

**MINUTES OF REGULAR MEETING**

**CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

**1776 E. Washington Street**

**Urbana, IL 61801**

**DATE: October 29, 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 :** Connie Berry, John Hall, J.R. Knight

**OTHERS PRESENT :** Steve Burdin, Judy Warmbier, Jim Meadows, Gerald Warmbier

**1. Call to Order**

The meeting was called to order at 7:00 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**

None

**6. New Public Hearings**

**Case 655-S-09 Petitioner: Judith K. and Gerald T. Warmbier Request: Authorize a Kennel as a Special Use Permit in the AG-1 Zoning District with a waiver of the standard conditions for: (1) a minimum separation of 200 feet between outdoor animal exercise areas and any adjacent residential use; and (2) a minimum side yard of 200 feet and a minimum rear yard of 200 feet. Location: A five**

1 acre tract in the East Half of the Southeast Quarter of the Northwest Quarter of Section 17 of Hensley Township and commonly known as the house and outbuildings at 2173 CR 750E, Champaign.

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

12  
13 Mr. Hall distributed a Supplemental Memorandum dated October 26, 2009, and a three page collection of  
14 web pages from [www.petfinder.com](http://www.petfinder.com) regarding Prairieland Anti-Cruelty Spay/Neuter Program for the  
15 Board's review. He said that the Supplemental Memorandum dated October 26, 2009, contain better copies  
16 of the photos which were included in the October 23, 2009, Preliminary Memorandum.

17  
18 Mr. Hall stated that on April 9, 2007, staff received a complaint about the subject property regarding the  
19 presence of approximately 100 cats on the property. He said that during this time staff did notice  
20 advertisements for a new dog kennel located between Mahomet and Champaign but did not have a chance to  
21 follow up on it. He said that on December 22, 2008, another complaint was received indicating that the  
22 property owners were apparently running a kennel on the subject property and staff attempted to contact the  
23 property owners. He said that staff was able to contact the property owners in February and informed them  
24 that a Special Use Permit was required for their operation and the appropriate information and application  
25 was sent out that same day.

26  
27 Mr. Hall stated that the petitioners submitted their application for a Special Use Permit on August 19, 2009,  
28 and after several attempts to get accurate descriptions for the public hearing and staff finally advertised the  
29 case. He said that after the advertisement was submitted staff realized that there were some outstanding  
30 questions as to if this was a kennel, veterinary facility, or a rescue facility and hopefully that information can  
31 be addressed tonight. He said that attached to the October 23, 2009, Preliminary Memorandum is a letter  
32 from the closest neighbors, who did not submit the complaint, indicating that they had no complaints and  
33 supported the Warmbier's operation. He said that other missing information relates to the amount of  
34 remodeling that was necessary to turn an agricultural building into the kennel facility. He said that the  
35 degree of the *Environmental Barriers Act* is based on the dollar value of remodeling as a percentage of the  
36 replacement cost of the structure. He said that it may be that all of the remodeling was made completely  
37 accessible but at this time it is unknown. He said that the accessibility code is not a County ordinance but is  
38 a State of Illinois requirement and the County cannot waive any portion of it. He said that the Zoning  
39 Administrator is responsible for its enforcement therefore it is something that is taken very seriously. He  
40 said that the accessibility information and compliance does not have to be received at tonight's meeting but  
41 it will need to be submitted prior to the issuance of a Zoning Use Permit.

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43 Mr. Hall distributed the color photos submitted by the Petitioners, black and white copies were included in  
44 the memorandums, for the Board's review.

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

Mr. Hall noted that somehow staff overlooked sending out notice for this case to nearby landowners and relevant jurisdictions until October 19, 2009, which is less than the 15 days required by the *Zoning Ordinance* so no final action should be taken at this meeting. He said that the subject property is within the one and one-half mile extraterritorial jurisdiction of the Village of Mahomet and the Village has been notified but no comments have been received. He said that the Village does not have protest rights, but their comments are welcome. He said that the subject property is also in Hensley Township which has a plan commission. He said that townships with plan commissions do not have protest rights on SUP cases but they are invited to provide comment. He said that Hensley Township has been notified of this request but no comments have been received to date.

Mr. Bluhm called Ms. Judy Warmbier to testify.

Mr. Judy Warmbier, who resides at 2173 CR 750E, Mahomet stated that they are basically a spay/neuter service for low income people. She said that she has been involved in this service for over 30 years with the same veterinarian. She said that they have three different veterinarians that assist with the operation and a surgical room has been set up in the structure that used to be a flower shop. She said that the veterinarians are not at the facility on a daily basis but may only be present once every two weeks, depending upon the schedule and number of animals present at that time and they also utilize clinics. She said that the operation will never get rich working with low income customers and waiting on donations. She said that she lived in Mahomet for 25 years and had four runs where she boarded dogs and kept very busy and she did not realize that she needed approval to operate her program at the current subject property. She said that since she is not very knowledgeable about computers she couldn't think of anything to do to make extra money for the program so she decided that she could board animals and turn 1/3<sup>rd</sup> of the agricultural building into a kennel. She said that there are nine, 5' x 15' runs attached to the building and there are volunteers who come to the facility during the day to assist her in keeping the facility clean. She noted that heated floors have been installed for the dogs comfort.

Mr. Bluhm asked the Board if there were any questions for Ms. Warmbier.

Mr. Palmgren asked Ms. Warmbier to indicate what other types of animals, other than dogs, are dealt with at the facility.

Ms. Warmbier stated that they service cats and dogs.

Mr. Palmgren asked Ms. Warmbier if there were truly 100 cats present at the facility.

Ms. Warmbier stated that she does have approximately 50 cats currently at the facility. She said that she is licensed with the State of Illinois and has been for many years without a violation. She said that they do not allow the cats to multiply and when a mother and kittens are brought to the facility they spay and neuter the kittens when they weigh two pounds. She said that she has found that people will spend more money on their dogs, being willing to put down a co-payment, than people with cats and many times the cat owners are

- 1 not even interested in having their cat spayed or neutered. She said that she does not just service Champaign  
2 County but travels to Newman and Villa Grove to pick up cats.  
3
- 4 Mr. Thorsland asked Ms. Warmbier to indicate how many volunteers would be present at the facility at one  
5 time.  
6
- 7 Ms. Warmbier stated that generally there is only one volunteer at the facility at a time unless the hours  
8 overlap a little. She said that in the early hours of the morning they take animals to other clinics for service  
9 and when they return they begin cleaning the facility.  
10
- 11 Mr. Bluhm asked the Board if there were any additional questions for Ms. Warmbier and there were none.  
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- 13 Mr. Bluhm asked if staff had any questions for Ms. Warmbier.  
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- 15 Mr. Hall asked Ms. Warmbier to indicate if there are clinics held at the property.  
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- 17 Ms. Warmbier stated that they spay and neuter the animals at the clinic which is located in the structure that  
18 used to be a flower shop. She said that there are three different veterinarians who offer their services for  
19 each clinic.  
20
- 21 Mr. Hall asked Ms. Warmbier to indicate how often the spay/neuter clinics are held.  
22
- 23 Ms. Warmbier stated that normally the clinics are held once every couple of weeks. She said that sometimes  
24 there may be a shorter period in between clinics if there is an animal that has medical issues that need  
25 attending.  
26
- 27 Mr. Hall asked Ms. Warmbier to indicate if the servicing veterinarian brings an assistant with them.  
28
- 29 Ms. Warmbier stated that sometimes an assistant will accompany the veterinarian.  
30
- 31 Mr. Hall asked Ms. Warmbier to indicate if Adopt-a-thons are held at the subject property.  
32
- 33 Ms. Warmbier stated that she does not generally hold Adopt-a-thons at the subject property. She said that  
34 one of the companies that really assists their project is Pet Smart and she does not believe that the public is  
35 aware of their commitment to non-profit organizations. She said that two or three times per year Pet Smart  
36 donates money to her program and every other month they offer the program space for Adopt-a-thons.  
37
- 38 Mr. Hall asked Ms. Warmbier if Dr. Duffee is still involved with the program.  
39
- 40 Ms. Warmbier stated no, other veterinarians assist with the program.  
41
- 42 Mr. Hall asked Ms. Warmbier if any of the assisting veterinarians have ownership in the facility.  
43
- 44 Ms. Warmbier stated no.

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2 Mr. Hall asked Ms. Warmbier if the veterinarians volunteer their time or are they paid.  
3  
4 Ms. Warmbier stated that they do pay one of the veterinarians and the others are volunteers. She said that  
5 the one veterinarian that they pay has volunteered at the program for many years and even though she is not  
6 going to get rich from the program they have decided to reimburse her for her services.  
7  
8 Mr. Hall stated that the floor plan of the studio only shows simple rectangles and indicates that one of the  
9 rooms is a surgical room.  
10  
11 Ms. Warmbier stated that surgeries are performed on one side of the studio and surgery preparations are  
12 done on the other side.  
13  
14 Mr. Hall recommended that the Board requests a more detailed floor plan of the studio.  
15  
16 Ms. Warmbier stated that the small side, indicated on the floor plan, is the surgical room.  
17  
18 Mr. Hall asked Ms. Warmbier if any plumbing was present at the studio.  
19  
20 Ms. Warmbier stated yes, there is a toilet and a tub.  
21  
22 Mr. Hall asked Ms. Warmbier if she also has a facility in Oakwood.  
23  
24 Ms. Warmbier stated no.  
25  
26 Mr. Hall informed Ms. Warmbier that the dogs that are boarded at her facility are lucky in that they have  
27 heated floors.  
28  
29 Ms. Warmbier stated that she is aware that some facilities only offer wood floors and no elevated space for  
30 the animals to lie on. She said that if anyone spends much time on concrete they will find that it never gets  
31 warm and she decided that her facility would have heated floors for the animals.  
32  
33 Mr. Hall asked Ms. Warmbier if the kennel building originally consisted of a white rock floor or was there a  
34 concrete floor when it was purchased.  
35  
36 Ms. Warmbier stated that a mud type floor existed in the pole barn. She said that she visited many facilities  
37 to gain an idea of what she would like to have. She said that she has placed a plastic wallboard on the walls  
38 of the facility for easily cleaning and used removable tongue and grooved slats for the runs.  
39  
40 Mr. Hall asked Ms. Warmbier if the kennel building had a bathroom.  
41  
42 Ms. Warmbier stated yes.  
43  
44 Mr. Hall asked Ms. Warmbier if the bathroom was connected to the existing septic system for the home.

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2 Ms. Warmbier stated yes.  
3  
4 Mr. Hall asked Ms. Warmbier to indicate the use of the trench beside the dog runs which is indicated in the  
5 floor plan of the kennel.  
6  
7 Ms. Warmbier stated that she picks up the solid waste located in the runs and then she cleans and rinses the  
8 runs.  
9  
10 Mr. Hall asked Ms. Warmbier if the trench drain is connected to the existing septic system for the home.  
11  
12 Ms. Warmbier stated yes.  
13  
14 Mr. Hall asked Ms. Warmbier if the existing septic system existed when she purchased the home or did she  
15 have a new septic system installed.  
16  
17 Ms. Warmbier stated that the existing septic system was there when they purchased the property.  
18  
19 Mr. Bluhm asked Ms. Warmbier to indicate the disposal process for the solid waste.  
20  
21 Ms. Warmbier stated that the solid waste is bagged and placed in garbage cans at the kennel and once full  
22 the cans are emptied into a dumpster that is kept besides the studio building and picked up by a disposal  
23 service.  
24  
25 Mr. Hall stated that Ms. Warmbier indicated that she has flexible hours for pickup and drop-offs. He asked  
26 Ms. Warmbier if she prefers that people call before they pickup or drop-off.  
27  
28 Ms. Warmbier stated that she does prefer that people call before they pickup or drop-off because she does  
29 not want to be at the facility 24 hours per day. She said that when you deal with the public at an operation  
30 that is located on your property the public believes that since you are home you are available for any  
31 services that they require.  
32  
33 Mr. Bluhm asked the Board if there were any additional questions for Ms. Warmbier and there were none.  
34  
35 Mr. Bluhm asked the audience if there were any questions for Ms. Warmbier and there were none.  
36  
37 Mr. Bluhm called Mr. Steve Burdin to testify.  
38  
39 Mr. Burdin stated that he erroneously signed the witness register for this case and is only in attendance to  
40 address Addendum Item #8.A.  
41  
42 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding  
43 Case 655-S-09 and there was no one.  
44

1 Mr. Bluhm closed the witness register for Case 655-S-09.  
2

3 Mr. Hall requested that Ms. Warmbier return to the witness stand for additional questions.  
4

5 Mr. Hall stated that the last two goals of the Anti-Cruelty Program indicate that they desire to educate  
6 people in appropriate care and the importance of spaying and neutering their animals. He asked Ms.  
7 Warmbier if she does this education when people bring their animals to the facility or are classes conducted  
8 at the facility.  
9

10 Ms. Warmbier stated that they do not hold classes at the facility. She said that the education is done on a  
11 one-to-one basis. She said that her son has developed a game that can be modified to different age groups  
12 educating them about appropriate care of their animals. She said that they deal with so many people at Pet  
13 Smart and even though those folks are there to purchase pet supplies they also require education about their  
14 pets.  
15

16 Mr. Hall asked Ms. Warmbier to indicate if only one-half of the kennel building is utilized for kennel space  
17 and the remaining one-half is used for storage.  
18

19 Ms. Warmbier stated that Mr. Hall was correct. She said that the area for storage is filled with crates, dog  
20 traps and other supplies. She said that the storage area has shelving and is organized and all of the items in  
21 storage are used for the facility.  
22

23 Mr. Hall asked Ms. Warmbier if she had any exterior signs.  
24

25 Ms. Warmbier stated no. She said that after she received the notice of violation she was afraid to install any  
26 signs for fear she would get in further trouble.  
27

28 Mr. Hall informed Ms. Warmbier that if she desired to install a sign in the future then it should be indicated  
29 on the site plan along with dimensions and placement. He said that staff can provide the sign requirements  
30 for Ms. Warmbier's information.  
31

32 Ms. Warmbier stated that she will consider this information.  
33

34 Mr. Hall stated that Ms. Warmbier's application indicated breeding and he requested that she indicate  
35 whether she intends to breed at the facility or did she only indicate such because of the definition of a  
36 kennel.  
37

38 Ms. Warmbier stated that she did not indicate that she intends to do any breeding at the facility and she finds  
39 it hard to believe that she would indicate such. She said that if the application indicates such then it is  
40 incorrect. She said that at one time she owned some of the top German Shepherds in the nation and she is  
41 not against people that breed quality dogs but she is against the breeding of purebred dogs with the dog  
42 across the street just because they can. She said that she has bred a couple of litters of shepherds and she  
43 does own a few shepherds but she did not purchase the building for breeding.  
44

1 Mr. Bluhm asked the Board if they had any questions that they would like answered at the next public  
2 hearing.

3  
4 Mr. Thorsland asked Mr. Hall if it is important to know the estimated capacity of the existing septic system  
5 since three buildings are being dumped into one existing system.

6  
7 Mr. Hall stated that he is not aware of how many bedrooms exist in the home but if it was a four bedroom  
8 septic system originally and the only people who currently live in the home are Mr. and Mrs. Warmbier then  
9 even with the kennel activities it is possible that the septic system is experiencing less loading than it should  
10 have been seeing. He asked if the Board would like staff to clarify if the system is being used at an  
11 appropriate level. He said that staff's discussion with Mr. Jeff Blackford, Champaign County Public Health  
12 Department, indicated that this is an issue for the Health Department because they are using the existing  
13 home's septic system for the kennel. He said that the only way to really know if this will result in a problem  
14 is to have the Health Department investigate it or the Board could impose a condition that if a septic system  
15 problem develops the owners will need to work with the Health Department to put in an adequately sized  
16 appropriate system.

17  
18 Mr. Thorsland agreed with such a proposed condition. He said that he passes the property many times and  
19 he has never seen a backhoe on the property.

20  
21 Ms. Warmbier stated that there is a backhoe on the property currently because they are trying to remove a  
22 concrete step on the property.

23  
24 Mr. Bluhm stated that if the solids are being picked up and disposed of the water influent is the only thing  
25 that is traveling to the septic system.

26  
27 Ms. Warmbier stated that she also picks up any hair that travels to the drains because she does not want the  
28 hair to cause any issues with the septic system.

29  
30 Mr. Hall stated that the Board should request a site plan that indicates the outdoor runs with dimensions  
31 because the photograph illustrates some really nice dog runs yet they are not indicated on the submitted  
32 plan. He said that he would also recommend that parking spaces, possible location of a future sign and the  
33 septic system also be indicated on the revised site plan.

34  
35 Mr. Bluhm asked Mr. Hall if there is anything specified in the submitted information regarding a quarantine  
36 area.

37  
38 Mr. Hall stated no.

39  
40 Ms. Warmbier stated quarantined animals are regulated under the Illinois Department of Agriculture and  
41 they do not have a quarantined area at the facility. She said that sick animals are taken to the veterinarian's  
42 facility.

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44 Ms. Capel asked Mr. Hall if he still had concerns regarding accessibility.



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Mr. Hall stated that he does still have concerns regarding accessibility. He said that he will speak with Mr. and Mrs. Warmbier prior to the next public hearing and review the thresholds in the *Environmental Barriers Act*. He said that at the most it would involve investigating if the existing door into the kennel was the door that was there originally and is it accessible. He said that the *Environmental Barriers Act* may indicate that the door must be accessible.

Ms. Capel asked Mr. Hall if the bathroom must be accessible.

Mr. Hall stated yes, because the bathroom is all brand new. He said that it appears that there has been some significant remodeling done at the property therefore staff will need to make an appointment with Mr. and Mrs. Warmbier to investigate whether or not the bathroom and the rest of the facility are accessible. He said that it is his understanding that the dogs are kept in at night and he would recommend that this be made a condition. He said that the number of animals that can be taken care of is presumably limited by the amount of space that Mr. and Mrs. Warmbier have to do it in and that space is fixed by what is indicated on the plans before the Board. He said that the space cannot be enlarged without obtaining a new special use permit and staff must make sure that Mr. and Mrs. Warmbier understand this information. He said that any expansion would be unauthorized and would be a violation. He said that a classic problem with any special use permit is to make it big enough to accommodate any foreseeable needs but do not make it so big that it is hard to obtain approval. He said that if nine dog runs is all that will be required for the foreseeable future then that is a pretty modest number and the cat room may also be adequate. He said that if any addition space is required for the cat room then it needs to be included on the current plans.

Ms. Capel asked if it would be feasible to discuss a limit on the number of cats at the facility at one time.

Mr. Hall stated that it is up to the Board.

Ms. Capel stated that it makes sense to limit the number of cats that can be on the property at any given time.

Mr. Hall asked Ms. Warmbier how many cats are normally in the cat room and is there a maximum that she desires currently.

Mr. Palmgren asked Ms. Warmbier if the cats in the cat room are running free or are they in cages.

Ms. Warmbier stated that she has no plans to add on. She said that some of the cats are caged and some of them run free and they have a 20' x 20' concrete run to the outside that they can access. She said that she would desire to only have 10 cats but that is not a feasible number therefore she would imagine that 50 or 60 cats would be a good maximum. She said that some of the cats go to Pet Smart every month and it may take a year before they are found a home. She said that she will not say that she does not believe in euthanasia and some groups will tell you that they never euthanize an animal, which in her opinion, is a bunch a bologna. She said that no one likes to euthanize an animal but sometimes they have to do it. She said that it doesn't take very many mother cats to have a litter of kittens and just last night she traveled to Newman where she received six kittens and two adult cats. She said that they are licensed as a shelter and it is hard to

1 be in the animal business and tell someone that the facility is full.  
2  
3 Mr. Thorsland asked Ms. Warmbier if the licensing process limits the number of animals that can be at the  
4 facility.  
5  
6 Ms. Warmbier stated yes. She said that the inspector investigates the facility to make sure that all records  
7 are present and current and that all of the animals are as healthy as possible.  
8  
9 Mr. Thorsland asked Ms. Warmbier if she is below the limit.  
10  
11 Ms. Warmbier stated that she would say that she is probably right at the limit. She said that she has been  
12 licensed for years and has also been a licensed investigator therefore she tries to stay within the limits.  
13  
14 Mr. Hall asked Ms. Warmbier if the inspections were annual.  
15  
16 Ms. Warmbier stated that a facility is not notified by the inspectors as to when they are going to arrive for an  
17 inspection. She said that she has had one person constantly complain about the facility and this person has  
18 contacted everyone that they can think of to investigate the property and they have with no findings. She  
19 said that they are not a big facility and she does not desire to get any bigger.  
20  
21 Mr. Bluhm asked Ms. Warmbier if there is a disposal service that picks up the euthanized animals.  
22  
23 Ms. Warmbier stated yes.  
24  
25 Ms. Capel stated that she believes that 75 cats would be a reasonable number present at the facility at one  
26 time.  
27  
28 Ms. Warmbier stated that she agrees with a limit of 75 cats.  
29  
30 Mr. Bluhm asked Ms. Warmbier to indicate the fee charged for the adoption of a cat.  
31  
32 Ms. Warmbier stated that the fee for a kitten is \$115 and the fee includes spaying or neutering, distemper  
33 shots, worming, blood work, etc. She said that a normal veterinary clinic would charge \$200 for everything  
34 that the kittens will have had at \$115.  
35  
36 Mr. Hall stated that pertinent information was received tonight regarding how big the veterinarian activities  
37 are in comparison to the boarding and he is relieved to know that Adopt-a-thons are not being held at the  
38 subject property. He said that if the Board does not include a condition about no Adopt-a-thons does the  
39 Board have any concerns about any events that might occur on the property. He reminded the Board that  
40 this is a use that will be there even when the Warmbiers are gone and they have already put in a significant  
41 investment into the property but any conditions that are imposed will constrain any future owners.  
42  
43 Mr. Courson asked Mr. Hall if since the Warmbiers live on the subject property could the facility be  
44 considered a home based business therefore qualifying for a home occupation permit

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Mr. Hall stated that the special use becomes the principal use and the dwelling becomes the accessory use. He said that the basic perimeter is that the number of the dog runs, the size of the cat room, the number of cats will be affixed to the special use and any expansion would require new approval. He said that perhaps it is at the point that the Board believes that there will not be any problems with someone buying the kennel and operating it in the same manner with nine dog runs, the same sized cat room and the same number of cats.

Mr. Schroeder would like to be assured that Ms. Warmbier can sell the facility without going through this process again.

Mr. Hall stated that as a special use permit if Mr. and Mrs. Warmbier wanted to they could just live on the subject property and have someone else run and operate the kennel.

Mr. Courson asked Mr. Hall how many employees could be on the property at any one time.

Mr. Hall stated that the Board has not set any limit on the number of volunteers/employees that can be present at the facility at any given time. He said that it appears that Mr. and Mrs. Warmbier have more than several volunteers although the number of volunteers that are present at the facility at any one time is limited. He said that given that the size is limited he could not imagine any benefit from having 10 or 20 employees in some kind of future arrangement and does not foresee that as becoming problem.

Ms. Capel asked Mr. Hall if there is a special use permit could Mr. and Mrs. Warmbier apply for a license to have special events or can the special use permit be set up in such a manner to allow special events.

Mr. Hall stated that it is his opinion that once a special use permit is approved a temporary use permit is no longer an option because if those temporary uses are not part of the special use permit then they are by definition an expansion. He said that this is why staff encourages applicants to think about any future large events that would not match their normal events included in the special use permit so that they can obtain the Board's approval for those large events. He said that it appears that Mr. and Mrs. Warmbier do not have this need at this time.

Mr. Bluhm requested a continuance date.

Mr. Hall stated that it appears that the December 17<sup>th</sup> meeting is the next available date for a continuance. He reminded the Board that the December 17<sup>th</sup> meeting will be held in Meeting Room 2 and it is also a meeting that the Board has considered cancelling.

**Mr. Thorsland moved, seconded by Mr. Palmgren to continue Case 655-S-09, Judith and Gerald Warmbier to the December 17, 2009, meeting. The motion carried by voice vote.**

Mr. Bluhm reminded the Board that the December 17<sup>th</sup> meeting is at 6:30 p.m.

**7. Staff Report**

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None

**8. Other Business**

**A. Addendum: Request for ELUC approval of Zoning Administrator’s request to hire professional consultant to review wind farm noise studies.**

Mr. Hall distributed a memorandum dated October 29, 2009, which reviews this issue. He said that he wanted to make it clear that this is only for the Board’s information and if after reviewing the memorandum the Board desires to take action then it is entirely up to the Board. He said that the distributed memorandum includes two memorandums that were submitted to the Environment and Land Use Committee. He said that the Wind Farm Amendment was adopted in May and at the end of May it occurred to him that staff must get geared up for the first wind farm application. He said that the Board may recall that several times during the wind farm amendment hearings he referred to the County’s need for consultants to review the wind farm noise study, the bird and bat mortality study, and the estimate of decommissioning costs. He said that special fees were included in the amendment and after the ZBA made a recommendation ELUC adjusted those fees to a minimum of \$20,000 to make sure that there were sufficient fees for the special studies. He said that the Ordinance identifies the staff of the Planning and Zoning Department as the consultant to the ZBA but staff is of no use to the ZBA on a noise study because staff is not qualified to review a noise study prepared by a qualified noise consultant. He said that on June 4, 2009, he prepared a memorandum for ELUC because he wanted them to be on board with spending the money even though they had authorized the fees. He said that he quickly found out that ELUC was not on board with spending the money even though they authorized the fees and they had concerns about how much the noise study would cost and if qualified consultants could be obtained at an affordable price. He said that since ELUC’s response he has decided to mainly focus on the noise consultant because frankly that is one of his biggest concerns. He said that in regard to the bird and bat mortality study he intends to see if he can get researchers from the University of Illinois or the Natural History Survey to assist. He said that in regard to the decommissioning costs he plans to contact other counties to see what they have been using and hopefully obtain a more detailed breakdown of those costs. He noted that he could actually hire a noise consultant without obtaining ELUC’s approval and the cost is very modest and well within the authority that he is authorized as a department head although he does really enjoy meeting with the ZBA on every other Thursday night and he would like to continue to do so in the future therefore it is important that ELUC is on board.

Mr. Hall stated that the County is not obligated to hire a qualified consultant and Champaign County could do like virtually every other county in Illinois does and accept the wind farm developer’s assertions and let the citizens come in and make their comments at the public hearing and the ZBA can make their recommendation to the County Board. He said that he does not believe that this is the best way and it is not what he would recommend but he is trying to get the Board to determine whether or not a noise consultant is necessary.

Mr. Hall said that he has been working with ELUC since June and the October 13, 2009, memorandum to ELUC discusses the Request for Qualifications for a wind farm noise consultant. He said that in an attempt to get better cost information for ELUC and to address their concerns in not obtaining a consultant from far

1 away he did identify three consultants with offices in the State of Illinois who are all experienced in  
2 reviewing wind farm noise submittals and were all willing to work with Champaign County. He said that he  
3 contacted many consultants who had no interest in helping a local government review a wind farm noise  
4 application because they did not want to lose the chance to do future wind farms and did not want to take the  
5 chance in upsetting the wind farm developers. He said that the only way that he could get cost information  
6 was to send out a Request for Qualifications, as suggested by the County Administrator, and an  
7 advertisement was placed. He said that the three firms that he had contacted did submit proposals therefore  
8 staff is aware of what the hourly costs are and one of the firms went so far as to submit a Not-to-Exceed  
9 Estimate. He said that Page 2 of the October 13, 2009, memorandum explains the next steps in the RFQ and  
10 these steps will be taken, if ELUC approves, when the first wind farm application is received, expected in  
11 November. He said that the RFQ steps are as follows: 1. Up to four qualified consultants, three have been  
12 identified, will be selected and will be notified by telephone by October 23, 2009; and 2. Upon receipt of the  
13 wind farm application, expected in November, the selected consultants will be provided copies of the  
14 relevant noise related application materials and asked to provide Not-to-Exceed Cost Estimate for review of  
15 the wind farm; and 3. Not to Exceed Cost Estimates must be provided to the Director of Planning and  
16 Zoning no later than two weeks after receipt of the application materials; and 4. The County shall designate  
17 a Consultant no later than one week after the first regularly scheduled ELUC meeting after receipt of the  
18 Not-to-Exceed Estimates; and 5. The designated consultant shall provide a written report within three  
19 weeks after designation; and 6. The Consultant will probably be required to appear at least one ZBA  
20 meeting for the wind farm.

21  
22 Mr. Hall stated that if the wind farm application is received by November 9, 2009, the Not-to-Exceed  
23 Estimates should be available for review at the regularly scheduled December 14, 2009, ELUC meeting. He  
24 said that if the wind farm application is received after November 9<sup>th</sup>, then the Not-to-Exceed Estimates could  
25 not be reviewed with ELUC unless either a Special ELUC meeting would be held or the wind farm review  
26 could be delayed. He said that staff is trying to get a Not-to-Exceed estimate and a decision to proceed so  
27 that the wind farm hearing that will begin in January will be completed by sometime in February and the  
28 ZBA would have gotten the benefit of the review of a noise study by a qualified consultant.

29  
30 Mr. Hall asked the Board if they felt strongly about having a noise consultant available and if so then the  
31 Board should indicate such by a memorandum or letter to ELUC. He said that if the Board strongly does not  
32 feel that a noise consultant is necessary then that should also be included in a memorandum or letter to  
33 ELUC. He said that if the Board does not feel strongly about a noise consultant either way then he will  
34 inform ELUC of that decision also because ELUC should know what the ZBA's preference is regarding this  
35 issue. He said that he does not expect the ZBA to side with the Zoning Administrator and this is not what  
36 this discussion is about but he would like the Board to decide within their own minds what they would like  
37 to have available when they are faced with a wind farm application.

38  
39 Ms. Capel asked Mr. Hall if there was a possibility of a civil suit if a neighbor is unhappy with the sound  
40 and there is essentially no backup information.

41  
42 Mr. Hall stated that anyone can sue anyone for anything at any given time and the Board does not need to  
43 fear that they need to hire a consultant for that reason because the County may well get sued anyway.

44

- 1 Ms. Capel stated that it just seems like having a consultant is part of due diligence as a Board.
- 2
- 3 Mr. Hall stated that it is due diligence on his part to bring it to the Board's attention.
- 4
- 5 Ms. Capel stated that due diligence is part of the permitting process.
- 6
- 7 Mr. Hall stated that certain members of ELUC believe that other counties in Illinois are getting by without
- 8 spending this money therefore why would Champaign County need to spend it. He said that this is not the
- 9 view of all of the members of ELUC but it is a strong view. He said that just because the ZBA recommends
- 10 a consultant does not mean that a consultant will be hired.
- 11
- 12 Mr. Thorsland stated that staff and the Board worked amazingly hard on the Ordinance and a lot of public
- 13 testimony was taken and considered. He said that after a good Ordinance was put forth ELUC did what they
- 14 normally do in that they made changes to the Ordinance. He said that there will be people who will be dead
- 15 set against wind farms and it would be nice for the ZBA to have a noise study to refer to with people who
- 16 are not as opposed but do have concerns. He said that he has come into possession of a report that was
- 17 completed on one of the Horizon Wind Farms and there is a table which indicates the octave bands and
- 18 indicates houses by number and how they would realize the sound created by the wind farm. He said that
- 19 there may be a point in the hearing where a non-participating landowner indicates that they are concerned
- 20 about noise and the Board could indicate what type of noise they might experience through the noise study
- 21 provided by the consultant. He said that he believes that having a noise consultant is a good idea and ELUC
- 22 has provided for fees to pay for those services.
- 23
- 24 Mr. Hall asked Mr. Thorsland if the study that he has in his possession is the study that was submitted on
- 25 behalf of the wind farm.
- 26
- 27 Mr. Thorsland stated yes. He said that the very first line indicates that the consultant was hired by Horizon
- 28 to complete the noise study but that does not mean that they would come back with any different results.
- 29
- 30 Mr. Palmgren stated that he would assume that those numbers would have some value but they are site
- 31 specific and there will be some ambient noise differences.
- 32
- 33 Mr. Thorsland stated that the way that he interprets this study is that the consultants were given the data on
- 34 the turbine, the location of the turbines and the houses and they know the wind speed and the noise
- 35 produced. He said that this was completed before the wind farm was constructed so that they could find any
- 36 problems before any would arise.
- 37
- 38 Mr. Palmgren stated that a 500 foot tower with a 1,200 foot separation distance from a non-participating
- 39 landowner would create some noise. He said that he supports the hiring of a noise consultant.
- 40
- 41 Mr. Bluhm stated that he also supports the hiring of a noise consultant. He said that Mr. Hall has drafted a
- 42 letter indicating the Board's support of hiring a wind farm noise consultant.
- 43
- 44 Mr. Hall distributed the draft letter indicating the ZBA's support of the Zoning Administrator's request to

1 hire a wind farm noise consultant for the Board’s review and approval.

2  
3 Mr. Schroeder stated that he supports the request.

4  
5 Mr. Bluhm suggested that the second sentence in the letter should indicate that the ZBA strongly supports  
6 the Zoning Administrator’s request to hire a qualified wind farm noise consultant to review the wind farm  
7 noise submittals in order to verify compliance with the *Zoning Ordinance* requirements.

8  
9 Mr. Bluhm called Mr. Steve Burdin to testify.

10  
11 Mr. Steve Burdin, who resides at 2527 CR 450E, Mahomet stated that he is a lot happier tonight than he was  
12 two nights ago when he was sitting at the last ELUC meeting and they struck this item from the agenda. He  
13 said that he does not know the experience of all of the people who will review the reports that come from the  
14 wind farm developers but considering how people might not be inclined to believe what the developers say  
15 it would be prudent to have independent evaluations of the submitted reports. He said that these will be  
16 models and these are number crunch results that the developers will submit that will indicate how these  
17 things will be once they are erected. He said that it certainly doesn’t preclude someone from saying at a  
18 later date that the wind farm is too noisy and sue or request an evaluation however it appears that having an  
19 independent evaluation of what is submitted by the developer is entirely sensible. He said this service will  
20 not come cheap but he believes that it is a worth while expenditure and given that the fees were raised by  
21 ELUC they should cough up some of the money and hire the consultants. He suggested that the ZBA  
22 recommend support of the Zoning Administrator’s request to hire a wind farm noise consultant.

23  
24 Mr. Bluhm asked the Board if there were any recommended changes to Mr. Hall’s drafted letter and there  
25 were no more.

26  
27 **Mr. Palmgren moved, seconded by Mr. Miller to approve Mr. Hall’s drafted letter as amended and**  
28 **forward the letter to ELUC indicating support of the Zoning Administrator’s request to hire a wind**  
29 **farm noise consultant. The motion carried by voice vote.**

30  
31 Mr. Hall thanked the Board and indicated that this will be an agenda item for the November 9, 2009, ELUC  
32 meeting.

33  
34 Mr. Thorsland stated that the Board previously discussed a different process for public testimony when the  
35 wind farm special use permit application hearings begin. He said that it was kicked around that the public  
36 hearings would be held on consecutive nights and when the witness register was closed the rest of the  
37 meetings could be used for the Board to work on the case. He said that this would eliminate repetitive  
38 testimony and the Board may want to consider such a process.

39  
40 Mr. Hall asked Mr. Thorsland if he is recommending two consecutive meetings for public testimony only.

41  
42 Mr. Thorsland stated yes.

43  
44 Mr. Hall stated that this may be a good way to get the first mass of testimony but the Board will not be able

1 to go through the rest of the hearing process without receiving additional public testimony. He said that  
2 each meeting will have to have a window for testimony at every meeting but the two consecutive meetings  
3 should certainly take care of most of the public input.  
4

5 Mr. Thorsland stated that when the Board worked on the text amendment public testimony provided a  
6 measure of the framework of what the Board did with the ordinance. He said that if the public testimony  
7 could be received early then the Board could ponder upon that testimony while they worked through the  
8 case.  
9

10 Mr. Hall stated that with the new schedule of County Board meeting with the new Committee of the Whole  
11 approach it should be much easier for the ZBA to reserve this meeting room. He said that the Board could  
12 tentatively reserve the meeting room but sooner or later the Board will have to go on record as holding a  
13 special meeting and that only makes sense when the Board knows when those hearings will take place and  
14 to date that information is unknown.  
15

16 Mr. Thorsland stated that he is only offering this option as a consideration.  
17

18 Mr. Bluhm asked Mr. Hall if he believes that the Lyle Shields Meeting Room will be large enough to hold  
19 any anticipated crowd for the wind farm public hearings.  
20

21 Mr. Hall stated that he has no reason to believe that the Lyle Shields Meeting Room will not be large enough  
22 to hold any anticipated crowds for the wind farm public hearings. He said that if the Board believes that it  
23 will not be large enough then other arrangements must be attempted but each time that he has tried to  
24 schedule the Brookens Gymnasium for meetings it has not been available. He said the meeting room had  
25 ample room for the text amendment hearings but he has no idea as to what kind of turnout might occur for  
26 the first wind farm public hearing.  
27

28 Mr. Thorsland stated that he assumes that people that are participating will not be as interested in attending  
29 as those who are not participating and oppose the wind farms.  
30

31 Mr. Bluhm asked Mr. Hall if a five minute limit could be placed on individual public testimony. He said  
32 that this limitation was enforced at the CZR public hearings.  
33

34 Mr. Hall stated that the State's Attorney is not comfortable with such a limitation but the Board can be  
35 rigorous in not accepting repetitive or rambling testimony but if someone is making points then the Board  
36 must allow that testimony to be heard in its entirety.  
37

38 Mr. Schroeder stated that the meeting room has a lot of unused seats and not everyone needs to be seated.  
39 He said that it appears that the meeting room would accommodate over 150 people.  
40

41 Mr. Hall stated that the capacity of the room is approximately 150 people.  
42

43 Mr. Bluhm stated that chairs have been provided during previous hearings.  
44



1 Mr. Schroeder asked Mr. Hall if Meeting Room 2 has a sound system that could be utilized for overflow  
2 attendees.

3  
4 Mr. Hall stated that Meeting Room 2 does have a sound system but the State’s Attorney is not comfortable  
5 with people having to sit in another room where the public hearing is being conducted.

6  
7 Mr. Bluhm stated that an application has to be received first and it is his understanding that the township has  
8 not spoken to the wind farm developer regarding a road agreement.

9  
10 Mr. Hall stated that he has spoken with the consultant and they are working on the proposed wind farm. He  
11 said that it is his understanding that the wind developer intends to submit their application to Vermilion  
12 County first and to date that application has not been submitted.

13  
14 Ms. Capel asked Mr. Hall if Vermilion County had a wind farm ordinance.

15  
16 Mr. Hall stated yes. He said that Vermilion County does not have a zoning ordinance but they do have a  
17 wind farm ordinance.

18  
19 Mr. Hall stated that the Board could rearrange the agenda and hold the public participation portion of the  
20 meeting at the end but it must be included at each meeting.

21  
22 Ms. Capel stated that during the text amendment the amount of public testimony that was received was  
23 overwhelming therefore leaving very little time at the end of the meeting for the Board, who was tired at that  
24 point, to work on the case.

25  
26 Mr. Hall noted that the November 12<sup>th</sup> public hearing will begin at 6:30 p.m. He said that staff will place  
27 the classic pink sticker on the front of the packet and the agenda indicating such.

28  
29 Mr. Courson asked Mr. Hall if the Board could receive their information in digital form rather than in the  
30 form of a mailing through the postal service.

31  
32 Mr. Hall indicated that staff could send the entire packet to the Board members by e-mail and informed the  
33 Board that the packet is posted on the County website.

34  
35 Ms. Capel stated that she does not need a mailing packet and an e-mail to each Board member indicating  
36 that the packet is available on the County website would be sufficient.

37  
38 Mr. Thorsland stated that he picks his packet up at the office on mailing days but he may be interested in  
39 receiving his packet digitally in the future.

40  
41 Mr. Palmgren stated that he still enjoys receiving a hard copy of the packet and he would be more than  
42 happy to pick up the packet on each mailing day. He said that he would call to make sure that the packet is  
43 ready and if staff does not hear from him then please place the packet in the mail.

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

None

**10. Adjournment**

The meeting adjourned at 8:27 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

10-29-09

DRAFT SUBJECT TO APPROVAL DRAFT

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ZBA //

***DRAFT SUBJECT TO APPROVAL DRAFT***

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