockman, providing supplemental information to
12 her parents' original statement that was provided in the Preliminary Memorandum. He said that there is a lot
13 of information in Ms. Brockman's email and he will not read it to the Board, but it is worth the Board's time
14 to read it.
15

16 Mr. Thorsland asked the Board if they have had a chance to read the email, and the Board indicated yes.
17

18 Mr. Thorsland called Philip Fiscella to testify.
19

20 Mr. Philip Fiscella, whose address is 505 West Green Street, Champaign, stated that he has been buying real
21 estate taxes for approximately five years and he has acquired several properties that way. He said that there
22 is a normally a reason why someone does not pay their real estate taxes; someone has died or their estate is
23 in disarray, or there is a title issue. He said that this seemed to be a text book case, but he did not bring the
24 abstracts with him. He said that at some time in the late 1990's a house was sold in the subdivision by
25 somebody who owned multiple lots, and even though there was a closing and a deed, somehow they
26 accidentally wrote the west 150 feet of Lot 9 instead of the actual lot they intended to convey. He said that
27 three days later someone came back with a sworn statement that a mistake had occurred and they deeded it
28 back. Mr. Fiscella stated that if anyone has ever purchased property they know that at the bottom of the deed
29 there is a statement indicating where the tax bill should be sent to, but in this case the bottom of the deed
30 indicated that the tax bill should be sent to someone who was not actually the buyer, and did not include that
31 statement on the second deed. He said that the original owner of the west 150 feet stopped getting a tax bill
32 and it is assumed that they forgot about the property taxes and the new owner of record, who didn't have title
33 to the property, proceeded to pay the real estate taxes for ten years and then stopped. Mr. Fiscella stated that
34 his attorney assumes that the person who was paying the real estate taxes got wise and found out that he was
35 not actually the owner and was only receiving the tax bill for years, so he stopped paying them, but
36 meanwhile the actual owner forgot about the property and he too was not paying the tax bill. Mr. Fiscella
37 stated that eventually the property went to the property tax sale and he began paying the real estate taxes on
38 the property. He said that he paid all the interest and fees for three years and received title of the property
39 and decided to list the property with Nate Evans with Keller Williams Realty; that is when he found out that
40 the property was not large enough per Champaign County's requirements.
41

42 Mr. Fiscella stated that this is his first time before the Board and applying for a variance. He said that he
43 started with staff's concerns and drew a map indicating his proposal. He said that he would never propose to
44 build a home which only had a 15 feet rear yard. He said that Ms. Burgstrom indicated that her deepest
45 concern with the granting of the variance was the preservation of an adequate visibility triangle at the
46 intersection at the southwest parcel in question. He said that Ms. Burgstrom was concerned that someone

1 may be traveling down Wildwood Drive at a high rate of speed and someone turning right off Lakeview
2 Drive may not be able to see them coming in time to prevent an accident. Mr. Fiscella stated that he drew
3 his site plan with Ms. Burgstrom's visibility concerns in mind, because he assumed that would be one of the
4 reasons why the variance may be denied, and placed the house in a location that would provide a very
5 generous visibility triangle. He said that if he were to sell the house to a family, they would want a back yard
6 for the kids and his plan would be to sit down with Brett Cox, Newcomb Township Highway Commissioner,
7 so that Mr. Cox could indicate his concerns and what he would require.

8
9 Mr. Thorsland stated that Brett Cox is no longer the Newcomb Township Highway Commissioner.

10
11 Mr. Fiscella stated that Dale Crowley won the seat for Newcomb Township Highway Commissioner, but he
12 resigned and Brett Cox was appointed as the highway commissioner again. Mr. Fiscella stated that he placed
13 the septic tank and leach field in the corner of the property so that there were no concerns regarding its
14 distance from the well on the property or any adjacent wells. He said that he spoke to Mike Flanagan at the
15 Champaign County Public Health Department and he indicated that the lot was of ample size for a septic
16 system and two or more future leach fields should the need for replacement arise, as septic systems are
17 placed on lots of this size with no issue. Mr. Fiscella stated that he indicated the placement of the proposed
18 septic tank on the site plan, included at Attachment B to the Preliminary Memorandum dated July 26, 2017.
19 He said that there is room for four or five leach fields if the need would ever arise, or a multi-flow system
20 could be installed and no leach field would be necessary.

21
22 Mr. Thorsland noted that he does not believe that multi-flow systems are allowed any more.

23
24 Mr. Fiscella stated okay. He said that if the variance is approved he is proposing to place a Wasser or Riley
25 manufactured home with an attached garage. He said that modern manufactured homes are indistinguishable
26 from site built homes as they have stone or brick accents, fireplaces, solid surface countertops, and other
27 high end features that people desire in their new homes. He said that the idea is to make this lot into
28 something that he could sell and make a lot of money on when he sells the property to a family; therefore, it
29 should be a classy home to justify all of this. He said that modular construction is ideal, because it does not
30 require a construction loan or tying up money for a long period of time; he would like to do this and get out
31 or get it rented if he decides not to sell it. He said that if it would ease the mind of the neighbors he would
32 be willing to accept some sort of deed restriction to assure the quality of the home placed on the lot.

33
34 Mr. Fiscella stated that he understands that the Brockman family has enjoyed the view of the property and
35 that they have enjoyed the garden that they have planted on the property, but it is unreasonable to deny the
36 variance request due to the presumption that one should be able to continue their use of another individual's
37 property without compensation or permission while he continues to pay the real estate taxes and insurance
38 on it. He said the Mr. and Mrs. Brockman have informed him that they were not willing to sell their
39 property and were not interested in purchasing his property. He said that he sent everyone in the
40 neighborhood a letter offering to sell the property to them for what the County had assessed it at, but he has
41 received no responses or counter-offers. He said that at this point he would be more than welcome to
42 consider an offer from any of the neighbors.

43
44 Mr. Fiscella stated that if the variance is denied he will file a petition to the Board of Review to lower the
45 assessment on the property to basically no value, and the County would lose the \$630 that he has been
46 paying every year for the last four years and would miss out on any new revenue that the new home would

1 create. He said that currently there is no legal use for the lot, but he has rigged up a four-row planter and he
2 would love to try it out and plant sweet corn next year on this lot. He said that he does not believe that a
3 garden is the highest and best use for this lot when it could be utilized for a home for a family.

4
5 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Fiscella.

6
7 Mr. DiNovo asked Mr. Fiscella when the conveyance occurred that caused the confusion.

8
9 Mr. Fiscella stated that he did not bring that information with him, but it was sometime in 1974.

10
11 Ms. Burgstrom stated that the conveyance occurred in 1997.

12
13 Mr. DiNovo asked if two parcels were created in 1974, but nothing was conveyed to another party until
14 1997.

15
16 Ms. Burgstrom stated yes.

17
18 Mr. Thorsland asked Mr. Fiscella if he purchased the property from a realtor or at the County tax sale.

19
20 Mr. Fiscella stated that he purchased the property at the County tax sale. He said that you pay the real estate
21 taxes on the property and then bid down the interest rate. He said that once it is sold you pay the taxes for
22 three years before you receive a tax deed.

23
24 Mr. Thorsland asked Mr. Fiscella if he has purchased other properties in this manner.

25
26 Mr. Fiscella stated yes, but generally he finds out about issues about the property and files a Deed in Error,
27 but in this case, he did not find out about the issues with the property until after the deed was transferred and
28 he couldn't get his money back.

29
30 Mr. Thorsland asked Mr. Fiscella if he ever checked with staff to determine if the lot was a buildable lot.

31
32 Mr. Fiscella stated that he assumed that the lot was buildable, because it appeared to be the same size as the
33 other lots located along the street.

34
35 Mr. Passalacqua stated that the lot being in the CR Zoning District is an added problem with the lot's size.

36
37 Mr. DiNovo asked staff to indicate when the Wildwood Acres Subdivision was platted.

38
39 Ms. Burgstrom stated that Wildwood Acres Subdivision was platted in 1968.

40
41 Mr. DiNovo stated that 1968 was before the adoption of the Champaign County Zoning Ordinance and was
42 when no one was anticipating its adoption.

43
44 Mr. Thorsland stated that it appears that Lot 9 was anticipated to be a lot.

45
46 Mr. Passalacqua asked Mr. Fiscella if the tax sale is basically blind and is available online.

- 1 Mr. Fiscella stated no. He said that the tax sale is held in the Lyle Shields Meeting Room and there is only
2 half of a second to evaluate a property.
3
- 4 Mr. Passalacqua stated that the buyers know that there is a risk.
5
- 6 Mr. Fiscella stated yes, but once you find out about a property you can file for a sale in error.
7
- 8 Mr. Passalacqua stated that Mr. Fiscella does not have to respond, but he would guess that he paid
9 approximately \$1,500 for the property.
10
- 11 Mr. Fiscella stated that he has approximately \$6,000 in the property because you have to pay more than just
12 the real estate taxes.
13
- 14 Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Fiscella and there
15 were none.
16
- 17 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Fiscella and there was no one.
18
- 19 Mr. Thorsland called David Kunde to testify.
20
- 21 Mr. David Kunde, who resides at 505F CR 2500 N, Mahomet, which is Lot 11 in the Wildwood Acres
22 Subdivision, stated that he has several concerns; first off, he has to consider what the township has done with
23 respect to drainage. He said that the drainage around Lot 12 normally ran around and into the Commons
24 Area. He said that instead of continuing cleaning up the drainage ditch, the township put a pipe across into
25 Lot 10, which now causes the drainage out of Lot 9 to drain into Lot 11 and down into his backyard. He said
26 that with the creation of Lot 9, if you create a home in the front half of Lot 9, with a considerable amount
27 more of drainage, it will then go into the drainage ditch through Lots 9 and 10, and then down into his
28 backyard and take out his septic tank and he has a distinct problem with that. He said another thing we need
29 to consider is that both Lots 10 and 11 have been declared totally in the flood zone and up until a year ago,
30 the back half of Lots 10 and 11 were in the flood zone; now they have moved the flood zone all the way up.
31 He said that this happened with the creation of the Thornwood Subdivision, when they didn't put any
32 holding ponds in, so now we get a massive amount of runoff and the river comes up so that 3 to 4 months
33 out of the year the back half of his lot is full of water. He said that on days when they get an excessive
34 amount of rain, the water goes up close to his back porch. He said that when you drain more out of Lot 9 by
35 putting in a house and more drainage there, you're going to simply take out his septic system. He said that
36 CR 2500N is closed multiple times during the year because of the flooding. He said that the six-acre
37 commons area has not been talked about and Lakeview Drive exists because originally, the back half of the
38 commons area was supposed to be a lake. He said that Lot 12 is supposed to drain into the commons area, as
39 do the homes on the other side of Wildwood Drive. He said the next question is what does half of Lot 9
40 have to do with responsibilities with respect to the commons; he has heard no one talk about that. He said
41 that the six acre commons area is owned by the lots in the subdivision; he asked if part of Lot 9 would only
42 pay half the taxes.
43
- 44 Mr. Passalacqua asked Mr. Kunde if they have homeowner's association fees or anything like that.
45
- 46 Mr. Kunde responded no; there is no homeowner's association.

1 Mr. Passalacqua asked Mr. Kunde who takes care of the commons.

2

3 Mr. Kunde stated that he takes care of his outlet, and the person in Lot 12 takes care of his.

4

5 Mrs. Capel asked who pays the real estate taxes in the commons, is it just part of the real estate taxes for the
6 lots.

7

8 Mr. Kunde stated that it is supposed to be divided up amongst the lots, so when the taxes are paid for the
9 lots, the owner would be paying 1/12th of the real estate taxes on the commons, but now that you're talking
10 about splitting Lot 9 in half, are those owners going to have half the responsibility to the commons.

11

12 Mr. Passalacqua stated that Lot 9 already is in half.

13

14 Mr. Kunde stated that half of Lot 9 is owned by the Brockmans, and half by Mr. Fiscella. He said what the
15 fees for the commons could be at some time, with more development, he does not know.

16

17 Mr. Thorsland stated that all the lots are paying right now, and Lot 9 has already been split somehow; but
18 who is responsible for the taxes. He asked Mr. Kunde if his concern is that the additional non-permeable area
19 is going to cause more water for this subdivision.

20

21 Mr. Kunde stated that basically what is going to happen to him is, with the runoff from new development, it
22 will go through Lots 10 and 11 and then into his backyard. He said that he became aware of Lots 10 and 11
23 being entirely in the flood zone when he looked at his insurance rate map about a year ago, because he was
24 thinking about buying flood insurance, which had normally been around \$300 per year. He was given a quote
25 for \$12,000 per year because now they are totally in the flood zone, including the house.

26

27 Mr. DiNovo stated that he thinks he has an answer to the question about the property tax share. He referred
28 to the Tax Atlas, which has apportioned shares of the commons, and noted that they are already split. He said
29 Lot 9 is already divided into 2 tax parcels, and each appears to have 1/24th of the commons, versus the other
30 Lots having 1/12th ownership in the commons, so Mr. Fiscella will be responsible for half the amount for
31 which the entirety of Lot 9 would be responsible.

32

33 Mr. Kunde asked how much responsibility they would have in the commons.

34

35 Mrs. Burgstrom responded that Mr. Fiscella would have 1/24th share in the responsibility.

36

37 Mr. Thorsland stated that the petitioner said that he made an offer to sell the property. He asked Mr. Kunde if
38 he had met the petitioner prior to tonight's meeting. He asked if he had ever seen a For Sale sign on the
39 property.

40

41 Mr. Kunde responded that he had not seen a sign, but he had received a mailing with an offer to sell the
42 property. He said the price was around \$12,000 or \$13,000, far more than what the tax bill was. He said he
43 is 80 years old and retired, and he does not have that kind of money.

44

45 Mr. Thorsland asked Mr. Kunde if there was anything else.

46

1 Mr. Kunde stated no.
2
3 Mr. Thorsland asked Mr. Kunde if drainage was his biggest concern.
4
5 Mr. Kunde responded yes, he has a 3-tank septic system and it goes down in the back, and when you're
6 talking about more and more water going in there, that system is going to be underwater.
7
8 Mr. Thorsland asked if there were any questions for Mr. Kunde from the Board or staff.
9
10 Ms. Griest asked Mr. Kunde when they reclassified his lot as being in the floodway and what was the Base
11 Flood Elevation that they designated there.
12
13 Mr. Kunde stated that he did not know; he would have to talk to his insurance agent again.
14
15 Mr. Hall commented to Mr. Kunde that Lot 9 as originally platted would allow one dwelling. He said the
16 variance requested here tonight would allow one dwelling to be constructed on this western portion, but it
17 won't allow a dwelling to be constructed on the eastern portion of Lot 9, so this variance, if approved, will
18 only allow one dwelling, just as was always planned.
19
20 Mr. Kunde stated if that building were back in the center of Lot 9, he would not have a problem, but because
21 it's in the front half, that is where the drainage problem comes.
22
23 Mr. Hall stated that his question is that he thought Mr. Kunde's flooding concern was due to the fact that an
24 additional home was going to be built, and Mr. Hall was just pointing out that it is not really an additional
25 home; rather, it's the one home that could only have ever been built on Lot 9.
26
27 Mr. Kunde asked why another home could not be built on the east part of Lot 9.
28
29 Mr. Hall responded that the remainder of Lot 9 is necessary to stay with Lot 8 because they have come into
30 common ownership and a variance would be required in order for someone to be able to put a home on it.
31
32 Mr. Kunde asked if somebody could get a variance and then build another home.
33
34 Mr. Hall stated that someone could purchase that lot and apply for a variance on it.
35
36 Mr. Kunde asked why he couldn't get a variance to put another house on his lot.
37
38 Mr. Hall stated that if Mr. Kunde wanted to roll the dice, pay the variance application fee, and come speak to
39 the Board to try and convince them, he could.
40
41 Mr. Kunde asked if anyone in the subdivision could apply for a variance to put a second house on his or her
42 property.
43
44 Mr. Hall stated that anyone in the entirety of Champaign County can petition for a variance for anything at
45 any time, except for the prohibited variances that are in the Ordinance. He said that the Department of
46 Planning and Zoning staff try to steer people away from what we think are bad variance requests, just as we

1 tried to dissuade Mr. Fiscella from thinking that this was going to be an easy approval; but it is still their
2 right to apply.
3
4 Mr. Thorsland asked the Board if anyone had questions for Mr. Kunde, and there was no one.
5
6 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Kunde.
7
8 Mr. Fiscella came forward to cross-examine Mr. Kunde.
9
10 Mr. Fiscella asked Mr. Kunde if when he looks at the original plat from Wildwood Acres, what were his
11 concerns for any division other than of the taxes for the commons. Mr. Fiscella said he did not see anything
12 in the covenant's description regarding maintenance or insurance of the commons area, or anything like that.
13
14 Mr. Kunde responded that there has been nothing done.
15
16 Mr. Fiscella asked Mr. Kunde if there is any framework within which we could set up a Homeowner's
17 Association unless everybody in the entire subdivision disagreed to it.
18
19 Mr. Kunde stated that everyone would have to agree. He said that is a good question, because if somebody
20 had an accident back there, who would be responsible.
21
22 Mr. Fiscella stated we could all be held liable.
23
24 Mr. Kunde concurred.
25
26 Mr. Thorsland thanked Mr. Kunde.
27
28 Mr. Thorsland called Brian Wattles to testify.
29
30 Mr. Brian Wattles, who resides at 505E CR 2500N, Mahomet (Lot 10) stated that he had just become aware
31 tonight that Mr. Fiscella had purchased this property 3 or 4 years ago. He said the neighbors had spoken
32 about this issue several times over the past year, that Mr. Fiscella was prospecting to build a home on the
33 property, and that he had been to their house and talked about it with them several times. Mr. Wattles said
34 that his point in all this is that he has maintained the west part of Lot 9 for almost 10 years, since he has lived
35 on Lot 10. He said that when his family moved in, the west part of Lot 9 was just overgrown weeds. He said
36 he just kept up on it; he calls it neighborhood beautification, just making it look presentable. He said he
37 thinks everybody appreciates it as far as he can tell. Mr. Wattles was under the impression, from pretty much
38 the time he moved in there, that the west part of Lot 9 had real estate tax issues; people had pursued paying
39 the back taxes, going forward trying to get ownership of it but they never had, because it couldn't be built
40 on. He said he thought not building on it would be just fine; if nobody is going to build on it, then he would
41 maintain it. He said he has been told in the past that this is basically the sand lot that the kids grew up on; its
42 shape is a baseball diamond, and in the past, they played baseball on it, and that's where the kids hung out.
43 He said it was a community area where all the homes could see what was going on, and he and his family
44 have used it as that ever since they have been there. He said he and his child have pulled sleds out on the lot,
45 rode dirt bikes, you name it, they had fun on the lot. He said whatever happens with the lot in the future is
46 out of his control, pending trying to purchase the lot himself.

1 Mr. Thorsland asked if he had ever been approached by Mr. Fiscella about buying the lot.

2
3 Mr. Wattles responded no. He said the person he bought his house from had pursued purchasing it, and after
4 Mr. Wattles had purchased their house about a year later, the previous owner started divorce filings and quit
5 paying taxes on it. Mr. Wattles said that would have been his opportunity to try to pursue it, but the previous
6 owner was told he couldn't build on it because of the half-lot issue. Mr. Wattles said he let it go at that; they
7 have been trying to pay off their house and they just did it this week.

8
9 Mr. Thorsland stated that the general knowledge or word on the street was that the west half of Lot 9 was an
10 unbuildable lot, since it was a remainder area and the Brockmans had the other part of Lot 9. He said that it
11 seems no one was interested in the west part of Lot 9 at the time because it would only be of interest to the
12 Brockmans by attachment or for Mr. Wattles to create some field of dreams.

13
14 Mr. Wattles concurred. He said that they had discussed if Ray and Sue Brockman would sell their garden lot
15 to Mr. Wattles at some point, that would be the only way Mr. Wattles would consider purchasing the lot. It
16 was something that could be passed on down the road, his son could build a house on it.

17
18 Mr. Thorsland stated at that point it would come under common ownership and be one lot.

19
20 Mr. Wattles concurred. He said that is pretty much all he had to say, other than the flooding issue that Mr.
21 Kunde had brought up. He said the area where Lot 10 and Lot 9 are the high ground in the neighborhood,
22 and it holds water. He has maintained it for 10 years and he knows when he can get on it and when he can't,
23 or he's just going to sink with the lawnmower. He said it holds water just about as long as the bottoms do.
24 He says Lot 9 takes forever to dry out, which in turn pushes water to all the houses around there, as far as he
25 is concerned; it's an act of nature.

26
27 Mr. Thorsland asked if it has gotten better or worse over the past few years.

28
29 Mr. Wattles stated that he couldn't say it has gotten worse, you just learn to expect what is going to happen.
30 He said he has been there 10 years and it has pretty much been status quo. Every year you get 3 to 4 weeks of
31 wetlands.

32
33 Mr. Thorsland stated, to summarize, the front part of Lot 9 is often wet, Mr. Wattles is worried about runoff
34 to his property, and Mr. Wattles has heard the lot is unbuildable through hearsay in the neighborhood.

35
36 Mr. Thorsland asked Mr. Wattles if there was anything else that he wanted to add.

37
38 Mr. Wattles stated no.

39
40 Mr. Thorsland asked if there were any questions from the Board or staff, and there were none.

41
42 Mr. Passalacqua stated that he was just trying to make heads or tails of the soil report for the property, which
43 would lead him to believe the lot does not hold water like that.

44
45 Mr. Thorsland stated that the Board has gotten a lot of soil evaluation reports, but maybe the people who live
46 there know better.

1 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Wattles, and there was no one.

2

3 Mr. Thorsland called Jessica Wattles to testify.

4

5 Ms. Jessica Wattles, Lot 10, 505E CR 2500N, Mahomet, stated that a modular home on that property is out of
6 character with the rest of the homes in the neighborhood. She said her husband has maintained that property
7 for 10 years and improved it. She said that part of the variance application said there was nothing natural of
8 note on the property, but she doesn't think that is accurate. She said her husband has put mulch and trees on
9 the property and there's an area where it is grassland, and if you look at it on Google Maps you can see he
10 has mowed in a peace sign. She said when they originally moved and became a renter on the property that
11 they now own, it was Marty Colclasure from whom they rented to own for a year, to be applied towards the
12 purchase of the property that was to include that part of Lot 9. But because they did not have a contract
13 stating that, Mr. Colclasure changed his mind. She said because they did not think they could build upon it,
14 and because of their relationship with Mr. Colclasure, they were okay with it. She said her husband
15 continued to maintain that lot the whole time.

16

17 Mr. Thorsland stated that it is important, because the Wattles had an oral agreement to rent to own their Lot
18 10 and the west part of Lot 9. He said at that time, the Wattles knew or were told that it was not a buildable
19 lot.

20

21 Ms. Wattles stated that personally, she did not know if her husband knew, but she did not know until that
22 was part of the discussion of when they did not acquire the lot; her husband explained to her they could not
23 have built on it anyway.

24

25 Mr. Thorsland asked if this was when Mr. Colclasure changed his mind.

26

27 Mr. Wattles stated yes, when they were closing on the property with Mr. Colclasure. She said she thought the
28 purchase of the west part of Lot 9 had just happened; she asked if the purchase had happened in 2013 like the
29 documentation says, or did it just happen.

30

31 Ms. Burgstrom stated that the lot was sold in a tax sale in 2013 and recorded once the 3 years of tax
32 payments had been covered.

33

34 Ms. Wattles stated that it surprised her this evening to know that the property had been purchased for this
35 amount of time when they have been maintaining it for the neighborhood, and they had never met Mr.
36 Fiscella to know about it as far as neighbors or anything. She said it is neither here nor there, but she doesn't
37 know that there is really an interest in their community and their neighborhood as far as the purchasing of
38 this lot and possibly putting a modular on it. She said that to the point of making a profit, they know that the
39 back taxes were likely less than \$2,000, but they got a letter for \$29,000 to buy the property.

40

41 Mr. Thorsland asked if Mrs. Wattles got a letter asking if they were interested for \$29,000.

42

43 Ms. Wattles stated yes, she thinks it would have been in the last couple of months. She said it was not
44 something they were going to pursue at that time, because they can't build on it and they knew what had
45 been paid. She said even getting a little more than that would be a significant profit without putting a home
46 on it. She said that if Mr. Fiscella had indeed found out that he could not build on that property, why would

1 he send out a letter for \$29,000 to the rest of the neighbors to purchase it, and put them in the same situation.
2 She said that is part of the reason Mr. Fiscella is here, is that he did not know about the lot, so she questions
3 why he would sell it to someone else for that profit margin. Mrs. Wattles said that they had never approached
4 the Brockmans about the half lot, but it is not something that they would talk about. She said that the
5 Brockmans were unwilling to sell the lot, but it might be a matter of relationships and time in order to have
6 that happen. She said that currently the Brockmans use that land as a garden; they are using the lot that Mr.
7 Fiscella approached them about.

8
9 Mr. Thorsland asked Ms. Wattles if she wanted to add anything else.

10
11 Ms. Wattles stated no.

12
13 Mr. Thorsland asked if there were any questions from the Board or staff for Ms. Wattles and there were
14 none.

15
16 Ms. Wattles asked if she could say one more thing. She said that when the water comes, it goes up to their
17 property where the trees are, and they have canoes that they take when it rains, a couple times a year at least.
18 She said when the water comes all the way up to their gas tank, they can launch their canoes out of their back
19 yard to go to the river. She said that their property drains to the bottoms area. She said that Lot 9 is kind of
20 land locked right now, and she does not know how drainage would work for that lot. She said she does not
21 know a lot about drainage or septic systems, but if Lot 9 has access to the commons area where their lot
22 drains, the corner lot (west part of Lot 9) does not, that she is aware of.

23
24 Ms. Griest asked Ms. Wattles if her subdivision has covenants.

25
26 Ms. Wattles stated that she has paperwork at home, but she doesn't know what that means.

27
28 Ms. Griest asked if there are building restrictions or specifications within their covenants, and if not, they
29 have no jurisdiction over what gets built.

30
31 Ms. Wattles stated that Mr. Kunde could answer that; he is the one that provided them with the paperwork
32 that they have on file. She said she does not understand the legality of it all. She said that the paperwork
33 stated the original intention of the subdivision, and it was written up by at least two members of the
34 subdivision. She said that Mr. Kunde would need to speak to Ms. Griest's question.

35
36 Mr. Thorsland said that what Ms. Griest is trying to say is that some people don't like the idea of a modular
37 home, but unless it is clearly stated in the covenants of the property, then it is allowed. He said that he
38 would like to call Mr. Kunde so the Board can see that before they finish the case.

39
40 Mr. Passalacqua stated that the Board does not need to see the paperwork; it is not their jurisdiction.

41
42 Ms. Griest concurred, saying it is a civil matter within their subdivision, not the Board's jurisdiction.

43
44 Mr. DiNovo stated that his understanding of the petitioner's testimony is that the house and garage shown on
45 the site plan are merely for illustrative purposes; he has not made any specific commitment to build anything
46 in particular.

1 Mr. Thorsland stated that within a mile or two of the subdivision, he knows of two homes that are relatively
2 recent that were modular, and you wouldn't know they were modular. He said in defense of the modular,
3 they are different than what they used to be. He said he does not think there is anything that prohibits that.
4 He said that for this variance, the real crux of the matter is that the lot is half of what it needs to be to have a
5 house. He said that as Mr. DiNovo said, where Mr. Fiscella put the house on the site plan was to address one
6 concern, but in doing that, he created other concerns, and there is probably flexibility on what is there. He
7 said the real fundamental question he has is that he is still just a little unclear about contact from Mr. Fiscella
8 with other residents of the subdivision and this \$29,000 letter that came which said that if they are interested,
9 Mr. Fiscella has half of a lot, the west side of Lot 9 for sale. He said that at some point in the last couple of
10 months, there was an idea that maybe Mr. Fiscella wanted to sell it, and so the opportunity was there.

11
12 Ms. Wattles stated that it wasn't that she was totally uninterested in the offer, but not at \$29,000.

13
14 Mr. Thorsland asked Ms. Wattles if she wanted to add anything else.

15
16 Ms. Wattles stated no.

17
18 Mr. Thorsland asked if there were any questions from the Board or staff, and there were none.

19
20 Mr. Thorsland asked the audience if anyone desired to cross-examine Ms. Wattles, and there was no one.

21
22 Mr. Thorsland asked the audience if anyone else would like to sign the witness register and testify, and there
23 was no one.

24
25 Mr. Thorsland asked Jones and Sue Brockman if they desired to present testimony.

26
27 Mr. and Mrs. Brockman declined to testify.

28
29 Mr. Thorsland called David Kunde to the witness microphone.

30
31 Mr. Thorsland asked Mr. Kunde if he received a letter in the mail from Mr. Fiscella regarding the lot in
32 question.

33
34 Mr. Kunde stated yes, they did receive a document from Mr. Fiscella.

35
36 Mr. Thorsland asked Mr. Kunde if he had a document that would explain some of the covenants or
37 guidelines of the subdivision when it was first created.

38
39 Mr. Kunde stated that he has such a document in his files at home, but the original document for the
40 subdivision indicated one home per lot.

41
42 Mr. Thorsland asked Mr. Kunde if this document also spoke about the commons area.

43
44 Mr. Kunde stated that he could not testify to that, because he does not recall if the document discussed the
45 commons area.

46

1 Mr. Thorsland stated that if this variance is granted, there would be one home on Lot 9 and would make the
2 remainder of Lot 9, owned by the Brockmans, require the same type of variance if they desired to place a
3 home on it. He said that a small portion of Lot 9 is located in the floodplain; therefore, that variance case
4 would prove to be even more difficult. He asked Mr. Kunde if could provide staff a copy of the document
5 that he has at home in his files.
6

7 Mr. Kunde stated yes.
8

9 Ms. Burgstrom stated that she met with the Brockmans and they had an original plat of the subdivision
10 which had the covenants attached. She said that she could not find a duplicate of the document in the
11 Recorder's Office. She said that the document that Mr. Brockman showed her indicated that the Lot 9 was
12 split in half, but the recorded plat does not show that division; therefore, she did not believe that the
13 covenants that were attached to Mr. Brockman's document were the official covenants. She said that she did
14 not include a copy of Mr. Brockman's documents in the packet, because they were not the official recorded
15 documents. She said that there is nothing in the requested variance, or what Mr. Fiscella proposes to
16 construct, which goes against what is indicated in the covenants. She said that the covenants do not indicate
17 whether or not a home can be a modular home, but it does indicate that the homes must be greater than 1,200
18 square feet and that they must have a setback of 30 feet from the road and 15 feet from the rear yard.
19

20 Mr. Thorsland stated that it is not unusual for the Board to have conflicting paperwork on any piece of
21 property.
22

23 Mr. DiNovo asked Ms. Burgstrom if the document which indicated that Lot 9 was split has a date on it.
24

25 Ms. Burgstrom stated that the date on the document indicates March 28, 1964; however, there are squiggling
26 lines on the document that suggest the document was a draft.
27

28 Mr. Thorsland asked Ms. Burgstrom when the plat was recorded.
29

30 Ms. Burgstrom stated that the plat was recorded in 1968 and Lot 9 is not divided on that document.
31

32 Mr. Kunde stated the previous owner of Mr. Brockman's lot owned their lot and half of Lot 9.
33

34 Ms. Griest asked Ms. Burgstrom if it is possible that the Brockmans have a later recorded version of the plat
35 in their title work that hasn't been traced.
36

37 Ms. Burgstrom stated that it is possible. She said that staff does not have documents related to that purchase.
38

39 Mr. DiNovo stated that staff might want to spend time figuring out the precise genesis of the west half of Lot
40 9. He said that if the creation of the west half of Lot 9 as a separate tract violated the *Illinois Plat Act* the
41 Zoning Ordinance bars granting of the variance. He said that this may come down to when it was created,
42 because lots violating the *Illinois Plat Act* prior to May 21, 1991, were grandfathered. He said that
43 depending on what action staff finds, deeming the creation of the lot may determine whether or not a
44 variance can be granted on it. He asked if the lot was created when a separate tax parcel was defined even
45 though it was under common ownership, or was it created as a separate tract of land when it was sold. Also
46 if Lot 9 was divided in 1997, was it within the Village of Mahomet's extra-territorial jurisdiction (ETJ) when

1 it was created.
2
3 Mr. Hall stated that he has no doubt that the lot was created in 1974.
4
5 Mr. DiNovo stated that there is an interpretation in the Department of Planning and Zoning's files because
6 he remembers writing one that addresses this.
7
8 Mr. Hall stated that there is plat act exception that lets no more than one acre to be divided in a recorded
9 subdivision and this lot is much less than one acre.
10
11 Mr. DiNovo stated that he does not remember, but that may be.
12
13 Mr. Hall stated that Exception 9 may be available, but it doesn't need to be used because there are other
14 things to control it.
15
16 Mr. DiNovo stated that doesn't resolve the question whether it may have violated the Mahomet Subdivision
17 Ordinance.
18
19 Ms. Burgstrom stated that staff looked at the 1974 and 1975 tax maps and reviewed the location of
20 Mahomet's ETJ and it was determined that Lot 9 was not in that area during the time of the division.
21
22 Mr. DiNovo stated that it is not uncommon for people to split property for tax billing purposes without
23 disturbing property ownership, and he is not sure if creating a tax parcel necessarily creates a lot. He said
24 that the Village of Mahomet would have to determine whether or not they deemed the lot pre-existing or not.
25
26 Mr. Thorsland asked the Board if they require more information on this case and time to fully absorb the
27 memorandum and testimony. He asked the Board if they would like more input from the petitioner and the
28 neighbors. He said that the lot has been in existence for some time and a continuance would not appear to
29 do a lot of harm to many people. He said that perhaps staff can determine when and how the lot was created.
30
31 Mr. Passalacqua asked Mr. Thorsland if his one question is when this property became a separate lot
32
33 Mr. Thorsland stated yes. He asked the Board if they required more time to review the documents.
34
35 Mr. Passalacqua stated that the memorandums are very clear and answers questions that the Board generally
36 asks and seeks answers for. He said that he is prepared to move forward.
37
38 Mr. Thorsland asked the Board for input regarding a continuance or moving forward tonight.
39
40 Mr. Thorsland asked Mr. Fiscella to return to the witness microphone.
41
42 Mr. Hall stated that as the Zoning Administrator, he sees a lot proposed that would be suitable in the AG-2
43 Zoning District, but the lot is not in the AG-2 Zoning District and is in the CR Zoning District. He said that
44 we know that an adequate septic system, reserve septic system and a house could be placed on this lot and
45 we also know that there is not going to be more than one house added to the subdivision if this variance is
46 granted. He said that he does not see any harm in granting the variance, but as it is quite counter to the

1 standards of the Ordinance, but it is not counter to the intent of the Ordinance. He said that a one-acre lot is
2 required in the CR Zoning District, but this is a nonconforming subdivision and nearly half of the lots are of
3 the same size as the lot that is proposed.

4
5 Mr. Passalacqua stated that everyone else is doing it so we should do it too.

6
7 Ms. Capel stated that precedence needs to be discussed. She said that there are six other lots that could be
8 split with this same type of a variance.

9
10 Mr. Hall asked Ms. Capel why she believes there are six other lots that could be divided like the subject
11 property. He said that there is no other lot situated like the subject property that has as much area as the
12 original Lot 9. He said that Lot 9 was the biggest lot in the subdivision and has more street access and one
13 could ask why Lot 9 was created so big in the first place.

14
15 Mr. DiNovo stated that the Board has seen many cases where people came into possession of real estate that
16 is nonconforming. He said that the history of this property is as bad as any lot he can think of, due to the
17 sloppiness of the recording documents, it left an orphaned tract of land that wound up in a real estate tax
18 sale. He said that the Board may want to have a discussion about whether or not there has been sufficient
19 effort made to sell the lot, but testimony has indicated that a significant effort was made to sell the lot to
20 neighboring lot owners. He said that if adjacent lot owners do not want the lot and they are confident that
21 the Board will prevent construction on the lot, those adjacent lot owners received a vacant lot that they can
22 continue to use as they have in the past without having to pay for it. He said that this does create a unique
23 situation that creates a practical difficulty in the use of this lot. He said that he has had a lot of concerns
24 about a lot of cases on the docket, but he is not concerned about this one.

25
26 Mr. Thorsland stated that his concern in granting the variance for half of Lot 9 is that Lot 8 and the east half
27 of Lot 9 is owned by the Brockmans, He said that should the Brockmans decide that they no longer need the
28 east half of Lot 9, the location of the house on the west side of Lot 9 and the amount of floodplain on the east
29 half of Lot 9 could make that lot more non-buildable. He said that there may be some room where a small
30 house and septic system could be placed on the east half of Lot 9, but the floodplain exists and a small
31 amount of road frontage. He said that he does not know what the Brockman's and the Wattles' future intent
32 is, but what does the granting the variance do to the east half of Lot 9 in regards to future use.

33
34 Mr. DiNovo stated that there has been a coherent change in title for the east half of Lot 9 and it is now in
35 common ownership with Lot 8 and is being used in conjunction with Lot 8 and it can be used indefinitely
36 with Lot 8 in the future. He said that an argument for a variance on the east half of Lot 9 could not be as
37 strong as the argument for a variance on the west half of Lot 9, because the situations are different.

38
39 Mr. Thorsland stated that he could envision a time when someone will want to build on the east half of Lot
40 9.

41
42 Mr. DiNovo stated that once you have a substandard lot and you buy more real estate next to it, you have
43 joined those two lots going forward. He said that granting the variance will not affect the east half of Lot 9.

44
45 Mr. Thorsland stated that he is assuming that someone in the future will tell someone else that the east half
46 of Lot 9 is a buildable space and they will be sitting here requesting a variance.

1 Mr. Hall stated that they will not only need variance for the new lot, but also a variance to allow Lot 8 to
2 become smaller and he does not see the Board doing that

3
4 Mr. DiNovo stated that people say rubbish about real estate in Champaign County every day of the week and
5 sadly, many of them are real estate professionals who do not know anything about zoning. He said that this
6 does not alter the fact that the west half Lot 9 was orphaned and that was no fault of the petitioner and
7 someone was going to buy this lot or be in the position that the petitioner is in currently. He said that this
8 was an unfortunate situation that occurred because people do not pay attention to the requirements of the
9 Ordinance. He asked the Board if they want to approve the variance for the west half of Lot 9 or make it a
10 free commons area for the rest of the subdivision.

11
12 Mr. Passalacqua asked if the west half of Lot 9 and Lot 8 have separate parcel numbers.

13
14 Mr. Hall stated yes. He said that for zoning purposes, Lot 8 is nonconforming and needs the east half of Lot
15 9 to be more conforming to the zoning district.

16
17 Mr. Passalacqua stated that the Brockmans did not buy the east half of Lot 9 for compliance, but to use for
18 their garden.

19
20 Mr. Hall stated that Mr. Passalacqua was correct.

21
22 Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Fiscella.

23
24 Mr. Thorsland asked Mr. Fiscella if he had personally spoken with the neighbors or sent out letters regarding
25 the sale or proposed use of the subject property.

26
27 Mr. Fiscella stated that he received title to the property in the winter. He said that he bought the real estate
28 taxes at the County tax sale and was not allowed to trespass on the property until after the period of
29 redemption had passed. He said that the period of redemption passed and he went to court for an order of
30 possession so that he could obtain the deed for the property. He said that he might buy 100 parcels and there
31 may only be only two that you get possession of, because there is a 98% chance that the owner will redeem
32 that lot. He said that Mr. Colclasure thought that he owned the lot, but unfortunately due to the legal
33 description mistake, when he attempted to convey the lot, the title company indicated that he did not own it
34 but has been paying the real estate taxes on it for years, so he stopped paying them. Mr. Fiscella stated that
35 once he received the deed for the subject property, he spoke to the Brockmans and they indicated that they
36 were not interested in buying the west half of Lot 9, nor were they willing to sell the east half of Lot 9. He
37 then sent a letter to the other neighbors and used the assessed value from the township assessor, \$29,000, but
38 he did not hear anything from anyone regarding a counter offer. He said that the letter indicated that if he
39 did not receive any counter offers that he would apply for a variance for the lot so that he could place a home
40 on it.

41
42 Mr. Thorsland stated that Mr. Fiscella obviously deals with real estate more than the neighbors; therefore, he
43 was expecting a counter offer, but the neighbors may have thought that \$29,000 was the asking price and
44 there was no need to provide a counter offer. He asked the Board how they would like to proceed.

45
46 Mr. DiNovo stated that due to the Board having a bare quorum, the petitioner should consider whether or not

1 he would like to move forward or not.

2
3 Mr. Thorsland stated that currently the Board has two members absent; therefore, it is at the petitioners'
4 discretion to either continue Cases 878-V-17 and 882-V-17 until a full Board is present or request that the
5 present Board move to the Final Determination. He informed the petitioners that four affirmative votes are
6 required for approval. He said that if the petitioner is uncomfortable with moving forward with a bare
7 quorum it may be advisable to request a continuance. He said that the two members who are absent tonight
8 are very competent and they may have questions themselves that might be helpful for the case.

9
10 Mr. Fiscella asked if the Findings of Fact would be set in stone with the present Board.

11
12 Mr. Thorsland stated yes.

13
14 Mr. Fiscella asked Ms. Burgstrom if she has reviewed the deed conveyances.

15
16 Ms. Burgstrom stated that she has attempted to research how the split occurred between 1974 and 1975, but
17 she has not had a chance to review the entire timeline. She said that she does have conveyance information
18 from the Champaign County Recorder's office about the 1997 transaction with Mr. Colclasure and the
19 transactions involving Ms. Catherine Wright when she sold the lots to separate people.

20
21 Mr. Fiscella asked Ms. Burgstrom if the split in 1974 involved deeds.

22
23 Ms. Burgstrom stated that she could not find any deeds regarding the division, but the 1974 and 1975 tax
24 map atlas pages indicate the split.

25
26 Mr. Fiscella stated that the property was in common ownership in 1975, so somehow they split the tax
27 parcel. He asked Ms. Burgstrom if the person who split the lot was the original owner of the subdivision.

28
29 Ms. Burgstrom stated that she does not have that information, but she does not believe so. She said that she
30 would have to do additional research.

31
32 Mr. Fiscella stated that the original developer may have intended Lot 9 to be separate lots, but that is the
33 question which no one has an answer.

34
35 Ms. Burgstrom stated that it is an interesting question, because the 1964 draft plat indicates Lot 9 as being
36 split, yet the recorded plat does not indicate Lot 9 as being divided. She said that she assumes that something
37 happened between the time of the draft and the recorded versions of the plat which changed the original
38 owner's mind for Lot 9.

39
40 Mr. Fiscella stated that he would like the opportunity to dig into this information a bit further.

41
42 Mr. Thorsland stated that the Board could review the proposed special condition with the petitioner and gain
43 his agreement or disagreement.

44
45 Mr. Thorsland read Special Condition A. as follows:

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A. **Within 30 days of Final Action of Cases 878-V-17, the petitioner shall file a miscellaneous document with the Champaign County Recorder of Deeds that documents the following:**

- (1) A variance was granted in Zoning Case 878-V-17 to authorize a lot less than one acre in area.**
- (2) Because of the size of the lot, there are concerns whether a replacement wastewater (septic) system can be installed on the lot in the future.**
- (3) Any new wastewater (septic) system will need to be authorized by the Champaign County Health Department.**
- (4) For further information, interested parties should contact the Champaign County Department of Planning and Zoning.**

The special condition stated above is required to ensure the following:
That potential buyer of the property are aware of how the lot was created and the possible limitations regarding the replacement of wastewater systems on the property.

Mr. Fiscella asked if recording the miscellaneous document, will not affect the use of the property. He asked if the miscellaneous document is more or less to notify potential/future buyers.

Mr. Thorsland stated yes. He said that potential buyers would be more informed than he was when he purchased the property.

Mr. Fiscella asked if it is true that any new wastewater (septic) system will need to be authorized by the Champaign County Public Health Department.

Mr. Thorsland stated yes. He noted that the ZBA has no approval authority for septic systems.

Mr. Fiscella stated that if that is the case, then is that statement necessary.

Mr. Thorsland stated that the special condition lets people know that it is not the ZBA who approves any new wastewater (septic) system.

Mr. Fiscella stated that indicating that a variance has been granted is a positive thing to have recorded.

Mr. Thorsland stated that it lets people know that a variance was granted on the lot.

Mr. DiNovo stated that it also lets people know that this is a lawful lot due to the granted variance.

Mr. Fiscella asked if the Board would be comfortable in eliminating items 2-4 if he received a letter from the office of Champaign County Public Health District (CCPHD) stating that they have no concerns with the

1 property.

2
3 Mr. Thorsland stated that as of the date of the letter, the CCPHD did not have any concerns, but who knows
4 what the law will be in 20 years. He said that the special condition lets future owners know that the
5 Champaign County Public Health Department must authorize any wastewater systems proposed on the lot
6 under the standards that exist at that time.

7
8 Mr. Fiscella stated that he does not feel that the conditions on the subject property are hydrologically
9 or by size constraints any different than the vast majority of lots with septic tanks in Champaign County.

10
11 Mr. Hall stated that the purpose of this condition is because the vast majority of the lots in rural Champaign
12 County are one acre or more in area. He said that this lot is being authorized in 2017 to be only one-half acre
13 in size when everyone else has to have one acre, which is the reason for this special condition. He said that
14 this special condition makes it clear that this lot has been approved; therefore, he understands Mr. Fiscella's
15 concern that the special condition is overclouding the lot, but it doesn't and it does make someone aware that
16 they are buying something smaller than what would normally be allowed.

17
18 Mr. Fiscella stated that he agreed to Special Condition A.

19
20 Mr. Thorsland entertained a motion to approve Special Condition A.

21
22 **Ms. Capel moved, seconded by Ms. Griest, to approve Special Condition A. The motion carried by**
23 **voice vote.**

24
25 Mr. Thorsland stated that it appears that Mr. Fiscella would like to have additional time to fully research the
26 deed conveyances and the creation of the lot. Mr. Thorsland stated that he would like to review the Findings
27 of Fact when there are more Board members present.

28
29 Ms. Burgstrom asked Mr. Fiscella if he had a timeline for construction.

30
31 Mr. Fiscella stated that he would like to have construction started as soon as possible.

32
33 Ms. Burgstrom stated that once the variance is approved and a Land Disturbance and Zoning Use Permit is
34 approved, construction could begin.

35
36 Mr. Thorsland requested a continuance date for the cases.

37
38 Mr. Hall stated that September 28th would be the next date available for a continuance.

39
40 Mr. Thorsland entertained a motion to continue Cases 878-V-17 and 882-V-17 to the September 28th
41 meeting.

42
43 **Ms. Griest moved, seconded by Mr. Passalacqua, to continue Cases 878-V-17 and 882-V-17 to the**
44 **September 28th meeting. The motion carried by voice vote.**

45
46

1 **7. Staff Report**

2
3 Mr. Hall stated that the County no longer sends out paper paystubs and will only send electronic versions.
4 He said that the reason why staff requests a read receipt is so that once staff is notified that the Board
5 member has received their electronic version of their paystub, staff can delete it from their computers.
6

7
8 **8. Other Business**
9 **A. Review of docket**

10
11 Mr. Thorsland stated that he will be absent from the August 17th and August 31st meetings.
12

13 Ms. Griest stated that she may be absent from the October 26, 2017 meeting.
14

15
16 **9. Audience Participation with respect to matters other than cases pending before the Board**

17
18 None
19

20
21 **10. Adjournment**

22
23 Mr. Thorsland entertained a motion to adjourn the meeting.
24

25
26 **Ms. Griest moved, seconded by Ms. Capel, to adjourn the meeting. The motion carried by voice vote.**
27

28 The meeting adjourned at 9:25 p.m.
29

30
31
32
33 Respectfully submitted

34
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36
37
38 Secretary of Zoning Board of Appeals
39
40