

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: August 26, 2010

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 : Lori Busboom, John Hall, J.R. Knight, Christina Papavasiliou (Assistant State’s Attorney)

OTHERS PRESENT : Neal Toler, Jeff Tock, Donna Parkinson, Ray Parkinson, Jay Hageman, Jed Gerdes, Terry Ladage, Carl Smith, Shawn Walker, Dwight Farber

1. Call to Order

The meeting was called to order at 7:05 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. Thorsland moved, seconded by Ms. Capel to rearrange the agenda and hear Case 673-V-10, Harl and Donna Parkinson prior to Case 645-S-09, Robert and Barbara Gerdes. The motion carried by voice vote.

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 Zoning District. Location:

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 **An approximately 83 acre tract that is approximately the West Half of the Southwest Quarter of**
2 **Section 33 of Ayers Township and commonly known as the farm at 52 CR 2700E, Broadlands.**

3
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 hands
6 for those who would like to cross examine and each person will be called upon. He requested that anyone
7 called to cross examine go to the cross examination microphone to ask any questions. He said that those
8 who desire to cross examine are not required to sign the witness register but are requested to clearly state
9 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 stated that there is no new memorandum for this case tonight. He clarified that the mailing
14 included the Supplemental Memorandum with all attachments listed except for the attachment titled, "Tables
15 Comparing Relevant Evidence for the Finding of Fact" which was inserted into the packet at the minute. He
16 said that the new attachment should be added as an item to the Documents of Record. He said that he did
17 find out from the State's Attorney that the court has joined the State with the case, Illinois Department of
18 Transportation Division of Aeronautics and the court has asked for information from IDOT.

19
20 Ms. Papavasiliou stated that when another party joins a case a complaint has to be re-filed and then a 60 day
21 time period is allowed for response. She said that Mr. Tock informed her that they intend to re-file within 10
22 days.

23
24 Mr. Bluhm asked the Board if there were any questions for Mr. Hall and there were none.

25
26 Mr. Bluhm called Mr. Jeff Tock to testify.

27
28 Mr. Jeff Tock, attorney representing the petitioners, stated that he would like to attempt to go through the
29 case based upon the attachment titled, "Tables Comparing Relevant Evidence for the Finding of Fact." He
30 said that he thought that this might be an orderly way of trying to approach the elements of what is being
31 proposed.

32
33 Mr. Tock stated that page 1 of the Table compares relevant evidence for the Finding that the Proposed
34 Special Use is necessary for public convenience. He said that Section 9.1.11.B. Special Use Criteria of the
35 *Champaign County Zoning Ordinance* states that a Special Use permit shall not be granted by the Board
36 unless the public hearing record and written application demonstrate: 1. that it is necessary for the public
37 convenience at this location. He said that if the Board would review the types of uses listed under Section
38 6.1.3 Schedule of Requirements and Standard Conditions the Board would find, in his opinion, more public
39 uses rather than private uses. He said that government buildings, airports, amusement parks, cemeteries,
40 electrical substation, fairgrounds, are all things that are for public use. He said that for a public use being
41 proposed it seems fair that the petitioner would need to show that the use is for the public convenience at
42 that specific location. He said that he is troubled by the requirement of the *Zoning Ordinance* where they are

8/26/10

AS APPROVED SEPTEMBER 16, 2010

ZBA

1 asking for a Special Use for a restricted landing area which by definition is a private use. He said that RLA's
2 are defined by the *Illinois Administrative Code* as a private use and airports are referred to as a public use
3 therefore the distinction between an airport and restricted landing area is that one is public and one is private.
4 He said that from the beginning the *Zoning Ordinance* requires that a public convenience must be proven for
5 a private use which is impossible because it is difficult to show public convenience for a private use. He
6 said that you can't have a public use with a private convenience therefore he does not believe that this aspect
7 of the *Zoning Ordinance* should apply.

8
9 Mr. Tock stated that there have been past cases where RLA's have come before this Board and the same
10 criteria was looked at where there was a restricted landing area. He said that in 1988 Case 672-S-88, Stu
11 Moment, the petitioner, indicated that his RLA would be used for aerial surveying purposes. Mr. Tock
12 stated that it appears that the use in Mr. Moment's case was a private use on his own land. Mr. Tock stated
13 that Mr. Moment also indicated that a fertilizer company would be invited and the RLA could be utilized for
14 general inspection of farmer's crops. Mr. Tock stated that he could not find anything in the record which
15 indicated that Mr. Moment's RLA was necessary for public convenience at that location.

16
17 Mr. Tock stated that in August, 1990 Case 724-S-90, Dean Schwenk, the petitioner, indicated that the RLA
18 would be used for his own private plane and recreational purposes only. Mr. Schwenk also indicated that on
19 occasion the airstrip may be used by his guests and his son would also be flying. Mr. Tock stated that the
20 ZBA stated that the proposed use was necessary for public convenience at the proposed location because it
21 would be a good location for crop dusting uses and that it should not be injurious to the area in which it is
22 located because it is not in a residential area. Mr. Tock stated that even though Mr. Schwenk admitted that
23 the RLA would be used for recreational use the ZBA indicated that the RLA could also be used for crop
24 dusting therefore it is a good use for the public in that location.

25
26 Mr. Tock stated that in 1991 Case 750-S-91, Lowell Routh, the petitioner, indicated that he desired to
27 establish an airstrip for not only private use but for possible emergency landings and crop dusting emergency
28 landings if needed. He said that there was a statement at the public hearing that the petitioner must show
29 that the request is necessary for the public convenience and the petitioner stated it was three to five miles to
30 the nearest landing strip and the requested RLA is located in an area out in the middle of no where. He said
31 that the ZBA indicated that to grant the request would provide a convenience to the general public because it
32 would provide for an emergency landing and crop dusting emergency landings in this area. He said that
33 those interpretations of the *Zoning Ordinance* indicating that this was a public convenience also applies to
34 the application made by the Gerdes family because their RLA will be used for crop dusting, seed application,
35 herbicide, pesticide, fungicide and will be available for emergency landings and other crop dusting. He said
36 that there is nothing in the record of any one of the previous cases that indicates that this is a public use in
37 any way therefore how can the Board consider this as a public convenience when it is really a private use. He
38 said that it would make it difficult for the Board to make this type of interpretation and it makes it difficult
39 for him to make the argument when it is an oxymoron.

40
41 Mr. Tock stated that there has been some discussion if the use of the RLA is appropriate or generally needed
42 by agriculture. He said that Jed Gerdes indicated that he applies rye grass as a cover crop and does it by

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 aerial application and the response was that there has not been any other farmer who has come in and
2 indicated that they need to have an air strip for aerial application of a cover crop. Mr. Tock stated that this
3 has created a vacuum as to whether or not this is something that is recognized in agriculture as an
4 appropriate way to apply the cover crop of rye grass over growing corn. He submitted a handout, on behalf
5 of the Gerdes family, from the Natural Resources Conservation Service regarding cover crop conservation
6 practices. He said that the cover crop, rye grass, is planted over growing corn so that when the corn is
7 harvested the growing rye grass is there to benefit the soil into next spring when soybeans will be planted.
8 He said that the first page of the handout indicates the following purposes for cover crop practices: 1. reduce
9 erosion from wind and water; 2. increase soil organic matter; and 3. manage excess nutrients in the soil
10 profile; and 4. promote biological nitrogen fixation; and 5. increase biodiversity; and 6. weed suppression;
11 and 7. provide supplemental forage; and 8. soil moisture management. He said that the second page
12 provides a chart which requires the method of seeding which may be by drill, broadcast or aerial application.
13 He said that this is a worksheet which is provided by the USDA/NRCS where they recognize the aerial
14 application of a cover crop. He said that also attached to the handout is Table 1. Common Cover Crops and
15 it indicates rye as the second listing which is easily established with rapid growth in fall and spring and has
16 allelopathic, weed killer properties. He said that he has provided this handout in support of the viability of
17 what Jed Gerdes is doing and how he is expanding his farming practice in working with the application of
18 rye grass by aerial means therefore requiring the requested RLA.

19
20 Mr. Tock submitted a letter dated August 26, 2010, from John Richard Reed, Reed's Fly-On Farming. Mr.
21 Tock said that Mr. Reed was unable to attend tonight's meeting but wanted to clarify his testimony of June
22 11, 2009. Mr. Tock stated that the testimony that Mr. Reed wanted to clarify was in reference to what the
23 impact would be if the setback from the runway to the nearest turbine was made less than 3,500 feet. Mr.
24 Reed previously stated that it is more difficult and dangerous to fly when there is a closer setback. Mr. Tock
25 stated that Mr. Reed's letter explains that it is desirable to have as great a setback as possible between a
26 runway and a 500 foot tower but if the towers are going to be moved closer than 3,500 feet setback, as
27 dictated by the *Champaign County Zoning Ordinance*, to only meet the setback that is established by IDOT
28 then even though it is closer to the runway it does not present a problem to him as a licensed, commercial,
29 experienced pilot and he can certainly operate within that setback without any difficulty.

30
31 Mr. Tock stated that it was pointed out in April by Carl Smith and verified by staff that trees had been
32 planted at the south end of the runway and along the east side of the proposed runway and that those were an
33 obstruction to the use of this runway that needed to be taken into consideration during the Board's approval
34 or denial of special use permit application. He submitted photographs which were taken during the week of
35 August 16th by Mr. Gerdes of the trees. Mr. Tock stated that the sheet with the two photographs on it was
36 taken from the soybean field on the Gerdes property and the first photograph is from the south end looking to
37 the south and the grass strip that is apparent is an unimproved ROW located in Douglas County. He said
38 that the second photograph on this sheet was taken at the edge of the Gerdes' field looking south into
39 Douglas County, south end of the runway, and the road which is indicated is Ayers Township Road 000N.
40 Mr. Tock stated that one of the photographs indicate a view looking to the west where trees, which most did
41 not survive, had been planted south of CR 000N by Carl Smith. Mr. Tock stated that if the Board is
42 concerned about the planting of 20 to 40 foot trees out there then this photograph will prove that this is not

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 the case. He said that the trees were only saplings when they were planted and many did not survive. He
2 said that if the saplings had survived in order to interfere with the runway they would need to grow to a
3 substantial size of 40 feet in height or more and at a growth rate of two feet a year it will be 20 years before
4 they would interfere with the runway. He said that he does not believe that the Board should take the trees
5 into consideration today as to whether or not these trees will create an impediment to the safe use of the
6 proposed restricted landing area. He noted that IDOT controls all of the RLA's and IDOT will review the
7 field to make sure that there are no obstructions at the time that they issue the permit for the restricted
8 landing area. He said that there is a self governing requirement that if at any point in time the field becomes
9 noncompliant, for instance the existence of trees interfering with the glide slopes and side setbacks as
10 established by IDOT, the operator is suppose to close the runway and self report it and then the State of
11 Illinois would decertify it and it would no longer be an approved restricted landing area. He said that if
12 sometime in the future the trees were to grow and become an impediment then the runway would be closed
13 down and would not be allowed to continue to operate.
14

15 Mr. Tock stated that another issue which has come up since the last time he was before the Board is the coal
16 mine in Vermilion County. He said that there was a map included as an attachment to the Supplemental
17 Memorandum dated August 20, 2010, which indicated the location of the coal mine area which extends
18 approximately one mile into Champaign County east of Broadlands and goes ten miles to the north and then
19 ten miles to the east. He said that during conversations between Mr. Hall and the representative from
20 Horizon Wind Energy it has been determined that it is very doubtful that any wind turbines will be located
21 within the area of the proposed coal mine. He said that this emphasizes that it is all speculation as to if or
22 when Horizon Wind Energy will ever put any wind turbines in this area. He said that Horizon has indicated
23 that they will not place wind turbines within the coal mine area therefore Mr. Hall has made the assumption
24 that Horizon may be pulling the wind turbines into Champaign County. Mr. Tock stated that he has heard
25 that the wind turbines that will be pulled into Champaign County will start at Broadlands and go north of
26 Sidney but all of this information is only speculation and it is inappropriate for the Board to consider the
27 speculative nature of what might happen. He said that a wind farm may never happen in Champaign County
28 and if there is one where will it be located. He said that in not knowing where the wind farm is going to be
29 located any action that the Board takes indicating that the RLA will not be approved because of the proposed
30 wind turbine farm is only speculation and the Board needs to address the facts which is that Horizon is
31 interested in the area but they have not committed to placing the turbines in the area.
32

33 Mr. Tock stated that there was a concern raised by staff that the RLA should not be approved because the
34 Board cannot guarantee the safety of what will happen in Vermilion and Douglas County. He said that this
35 concern is not within the Board's jurisdiction and the Board cannot guarantee everyone's safety everywhere.
36 He said that under the *Champaign County Zoning Ordinance* the Board must look at the setbacks and
37 determine what requirements can be imposed for the land or the land use that is located in Champaign
38 County, not what is in Douglas or Vermilion County. He said that it is the job of IDOT Division of
39 Aeronautics enforcing the glide path and the side setbacks and it is their job to assure that there are no
40 obstructions whether it is in Champaign, Douglas or Vermilion County. He said that the Board should only
41 enforce the Champaign County Zoning Ordinance and if something is beyond your jurisdiction then let
42 someone else address it. He requested that the Board base their decision on the facts and not conjecture.

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1
2 Mr. Bluhm asked the Board if there were any questions for Mr. Tock and there were none.

3
4 Mr. Bluhm asked if staff had any questions for Mr. Tock and there were none.

5
6 Mr. Bluhm called Mr. Terry Ladage to testify.

7
8 Mr. Terry Ladage, who resides at 344 CR 1300N, Champaign distributed a one page handout to the Board
9 for review. He said that he resides in the west side of Champaign County on the Litchfield RLA and he is
10 present tonight to be able to answer questions and discuss with the Board what the RLA operations consist
11 of. He said that he has resided at his home location for over 40 years and he agrees with Mr. Tock's
12 testimony that an RLA is private property. He said that in order for someone else to utilize the RLA they
13 would have to be invited or otherwise there are issues of litigation, etc. He said that having the RLA
14 provides many benefits with regard to the absence of air traffic control operation that are at typical
15 commercial airports, terminals and airport security. He said that these are all issues that everyone takes for
16 granted but it amounts to time and real money for someone that has to go through an airport operation to do
17 his business. He said that obviously it provides greater latitude for any operation and yet we are all working
18 within the FAA confines and the Illinois DOT regulations makes certain that what they do is safe. He said
19 that there have been issues about the economics of what is being addressed which is a crop dusting operation
20 that must continuously return back and forth to the Mattoon area for reloading. He said that he just spoke to
21 Flightstar within the past two hours and the current cost of 100 gallons of low lead aviation fuel is \$5.40 per
22 gallon. He said that many of the crop dusters are averaging a 20 gallon per hour operation and if the man has
23 to leave the Gerdes farm and fly to Mattoon and back he would estimate that the round trip would cost over
24 \$60 in gas not counting the labor, maintenance and depreciation therefore making it approximately \$100 per
25 trip. He said that if an operator is doing this several times per day then economically it is a real concern.

26
27 Mr. Ladage stated that his handout pointed out historical information, education, community service,
28 research support, personal use and summation. He said that several years ago he invited the Medivac Air
29 Life helicopter to come sit on their RLA so that they could teach EMT programs to their own volunteer fire
30 department personnel. He said that this training included people involved in the Scott Fire Protection
31 District and many were from Bondville, Seymour and Ivesdale. He said that the training including landing,
32 loading, safety and night operations and the training was so intense that it cannot be discussed in just a few
33 words. He said that the volunteers are professionals who need high skills in working with their equipment
34 and within a few weeks after the training session there was a terrible accident on the Monticello Road which
35 required these skills from the Scott Fire Protection District. He said that he would suspect that the areas of
36 Broadlands and Allerton would appreciate it if the Gerdes family would provide the same type of training for
37 their fire protection districts.

38
39 Mr. Ladage stated that he has worked with the U of I Extension Office 4-H Clubs to give kids exposure to
40 flight and has worked with the National EAA Young Eagles. He said that these opportunities help kids with
41 science projects and classes. He said that crop dusters have landed upon his RLA and the farmer's gather
42 around very quickly because they too want to learn about the GPS systems that are being used in this

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 equipment, the glide bars and where they are positioned, etc. He said that his RLA provides a lot of
2 community service in that farmers are interested to view their crops to view storm damage, wind damage,
3 rain, damage, etc. He said that he has taken township drainage district supervisors for flights so that they can
4 see if the contractor has fulfilled his obligations or if scheduled work has been completed. He said that he
5 has taken farmers for flights for land acquisition and investments and crop insurance agents to view damage
6 fields in Champaign County. He said that he also has a neighbor who raises Simmental Cattle and he brings
7 people in from Colorado, Ohio, Louisiana and Minnesota to land on the RLA so that they can see what he
8 has for auction.
9

10 Mr. Ladage stated that there are five research farms within a five mile radius from his home and the
11 managers want aerial views of commodities, tile laterals, irrigation systems, facility inspections, land
12 development and future land investments to view farms. He said that adjacent test plot areas are being used
13 around his RLA by Illini F.S., Pioneer, and Monsanto and those people come out to park on the airstrip so
14 that they can view the research areas. He said that Hobbico has their own research and development
15 operations on his RLA and when he left tonight they were out there flying their models. He said that it has
16 been very beneficial to have the RLA because as a teacher in the aviation program at the U of I he has
17 experimented with equipment himself.
18

19 Mr. Ladage stated that he owned and operated a private balloon business and he does all of the construction,
20 maintenance and repair for a lot of his balloon customers and all types of peoples from all walks of life are
21 gaining exposure to this aviation oriented program and seeing what an RLA operation is all about. He said
22 that he has entertained experimental aircraft groups for over 30+ years at their home and he operates his own
23 personal aircraft. He said that an RLA really is for the public good because it provides a positive community
24 asset for public health, safety and community operations. He requested that the Board not choke the
25 proposed RLA and allow it the full benefits of its operation. He said that people in the community who
26 require the Gerdes family's support will seek them out whether they know it or not and they will utilize the
27 RLA for community related activities. He said that he hopes that the Gerdes family can enjoy the benefits of
28 an RLA with no restrictions for the benefit of the community and their farming profession.
29

30 Mr. Bluhm asked the Board if there were any questions for Mr. Ladage and there were none.
31

32 Mr. Bluhm asked if staff had any questions for Mr. Ladage and there were none.
33

34 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Ladage.
35

36 Mr. Jay Hageman, who resides at 7558 North 300 East Road, Fairmount stated that he lives in Vermilion
37 County but farms in Champaign County. He asked Mr. Ladage if he just indicated that his RLA and
38 hopefully the one for the Gerdes' will be used for health, safety and community.
39

40 Mr. Ladage stated that his focus is that the RLA is a private enterprise on private property and with that said
41 they can allow people, such as what he has done with his RLA, by inviting them to improve the community
42 and their education and research.

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1
2 Mr. Hageman asked Mr. Ladage if he is speaking in favor of the proposed RLA because his RLA is good
3 and doing wonderful.
4
5 Mr. Ladage stated yes.
6
7 Mr. Hageman asked Mr. Ladage if his RLA was being utilized for people looking for land and land
8 development and hopefully the Gerdes family would be able to use their RLA for the same purpose.
9
10 Mr. Ladage stated yes. He said that a farmer may come to his home to request a flight to look at a potential
11 interest that he has for a farm and not for land development. He said that land development for him is the
12 implementation of tiles, laterals, creek improvement, drainage district, etc.
13
14 Mr. Hageman thanked Mr. Ladage for the clarification. He asked Mr. Ladage if he serves the five research
15 farms.
16
17 Mr. Ladage stated that there are five research farm around his home area and because of the location of the
18 RLA sometimes the five research companies will call him once or twice a summer so that they can take
19 aerial photographs of their research farm plots for the purpose of plot identification, stock holder meetings,
20 etc.
21
22 Mr. Hageman asked Mr. Ladage if the companies are making money from these aerial flights.
23
24 Mr. Ladage stated that the companies may be but he isn't.
25
26 Mr. Hageman asked if this was an agricultural use.
27
28 Mr. Ladage stated that it is his belief that he is providing a community service to these people by allowing
29 the use of his aircraft and his services for his neighbors to go out and look at their products. He said that he
30 isn't hanging out a sign that indicates that for a certain fee he will do everything that they ask him to do.
31
32 Mr. Hageman asked Mr. Ladage if he makes any money during these community service flights.
33
34 Mr. Ladage stated no.
35
36 Mr. Hageman asked Mr. Ladage if he allows aerial application operators to fly from his RLA.
37
38 Mr. Ladage stated no. He said that he is not engaged in farming and the farmers who are adjacent to him do
39 not have the type of operations that the Gerdes family has described.
40
41 Mr. Hageman asked Mr. Ladage if he is aware of the amount of acres that the Gerdes family has seeded in
42 rye grass in the past.

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Mr. Ladage stated no.

Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Ladage.

Mr. Carl Smith, who resides at 214 County Road 2700E, Allerton stated that has a Vermilion County address but lives in Champaign County and has a landowner which owns adjacent ground to the proposed RLA. He said that he agrees with Mr. Ladage that the EMT training is a wonderful idea but this is a service that is practiced throughout the area without any airstrips. He said that the exact same type of training was done in Allerton in which U.S. Route 49 was closed and a helicopter was brought in at Heritage High School in Broadlands for a simulated car accident therefore he does not believe that an RLA has to be in place for training purposes. He said that a big difference between Mr. Ladage's RLA and the proposed RLA by the Gerdes family is that Mr. Ladage owns an airplane and the Gerdes family does not own a plane and testimony has indicated that they do not intend on owning an airplane. He said that in terms of flying to look at tile lines, holes in the fields, and flooding can be accomplished from existing runways in the area where there are pilots to serve them. He asked Mr. Ladage if someone has the same benefits if they do not own a plane but owns an RLA.

Mr. Ladage stated that the RLA is a matter of convenience. He said that the convenience of having an RLA located at your home is beneficial if you desire to have an aerial view of your neighbor's tiles, fields, etc. He said that the benefit of having an RLA beats the option of driving to Mattoon or fighting with security at Willard.

Mr. Smith asked Mr. Ladage if he would meet someone at the Vermilion County airport because they wanted to view property in that county.

Mr. Ladage stated yes, if the land was located in that area. He said that his testimony is in regards to local neighbors, community people within the Gerdes family farm or within his area. He said that people who are within 20 miles or so normally contact him for aerial flights and he accommodates them.

Mr. Smith asked Mr. Ladage if he owned a plane.

Mr. Ladage stated yes.

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

Mr. Bluhm called Carl Smith to testify.

Mr. Smith stated that there has been a lot of testimony and most things speak for themselves. He said that it is his understanding that most of the cases that Mr. Tock previously discussed involved a property owner who owned an airplane and then the RLA was opened up to other uses. Mr. Smith stated that on page 2 of 32 Item #5.B. indicates that there is a runway safety area located entirely on the subject property that is 120

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 feet wide, centered on the runway. He said that he is concerned as an adjoining landowner that the runway is
2 supposed to be 100 feet wide and the safety area is 120 feet centered on it therefore in reality there is only 10
3 feet of safety area to the side of the runway. He said that if he is on his property watering his trees or
4 inspecting his crops and a plane comes in to land on the RLA it could hit one bump and be on top of him.
5 He said that he considers 10 feet to be far too little of a safety area and he would request that if the RLA is
6 approved that the safety area be increased dramatically.

7
8 Mr. Smith stated that Mr. Gerdes previously presented testimony indicating that he would save five to ten
9 dollars per acre by providing a landing strip closer to where he farms. Mr. Smith stated that he has farmed
10 all of his life and has had thousands of acres sprayed year after year and he has never realized any savings or
11 been told from a pilot that there is any savings if he could move closer to the fields. He said that Mr. Reed
12 has indicated that he flies all of his loads out of Mattoon because his tanks and equipment are located there
13 and he is not interested in moving which appears to be the case with most applicators.

14
15 Mr. Smith stated that Item #7.F(3) indicates that Mr. Reed testified that rye grass is a difficult crop to apply
16 and time is of the essence, so being able to load close is imperative because there is not a single helicopter in
17 the State of Illinois that can apply rye grass. Mr. Smith stated that a helicopter operator is present at
18 tonight's meeting therefore it might be valid to ask him if Mr. Reed's statement is valid.

19
20 Mr. Smith stated that the trees were planted and watered on a regular basis and they were told when they
21 purchased the trees that they are mechanically harvested and to expect approximately 15% loss on average
22 but he believes that he has had a 20% loss. He said that a majority of the trees were killed by what appears
23 as overspray from an adjacent field. He invited the Board to visit the field in which the trees are planted to
24 view how the tops of the trees have been damaged due to chemical application. He said that he has
25 purchased additional trees and as soon as the crops are taken out of the fields the trees will be planted. He
26 said that if necessary he will bring in a tree spade and plant 20 foot trees because that is how committed they
27 are on their side of the RLA.

28
29 Mr. Courson asked Mr. Smith if he planted the trees to prevent the RLA.

30
31 Mr. Smith stated yes. He said that he believes in the wind farm and he would like to see it come to benefit
32 the entire community.

33
34 Mr. Courson asked Mr. Smith if there were no wind farms anticipated in the area, would he care about the
35 RLA?

36
37 Mr. Smith stated that if he was guaranteed that the wind farm company was not interested in the area and
38 was not just being chased away then he would not be as opposed to the RLA but he would request that the
39 safety area be expanded rather than allowing ten feet from their field.

40
41 Mr. Courson asked Mr. Smith if he owns the land.

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 Mr. Smith stated no, his aunt owns the land.
2
3 Mr. Courson asked Mr. Smith if he received crop subsidy from the farm land.
4
5 Mr. Smith stated yes.
6
7 Mr. Courson asked Mr. Smith if he would take the strip of land out of production.
8
9 Mr. Smith stated that the strip of land is currently out of production and he is not receiving any crop subsidy
10 on the strip. He said that directly across the county line is additional acreage that one of his other landlords
11 own and it will also be affected by the RLA. He said that he personally owns ground to the north of the RLA
12 that will also be affected.
13
14 Mr. Bluhm asked the Board if there were any further questions for Mr. Smith and there were none.
15
16 Mr. Bluhm asked Mr. Smith if he had anything sprayed.
17
18 Mr. Smith stated yes, all of his corns and beans were sprayed.
19
20 Mr. Bluhm asked Mr. Smith how much he was charged to spray the fungicide.
21
22 Mr. Smith stated that he just paid the bill the other day and it was in the thousands of dollars but per acre it
23 was approximately \$16 per acre.
24
25 Mr. Bluhm asked if staff had any questions for Mr. Smith.
26
27 Mr. Hall asked Mr. Smith how much separation he would like the Board to require between the runway and
28 the east property line.
29
30 Mr. Smith stated that he would prefer 200 to 300 feet because within a blink of an eye a plane could be
31 landing.
32
33 Mr. Hall asked Mr. Smith to confirm that he does intend to replant the trees.
34
35 Mr. Smith stated yes, the trees have been purchased and invited staff to come down to look at them if so
36 desired.
37
38 Mr. Hall stated that staff has seen the trees and photographs have been taken although they did not believe
39 that the photographs were needed at tonight's meeting therefore they are unavailable for the Board's review.
40 He said that it was staff's intent to visit the site today but due to illness in the office it was not feasible. He
41 asked Mr. Smith if he planted the trees along the east line of the RLA.
42

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 Mr. Smith stated yes.

2

3 Mr. Hall stated that, as the Zoning Administrator, if Mr. Smith had planted the trees after the RLA had been
4 approved he would be obligated to have the trees removed or maintained at a height such that they would not
5 encroach into the imaginary surfaces of the RLA. He said that it is his position that the trees were planted
6 well before the RLA was approved therefore he will not be taking any action on those trees. He said that Mr.
7 Smith has voiced his position in that he plans to maintain a row of trees along the east side but there is a time
8 frame in which if the trees are absent and the RLA is approved Mr. Smith may not be able to replant the
9 trees. He said that obviously at the end of the growing season Mr. Smith may lose young stock and provided
10 that the stock is replaced in a timely manner and as long as Mr. Smith keeps record of which trees are
11 replaced so that if there is ever a question about the trees he does not lose the right to keep the trees in their
12 location.

13

14 Mr. Smith stated that if the trees were planted before the RLA approval then replanting would be legitimate.

15

16 Mr. Hall stated that if the trees were dead and gone for an extended period then Mr. Smith could lose the
17 right to replant those trees. He said that he has a great deal of difficulty with someone suggesting that the
18 Board should ignore the trees.

19

20 Mr. Smith stated that the trees on the south were planted at the exact same time as the trees to the east.

21

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

23

24 Mr. Bluhm called Dwight Farber to testify.

25

26 Mr. Dwight Farber, Project Manager for Horizon Wind Energy, stated that they are currently making plans to
27 develop in this area. He said that they are planning to develop a 300 megawatt project located in parts of
28 Champaign, Vermilion, Douglas and Edgar counties. He said that Horizon Wind Energy has invested a
29 considerable amount of money in the last two years, approximately $\frac{3}{4}$ of a million dollars, to get ready to
30 build this project in transmission line studies. He said that one of the transmission line studies has come
31 back looking very good which gives them the first hurdle to get a project connected to that transmission line
32 so that they have good commitment in terms of the study and the results of the study. He said that they
33 expect the other results of the other study to be back soon. He said that Horizon Wind Energy has invested
34 in four met towers to verify the wind speed and three of the met towers have been up since 2008 and the
35 wind speeds certainly support the development of a wind farm in this area. He said that their project
36 footprint has been altered somewhat due to the proposed coal mine therefore they will not be going into
37 areas that will have a coal mine lease upon it therefore shifting their footprint a little further into Champaign
38 County. He said that currently they have signed up approximately 3,000 acres within the project area and
39 they have commitments for close to 8,000 acres of other landowners that have not completed leases yet. He
40 said that the commitment level appears to be very strong in the entire project area and certainly in
41 Champaign County. He said that a timeline as to when the project will begin is a function of when they are
42 able to get all of the necessary land signed up, all the designing completed, and they are in the process of

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 bidding this project for a power purchase agreement. He said that should they secure the power purchase
2 agreement they could be building the first phase in the area as early as 2012 but that is yet to be known based
3 on a lot of the factors.

4
5 Mr. Palmgren asked Mr. Farber when a permit application will be filed.

6
7 Mr. Farber stated that a permit application, if they are able to build in 2012, could be submitted as early as
8 next year.

9
10 Mr. Palmgren asked Mr. Farber when the first tower would be constructed.

11
12 Mr. Farber stated that if the first phase was able to be constructed in 2012, based on all these factors, the first
13 tower could be constructed in 2012.

14
15 Mr. Palmgren stated that since there is a not a date specific would he have a problem with an agreement for
16 an RLA for agricultural/conservation work and when a tower is planned to be built, assuming that contracts
17 are completed at that time, the RLA agreement could be discussed again at that time.

18
19 Mr. Farber stated that the issue with Horizon losing land in this area is that when a bigger buffer is taken out
20 it removes land that is very important to the layout of the project. He said that there has been testimony
21 received which indicates that there are several landowners who have already signed up for the project and
22 there are other landowners who have committed to the project but some of their land is located in the area of
23 the proposed RLA. He said that not completing such an agreement would not only be for Horizon Wind
24 Energy's benefit for an efficient layout of the project but also for the benefit of any landowners that would be
25 precluded from participating in the project.

26
27 Mr. Palmgren asked Mr. Farber if he would be opposed to an RLA in this specific location at any time.

28
29 Mr. Farber stated that Horizon works with existing land areas and they comply with all of the regulations for
30 those but in this particular area Horizon plans to do a wind farm in the area and has been planning to do so
31 since 2008. He said that Horizon has landowners in the area who have committed to the project and desire
32 to be part of it. He said that it is not his decision as to whether an RLA is approved or not but Horizon does
33 have landowners that are already committed and the wind farm would benefit the community.

34
35 Mr. Bluhm asked the Board if there were any additional questions.

36
37 Mr. Courson stated that Mr. Farber indicated that the layout of the wind farm in Champaign County would
38 be changed somewhat due to the proposed coal mine. He asked Mr. Farber why the wind farm was not
39 considered in the new location to begin with.

40
41 Mr. Farber stated that originally they had looked at an area along a ridge that they felt like the wind would be
42 better and there was more contiguous land and smaller footprint. He said that as they began looking at the

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 areas that had coal mine leases and they started to see where there were some other landowners that may not
2 interested in signing on to the wind farm project they shifted the project more into Champaign County. He
3 said that this is not uncommon with wind farm projects as they are being developed because the companies
4 begin signing up land in a project area and find that the project requires shifting.

5
6 Mr. Bluhm asked the Board if there were any further questions for Mr. Farber and there were none.

7
8 Mr. Bluhm asked if staff had any questions for Mr. Farber.

9
10 Mr. Hall stated that he believes the finding indicates that wind turbines in a wind farm go in at about 70
11 acres per turbine. He said that it is his understanding with most wind farms in central Illinois that the towers
12 are in rough rows and not in a uniform distribution over a rectangular area because they respond to the
13 topography and the wind. He asked Mr. Farber if it would be fair to indicate 70 acres per turbine.

14
15 Mr. Farber stated that the general rule that they use is one turbine to every 80 to 100 acres and that depends
16 upon all of the setbacks that they comply with in relation to homes, roads, transmission lines and non-
17 participating landowners. He said that he has areas where landowners would like to have a turbine but they
18 may only receive one because of all of the setbacks yet for other landowners may be able to have more. He
19 said that the intent for this project is to get land signed up in a contiguous fashion so that they could design
20 the wind farm more at a straight line.

21
22 Mr. Bluhm asked the audience if anyone desired to cross examine Mr. Farber and there was no one.

23
24 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding
25 Case 645-S-09 and there was no one.

26
27 Ms. Papavasiliou stated that even though it is a private use the Ordinance requires that it obtain a Special
28 Use and the Board must make sure that their decision is based on the fact that the criteria has been met. She
29 said that the criteria regarding public convenience at that location sometimes creates confusion but it is only
30 emphasizing that the Board's roll is to protect the public convenience and that the Special Use Permit
31 process is about harmony of uses. She said that the Board's planning power is very broad.

32
33 Mr. Bluhm closed the witness register.

34
35 Mr. Hall reasserted that the Board is not obligated to ignore the trees if he is obligated to make sure that they
36 are removed. He said that no other farmer has testified that they require an RLA to apply rye grass but the
37 evidence is that no other farmer has testified that there is a need for the RLA. He said that this Board deals
38 with the finding for public convenience for private lakes all of the time and the necessity for the public need
39 for truck terminals, major rural businesses, contractor's facilities therefore this is nothing new. He said that
40 it is a problem with the Ordinance and after this case is over and settled he would love to ask for Mr. Tock's
41 help in asking the County Board to amend the required criteria. He said that he would like to eliminate this
42 one requirement from the Zoning Ordinance because there are other ways to deal with these issues than

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 having to make a finding of public convenience but it is the Board's obligation in this case. He said that
2 regarding the trees one thing that the Board might consider, if they believe that the absence of trees is an
3 issue, is ask for a statement from the landowner. He said that the Board accepts the tenant farmer's
4 testimony for many things therefore it is reasonable to accept Carl Smith's testimony regarding the intention
5 of replanting the trees. He said that if for some reason the Board finds Mr. Smith's testimony lacking then
6 he would encourage the Board to provide time for some statement from the landowner rather than determine
7 that the trees are not there therefore they are not relevant. He said that staff has summarized the evidence for
8 the Board and it is a good road map for the Board but the distributed table has evidence underlined indicated
9 to be added as Item #8.W. He said that Item #8.X should read as follows: The *Champaign County Zoning*
10 *Ordinance* requires a minimum separation between any wind farm tower and any existing RLA or an RLA
11 for which there had been a complete application received by the date of adoption of a recent amendment.
12 The revised RLA wind farm separation results in about 891 acres of separation per wind farm tower. Wind
13 farm towers generally occur at a density of about one tower per 80 to 100 acres. Even an RLA that is on 80
14 acres could affect as much as 811 other acres or roughly 11 wind turbines however other separations (such as
15 streets and utilities) will also have a significant affect on the location of wind turbines. Reducing the ability
16 of neighbors to lease land for wind farm turbines reduces their possible income and also reduces the taxes
17 paid by the wind farm to local taxing bodies such as school districts.

18
19 Mr. Hall stated that a new Item #8.Y should indicate Mr. Reed's letter of August 26, 2010, stating that the
20 revised RLA wind farm separation is a safe separation. Mr. Hall stated that he is not aware of any other
21 testimony which was given at tonight's hearing that really needs to be added to the Summary of Evidence
22 unless the Board members heard testimony that they thought was especially compelling.

23
24 Mr.Thorsland stated that in a way the trees and the wind farm are similar in that the seeds for the wind farm
25 were planted in 2008 although it doesn't exist yet and the actual trees were planted prior to the RLA and are
26 established before the RLA was approved. Mr. Thorsland stated that perhaps a condition could be proposed
27 that the RLA could be approved for agricultural aerial application until such time the wind farm is developed
28 and if the wind farm is not developed then the RLA can continue as approved.

29
30 Mr. Hall stated that the courts have determined that the Board cannot impose conditions on petitioners unless
31 the petitioner agrees therefore if Mr. Gerdes rejected the condition then the Board could not require it.

32
33 Ms. Capel stated that there are other ways to apply rye grass.

34
35 Mr. Palmgren stated that there was mention that IDOT Department of Aeronautics will shut down the RLA
36 if they felt that the RLA was dangerous. He said that if the RLA is already in place then perhaps the
37 placement of the wind towers would be controlled.

38
39 Mr. Hall stated that IDOT does not control any separation in regards to wind farm towers.

40
41 Mr. Palmgren stated that if a wind tower was placed at the end of the runway in Douglas County it would be
42 very hard to travel over 500 feet and drop down to the airstrip therefore he would think that IDOT would

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 have a problem with that and decertify the RLA. He said that he would assume that the RLA and the wind
2 farm will try to co-exist until some point and time when things get too close. He said that if the wind farm
3 company went ahead and placed their wind towers wherever they have contracts eventually one or more
4 would become too close and the Division of Aeronautics would act to decertify the RLA.

5
6 Ms. Capel asked if IDOT had the power to regulate where the wind turbines are placed.

7
8 Mr. Hall stated no.

9
10 Mr. Hall stated that if the Board approves the RLA then the Board has identified the landowners who cannot
11 participate in the wind farm. He said that there is an absolute conflict currently in that there are trees
12 planted in Champaign County which will encroach into the imaginary surfaces. He said that the trees are
13 very young and the fight will not come for several years but it will come.

14
15 Mr. Thorsland stated that Mr. Smith was not averse to planting 20 foot trees if necessary. Mr. Thorsland
16 asked if Mr. Smith planted such trees after the RLA would it be an IDOT issue or a County issue enforced by
17 the Zoning Administrator.

18
19 Mr. Hall stated that IDOT has already indicated that a big tree is a big problem.

20
21 Mr. Palmgren stated that no one can tell us at this point where a turbine is going to be located therefore how
22 can the Board predict the future. He said that the speculative wind farm is holding up everything else in the
23 area.

24
25 Mr. Hall stressed that the Board should look at every required finding and if the Board believes that the RLA
26 is necessary for public convenience and not injurious to the district regarding safety problems then the exact
27 location of the turbines may be the only issue.

28
29 Mr. Thorsland clarified to the other Board members that a positive finding must be made on all findings.

30
31 Mr. Hall stated that any condition must be agreed to by Mr. Gerdes.

32
33 Mr. Bluhm stated that his comments are in regards to Mr. Smith's testimony. Mr. Bluhm asked if there was
34 anything in the Ordinance, except for the 120 feet centered on the runway that would satisfy his request of
35 the safety area being further from his property line.

36
37 Mr. Hall stated that the minimum staff recommendation is 85 feet to ensure that there is no encroachment
38 into the side imaginary surface for the trees that are planted. He said that the Ordinance does not have
39 anything and this is not really a structure so it cannot be looked at for a 10 foot minimum yard.

40
41 Mr. Bluhm stated that Mr. Smith indicated his concern that if the safety area is only 10 feet off of his
42 property and a plane comes in and hits a bump it would not take long to get to his property and what damage

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 could occur. He asked Mr. Hall if the 85 feet is from the property line to the safe zone.
2
3 Mr. Hall stated that the 85 feet would be from the property line to the edge of the runway. He said that
4 IDOT requires a clear distance for 85 feet at the side of the runway and if the trees overgrow the property
5 line it would make sense to make it more than 85 feet but it is his understanding that if an overgrowth of
6 vegetation occurs then the overgrowth can be removed at the property line.
7
8 Mr. Bluhm asked Mr. Hall if the 85 feet has been incorporated into the finding or as a condition.
9
10 Mr. Hall stated that staff has mentioned this several times and no revised site plan was submitted.
11
12 Mr. Thorsland asked if the Board should ask Mr. Gerdes if he was agreeable to the 85 feet setback from the
13 east property line.
14
15 Mr. Bluhm stated that Mr. Gerdes would need to sign the witness register.
16
17 Mr. Tock stated that Mr. Gerdes would be in agreement with an 85 foot setback to the east property line. He
18 said that it should actually be 90 feet due to the layout of the trees.
19
20 Mr. Thorsland asked if the trees to the south are in Champaign County.
21
22 Mr. Bluhm stated no the trees to the south of the runway are in Douglas County.
23
24 Mr. Knight distributed text that should be included as new Item #12.C on page 27 of 32. The text reads as
25 follows: The petitioner shall apply for a Change of Use Permit within 30 days of the approval of the special
26 use permit, and shall also provide with the permit application an amended site plan which indicates that the
27 runway shall be located no closer than 85 feet to the east property line. The above condition is necessary to
28 ensure the following: Compliance with the Zoning Ordinance within a reasonable time frame.
29
30 Mr. Bluhm asked Mr. Hall if any text existed in the RLA description which indicates that a person has to
31 own their own plane.
32
33 Mr. Hall stated no, not that he is aware.
34
35 Mr. Bluhm stated that someone owning an RLA who does not own their own plane is a concern. He said
36 that all of the other RLA's that have been approved in Champaign County has included the owner's own
37 aircraft.
38
39 Mr. Hall stated that this might be an interesting item of evidence to add to Item #7.K(7) indicating the
40 following. There has never been a request for an RLA in Champaign County by a landowner who did not
41 own an airplane nor was not a pilot. He said that Item #7.S on page 12 of 32 is redundant and should be
42 stricken.

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1
2 Mr. Bluhm stated that it is probably classified information but it would be nice to find out who has signed a
3 lease for the wind farm project or has given an indication of intent.
4
5 Mr. Thorsland stated that there were property owners who testified that they were hopeful for a wind farm
6 and Mr. Gerdes testified that he was not happy about a wind farm.
7
8 Mr. Bluhm asked if the Board is creating a conflict in regards to public convenience for the RLA if the
9 public already signed contracts for the wind farm before the application for the RLA was submitted.
10
11 Mr. Hall asked Mr. Bluhm if his question is based on when the contracts were signed and not who signed the
12 contracts.
13
14 Mr. Bluhm stated yes, although it would be nice to know who signed the contracts and when they signed
15 them.
16
17 Ms. Capel stated that Item #7.G(3) indicates that Mr. Smith and Mrs. Horst, the land owner of the farm
18 directly to the east, and her sister own considerable property in the area and they all signed contracts with
19 Horizon several months before the RLA was proposed. She said that Item #7.H(2) refers to Ms. Horst's
20 letter indicating that she had signed a contract to allow Horizon Wind Farms to place a turbine on her
21 property.
22
23 Mr. Hall stated that Paul Cole also submitted a letter on behalf of his clients which indicated that they too
24 were hopeful for the opportunity to sign a contract with Horizon.
25
26 Mr. Palmgren stated that Mr. Gerdes testified that his aerial applicator previously used an airstrip that has
27 since been tilled. Mr. Palmgren stated that Mr. Gerdes testified that a proposal for a land trade between
28 himself and a neighbor was declined.
29
30 Mr. Thorsland asked if Allerton has indicated any concerns regarding the RLA or the wind farm.
31
32 Mr. Hall stated that Allerton has jurisdiction although staff does not know what they have done or even if
33 they plan to do anything in regards to the wind farm. He said that staff has tried for some time to obtain
34 something in writing indicating that Allerton has an adopted zoning ordinance and staff has been
35 unsuccessful.
36
37 Mr. Thorsland asked if staff had received comments from Broadlands.
38
39 Mr. Hall stated that Broadlands has the same jurisdiction as Allerton.
40
41 Mr. Thorsland stated that Mr. Farber testified that landowners had signed commitments in 2008 for the wind
42 farm.

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1

2 Mr. Hall stated he does not believe that there has been any testimony received from Mr. Farber, prior to
3 tonight. He said that there is an item of evidence about what was known about a proposed wind farm.

4

5 Mr. Bluhm stated Item #7.C(1) on page 4 of 32 indicates that Horizon representative, Dwight Farber, has
6 discussed the anticipated wind farm and its general location with Planning and Zoning staff on multiple
7 occasions.

8

9 Mr. Hall stated that a new Item #7.C(5) could be added to supplement Item #7.C as follows: Mr. Dwight
10 Farber testified at the August 26, 2010, public hearing that Horizon Wind Energy began working on the
11 project in 2008.

12

13 **Mr. Schroeder moved, seconded by Mr. Thorsland to recess the meeting for a five minute break. The**
14 **motion carried by voice vote.**

15

16 **The meeting recessed at 9:40 p.m.**

17 **The meeting resumed at 9:45 p.m.**

18

19 Mr. Thorsland stated that an issue which has bearing upon his decision is whether or not the court finds that
20 the ZBA has jurisdiction.

21

22 Mr. Hall stated that the Board has jurisdiction tonight.

23

24 Mr. Bluhm stated that he agrees with Mr. Thorsland in that if the ZBA does have jurisdiction then they may
25 look at the RLA differently or may obtain something from the court case which would benefit the Board's
26 decision.

27

28 Ms. Capel stated that the Board must operate under what the regulations are and not what they could be.

29

30 Mr. Hall stated that he received recent information from the IDOT engineer which is in charge of airport
31 safety and who is the interim head of the group which approves RLA's because staff has had another
32 landowner make a claim of an agricultural RLA. Mr. Hall stated that the landowner informed IDOT that he
33 had Champaign County's approval for the RLA. Mr. Hall stated that IDOT called staff to verify that the
34 landowner had received Champaign County's approval because they were receiving complaints and he made
35 clear that no one had approval from Champaign County for any agricultural RLA and Steve Long, interim
36 chief, explained that it is his view that an RLA is an aeronautical facility that has to also comply with local
37 zoning. Mr. Hall stated that Mr. Long does not establish policy for IDOT Division of Aeronautics, he is in
38 charge of enforcing it at this time on an interim basis, and it is unknown as to how much authority Mr. Long
39 has but at this time this is the latest information that he has from IDOT regarding RLA's and whether or not
40 the IDOT office which enforces RLA restrictions is interested in local zoning. Mr. Hall stated that per Mr.
41 Long, IDOT is interested in local zoning and the landowner who claimed that he had County approval has
42 had his RLA application placed on hold until he obtains local approval. Mr. Hall stated that things might

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 change once IDOT becomes involved and the judge makes a decision on the court case but this is the latest
2 information that staff has received from IDOT as to how important local zoning is.
3
4 Ms. Capel asked Mr. Hall if the Ordinance would have to be amended to not allow an agricultural RLA.
5
6 Mr. Hall stated that Champaign County does not have agricultural RLA's.
7
8 Mr. Bluhm stated that the Zoning Ordinance addresses RLA's, period.
9
10 Mr. Hall stated that he had been presented a claim of agriculture and he outlined what he believed was
11 reasonable and someone else disagreed therefore now we are in court.
12
13 Mr. Bluhm asked Mr. Hall what will happen if the new person comes to the office to apply for a special use
14 permit, the case is docketed, the Board begins going through the case and in 90 days a decision is still not
15 made. He said that IDOT may believe that the County has control over an agricultural RLA but it hasn't
16 been determined what the courts believe. He said that the Board could begin another case regarding an RLA,
17 which claims agriculture, and a decision is made by the courts that the County has no jurisdiction therefore
18 wasting staff and the Board's time as well as money.
19
20 Mr. Hall stated that as far as he is concerned no money or time has been wasted because staff and the Board
21 are doing what they are suppose to be doing.
22
23 Mr. Bluhm stated that if it is a case that the court decides that the County has no jurisdiction over then staff
24 and the Board could have been using the time and resources on other cases.
25
26 Mr. Hall stated that if the Board is not ready to take action on this case then the Board should not take action
27 on this case.
28
29 Ms. Papavasiliou stated that her motion to dismiss the case was denied but she wanted the judge to indicate
30 that as a matter of law there were no agricultural RLA's that could exist but the judge stated that he could
31 not do that because he believed that the facts of this particular case were of interest to him. She said that the
32 discussion of this case is relevant to the court case and if the judge decides that this application is exempt
33 then any decision that the Board made to the contrary will be void.
34
35 Mr. Bluhm asked Ms. Papavasiliou if there is any bit of evidence that could come out of the court case that
36 may be of interest to the Board in making their decision.
37
38 Ms. Papavasiliou stated that the Board is interpreting the facts before them according to the existing
39 Ordinance. She said that the judge must determine if the existing Ordinance is valid as it stands right now.
40
41 Mr. Bluhm stated that if the Ordinance is invalid then the Board will have to do something to correct it. He
42 asked if the Board makes a decision on this case based upon an invalid Ordinance will the case have to come

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 back and be reviewed.

2

3 Ms. Papavasiliou stated that the Board's decision will be void.

4

5 Mr. Bluhm stated that the case would have to be done over again if they want the RLA under what the
6 judge's determination was therefore he would rather wait to see what the judge is going to say.

7

8 Ms. Papavasiliou stated that it really isn't a legal question because it is the Board's decision.

9

10 Ms. Capel stated that if the Board approves the case the judge could void the Board's decision by indicating
11 that the use is exempt. She said that if the Board denies the case and the judge voids the Board's decision
12 then there is delay. She said that if the Board approves or denies the case and the judge upholds the
13 Ordinance as written then the Board's decision stands. She said that if the Board does make a decision the
14 Board has expressed how they feel about the Ordinance therefore contributing to the judge's decision with
15 respect to the Ordinance.

16

17 **Ms. Capel moved, seconded by Mr. Thorsland to extend the August 26, 2010, public hearing for ten**
18 **minutes. The motion carried by voice vote.**

19

20 Mr. Bluhm stated that Mr. Hall has indicated that all the testimony which is relevant to the case has been
21 added to the Summary of Evidence.

22

23 Mr. Hall stated yes.

24

25 Mr. Bluhm asked the Board if they desired to move forward to the Finding of Fact.

26

27 The consensus of the Board was to move forward to the Finding of Fact.

28

29 Mr. Thorsland stated that the proposed a condition would require that the petitioner agree to shut down the
30 RLA should a wind farm be approved.

31

32 Mr. Bluhm stated that this is almost a moot point because the wind farm company has to determine where
33 the wind turbines will be placed before construction can begin. He said that if an RLA is in place then the
34 wind farm will be required to meet the separation guidelines.

35

36 Mr. Thorsland stated that the condition would be that the RLA would shut down if the wind farm is
37 developed.

38

39 Mr. Hall asked Mr. Thorsland which trigger he would like Mr. Gerdes to react to a wind farm in Champaign
40 County or in Douglas County.

41

42 Mr. Thorsland stated that the wind farm company has the intent to build a wind farm within the location of

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 the RLA and the process began in 2008. He said that the trigger for Mr. Gerdes would be when Horizon
2 submits a wind farm application to Champaign County for the proposed site.
3
4 Mr. Hall stated that with one wind farm tower proposed closer than the separation.
5
6 Mr. Thorsland asked Mr. Gerdes if he would be willing to use the RLA until such time that the wind farm is
7 developed.
8
9 Mr. Tock stated that such a condition would not be acceptable.
10
11 Mr. Hall stated that Mr. Tock's indication that such a condition would not be acceptable eliminates both
12 options under Item #12.B.
13
14 Mr. Bluhm asked Mr. Hall if Item #12.A. should remain.
15
16 Mr. Hall stated that Item #12.A. will not remain if the petitioners do not accept it.
17
18 Mr. Palmgren stated that ultimately the safety issue is the pilot's responsibility.
19
20 Mr. Hall asked Mr. Thorsland if he desired to enter the petitioner's rejection of the special condition into the
21 Summary of Evidence.
22
23 Mr. Thorsland stated yes.
24
25 Mr. Hall suggested that Item #12 be renumbered to Item #13 and new Item #12 would include everything
26 from original Item #12.B(1), as included in the Revised Draft Summary of Evidence dated August 20, 2010,
27 beginning with the following: The Board considered a condition that would:. He said that the following
28 sentence will be added: The petitioners rejected the condition. He said that this keeps it nice and simple and
29 it indicates that the petitioners had the option but they rejected it.
30
31 **Ms. Capel moved, seconded by Mr. Thorsland to extend the meeting to 10:30 p.m. The motion carried**
32 **by voice vote.**
33
34 Mr. Bluhm asked Mr. Hall if the Board should ask the petitioners if they accepted the proposed condition in
35 Item #12.B(2).
36
37 Mr. Hall asked the Board what purpose Item #12.B(2) would serve.
38
39 The consensus of the Board was the Item #12.B(2) would not serve any purpose therefore there is no need to
40 ask the petitioners to accept or reject it.
41
42 Mr. Bluhm read the proposed special condition included in Item #12.A as follows:

8/26/10

AS APPROVED SEPTEMBER 16, 2010

ZBA

1 **The Restricted Landing Area must be used in compliance with the approved Certificate**
2 **Of Approval for operation from the Illinois Department of Transportation Division of**
3 **Aeronautics.**

4 The above condition is necessary to ensure that:

5 **The proposed RLA is operated so as to ensure public safety.**

6
7 Mr. Bluhm asked Mr. Tock if the petitioners agreed to the special condition as read.

8
9 Mr. Tock stated that he does not understand why the proposed condition is necessary because the petitioners
10 could not and would not operate unless they were in compliance with a Certificate of Approval from IDOT.

11
12 Mr. Bluhm stated that if the ZBA is aware that there is another authority which governs uses the proposed
13 special condition is included to make sure that everyone is aware that the petitioner must follow that
14 authority's rules and regulations.

15
16 Mr. Tock stated that they intend to follow the rules and regulations set forth by IDOT. He said that they do
17 agree to the condition.

18
19 **Mr. Thorsland moved, seconded by Mr. Courson to approve proposed special condition #12.A as**
20 **follows:**

21
22 **The Restricted Landing Area must be used in compliance with the approved Certificate**
23 **Of Approval for operation from the Illinois Department of Transportation Division of**
24 **Aeronautics.**

25 The above condition is necessary to ensure that:

26 **The proposed RLA is operated so as to ensure public safety.**

27
28 **The motion carried by voice vote.**

29
30 Mr. Bluhm read the proposed special condition for Item #12.C as follows:

31
32 **The petitioner shall apply for a Change of Use Permit within 30 days of the**
33 **approval of the special use permit, and shall also provide with the permit application**
34 **an amended site plan which indicates that the runway shall be located no**
35 **closer than 85 feet to the east property line.**

36 The above condition is necessary to ensure that:

37 **Compliance with the Zoning Ordinance within a reasonable time frame.**

38
39 Mr. Tock stated that the petitioners agree to the special condition included in Item #12.C.

40
41 **Mr. Thorsland moved, seconded by Mr. Courson to approve special condition Item #12.C as follows:**
42

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 **The Restricted Landing Area must be used in compliance with the approved Certificate**
2 **Of Approval for operation from the Illinois Department of Transportation Division of**
3 **Aeronautics.**

4 The above condition is necessary to ensure that:

5 **The proposed RLA is operated so as to ensure public safety.**

6
7 **The motion carried by voice vote.**

8
9 Mr. Hall stated that the following items should be added as Documents of Record: #18: NRCS Practice
10 Code 340, submitted by Jeff Tock on August 26, 2010; and #19: Letter from Rick Reed, Reed's Fly-On
11 Farming dated August 26, 2010, submitted by Jeff Tock; and #20: Photographs of trees taken by Jed Gerdes
12 within the last week; and Item #21: Statement from Terry Ladage submitted on August 26, 2010.

13
14 **Finding of Fact for Case 645-S-10:**

15
16 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
17 645-S-09 held on June 11, 2009, July 30, 2009, December 3, 2009, January 14, 2010, April 15, 2010, May
18 27, 2010 and August 26, 2010, the Zoning Board of Appeals of Champaign County finds that:

- 19
20 **1. The requested Special Use Permit, subject to the special conditions imposed**
21 **herein, IS NOT necessary for the public convenience at this location because the**
22 **RLA is not convenient for the public and despite the efficiency of aerial application**
23 **of rye grass from the petitioner's home location.**

24
25 Mr. Palmgren stated that the requested Special Use Permit, subject to the special conditions imposed herein
26 IS necessary for the public convenience at this location because it is an agricultural operation in AG-1 and
27 the petitioner is also trying to do some conservation work by the spreading of rye grass and having the RLA
28 close to the home site reduces the petitioner's costs. The previous airstrip that was utilized by the petitioner
29 is gone. All additional uses that were described by Terry Ladage could be utilized.

30
31 Mr. Hall noted that it is not an agricultural operation.

32
33 Mr. Palmgren stated that, "it is an agricultural operation in AG-1," should be stricken from his finding.

34
35 Mr. Miller stated that he would indicate that the Special Use Permit IS NOT necessary for the public
36 convenience at this location because there are other methods of administering the applications to the fields.

37
38 Ms. Capel agreed with Mr. Miller. She said that the Trisler's Farm air strip in Vermillion County is
39 available.

40
41 Mr. Miller stated that "necessary" is the key word.

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 Mr. Thorsland stated that the Special Use Permit IS NOT necessary for the public convenience at this
2 location because the air strip would be useful for the petitioner but it is not for the public's convenience.

3
4 Mr. Bluhm stated that the Board discussed public convenience earlier and part of that discussion was about
5 the landowners who have already signed up for the wind farm therefore he would determine that IS NOT is
6 the correct finding.

7
8 Mr. Courson stated that the school districts do not receive any extra money from the wind towers. He said
9 that the money goes into a general fund on property taxes and the State hands it out. He said that the
10 individual school districts do not receive a dime unless they request it.

11
12 Mr. Thorsland stated that the Board received testimony which would contradict Mr. Courson.

13
14 Mr. Courson stated that the witness that provided such testimony was misinformed because the general
15 budget comes from the State. He said that just because a wind farm is located within a wind farm area does
16 not mean that the school district will receive a bunch of extra money.

17
18 Mr. Bluhm disagreed.

19
20 Mr. Courson stated that all of the generated money goes to a general fund and the State distributes the
21 money. He said that lottery funds do not go to the schools, it goes to the general fund and the State cuts the
22 budget for schools therefore the schools do not receive any extra money.

23
24 Mr. Hall asked Mr. Courson if he is indicating the local jurisdictions do not receive any benefit from the
25 investment of the wind farm and the increased property taxes.

26
27 Mr. Courson stated that the local jurisdictions may see a small increase in jobs but not in local tax receipts.

28
29 Mr. Courson stated that the wind farm companies are lobbying the State to become tax exempt from property
30 taxes and all it will take is the right people to get such passed and the wind farms won't pay any property
31 taxes. He said that people have this impression that a lot of revenue is going to be made with the wind farms
32 and such an impression is false because it isn't going to happen.

33
34 Ms. Capel stated that the use is more inconvenient for more people than it is convenient for the public.

35
36 Mr. Palmgren stated that his point was that he was trying to find a way for the petitioner to continue, at a
37 reasonable cost, to spray his crops and plant the rye grass. He said that other methods do not work very well
38 when the ground is wet therefore aerial application is a viable option.

39
40 **Mr. Thorsland moved, seconded by Paul Palmgren that the requested Special Use Permit, subject to**
41 **the special conditions imposed herein, IS necessary for the public convenience at this location.**

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 The roll was called:

2

3	Courson-yes	Miller-no	Palmgren-yes
4	Schroeder-no	Thorsland-no	Capel-no
5	Bluhm-no		

6

7 **The motion failed.**

8

9 **Mr. Thorsland moved, seconded by Mr. Miller that the requested Special Use Permit, subject to the**
10 **special conditions imposed herein, IS NOT necessary for the public convenience at this location.**

11

12	Miller-yes	Palmgren-no	Schroeder-yes
13	Thorsland-yes	Capel-yes	Courson-no
14	Bluhm-yes		

15

16 **The motion carried.**

17

18 Mr. Thorsland stated that the Board should use Mr. Palmgren's comments in reference to the "despite"
19 portion for Item #1 of the finding.

20

21 **Ms. Capel moved, seconded by Mr. Miller to extend the meeting to 10:45p.m. The motion carried by**
22 **voice vote.**

23

24 Mr. Miller read the following text regarding the "despite" portion for Item #1 of the finding: the RLA is not
25 absolutely necessary for the proposed use and it is not publically accepted or convenient despite, include Mr.
26 Palmgren's previous comments.

27

28 Mr. Hall requested that Mr. Palmgren indicate the text for the "despite" portion of Item #1.

29

30 Mr. Palmgren stated that the efficiency of aerial application of rye grass from the petitioner's home location.

31

32 **2. The requested Special Use Permit, subject to the special condition imposed**
33 **herein, is so designed, located and proposed to be operated so that it WILL**
34 **be injurious to the district in which it shall be located or otherwise detrimental**
35 **to the public health, safety, and welfare.**

36

37 **a. The street has ADEQUATE traffic capacity and the entrance location has**
38 **ADEQUATE visibility.**

39

40 Mr. Thorsland stated that the street has ADEQUATE traffic capacity and the entrance location has
41 ADEQUATE visibility.

42

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 **b. Emergency services availability is ADEQUATE.**

2
3 Ms. Capel stated that emergency services availability is ADEQUATE.

4
5 **c. The Special Use will be designed to CONFORM to all relevant County ordinances**
6 **and codes.**

7
8 Mr. Thorsland stated that the Special Use will be designed to CONFORM to all relevant County ordinances
9 and codes.

10
11 **d. The Special Use WILL be compatible with adjacent uses.**

12
13 Mr. Palmgren stated that the Special Use WILL be compatible because the use is compatible with AG-1
14 zoning.

15
16 Ms. Capel stated that the Special Use WILL NOT be compatible with adjacent uses due to previous
17 commitments that the neighbors have made with the wind farm company.

18
19 Mr. Bluhm stated that the Special Use WILL NOT be compatible with the adjacent uses because there are
20 trees located in the adjacent land.

21
22 Mr. Hall stated that the Board could word Item #2.d as both ways because what matters is the overall
23 assessment of the criteria. He said that it would make sense to have a disagreement on these items but the
24 Board will have to vote on the overall assessment.

25
26 **e. Surface and subsurface drainage will be ADEQUATE.**

27
28 Mr. Miller stated that surface and subsurface drainage will be ADEQUATE.

29
30 **f. Public safety will be INADEQUATE.**

31
32 Mr. Thorsland stated that public safety will be INADEQUATE because the Board is unaware of the amount
33 of commitments signed by landowners with the wind farm company and the Board is not aware of any
34 required safety separation from wind farm towers and other features in other in other jurisdictions.

35
36 Mr. Hall asked Mr. Thorsland if the following text would be adequate for his finding: Public safety will be
37 INADEQUATE because the Board is unaware of safety separations for wind towers and other features in
38 other jurisdictions.

39
40 Mr. Thorsland stated that Mr. Hall's text was adequate for the finding for Item #2.f.

41
42 **Ms. Capel moved, seconded by Mr. Thorsland that the requested Special Use Permit, subject to the**

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 special condition imposed herein, is so designed, located and proposed to be operated so that it WILL
2 be injurious to the district in which it shall be located or otherwise detrimental to the public health,
3 safety, and welfare.

4
5 The roll was called:

6
7 **Palmgren-no** **Schroeder-yes** **Thorsland-yes**
8 **Capel-yes** **Courson-no** **Miller-yes**
9 **Bluhm-yes**

10
11 **3a. The requested Special Use Permit, subject to the special conditions imposed**
12 **herein, DOES conform to the applicable regulations and standards of the**
13 **district in which it is located.**

14
15 Mr. Courson stated that the requested Special Use Permit, subject to the special conditions imposed herein,
16 DOES conform to the applicable regulations and standards of the district in which it is located because the
17 petitioners agreed to follow all the laws of the IDOT regulations and IDOT will have to review and recertify
18 the RLA and decertify it if they find that it is unsafe.

19
20 **Mr. Courson moved, seconded by Mr. Palmgren that the requested Special Use Permit, subject to the**
21 **special conditions imposed herein, DOES conform to the applicable regulations and standards of the**
22 **district in which it is located. The motion carried by voice vote.**

23
24 **3b. The requested Special Use Permit, subject to the special conditions imposed**
25 **herein, DOES NOT preserve the essential character of the district in which it**
26 **is located because:**

27
28 **a. The Special Use will be designed to CONFORM to all relevant County**
29 **ordinances and codes.**

30
31 Mr. Thorsland stated that the Special Use will be designed to CONFORM to all relevant County ordinances
32 and codes.

33
34 **b. The Special Use WILL NOT be compatible with adjacent uses.**

35
36 Ms. Capel stated that the Special Use WILL NOT be compatible with adjacent uses.

37
38 **c. Public safety will be INADEQUATE.**

39
40 Mr. Thorsland stated that public safety will be INADEQUATE.

41
42 **Ms. Capel moved, seconded by Mr. Miller that the requested Special Use Permit, subject to the special**

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 conditions imposed herein, DOES NOT preserve the essential character of the district in which it is
2 located.

3
4 The roll was called:

5
6 Schroeder-yes Thorsland-yes Capel-yes
7 Courson-no Miller-yes Palmgren-no
8 Bluhm-no
9

10 4. The requested Special Use Permit, subject to the special conditions imposed
11 herein, IS NOT in harmony with the general purpose and intent of the
12 Ordinance.

- 13
14 a. The Special Use is authorized in the district.
15 b. The requested Special Use Permit IS NOT necessary for the public
16 convenience at this location.

17
18 Mr. Thorsland stated that the Special Use Permit IS NOT necessary for the public convenience at this
19 location.

- 20
21 c. The requested Special Use Permit, subject to the special conditions imposed
22 herein, is so designed, located and proposed to be operated so that it WILL
23 be injurious to the district in which it is located or otherwise detrimental
24 to the public health, safety and welfare.

25
26 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed herein, is
27 so designed, located and proposed to be operated so that it WILL be injurious to the district in which it is
28 located or otherwise detrimental to the public health, safety and welfare.

- 29
30 d. The requested Special Use permit, subject to the special conditions imposed
31 herein, DOES NOT preserve the essential character of the district in which
32 it is located.

33
34 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed herein,
35 DOES NOT preserve the essential character of the district in which it is located.

- 36
37 e. The requested Special Use Permit, subject to the special conditions imposed
38 herein, DOES conform to the applicable regulations and standards of the
39 district in which it is located.

40
41 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed herein,
42 DOES conform to the applicable regulations and standards of the district in which it is located.

1
2 **Mr. Thorsland moved, seconded by Ms. Capel the requested Special Use Permit, subject to the special**
3 **conditions imposed herein, IS NOT in harmony with the general purpose and intent of the Ordinance.**

4 The roll was called:

5
6 **Thorsland-yes Capel-yes Courson-no**
7 **Miller-yes Palmgren-no Schroeder-yes**
8 **Bluhm-yes**
9

10 **Mr. Thorsland moved, seconded by Mr. Palmgren to extend the meeting for fifteen minutes. The**
11 **motion carried by voice vote.**

12
13 **5. The requested Special Use IS NOT an existing nonconforming use.**

14
15 Mr. Thorsland stated that the requested Special Use IS NOT an existing nonconforming use.

16
17 **6. The special conditions imposed herein are required to ensure compliance with**
18 **the criteria for Special Use Permits and for the particular purposes described**
19 **below:**

20
21 **A. The Restricted Landing Area must be used in compliance with the approved Certificate**
22 **Of Approval for operation from the Illinois Department of Transportation Division of**
23 **Aeronautics.**

24 The above condition is necessary to ensure that:

25 **The proposed RLA is operated so as to ensure public safety.**
26

27 **B. The petitioner shall apply for a Change of Use Permit within 30 days of the**
28 **approval of the special use permit, and shall also provide with the permit application**
29 **an amended site plan which indicates that the runway shall be located no**
30 **closer than 85 feet to the east property line.**

31 The above condition is necessary to ensure that:

32 **Compliance with the Zoning Ordinance within a reasonable time frame.**
33

34 **Mr. Courson moved, seconded by Mr. Thorsland to adopt the Summary of Evidence, Documents of**
35 **Record and Finding of Fact as amended. The motion carried by voice vote.**
36

37 **Mr. Courson moved, seconded by Mr. Thorsland to close the public hearing for Case 645-S-09. The**
38 **motion carried by voice vote.**
39

40 **Final Determination for Case 645-S-09:**
41

42 **Mr. Thorsland moved, seconded by Ms. Capel that the Champaign County Zoning Board of Appeals**

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 finds that, based upon the testimony and other evidence received in this case, that the requirements of
2 Section 9.1.11B HAVE NOT been met, and pursuant to the authority granted by Section 9.1.6B of the
3 Champaign County Zoning Ordinance, determines that the Special Use requested in Case 645-S-09 is
4 hereby DENIED to the petitioners Robert and Barbara Gerdes to authorize the construction and use
5 of a “Restricted Landing Area” as a Special Use in the AG-1 Agriculture Zoning District, subject to
6 the following special conditions:

- 7
8 **1. The Restricted Landing Area must be used in compliance with the approved Certificate
9 Of Approval for operation from the Illinois Department of Transportation Division of
10 Aeronautics.**

11 The above condition is necessary to ensure that:

12 **The proposed RLA is operated so as to ensure public safety.**
13

- 14 **2. The petitioner shall apply for a Change of Use Permit within 30 days of the
15 approval of the special use permit, and shall also provide with the permit application
16 an amended site plan which indicates that the runway shall be located no
17 closer than 85 feet to the east property line.**

18 The above condition is necessary to ensure that:

19 **Compliance with the Zoning Ordinance within a reasonable time frame.**
20

21 The roll was called:

22			
23	Capel-yes	Courson-no	Miller-yes
24	Palmgren-no	Schroeder-yes	Thorsland-yes
25	Bluhm-yes		
26			

27 Mr. Hall informed the petitioners that his request has received a denial. He said that a completed Finding of
28 Fact will be forwarded to his attorney as soon as possible.
29

30 **6. New Public Hearings**
31

32 **Case 673-V-10 Petitioner: Harl and Donna Parkinson Request to authorize the use of an existing
33 detached accessory storage building less than 150 square feet in area with a side yard of zero feet and
34 a rear yard of zero feet in the AG-2 Agriculture Zoning District. Location: Lot 1 of Headlee 2nd
35 Subdivision in Section 14 of Mahomet Township and commonly known as the house at 204 South
36 Lake of the Woods Road.**
37

38 Mr. Bluhm informed the audience that this is an Administrative Case and as such the County allows anyone
39 the opportunity to cross examine any witness. He said that at the proper time he will ask for a show of hands
40 for those who would like to cross examine and each person will be called upon. He requested that anyone
41 called to cross examine go to the cross examination microphone to ask any questions. He said that those
42 who desire to cross examine are not required to sign the witness register but are requested to clearly state

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 their name before asking any questions. He noted that no new testimony is to be given during the cross
2 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt
3 from cross examination.

4
5 Mr. Hall distributed a new Supplemental Memorandum dated August 26, 2010, to the Board for review. He
6 said that the new memorandum has many attachments and at this time he will review those attachments with
7 the Board. He said that Attachment One is a short letter from Mr. Parkinson which included a listing sheet
8 from RE/Max Realty dated 8/15/2001, indicating that the garden shed was on the property at that time. Mr.
9 Hall stated that Attachment Two is a short letter from neighbors Josh and Alicia Helmick indicating that they
10 have no issues with the Parkinson's shed. Mr. Hall stated that Attachment Three is a copy of the original
11 complaint. He said that a copy of the original complaint has been provided to document that when staff
12 received the complaint there was no functional complaint made about the shed but that it was too close to the
13 property line. Attachment Four includes photographs from Mr. Parkinson indicating the subject shed.
14 Attachment Five includes a site map with coordinating photographs of the subject property indicating the
15 directional view of the shed in relation to neighboring properties.

16
17 Mr. Hall stated that the new memorandum includes several items of new evidence for the Summary of
18 Evidence. He reviewed, in general, the new items of evidence with the Board and said that if the Board had
19 any specific questions regarding an individual item then staff will go back and further review it. He said that
20 the first item of evidence amends Item #1 on page 1 of 9 specifying that petitioners purchased the property
21 on October 9, 2001. He said that the second new item of evidence is a revision of Item #5 on page 2 of 9
22 which is simply a verbal description of the property. He noted that the last item in this description references
23 a mature elm tree which is located between the deck and the accessory storage building. He said that the
24 third new item of evidence is new Item #7.D on page 4 of 9 which refers to the RE/Max Realty listing, which
25 is an attachment, for the subject property indicating that there was a garden shed on the property when it was
26 purchased on October 9, 2001. He said that the fourth new item of evidence is Item #8.B. on page 5 of 9
27 which discusses the mature elm tree located in the area that would be occupied by the subject building if it
28 were relocated in the same corner of the yard to provide conforming yards. He said that it is true that if the
29 mature elm tree was not there adequate space would be available for the shed to be relocated further from
30 both lot lines although there is plenty of area on the rest of the property where the shed could have originally
31 been located but the shed was not placed on the property by the petitioners and it was there when they
32 purchased the property. Mr. Hall stated that the fifth new items of evidence are new Items #9.B and 9.C on
33 page 5 of 9. He said that Item #9.B. indicates the petitioner's submittal including the Re/Max Realty listing
34 indicating that there was a garden shed on the property when the petitioner purchased the property and Item
35 #9.C mentions the letter from Josh and Alicia Helmick, neighbors of the subject property, indicating that
36 they have no issues with the subject storage building. He said that the sixth new item of evidence is Item
37 #10.B.(2) on page 5 of 9 indicating the rough map of the vicinity of the subject property that the petitioners
38 submitted indicating the distance from the petitioner's house to the nearest structures on neighboring lots.
39 The nearest building is indicated as being approximately 75 feet from the east side of the house which is
40 approximately 64 feet from the east side of the subject storage building. He said that the seventh new items
41 of evidence are Items #11.D, 11.E and 11.F on page 6 of 9. He said that Item #11.D mentions that the shed
42 was on the subject property when the petitioners purchased the property on October 9, 2001, and there has

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1 only been one complaint regarding the building in that time. He said that Item #11.E discusses the rough
2 map of the vicinity of the subject property and the fact that the nearest house is approximately 64 feet from
3 the east side of the subject shed. He said that Item #11.F mentions the letter from neighbors Josh and Alicia
4 Helmick. He said that Item #11.G discusses that if the variance is approved then the mature elm tree will be
5 allowed to remain on the property and continue to enhance the property value. He said that Item #11.H
6 indicates that the neighbor's fence is attached to the subject building and altering the building or its location
7 would require a modification of the fence. He said that Item #11.I mentions that the original complaint
8 against the subject building did not specify any particular problem caused by the shed, but only that it was
9 too close to the side and rear lot lines. Mr. Hall stated that the eighth item of new evidence is Item 14 on
10 page 6 of 9 is a proposed condition which is only a rhetorical device and the Board does not have to accept
11 the condition. He said that as the Board knows, if a variance is approved and no specification is made then
12 the assumption is that the structure could be replaced if need be provided that it is the same footprint and in
13 the same location. He said that the case was not advertised in this way therefore if the Board feels that this is
14 a reasonable request and the Board is inclined to approve it a new item of evidence could be added
15 specifying that the approval also covers replacement if need be. He said that recently there have been similar
16 variances dealing with different building types but for a variance for an accessory building the Board could
17 place some limit upon what type of replacement could occur. He said that although this is not staff's
18 recommendation the Board could find that the shed in its current location is fine but if it requires
19 replacement it would be required to meet the minimum yard requirements.

20

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

22

23 Mr. Courson stated that he does not believe that the RE/Max listing indicating that the shed existed on the
24 property when the petitioner's purchased the property is relevant to the case. He said that the shed is not in
25 compliance therefore it doesn't matter who built the shed or who purchased the property after the fact.

26

27 Mr. Hall stated the evidence is relevant to the criteria that the special conditions, circumstances, hardship or
28 practical difficulties do not result from actions of the applicant. He said that it is relevant to the extent that
29 the petitioners did not place the building on the property. He said that it is a fact that there are no records of
30 anyone calling the office before the property was purchased verifying that everything was in compliance but
31 it is also a fact that such a practice hardly every happens.

32

33 Mr. Bluhm stated that there are a lot of realtors who do not know the rules and do not want to know the rules
34 therefore they perceive that their listed properties meet all of the County's guidelines.

35

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

37

38 Mr. Hall stated that the Board can only approve a variance if there is a positive finding on each criteria and
39 some might be inclined to think that this is a positive finding for Item #9.

40

41 Mr. Courson stated that he would argue that the petitioners did take action because they did purchase the
42 property. He said that the petitioner did not have to purchase the property.

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1
2 Mr. Hall stated that Mr. Courson's view is certainly one view that can be considered.
3
4 Mr. Bluhm asked the Board if there were any further questions for Mr. Hall and there were none.
5
6 Mr. Bluhm called Mr. Ray Parkinson to testify.
7
8 Mr. Ray Parkinson, who resides at 204 S. Lake of the Woods Road, Mahomet stated that staff has covered
9 just about everything. He said that there were three letters from neighbors that were supposed to be sent to
10 staff and the Board indicating that they had no issues with leaving the shed in its current location. He said
11 that they have a mutual agreement with the lady who lives behind which allows them the use of 20 feet of
12 her property. He said that they mow the area and they have two bird feeders located on the 20 feet of
13 property. He said that as long as the lady lives upon her property and as long as they live on their property
14 the mutual agreement stands but if she sells her property then they will have to speak to the new owners to
15 see if they could still utilize the 20 feet. He said that Josh and Alicia Helmick own the 20 feet to the west of
16 the shed which extends to Lake of the Woods Road and they have indicated that they have no issues with the
17 location of the shed. He said that he wishes that the realtor had told them that the shed was not in
18 compliance but the fact is that they didn't.
19
20 Mr. Hall asked Mr. Parkinson if any of the neighbors have complained about the shed's location.
21
22 Mr. Parkinson stated no. He said that the elderly couple which lives to the east of the subject property are
23 selling their property in October.
24
25 Mr. Bluhm asked the Board if there were any questions for Mr. Parkinson and there were none.
26
27 Mr. Bluhm asked if staff had any questions for Mr. Parkinson.
28
29 Mr. Hall asked Mr. Parkinson if he previously asked him if the shed could be relocated.
30
31 Mr. Parkinson stated that he does not recall such a conversation but the only way that the shed could be
32 moved would be to the north which would place it within five feet of the edge of the house. He said that the
33 there are three raised gardens to the east of their house therefore the shed could not be relocated there unless 25
34 truckloads of dirt was removed.
35
36 Mr. Hall asked Mr. Parkinson if the shed could structurally withstand relocation.
37
38 Mr. Parkinson stated no. He said that the front of the shed is rotting and the sides are not in good shape. He
39 said that if the shed requires replacement he understands that he will have to build a smaller shed but
40 currently the existing shed is loaded.
41
42 Mr. Bluhm asked Mr. Parkinson if the shed is on a foundation.

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1
2 Mr. Parkinson stated no. He said that the shed is located on a concrete slab and is blocked up approximately
3 six inches to prevent the shed floor from rotting.
4
5 Mr. Bluhm asked Mr. Parkinson if the shed was sitting on 2" x 6" boards.
6
7 Mr. Parkinson stated yes, it is has boards under it which sit on concrete blocks. He said that if the shed is
8 moved it will probably fall apart.
9
10 Mr. Bluhm asked the Board if there were any questions for Mr. Parkinson and there were none.
11
12 Mr. Bluhm asked if staff had any further questions for Mr. Parkinson and there were none.
13
14 Mr. Bluhm asked the audience if there were any questions for Mr. Parkinson and there were none.
15
16 Mr. Hall suggested a new Item #7.E. which would be located on page 4 of 9 of the finding to read as follows:
17 Petitioner Ray Parkinson testified at the public hearing on August 26, 2010, that the subject shed is on
18 concrete blocks on a concrete slab and it is his opinion that the shed could not be relocated without the shed
19 falling apart.
20
21 Mr. Bluhm asked Mr. Parkinson to confirm that the shed is sitting on a concrete foundation, concrete blocks
22 and 2" x 6" boards with a plywood floor inside the building.
23
24 Mr. Parkinson stated yes.
25
26 Mr. Hall stated that he would also recommend the same text included in new Item #7.E. for new Item #8.C.
27 which is on page 5 of 9.
28
29 Mr. Bluhm asked Mr. Hall if the Documents of Record are up-to-date.
30
31 Mr. Hall stated yes.
32
33 Mr. Thorsland stated that in regard to the proposed special condition included in Item #14 on page 6 of 9 the
34 special condition should read as follows: The requested variance authorized the location of the existing
35 detached accessory storage building, and at such time that a replacement for the subject structure is
36 constructed on the subject property it may be reconstructed no larger than the current footprint at the same
37 location.
38
39 Ms. Capel stated that along the west and south side of the shed which are the two boundaries in question,
40 there is an existing 25 foot easement on adjacent properties in which no construction could occur.
41
42 Mr. Hall stated that this text could be added as new Item #7.F.

1
2 Mr. Bluhm read the revised special conditions as follows:

3 **The requested variance authorized the location of the existing detached accessory storage**
4 **building, and at such time that a replacement for the subject structure is constructed on the**
5 **subject property it may be reconstructed no larger than the current footprint at the same**
6 **location.**

7 The above stated condition is necessary to ensure the following:

8 **The existing accessory storage building is allowed to remain on the property at its current**
9 **location, but any replacement structure shall be placed in a conforming location.**

10
11 Mr. Bluhm asked Mr. Parkinson if he was agreeable to the special condition.

12
13 Mr. Parkinson stated yes.

14
15 **Mr. Thorsland moved, seconded by Mr. Courson to approve the special condition. The motion**
16 **carried by voice vote.**

17
18 Mr. Bluhm asked the audience if anyone desired to sign the witness register to present testimony regarding
19 Case 673-V-10 and there was no one.

20
21 Mr. Bluhm closed the witness register.

22
23 **Finding of Fact for Case 673-V-10:**

24
25 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
26 673-V-10 held on August 26, 2010, the Zoning Board of Appeals of Champaign County finds that:

- 27
28 **1. Special conditions and circumstances DO exist which are peculiar to the land**
29 **or structure involved which are not applicable to other similarly situated land**
30 **and structures elsewhere in the same district.**

31
32 Mr. Palmgren stated that special conditions and circumstances DO exist which are peculiar to the land or
33 structure involved which are not applicable to other similarly situated land and structures elsewhere in the
34 same district because the shed existed when the property was purchased and relocation would be difficult
35 due to an existing mature elm tree and the fact that the shed is currently placed on a concrete slab and
36 relocation would cause the shed to fall apart.

37
38 Mr. Thorsland stated that the corner in which the shed is located has an easement on both sides in question
39 where no construction can take place.

- 40
41 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
42 **regulations sought to be varied WILL prevent reasonable or otherwise permitted**

1 use of the land or structure or construction.
2

3 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
4 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
5 or construction because the shed cannot be moved without it falling apart and a mature elm tree would be
6 required to be removed and if the shed was relocated at the other corner of the lot three raised bed gardens
7 would have to be destroyed.
8

9 **3. The special conditions, circumstances, hardships or practical difficulties DO NOT**
10 **result from actions of the applicant.**
11

12 Mr. Thorsland stated that the special conditions, circumstances, hardships or practical difficulties DO NOT
13 result from actions of the applicant because the structure was in place prior to the current ownership and no
14 complaints have been filed regarding the shed.
15

16 Mr. Bluhm stated that the structure has existed since 2001.
17

18 **4. The requested variance, subject to the proposed special condition, IS in harmony**
19 **with the general purpose and intent of the Ordinance.**
20

21 Mr. Thorsland stated that the requested variance, subject to the proposed special condition, IS in harmony
22 with the general purpose and intent of the *Ordinance* because current easements allow separation from other
23 structures and an agreement with adjacent landowners to allow the shed to remain. He said that the
24 requested variance is not a prohibited variance.
25

26 **5. The requested variance, subject to the proposed special condition, WILL NOT**
27 **be injurious to the neighborhood or otherwise detrimental to the public health,**
28 **safety or welfare.**
29

30 Mr. Courson stated that the requested variance, subject to the proposed special condition, WILL NOT be
31 injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare because there is
32 a 25 foot easement along both sides of the shed and the shed will not limit any egress to the surrounding
33 properties. He said that letters have been received from surrounding neighbors with no complaints about the
34 shed.
35

36 Ms. Capel stated that allowing the shed to remain remedies the fence issue.
37

38 **6. The requested variance, subject to the proposed special condition, IS the minimum**
39 **variation that will make possible the reasonable use of the land/structure.**
40

41 Ms. Capel stated that the requested variance, subject to the proposed special condition, IS the minimum
42 variation that will make possible the reasonable use of the land/structure because the shed is located right on

1 the property line and no other accommodations will make it not in violation.

2
3 Mr. Courson stated that any movement of the building could cause the building to collapse.

4
5 **7. The special condition imposed herein is required to ensure compliance with**
6 **the criteria for variances and for the particular purpose described below:**

7
8 **The requested variance authorized the location of the existing detached accessory**
9 **storage building, and at such time that a replacement for the subject structure is**
10 **constructed on the subject property it may be reconstructed no larger than the current**
11 **footprint at the same location.**

12 The above stated condition is necessary to ensure the following:

13 **The existing accessory storage building is allowed to remain on the property at its**
14 **current location, but any replacement structure shall be placed in a conforming**
15 **location.**

16
17 **Mr. Thorsland moved, seconded by Mr. Miller to adopt the Summary of Evidence, Documents of**
18 **Record and Finding of Fact as amended. The motion carried by voice vote.**

19
20 **Mr. Miller moved, seconded by Mr. Schroeder to close the public hearing for Case 673-V-10. The**
21 **motion carried by voice vote.**

22
23 **Final Determination for Case 673-V-10:**

24
25 **Mr. Palmgren moved, seconded by Mr. Courson that the Champaign County Zoning Board of**
26 **Appeals finds that, based upon the application, testimony and other evidence received in this case,**
27 **that the requirements of Section 9.1.9.C HAVE been met and pursuant to the authority granted in**
28 **Section 9.1.6.B of the *Champaign County Zoning Ordinance*, the Zoning Board of Appeals of**
29 **Champaign County determines that the variance requested in Case 673-V-10 is hereby GRANTED**
30 **WITH CONDITIONS to the petitioners, Harl and Donna Parkinson to authorize the use of an existing**
31 **detached accessory storage building less than 150 square feet in area with a side yard of zero feet and**
32 **rear yard of zero feet in the AG-2 Agriculture Zoning District. Subject to the following special**
33 **conditions:**

34
35 **The requested variance authorized the location of the existing detached accessory**
36 **storage building, and at such time that a replacement for the subject structure is**
37 **constructed on the subject property it may be reconstructed no larger than the current**
38 **footprint at the same location.**

39 The above stated condition is necessary to ensure the following:

40 **The existing accessory storage building is allowed to remain on the property at its**
41 **current location, but any replacement structure shall be placed in a conforming**
42 **location.**

8/26/10
ZBA

AS APPROVED SEPTEMBER 16, 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

The roll was called:

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

Mr. Hall informed the petitioners that they have received approval from the Board and nothing more is required. He said that staff will send out the necessary paperwork as soon as possible.

Ms. Capel moved, seconded by Mr. Thorsland to recess the meeting for a five minute break. The motion carried by voice vote.

The meeting recessed at 7:38 p.m.

The meeting resumed at 7:48 p.m.

Mr. Bluhm stated that the Board will now hear Case 645-S-09.

7. Staff Report

None

8. Other Business

Mr. Hall stated that the next meeting for the ZBA is September 16th and he can imagine that some of the Board members may be in the field at that time therefore it would be nice to know before 7:00 p.m. whether or a not a quorum will be present at the meeting.

Mr. Miller requested that staff call all Board members to assure attendance.

Mr. Hall stated that staff will call the Board members.

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

None

10. Adjournment

The meeting adjourned at 10:50 p.m.

ZBA
8/26/10

AS APPROVED SEPTEMBER 16, 2010

1 Respectfully submitted

2

3

4

5

6 Secretary of Zoning Board of Appeals

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39