

**MINUTES OF REGULAR MEETING**

**CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

1776 E. Washington Street  
Urbana, IL 61801

**DATE:** August 25, 2005

**PLACE:** 1776 East Washington Street  
Meeting Room 1

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

**Urbana, IL 61802**

**MEMBERS PRESENT:** Doug Bluhm, Debra Griest, Joseph L. Irle, Richard Steeves, Melvin Schroeder, Roger Miller

**MEMBERS ABSENT :** Dennis Goldenstein

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

**OTHERS PRESENT :** Lori Bateman, Mike Bateman, John Hurd, Joyce Phares, Don Wauthier, Nancy Boyd, George Boyd, Philip VanNess, Ron Minch

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**1. Call to Order**

The meeting was called to order at 7:07 p.m.

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

The roll was called and a quorum declared present.

**3. Correspondence**

None

**4. Approval of Minutes**

None

**5. Continued Public Hearing**

**Case 487-S-05 Petitioner: Hindu Temple and Cultural Society of Central Illinois and Shiv Kapur Request to authorize the establishment and use of a temple as a Special Use in the AG-2, Agriculture Zoning District. Location: The subject property is an approximately 12 acre tract in the SW1/4 of the SW1/4 of Section 35 of Somer Township that is proposed to be located approximately 400 feet east of the intersection of Airport Road and High Cross Road on the north side of Airport Road.**

Mr. Hall distributed a Supplemental Memorandum dated August 25, 2005, for the Board's review. He said that the memorandum includes a letter from Steve Wayman dated August 23, 2005. Mr. Hall stated that he spoke to the attorney for the Petitioners and the attorney indicated that the situation is still the same as described in the Supplemental Memorandum dated August 19, 2005.

He said that the hope of the Hindu Society is to come to the Board at the November 22, 2005, meeting with an engineering analysis to answer the questions that were raised at the previous meeting. He said that until the land situation gets resolved the case is at a stand still. He said that the Hindu Society cannot promise that everything will be resolved by the November 22, 2005, meeting but the attorney assured him that it is their top priority but at this point it is out of their control.

Mr. Irle asked Mr. Hall if he was aware of the reason why the Drainage Commissioner was not present.

Mr. Hall stated that the drainage district did receive notice of the meeting but he is not aware of the reason why they are not present.

Mr. Schroeder asked Mr. Hall how many of the answers to the questions which were raised at the previous meeting will the Board have by the November 22<sup>nd</sup> meeting.

Mr. Hall stated that the Hindu Society is not guaranteeing that they will have any answers ready by that time.

Mr. Schroeder stated that it seems that there are a lot of questions regarding drainage, sewage, etc. He said that he is not going to vote for anything until he is assured that these issues will be taken care of.

Ms. Griest stated that she does not expect that the Hindu Society will be far enough along by the November 22<sup>nd</sup>, meeting for the Board to take any kind of final action. She said that there is even a question as to whether the Hindu Society will have a land contract by the November meeting. She said that the continuance to November 22<sup>nd</sup>, is the longest that the Board could continue the case so that they may proceed and if required an additional continuance could be granted.

Mr. Bluhm stated that Mr. Wayman's letter indicates that he spoke with Don Flessner, Saline Drainage District Commissioner on April 30, 2005, and he suggested that he was only aware of coffee shop talk regarding the topic and was not notified directly as a governing body.

Mr. Hall stated that the postcard notices were sent on April 27, 2005, and the notice is only sent to the contact person of the drainage district. He said that the conversation between Mr. Wayman and Mr. Flessner occurred on April 30<sup>th</sup>, and staff has not received any comments from the Saline Drainage District to date.

Ms. Griest stated that there are no signatures on the witness register. She asked the audience if there was anyone in attendance who did not sign the witness register but desired to do so at this time and there were none. She closed the witness register.

**Mr. Bluhm moved, seconded by Mr. Steeves to continue Case 487-S-05: Hindu Temple and Cultural Society of Central Illinois and Shiv Kapor to the November 22, 2005, Zoning Board of Appeals meeting. The motion carried by voice vote.**

**Case 502-V-05 Petitioner: Mike and Lori Bateman Request to authorize the division of a lot that is 4.984 acres in area instead of the required minimum area of more than 5 acres in order for a lot to be divided, in the CR, Conservation Recreation Zoning District. Location: A 4.984 acre tract that is located approximately in the East ½ of the Southeast ¼ of the Northwest ¼ of Section 18 of East Bend Township and located on the southwest side of CR 3350N and that is commonly known as the residence at 663 CR 3350N, Fisher.**

Mr. Hall distributed a Supplemental Memorandum dated August 25, 2005, to the Board for review. He said that the memorandum includes draft minutes for this case which have been excerpted from the July 28, 2005, meeting. He said that new evidence based on the minutes has been added to the Summary of Evidence as Item 13.E. He said that at the invitation of Mr. Ronald Minch, he was able to visit the site this afternoon but was unable to put his observations in writing for the Board's review. He said that he did see the swale which Mr. Minch had spoke about at the last meeting. He said that he believes that the swale only drains a very small portion of proposed Lot 1 and it is the portion in the extreme northwest portion of Lot 1. He said that he does not believe that the swale would pick up any measurable water due to the construction of a house unless someone decided to place the house right up next to the street. He said that as you view the lot line there are other low spots indicating that surface drainage wanders back and forth between the lots. He said that the site is fairly level until you get far back on the side where it clearly drains right to the river. He said that it is conceivable that there could be changes to the topography during construction of a home on Lot 1 which may divert some extra flow over to the Minch property. He said that the Board could establish a condition either keeping any grade changes a certain minimum distance from the lot line although it is not clear that this wouldn't prevent some increase of flows on the Minch property. He said that he could imagine a condition that would require topographic measurements very closely spaced before any disturbance and verification afterwards that could be used in the future to prove there was no increase in flow onto the Minch property. He said that the plat met all of the topographic requirements of the Subdivision Regulations. He said that minor subdivisions do not have to provide the same amount of information that major subdivisions are required to provide. He said that if this was compared to a major subdivision one could say that this minor subdivision was not done at the same amount of detail because it only met the minimum requirements of the Subdivision Regulations.

Mr. Irle stated that Mr. Minch indicated that his house was four to six feet lower than the subject property and asked Mr. Hall if this was obvious during his site visit.

Mr. Hall stated that he is not an engineer and he does not like to trust his eyes for something like this but it did not appear to be the case to him.

Mr. Irle stated that he visited the site and he agreed with Mr. Hall in that Mr. Minch's home did not appear to be that much lower than the subject property.

Ms. Griest informed the audience that this is an Administrative Case and as such the County allows anyone the opportunity to cross examine any witness. She said that at the proper time she will ask for a show of hands for those who would like to cross examine and each person will be called upon. She requested that anyone called to cross examine go to the cross examination microphone to ask any questions. She said that those who desire to cross examine are not required to sign the witness register but are requested to clearly state their name before asking

any questions. She noted that no new testimony is to be given during the cross examination.

Mr. Mike Bateman, who resides at 663 CR 3350N, Fisher, IL, stated that he doesn't have much more to add than from the last meeting. He said that he would guess that Mr. Minch's floor elevations is one foot higher than the proposed lot.

Ms. Griest asked the Board if they had any questions for Mr. Bateman.

Mr. Irle asked Mr. Bateman if the cul-de-sac was originally designed for 20 lots but there are only 15 homes now.

Mr. Bateman stated that Mr. Irle was correct.

Mr. Irle asked Mr. Bateman if he had received any feedback from Scott Rodgers, East Bend Township Highway Commissioner or Fire Protection District.

Mr. Hall stated that the East Bend Township Highway Commissioner indicated that he has no objections and will provide such in writing if required.

Mr. Bateman stated that Mr. Rodgers had offered to attend the last meeting but he told him that he didn't see any reason why he should spend all evening at the meeting when he had no objections.

Mr. Irle stated that since there is no feedback he would assume that they have no issues with the requested variance. He said that perhaps a berm should be constructed to assist with any drainage or runoff issues.

Mr. Bateman stated that he had also considered construction of a berm or a swale down the property line. He said that he took elevation shots and it does appear to gradually go towards the river. He said that from where the proposed house would set it will all go past the backside of Mr. Minch's home. He said that this type of request has occurred in the subdivision before in that two other lots have been subdivided.

Ms. Griest asked if staff had any questions for Mr. Bateman and there were none.

Ms. Griest asked if the audience had any questions for Mr. Bateman and there were none.

Mr. Phillip VanNess, Attorney for Mr. Ronald Minch stated that the Board received a seven page memorandum dated July 28, 2005, indicating their opposition to Mr. Bateman's request. He said that they still stand by their memorandum and have received no additional information from staff which does not suggest that there is in fact a drainage issue. He stated that they had the following three requests for the Board: 1. Do not dodge the Board's duties to evaluate the merit of the requested variance because the vacant parcel is almost five acres. He said that the Board must apply the five criteria that is laid out in the Zoning Ordinance. 2. Do not fixate on the drainage issue. He said that this is one of the five criteria that are applicable as to whether a variance should or should not be granted. 3. Do not be influenced by the actions of the Environment and Land Use Committee. He said the Board cannot be certain that the requested variance will not be injurious to the neighbors. He said that at the last meeting he requested that the Board review the

submitted elevations which indicated that there will be additional flows from the Mr. Bateman's property to Mr. Minch's property. He said that this flow has and will continue unless the Board requires a swale/berm requirement. He said unless Mr. Bateman or the Board is willing to engineer this property the Board cannot conclude that granting of this variance is consistent with the overall intent of the Ordinance or that any hardship suffered by the Bateman's is nothing other than self-imposed.

Ms. Griest asked the Board if they had any questions for Mr. VanNess and there were none.

Ms. Griest asked if staff had any questions for Mr. VanNess.

Mr. Hall requested that Mr. VanNess review the five criteria.

Mr. VanNess stated that there are no special conditions or circumstances peculiar to this parcel for the purpose of subdivision. He said that they were told at the last hearing that planning efforts were made by the Batemans prior to the time at which the Ordinance was changed. He said that they contend that no substantial steps were taken until the Ordinance had already changed and was much like a couple talking over the dinner table. He said that whether there are reasonable or otherwise permitted use of the land that is prevented by the difficulties or hardships created by lawful regulation is obviously no. He said that the Batemans have lived on the property for 15 years and it is perfectly suitable for the purposes for which they purchased the property. He said that whether special conditions or practical difficulties are found do exist only as a result of the applicant's actions in disregarding the County's Ordinance. He said that anyone who purchased the five acre parcels had the expectation of privacy, space between neighbors therefore this request does not square with the expectations of the neighboring properties. He said that in regard to the general purpose and intent of the Ordinance they feel that it is clear that one reason that the Board made the change in the Ordinance in the first place was because they wanted to have some sort of sensitivity built into the regulations regarding natural features such as forested areas. He said that these areas flood a lot and a lot of space is required in order to find a certain amount of buildable area. He said that the Bateman property had to be jig sawed in such a way in order allow them to find a piece of ground which they could build on. He said that the resulting left over piece of ground, Lot 2, is in fact where the Bateman residence is presently located. He said that the Board is being asked to approve Lot 1 after you have left behind Lot 2 which requires five waivers plus the requested variance and are also asking that the variance be conditioned. He said that the final question of whether the requested variance will be injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare should be addressed. He said that a wall, deep swale or berm could be constructed if they had unlimited engineering which would preclude flows from one piece of ground flowing onto another but he does not recall this being the submission of the Zoning Board of Appeals. He said that the ZBA's job is to ask if the project, as requested, is going to be detrimental to the public health, safety, and welfare and as it is presently placed before this Board it will be detrimental.

Mr. Hall stated that it is not an excuse that the Bateman's did not know how large their lot was but he wondered in Mr. VanNess's opinion if it is not a special condition that for approximately 15 years they have paid real estate taxes on five acres of land. He said that each time that the Batemans came into the Planning and Zoning office the maps indicated that the lot is over five acres in area and only after investing in the services of a surveyor and having a plat completed did

they realize that their tract is less than five acres.

Mr. VanNess stated that he does not feel that this is a special condition because the landowner is responsible for knowing the size of their property.

Mr. Hall stated that anytime you violate an ordinance unknowingly it is not considered an excuse. He asked Mr. VanNess if after investing in the subdivision plat and not being allowed to get the benefit of it is not a prevention of the reasonable use.

Mr. VanNess stated that not under the circumstances because virtually every penny of that investment took place after the Ordinance was changed. He said if they had wanted to preclude and stop their losses then they should have stopped right then and anything that they take on after that point is their choice. He said that he is here to represent Mr. Minch and not to tear down Mr. Bateman but the bottom line is that Mr. Minch pays taxes too.

Mr. Hall stated that he wished that there were more people who would adjust their proposals as much as the Batemans have in order to make the lots fit.

Mr. VanNess stated that he worked for the Illinois Environmental Protection Agency for almost ten years and the Pollution Control Board for almost five years and he understands where Mr. Hall is coming from but people do need to be responsive to the comments of an administrative body.

Mr. Hall stated that in regard to injury to the neighborhood all he can say is that none of the County's regulations require side lot line swales. He said that if you review most urban subdivision regulations you will see a beautiful diagram of how you are suppose to have a building pad with perfect drainage going in four directions going out to the lot lines and swale lines. He said that in the County where we deal with lots that vary from one acre up to five acres there are no such requirements and it may in fact be a hazard yet it passed the subdivision regulations. He said that this Board can determine with further review if our standards are not adequate and if something needs to be done but it would have to be the determination of this Board because the Environment and Land Use Committee did not see this as a problem.

Mr. VanNess stated that he happily lives in a subdivision in Savoy where houses are approximately 20 feet apart but he did not buy five acres of river front property with the anticipation of having some elbow room. He said that the fact of the matter is that his house is built on the only buildable piece of flat land on the neighboring lot and Mr. Minch will have a neighbor which is closer than what he currently has. He said that at some point in time you have to give due regard to what is already out there and if circumstances were different that might alter the case but in this case everyone has had enjoyment of their property for approximately seven years.

Mr. Hall stated that he had no other questions for Mr. VanNess.

Ms. Griest asked the Board if they had any questions for Mr. VanNess and there were none.

Ms. Griest asked if the Petitioner had any questions for Mr. VanNess and there were none.

Ms. Griest asked if the audience had any questions for Mr. VanNess and there were none.

Ms. Griest asked if there was anyone in the audience who has not signed the witness register to present testimony and wished to do so at this time. No response was given therefore Ms. Griest closed the witness register.

Mr. Steeves asked what was the cause of the lot going from five acres to less than five acres. He asked if it was the change in the right of way of the road or was it something that wasn't considered before and is now being considered.

Mr. Hall stated that it was the way in which the land was developed. He said that it wasn't approved as a plat of subdivision and all of the lots were surveyed. He said that it was done in separate actions in that there was a dedication of right of way and then the lots were sold. He said that when the legal descriptions were constructed they did not anticipate the dedication of right-of-way. He said that he has not seen a copy of the deed to know what it indicates for acreage. He said that the legal description from the recorded deed is where the Supervisor of Assessments Office receives its information for tax maps. He said that the plat for the right-of-way is a separate document from the survey of a lot and it is not a good way to do things and only leads to confusion.

Ms. Griest asked if in the event that Mr. Bateman had not chosen to take this path and had proceeded to sell his property he would have been selling it as 5.29 acres and his legal description and his deed that he conveyed would continue to say 5.29 acres.

Mr. Hall stated that he can only presume that when you look in the Sidwell Tax Atlas that all the other lots in this development are improperly labeled as to area.

Mr. Steeves stated that he would like to know what the deed actually indicates for acreage. He said that it may indeed prove that Mr. Bateman was misinformed.

Mr. Bateman stated that he believed that he had submitted a copy of the deed when he submitted the variance application.

Mr. Hall stated that he will check the file for the deed.

**The Board recessed at 7:47 p.m.**

**The Board resumed at 8:02 p.m.**

Mr. Hall stated that he did check the file and did find a copy of the Zoning Use Permit Application. He said that the application indicates as a description: Tract 8, Taylor Subdivision, Section 18, East Bend Township, therefore it referred to the plat of survey and a copy of the actual deed was not submitted. Lori Busboom, Zoning Technician spent some time searching through recorded documents and the deed apparently recounts the written description of the survey of the tract but many times such a description ends with giving the area of the particular tract of land and nothing that staff could find included this type of summary statement. He said that at this point he has no idea how the Batemans would be aware of how much land they have.

Ms. Griest stated that it is reasonable to assume that none of the property owners in the

development can actually prove an exact amount of acreage that they own.

Mr. Hall stated that he hasn't been able to come up with the information through the search that staff has done and he has consulted the file of the previous subdivision which was across the street and we still haven't found a document which makes it real clear.

Ms. Griest stated that in earlier testimony it was stated that there were at least two other subdivisions in this group of tracts and asked how close these tracts were to the Bateman tract.

Mr. Hall stated that one that he is familiar with has the second lot in from the east line and is one of the lots on the lake. He said that this lot has been divided twice and neither are near Mr. Bateman's tract.

Mr. Irle stated that it appears that wherever the woods are is where the homes are built. He said that it is a shame that a property owner has to pay a surveyor to confirm the amount of acreage that you own. He said that when we are talking about .016 acres it should be enough leeway to allow for such a variance.

Ms. Griest stated that she agrees with Mr. Irle.

Mr. Steeves stated that this was his point in wanting to see the actual deed. He said that if the Batemans were aware of the acreage then that is one thing but if they only found out about the lot being less than five acres when they had the survey prepared then that would prove that the special conditions did not result from actions of the applicant.

Mr. Hall stated that if someone who had been familiar with how this survey was prepared could have surmised that the area indications in the Supervisor of Assessments records are not accurate. He said that when he saw the documents in the old subdivision file about how the right-of-way was separate from the lots he wished that he had realized that there was a problem.

Mr. Schroeder asked for a description of the Sidwell Tax Atlas.

Mr. Hall stated that for years the County has subscribed to the Sidwell service of providing maps of the tax parcels which are on file. He said that these maps are approximately 11" x 17" and have two sections per page. He said that they are published yearly reflecting the changes that occurred during the previous year. He said that staff has the old version which is very large and in 1980 the newer version was created. He said that for lots which are not included in a platted subdivision the actual acreage is included but for lots which are included in a platted subdivision there is no area indication and the subdivision file must be reviewed. He said that it is the most fundamental thing that we use in the office other than the Zoning Ordinance. He said that a new Item #13.F should state the following: John Hall testified at the August 25, 2005, hearing that he had visited the subject property that day and observed the drainage way which Mr. Minch had described in previous testimony and noted the following: 1. Only a very small portion of proposed Lot 1 appeared to be a tributary to the drainageway on the Minch property; 2. Construction of a home on proposed Lot 1 could increase on how the amount of stormwater runoff onto the Minch property if care is not taken. He said that a new Item #9.D should state the following: Lori Busboom, Zoning Technician reviewed the Recorder's of Deeds documents and the only legal description

found did not include a statement of total acreage for the Bateman property.

Mr. Irle stated that Mr. Bateman testified that construction of a swale or berm would not be a problem yet it is not known if it will resolve the drainage issues with the neighbors.

Mr. Hall stated that he has a fear that if construction occurred on Lot 1 that there may be subsequent complaints about drainage situations and these could be recurring complaints. He said that these complaints could set in motion an unfortunate situation for everyone involved.

Mr. Irle stated that the berm would probably catch water and create more of a problem but a swale would take the water away.

Ms. Griest stated that she is not in favor of the berm. She asked if there was adequate space to create an adequate swale.

Mr. Hall stated that yes there is adequate space to create an adequate swale. He said that anticipation of a swale leads to the concern about where the swale would empty and proper care taken so that an erosion problem is not created. He said that he does not like to encourage unnecessary conditions but he does have a concern that there could be a problem at this location in the future and one approach that the Board could consider is to leave it up to the petitioner. He said that it would make less work on the Planning and Zoning staff until such day as we may actually receive a complaint. He said that he does not want the Board to feel that there always has to be a condition. He said that there is not something like this incorporated into the body of our regulations but if the Board would like have a condition he would prefer not to be required to create it at this moment. He said that he would also hate to see this case continued but he would also hate to construct a condition which will not do what the Board is desiring it to do and actually create additional problems.

**The consensus of the Board was not to require a condition for Case 502-V-05.**

**Finding of Fact for Case 502-V-05:**

From the documents of record and the testimony and exhibits received at the public hearing conducted on July 28, 2005, and August 25, 2005, the Zoning Board of Appeals of Champaign county finds that:

1. Special conditions and circumstances do exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land and structures elsewhere in the same district.

Mr. Steeves stated that special conditions and circumstances do exist which are peculiar to the land or structure involved which are not applicable to other similarly situated land and structures elsewhere in the same district because the owner was under the impression that they owned more than five acres and would not need a variance until a survey was made that concluded that he did not own five acres. He said that the Sidwell Tax Atlas indicated 5.29 acres and he has paid real estate taxes at that level since he owned the property.

2. Practical difficulties or hardships created by carrying out the strict letter of the

regulations sought to be varied will prevent reasonable or otherwise permitted use of the land or structure or construction.

Mr. Irle stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied will prevent reasonable or otherwise permitted use of the land or structure or construction because the Petitioner invested in a preliminary plat at some expense and placed the current house on a lot at an offset manner in order to accommodate a future home on the lot.

3. The special conditions, circumstances, hardships, or practical difficulties do not result from actions of the applicant.

Mr. Bluhm stated that special conditions, circumstances, hardships, or practical difficulties do not result from actions of the applicant because the Petitioner always believed that they had 5.29 acres by the Sidwell Tax Atlas and the deed researched on August 25, 2005, contained no acreage nor area information.

4. The requested variance is in harmony with the general purpose and intent of the Ordinance.

Mr. Irle moved that the requested variance is in harmony with the general purpose and intent of the Ordinance because the subject property is short from meeting the requirement of five acres by only .016 acres which if not for the portion of the lot that was dedicated for the driveway there would be no need for a variance. He said that building the house on the cul-de-sac rather than on prime farmground is in step with the Ordinance.

5. The requested variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Mr. Irle stated that the requested variance will not be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the current cul-de-sac was designed for 20 residences and only 15 currently exist. He said that it will not have an additional impact on road traffic and no negative comments were received from the East Bend Township Road Commissioner nor from the Fire Protection District. He said that there appears to be adequate water availability.

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

Mr. Bluhm stated that the requested variance is the minimum variation that will make possible the reasonable use of the land/structure because the tract is only .016 acres short of the five acre minimum requirement and the Petitioner felt that they owned 5.29 acres. He said that only until after he had a survey completed did he discover that he actually owned less than five acres and a variance was required. Mr. Irle stated that the purchase of additional property is not feasible.

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

**Mr. Steeves moved, seconded by Mr. Schroeder to close the public hearing for Case 502-V-05: Mike and Lori Bateman. The motion carried by voice vote.**

Ms. Griest informed Mr. Bateman that the Zoning Board of Appeals is short one member at tonight's meeting and it is his right to have a full Board present for the final determination. She asked Mr. Bateman if he would like to proceed with the final action at tonight's hearing or continue the case until a full Board is present.

Mr. Bateman stated that he would like to continue with the final determination with the present Board.

**Final Determination for Case 502-V-05:**

**Mr. Irle moved, seconded by Mr. Bluhm that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.9C have been met and pursuant to the authority granted by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the variance requested in Case 502-V-05, is hereby granted to the petitioners, Mike and Lori Bateman, to authorize the division of a lot that is 4.984 acres in area instead of the required minimum area of more than 5 acres in order for a lot to be divided, in the CR, Conservation Recreation Zoning District.**

The roll was called:

<b>Bluhm-yes</b>	<b>Goldenstein-absent</b>	<b>Irle-yes</b>
<b>Miller-yes</b>	<b>Schroeder-yes</b>	<b>Steeves-yes</b>
<b>Griest-yes</b>		

6. New Public Hearings:

Case 510-S-05 Petitioner: Dewey Public Water District Request to authorize the replacement and expansion of a nonconforming Government Building that contains water treatment facilities in the R-2, Single Family Residence Zoning District. Location: Lot 2 of Block 2 of the Original Town of Dewey and that is commonly known as the Dewey Public Water District facility at the southeast corner of Main Street and Third Street in Dewey.

Mr. Hall distributed a Supplemental Memorandum dated August 25, 2005, for the Board's review. He said that a letter has been received from Scott Rodgers, East Bend Township Highway Commissioner indicating support of the proposed project. He said that the Highway Commissioner wanted it to be placed on record that if the road is damaged the repairs must be made to the standards of the township. He said that the Highway Commissioner was concerned with any drainage improvements which may be required such as tile replacement. Mr. Hall stated after review of the site plan that was received on July 19, 2005, it was apparent that the variances are required for the size of the loading berth and screening for both the parking and loading berth. He said that because this is a local government entity and as to not slow down the progress on this

much needed rehabilitation of District facilities the Special Use could be approved with the following condition:

**All required parking spaces with necessary screening and the minimum size of loading berth also with necessary screening shall be provided by the Zoning Compliance inspection or a variance shall be received.**

He said that this will ensure that this much needed rehabilitation of District facilities proceeds with minimal interruption and complies with all requirements of the Zoning Ordinance. He said that there is adequate time for the variance case to be held at the next ZBA meeting. He said that this information was received in plenty of time and we could have identified the need for the variance for this meeting but it was missed.

Ms. Griest informed the audience that this is an Administrative Case and as such the County allows anyone the opportunity to cross examine any witness. She said that at the proper time she will ask for a show of hands for those who would like to cross examine and each person will be called upon. She requested that anyone called to cross examine go to the cross examination microphone to ask any questions. She said that those who desire to cross examine are not required to sign the witness register but are requested to clearly state their name before asking any questions. She noted that no new testimony is to be given during the cross examination.

Mr. John Hurd, Chairman of the Dewey Public Water District stated that the water district was formed in 1966 and the original plant was built in 1968. He said that at this time it is necessary to update the plant due to the condition of the facility. He said that their loan has been approved and they are awaiting their permit from the IEPA which should be received within the next 60 days. He said that the water district was not aware that the land was not zoned properly until the Planning and Zoning Department sent a letter indicating that a Special Use Permit would be required. He requested that the Board approve their request.

Ms. Griest asked the Board if they had any questions for Mr. Hurd.

Mr. Bluhm asked Mr. Hurd if the plant is going to be laid out the same other than the building will be larger.

Mr. Hurd stated that Mr. Bluhm was correct. He said that the only reason that the building will be larger is because of the way the tank must be located.

Ms. Griest asked Mr. Hurd if there was a problem with the variance requirement.

Mr. Hurd stated that he doesn't really understand the screening requirement for the parking lot. He said that they are planning on building a sidewalk, the 10' x 32' pad, from the door out to Third Street for the sole purpose of bringing chlorine from the street up to the building. He said that they may be required to replace a field tile but there should be no damages to the road.

Ms. Griest asked if staff had any questions for Mr. Hurd and there were none.

Ms. Griest asked the audience if they had any questions for Mr. Hurd and there were none.

Ms. Griest asked Mr. Hall if it is customary that the water district buildings were placed in the R-2,

Zoning District.

Mr. Hall stated that the building existed prior to the adoption of zoning.

Ms. Griest asked if the Board should expect to see other instances of this type of request due to the age of other existing water district facilities.

Mr. Hall stated that a water treatment plant cannot exist anywhere in unincorporated areas of the County without a Special Use Permit. He said that in this case this is just a government building and it would also require a Special Use Permit in the Residential Zoning District.

Mr. Hurd stated that the water plant currently sits close to the Sangamon Valley Fire Station, the Dewey Post Office, a barbershop, the grain elevator office and a bank. He said that the only thing that is considered residential is the house which is located next door to the water plant and a couple across the street and everything else is commercial.

Mr. Hall stated that the Special Use process is a way to make sure that everything is done properly and would give the facility a conforming use designation. He said that an Item #12.B. should be added to the Preliminary Draft Summary of Evidence dated August 25, 2005, indicating the following: Mr. John Hurd, Chairman of the Dewey Public Water District testified at the August 25, 2005, hearing that they anticipate to receive the IEPA permit in approximately 60 days or less. He said that and Item #3 should be added to the Documents of Record indicating the Supplemental Memorandum dated August 25, 2005, including an attachment from Scott Rodgers, East Bend Township Road Commissioner and an Item #4 should indicate photographs of the existing facility.

**Mr. Irle moved, seconded by Mr. Bluhm to approve the following condition:**

**All required parking spaces with necessary screening and the minimum size of loading berth also with necessary screening shall be provided by the Zoning Compliance inspection or a variance shall be received.**

**The motion carried by voice vote.**

Ms. Griest stated that Item #14 of the Preliminary Draft Summary of Evidence dated August 25, 2005, indicates a proposed special condition for exterior lighting. She asked Mr. Hurd if the Dewey Public Water District planned on installing night lighting.

Mr. Hurd stated that they do not plan on installing night lighting because there is adequate street lighting.

Mr. Hall stated that Item #14 could be amended to indicate the following: Mr. John Hurd, Chairman of the Dewey Public Water District testified at the August 25, 2005, hearing that no night lighting is proposed to be installed at the facility outside of the existing street lights.

**Finding of Fact for Case 510-S-05:**

From the documents of record and the testimony and exhibits received at the public hearing

conducted on August 25, 2005, the Zoning Board of Appeals of Champaign County finds that:

1. The requested Special Use Permit is necessary for the public convenience at this location.

Mr. Miller stated that the requested Special Use Permit is necessary for the public convenience at this location because of the necessary upgrades to a 30 year old facility which is in much needed repair.

2. The requested Special Use Permit, subject to the special condition imposed herein, is so designed, located, and proposed, to be operated so that it will not be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare.

Mr. Bluhm stated that the requested Special Use Permit, subject to the special condition imposed herein, does so designed, located, and proposed, to be operated so that it will not be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare because the building is basically the same footprint as the old structure except that one wall will be moved so that it will fit around the new tank.

- 3a. The requested Special Use Permit, subject to the special conditions imposed herein, does conform to the applicable regulations and standards of the district in which it is located.**

Mr. Miller stated that the requested Special Use Permit, subject to the special conditions imposed herein, does conform to the applicable regulations and standards of the district in which it is located.

- 3b. The requested Special Use Permit, subject to the special conditions imposed herein, does preserve the essential character of the district in which it located.**

Mr. Steeves stated that the requested Special Use Permit, subject to the special conditions imposed herein, does preserve the essential character of the district in which it is located because government buildings are allowed in the district and the building is basically the same footprint as the old structure except that one wall will be moved so that it will fit around the new tank.

4. The requested Special Use Permit, subject to the special conditions imposed herein, is in harmony with the general purpose and intent of the Ordinance.

Mr. Irle stated that the requested Special Use Permit, subject to the special conditions imposed herein, is in harmony with the general purpose and intent of the Ordinance because it brings a nonconforming government building into conformance.

5. The requested Special Use is not an existing nonconforming use.

Mr. Irle stated that the requested Special Use is not an existing nonconforming use.

**Mr. Irle moved, seconded by Mr. Miller to adopt the Finding of Fact, Documents of Record and Finding of Fact as amended. The motion carried by voice vote.**

**Mr. Steeves moved, seconded by Mr. Schroeder to close the public hearing for Case 510-S-05. The motion carried by voice vote.**

Ms. Griest informed Mr. Hurd that the Zoning Board of Appeals is short one member at tonight's meeting and it is his right to have a full Board present for the final determination. She asked Mr. Hurd if he would like to proceed with the final action at tonight's hearing or continue the case until a full Board is present.

Mr. Hurd stated that he would like the Board to proceed with the final determination.

**Final Determination for Case 510-S-05:**

**Mr. Miller moved, seconded by Mr. Irle that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements of Section 9.1.11B. have been met and pursuant to the authority granted by Section 9.1.6B of the Champaign County Zoning Ordinance, determines that the Special Use requested in Case 510-S-05 is hereby granted with special conditions to the petitioner Dewey Public Water District and John Hurd, Chairman to authorize the replacement and expansion of a nonconforming Government Building that contains water treatment facilities in the R-2, Single Family Residence Zoning District, subject to the following special condition:**

1. All required parking spaces with necessary screening and the minimum size of loading berth also with necessary screening shall be provided by the Zoning Compliance inspection or a variance shall be received.

The roll was called:

Irle-yes	Miller-yes	Schroeder-yes
Steeves-yes	Bluhm-yes	Goldenstein-absent
Griest-yes		

The Board recessed at 9:06 p.m.

The Board resumed at 9:15 p.m.

**Case 517-AT-05 Petitioner: Zoning Administrator Request to amend the Ordinance to allow lots in platted subdivisions between 5/17/77 and 2/18/97 to have access by means of an easement (if included as part of original plat). (Related to Cases 508-V-05 and 509-V-05).**

Mr. Hall stated that the description on the agenda is not the description that was in the legal advertisement nor the description on the memorandum. He said that the legal is correct and suggested that Ms. Griest read the description of the case from the memorandums. He said that

recently a Zoning Use Permit Application was received on a lot that was created by a Plat of Subdivision that was approved by the Champaign County Board on March 21, 1995. He said that on February 17, 1997, with the adoption of Ordinance No. 527 (Case 055-AT-96) the use of easements of access as the only means of access was prohibited. He said that the subdivider was understandably upset when told that the lots that had been lawfully created in March of 1995 had been rendered nonconforming in February of 1997. The Zoning Use Permit was eventually authorized subject to conditions including applications for variance on each lot. The Zoning Administrator saw some merit to the argument that subdividers that comply with all requirements have an expectation that their lots will remain good lots and so this amendment has been proposed. He said that the Board has had some recent cases where people were not located in a plat of subdivision but within a plat of survey and they didn't have access to a public street and it was determined that public safety requires a certain minimum of public road width and he agrees with this approach. He said that he doesn't see why someone should be given a free ride just because they went through the subdivision process which involves a lot more than just street construction and even with the proposed amendment they are still receiving a benefit from going through the subdivision process. He said that after review of the subdivision files there have only been eight instances in which this situation has occurred. He said that this amendment applies to more than just county approved subdivisions it also applies to subdivisions which may have been approved by municipalities or villages. He said that there is one county subdivision which was approved in 1994 and this provision in terms of the number of lots needs to be increased to allow up to six lots to front upon an easement of access. He said that the expectation is that they went through the process and obtained approval for these small lots with an easement of access but the County decided later that there needed to be a certain minimum amount of paving to provide for public safety. He said that it is unknown how this will be received by the County Board but he has written the amendment in a way that he is comfortable although it is not what was originally proposed. He said that he did receive a fax from the attorney in the zoning use permit that triggered this amendment although he has not had a chance to discuss his comments. He said that the Ordinance could have a provision included that if you are in a plat of subdivision and it has already been reviewed once and the standards are met you are not required to return to this Board for a public hearing. He said that if you are in a plat of survey these things were never reviewed by a public body therefore he could see why someone would be required to return for a variance. He noted that this case is not ready for final action and due to Mr. Roseman's illness he has not had an opportunity to work any further on the case.

Ms. Griest asked the Board if they had any questions for Mr. Hall and there were none.

Mr. Don Wauthier stated that this is not an unusual situation of having to place a "grand-father" clause in the Ordinance. He said that we see it all of the time when lot sizes have been changed so this kind of situation is not unusual and people should not have to obtain a variance for every single thing. He said that the provisions for this are good in that it has been limited to a subdivision plat where there has been prior public review for the easement of access in comparison to a plat of survey which has had no public review. He said that he does not care for access easements because they always end up causing trouble for any kind of enforcement activity. He said that the lot owners do have an expectation that the County has reviewed the subdivision plat and was aware that there was an access easement therefore what they have is okay. He suggested that the suggested 1100 feet may work with subdivisions which are already existing but he wondered if it may be a little too long and if at some point in time in the future the County may regret having

that long of an access easement. He suggested that four lots be allowed to use the access easement rather than six because from a public safety standard six may be too many.

Mr. Hall stated that one of the subdivisions did have an 1100 foot long 20 foot wide easement which had three homes fronting on it. He said that Mr. Wauthier raised the point that the Board needs to consider these situations and maybe there are some things out there which have been approved that the Board feels should be reviewed as a variance. He said that by the time you go 1100 feet the conditions may be such that the Board would not be aware of until it is reviewed as a variance. He said that many times this was a family situation where someone got the front lot and someone else got the back lot and no maintenance agreements were made and this may be a good example of a case that the Board would want to review. He said that in the rural districts 1300 feet is allowed for a cul-de-sac because you can only get 12 lots there but this is for a public street cul-de-sac.

Ms. Griest asked what other concerns would the Board consider if they met the depth, width and maintenance.

Mr. Hall stated that the recent variance in Newcomb Township where they had the 8 foot diameter culvert and in order to get a 20 feet wide pavement there is going to have to be something done with that culvert. He said that this condition included submittals by an engineer that was reviewed by our engineer and that is why with 1100 feet there may be some sort of drainage issue that will come up. He said that he did find that the NFPA only requires a turn-around when the length is more than 300 feet. He said that on the October 13, 2005, meeting date Cases 508-V-05 and 509-V-05 are cases which were docketed for the subdivision which triggered the need for the proposed amendment. He said that these cases can be pushed back and this case can be continued to the October 13, 2005, meeting or the Board may be able to hear this case at the September 15, 2005, meeting.

**Mr. Miller moved, seconded by Mr. Schroeder to continue Case 517-AT-05 to the October 13, 2005, meeting. The motion carried by voice vote.**

## 7. Staff Report

Mr. Hall stated that the Policy Committee has scheduled a special meeting on September 15, 2005, and they have offered to use Meeting Room 2. He said that if the docket is reviewed for September 15, 2005, it is possible that the ZBA could utilize Meeting Room 2 instead. He said that the topic requiring the special Policy Committee meeting is so controversial that they will probably require Meeting Room One due to the anticipated number of attendees.

Ms. Griest stated that she would like a "thank you" extended to Administrative Services for considering the ZBA's requirements for Meeting Room One.

**The consensus of the Board is to move the September 15, 2005, meeting to Meeting Room Two to allow the special Policy Committee meeting use of Meeting Room One.**

8. Other Business

A. Amendment of Section 8.4 of the ZBA Bylaws to lower the number of required affirmative

votes to be consistent with the Statutory requirement of four votes.

Mr. Hall stated that this amendment was noticed on the August 12, 2005, agenda and was necessary because the ByLaws became out of date when the State lowered the number of required affirmative votes to four. He read the proposed text for Section 8.4:

**8.4 No Final Determination shall be made at a meeting where less than four board members are present. A concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to grant any Variance or Special Use Permit under the terms of the Ordinance, or to recommend any amendment of the Zoning Map or Ordinance Text to the Governing Body.**

**Mr. Irle moved, seconded by Mr. Bluhm to approve the Amendment to Section 8.4 of the ZBA Bylaws to lower the number of required affirmative votes to be consistent with the Statutory requirement of four votes. The motion carried by voice vote.**

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

None

10. Adjournment

The meeting adjourned at 9:45 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals



