

AS APPROVED DECEMBER 3, 2009

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: July 30, 2009

**PLACE: Lyle Shields Meeting Room
1776 East Washington Street**

TIME: 7:00 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Doug Bluhm, Catherine Capel, Thomas Courson, Roger Miller, Melvin Schroeder, Eric Thorsland, Paul Palmgren

MEMBERS ABSENT : None

STAFF PRESENT : John Hall, Leroy Holliday, J.R. Knight

OTHERS PRESENT : Jeanine French, Dennis French, Robert Miller, Paul Cole, Jed Gerdes, Barbara Gerdes, Sharon Lacquet, Maria Lacquet, Robert Gerdes, Phyllis Benschneider, Shawn Walker, Carl Smith, Brian Sullivan, John Fulton, Dwight Farber, Sherry Schildt

1. Call to Order

The meeting was called to order at 7:04 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

Mr. Bluhm requested a motion to rearrange the agenda and hear Case 647-V-09, Dennis and Jeanine French prior to Case 645-S-09, Robert and Barbara Gerdes.

Mr. Thorsland moved, seconded by Ms. Capel to rearrange the agenda and hear Case 647-V-09, Dennis and Jeanine French prior to Case 645-S-09, Robert and Barbara Gerdes. The motion carried by voice vote.

5. Continued Public Hearing

1
2 ***Case 645-S-09** Petitioner: **Robert and Barbara Gerdes** Request: **Authorize the construction and use**
3 **of a “Residential Landing Area” as a Special Use in the AG-1, Agriculture Zoning District.** Location:
4 **An approximately 83 acre tract that is approximately the West Half of the Southwest Quarter of**
5 **Section 33 of Ayers Township and commonly known as the farm at 52 CR 2700E, Broadlands.**
6

7 Mr. Bluhm informed the audience that this is an Administrative Case and as such the County allows anyone
8 the opportunity to cross examine any witness. He said that at the proper time he will ask for a show of
9 hands for those who would like to cross examine and each person will be called upon. He requested that
10 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
11 those who desire to cross examine are not required to sign the witness register but are requested to clearly
12 state their name before asking any questions. He noted that no new testimony is to be given during the cross
13 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
14 from cross examination.
15

16 Mr. Hall distributed a Supplemental Memorandum dated July 24, 2009, to the Board for review. He said
17 that Item #7.C(2) of the Summary of Evidence dated July 30, 2009, included as an attachment to the July 24,
18 2009, Supplemental Memorandum, should be revised to indicate the following: At the June 11, 2009, public
19 hearing, attorney Paul Cole, representing several neighbors to the west, indicated that if it were possible to
20 place a wind turbine on their property then his clients would like to have that opportunity.
21

22 Mr. Hall stated that the Supplemental Memorandum dated July 30, 2009, has some additional information
23 for the Summary of Evidence. He said that the following text should be added as a new Item #8.O:
24 Regarding the economic impact of the proposed RLA versus the impact of the anticipated wind farm: (1)
25 The average annual per acre value of wind farm lease payments is approximately \$50 per acre assuming a
26 gross density of one turbine per 70 acres and a lease value of \$3,500 based on information about the first
27 wind turbine developments in McLean County in 2002; and (2) Jed Gerdes, son of the petitioners, testified
28 at the June 11, 2009, public hearing that he raises good quality beans which require fungicides to be sprayed,
29 and he can save five to ten dollars an acre by providing a landing strip closer to where he farms. When that
30 savings is multiplied over thousands of acres it provides a strong financial incentive to have a landing strip;
31 and (3) a wind farm would also have a positive effect on local property tax revenues that staff has not tried
32 to estimate.
33

34 Mr. Hall stated that he does not know how accurate any of these numbers are but he does know that the
35 information is based on the McLean County wind farms and the net density is based on the special use. He
36 said that it is virtually impossible, unless someone violates their contract with the wind farm, to find out how
37 much annual lease payments are and for that reason the Board may not decide to not include this item of
38 evidence.
39

40 Mr. Hall reviewed the following which should be added as a new Item #10.D: Regarding RLA’s previously
41 authorized by Champaign County and RLA’s still in operation: (1) The Special Use Permit requirements for
42 RLA’s were added to the *Zoning Ordinance* in Ordinance No. 320 (Zoning Case 642-AT-88) adopted on
43 August 23, 1988. At that time there were many RLA’s in operation in the County that became legal
44 nonconforming uses at that time; and (2) Since the adoption of Ordinance No. 320, Champaign County has

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1 authorized three SUP's for RLA's, as follows: (a) Case 672-S-88 was approved on for petitioner Stu
2 Moment in Section 7 of Sidney Township, however, this RLA does not appear to be in use anymore. The
3 SUP is attached to the land so an RLA could be reestablished on that location, presuming all the County
4 zoning and IDOT requirements could still be met; and (b) Case 724-S-90 was approved on for petitioner
5 Dean Schwenk in Section 12 of Pesotum Township, and appears to still be in use; and (c) Case 750-S-91
6 was approved for petitioner Lowell Routh in Section 36 of St. Joseph Township, and appears to still be in
7 use; and (3) Regarding other known RLA's in Champaign County on August 23, 1988: (a) In Section 12 of
8 Newcomb Township a Mr. Furtney established an RLA on July 1, 1986, but did not obtain a Zoning Use
9 Permit (ZUP) for the use. It does not appear that this RLA is still in use; and (b) In Section 1 of Hensley
10 Township, Riley McCulley established an RLA on June 21, 1973, which was before the adoption of zoning
11 and allowed it to be used as a legal nonconforming use. This RLA appears to still be in use; and (c) In
12 Section 12 of Mahomet Township, Voyle Spence established an RLA on June 26, 1969, which was before
13 the adoption of zoning and allowed it to be used as a legal nonconforming use. However, this RLA was not
14 in use as of August 23, 1988, and would have to be reestablished by way of a SUP; and (d) In Section 28 of
15 Hensley Township, Frank Andrew established an RLA on January 18, 1949, which was before the adoption
16 of zoning and allowed it to be used as a legal nonconforming use. It does not appear that this RLA is still in
17 use; and (e) In Section 28 of Mahomet Township, William Herriot established an RLA on April 8, 1977, but
18 did not obtain a ZUP for the use. It does not appear that this RLA is still in use; and (f) In Section 31 of
19 Somer Township, Roy Reifsteck established an RLA on September 9, 1959, which was before the adoption
20 of zoning and allowed it to be used as a legal nonconforming use. It does not appear that this RLA is still in
21 use; and (g) In Section 21 of Scott Township, Mark Igoe established a Heliport/RLA on March 17, 1988, but
22 did not obtain a ZUP for the use. This RLA appears to still be in use; and (h) In Section 27 of Scott
23 Township, John Litchfield established an RLA on September 5, 1980, but did not obtain a ZUP for the use.
24 This RLA appears to still be in use; and (i) In Section 29 of Rantoul Township, Robert Schmidt established
25 an RLA on July 21, 1983, but did not obtain a ZUP for the use. However, a ZUP was obtained at a later date
26 and the lot containing the RLA was the subject of Zoning Case 528-V-05. This RLA appears to still be in
27 use; and (j) In 6 of St. Joseph Township, Roscoe Knott established an RLA on November 29, 1949, which
28 was before the adoption of zoning and allowed it to be used as a legal nonconforming use. It does not appear
29 that this RLA is still in use; and (k) In Section 16 of St. Joseph Township, Dale Busboom established an
30 RLA on August 3, 1970, but did not obtain a ZUP for the use. This RLA appears to still be in use; and (l) In
31 Section 22 of Sidney Township, Harry Justus established an RLA on August 23, 1966, which was before the
32 adoption of zoning and allowed it to be used as a legal nonconforming use. It does not appear that this RLA
33 is still in use.

34
35 Mr. Hall stated that Dale Rust, Flight Safety Coordinator for IDOT Division of Aeronautics, has stated
36 that there have been several RLA's in this area that are no longer in use therefore staff added an item of
37 evidence which speaks about when RLA's were added to the *Zoning Ordinance*. He said that three
38 RLA's were approved since the amendment in 1988. He said that the item of evidence also indicates a
39 listing of known RLA's in Champaign County and whether they are in use or not. He said that special
40 use permits run with the land and as far as he knows none of the authorized RLA's has sunset conditions
41 placed upon them. He said that several of the RLA's do not appear to be in use but their special use
42 permit authorizations are still valid and could be reconstituted at any time.

43
44 Mr. Hall gave a brief overview of Attachment D, Revised Wind Farm Separations for the subject

1 property. He said that previously staff had only mapped wind farm separations that were relevant to the
2 Petitioner's property but there is a wind farm separation along every public road and that reduces the
3 area available for placement of the turbines. He said that along every road on the map there is a wind
4 farm separation indicated and staff is assuming 550 feet along both sides of the road because it is
5 assumed that virtually every other landowner would be involved in the wind farm. He said that there is
6 a 550 foot separation that travels the entire distance of the proposed RLA along the Champaign County
7 and Douglas County line. He said that it has not been confirmed as to whether Douglas County would
8 require a separation from the road but he hasn't seen any county yet that wouldn't. He said that the map
9 indicates that inside the Allerton and Broadlands ETJ's staff has dashed all of the separations along the
10 roads within those ETJ's. He said that it is unknown if those villages will require the separations but it is
11 assumed that Horizon Wind Energy will honor those separations.

12
13 Mr. Hall stated that staff revised the separation around the subject property but staff still did not get the
14 separations to the west correct. He said that Mr. Gerdes has a roughly corrected copy that he will
15 distribute at tonight's public hearing to the Board for review. Mr. Hall stated that Mr. Gerdes' corrected
16 copy should be entered as a new item of evidence but suffice to say the 1,200 foot separation from the
17 Gerdes farmstead does apply across the road.

18
19 Mr. Bluhm asked the Board if there were any questions for Mr. Hall.

20
21 Mr. Courson asked Mr. Hall if an application has been received for a wind farm in this area.

22
23 Mr. Hall stated no.

24
25 Mr. Courson asked Mr. Hall if there was a met tower located in this area.

26
27 Mr. Hall stated that he has heard rumors that there is a met tower in Douglas County but he has not
28 confirmed its existence.

29
30 Mr. Palmgren asked Mr. Hall what the signed contract means. He said that Ms. Carole Smith Horst
31 indicated in her letter that she is concerned that her family may not have the opportunity for a wind
32 tower on their property if Mr. Gerdes' request is granted. He said that the March 12, 2009, and March
33 26, 2009, indicate that the Board discussed future use and it was determined that the Board could not
34 speculate what will happen down the road therefore if there is no contract and no permit for a wind farm
35 then we may be restricting Mr. Gerdes' use for something that might happen in the future. He noted that
36 he visited the subject property and found that it is a rather flat area.

37
38 Mr. Hall stated that in the very beginning staff spoke the State's Attorney about this very issue and staff
39 did not go to the trouble of obtaining a written opinion although Christina Papavasiliou, Assistant
40 State's Attorney assured staff that the Board is completely within its rights to take into account the
41 anticipated wind farm and that anticipation could be taken into consideration with this particular special
42 use permit. He said that regarding the characteristics of the subject property, he had the same kinds of
43 questions because it has been discussed that ridges are great places for wind farms although the subject
44 property is not located on a ridge. He said that the only thing that staff had at its disposal was a wind

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1 site selection tool that some state agency had available and it is actually intended for homeowner use.
2 He said that staff took some time to use the tool to see if they could identify this depressed area as any
3 different than any higher areas around it and all staff could identify was the wind speed and it did not
4 seem to correlate to the topography at all. He said that he understands that Horizon is using a much
5 more advanced technique.
6

7 Mr. Palmgren asked Mr. Hall if staff has a proposal which indicates where Horizon may have in mind.
8

9 Mr. Hall stated that he has not seen anything on a map but it has been reported that the wind farm will
10 include areas in the counties of Champaign, Vermilion, Edgar and Douglas. He said that there is a ridge
11 north of the subject property which goes for some distance which would include part of Vermilion and
12 Edgar counties.
13

14 Mr. Palmgren stated there may be higher ground to the south also although it is hard to say what might
15 happen without looking at a contract. He said that his guess is that the company visits a site and if it is a
16 favorable area then they attempt to get landowners to sign on to the anticipated project. He said that if
17 the project happens it happens and if it doesn't it doesn't but the Board should not hold up a request
18 from a landowner who is not signed on in the mean time.
19

20 Mr. Hall clarified that the State's Attorney indicated that the Board does not have to wait on a wind farm
21 but can plan for a wind farm today.
22

23 Mr. Miller stated that it is his opinion that perhaps the purpose of the RLA is also because of speculation
24 of future wind towers being developed in the area of the subject property and the intended use is to
25 create a safe zone where the Petitioner is not forced to live in a wind farm area. He said that his opinion
26 is based on previous testimony presented by the Gerdes family and the timing of the RLA application is
27 ironic in that it came shortly after the approval of the wind farm ordinance. He said that it concerns him
28 that it appears to be a race as to who gets what first. He said that it is his opinion that granting this
29 request is in the best interest of the County.
30

31 Mr. Miller stated that he reviewed the listing of approved existing RLA's and many of those names he
32 recognized and is aware of where they are located. He said that many of the landowner's of the RLA's
33 are pilots that have their own aircraft and use the RLA for recreational purposes or private use. He said
34 these RLA's are justified because the landowners use it for themselves but the proposed RLA is not to
35 be used by a licensed pilot which is also the landowner. He said that it appears that the proposed RLA
36 in this case is going to be used for commercial use only.
37

38 Mr. Palmgren stated that in looking at the layout, which appears to be changing daily, it is a small piece
39 of property that is being taken out of the area. He said that when it comes down to it only a few hundred
40 acres, which would include one or two towers, is being taken out of the picture. He said that if Mr.
41 Gerdes' objective was to block the wind farm then, if he was Mr. Gerdes, he would locate the RLA in a
42 location where he could do the most damage. Mr. Palmgren stated that he believes that Mr. Gerdes is
43 sincere in trying to establish a commercial use for his conservation efforts.
44

1 Mr. Thorsland stated that he has heard both sides of this issue and is concerned that the County only has
2 jurisdiction over 44% of the area. He said that it is unknown what Douglas County will do in regard to a
3 wind farm and he is worried putting down a narrow band which would push Champaign County out into
4 an area that we have no real jurisdiction over.

5
6 Mr. Hall stated that he hopes that the Board does not focus too much on what has been said in other
7 hearings. He said that during this particular hearing the Board needs to focus on what has been brought
8 before them and the criteria that must be met. He said that one of the most difficult criteria to meet on a
9 special use permit is if the use is necessary for the public convenience. He said that even when you
10 have a business which starts out illegally and builds a client base it is easy to prove that it is necessary
11 and in this case there has been very little evidence about necessary for public convenience. He said that
12 people have been getting their crops sprayed for a very long time without an RLA in this location. He
13 said that there is an anticipated wind farm that will benefit more than just the neighbors of this area and
14 the Board needs to take this into account when they make their final determination. He requested that
15 the Board remain focused on the evidence that has been presented at this hearing that is pertinent to the
16 criteria that the Board has to deal with.

17
18 Mr. Courson stated that there has been testimony indicating that an existing RLA that was being utilized
19 by the area has been closed.

20
21 Mr. Hall stated that the Board has not received testimony indicating that the RLA that was closed was
22 used for anything other than for Mr. Gerdes' rye grass which does not warrant public convenience but if
23 this is the Board's interpretation of public convenience then they need to make it very clear in the
24 finding so that there won't be any mistakes as to what was considered public convenience during this
25 hearing.

26
27 Mr. Thorsland asked Mr. Hall if RLA's, by nature, are private.

28
29 Mr. Hall stated that RLA's are not required to be private.

30
31 Mr. Miller stated that Item #7.C.2 of the Revised Draft Finding of Fact dated July 24, 2009, indicates
32 that Mr. Cole, representing several neighbors to the west, indicated that his clients had signed contracts
33 to allow Horizon Wind farm to place a turbine on their property and Item #7.C.4 indicates that Mrs.
34 Carole Horst has indicated in her letter to the Board that she also had a contract on her property to place
35 a wind turbine from Horizon Wind Farms. He asked Mr. Hall if there was a conflict in these statements.

36
37 Mr. Hall stated that both of those statements are true.

38
39 Mr. Miller stated that perhaps Mr. Carl Smith could clarify if there are actual signed contracts or did
40 Horizon Wind Farms approach the landowners with the proposals.

41
42 Mr. Hall stated that staff was only trying to accurately reflect the minutes.

43
44 Ms. Capel stated that if the County can only enforce 44% of the land around the RLA then we could be

1 creating an unsafe RLA.

2
3 Mr. Hall stated that for that part that is located within Champaign County’s zoning jurisdiction staff and
4 the Board have done all they can to assure the safety of the RLA and if Allerton and Douglas County do
5 not believe that this is necessary within their jurisdiction then that is their call. He said that it is hard for
6 him to reconcile this but he does not believe that it is ruled out as a viable position to take.

7
8 Ms. Capel stated that she understands how it might be a viable position but if the County is going to
9 make sure that only 44% of it is safe and hang the rest of it then that is kind of abdicating our
10 responsibility.

11
12 Mr. Hall stated that it appears to be inconsistent with what the County Board decided is necessary for a
13 safe wind farm.

14
15 Mr. Bluhm asked Mr. Hall if Allerton has a comprehensive plan.

16
17 Mr. Hall stated that Allerton does not have extra-territorial jurisdiction. He said that this is an extra-
18 territorial zoning protest jurisdiction because neither Allerton nor Broadlands have comprehensive plans
19 but the state wind farm regulations do not refer to them having comprehensive plans but simply refers to
20 within one and one-half mile of a municipal zoning jurisdiction and both Allerton and Broadlands have
21 their own zoning jurisdiction.

22
23 Mr. Bluhm stated that Allerton does not have to give any approval that Champaign County is placing a
24 “safe zone” into their one and one-half mile jurisdiction.

25
26 Mr. Hall stated no because that “safe zone” does not apply within their one and one-half mile.

27
28 Mr. Bluhm stated that he is discussing the approach slopes. He asked Mr. Hall if Allerton had a
29 comprehensive plan we would also need their approval.

30
31 Mr. Hall stated that the approach slopes are enforced by I.D.O.T.

32
33 Mr. Bluhm stated that I.D.O.T. would have to check with Allerton because if they did have a
34 comprehensive plan within the next five years the area around the proposed RLA could be designated as
35 residential.

36
37 Mr. Hall stated that this is one of those areas of overlapping planning jurisdictions and the approach
38 slope is valid therefore whether Allerton approves it or not is up to I.D.O.T.

39
40 Mr. Bluhm asked the Board if there were any additional questions for Mr. Hall and there were none.

41
42 Mr. Bluhm called Mr. Jed Gerdes to testify.

43
44 Mr. Jed Gerdes, who resides at 1448 CR 2700E, Ogden stated he hopes to answer questions and

1 alleviate any concerns regarding the proposed RLA. He noted to all of his friends and neighbors in
2 attendance that regardless of the outcome of his request there will be no hard feelings because everyone
3 is trying to do what is best for their own ground and their own purposes.
4

5 Mr. Gerdes stated that the timing of his request is terrible and as soon as he found out that the airstrip
6 that he was previously utilizing was tilled under then he started his application for this request. He said
7 that he and his family drove to Villa Grove for pizza and realized that the airstrip was no longer in
8 existence. He said that he contacted Steve Riggins, owner of the previous airstrip, and asked why the air
9 strip no longer existed and Mr. Riggins informed him that he had sold his airplane and no longer needed
10 the airstrip.

11
12 Mr. Gerdes stated that the reason for his request is because, as a farmer, he fell in love with the soil and
13 loves raising crops and utilizing the rye grass assists him in preserving and improving the soil in the
14 area. He said that he will be using the air strip for the rye grass and urea application. He said that there
15 are a lot of RLA's in Champaign County but they are all in the northern portion of the County and not
16 within his area.

17
18 Mr. Gerdes read a letter dated July 30, 2009, from Rick Reed, owner of Reed's Fly-On Farming as
19 follows:

20 It was my intention to be in attendance at the Champaign County Zoning Board Meeting tonight.
21 Unfortunately, we are currently working daylight to dark and I am unable to make it. I am
22 sending this letter to Jed Gerdes, encouraging him to use it as he sees fit.
23

24 At the last Board meeting, I stated my case in support of the Gerdes' request to build a landing
25 strip on their farm. I still urge that the vote be in their favor. I work a great deal between
26 Villa Grove and Oakwood and there is no suitable place for me to land in that area. If I had
27 a landing strip on Jed's ground today, it would have saved about three hours of extra flight
28 time while working seed corn in the Oakwood area.
29

30 I truly appreciate the concern of surrounding landowners in the realization that wind towers
31 would have to be set back from an approved landing strip. However, it is a fact that no permit
32 has been applied for by any wind developer, and planning for a wind tower that is only a
33 possibility seems a bit premature. It is my understanding that Horizon is still in the exploratory
34 stage and has yet to develop a plan and/or pattern layout should they decide to enter the
35 permit process. It is very possible that, with or without an airstrip approved, towers may not
36 be erected in that area.
37

38 I respectfully urge the Board to consider the potential good that will come from allowing the
39 construction of this air strip, good not just for the Gerdes family but for all the agricultural
40 community.
41

42 Mr. Gerdes stated that one pilot serves multiple farmers whereas most of the RLA's serve multiple
43 pilots as a hobby therefore where is the public need for those RLA's. He said that if someone has a
44 puddle jumper that someone uses just for fun on the weekends their RLA does not serve any public need

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1 where as his airstrip is meant to meet the farmer's public need. He said that he spoke to Mr. Reed and
2 he is very interested in utilizing the proposed air strip and he has also spoken to his local fertilizer dealer
3 offering the air strip to utilize their needs. He said that his local fertilizer dealer's pilot clipped a power
4 line and had to fly back to Rantoul because there was no place for him to land in the area that he was
5 serving therefore there is safety concern in having no facility for those pilots to land in the southern
6 portion of the County.

7
8 Mr. Gerdes indicated on a map indicating the general location of his farm ground to show how the RLA
9 is centrally located for his use. He said that his partner, Charles Goodall, desires to plant more cover
10 crops in the Sidell area and is represented in green on the map. He said that the subject property is
11 where the central hub of his operation is located because it is where he stores the seed, farming
12 equipment, etc. He said that until the previous meeting he was not sure as to who would protest his
13 request for the RLA and since then he has put out some proposals to help those folks out because if they
14 want to have a wind turbine on their property then that is their business. He said that he has sent a
15 proposal to the Smith's who farm 80 acres to the east of the landing strip but has not received any
16 response. He said that the RLA has a 1,000 feet setback to the south end of the landing strip and 750
17 feet setback to the north end. He said that in the current situation this is the setback from his property
18 and if the neighboring property setback is taken into consideration there is no possibility for any wind
19 turbine, whether there is a landing strip or not, to be placed within the first quarter-mile. He said that he
20 has an 80 acre field which is a little over a mile to the east which has excellent fertility and indicated in
21 his proposal that he would be willing to trade the Smith's properties so that they could have all of the
22 turbines that they desire but again he has received no response. He said that the Miles' family owns a
23 larger property to the west of the proposed RLA therefore they would not be interested in trading an 80
24 acre field for their larger tract. He said that the 3500 feet separation would only give the Miles'
25 neighbor 350 feet away from a wind turbine and, with the Board's approval, it could be moved back to
26 3200 feet on the north/south line which would allow them 650 feet which would give ample room to set
27 a wind turbine and give them at least a 100 foot leeway. He said that with this approval the Miles could
28 have a wind turbine and he could have the rye grass flown on it. He said that he spoke to the pilots and
29 they indicated that just losing 300 foot on one side of the airstrip would not be a big deal and they could
30 work with it.

31
32 Mr. Gerdes stated that the 550 feet minimum separation is correct for Douglas County and the road
33 which lies in line with the southern end of the airstrip makes no possibility of a wind turbine being
34 placed in the flight place of a plane because the 550 feet separation will make it clear for the next mile.
35 He said that the Smith's have a very small area to work with and the Miles' property, with the 1200 feet
36 setback from a non-participating dwelling, 550 feet along other roads (assuming that the other
37 landowners are participating otherwise the separation would be 750 feet), his proposal to the Board
38 would make the entire airstrip effect 100 acres for a wind turbine therefore causing very minimal
39 impact. He said that Theodore Gray, a landowner of a five acre parcel to the north, has indicated that he
40 is not interested in participating in the wind farm project therefore the north end of the airstrip would be
41 clear of wind turbines.

42
43 Mr. Gerdes stated that there has been much talk about a wind farm from north of Newman to north of
44 Homer, which would encompass most of his farmland, yet nothing has been submitted to the County.

1 He said that it is unknown where the wind farm will actually be therefore how can one spot be
2 designated over another because with all of the rumors it could be anywhere. He said that it appears
3 ridiculous to hold up the whole southern part of Champaign County on a what if.
4

5 Mr. Gerdes stated that it is his understanding that the Horizon contracts offers \$40 per acre for an option
6 on the landowners ground and then the contract can be extended with two other \$20 payments. He said
7 that basically once the contract is signed by both parties and the monies are received Horizon can lock
8 up the ground for the next 47 years where they can build a wind turbine farm but will not be required to
9 build a wind turbine farm. He said that just because someone has a signed contract does not mean that
10 they are going to receive a wind turbine it only means that Horizon is taking an option out on the
11 ground.
12

13 Mr. Gerdes stated that a lot of government funding comes into play with these projects and companies
14 have made proposals before and not followed through such as the ethanol plants at Tuscola and Royal
15 and at the Anderson's location, and the auto manufacturer in Fithian. He said that companies make
16 proposals all of the time but as time goes along things change therefore how can everything else be held
17 up on a "what if" scenario. He said that a big part of tonight is setting a precedence and if the Board
18 uses a "what if" scenario on a turbine setback an airstrip does not have to be so far from a turbine but the
19 turbine has to be so far from an airstrip therefore if the Board is attempting to deem whether an airstrip
20 is worthy based on turbine factors that means that this method would have to used across the board on
21 everything. He said that if someone wanted to build a house outside of Homer and they placed their
22 house 75 feet from the road they could wipe out an entire 80 acre parcel from having a wind turbine. He
23 said that the Board cannot make one rule for houses and one rule for airstrips because there are a lot of
24 "what if" scenarios when you journey down this slippery slope. He asked if someone placed a turbine
25 on a property and someone else placed a house on the property could the person who built the house
26 request that the wind turbine be taken down. He said that the Board will want to be fair and set a
27 precedence that the Board will have to respect at every meeting after this for all other requests.
28

29 Mr. Gerdes stated that the proposed airstrip is clear on all sides in regards to setbacks and adheres to all
30 F.A.A. guidelines and has been determined to be an ideal place for an airstrip. He said that wind turbine
31 setbacks cannot be used to determine an airstrip's liability because there are no wind turbines present
32 and there may not be for several years. He said that he has been asked if he intends to use his airstrip for
33 public use and the answer is yes, if any pilot desires to use his airstrip then they are more than welcome
34 to do so. He said that if any of his proposals would help out the Smith family or the Miles family then
35 he would be happy to work with them. He said that this request is very important to his operation and
36 he would be very disappointed if it were denied.
37

38 Mr. Bluhm asked the Board if there were any questions for Mr. Gerdes and there were none.
39

40 Mr. Bluhm asked if staff had any questions for Mr. Gerdes.
41

42 Mr. Hall complimented Mr. Gerdes for making proposals to two of his neighbors attempting to address
43 their concerns.
44

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1 Mr. Gerdes stated that he lives and works with his neighbors everyday therefore he would like to work
2 something out that would be agreeable to everyone.

3
4 Mr. Hall asked Mr. Gerdes if the Board would consider continuing Case 645-S-09, would it be possible
5 for the Board to hear from some of those neighbors whom he made the proposals to.

6
7 Mr. Gerdes stated that he does not know. He said that his neighbors have had his proposal for at least
8 ten days and he hasn't heard anything to date. He said that the neighbors are in attendance tonight
9 therefore perhaps they could speak at this hearing regarding his proposals.

10
11 Mr. Hall stated that the idea that Mr. Gerdes proposed regarding reducing the setback to a turbine on
12 one side would require a hearing for that request and would require testimony from a pilot indicating
13 that it would not seriously affect the safety of the airstrip. He said that he would like to add to Mr.
14 Gerdes' analogy about homes in the area of the wind farm. He said that under the *Champaign County*
15 *Zoning Ordinance* a landowner can sell three or four lots "by-right" and the County has no discretion as
16 to where those lots may or may not go and it is only after that point when the Rural Residential Overlay
17 requirement is involved that the County would have discretion where people could build homes. Mr.
18 Hall asked Mr. Gerdes to clarify his statement regarding how many acres the airstrip would affect, was
19 it 100 acres in Champaign County or in Douglas County also.

20
21 Mr. Gerdes stated that he meant that 100 acres on the Miles' property would be affected by the airstrip.

22
23 Mr. Bluhm asked the audience if anyone had any questions for Mr. Gerdes at this time.

24
25 Mr. Carl Smith, who resides at 214 CR 2700E, Allerton asked Mr. Gerdes to clarify if the 1,000 foot
26 separation distance from a wind turbine to one of his landlord's property is what is required from the
27 County for non-participants or what Mr. Gerdes proposed.

28
29 Mr. Hall stated that the County requires a 1,000 foot separation distance from a wind turbine to non-
30 participating landowners who are within one-quarter mile of a public street.

31
32 Mr. Smith asked what the separation distance would be for someone who is more than one-quarter mile
33 from the public street.

34
35 Mr. Hall stated that there would be a separation distance of 750 feet.

36
37 Mr. Smith stated that there is more than just a little 20 foot circle that would be allowed on a property
38 that is targeted for a wind turbine.

39
40 Mr. Gerdes stated that it really depends on what the other neighbors do because you know that you have
41 to stay 550 feet from those neighbors who participate but if they do not participate in the wind farm then
42 the separation is 750 feet.

43
44 Mr. Bluhm asked if anyone else in the audience would like to cross examine Mr. Gerdes and there was

1 no one.

2

3 Mr. Bluhm called Mr. Paul Cole to testify.

4

5 Mr. Paul Cole, attorney representing Robert and Barbara Miller, stated that he would like to correct a
6 previous statement indicating that Hester Miles owns property on the west side although that is incorrect
7 it is Robert Miller who owns the property on the west side of the subject property. He said that the
8 materials that he received indicated that he represents Hester Miles and Robert and Barbara Miller
9 although this is incorrect, he is only representing Robert and Barbara Miller. He said that none of his
10 clients have a contract for a wind turbine to be placed on their property. He said that he thought very
11 briefly of patting Mr. Gerdes on the back and telling him that he is an earnest, likable person and if he
12 were sitting on the Board he would want to give him what he is asking for but Mr. Gerdes is asking the
13 Board to set a precedence that is just wrong. He said that the Board is currently being asked to ignore
14 the law and it is really seductive and tempting to make this issue all about wind farms and whether
15 someone has a contract to place a turbine on their property. He said that he is present tonight to
16 represent the Millers and asking the Board to look at their responsibility under the law. He said that he
17 is present at tonight's meeting because the Miller's property rights are about to be effected by a decision
18 allowing this landing strip.

19

20 Mr. Cole stated that everyone that owns land owns it from the center of the earth up to the surface on to
21 the sky and everyone would like to think that they could do whatever they want to do whenever they
22 want to on their land although the only reason that they can't is because we have things like zoning
23 ordinances, which makes perfect sense. He said that personally, he does not want a pig farm next to his
24 house in the middle of Champaign but the Zoning Ordinance will allow a special use permit for a
25 landing strip, as it applies in this situation and if it was allowed, would be taking away the Miller's
26 rights for their property. He said that the Miller's have the right to come before this Board for a special
27 use permit for a wind turbine although if the proposed landing strip is approved the Miller's will be
28 denied their right to request their special use permit. He said that approval of the landing strip will be as
29 if the Miller's had their hearing without ever having it and were denied and that should not happen and
30 that is not what the Zoning Ordinance intends. He said that the Zoning Ordinance says: "necessary at
31 this particular location for the public convenience" therefore this Board is not allowed to authorize this
32 RLA unless it has found the very specific reasons that honor the Ordinance.

33

34 Mr. Cole stated that Item #7.F.3 of the Revised Draft Summary of Evidence dated July 24, 2009,
35 indicates that Mr. Gerdes gave testimony at the June 11, 2009, public hearing that his family needs to
36 establish a new landing strip so they can continue using rye grass to protect their fields from erosion.
37 Mr. Cole said that Item #7.F.5 indicates that Mr. Gerdes testified that he is one of the only farmers in
38 Central Illinois who has been working with rye grass and Item #7.F.13 indicates that Mr. Gerdes
39 testified that he could save five to ten dollars per acre by providing a landing strip closer to where he
40 farms which is the essence of the math in that this is the location of the airstrip in relation to Mr. Gerdes'
41 farming operation. Mr. Cole asked what it is about this location that is so necessary for the public or is
42 it only necessary for Mr. Gerdes' economic convenience. Mr. Cole stated that there has been some
43 information presented concerning the relative income that might arise from farming versus wind farming
44 and the possibility that wind farm contracts signed by farmers might tie up their land for many years

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1 without the prospect of a wind farm ever being developed, so what. Mr. Cole stated that everyone has
2 the right to use their land for whatever economic purpose they seek and if we were really looking at the
3 comparison of a potential wind farm with a potential field of rye grass, assuming that the wind farm
4 happened, wouldn't we be looking at a very large increase in value of a taxable base generating a lot of
5 money to the County. He said that if the wind farm doesn't happen then no harm is done because all we
6 have now is agriculture just as Mr. Gerdes has currently. He said that the possibility that some immense
7 benefit might come along is good and the fact that it only might come along does not mean that Mr.
8 Gerdes is entitled to his airstrip. Mr. Cole asked the Board what is the law. He said that he is a lawyer
9 and when a lawyer stands up and states, "this is the law," someone wants to shoot him but the law is
10 there for a reason and it is there because a landowner has the right to do what they want to do unless
11 there is a law that states otherwise. He said that if the law is used in a way that detracts from rights that
12 a landowner has anyway is not right. He said that the Miller's may not know whether they can place a
13 wind turbine on any particular acreage of their land but they don't want to be told by this Board that
14 their current rights have now disappeared and they might not as well try to come before the ZBA for a
15 special use permit because it has already been denied. He said that when something like this happens it
16 is called condemnation which is when a government body takes from the property owner the rights that
17 they had then that government body is suppose to compensate the property owner for it. He said that
18 this is a taking and pardoned himself for being so direct with the Board. He said that this use must be
19 proven to the Board that it is necessary for the public convenience at this location. He said that he hopes
20 that Mr. Gerdes is able to find another location for his hired pilot to land his airplane because it would
21 seem that there are other RLA's around the County, some unused, that could be used or revived. He said
22 that this means that the proposed RLA is not so special therefore it is not necessary at this location
23 unless the Board happens to buy into Mr. Gerdes' presentation that it is more central to his private
24 operation therefore it helps him personally, privately and economically but if that is the only reason then
25 the Board should not approve his request.

26
27 Mr. Bluhm asked the Board if there were any questions for Mr. Cole.

28
29 Mr. Courson asked Mr. Cole to define the term "public."

30
31 Mr. Cole stated that this is an interesting request and it has always been such. He said that if you look at
32 a special use permit application for a common convenience food store or gas station within a
33 neighborhood which normally does not house such things then "public convenience" is applicable
34 because it is a service the general public cannot otherwise obtain and is a lot more convenient for them
35 to get to it if it is within three blocks of their home rather than one mile away. He said that the term
36 "public" is meant in terms of a lot of people and by a lot of people he does not mean of the number of
37 different classes of people but the large number of people that the use will serve as a convenience. He
38 said that there has to be a distinction between in numbers because otherwise someone could say that
39 they know a guy who has indicated that he would use the airstrip and because he is in the public the
40 public convenience is satisfied. Mr. Cole stated that when he states the term "public" he is referring to a
41 large number of people who have an interest in obtaining something that they cannot get conveniently
42 somewhere else.

43
44 Mr. Bluhm asked the Board if there were any additional questions for Mr. Cole.

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Mr. Palmgren asked Mr. Cole about the agricultural public because they could be in a radius of ten miles and might find that this is convenient in that the use of the airstrip would make it more economical to apply chemicals and participate in the rye grass program. He said that there are not going to be people driving down to the property to buy groceries but there will be a lot of people in the agricultural district that might need the airstrip on an emergency basis. He asked Mr. Cole if the agricultural public would be considered a class of the public or would it not be relevant.

Mr. Cole stated that this particular airstrip at its proposed location is on a county road that is marked as being somewhat impassible when it is wet therefore the public cannot include anyone who expects the get there in a car and could only be those few people who intend to fly airplanes onto the airstrip. He said that assuming that there are five or six people who would find it more economical to use this location than another would not make it necessary for the public convenience. He asked why existing landing strips cannot be used and an arrangement be made with someone else for that purpose.

Mr. Palmgren stated that previous testimony indicates that there are no existing RLA's in the area and many of the landing strips that were indicated in the Supplemental Memorandum dated July 30, 2009, are no longer in service and may never be again. He said that he is looking at the area and agricultural operations and the possibility of safety concerns because if a wind farm is constructed one day the RLA may prove useful for the wind farm. He said that there are no airstrips, not a commercial airport, in this part of the County therefore it may qualify as a public use.

Mr. Cole stated that it could also be said that there might be two other commercial agricultural operations that might find it convenient to use this location but it does not make it necessary and this is not a filling station or convenient food store but is a landing strip and airplanes go much greater distances than cars without complaining about it. He said that the question is, what has been presented to the Board, in a way of evidence, that demonstrates that there is an aviation public that desires this to happen and the only testimony that has been received regarding such is from the property owner which has indicated that it suits his private convenience and his agricultural operations and his hired pilot who does his seed spreading, this is not the public.

Mr. Bluhm asked the Board if there were any additional questions for Mr. Cole.

Mr. Bluhm stated that he understands Mr. Cole's point that if the airstrip is approved it will limit the rights of the adjacent property owners. He asked Mr. Cole if there are not similar situations that could occur such as if the Miller's, Mr. Cole's clients, desire to place a hog farm on their property and the adjacent neighbors desire to construct a subdivision. Mr. Bluhm stated that the Board will have to follow all the laws and everything else from animal units to separation from livestock facilities therefore taking away the rights of that adjacent neighbor. He said that the table could be flipped.

Mr. Cole stated that yes, it sometimes depends on who got their request in first and that distinction explains what he is speaking about which is the law because he does not want his client to lose his property rights. He said that he would not want this to be a contest between wind farms and landing strips because it isn't but the reason why he is talking about it is because what does the law state and it

1 indicates, “necessary for the public convenience in this location.” He said that if the Board wants to
2 allow one person to do something that takes away the rights of another landowner then the Board has
3 offended his client and because his client might be offended he is in attendance tonight. He said that
4 this should not make any difference because the point is the Board should be asking themselves the
5 same question which is, “Does this application satisfy the law, necessary for the public convenience at
6 this particular location.”
7

8 Mr. Bluhm asked Mr. Hall if there are similar situations that the Mr. Cole’s clients would desire to do
9 something on their property which would limit the rights of an adjacent property.
10

11 Mr. Hall stated that there are very few, if anything in the Zoning Ordinance whose effects go out to
12 3,500 feet.
13

14 Mr. Bluhm asked Mr. Hall if there are uses which would affect adjacent landowners which are a lot
15 closer.
16

17 Mr. Hall stated that he could not think of any special use permit in the AG-1 District that has any
18 separation requirements like this other than the wind farms. He said that an interesting question is,
19 “What is generating the separation, the wind farm or the RLA?”
20

21 Mr. Cole stated that we could assume that there are some developments that would be subject to a
22 special use permit, on his client’s property that could interfere with their neighbor’s uses. He said that
23 his clients could request a special use permit and their neighbor could object but whether or not their
24 neighbor objected this Board would still have to ask itself the same basic question, “Does this applicant
25 show that the use that has been requested as necessary for the public convenience at this location?” He
26 said that we have been inundated with discussions whether a wind farm may or may not go in and
27 whether you can sequester carbon by planting more rye grass and if you looked at all the coal barges
28 going up the Yangtze River today you would know that the Chinese are going to pump carbon monoxide
29 into the atmosphere and it doesn’t matter how much rye grass you plant because we are not the problem.
30 He asked the Board not to set a precedence and lose sight of the fact that the law is very simple and we
31 know that the applicant has to demonstrate proof that has not been done and in fact everything that the
32 applicant has presented only represents his operation, his convenience, and his costs with a little bit of
33 salt that his hired pilot has indicated that he would use the airstrip too, that is not the public.
34

35 Mr. Bluhm asked Mr. Cole if all of the other approved RLA’s have been approved against the law.
36

37 Mr. Cole stated that he does not know because he was not there when they were approved.
38

39 Mr. Palmgren asked if Mr. Gerdes needed to prove that the use is necessary at the location or is
40 necessary for the location.
41

42 Mr. Hall stated that Mr. Gerdes must prove that the RLA is necessary at that location. He said that it is
43 kind of a mystery to him how any RLA is necessary for public convenience which makes that criteria a
44 challenge but there are other criteria that the Board must also come to terms with such as, is it injurious

1 to the district. He requested that the Board keep in mind that all five of the criteria, not just necessary
2 for public convenience, be considered.

3
4 Mr. Cole stated that a landing strip could be established which is necessary for medical evacuation
5 purposes and educational or training purposes. He said that there are surely a number of ways to
6 demonstrate public convenience even though it is a private airstrip.

7
8 Mr. Hall stated that one way that public convenience could be demonstrated in this case is if more
9 farmers other than just the Petitioner testified that it was in fact necessary.

10
11 Mr. Palmgren asked if Mr. Reed's testimony would fit into that category.

12
13 Mr. Hall stated that Mr. Reed has already testified that the proposed RLA is necessary therefore the
14 Board could take his testimony into account.

15
16 Mr. Miller stated that he has some questions that may require opinions from the State's Attorney, who is
17 absent at tonight's meeting, which may require a short closed session.

18
19 Mr. Hall stated that if Mr. Miller's questions are regarding public convenience then he does not believe
20 that a closed session would be suitable. He said that he could ask the State's Attorney to provide a
21 memorandum providing some considerations for the Board to take into account for public convenience.
22 He said that he would suspect that this would be quite a challenge but if the Board desires he will make
23 that request.

24
25 Mr. Bluhm asked the audience if anyone desired to sign the witness register at this time to present
26 testimony regarding Case 645-S-09 and there was no one.

27
28 Mr. Gerdes stated that there has been a lot of discussion regarding public convenience but one pilot
29 services 20 to 50 farmers therefore it is up to the pilot as to what facility they will utilize during their
30 application. He said that if Mr. Reed desires to use the proposed RLA and the fertilizer company that he
31 had offered services to could save time in flying locally rather than 40-50 miles to Rantoul. He said that
32 since one pilot will service many farmers there may only be one or two pilots that will serve the entire
33 public in the area.

34
35 Mr. Carl Smith stated that the fact that few pilots serve many farmers is absolutely true and Mr. Reed
36 has sprayed several acres for him over the years. He said that in all of the years that Mr. Reed has
37 serviced his fields Mr. Reed has flown out of his Mattoon location although the Tuscola airport or
38 Danville airport would have been much closer. He said that currently he is in the midst of having fields
39 sprayed and the pilots are flying from Paris and Rantoul and do not choose Champaign, Danville or
40 Tuscola. He said that they choose to fly out of their home location where their equipment is set up for
41 their chemicals and everything else but if it were more economical for them to move to a closer location
42 he would imagine that they would therefore the availability of this RLA will not act as a magnet to
43 attract pilots to use as a base of operation. He said that there has been testimony that the RLA would
44 save area farmers money although he has never been told from a pilot that if he could move to a closer

1 location he would charge less.
2
3 Mr. Bluhm asked the Board if there were any questions for Mr. Smith and there were none.
4
5 Mr. Bluhm asked if staff had any questions for Mr. Smith and there were none.
6
7 Mr. Bluhm asked the audience if anyone had any questions for Mr. Smith and there was no one.
8
9 Mr. Bluhm asked the audience if anyone else desired to sign the witness register to present testimony
10 regarding Case 645-S-09 at this time and there was no one.
11
12 Mr. Bluhm requested the Board's comments.
13
14 Mr. Miller stated that he would like to have a recommendation from the State's Attorney prior to
15 making a final determination in this case.
16
17 Mr. Bluhm asked the Board if they would like to have a recommendation from the State's Attorney.
18
19 Mr. Miller stated that Mr. Gerdes must prove the criteria and to date it does not appear that he has done
20 so but if he can give proof that the criteria for approval has been met then the Board is well within the
21 law to approve his request.
22
23 Mr. Courson stated that he would like to see this case continued to a later date so that Mr. Gerdes can
24 obtain responses from the neighbors regarding land swapping. He said that it would also be beneficial if
25 Mr. Gerdes could obtain comments from other pilots indicating that the RLA was necessary at this
26 location to service their clients.
27
28 Mr. Bluhm stated that Mr. Cole's testimony regarding the other existing RLA's could be public
29 convenience for flight training but how many people would that actually serve. He said that within an
30 agricultural district how many people would be participating in a flight school therefore he only takes
31 Mr. Cole's comments with a grain of salt. He said that he would like direction from the State's Attorney
32 regarding what the law states about public convenience.
33
34 Mr. Palmgren stated that flight training is probably not going to happen on a sod airstrip. He said that as
35 a pilot if he were flying out in the middle of nowhere it would be convenient to have an RLA available
36 to land on if he discovered he was having trouble with his aircraft. He said that if the requested RLA is
37 approved by the State of Illinois then it will be marked on a map for pilots and if they are having trouble
38 in that particular location they will be looking for that RLA therefore this would prove that the RLA
39 would be necessary for public convenience. He said that he lives in Aero-Place Subdivision and it is
40 amazing how much air traffic flies over that airstrip.
41
42 Mr. Bluhm asked the Board if they had any other comments or suggestions for staff to investigate. Mr.
43 Bluhm stated that the case would need to be continued due to the amount of testimony that has been
44 given at tonight's meeting which must be incorporated into the Finding of Fact. Mr. Bluhm requested a

1 continuance date from staff.

2
3 Mr. Hall stated that the chances of obtaining a written recommendation from the State’s Attorney are
4 better if the case is continued to a later date. He said that the maximum allowed continuance date
5 cannot be past 100 days, unless the By-laws are suspended, which would continue this case to October
6 29, 2009. He said that he has a concern that the October 29th date may not be a favorable date because it
7 could be well within the height of harvest therefore the By-laws could be suspended to continue the case
8 until such time when a quorum of Board members could be expected to make a determination. He said
9 that the Petitioner should also be asked if October 29th would be convenient. He said that given that the
10 Board has indicated that they would be more comfortable making such a determination when they have
11 comments from the State’s Attorney it may be well advisable to suspend the rules.

12
13 Mr. Bluhm requested Mr. Gerdes’ thoughts regarding a continuance date.

14
15 Mr. Gerdes stated that due to the late harvest that they are anticipating October 29th would not be a
16 favorable date and hopefully he would be wrapping things up by November 12th although application of
17 anhydrous application could go into December. He said that he will just have to make arrangements to
18 be at whatever continuance date the Board determines.

19
20 Mr. Bluhm stated that the Board could continue the case to the November 12th or December 3rd.

21
22 Mr. Gerdes stated that he will abide by whichever date the Board chooses.

23
24 Mr. Bluhm requested the Board’s comments regarding a continuance date.

25
26 Mr. Bluhm requested a motion to suspend the By-laws.

27
28 **Mr. Palmgren moved, seconded by Ms. Capel to suspend the By-laws regarding the 100 day**
29 **continuance date for Case 645-S-09. The motion carried by voice vote.**

30
31 **Mr. Schroeder moved, seconded by Mr. Thorsland to continue Case 645-S-09 to December 3,**
32 **2009, meeting. The motion carried by voice vote.**

33
34 Mr. Bluhm reminded the audience that anyone who signed the attendance register and the witness
35 register will receive information regarding this case for the December 3rd meeting.

36
37 **6. New Public Hearings**

38
39 ***Case 647-V-09 Petitioner: Dennis and Jeanine French Request: Authorize the creation and use of a**
40 **lot that is 7.71 acres in area on best prime farmland in lieu of the maximum allowed three acres on**
41 **best prime farmland. Location: A 7.71 acre tract in the North Half of the Northeast Quarter of the**
42 **Northeast Quarter of Section 5 of Raymond Township and commonly known as 1985 CR 600N,**
43 **Sidney.**
44

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1 Mr. Bluhm informed the audience that this is an Administrative Case and as such the County allows anyone
2 the opportunity to cross examine any witness. He said that at the proper time he will ask for a show of
3 hands for those who would like to cross examine and each person will be called upon. He requested that
4 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
5 those who desire to cross examine are not required to sign the witness register but are requested to clearly
6 state their name before asking any questions. He noted that no new testimony is to be given during the cross
7 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
8 from cross examination.

9
10 Mr. Bluhm noted that there are two registers which require signatures. The attendance record indicates
11 everyone's presence at tonight's meeting and if a member of the audience desires to present testimony
12 regarding a particular case then they need to sign the witness register pertaining to that case.

13
14 Mr. Hall stated there is no new information regarding Case 647-V-09, to present at tonight's meeting. He
15 said that this case is a prime example where the County's best prime farmland maximum lot size has no
16 exceptions in the Ordinance, even for existing farmstead sites. He said that the subject property is a
17 proposed 7.71 acre lot which would include the farmstead. He said that the 1972 aerial indicates that what
18 appears to be an old pasture has never been in row crop production therefore no best prime farmland will be
19 taken out of production. He said that staff forgot to include as part of the Special Conditions of the
20 Summary of Evidence that the size of the lot is of small size and irregular shape. He said that the small size
21 and irregular shape may be one of the reasons why the ground between the house site and the railroad has
22 always been in pasture ground rather than row crop production. He said that during the Board's review of
23 the Summary of Evidence staff needs to address this information.

24
25 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.

26
27 Mr. Bluhm called Mr. Dennis French to testify.

28
29 Mr. Dennis French who resides at 1985 CR 600N, Sidney stated that he appreciates the Board's time given
30 at tonight's meeting. He said that when he and his wife purchased the property they were living in
31 Louisiana and were very unfamiliar with the multitude of rules and regulations in Illinois. He said that when
32 they purchased the property they were under the impression that Mr. Erb, the previous owner, had secured a
33 temporary variance and it was his responsibility to obtain a permanent variance but it was later discovered
34 that this was not the case. He said that Mr. Erb was born and raised in the existing house and has lived there
35 all of his life therefore this may have been the reason why Mr. Erb did not feel the need to obtain a variance
36 for the property. He said that Mr. Erb has photos of the property which indicates oak trees that extended
37 back to current property. Mr. French stated that at this point he would like to obtain the variance for his
38 property so that in case his house is destroyed he could rebuild it. He said that he and his wife have no
39 intentions to change anything on the property.

40
41 Mr. Bluhm asked the Board if there were any questions for Mr. French and there were none

42
43 Mr. Bluhm asked if staff had any questions for Mr. French and there were none.

1 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. French and there was no one.

2
3 Mr. Bluhm asked the audience if anyone desired to sign the witness register and present testimony regarding
4 Case 647-V-09 and there was no one.

5
6 **Summary of Evidence for Case 647-V-09:**

7
8 Mr. Hall stated that a new Item #7E should indicate the following: The small size and irregular shape,
9 specifically along the east lot line of the subject property, makes it less desirable than the surrounding
10 farmland for agricultural purposes. He said that a new Item #9D should indicate the same text as inserted in
11 new Item #7E. He said that Item #7D should be revised to indicate the following: Under the Illinois Plat
12 Act the Petitioner has the right to create a parcel greater than five acres in area.

13
14 **Finding of Fact for Case 647-V-09:**

15
16 Mr. Bluhm said that from the documents of record and testimony and exhibits received at the public hearing
17 for the zoning case 67-V-09 held on July 30, 2009, the Zoning Board of Appeals finds that:

- 18
19 **1. Special conditions and circumstances DO exist which are peculiar to the land or**
20 **structures involved, which are not applicable to other similarly situated land and**
21 **structures elsewhere in the same district.**

22
23 Mr. Thorsland said that Special conditions and circumstances DO exist which are peculiar to the land or
24 structures involved, which are not applicable to other similarly situated land and structures elsewhere in the
25 same district because the property was sold with the understanding that a variance was granted, the land was
26 out of production since pre-1972 and the lot was of irregular shape and not suitable for row crop production.

- 27
28 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
29 **regulations sought to be varied WILL prevent reasonable or otherwise permitted use of**
30 **the land or structure or construction.**

31
32 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
33 regulations sought to be varied WILL prevent reasonable or other wise permitted use of the land or structure
34 or construction because it would keep the applicant from obtaining a building permit.

35
36 Mr. Miller stated that a three acre lot would not encompass all of the existing buildings.

- 37
38 **3. The special conditions, circumstances, hardships or practical difficulties DO NOT**
39 **result from actions of the applicant.**

40
41 Mr. Courson stated that the special conditions, circumstances, hardships or practical difficulties DO NOT
42 result from actions of the applicant because the structures had already existed and the portion of the
43 property which is in pasture was never in row crop production.

1 Ms. Capel state that the property was purchased under the pretense that the previous owner had applied for
2 the variance.
3

4 **4. The requested variance IS in harmony with the general purpose and intent of the**
5 **Ordinance.**
6

7 Mr. Thorsland said that the requested variance IS in harmony with the general purpose and intent of the
8 Ordinance because it meets all other zoning requirements and it not prohibited by the Ordinance.
9

10 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
11 **detrimental to the public health, safety or welfare.**
12

13 Mr. Palmgren stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
14 detrimental to the public health, safety or welfare because the subject property is of irregular shape with
15 existing buildings and a portion of the land is out of production.
16

17 **6. The requested variance IS the minimum variation that will make possible the**
18 **reasonable use of the land/structure**
19

20 Mr. Miller stated that the requested variance IS the minimum variation that will make possible the
21 reasonable use of the land/structure because it would be squaring up the parcel to make the minimum lot
22 variation.
23

24 Mr. Bluhm stated that the building site is more than three acres.
25

26 Mr. Bluhm stated that there are no special conditions.
27

28 **Mr. Thorsland moved, seconded by Mr. Schroeder to adopt the Summary of Evidence, Documents of**
29 **Record and Finding of Fact as amended. The motion carried by voice vote.**
30

31 **Mr. Thorsland moved, seconded by Mr. Courson to close the public hearing for Case 647-V-09. The**
32 **motion carried by voice.**
33

34 **Final Determination**
35

36 **Mr. Miller moved, seconded by Mr. Thorsland that the Champaign County Zoning Board of Appeals**
37 **finds that based on the application, testimony and other evidence received in this case that the**
38 **requirements of Section 9.1.9C HAVE BEEN met and, and pursuant to the authority by Section**
39 **9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign**
40 **County determines that the Variance requested in Case 647-V-09 is hereby GRANTED to the**
41 **petitioners Dennis and Jeanine French , to authorize the creation and use of a lot 7.71 acres in area on**
42 **best prime farmland in lieu of the maximum allowed three acres on best prime farmland.**
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44 The roll was called:

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Capel-yes	Courson-yes	Miller-yes
Palmgren-yes	Schroeder-yes	Thorsland-yes
Bluhm-yes		

7. Staff Report

None

8. Other Business

A. Scheduling of wind farm zoning cases

Mr. Hall stated that staff is continuing to indicate on the docket the scheduling of our first wind farm case and at a certain point the Board may want to consider suspending the Bylaws and docketing the anticipated case for one, two or three meetings simply to reserve those meetings so that it could be placed on the docket.

He said that if the Board reserved October 15th and October 29th for the wind farm then staff would have to begin monitoring that case so that as soon as the last ZBA meeting, before we lose the window to advertise cases for the October 15th meeting, it could be decided, if there is no wind farm application, which other cases could be move up to fill the docket therefore other petitioners are not being delayed due to an anticipated wind farm application. He said that he does not anticipate receiving a wind farm application in September and it is doubtful if we will receive one in October. He said that cases on the docket appear to be minimal therefore at this time it is not a big deal but it is something that staff and the Board must keep track of. He said that the Board does not need to take any action tonight but during the months of November and December it is very difficult to do anything really significant at the Board because it is very difficult to have meetings. He said that staff will report to the Board regarding this issue at each meeting and at a point when the Board finds is necessary he would recommend that the By-laws are suspended and three consecutive meetings be set aside for the wind farm.

Mr. Thorsland asked Mr. Hall if the Board should place the anticipated wind farm on the docket.

Mr. Hall stated no, because once those meeting dates are set aside we must make sure that we do not waste a meeting date due to awaiting the wind farm application and no initiative was taken to move another case up on the docket.

Mr. Thorsland asked Mr. Hall if anything that is on the backburner could be moved up on the docket.

Mr. Hall stated that the only thing that is on any burner is what is indicated on the current docket.

Mr. Thorsland stated that perhaps staff should be giving new applicants a heads up about the anticipated wind farm application and the status of the docket.

Mr. Hall agreed.

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Mr. Thorsland stated that he would hate to hold up the docket for an anticipated wind farm application and have no application submitted when someone who has submitted their application is ready to go.

Mr. Hall stated that in the old days staff would not accept an application until it was complete but that lead to a huge backlog and currently the docket is so scarce staff has been accepting partial applications so that the applicant can obtain a docket date. He said that while the applicant is awaiting their docket date they can complete their application and submit any pertinent documentation to make their case more robust. He said that currently we are back to the situation where we have taken partial applications and by the time their case came up they had not gotten everything to staff. He said that applicants want to get on the docket as soon as possible but staff needs a complete application so that staff does not advertise in error.

Mr. Bluhm asked Mr. Hall if the cases that are listed on the docket for October 1st are complete or tentative.

Mr. Hall stated that both cases are tentative. He said that staff has been in contact with both and the petitioners contact staff on an infrequent, irregular basis. He asked Mr. Knight if staff currently has complete applications for either case.

Mr. Knight stated no. He said that both petitioners are working on their new plan.

Mr. Bluhm asked if staff would like the Board to block off the next three meetings for the wind farm.

Mr. Hall stated that the Board can make this decision at the next meeting. He said that staff needs more than six weeks to have a wind farm ready for a public hearing. He said that the Board saw tonight how difficult managing all of the separations are and he doubts that the wind farm applicant supplies a good diagram to prove that they have met all of the separation requirements. He said that he believes staff needs at least two months after application before the first hearing for a wind farm occurs. He said that staff needs at least a month for the slightest zoning case anyway and with the volume of data that staff needs to review with a wind farm two months would not be unreasonable. He said that with the two month requirement the docket is already past the October timeframe.

Mr. Bluhm stated that the public hearings for October 15th, October 29th and November 12th could be blocked off for the wind farm with the stipulation that the application must received prior to a certain date. He said that if staff believes that six weeks is the time period before the first public hearing could be heard for the wind farm then the applicant could be informed that the application must be received six weeks prior to the first hearing and if it is not then that date is gone. He said that if the applicant for the wind farm is not going to get the application to staff by the required time period then staff and the Board is not going to go under pressure for that applicant.

Mr. Hall stated that in retrospect it would have been good to have indicated that timeline in the *Ordinance* but it was not thought of at that time.

Mr. Bluhm stated that the Board could still do that.

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Mr. Hall stated that he is comfortable with just six weeks prior to the first hearing.

Mr. Knight stated that staff has been planning on re-advertising Case 634-AT-08, Part B, which has not been done to date therefore if a timeline is desired then it could be inserted at that time.

Mr. Hall stated that it is a possibility.

Mr. Bluhm stated that the Board should begin giving staff direction about this issue at this time. He said that if the Board decides to block off those three meetings then if an application is not received within six weeks prior to any of those meetings the meeting date will be lost.

Mr. Thorsland moved, seconded by Ms. Capel to suspend the By laws to take cases out of order. The motion carried by voice vote.

Mr. Thorsland moved, seconded by Mr. Courson to reserve the docket dates of October 15, 2009, October 29, 2009, and November 12, 2009, for the anticipated wind farm providing that a complete application is received six weeks prior to the first meeting date. The motion carried by voice vote.

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

Mr. Schroeder stated that he respects the younger Board members that we have currently rather than what the Board used to have when the attorneys would come before the Board to batter them with what they were doing wrong. He said that he is the only Board member which is old enough to remember that there used to be some pretty bad Board meetings when it was common for two or three attorneys to come up and tell the Board how bad they were.

10. Adjournment

The meeting adjourned at 9:15 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

7/30/09

AS APPROVED DECEMBER 3, 2009

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