

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: December 3, 2009

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

TIME: 6:30 p.m.

Urbana, IL 61802

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

MEMBERS ABSENT : Melvin Schroeder

STAFF PRESENT : Connie Berry, John Hall, Christina Papavasiliou (Assistant State's Attorney)

OTHERS PRESENT : Terry Ladage, John Fulton, Jeff Tock, Paul Cole, Rick Reed, Neal Toler, Phyllis Benschneider, Ken Little, Jed Gerdes, Barbara Gerdes, Robert Gerdes, Shawn Walker, Sherry Schildt, Carl Smith, Jay Hageman, Afton Kolbe

1. Call to Order

The meeting was called to order at 6:38 P.M.

2. Roll Call and Declaration of Quorum

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

3. Correspondence

None

4. Approval of Minutes (July 30, 2009 and October 15, 2009)

Mr. Thorsland moved, seconded by Ms. Capel to approve the July 30, 2009 and October 15, 2009, minutes as submitted. The motion carried by voice vote.

Mr. Courson arrived at 6:42 P.M.

5. Continued Public Hearing

Case 645-S-09 Petitioner: Robert and Barbara Gerdes Request to authorize the construction and use of a "Restricted Landing Area" as a Special Use in the AG-1 Agriculture District Location: An approximately 83 acre tract that is approximately the West Half of the Southwest Quarter of Section

33 of Ayers Township and commonly known as the farm at 52 CR 2700E, Broadlands.

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

Mr. Hall distributed a Supplemental Memorandum dated December 3, 2009, to the Board for review. He said that the new memorandum proposes new Summary of Evidence items for the information that was included in the mailing from Attorney Paul Cole. He said that a new special condition of approval which simply documents that if the RLA is approved operation must continue in compliance with the I.D.O.T. Division of Aeronautics' requirement. He said that attached to the new memorandum are the minutes of March 28, 1991, which is when the last RLA was approved, for the Board's review of what kind of findings were included with that approval. He said that also attached to the new memorandum is the updated version of the Revised Wind Farm Separations in the Vicinity of the Gerdes Property illustrating the separations that are anticipated and the effects of the Village of Allerton's one and one-half mile jurisdiction as well as the Douglas County jurisdiction. He suggested that the Board begin with testimony from Jeff Tock, Attorney for Mr. Gerdes.

Mr. Bluhm called Mr. Jeff Tock to testify and requested that he sign the witness register prior to giving testimony.

Mr. Jeff Tock, Attorney representing Jed Gerdes and Robert and Barbara Gerdes, stated that the Gerdes family requested that he review the case and due to his familiarity with zoning issues and the State statute authorizing the County to implement zoning he was aware of the limitation that the County has no zoning authority over agricultural use. He said that the RLA is supposed to be for agricultural use only which is the way that the information is set forth in the application was indicated by Mr. and Mrs. Gerdes. He said that the RLA is to be strictly for aircraft that will be using the grass runway to apply herbicides, pesticides and seed on the land that is farmed by the Mr. and Mrs. Gerdes and their son Jed. He said that the limitation on the use of the runway is so that it is strictly agricultural and given that restriction he believes that the County has no zoning authority or jurisdiction to require a special use permit for this particular RLA. He said that this being the case there is no point in moving forward with the petition because of the lack of the authority of the ZBA to grant the special use permit due to it is a matter of right for the Gerdes family to operate the RLA with the limitation that it is only for agricultural use. He said that he has been in contact with the State's Attorney's office and it is his understanding, through his conversation with Mr. Hall, that the State's Attorney has reviewed the information that he provided as well as the State statute and concurs with the understanding that the RLA is limited to the property that is used by the Gerdes family for their farming operation and since this is an agricultural use the County has no jurisdiction. He said that this would also apply to no limitations or waivers as to any setback from the RLA to wind turbine towers that may be set

12/3/09

AS APPROVED DECEMBER 17, 2009

ZBA

1 forth in the wind farm ordinance that has been adopted by the County. He said that Mr. Hall has indicated
2 that he would like to have the opportunity to put everything in writing in a letter to the Gerdes family setting
3 forth the understanding of the limitation that this is a landing strip which is only to be used for the Gerdes
4 family's agricultural purposes for the land that they farm and not to be used as a commercial landing strip
5 where the Gerdes' air operator can utilize the airstrip to service other landowners. He said that the Gerdes
6 family does agree to the limitations. He said that it is his understanding that Case 645-S-09 will be
7 continued to a later date so that the material gathered and if acceptable the public hearing will be terminated
8 with no finding.

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10 Mr. Bluhm asked the Board if there were any questions for Mr. Tock.

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12 Mr. Palmgren asked if the setbacks adopted in Case 634-AT-08, Part A. would apply to the RLA.

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14 Mr. Tock stated that the 3500 feet does apply and it is not reduced by a waiver.

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16 Mr. Bluhm asked the Board if there were additional questions for Mr. Tock and there were none.

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18 Mr. Bluhm asked if staff had any questions for Mr. Tock and there were none.

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20 Mr. Hall stated that it would be entirely valid to consider this an agricultural RLA but he would like the
21 opportunity to indicate such in writing for Mr. Gerdes so that he can see the actual limitations and then he
22 could use this information as evidence for I.D.O.T. that the RLA complies with Champaign County zoning
23 therefore obtaining his I.D.O.T. Certificate of Approval. He recommended that the Board continue Case
24 645-S-09 to January 14, 2010, to give staff a month to get all the information distributed, reviewed and
25 agreed upon. He said that his recommendation would be that as soon as Mr. Gerdes agrees with the
26 limitations in the letter he could submit a written letter withdrawing Case 645-S-09. He said if the letter of
27 withdrawal is submitted for the case it would not need to come back to the Board because the Board would
28 not need to dismiss the case and those who are interested in the case would not need to go out in the middle
29 of January for a night meeting.

30
31 Mr. Bluhm stated that since the case will be continued to a later date there is no need for public testimony
32 tonight because it appears that the approval is out of the Board's hands. He said that if the case, for some
33 reason, is continued and brought back before this the Board new testimony will be accepted regarding this
34 case.

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36 **Mr. Thorsland moved, seconded by Mr. Miller to continue Case 645-S-09 to January 14, 2010. The**
37 **motion carried by voice vote.**

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39 Mr. Hall informed the audience that anyone who has signed the witness or attendance record regarding this
40 case will receive notice in the mail if the case has been withdrawn or will be continued to January 14th.

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42 **6. New Public Hearings**

1 None

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3 **7. Staff Report**

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5 Mr. Hall informed the Board that Case 520-AM-05, Gene Bateman was before the County Board last week
6 and any amendment to the Zoning Ordinance has to be approved by a majority of all elected Board members,
7 which in Champaign County's case is 14, and at that meeting the case failed on a vote of 12 affirmative
8 votes and 11 no votes. He said that a majority voted for approval but not a majority of all elected Board
9 members and there were more than two elected members who did not attend the meeting. He said that it was
10 conceivable that if the case had been deferred to a full County Board meeting that a different outcome could
11 have occurred but since this was not the case the request did fail.

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13 Mr. Hall stated that at the November 30th ELUC meeting the request for the hiring of professional
14 consultants for review of certain technical studies for Wind Farm County Board Special Use Permits was
15 denied. He said that ELUC did discuss this item for a period of time and there was support for and against
16 the request.

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18 **8. Other Business**

19 **A. Docketing of anticipated California Ridge Wind Farm**

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21 Mr. Hall stated that according to information given at the November 30th ELUC meeting the ZBA should not
22 be concerned about receiving a wind farm application until Spring 2010 therefore the Board may decide to
23 eliminate the wind farm case from the docket until such time that an application is received. He said that he
24 can mail a letter to the wind farm developers indicating such and stressing that six weeks after receipt of a
25 full application will be required prior to a hearing for the wind farm.

26

27 **Mr. Courson moved, seconded by Mr. Thorsland to remove the wind farm case from the docket. The**
28 **motion carried by voice vote.**

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

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32 None

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34 **10. Adjournment**

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36 The meeting adjourned at 6:54 P.M.

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38 Respectfully submitted

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42 Secretary of Zoning Board of Appeals

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DRAFT SUBJECT TO APPROVAL DRAFT

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