

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: February 17, 2011

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

TIME: 6:30 p.m.

Urbana, IL 61802

MEMBERS PRESENT: Catherine Capel, Thomas Courson, Eric Thorsland, Paul Palmgren

MEMBERS ABSENT: Roger Miller, Melvin Schroeder

STAFF PRESENT: Connie Berry, John Hall

OTHERS PRESENT : Myra Sully, Brian Lile, Susie Roderick, Ron Marlowe, Loretta Marlowe, Homer Kirby, Mark Kates, Linda Kates, Donald Roderick, Peggy Roderick, Al Kurtz

1. Call to Order

The meeting was called to order at 6:32 p.m.

2. Roll Call and Declaration of Quorum

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

3. Correspondence

None

4. Approval of Minutes (January 20, 2011)

Ms. Capel moved, seconded by Mr. Courson to approve the January 20, 2011, minutes as submitted. The motion carried by voice vote.

5. Continued Public Hearing

Case 675-AT-10 Petitioner: Champaign County Zoning Administrator Request: Part A. 1. In the first four paragraphs of Section 8 clarify that nonconforming (NC) dwellings may be expanded as unauthorized herein; and 2. Revise 8.1.2 to authorize that NC lots may be used separately if authorized by variance. Part B. 1. Revise 8.2.1 B. as follows: a. Limit applicability to the total expansion since October 10, 1973; and b. increase the limit on expansion of a single family (SF) dwelling that is a NC use provided that a variance is required if more than one principal use on the lot

2/17/11

1 and the lot area is less than required in subsection 4.3.4.; and c. Eliminate the limit on the amount a
2 accessory buildings; and 2. Revise 8.2.1 C. so that the limit on expansion applies to the total since
3 October 10, 1973; and 3. Revise 8.2.2 to authorize that a SF dwelling that is a NC use may be moved if
4 authorized by variance; and 4. In 8.2.3 clarify “ceases”. Part C. Revise 8.3.1 to authorize that a NC
5 structure may be enlarged in a way that increases the nonconformity if authorized by variance; and
6 2. Revise 8.3.3 to authorize that a NC structure may be moved without conforming to the regulations
7 if authorized by variance. Part D 1. Revise 8.4.1 and 8.4.2 to authorize that a SF dwelling that is a NC
8 use may be expanded or reconstructed as authorized in 8.2; and 2. In 8.4.5 clarify “abandoned” and
9 “discontinued”; 3. In 8.4.6 provide for replacement of a SF dwelling that is a NC use. Part E. Revise
10 8.6 to authorize the following: a. A SF dwelling that is a NC use may expand as authorized in 8.2.1 or
11 reconstructed as authorized in 8.4.1; and b. A SF dwelling that is a NC use has no limit on the value of
12 repair or replacement; and c. Any structure that is NC may be granted a variance to authorize a
13 higher value of repair. Part F. In 9.1.2 C. require the Zoning Administrator to provide notice of NC
14 zoning on any permit for a SF dwelling in a district in which a SF dwelling is not an authorized
15 principal use. Part G. Revise Section 3 Definitions so that “nonconforming” only applies to
16 nonconformities that existed upon the effective date of adoption or amendment of the ordinance.
17

18 Mr. Hall stated that the Supplemental Memorandum dated January 26, 2011, was the first time that Part G.
19 was included. He said that Part G. was in regards to the Board’s determination to change the definition of
20 “non-conforming” to refer to only things that existed upon the effective date of adoption or amendment to
21 the ordinance. He said that the Supplemental Memorandum dated February 9, 2011, begins with a short
22 guide to the different parts of the case and will be useful at the County Board. He said that the attached
23 table characterizes each part of the amendment as being either “minor”, which is a clarification, or
24 “moderate”, which is only in regards to 8.2.1 C. He said that in his view the amendment is clarifying what
25 should have been in the ordinance already but someone else could take the view that this is a new restriction
26 and technically it is. He said that the things that he would term “major” are changes which allow
27 landowners to do things that they previously could not do and most of those things consist of relaxing the
28 regulations and letting the landowners do something in the future that they cannot do currently. He said that
29 there are no major restrictions but he does want the Board to understand that Part B.2, which is the part
30 revising 8.2.1 C, is to make clear the expansion that is currently allowed applies to the total expansion since
31 October 10, 1973. He said that there has never been a disagreement with anyone about that but none the less
32 it is not what the ordinance currently states and he believes that it is what all of the documents in the 1992
33 zoning case intend. He said that currently if someone in Wilber Heights has two homes on one lot they
34 could expand both homes by 200 square feet and they would not need any approval. He said that this
35 amendment increases the limit from 200 feet to 25% of the floor area, so that for example, if it is an 1,800
36 square foot home then 450 square feet per home could be expanded although if it is a lot that does not meet
37 the current lot area requirements for a lot with two homes and two septic systems this amendment would
38 require a variance. He said that the purpose of the variance is to make sure that there is enough room on the
39 lot for the expansion without interfering with the septic systems or at least if they need to be revised they
40 need to be revised appropriately. He said that, in that instance, the Board could take the approach that the
41 ordinance should not be made any more restrictive and allow an expansion of 200 square feet without a

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

1 variance but if the expansion is desired to be more than 200 square feet then a variance would be required.
2 He said that the Board could try to develop some special conditions but it is already sufficiently complex
3 and coming before the Board to obtain a variance is not unreasonable but is a change from current practice.
4

5 Mr. Hall stated that there have not been any changes to the legal advertisement since the definition of non-
6 conforming was added. He said that Attachment B to the February 9, 2011, Supplemental Memorandum
7 adds a lot of notes which are intended to be helpful although they add a lot of length and the notes provide
8 justification, describes the conditions that are being addressed with the changes and many times they
9 provide evidence which ultimately shows up in the Finding of Fact. He said that he hopes that anyone
10 would find Attachment B helpful although it requires a certain amount of patience to work through. He said
11 that the notes refer to the comparison of other counties and refer to the policies that the amendment will help
12 achieve for the purposes in the ordinance. He said that because there is so much text he will not read
13 through them with the Board unless the Board so desires. He said that the first draft of the Finding of Fact
14 was also sent out with the Supplemental Memorandum dated February 9, 2011. He said that the draft
15 includes words in bold italic with an asterisk indicating staff's recommendation regarding goals achieved.
16 He said that a new feature for the Finding of Fact is located on Page 14 of 21 which summarizes all of those
17 goals and staff's recommendation is that the amendment does help achieve 6 of the 10 goals in the Land
18 Resource Management Plan and will not impede the achievement of the other four goals. He said that it will
19 improve the ordinance because it helps achieve the purpose of the ordinance. He said that the amendment
20 also helps correct errors in the text of the ordinance and relaxes unreasonable requirements while at the same
21 time provides flexibility for landowners in Champaign County. He said that he cannot think of any other
22 global things to add but he would invite the Board to add anything that appears relevant because a text
23 amendment has to achieve the plan and many times it will also make the ordinance better. He said that
24 previously the Board hadn't discussed this issue during text amendments but in this case it is especially
25 important and he hopes to include it in the future.

26
27 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.
28

29 Mr. Palmgren asked Mr. Hall if there were any major negative items to the text amendment.
30

31 Mr. Hall stated that the one major negative item is the fact that if currently there are two homes on a
32 property 200 square feet can be added without a variance but under this text amendment a variance would be
33 required in order to do that. He said that staff has been contacted by one municipality therefore it is
34 assumed that municipal staffs are just now looking seriously at this text amendment. He said that it is his
35 view that the proposed text amendment will not allow anything new that is a problem and is meant to
36 address things that already exist therefore he hasn't spent a lot of time making it clear to municipalities that
37 this amendment will not create any new problems for them but will correct problems that existing
38 landowners have. He said that the municipalities are just now reviewing the text amendment although he
39 does not feel that there is any reason to wait to see if the municipalities raise any issues. He said that with
40 any text amendment that the Board deals with there is always the question of how long the Board should
41 wait so that it can address any issues that are brought forward by municipal planning staffs. He said that he

2/17/11

1 believes that the Board could take final action tonight but it would not be unreasonable to wait one month to
2 see if any issues arise and any issues that do arise will generally have to be resolved at the County Board.

3
4 Mr. Thorsland stated that the text amendment tends to focus in on the Wilber Heights area and to some
5 extent Penfield. He asked Mr. Hall how this text amendment would affect many other properties in the
6 unincorporated areas of the County.

7
8 Mr. Hall stated that any of the settlements that the County provides zoning for such as Penfield, Dewey,
9 Seymour, Foosland, and Longview have nonconformities. He said that there is a section of nonconforming
10 dwellings north of St. Joseph but within the Urbana Extra-Territorial Jurisdiction there are no residential
11 areas that are not zoned residential. He said that in the Urbana ETJ there are a lot of dwellings that are
12 nonconforming because there are one, two or three dwellings on a single lot. He said that the text
13 amendment will change the zoning requirements for single family dwellings which are nonconforming uses.
14 He said that there are two ways that a dwelling can be nonconforming such as when they are nonconforming
15 to the zoning district or if there are multiple dwellings on a single lot. He said that the Urbana staff did not
16 see multiple nonconforming dwellings on one lot as a big problem within their ETJ but they wanted to
17 clarify that the amendment was addressing those types of properties. He said that even in the rural districts
18 there could be two dwellings on one property therefore the same kind of benefits that the text amendment
19 would create for Wilber Heights would also apply in the AG-1 zoning district.

20
21 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.

22
23 Mr. Thorsland stated that there are only two names on the witness register and asked the audience if anyone
24 else desired to sign the witness register to present testimony regarding Case 675-AT-10. He reminded the
25 audience that when they sign the witness register they are signing an oath that the testimony that they are
26 presenting to the Board is true.

27
28 Mr. Thorsland called Homer Kirby to testify.

29
30 Mr. Homer Kirby, who resides at 312 Paul Avenue, Champaign stated that he has resided in Wilber Heights
31 since 1947 and intends to spend the rest of his life there. He said that if his house was destroyed by fire he
32 could not replace it with a new home therefore he feels that the County, along with the City of Champaign,
33 is trying to run the homeowner's out of the area. He said that at one time the City of Champaign informed
34 the property owners that if they installed sewers in the area they would absorb the area into the city limits,
35 which hasn't happened. He said that he remembers speaking with a County road crew member who
36 informed him that the reason why the County doesn't improve the roads in the area is because it does not
37 receive enough revenue from the property taxes. Mr. Kirby stated that he does not understand why the
38 County would feel that way because they certainly accept his money when the property taxes are due. He
39 asked where he and his neighbors were supposed to go when they are kicked out by the County and the City
40 of Champaign.

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

1 Mr. Thorsland asked the Board if there were any questions for Mr. Kirby and there were none.

2

3 Mr. Thorsland asked if staff had any questions for Mr. Kirby and there were none.

4

5 Mr. Thorsland called Mark Kates to testify.

6

7 Mr. Mark Kates, who resides at 2307 N. 5th Street, Champaign, stated that he has lived in the Wilber Heights
8 neighborhood for approximately 15 years. He said that he missed the first two meetings regarding this case
9 therefore he has a few questions. He asked Mr. Hall if the allowed expansion of 200 square feet, with the
10 approval of a variance, only applies to properties with two homes or properties with a single dwelling.

11

12 Mr. Hall stated that the allowed expansion applies to properties with two homes and only if the lot area is
13 less than what the Ordinance otherwise requires. He said that if the property has enough lot area then a
14 variance would not be required for the 200 foot expansion.

15

16 Mr. Kates stated that he only has one home on his lot therefore the requirement of a variance would not
17 apply to his property for the 200 foot expansion. He said that he and his wife purchased their home in
18 Wilber Heights when they were young and didn't have a lot of money but they didn't want to rent a home all
19 of their lives so they purchased a home that they could afford. He said that they didn't really plan on staying
20 in Wilber Heights forever but their son was raised in the house and he has since moved away and has
21 blessed them with grandchildren. He said that their son works at Clifford-Jacobs which is across the street
22 from their home and they are able to see their son every day and quite often their grandchildren when they
23 pick up their dad from work. He said that their son is the fourth generation of their family who has been
24 raised in the Wilber Heights area and his grandchildren will be the fifth generation. He said that he becomes
25 emotional when he considers the fact that the home that he and his wife own and raised their family in could
26 not be rebuilt if it was destroyed by a fire or tornado. He said that his father and mother-in-law reside
27 around the corner of his property therefore he is able to assist them with the maintenance of their property
28 and plow snow if need be. He said that the property owners in Wilber Heights truly depend on each other
29 and not upon anyone else. He said that he believes that the proposed text amendment is a positive thing that
30 is being considered and encouraged the Board to do the right thing for not only the people in Wilber Heights
31 but also for any other property owner in the County who finds themselves in the same situation.

32

33 Mr. Thorsland asked the Board if there were any questions for Mr. Kates and there were none.

34

35 Mr. Thorsland asked if staff had any questions for Mr. Kates.

36

37 Mr. Hall asked Mr. Kates if he was aware of the property restrictions when he and his wife purchased the
38 home.

39

40 Mr. Kates stated that they were aware of the restrictions but it was a home that they could afford and they
41 hoped that some day the restrictions would change. He said that they didn't plan on staying in the area as

2/17/11

1 long as they have but as everyone knows time goes by and the next thing they new the home was paid for
2 and they have kept it in very good repair. He said that the property owners in the Wilber Heights area do
3 keep their homes in good repair because the properties are their homes and not pieces of junk that shouldn't
4 be replaced. He said that he had always believed that one day he and his wife would sell the property and
5 use the money as a down payment for a property in a different location but now at this point in their lives
6 they do not desire to do so. He repeated that yes, when they purchased the property they were aware of the
7 restrictions and at that time it didn't concern them but now since they have stayed there so long the reality of
8 the restrictions are a concern.

9
10 Mr. Hall asked Mr. Kates if he believed that Wilber Heights is a good place to live.

11
12 Mr. Kates stated that he does enjoy living in the Wilber Heights area because he enjoys the fact that he is
13 very close to his work, his son's work and his mother and father-in-law. He said that he enjoys the fact that
14 if he desires to have a bonfire in his backyard he can and he can take his trash out to the curb for pickup
15 without having to take it in every night. He said that there are certain aspects in the area that he does not
16 enjoy such as the fact that the roads have been allowed to fall apart into pieces or that he had to purchase the
17 tile to fix the drainage ditch in front of his property because the County refused to do anything about it. He
18 said that he does not appreciate the fact that it took an article in the *News Gazette* to get a new stop sign at
19 the "t" road. He said that the Wilber Heights area is a good community and as long as the homes exist the
20 property owners should be allowed to care for them so that the good community will continue. He said that
21 the community is an aging community and not everyone will be there forever but for those who are there
22 now they should be allowed to keep their property in good repair and replace it if something should happen
23 to it.

24
25 Mr. Hall asked Mr. Kates if he was employed by one of the businesses in the Wilber Heights' area.

26
27 Mr. Kates stated no, he is employed by the City of Urbana. He said that his son is employed at one of the
28 businesses.

29
30 Mr. Hall asked Mr. Kates if he has heard any concerns from the businesses regarding the proposed text
31 amendment.

32
33 Mr. Kates stated that he has not heard of any concerns. He said that the neighborhood was started for the
34 people who worked at Clifford Jacobs and on the railroad. He said that his father-in-law's father worked
35 and retired from Clifford Jacobs and his son is currently employed there. He said that he has many friends
36 who are employed at Clifford Jacobs, one for over 40 years, and they have not heard any discussion
37 regarding any negative views of the proposed changes. He said that the proposed amendment will not
38 impact the existing businesses but will impact the property owners that are present at this meeting.

39
40 Mr. Thorsland asked the Board and staff if there were any further questions for Mr. Kates and there were
41 none.

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

1
2 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
3 regarding Case 675-AT-10.
4

5 Mr. Al Kurtz, County Board member, requested the opportunity to address the case.
6

7 Mr. Thorsland denied Mr. Kurtz's request. He informed Mr. Kurtz that any input or concerns regarding the
8 proposed text amendment could be brought forth at the County Board meeting that will address this case.
9

10 Mr. Thorsland requested a motion to close the witness register.
11

12 **Mr. Courson moved, seconded by Mr. Palmgren to close the witness register for Case 675-AT-10. The**
13 **motion carried by voice vote.**
14

15 Mr. Thorsland requested that the Board take a few minutes to review the Finding of Fact.
16

17 Mr. Hall stated that on Page 6 of 21 of the Preliminary Draft Finding of Fact dated February 17, 2011, item
18 8.B. authorizes variances for the use of nonconforming lots of record. He said that this allows
19 nonconforming lots of record to be used in amounts that are less than otherwise required. He said that
20 during the process of having another long conversation with Mr. Tom Lemke it was discussed that his lots in
21 Wilber Heights are 130 feet deep and 25 feet wide and no amount of lots which are the size of Mr. Lemke's
22 ends up being the same area as required for lots, it is either more or less, which is a clear demonstration that
23 it is a reasonable thing to be able to grant these variances. He said that if Mr. Lemke divided his lots along
24 the existing lot lines he would have one good lot and the other remaining lot would be 400 to 600 square feet
25 too small. Mr. Hall stated that the Board is aware that 400 to 600 feet shy of 20,000 square feet is not the
26 end of the world and would have no bad effects but it would require a variance. He said that item 8.D
27 clarifies that being able to grant a variance like the previously mentioned situation would make it easier for
28 Wilber Heights to be redeveloped in industrial uses exactly as the Ordinance envisions because now
29 variances can be authorized for lot areas. He said that being able to grant variances for nonconforming
30 structures may end up being more nonconforming but the Board has reviewed them during the variance
31 process and was satisfied that it will be a better situation than what currently exists therefore helping with
32 redevelopment. He said that all of the things which the Board is being asked to do to make it easier for the
33 property owners of Wilber Heights to maintain their homes will also achieve the very purpose of the
34 industrial zoning in the first place and why this did not occur to the original drafters of the Ordinance
35 escapes him but he does believe that it is easy to demonstrate. He said that he does not know that it is
36 always called out in the finding of fact in every place that it should be and he would hope that it would only
37 take a couple of examples to make people realize the benefit of the amendment. He said that a benefit of not
38 taking action tonight would be that staff could load the finding of fact with specific examples or instances of
39 how being able to grant a variance would make redevelopment under industrial use easier. He said that at
40 the beginning of this amendment he didn't have this understanding but it is very clear that this will provide
41 more flexibility for homeowners and for new industrial uses that desire to locate there.

2/17/11

1
2 Mr. Thorsland stated that through Mr. Hall's questioning the Board received testimony from Mr. Kates that
3 no complaints have been filed from the businesses regarding the proposed text amendment. He said that the
4 only comments received from municipalities were from the City of Urbana as to how this will affect other
5 parts of the town. He said that if the Board is comfortable with moving forward tonight he believes that
6 many of the additional questions will be answered by the time it gets before the County Board. He said that
7 personally he is comfortable with moving forward.

8
9 Ms. Capel asked Mr. Hall if this text amendment will meet a lot of opposition.

10
11 Mr. Hall stated that there has not been any opposition yet and he does not believe that it should meet any
12 opposition because it is not going to let something new be created that does not already exist.

13
14 Mr. Thorsland asked Mr. Hall if the Documents of Record required any additions. Mr. Thorsland noted that
15 item 8 should be revised to indicate the following: Supplemental Memorandum for Case 675-AT-10 dated
16 February 9, 2011, with attachments.

17
18 Mr. Thorsland stated that it should be noted in the Finding of Fact that all of the municipalities have been
19 notified and only one call has been received regarding the proposed amendment.

20
21 Mr. Hall stated that on page 3 of 21, item 3 should be revised as follows: Municipalities with zoning and
22 townships with planning commissions have protest rights on all text amendments and they are notified of
23 such cases. One question has been received to date from one municipality.

24
25 Mr. Thorsland stated that witness testimony indicated that no concerns have been raised by the businesses at
26 this time.

27
28 Mr. Hall stated that on page 6 of 21, a new item 8.E could be added indicating that no concerns have been
29 raised by businesses at this time.

30
31 Mr. Thorsland asked if the Board had any additional evidence to add to the Finding of Fact.

32
33 Mr. Thorsland requested a motion to approve the Documents of Record as revised.

34
35 **Mr. Palmgren moved, seconded by Ms. Capel to approve the Documents of Record as revised. The**
36 **motion carried by voice vote.**

37
38 Mr. Thorsland asked the Board if they desired to adopt the revised Summary Finding of Fact or review it
39 with staff adopting each point individually.

40
41 **Ms. Capel moved, seconded by Mr. Courson to adopt the Summary Finding of Fact as revised. The**

ZBA

1 motion carried by voice vote.

2
3 **Final Determination for Case 675-AT-10:**

4
5 **Mr. Courson moved, seconded by Ms. Capel that pursuant to the authority granted by Section 9.2 of**
6 **the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**
7 **determines that the Zoning Ordinance Amendment requested in Case 675-AT-10 should BE**
8 **ENACTED by the County Board in form attached hereto.**

9
10 The roll was called:

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

11
12
13
14
15 Mr. Hall informed the audience that the case will be forwarded to the County Board Committee of the
16 Whole at their meeting on March 1, 2011, held in this meeting room at 6:00 p.m. He noted that the notices
17 are sent out by the County Board office and are posted on the County Board website during the week of
18 March 1st, but no notices are mailed out to interested individuals and it will be incumbent upon each
19 individual to remember the meeting if they wish to attend. He thanked the audience for their attendance and
20 input for Case 675-AT-10.

21
22 Mr. Thorsland requested a motion to close Case 675-AT-10.

23
24 **Mr. Courson moved, seconded by Mr. Palmgren to close the public hearing for Case 675-AT-10. The**
25 **motion carried by voice vote.**

26
27 **6. New Public Hearings**

28
29 **Case 678-V-10 Petitioner: Brian Lile and Myra Sully Request to authorize the use of an existing**
30 **unauthorized detached accessory structure in the R-2 District with a front yard of six feet instead of**
31 **the minimum required front yard of 10 feet and a setback of 41 feet 6 inches instead of the minimum**
32 **required setback of 44 feet and 6 inches. Location: Lots 10 and 11 of Block 3 of S.H. Busey's 6th**
33 **Addition to Penfield that is commonly known as 419 South Main Street, Penfield.**

34
35 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows
36 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show
37 of hands for those who would like to cross examine and each person will be called upon. He requested that
38 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
39 those who desire to cross examine are not required to sign the witness register but are requested to clearly
40 state their name before asking any questions. He noted that no new testimony is to be given during the cross
41 examination. He said that attorneys who have complied with Article 6.5 of the ZBA By-Laws are exempt

2/17/11

1 from cross examination.

2
3 Mr. Hall distributed a Supplemental Memorandum dated February 17, 2011, to the Board for review. He
4 said that the new Supplemental Memorandum indicates the corrected request for the variance. He said that
5 the memorandum that was included in the mailing indicates that the existing site plan received on October 1,
6 2010, does not appear to indicate the correct measurement to the property line because the dimension is
7 shown at an angle rather than perpendicular to the property line and the center of the street. He said that
8 staff was not able to visit the property until this week to re-measure and upon that visit staff found that the
9 petitioner was correct in indicating six feet but it should have been drawn perpendicular. He said that staff
10 discovered that the setback was 41 feet 6 inches and admitted that this was a difficult measurement to
11 determine therefore the difference between staff's measurement and the petitioner's measurement, 6 inches,
12 is pretty good. He said that the request has been corrected to indicate a front yard of 10 feet because the
13 Zoning Ordinance allows front yard averaging on blocks where 25% or more of the lots were developed on
14 October 10, 1973, and this block meets that standard. He said that the setback is not 62 feet 6 inches but is
15 44 feet 5 inches therefore the amount of variance is greatly reduced.

16
17 Mr. Hall stated that the Supplemental Memorandum dated February 17, 2011, includes new evidence which
18 is to be added to the Summary of Evidence. Mr. Hall read and reviewed the new evidence with the Board.
19 He said that the following new evidence is proposed to be added to item 5 regarding the site plan: A. The
20 existing one story ranch house with attached garage is indicated in the approximate center of the property at
21 approximately a 45 degree angle to Main Street. The existing house was constructed under permit 218-74-
22 01 authorized on 8/6/74. The house meets or exceeds all required setbacks and yards and is outside of the
23 corner visibility triangle but it is not clear if a zoning compliance certificate was ever approved; and B. The
24 subject garage is indicated as follows: (1) The overall dimensions are 20 feet by 20 feet; and (2) The subject
25 garage is located a few feet from the west end of the existing attached garage and with the south face of the
26 new garage aligned with the south face of the existing attached garage; and (3) The subject garage is
27 indicated as having a 42 feet setback from the center of Main Street and indicated as being 6 feet from the
28 sidewalk as measured at an angle rather than perpendicular as the setback is indicated. On 2/15/11 staff
29 from the Department of Planning and Zoning measured the subject garage to be 6 feet from the Main Street
30 right of way and approximately 51 feet 6 inches from the centerline of the Main Street pavement; and (4)
31 The existing asphalt driveway is shown on both sides of the sidewalk but the asphalt driveway for the
32 subject garage is only on the house side of the sidewalk and this driveway does not extend to the street. The
33 petitioner's photos also indicated that the driveway for the subject garage does not extend to the street. B.
34 A gas line is indicated as coming onto the property from the west and extending behind the subject garage
35 and then turning to connect to the existing house; and C. A single story garage is also indicated in the
36 northeast corner of the property and located 27 feet from the alley and 4 feet from the north side lot line.
37 This garage was constructed under permit 242-85-03 authorized on 8/30/85 but there is no record of an
38 approved zoning compliance certificate.

39
40 Mr. Hall stated that the following new evidence is proposed to be added to item 7 regarding special
41 conditions or circumstances: B. Regarding Main Street to Penfield: (1) Main Street in Penfield has a 75

ZBA

1 feet wide right of way which is 15 feet wider than the typical 60 feet right of way anticipated for Minor
2 Streets in the Zoning Ordinance.; and (2) There are no known plans for the expansion of Penfield and it is
3 unlikely that Main Street will ever need to have a wider right of way. C. Regarding the angle on which the
4 garage has been constructed in regards to Main Street: (1) The west corner of the subject garage is 6 feet
5 from the Main Street right of way and the east edge is approximately 20 feet from the right of way and
6 therefore the subject garage has an average front yard of 13 feet and an average setback 48 feet and 6 inches.
7 The Zoning Ordinance does not provide for an average front yard and setback for structures that are at an
8 angle to the right of way. The unofficial average front yard of 13 feet exceeds the minimum required front
9 yard of 10 feet based on front yard averaging provisions in the Zoning Ordinance; and (2) The existing
10 alignment of the subject garage allows the subject garage to share the existing asphalt driveway for the
11 existing garage and thereby minimize driveway entrances onto Main Street. D. There is another detached
12 garage on the northeast corner of the subject property. The site plan indicates that the garage is 4 feet from
13 the north lot line which is less than the minimum required 5 feet. Paragraph 13.2.1 C. of the Ordinance
14 prohibits the ZBA from granting a variance and the zoning Administrator from authorizing a zoning use
15 permit when there is an outstanding violation of the Zoning Ordinance unless that approval is the sole
16 impediment to correcting the violation. The requested variance is not related to that garage but the location
17 of that garage does not appear to be in violation so much as the confusion about where the lot lines actually
18 are.

19
20 Mr. Hall stated that the following new evidence is proposed to be added to item 8 regarding practical
21 difficulties or hardships: B. The petitioners' site plan indicates a gas line coming onto the property from the
22 west and extending behind the subject garage and then turning to connect to the existing house. If the
23 subject garage were constructed in this general location with a front yard and setback consistent with the
24 Ordinance the gas line would have to be relocated unless the driveway could cross over the gas line and a
25 new driveway would be required; and C. The existing alignment of the subject garage allows the subject
26 garage to share the existing asphalt driveway for the existing garage and thereby minimize driveway
27 entrances onto Main Street.

28
29 Mr. Hall stated that the following new evidence is proposed to be added to item 9 regarding whether or not
30 the practical difficulties or hardships result from actions of the petitioner: B. The petitioners could have
31 requested this same variance in the beginning before the garage was constructed; and C. The petitioners did
32 not build the house with the attached garage nor install the existing driveway nor install the gas line that
33 connects to the house from the west. He said that the following new evidence is proposed to be added to
34 item 10 regarding purpose and intent of the Ordinance: D. Minimizing driveway entrances onto public
35 streets is generally desirable and the subject garage is located such that no new driveway entrance is
36 required; and E. The driveway for the subject garage should not result in vehicles overhanging the sidewalk;
37 and F. The average setback and front yard of the subject garage exceeds the minimum required setback and
38 front yard based on front yard averaging that is authorized by the Ordinance. Mr. Hall noted that he would
39 like to revise item F. as follows: The average setback and front yard of the subject garage (although not
40 authorized by the Ordinance) exceeds the minimum required setback and front yard based on front yard
41 averaging authorized by the Ordinance. He said that the revision of item F. is to make it clear that this is not

2/17/11

1 something that the Ordinance recognizes and the Board does not have to accept his revision but it is what he
2 is suggesting. He continued with item G as follows: The alignment of the subject garage maintains all parts
3 of the open area of the subject property as a single large open area rather than creating small pockets of open
4 space. He said that item G. is a way of saying that if the garage was located adjacent to the existing garage
5 and in conformance with the required setback and front yard it would divide the open space on the property
6 and there would a little open area between the two garages. He said that the small open area could be a nice
7 area but in general the provision of large open areas is generally preferred over a bunch of small ones.

8
9 Mr. Hall stated that the following new evidence is proposed to be added to item 11 regarding the effects of
10 the requested variance on public health, safety and welfare: D. There have been no complaints received by
11 the Department of Planning and Zoning from neighbors of the subject property; and E. The site plan does
12 not indicate the locations of the water line and the septic system on the subject property and it is assumed
13 that neither of those were located where the subject garage is located. He said that the following new
14 evidence is proposed to be added to item 13 regarding whether or requested variance is the minimum
15 necessary: A. The requested variance is the minimum variation necessary to authorize use of the subject
16 garage. He said that the following new evidence is proposed to be added to item 14 regarding special
17 conditions of approval: A. The petitioners have not yet applied nor paid for a zoning use permit for the
18 garage. If this variance is approved the petitioners will have to submit a completed Zoning Use Permit
19 application and the fee of \$97. He said that the Supplemental Memorandum dated February 17, 2011,
20 includes the Annotated Site Plan, staff photographs along north edge of subject property, and an aerial photo
21 from 2008 with parcel boundaries which is mostly relevant to the northeast garage but also shows the other
22 properties used for front yard and setback averaging along the block.

23
24 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

25
26 Ms. Capel asked Mr. Hall if the Board will address the other detached garage which has a 4 foot side yard.

27
28 Mr. Hall stated yes. He said that the 4 foot side yard is a violation and the only thing that can be approved is
29 something that would correct it. He said that this issue was not included in the legal and it could be called
30 staff error. He said that if the Board desires the case could be re-advertised and the case could be considered
31 at a future meeting. He said that there is confusion regarding the property line and if the Board desires to
32 take a hard case it could determine that the confusion amounts to a violation or the Board could simply
33 acknowledge the situation. He said that he spoke with the petitioners prior to this meeting and he informed
34 them that if they had any further construction plans for the property that is within the vicinity of the lot line
35 then they will need to resolve exactly where the lot line is located. He said that the distributed staff
36 photographs are intended to indicate the corners of the property (indicated by the white PVC pipes). He
37 reviewed the photographs with the Board and noted that it is unknown as to who placed the white PVC pipes
38 on the property or why they were placed on the property although they do more or less align with a line that
39 is approximately five feet from the garage. He said that by reviewing the photographs and the aerial it is
40 apparent that there is an issue with the location of the property line for the subject property to the west as
41 well as with other properties in Penfield. He informed the Board that they would be within their right to

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

1 acknowledge the current violation regarding the existing shed and require correction of all noncompliant
2 structures or the Board could determine that it is unknown whether a violation exists until a lot more effort is
3 taken in determining the exact location of the property line.

4
5 Ms. Capel asked Mr. Hall if there would be any consequences in ignoring the violation.

6
7 Mr. Hall stated no.

8
9 Mr. Thorsland stated that the 2008 aerial indicates that there are other structures in the area which are also in
10 the same predicament.

11
12 Ms. Capel stated that basically the Board is elaborating on the confusion.

13
14 Mr. Thorsland stated that the same situation also exists in Dewey and it is not unprecedented.

15
16 Mr. Hall stated that if the garage was damaged it could not be rebuilt without clarifying the location of the
17 property line and then perhaps obtaining a variance. He said that the garage was not built by the petitioners
18 but it was built in 1984 and staff was aware of the dimension when the first memorandum was prepared. He
19 said that he even made a note that the garage was not a problem although he cannot explain what he was
20 thinking when he wrote it therefore it is always good to have another set of eyes to review such things but
21 staff is currently short handed.

22
23 Mr. Thorsland stated that a special condition regarding the reconstruction of the existing garage would
24 normally be proposed. He asked Mr. Hall if such a condition could be proposed for the existing garage and
25 if so he asked if the Board was comfortable in proposing such a condition.

26
27 Ms. Capel stated that such a condition would take away any consequences of ignoring the violation.

28
29 Mr. Hall stated that the property line would need to be identified more accurately. He said that regarding
30 the subject garage, if he had more time, he would have written something about how the Board might
31 consider a variance as to whether or not the subject garage should be allowed to be rebuilt in its current
32 location. He said that if the Board approves the variance with no conditions the understanding would be that
33 the subject garage could be rebuilt at its current location. He said that the Board has approved variances for
34 things like garages before where as the Board specifically indicated that if the garage was damaged and
35 required reconstruction it would have to meet the requirements of the Ordinance at that time. He said that
36 he has not proposed any conditions but he believes that he is obligated to inform the Board that they could
37 propose such a condition if the Board believes it is warranted.

38
39 Mr. Thorsland stated that there is only one name indicated on the witness register and reminded the audience
40 that they are signing an oath when they are signing the witness register.

41

2/17/11

1 Mr. Thorsland called Myra Sully to testify.

2
3 Ms. Myra Sully, who resides at 419 South Main, Penfield, stated that they originally hired a contractor to
4 construct the subject garage and file all of the paperwork. She said that before the concrete was poured they
5 asked the contractor if the permit was filed and if everything was approved and they were told that
6 everything was indeed filed and approved. She said that after the garage was constructed they received a
7 letter in the mail from the Champaign County Planning and Zoning Department indicating that they had
8 constructed an unauthorized garage which was in violation. She said that currently the State's Attorney's
9 office has a court injunction against the contractor for fraud. She said that they feel that the area that the
10 subject garage is located actually conforms to how the house is located and improves the yard. She said that
11 they could have constructed the garage in the back yard beside the alley but it would have been located in
12 the middle of the back yard and very close to the deck. She said that the septic system and leach field is
13 located in the back yard as well as the power lines therefore the current location was determined for
14 placement of the garage.

15
16 Mr. Thorsland asked the Board if there were any questions for Ms. Sully and there were none.

17
18 Mr. Thorsland asked if staff had any questions for Ms. Sully.

19
20 Mr. Hall asked Ms. Sully if the current location of the garage was the original desired location for placement
21 and if they were assured that the all permits had been approved for such placement.

22
23 Ms. Sully stated that they had two desired locations for the garage. She said that one location was in the
24 back yard but when they measured it out it was determined that the garage would be located in the middle of
25 the yard therefore they decided to pick the second desired location which was beside the house next to the
26 other double garage. She said that the current location appeared more uniform therefore once they began
27 measuring out the site it was discovered where the gas line was located. She said that they questioned the
28 current location with the contractor and he indicated that it would not be a problem because they owned a
29 double lot and all of the permits were filed and approved.

30
31 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Sully and there was no one.

32
33 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
34 testimony regarding Case 678-V-10 and there was no one.

35
36 Mr. Thorsland requested a motion to close the witness register.

37
38 **Ms. Capel moved, seconded by Mr. Palmgren to close the witness register for Case 678-V-10. The**
39 **motion carried by voice vote.**

40
41 Ms. Capel asked Mr. Hall if the case should be re-advertised indicating the new measurements by staff.

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

1
2 Mr. Hall stated no because the numbers advertised state a much greater variance than what is actually
3 required.

4
5 Mr. Thorsland asked if a special condition should be proposed regarding the Zoning Use Permit and fees.

6
7 Mr. Hall stated no, the petitioner is aware of the requirement.

8
9 Ms. Sully stated that she has the completed Zoning Use Permit and will submit it tonight along with the fee
10 if the variance is approved tonight.

11
12 Mr. Thorsland asked the Board if there were any additional additions, deletions or corrections to the Finding
13 of Fact.

14
15 Mr. Hall stated that item #10.B(3) on Page 6 of 10 of the Preliminary Summary of Evidence and Findings of
16 Fact dated February 17, 2011, should be shifted down under item #10.B(2). He said that item #10.B(2)
17 should be revised to read the following: Off-street parking: The driveway for the subject garage should not
18 result in vehicles overhanging the sidewalk. He said that item #10.E on Page 3 of the February 17, 2011,
19 Supplemental Memorandum regarding proposed evidence to be added to item #10 regarding purpose and
20 intent of the Ordinance should be stricken (due to inclusion under item #10.B(2) regarding off-street
21 parking) and the text in item #10.F would become new item #10.E and item #10.G would become new item
22 #10.F.

23
24 Mr. Thorsland stated that a new item #3 should be added to the Documents of Record indicating the
25 following: Supplemental Memorandum for Case 678-V-10, dated February 17, 2011, with attachments: 1.
26 Annotated Site Plan; and 2. Aerial photo from 2008 with parcel boundaries; and 3. Staff photographs along
27 north edge of subject property.

28
29 **Finding of Fact for Case 678-V-10:**

30
31 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
32 678-V-10 held on February 17, 2011, the Zoning Board of Appeals of Champaign County finds that:

- 33
34 **1. Special conditions and circumstances DO exist which are peculiar to the land**
35 **or structure involved, which are not applicable to other similarly situated land**
36 **and structures elsewhere in the same district.**

37
38 Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the land or
39 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
40 same district because the location of the garage allows the use of a single driveway rather than adding an
41 entrance onto the street. She said that the location of the gas line prevents a different location for the garage

2/17/11

1 on the subject property and she added that the average setback meets the standard although the closest point
2 does not.

3
4 Mr. Courson stated that the angle of the house to the road makes it extremely difficult for placement of a
5 garage on the subject property.

6
7 **2. Practical difficulties or hardships created by carrying out the strict letter of**
8 **the regulations sought to be varied WILL prevent reasonable or otherwise**
9 **permitted use of the land or structure or construction.**

10
11 Mr. Palmgren stated that practical difficulties or hardships created by carrying out the strict letter of the
12 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
13 or construction because the building already exists and moving it to a different location would be costly.

14
15 Mr. Hall stated that cost is not an appropriate justification.

16
17 Mr. Thorsland stated that trying to work with the location of the gas line, leach field and the existing angled
18 layout of the structures on the subject property created the situation that is before the Board today.

19
20 Ms. Capel stated that the variance will allow an efficient use of the existing driveway for both structures.

21
22 **3. The special conditions, circumstances, hardships, or practical difficulties DO**
23 **NOT result from actions of the applicant.**

24
25 Ms. Capel stated that the special conditions, circumstance, hardships, or practical difficulties DO NOT result
26 from actions of the applicant because the applicant worked in good faith with the contractor in finding a
27 location on the lot for the garage and was assured by the contractor that all of the appropriate papers were
28 filed and that the garage met all of the Ordinance regulations. She said that the current location is the best
29 location for the garage given the location of the driveway, gas line and septic system.

30
31 **4. The requested variance IS in harmony with the general purpose and intent of**
32 **the Ordinance.**

33
34 Ms. Capel stated that the requested variance IS in harmony with the general purpose and intent of the
35 Ordinance because the averaging of the setback of the two corners of the building places it in a situation
36 where a variance is not required.

37
38 Mr. Thorsland stated that there is a significant road setback that would probably never be utilized.

39
40 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
41 **detrimental to the public health, safety, or welfare.**

ZBA

1
2 Ms. Capel stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
3 detrimental to the public health, safety or welfare because no objections have been received and it will
4 prevent cars hanging over the sidewalk.

5
6 Mr. Thorsland stated that the Compromise Township Highway Commissioner provided comment that he
7 had no problem with the location of the subject garage and that it was an asset to the community.

8
9 **6. The requested variance IS the minimum variation that will make possible the**
10 **reasonable use of the land/structure.**

11
12 Ms. Capel stated that the requested variance IS the minimum variation that will make possible the
13 reasonable use of the land/structure because it is the exact number of feet that will bring the subject garage
14 into conformance with the Zoning Ordinance.

15
16 **Ms. Capel moved, seconded by Mr. Palmgren to adopt the Summary of Evidence, Documents of**
17 **Record and Finding of Fact as amended. The motion carried by voice vote.**

18
19 Mr. Thorsland informed the petitioners that two Board members were absent from tonight's meeting
20 therefore it is at their discretion to either continue Case 678-V-10 until a full Board is present or request that
21 the present Board move forward to the Final Determination. He informed the petitioners that four
22 affirmative votes are required for approval.

23
24 Ms. Sully and Mr. Lile requested that the present Board move forward to the Final Determination.

25
26 **Ms. Capel moved, seconded by Mr. Courson to close the public hearing for Case 678-V-10. The**
27 **motion carried by voice vote.**

28
29 **Final Determination for Case 678-V-10:**

30
31 **Ms. Capel moved, seconded by Mr. Courson that the Champaign County Zoning Board of Appeals**
32 **finds that, based upon the application, testimony and other evidence received in this case, that the**
33 **requirements of Section 9.1.9.C HAVE been met, and pursuant to the authority granted by Section**
34 **9.1.6.B. of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign**
35 **County determines that the variance requested in Case 678-V-10 is hereby GRANTED to the**
36 **petitioners, Brian Lile and Myra Sully, to authorize the use of an existing unauthorized detached**
37 **accessory structure in the R-2 District with a front yard of six feet instead of the minimum required**
38 **front yard of 10 feet and a setback of 41 feet 6 inches instead of the minimum required setback of 44**
39 **feet 6 inches.**

40
41 The roll was called:

2/17/11

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

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

Mr. Hall informed the petitioners that the variance has been approved therefore they should submit their Zoning Use Permit Application and fees as soon as possible.

Ms. Sully stated that she will submit the completed Zoning Use Permit Application and fees at tonight's meeting.

Mr. Palmgren requested a five minute recess.

The meeting recessed at 8:00 P.M.

The meeting resumed at 8:05 P.M.

7. Staff Report

A. January, 2011 Monthly Report

Mr. Hall indicated that the January, 2011 Monthly Report was not available for review at tonight's meeting.

8. Other Business

A. Review of ZBA By-laws

Mr. Thorsland stated that personally he has thoroughly reviewed the ZBA Bylaws. He said that he attended the Siting, Zoning and Taxation of Wind Farms Conference last week and he managed to spend a great deal of time with several county zoning board members from around the state and discussed how they held their hearings. He said he has also been reading a lot about the procedures of the zoning law and he went through the Champaign County Zoning Board of Appeals Bylaws. He said that recently it was brought to his attention that the Zoning Board does not hold meetings but hearings and the Board does not accept public participation but accepts testimony from witnesses. He said that on the witness register there is an oath indicating that those who sign it swear or affirm, in their individual capacity, that the evidence that they present at the hearing will be the truth, the whole truth, and nothing but the truth, so help me God. He requested that every Board member read through the Bylaws so that it can be determined how tight the hearings should be held. He said that he believes that the hearings should be tighter because in the future there will be cases which will cause controversy. He said that during the wind farm hearings he served as the temporary chairman and he was only able to take a quick glance at the Bylaws. He said that he would be reluctant to repeat the kind of hearings that were held during the Comprehensive Zoning Review, which were held in the gymnasium, because there was a lot of "hearsay" evidence and a lot of people who were very emotional. He said that he asked his colleagues about time limits for public input because it is more difficult to place a time limit on witness testimony than on public input. He said that the ZBA does have a lot of control over what is considered "hearsay" and what is "relevant or irrelevant" testimony. He said that

ZBA

1 at tonight's hearing he allowed Mr. Kirby the opportunity to repeat his testimony from the previous meeting
2 but there is some flexibility on whether to allow or stop a witness from giving repetitive testimony. He said
3 that when some of the cases with large witness registers become very contentious he believes that the Board
4 must do better and indicate when the Board feels that a witness is doing something that they shouldn't so
5 that he can act on it. He requested that staff distribute copies of the Champaign County Zoning Board of
6 Appeals Meeting Notes to the Board for review. He said that he believes that after the Board has an
7 opportunity to review the Meeting Notes it will find that the Bylaws are not exactly being followed.

8
9 Mr. Hall stated that he would hope that once staff investigates whether or not the Meeting Notes accurately
10 reflect the By-laws that it is made an appendix to the Bylaws.

11
12 Mr. Thorsland stated that his new member packet included an Appendix to the Champaign County Zoning
13 Board of Appeals Bylaws which indicates everyone's duties and how the entire process works.

14
15 Mr. Hall stated that staff will also distribute a copy of the Appendix to the Board for review. He said that
16 the reason why the Bylaws were placed on the agenda is because a public hearing never closes. He said that
17 a public hearing begins and ends but it never closes unless the Board is discussing a law suit or something
18 like that therefore every place where the Bylaws indicate "close the public hearing" needs to be replaced
19 with new text.

20
21 Ms. Capel asked Mr. Hall if the public hearing should only be determined "closed" when the hearing is
22 technically over.

23
24 Mr. Hall stated no. He said that the only time a public hearing can be closed is when the Board goes into
25 closed session for something that is appropriate. He said that the phrase, "close the public hearing," dates
26 from 1973 before there was an *Open Meetings Act*. He said that the first time that David DeThorne,
27 Champaign County Assistant State's Attorney, heard him use the phrase "close the public hearing" he
28 almost had a heart attack. Mr. Hall stated that Mr. DeThorne thought that the ZBA was going into closed
29 session which would be very inappropriate and the ZBA has only gone into closed session once to discuss a
30 law suit and that is the only closed session minutes that are on record.

31
32 Mr. Thorsland stated that his colleagues at the conference also seemed shocked by the term "close the public
33 hearing."

34
35 Mr. Hall stated that his recommendation will either be "end testimony" or "end witness register". He said
36 that the most peculiar thing about the Bylaws is that there are sections which discuss meetings and
37 procedures but there is nothing which discusses the parts of a public hearing. He said that he believes that
38 there are only two parts to a public hearing: 1. Fact Finding consisting of receiving evidence, hearing
39 testimony, discussion amongst the Board, and making a finding; and 2. Final Determination. He said that he
40 is not trying to invent something new because it is neat and fun but because the Board needs to have
41 something other than "close the public hearing." He said that he had hoped to have new text drafted for

2/17/11

1 tonight's hearing but he was unsuccessful. He requested that the Board review the Bylaws and consider new
2 text to be proposed to replace "close the public hearing."
3
4 Mr. Thorsland stated that he is attending an *Open Meetings Act* Conference tomorrow and he would like to
5 ask his colleagues from different counties what they do at the end of the meeting. He said that he has been
6 informed by three different people from different counties that when a witness reads testimony from a
7 website that the evidence should be deemed as "hearsay" and dismissed from the record. He said that if
8 someone searches a subject on the web then over 1,000 web sites indicating someone else's opinion about
9 the subject could appear.
10
11 Mr. Hall stated that any changes to the Bylaws must be approved by the State's Attorney's office and they
12 need to determine if the Board can accept evidence from the web or not.
13
14 Mr. Thorsland stated that during the hearing on Case 666-AT-10, one of the witnesses and staff got into a
15 back and forth discussion which he feels that he should have stopped before he did. He said that the witness
16 is only before the Board to present testimony regarding the specific case at hand and is not to be allowed to
17 sit and drill staff. He said that procedurally the Board needs to work on the Bylaws and submit them to the
18 State's Attorney's office for review.
19
20 Mr. Thorsland stated that if the Board reviews the Bylaws and the Meeting Notes it will find that the two do
21 not coincide with each other.
22
23 Ms. Capel stated that the Zoning Ordinance was modified during the first case and the Finding of Fact was
24 determined as a whole but during the variance case the findings for the Finding of Fact were determined
25 individually.
26
27 Mr. Hall stated that during a variance and special use case there are certain findings which the Board must
28 make individually because each criterion must be dealt with separately. He said that there are no standards
29 for a Finding of Fact for an amendment.
30
31 Mr. Thorsland stated that during the Comprehensive Zoning Review there was an attempt to have time
32 limits but during the wind farm hearings he was informed that he could not impose any time limits on
33 testimony.
34
35 Mr. Hall stated that there were no time limits for public testimony during CZR because it is not appropriate.
36
37 Mr. Courson stated that it is the Chair's job to stop a witness from rambling.
38
39 Ms. Capel asked Mr. Thorsland what would have been the appropriate time to stop the witness for Case 666-
40 AT-10.
41

ZBA

1 Mr. Thorsland stated that he should have asked the witness to simply ask his question once and to stop
2 rephrasing the same question over and over again until he or she believes they have crossed up staff. He
3 said that he did not believe that the way the witness was drilling staff was appropriate and if there had been a
4 larger gallery of people he would have ceased the witness' testimony before he did.

5
6 Mr. Courson asked Mr. Thorsland what should be done about people who continuously desire to ask
7 questions after they have had their opportunity to speak.

8
9 Mr. Thorsland stated that he would be disinclined to allow such practice especially after the witness register
10 has been closed and they only desire to rebut. He said that he will not allow someone signing the witness
11 register as two different individuals, once as an individual and again as a plan commissioner, etc. He said
12 that someone could include all of their titles on the one line and speak once. He said that he was informed
13 that he was being too loose as Chair therefore he will make the meetings as tight as desired.

14
15 Mr. Hall stated that it is his impression that running such a tight ship would only result in more criticism.

16
17 Mr. Hall stated that the only deadline regarding the ZBA Bylaws is that it must be fixed before the wind
18 farm hearings.

19
20 Ms. Capel asked Mr. Hall if there were pending applications for a wind farm.

21
22 Mr. Hall stated no. He said that he does not anticipate any applications for a wind farm until after this year.

23
24 Mr. Hall stated that there is pending legislation regarding not just ZBA hearings but also what the County
25 Board can do and it is very confusing therefore he won't speculate on what it might mean. He said that he
26 does hope that the State's Attorney speculates on it. He said that the Board will be fascinated when they
27 read the legislation because it has to do with appeals of ZBA decisions and it is something that the County
28 may want to give testimony on when it gets to the legislature. He said that it was originated in Dekalb
29 County and the Zoning Administrator is a highly respected Zoning Administrator and he knows the
30 legalities therefore everyone else is waiting for his reasons why the legislation is being proposed. He said
31 that staff will send out a copy of the legislation for the Board's review.

32
33 Mr. Thorsland stated that according to the docket it appears that the March 10, 2011, meeting could be
34 cancelled.

35
36 Mr. Hall stated that the only thing that the Board could meet for would be to review the Bylaws.

37
38 Mr. Thorsland requested a motion to cancel the March 10, 2011, meeting.

39
40 **Mr. Courson moved, seconded by Ms. Capel to cancel the March 10, 2011, meeting. The motion**
41 **carried by voice vote.**

2/17/11

1
2 Mr. Hall stated that in regards to the March 24, 2011, it should not be a surprise to anyone that the Ogden
3 Township Highway Commissioner has not had a lot of time this winter to think about things like zoning
4 cases and he has promised staff that he will have some thoughts regarding Case 677-V-10 therefore staff has
5 not advertised the case to date. He said that in regards to Case 681-S-11 staff is doing a good job of getting
6 everything required before advertising the case but everything has not been obtained therefore Case 681-S-
7 11 has not been advertised. He said that given the way that *The Leader* operates, zoning cases in Ogden
8 Township require extra time for legal advertisements. He said that cases located in Compromise Township
9 do not have such an issue because the legal advertisement is placed in the *News Gazette* therefore it could be
10 that Kopmann Cemetery is the only case scheduled for March 24th.

11
12 Mr. Hall stated that there are a few new cases anticipated but he is happy to say that the staff in charge of
13 clarifying with the petitioners as to what they need are in fact doing a much better job these days and it takes
14 a lot longer for people to get everything that is required.

15
16 **9. Audience Participation with respect to matters other than cases pending before the Board**

17
18 None

19
20 **10. Adjournment**

21
22 Mr. Thorsland requested a motion to adjourn the meeting.

23
24 **Mr. Palmgren moved, seconded by Mr. Courson to adjourn the meeting. The motion carried by voice**
25 **vote.**

26
27 The meeting adjourned at 8:30 p.m.

28
29
30 Respectfully submitted

31
32
33
34
35 Secretary of Zoning Board of Appeals

36
37
38
39
40
41

2/17/11

AS APPROVED MARCH 24, 2011

ZBA

- 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

ZBA //

DRAFT SUBJECT TO APPROVAL DRAFT

- 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