

## **CASE 947-AT-19**

*SUPPLEMENTAL MEMORANDUM #1*

*November 13, 2019*

**Petitioner:** Zoning Administrator

**Request:** Amend the Champaign County Zoning Ordinance by amending the requirements for PV solar farms by deleting Section 6.1.5 B.(2)b. that requires a 0.5 mile separation between a proposed PV solar farm and the CR Conservation Recreation Zoning District, and amend the requirements in Section 6.1.5 Q.(4)e. to add requirements for financial assurance provided by financial institutions headquartered in Champaign County.

**Location:** Unincorporated Champaign County

**Time Schedule for Development:** As soon as possible

**Prepared by:** **Susan Burgstrom**, Senior Planner  
**John Hall**, Zoning Administrator

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### **STATUS**

This case was continued to November 14, 2019 at the October 17, 2019 ZBA meeting in order to allow time for the State's Attorney's Office (SAO) to respond to questions posed about this case.

The SAO was asked to give legal advice on two questions regarding a proposed draft amendment regarding credit rating providers and scores.

- 1) Does the amendment as drafted pose an equal protection issue?
- 2) Does the amendment as drafted fall within the powers conferred by the enabling act?

In a memo dated November 7, 2019, Matt Sullard, Assistant State's Attorney, responded to these questions. A copy of the memo will be available for ZBA members at the November 14<sup>th</sup> meeting. More information can be found below.

### **STATE'S ATTORNEY'S OFFICE OPINION**

Regarding the equal protection question, Mr. Sullard advises not to proceed with the amendment language as drafted. He offered a possible revision to the draft amendment that simply adds the Kroll Bond Rating Agency and a rating of "A-" to the accepted standards, in addition to S&P and Moody's ratings that are already part of the draft amendment.

Regarding the Zoning Enabling Act question, Mr. Sullard responded that the draft amendment does fall within the powers conferred by the Zoning Enabling Act (*55 ILCS 5/5-12001*).

### **THE RISK OF THE PROPOSED CHANGE**

The table in Attachment C compares the rating categories for S&P, Moody's, and the Kroll Bond Rating Agency. The table illustrates that the rating categories of each of these "nationally recognized statistical rating organizations" (NRSRO) seem to be roughly comparable. Moody's has nine broad categories and S&P and Kroll both have ten broad categories. The tenth category for both S&P and Kroll are defined as "in default" and Moody's does not have such a category.

The current minimum required ratings were based on the requirements of PJM Interconnection LLC, a regional transmission organization for the electrical grid in the eastern half of the United States. The current minimum required financial ratings are the mid-point of the third tier of rating categories. The lower range of this third tier is the proposed alternative rating for banks headquartered in Champaign County. The third tier of rating categories and the relevant modifiers are described as follows by each NRSRO:

- The S&P rating of ‘A’ is defined as: “An obligation rated ‘A’ is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor’s capacity to meet its financial commitments on the obligation is still strong...Ratings from ‘AA’ to ‘CCC’ may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within that rating category.”
- The Moody’s rating of ‘A’ is defined as: “Obligations rated ‘A’ are judged to be upper-medium grade and are subject to low credit risk...Moody’s appends number modifiers of 1, 2, and 3 to each generic rating classification from Aaa to Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category and the modifier 2 indicates a mid-range ranking and the modifier 3 indicates a ranking to the lower end of that generic rating category.”
- The Kroll Bond Rating Agency defines a rating of ‘A’ as: “determined to be of high quality with a small risk of loss due to credit-related events. Issuers and obligations in this category are expected to weather difficult times with low credit losses...KBRA may append – or + modifiers to ratings in categories AA through CCC to indicate, respectively, upper and lower risk levels within the broader category.”

In order to make it possible for a bank headquartered in Champaign County to provide a letter of credit for PV solar farm decommissioning, it will be necessary to lower the minimum required financial rating to the lower end of the generic, broader “A” rating. That new minimum would apply across the board and not just to banks headquartered in Champaign County.

The review of the general rating categories does not identify the exact risk resulting from such a change, but it suggests that the risk is identifiable and not negligible. However, any issuer with a rating in this third tier should be considered to be high quality with a small risk of loss due to credit-related events. Issuers in this third tier will be somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories, especially issuers with a higher risk level within the broader category.

## **NO EFFECT ON CHAMPAIGN COUNTY’S CREDIT RATING**

Following up on the concerns of the SAO, staff checked with the Administrative Services Department regarding any risk posed to Champaign County’s credit rating. Revising the minimum required financial rating for issuers of letters of credit for Champaign County approved PV solar farms should pose no harm to Champaign County’s credit rating, in the opinion of the Administrative Services Department.

## **THE CHANGE TO THE ZONING CASE SHOULD BE READVERTISED**

The across-the-board alternative minimum required financial rating is materially different than what was originally advertised for this text amendment.

If the Board feels that the alternative minimum required financial rating is acceptable in light of the greater opportunity it provides for banks headquartered in Champaign County, and in spite of the somewhat greater risk for any financial assurance that may be provided for PV solar farm decommissioning in Champaign County, then the case should be re-advertised before a recommendation is forwarded to the Environment and Land Use Committee.

If the Board feels that the alternative minimum required financial rating is not acceptable, then it should recommend denial of the amendment.

The Revised Finding of Fact, Summary Finding of Fact, and Final Determination for Case 947-AT-19 dated November 14, 2019 includes optional revised text based on Mr. Sullard's memorandum.

## **ATTACHMENTS**

- A Legal advertisement dated September 11, 2019
- B Kroll Bond Rating Agency Rating Scale
- C Long Term Credit Ratings for S&P, Moody's, and Kroll Bond Rating Agency
- D Revised Finding of Fact, Summary Finding of Fact, and Final Determination for Case 947-AT-19 dated November 14, 2019, with attachment:
  - Annotated version of proposed amendments dated November 14, 2019

**LEGAL PUBLICATION: WEDNESDAY, SEPTEMBER 11, 2019**

**CASES: 945-AT-19, 946-AT-19, 947-AT-19 & 948-AT-19**

**NOTICE OF PUBLIC HEARING IN REGARD TO PROPOSED AMENDMENTS TO THE  
CHAMPAIGN COUNTY ZONING ORDINANCE.**

CASES: 945-AT-19, 946-AT-19, 947-AT-19 & 948-AT-19

The Champaign County Zoning Administrator, 1776 East Washington Street, Urbana, has filed a petition to change the text of the Champaign County Zoning Ordinance. The petition is on file in the office of the Champaign County Department of Planning and Zoning, 1776 East Washington Street, Urbana, IL.

A public hearing will be held **Thursday, September 26, 2019, at 6:30 p.m.** prevailing time in the John Dimit Meeting Room, Brookens Administrative Center, 1776 East Washington Street, Urbana, IL, at which time and place the Champaign County Zoning Board of Appeals will consider a petition to amend the Champaign County Zoning Ordinance as follows:

Case 945-AT-19

Amend the requirements for a photovoltaic (PV) solar farm in Section 6.1.5 B.(2) of the Champaign County Zoning Ordinance by adding the following requirements for any proposed PV solar farm that is located within 1.5 miles of a municipality:

- A. Increase the minimum required time for municipal review by adding the following:
  1. Require the Zoning Administrator to send notice to any municipality located within 1.5 miles of a proposed PV solar farm prior to the start of a public hearing, in addition to any notice otherwise required.
  2. Require the public hearing at the Zoning Board of Appeals (ZBA) for the PV solar farm to occur at a minimum of two ZBA meetings that are not less than 28 days apart unless the 28-day period is waived in writing by any relevant municipality.
  3. Require the Zoning Administrator to notify said municipality of the ZBA recommendation after the close of the public hearing.
  4. If the Environment and Land Use Committee (ELUC) makes a preliminary determination to accept the ZBA recommendation, the PV solar farm shall remain at ELUC for a maximum 30-day municipal comment period until the next ELUC meeting, unless the municipal comment period is waived in writing by any relevant municipality.
- B. Require municipal subdivision approval for any PV solar farm land lease exceeding five years when required by any relevant municipal authority that has an adopted comprehensive plan.
- C. Amend Section 8.2.3 to allow any PV solar farm authorized prior to the effective date of this amendment and that is in the process of being repaired to not lose its zoning right to operate.
- D. Add new Section 8.2.4 to allow any PV solar farm authorized prior to the effective date of this amendment to be constructed pursuant to the standard requirement of a Zoning Use Permit, provided that the Special Use Permit for the solar farm has not expired.

Case 946-AT-19

Amend the requirements for a photovoltaic (PV) solar farm in Section 6.1.5 B.(2) of the Champaign County Zoning Ordinance by adding the following requirements for any proposed PV solar farm that is located within 1.5 miles of a municipality:

- A. Increase the minimum required separation between a PV solar farm and a municipal boundary from 0.5 mile to 1.5 miles.
- B. Increase the minimum required time for municipal review by adding the following:

1. Require the Zoning Administrator to send notice to any municipality located within 1.5 miles of a proposed PV solar farm prior to the start of a public hearing, in addition to any notice otherwise required.
  2. Require the public hearing at the Zoning Board of Appeals (ZBA) for the PV solar farm to occur at a minimum of two ZBA meetings that are not less than 28 days apart unless the 28-day period is waived in writing by any relevant municipality.
  3. Require the Zoning Administrator to notify said municipality of the ZBA recommendation after the close of the public hearing.
  4. If the Environment and Land Use Committee (ELUC) makes a preliminary determination to accept the ZBA recommendation, the PV solar farm shall remain at ELUC for a maximum 30-day municipal comment period until the next ELUC meeting, unless the municipal comment period is waived in writing by any relevant municipality.
- C. Require municipal subdivision approval for any PV solar farm land lease exceeding five years when required by any relevant municipal authority that has an adopted comprehensive plan.
- D. Amend Section 8.2.3 to allow any PV solar farm authorized prior to the effective date of this amendment and that is in the process of being repaired to not lose its zoning right to operate.
- E. Add new Section 8.2.4 to allow any PV solar farm authorized prior to the effective date of this amendment to be constructed pursuant to the standard requirement of a Zoning Use Permit, provided that the Special Use Permit for the solar farm has not expired.

Case 947-AT-19

Amend the Champaign County Zoning Ordinance by amending the requirements for PV solar farms by deleting Section 6.1.5 B.(2)b. that requires a 0.5 mile separation between a proposed PV solar farm and the CR Conservation Recreation Zoning District, and amend the requirements in Section 6.1.5 Q.(4)e. to add requirements for financial assurance provided by financial institutions headquartered in Champaign County.

Case 948-AT-19

Amend the Champaign County Zoning Ordinance by amending Section 8.3.2 to authorize a variance to rebuild a nonconforming structure before the structure is damaged.

All persons interested are invited to attend said hearing and be heard. The hearing may be continued and reconvened at a later time.

Ryan Elwell, Chair  
Champaign County Zoning Board of Appeals

**TO BE PUBLISHED: WEDNESDAY, SEPTEMBER 11, 2019 ONLY**

Send bill and one copy to: Champaign County Planning and Zoning Dept.  
Brookens Administrative Center  
1776 E. Washington Street  
Urbana, IL 61802  
Phone: 384-3708

## KBRA - Kroll Bond Rating Agency


Kroll Bond Rating Agency (KBRA) assigns credit ratings to issuers and their obligations using the same rating scale. In either case, KBRA's ratings are intended to reflect both the probability of default and severity of loss in the event of default, with greater emphasis on probability of default at higher rating categories. For obligations, the determination of expected loss severity is, among other things, a function of the seniority of the claim. Generally speaking, issuer-level ratings assume a loss severity consistent with a senior unsecured claim. KBRA appends an (sf) indicator to ratings assigned to structured obligations. These definitions should be used in conjunction with KBRA's rating methodologies.


AAA	Determined to have almost no risk of loss due to credit-related events. Assigned only to the very highest quality obligors and obligations able to survive extremely challenging economic events.
AA	Determined to have minimal risk of loss due to credit-related events. Such obligors and obligations are deemed very high quality.
A	Determined to be of high quality with a small risk of loss due to credit-related events. Issuers and obligations in this category are expected to weather difficult times with low credit losses.
BBB	Determined to be of medium quality with some risk of loss due to credit-related events. Such issuers and obligations may experience credit losses during stressed environments.
BB	Determined to be of low quality with moderate risk of loss due to credit-related events. Such issuers and obligations have fundamental weaknesses that create moderate credit risk.
B	Determined to be of very low quality with high risk of loss due to credit-related events. These issuers and obligations contain many fundamental shortcomings that create significant credit risk.
CCC	Determined to be at substantial risk of loss due to credit-related events, near default, or in default with high recovery expectations.
CC	Determined to be near default or in default with average recovery expectations.
C	Determined to be near default or in default with low recovery expectations.
D	<p>KBRA defines default as occurring if:</p> <ol style="list-style-type: none"> <li>1. There is a missed interest payment, principal payment, or preferred dividend payment, as applicable, on a rated obligation which is unlikely to be recovered.</li> <li>2. The rated entity files for protection from creditors, is placed into receivership, or is closed by regulators such that a missed payment is likely to result.</li> <li>3. The rated entity seeks and completes a distressed exchange, where existing rated obligations are replaced by new obligations with a diminished economic value.</li> </ol>

KBRA may append - or + modifiers to ratings in categories AA through CCC to indicate, respectively, upper and lower risk levels within the broader category.

### Long Term Credit Ratings

Standard & Poor's ratings description	Moody's ratings description	Kroll ratings description
Investment Grades	Investment Grades	Higher & Medium Quality Grades
<p>AAA highest rating assigned by S&amp;P Global Ratings. The obligor's capacity to meet its financial commitments on the obligation is extremely strong</p>	<p>Aaa Obligations rated Aaa are judged to be of the highest quality, subject to the lowest level of credit risk.</p>	<p>AAA Determined to have almost no risk of loss due to credit-related events. Assigned only to the very highest quality obligors and obligations able to survive extremely challenging economic events.</p>
<p>AA+ An obligation rated 'AA' differs from the highest-rated obligations only to a small degree. The obligor's capacity to meet its financial commitments on the obligation is very strong.</p> <p>AA</p> <p>AA-</p>	<p>Aa1</p> <p>Aa2 Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.</p> <p>Aa3</p>	<p>AA+ Determined to have minimal risk of loss due to credit-related events. Such obligors and obligations are deemed very high quality.</p> <p>AA</p> <p>AA-</p>
<p>A+ An obligation rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitments on the obligation is still strong.</p> <p>A</p> <p>A-</p>	<p>A1</p> <p>A2 Obligations rated A are judged to be upper-medium grade and are subject to low credit risk.</p> <p>A3</p>	<p>A+ Determined to be of high quality with a small risk of loss due to credit-related events. Issuers and obligations in this category are expected to weather difficult times with low credit losses.</p> <p>A</p> <p>A-</p>
<p>BBB+ An obligation rated 'BBB' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to weaken the obligor's capacity to meet its financial commitments on the obligation.</p> <p>BBB</p> <p>BBB-</p>	<p>Baa1 Obligations rated Baa are judged to be medium grade and subject to moderate credit risk and as such may possess certain speculative characteristics.</p> <p>Baa2</p> <p>Baa3</p>	<p>BBB+ Determined to be of medium quality with some risk of loss due to credit-related events. Such issuers and obligations may experience credit losses during stressed environments.</p> <p>BBB</p> <p>BBB-</p>
<p>BB+ An obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions that could lead to the obligor's inadequate capacity to meet its financial commitments on the obligation.</p> <p>BB</p> <p>BB-</p>	<p>Ba1</p> <p>Ba2 Obligations rated Ba are judged to be speculative and are subject to substantial credit risk.</p> <p>Ba3</p>	<p>BB+ Determined to be of low quality with moderate risk of loss due to credit-related events. Such issuers and obligations have fundamental weaknesses that create moderate credit risk.</p> <p>BB</p> <p>BB-</p>

 current Zoning Ordinance minimum requirement

 proposed alternative requirement

## Long Term Credit Ratings

Standard & Poor's ratings description	Moody's ratings description	Kroll ratings description
<b>Speculative Grades</b>	<b>Speculative Grades</b>	<b>Lower Quality Grades</b>
<p><b>B+</b> An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitments on the obligation.</p> <p><b>B</b> Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial commitments on the obligation.</p> <p><b>B-</b></p>	<p><b>B1</b></p> <p><b>B2</b> Obligations rated B are considered speculative and are subject to high credit risk.</p> <p><b>B3</b></p>	<p><b>B+</b> Determined to be of very low quality with high risk of loss due to credit-related events. These issuers and obligations contain many fundamental shortcomings that create significant credit risk.</p> <p><b>B</b></p> <p><b>B-</b></p>
<p><b>CCC+</b> An obligation rated 'CCC' is currently vulnerable to nonpayment and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitments on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitments on the obligation.</p> <p><b>CCC</b></p> <p><b>CCC-</b></p>	<p><b>Caa1</b></p> <p><b>Caa2</b> Obligations rated Caa are judged to be speculative of poor standing and are subject to very high credit risk.</p> <p><b>Caa3</b></p>	<p><b>CCC+</b></p> <p><b>CCC</b> Determined to be at substantial risk of loss due to credit-related events, near default, or in default with high recovery expectations.</p> <p><b>CCC-</b></p>
<p><b>CC</b> An obligation rated 'CC' is currently highly vulnerable to nonpayment. The 'CC' rating is used when a default has not yet occurred but S&amp;P Global Ratings expects default to be a virtual certainty, regardless of the anticipated time to default.</p>	<p><b>Ca</b> Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.</p>	<p><b>CC</b> Determined to be near default or in default with average recovery expectations.</p>
<p><b>C</b> An obligation rated 'C' is currently highly vulnerable to nonpayment, and the obligation is expected to have lower relative seniority or lower ultimate recovery compared with obligations that are rated higher.</p>	<p><b>C</b> Obligations rated C are the lowest rated and are typically in default, with little prospect for recovery of principal or interest.</p>	<p><b>C</b> Determined to be near default or in default with low recovery expectations.</p>
<p><b>D</b> An obligation rated 'D' is in default or in breach of an imputed promise</p>		<p><b>D</b> In default</p>

### Notes:

1. S&P Ratings from 'AA' to 'CCC' may be modified by the addition of a plus (+) or minus (-) sign to show relative standing within the rating categories.
2. Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category.
3. KBRA may append - or + modifiers to ratings in categories AA through CCC to indicate, respectively, upper and lower risk levels within the broader category.



**REVISED DRAFT 11/14/19**

**947-AT-19**

**FINDING OF FACT  
AND FINAL DETERMINATION**

**of  
Champaign County Zoning Board of Appeals**

Final Determination: *{RECOMMEND ENACTMENT/RECOMMEND DENIAL}*

Date: *{November 14, 2019}*

Petitioner: **Zoning Administrator**

Request: **Amend the Champaign County Zoning Ordinance by amending the requirements for PV solar farms by deleting Section 6.1.5 B.(2)b. that requires a 0.5 mile separation between a proposed PV solar farm and the CR Conservation Recreation Zoning District, and amend the requirements in Section 6.1.5 Q.(4)e. to add requirements for financial assurance provided by financial institutions headquartered in Champaign County.**

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## **FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **September 26, 2019, October 17, 2019, and November 14, 2019**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The proposed amendment is intended to update the requirements for Photovoltaic (PV) SOLAR FARMS in the Zoning Ordinance.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases.

### ***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. Goal 1 is **NOT RELEVANT** to the proposed amendment in general.

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. Goal 2 is **NOT RELEVANT** to the proposed amendment in general.

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. Objectives 3.2 and 3.3 do not appear to be relevant to the proposed amendment.

The proposed amendment will **HELP ACHIEVE** Goal 3 for the following reasons:

- A. Objective 3.1 states, “Champaign County will seek to ensure that it maintains comparable tax rates and fees, and a favorable business climate relative to similar counties.”

The proposed amendment will **HELP ACHIEVE** Objective 3.1 because of the following:

- (1) The proposed amendment will provide an opportunity for ~~locally-based~~ broader range of businesses to participate in the financial security of a PV solar farm development, which will help Champaign County maintain a business climate comparable to other counties.
- (2) Regarding the amendment to proposed financial assurances advertised in the September 11, 2019 legal notice:
  - a. At the September 26, 2019 ZBA meeting, the minutes indicate the following: “Mr. DiNovo stated that the second proposal, as it is drafted, seems to be violating one of the most clearly established principles in land use law that he would encounter, and that is that the Zoning Ordinance cannot be used to favor businesses within your jurisdiction. He said that if the Kroll rating is good enough for a Champaign County bank, then it is good enough any bank, and there is a compelling reason to not put a barrier in the ordinance which would exclude many of our local banks. He said that allowing any credit agency approved by the Security Exchange Commission (SEC) is for any bank, anywhere. He said that he believes that there is a very big legal problem with having one set of rules for Champaign County financial institutions and another set of rules for institutions outside of Champaign County. He said that this could exclude many of the local banks from competing for this type of business, but whatever is done, it has to be on a level playing field.”

- (3) The State’s Attorney’s Office was asked to give legal advice on two questions regarding the proposed draft amendment as advertised in the September 11, 2019 legal notice regarding credit rating providers and scores: Does the amendment as drafted pose an equal protection issue? Does the amendment as drafted fall within the powers conferred by the enabling act?
- a. In a memo dated November 7, 2019, Matt Sullard, Assistant State’s Attorney, responded to these questions.
- (a) Regarding the equal protection question, Mr. Sullard advises not to proceed with the amendment language as drafted. He offered a possible revision to the draft amendment that simply adds the Kroll Bond Rating Agency and a rating of “A-” to the accepted standards, in addition to S&P and Moody’s ratings that are already part of the draft amendment.
- (b) Regarding the enabling act question, Mr. Sullard responded that the draft amendment does fall within the powers conferred by the Zoning Enabling Act.
- (4) John Hall, Zoning Administrator, recommends re-advertising this case should the Board decide to proceed with Mr. Sullard’s idea, because it is significantly different from the currently advertised draft amendment.

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. Goal 4 is **NOT RELEVANT** to the proposed amendment in general.

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. Goal 5 is **NOT RELEVANT** to the proposed amendment 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. Goal 6 is **NOT RELEVANT** to the proposed amendment in general.

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. Goal 7 is *NOT RELEVANT* to the proposed amendment in general.

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. Objectives 8.1, 8.2, 8.3, 8.4, 8.5, 8.7, 8.8, and 8.9 do not appear to be relevant to the proposed amendment.

The proposed amendment will *HELP ACHIEVE* Goal 8 for the following reasons:

- A. Objective 8.6 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.

Objective 8.6 has six subsidiary policies. Policies 8.6.1, 8.6.2b., 8.6.5, and 8.6.6 do not appear to be relevant to the proposed amendment. The proposed amendment will *HELP ACHIEVE* Objective 8.6 because of the following:

- (1) Policy 8.6.2a. 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.**”

The proposed amendment will *HELP ACHIEVE* Policy 8.6.2a. for the following reason:

- a. Regarding the proposed amendment to remove the 0.5-mile separation required between a PV solar farm and the CR Conservation Recreation Zoning District, the Zoning Ordinance regarding PV solar farms already has protections in place for the stream corridors and other natural areas typically found in the CR District without requiring a separation from a PV solar farm.
- b. Section 6.1.5 F.(9) requires a vegetative land cover for any PV solar farm on best prime farmland. This land cover will provide some additional habitat as compared to row crop agriculture, which will actually benefit any CR District that is nearby.
- c. Sec. 6.1.5 M.(2) requires vegetative screening within 1,000 feet of dwellings, which will also benefit any nearby CR District.
- (2) Policy 8.6.3 states, “**For discretionary development, the County will use the Illinois Natural Areas Inventory and other scientific sources of information to identify priority areas for protection or which offer the potential for restoration, preservation, or enhancement.**”

The proposed amendment will **HELP ACHIEVE** Policy 8.6.3 for the following reason:

- a. Regarding the proposed amendment to remove the 0.5-mile separation required between a PV solar farm and the CR Conservation Recreation Zoning District, the Zoning Ordinance regarding PV solar farms already requires petitioners to complete an EcoCAT environmental assessment to identify stream corridors and other natural areas typically found in the CR District without requiring a separation from a PV solar farm.
- (3) Policy 8.6.4 states, **“The County will require implementation of IDNR recommendations for discretionary development sites that contain endangered or threatened species, and will seek to ensure that recommended management practices are maintained on such sites.”**

The proposed amendment will **HELP ACHIEVE** Policy 8.6.4 for the following reason:

- a. Regarding the proposed amendment to remove the 0.5-mile separation required between a PV solar farm and the CR Conservation Recreation Zoning District, the Zoning Ordinance regarding PV solar farms already requires petitioners to implement IDNR recommendations to protect habitats and endangered or threatened species typically found in the CR District without requiring a separation from a PV solar farm.

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. Goal 9 is **NOT RELEVANT** to the proposed amendment in general.

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. Goal 10 is **NOT RELEVANT** to the proposed amendment in general.

**REGARDING THE PURPOSE OF THE ZONING ORDINANCE**

16. The proposed amendment will **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 amendment is not directly related to this purpose.

- 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 is not directly related to this purpose.

- 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 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 amendment is not directly related to this purpose.

- 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 is not directly related to this purpose.

- 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 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 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 amendment is not directly related to this purpose.

- 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 amendment is consistent with this purpose.

- 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 amendment is consistent with this purpose.

- 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 amendment is not directly related to this purpose.

- 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 amendment is consistent with this purpose.

- 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 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 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 amendment is consistent with this purpose because the Zoning Ordinance regarding PV solar farms already has protections in place for the stream corridors and other natural areas typically found in the CR District without requiring a separation from a PV solar farm.

- 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 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 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 amendment is consistent with this purpose. Eliminating the unnecessary separation to the CR District will improve the efficiency of the approval process for PV solar farms.

17. The proposed text amendment **WILL** improve the text of the Zoning Ordinance because:
- A. The proposed amendment regarding credit ratings will provide opportunities for ~~based~~ broader range of financial institutions that have not been rated by S&P or Moody's to be eligible for providing letters of credit for approved PV solar farms.
  - B. The proposed amendment that removes the one-half mile separation between a PV solar farm and the CR District would remove unnecessary language from the Zoning Ordinance.

## **SUMMARY FINDING OF FACT**

From the documents of record and the testimony and exhibits received at the public hearing conducted on **September 26, 2019, October 17, 2019, and November 14, 2019**, the Zoning Board of Appeals of Champaign County finds that:

1. The proposed Zoning Ordinance text amendment ***IS NECESSARY TO ACHIEVE*** the Land Resource Management Plan because:
  - A. The proposed Zoning Ordinance text amendment will ***HELP ACHIEVE*** LRMP Goals 3 and 8.
  - B. The proposed Zoning Ordinance text amendment is ***NOT RELEVANT*** to LRMP Goals 1, 2, 4, 5, 6, 7, 9, and 10.
2. The proposed text amendment ***WILL*** improve the Zoning Ordinance because it will:
  - A. ***HELP ACHIEVE*** the purpose of the Zoning Ordinance (see Item 16).
  - B. ***IMPROVE*** the text of the Zoning Ordinance (see Item 17).

## DOCUMENTS OF RECORD

1. Legal advertisement
2. Preliminary Memorandum dated September 19, 2019, with attachments:
  - A Legal advertisement
  - B ELUC Memorandum dated May 1, 2019, with attachments:
    - Proposed Changes to Zoning Ordinance Other Than in Response to Municipal Concerns dated February 27, 2019
    - Alternative Minimum Credit Rating for Financial Institutions Headquartered in Champaign County, Illinois dated May 1, 2019
  - C Several online articles regarding the Kroll Bond Rating Agency
  - D Land Resource Management Plan (LRMP) Goals & Objectives
  - E Preliminary Finding of Fact, Summary Finding of Fact, and Final Determination for Case 947-AT-19 dated September 26, 2019, with attachment:
    - Annotated version of proposed amendments
3. Memo from Matt Sullard, Assistant State's Attorney, dated November 7, 2019 (for ZBA member review only)
4. Supplemental Memorandum #1 dated November 13, 2019, with attachments:
  - A Legal advertisement dated September 11, 2019
  - B Kroll Bond Rating Agency Rating Scale
  - C Long Term Credit Ratings for S&P, Moody's, and Kroll Bond Rating Agency
  - D Revised Finding of Fact, Summary Finding of Fact, and Final Determination for Case 947-AT-19 dated November 14, 2019, with attachment:
    - Annotated version of proposed amendments dated November 14, 2019

**FINAL DETERMINATION FOR CASE 947-AT-19**

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

The Zoning Ordinance Amendment requested in **Case 947-AT-19** should ***{BE ENACTED / NOT 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:

Ryan Elwell, Chair  
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

**PROPOSED AMENDMENT FOR CASE 947-AT-19**

1. Delete existing Section 6.1.5 B.(2)b.:
  - (2) The PV SOLAR FARM County Board SPECIAL USE permit shall not be located in the following areas:
    - a. Less than one-and-one-half miles from an incorporated municipality that has a zoning ordinance unless the following is provided:
      - (a) No part of a PV SOLAR FARM shall be located within a contiguous urban growth area (CUGA) as indicated in the most recent update of the CUGA in the Champaign County Land Resource Management Plan, and there shall be a separation of one-half mile from a proposed PV SOLAR FARM to a municipal boundary at the time of application for the SPECIAL USE Permit, except for any power lines of 34.5 kVA or less and except for any proposed PV SOLAR FARM substation and related proposed connection to an existing substation.
      - (b) The PV SOLAR FARM SPECIAL USE permit application shall include documentation that the applicant has provided a complete copy of the SPECIAL USE permit application to any municipality within one-and-one-half miles of the proposed PV SOLAR FARM.
      - (c) If no municipal resolution regarding the PV SOLAR FARM is received from any municipality located within one-and-one-half miles of the PV SOLAR FARM prior to the consideration of the PV SOLAR FARM SPECIAL USE permit by the Champaign County Board, the ZONING ADMINISTRATOR shall provide documentation to the County Board that any municipality within one-and-one-half miles of the PV SOLAR FARM was provided notice of the meeting dates for consideration of the proposed PV SOLAR FARM SPECIAL USE Permit for both the Environment and Land Use Committee and the County Board.

~~b. — Less than one-half mile from the CR Conservation Recreation Zoning District.~~

2. **Revise Section 6.1.S Q.(4)e. as follows:**

- e. The long term corporate debt (credit) rating of the letter of credit issuing financial institution by both Standard & Poor's Financial Services LLC (S&P) and Moody's Investors Service (Moody's) shall be equal to or greater than the minimum acceptable long term corporate debt (credit) rating, as follows:
  - (a) The Zoning Administrator shall verify the long term corporate debt (credit) rating of the proposed financial institution by ~~both~~ Standard & Poor's Financial Services LLC (S&P) and/or Moody's Investors Service (Moody's) and/or the Kroll Bond Rating Agency.

- (b) The minimum acceptable long term corporate debt (credit) rating of the proposed financial institution shall be a rating of “A” by S&P or a rating of “A2” by Moody’s, or a rating of “A-” by Kroll Bond Rating Agency.
- ~~(c) Notwithstanding the requirements of Section 6.1.5 Q.(4)e.(a) (b), if the financial institution issuing the letter of credit is headquartered in a municipality within Champaign County, Illinois, an alternative minimum acceptable credit rating shall be a rating of "A-" by the Kroll Bond Rating Agency and shall be verified by the Zoning Administrator.~~
- (c) Whenever the most current long term corporate debt (credit) rating of the proposed financial institution by either S&P, ~~or~~ Moody’s, ~~or in the case of a financial institution headquartered in a municipality in Champaign County, Illinois, the~~ Kroll Bond Rating Agency is lower than the minimum acceptable long term corporate debt (credit) rating, the letter of credit shall be replaced with a new irrevocable letter of credit from an issuing financial institution whose most current long term corporate debt (credit) rating by either S&P, ~~or~~ Moody’s, or Kroll Bond Rating Agency meets or exceeds the minimum acceptable long term corporate debt (credit) rating.