

MINUTES OF SPECIAL MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: October 13, 2011

PLACE: Lyle Shields Meeting Room  
1776 East Washington Street

TIME: 7:00 p.m.

Urbana, IL 61802

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

MEMBERS ABSENT : None

STAFF PRESENT : Connie Berry, Lori Busboom, John Hall, Jamie Hitt, Andrew Kass,  
Joel Fletcher (Assistant State’s Attorney)

OTHERS PRESENT : Kevin Parzyck, Sherry Schildt, Michael Blazer, Deanne Sims, Steve  
Burdin, Marsha Gates, Greg Frerichs, Larry Mann, Roy Knight, Trish  
Gale, Jeff Blue, Deb Griest, Mary Jo Reik, Ralph Langenheim,  
Loretta Elliott, Herb Schildt, Bruce Stickers, Rick Buckley, Al Kurtz,  
Marvin Johnson

1. Call to Order

The meeting was called to order at 7:02 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present.

Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the witness register. He reminded the audience that when they sign the witness register they are signing an oath.

3. Correspondence

None

4. Approval of Minutes

None

5. Continued Public Hearing

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1  
2 **Case 696-S-11** Petitioner: **California Ridge Wind Energy LLC and the participating**  
3 **landowners listed in the legal advertisement. California Ridge Wind Energy LLC is**  
4 **wholly owned by Invenergy Wind North America LLC, One South Wacker Drive,**  
5 **Suite 1900, Chicago, IL, with corporate officers as listed in the legal advertisement.**  
6 **Request: Authorize a Wind Farm with consists of 30 Wind Farm Towers (wind**  
7 **turbines) in total with a total nameplate capacity of 48 megawatts (MW) of which**  
8 **28 Wind Farm Towers with a total nameplate capacity of 44.8 MW are proposed in**  
9 **Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate**  
10 **capacity of 3.2 MW are proposed in Ogden Township (Part B), and including access**  
11 **roads, wiring, and public road improvements, and including the waivers of**  
12 **standard conditions in Section 6.1.4 as listed in the legal advertisement. Location:**  
13 **In Compromise Township the following sections are included with exceptions as**  
14 **described in the legal advertisement: Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33 of**  
15 **T21N, R14W of the 2<sup>nd</sup> P.M.; and Section 24, 25, and 36 of T21N, R10E of the 3<sup>rd</sup>**  
16 **P.M.; and Fractional Sections 30 and 31 of T21N, R11E of the 3<sup>rd</sup> P.M. In Ogden**  
17 **Township the following sections are included with exceptions as described in the**  
18 **legal advertisement: Fractional Section 6, T20N, R11E of the 3<sup>rd</sup> P.M.; and**  
19 **Fractional Sections 4, 5, 6 and 7 of T20N, R14W of the 2<sup>nd</sup> P.M.; and Sections 8, 9,**  
20 **and 16 of T20N, R14W of the 2<sup>nd</sup> P.M.**

21  
22  
23 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County  
24 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will  
25 ask for a show of hands for those who would like to cross examine and each person will be called  
26 upon. He requested that anyone called to cross examine go to the cross examination microphone to  
27 ask any questions. He said that those who desire to cross examine are not required to sign the  
28 witness register but are requested to clearly state their name before asking any questions. He noted  
29 that no new testimony is to be given during the cross examination. He said that attorneys who have  
30 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.

31  
32 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time and there  
33 was no one.

34  
35 Mr. Thorsland asked the petitioner if they would like to make a statement outlining the nature of  
36 their request.

37  
38 Mr. Michael Blazer, legal counsel for Invenergy, stated that as of this afternoon he received notice

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1 from Ms. Sheryl Kuzma that both township road agreements for Compromise and Ogden Townships  
2 have been executed. He said that the e-mail that he received included Marvin Johnson's,  
3 Compromise Township Highway Commissioner, executed agreement but it did not include Mr.  
4 Frerich's, Ogden Township Highway Commissioner, executed agreement. He said that both  
5 commissioners are present tonight therefore they can confirm that both agreements have been signed.  
6

7 Mr. Blazer stated that the other principal issue which has taken up a vast majority of his time and Mr.  
8 Fletcher's, Assistant State's Attorney, and Mr. Hall's time is the Reclamation Agreement. He said  
9 that he and Mr. Fletcher have been working since early last Friday and they have made progress but  
10 they are not done and candidly he cannot tell the Board that they are going to be done. He said that  
11 there is at least one issue that they cannot seem to resolve because they are at opposite ends of the  
12 spectrum on and he does not know where they are going to get to with that. He said that the  
13 Ordinance requires this Board impose a condition of an executed Reclamation Agreement as part of  
14 its recommendation to the County Board which authorizes the ZBA to pass this on to the County  
15 Board without having a fully agreed Reclamation Agreement. He said that he and Mr. Fletcher will  
16 continue working but the issue is the estimated cost of reclamation and issue of salvage value. He  
17 said that he and Mr. Fletcher have gone back and forth through many telephone calls and e-mails and  
18 an enormous amount of time has been spent on this issue. He said that they have provided Mr.  
19 Fletcher with a number of different documents to substantiate the fact that salvage value, as a matter  
20 of course, is always taken into account when determining the cost of the project in regards to  
21 decommissioning. He distributed copies to the Board of one of the documents which he shared with  
22 Mr. Fletcher which is another decommissioning agreement that Invenergy had entered into with  
23 Henry County, Illinois involving their Bishop Hill Project. He said that the draft that he and Mr.  
24 Fletcher are currently working on is up to 14 pages in length. He said that along with every other  
25 county in the State which has entered into one of these agreements salvage value is taken into  
26 account whether or not salvage value is or is not mentioned in their wind farm ordinance. He said  
27 that salvage value is taken into account because it is a routine common concept anytime you are  
28 involved in a project which may require dismantling, decommissioning or demolition. He said that if  
29 Champaign County elected to interpret the word "cost" in the Ordinance by grafting on the word  
30 "gross cost" which is not in the Ordinance Champaign County would be the only county in the State  
31 to view decommissioning costs as excluding salvage value.  
32

33 Mr. Blazer stated that another reason why he wanted to distribute the Henry County  
34 decommissioning agreement is because the numbers are very close. He said that the salvage value of  
35 copper has gone up in the last couple of years but the turbine numbers are close. He said that in  
36 Henry County Invenergy is paying \$25,000 per turbine for purposes of financial assurance but in  
37 Champaign County based on the 210% Invenergy would be providing financial assurance to the tune  
38 of \$63,000 per turbine which is over 2-1/2 times and would be the most that Invenergy has ever paid

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1 to any other county. He said that at this point Invenergy is beginning to stretch the viability of this  
2 project because if the County requires Invenergy to exclude salvage value the total cost to the project,  
3 over the life of the project, would be \$23 million dollars and candidly that would kill the project. He  
4 said that ultimately this is a policy decision for the ZBA and/or the County Board to make. He said  
5 that Invenergy views the policy decision the way that decommissioning, dismantlement, demolition,  
6 whatever "d" word you want to use to address the taking down of something that has previously been  
7 built and salvage value is always taken into account. He said that salvage value is taken into account  
8 because part of what you get when a contractor gives you a bid for a demolition project that bid  
9 includes the cost of disposal and salvage value is a component of disposal. He said that the Board  
10 can see from the Henry County agreement and the engineering estimate that is called for by the  
11 Ordinance, which Invenergy provided in their application and recently updated from HDR, that  
12 copper and steel values were not accounted for which are significant. He said that he recently saw an  
13 article that there is a huge problem in the energy industry in Canada due to the vandalism of copper.  
14 He said that a demolition contractor is not going to take recyclable materials to a landfill but to a  
15 recycler and sell them which is the way that demolition or dismantlement works whether we are  
16 talking about a house, turbine, factory or anything else. He said that based on the experience of not  
17 only Invenergy but every other wind farm company in this state in dealing with decommissioning  
18 agreements and decommissioning applications. He said that Invenergy has supplied the  
19 decommissioning estimate that the Ordinance calls for which is the cost of decommissioning  
20 multiplied by 210% which is just under \$2 million dollars. He said that unfortunately what they are  
21 getting back from the Board is that they are not comfortable with the notion that salvage value should  
22 be credited and his response has been repeatedly that it is not a credit but how you get to cost. He  
23 said that the assumption is that if twenty years from now Invenergy has gone out of business and no  
24 one wants to keep the project running and it now has to be dismantled therefore someone has to hire  
25 a contractor to come in to dismantle the turbines. He said that the County will send this project out  
26 for bid and the County will get bids back and ultimately someone will sign a contract and that  
27 contract will not be for a gross price and include disposal for anything that might or might not be  
28 salvageable but a net price. He said that the cost will be the cost of demolition minus what the  
29 contractor can sell the material for to the extent that it can be recycled.

30  
31 Mr. Blazer stated that he and Mr. Fletcher have discussed his concern that the engineer's estimate of  
32 the gross cost of dismantlement may be more accurate than his estimate of the potential salvage  
33 value. He said that he disagrees with Mr. Fletcher's concern because the salvage value is based on  
34 published figures. He said that when Invenergy was proposing a five year revisiting the Board  
35 determined that the time frame was too long therefore Invenergy agreed to bring that revisit back to  
36 three years and tie the financial assurance, Letters of Credit, to that three year revisiting of the  
37 salvage value. He said that Invenergy has gone as far as they possibly can in minimizing whatever  
38 perceived potential risk anyone sees twenty years down the road that there may not be enough money

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1 to dismantle one of these if Invenergy goes south and there is not much more that Invenergy can do  
2 on that issue.

3  
4 Mr. Blazer stated that he and Mr. Fletcher discussed other matters and Mr. Fletcher came up with a  
5 great idea which could resolve the issue lien priority because the County's interest in the salvage  
6 value really takes hold if the project has been abandoned. He said that the security will be held by  
7 the lenders but the Board discussed their concern about how this will impact the County's interest in  
8 being able to take the full benefit of whatever the value may be in order to add that to the reclamation  
9 costs. He said that Mr. Fletcher came up with the idea of using the mechanic's lien statute because  
10 the County will never take title to these if they actually have to dismantle them because they will hire  
11 a contractor and that contractor will go out and do whatever it is they do. He said that by operation  
12 of law the contractor, to the extent that they are not paid something, will have a mechanic's lien on  
13 the project. He said that this mechanism will allow the County to take a step back and provide  
14 whatever contractor they hire with the full protection of not only the financial assurance but a lien  
15 right that will take priority over anyone who has been a lender even though the security interest pre-  
16 dates the mechanic's lien. He said that there were a few odds and ends regarding environmental  
17 issues which he believes he and Mr. Fletcher will be able to work out. He said that the one issue that  
18 he and Mr. Fletcher are hitting heads on is the salvage value and they are at an impasse. He said that  
19 he does not believe that it is a decision that Mr. Fletcher can make and he is not sure whether he will  
20 even make a recommendation to the Board. He said that ultimately the ball is going to be back in the  
21 ZBA's court and the County Board's court because Invenergy has gone as far as they possibly can on  
22 that issue. He said that a brief discussion occurred on the noise issue and he does not know if it has  
23 been completed to Mr. Fletcher's satisfaction or not because so much time was spent on the  
24 Reclamation Agreement. He said that based on the memorandum that he gave to Mr. Hall he does  
25 believe that some of the noise questions were resolved. He said that he believes that everything else  
26 is done other than the one issue regarding the Reclamation Agreement.

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

29  
30 Mr. Courson stated that Mr. Blazer made the statement that a contractor taking something apart will  
31 sell it and he would agree with that statement up to the point that the contractor will sell it if he is  
32 able to make money on it. He said that if the cost of stripping wires from insulation, loading material  
33 on trucks, hauling the material over vast distances will cost him more than what he is going to sell it  
34 for he will not sell it but take it to a local landfill. He said that he has a copy of the New Grange  
35 Wind Farm Project Decommissioning Agreement which indicates that their salvage values are much  
36 lower than what Invenergy has included in their agreement. He said that the New Grange report was  
37 done on a GE 1.8 megawatt wind generator that was proposed for their wind farm and their total  
38 salvage value came in at \$35,000 where Invenergy is indicating that their salvage value for this

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1 project is \$141,000 which is a vast difference. He said that he must make sure that the County is  
2 protected because there are literally tens of thousands of these turbines in California that did not have  
3 a reclamation agreement and it is costing the taxpayers of California hundreds of millions of dollars  
4 to take them down.

5  
6 Mr. Blazer stated that California was the first state to put up wind turbines and those turbines are  
7 obsolete. He said that he does not know what the basis was for the decommissioning report in New  
8 Grange because he is not familiar with that wind farm but he can tell the Board that one of the  
9 reasons why they are at \$63,000 is because the Ordinance requires 210% of what the engineer's  
10 estimate is as opposed to \$25,000 in Henry County which is being built as he speaks. He asked if the  
11 Board believes that he will tell them that he can completely eliminate every shred of risk, no. He  
12 said that he is a lawyer and he won't tell the Board that the sun is shining unless he goes out and  
13 confirms himself. He said that he cannot tell the Board that Invenergy has eliminated every shred of  
14 risk but he can tell the Board that they have gone as far as possible and as far as the Ordinance  
15 requires to minimize that risk. He said that originally Invenergy tried to convince the Board to go  
16 with 125% rather than 210% and having realized how much of a hot issue this was they decided to  
17 go with the 210% because there was no reason to cause any further discomfort regarding this issue  
18 than what already existed. He said that he does not know what the requirements were in New  
19 Grange or what their Ordinance indicated but he can tell the Board that they are 2-1/2 times more  
20 secured than Henry County is with the agreement that they signed with Invenergy over two years ago.

21  
22 Mr. Thorsland stated that Items #7(c) and (d) on Page 2 of the Bishop Hill Decommissioning  
23 Agreement indicates that after the 24<sup>th</sup> year it is \$35,000 per turbine and if the restoration cost of  
24 Bishop Hill exceeds salvage value and financial assurance amounts, Bishop Hill shall be responsible  
25 for any difference. He said that Bishop Hill, the operator, would take care of it regardless of what the  
26 salvage value and financial assurance was provided that they were still in business.

27  
28 Mr. Blazer stated that Bishop Hill is a subsidiary of Invenergy. He said that assuming that Bishop  
29 Hill was still in business then they will take care of it.

30  
31 Mr. Thorsland stated that we do not have such language in our Ordinance.

32  
33 Mr. Blazer stated that Champaign County does have such language in their Ordinance. He said that  
34 to be practical Invenergy posts a financial assurance of \$25,000 which is the only guarantee that  
35 Bishop Hill had just like Champaign County at \$63,000. He said that let's assume that Invenergy  
36 agreed that if the cost is more than \$63,000 per turbine the Reclamation Agreement already indicates  
37 that Invenergy will do whatever is necessary to do to take them down and are separately providing  
38 financial assurance of \$63,000 per turbine. He said that let us assume that the worst of all

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1 circumstances happens in that Invenergy goes out of business and the wind energy business goes  
2 down the toilet and no one wants to continue operation of the wind farm therefore it has to be taken  
3 down. He said that essentially all the County is going to have is \$63,000 per turbine net because  
4 Invenergy will be out of business which is what the County is trying to protect themselves from by  
5 requiring 210% of the engineer's estimate. He said that the situations are identical except that  
6 Invenergy is posting over double what was posted in Henry County because first and foremost the  
7 obligation in the Reclamation Agreement is that Invenergy will take it down and the financial  
8 assurance only kicks in if Invenergy is not around to take it down or does not do it as fast as Mr. Hall  
9 or whoever succeeds him in twenty years tells them to take it down.

10

11 Mr. Courson asked if Invenergy goes under does the landowner have under any obligation for  
12 decommissioning.

13

14 Mr. Blazer stated that the easement agreements with each of the landowners requires Invenergy to  
15 indemnify them from any costs resulting from the presence of the turbines on their property, over and  
16 above what they are receiving on a yearly basis. He said that from a legal perspective if there is an  
17 illegal non-conforming use on someone's property the County can direct the landowner to remediate  
18 that situation therefore it becomes a legal matter between the landowner and Invenergy. He said that  
19 if Invenergy disappears and the County requires the landowner to take it down they will turn around  
20 and Invenergy is not there. He said that there is a 20-year power purchase agreement, with one of the  
21 major power companies, which ultimately underlines the whole financial liability of the project and  
22 that is what will cause one or more lenders to lend the money to build the project. He said that if at  
23 the end of the day if Invenergy disappears the County can tell the landowner to take it down because  
24 they are the one who is responsible.

25

26 Mr. Courson stated that participating landowners could be on the hook to take the turbines down.

27

28 Mr. Blazer stated yes, but the bottom line is that this is why Invenergy is posting the security that  
29 they are which is required by the Ordinance to make sure that such an occurrence never happens.

30

31 Mr. Thorsland asked if staff had a question for Mr. Blazer.

32

33 Mr. Hall stated that he does not have a question but reminded everyone that the Board does not have  
34 to have the executed Reclamation Agreement as part of the public hearing but there does have to be a  
35 draft that is forwarded to the County Board with some recommendation and the agreement will be  
36 executed only by approval by the County Board.

37

38 Mr. Blazer stated that the Reclamation Agreement has to be executed prior to the time that Invenergy

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1 seeks Zoning Use Permits from the Zoning Administrator.

2  
3 Mr. Thorsland asked if the Board or staff had any further questions for Mr. Blazer and there were  
4 none.

5  
6 Mr. Hall distributed a new Supplemental Memorandum dated October 13, 2011, to the Board for  
7 review. He said that the new memorandum includes an e-mail from Larry Mann. He said that Mr.  
8 Mann expresses three concerns in his e-mail regarding noise, proximity to non-participating property  
9 owners and hours of work. He said that the revised Reclamation Agreement which was received  
10 today is the current proposal but it is an incomplete Reclamation Agreement because Page 4 and 5  
11 has no amounts proposed for the escrow account or letter of credit. He said that he wants to be very  
12 clear that it is up to Invenergy to decide what they want to propose and in his view they can propose  
13 as much salvage value as part of it as they want but whatever they propose in terms of value has to be  
14 specifically approved. He said that it is not like staff has told Invenergy that they could not do this  
15 and it was never said and it is fair to say that there was a difference in opinion as to how useful the  
16 salvage value was but it is up to Invenergy to make a proposal. He said that a long time ago,  
17 yesterday morning, when he thought staff had a different Reclamation Agreement he revised the  
18 previous information regarding assessing compliance with Paragraph 6.1.4 P. and this afternoon he  
19 was able to change the date of receipt of the Reclamation Agreement but then realized the one  
20 received today is not complete. He said that at the last meeting when the Board had the revised base  
21 decommissioning cost estimate we expressed some concerns to Invenergy and they went back to  
22 HDR and there were changes made. He said that he believes that Champaign County has more detail  
23 now about how decommissioning will happen and without hiring a contractor we know a lot about  
24 how it is going to happen. He said that we now know that Invenergy is proposing to remove the  
25 concrete to 54 inches below grade and there are costs inserted that were not specified before. He said  
26 that at the same time the costs for repair of public roads has been reduced but the justification is that  
27 now we have a road agreement and we know what is going to happen on those roads and we know  
28 that we don't need to have \$25,000 per turbine in there just for that. He said that he found one  
29 decommissioning plan on the internet that had a reclamation value of \$100,000 per turbine although  
30 he does not have all of the details on those turbines and they were looking at two different kinds but  
31 as far as he is concerned the salvage value has been documented. He said that this is still salvage  
32 value and the Board has to deal with it because it has been documented and the Board has to decide  
33 how much faith that they want to put in to that.

34  
35 Mr. Hall stated that there is an attachment which goes back to the last meeting regarding noise and  
36 he wanted to clarify that at the last meeting his point was that he had concerns about only two  
37 dwellings. He said a table is attached listing the 32 closest dwellings to turbines and the 32 highest  
38 predicted noise levels from the noise study and they are all within the IPCB guidelines. He said that

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1 at the last meeting there was discussion of how much flexibility the Board was willing to grant the  
2 petitioner on final locations of turbines. He said that he spoke with Mr. Leuchtmann who suggested  
3 that the Board allow deviation from the submitted site plan up to 500 feet for turbines that are more  
4 than 1,500 feet from non-participating dwellings. He said that if the Board reviews the table  
5 regarding separations and noise levels 500 feet generally results in an increase of 1 to 2dBA at the  
6 most and Tim Casey testified that it takes a difference of 3dBA to be noticeable. He said that moving  
7 the turbine 500 feet closer, theoretically, they would not notice the change in noise.

8  
9 Ms. Capel asked if Mr. Casey indicated that 3dBA is noticeable or is a doubling.

10  
11 Mr. Hall stated that 6dBA is a doubling and it takes 3dBA to have a noticeable difference but that  
12 also depends on the individual. He said that at less than 1,500 feet the limit is that 90% of the  
13 separation must be provided that was in the approved site plan. He said that if something is found to  
14 be at 1,488 feet the corresponding noise level is about 44dBA and it could be moved by 10% or 150  
15 feet and that would be less than 1,368 and that is not changing any dBA. He said that it will be  
16 closer but there is no way to correct for the size of the turbine but regarding the noise this flexibility  
17 is a non-issue although it is something to complain about. He said that there are other changes in the  
18 special conditions and one thing that he wants to flag is that the excerpt from the NRCS is the worst  
19 case for turbines and Mr. Stickers indicated in his testimony that some of the turbines are guaranteed  
20 to have problems with over land flows of water in existing drainage ways where Invenergy is  
21 proposing access drives. He said that Mr. Stickers sent an entire library of photos of problems that  
22 he has seen at other wind farms but he did not have a chance to copy these photos for the Board's  
23 review. He said that he is recommending that the Board require conditions regarding a permanent  
24 erosion and sedimentation plan. He said that the proposed condition appears as J.9 on Page F-6 and  
25 F-7 of the Supplemental Memorandum dated October 13, 2011. He read Item #J.9 as follows: a  
26 permanent soil erosion and sedimentation plan for all wind farm tower sites and access roads that  
27 conforms to the relevant Natural Resources Conservation Service guidelines and that is prepared by  
28 an Illinois Licensed Professional Engineer. He said that this has to be submitted at the time of  
29 application and before a Zoning Compliance Certificate is issued we must have as-built  
30 documentation of all permanent soil erosion and sedimentation improvements for all wind farm  
31 tower sites and access roads prepared by a licensed Illinois Licensed Professional Engineer. He said  
32 that the Board does not have to require this special condition and it is not clear if the petitioner will  
33 accept this condition. He said that he has received countless e-mails from County Board members  
34 for the past two years regarding this very item and he does not want to be criticized by County Board  
35 members for not recommending this condition. He recommended that the Board review the Natural  
36 Resources Report and review the distributed CD which includes the entire Natural Resources Report.  
37 He noted that the entire report is on the County website.

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

2

3 Mr. Courson stated that he agrees with the erosion control measures which need addressed because  
4 he has been to the wind farm at McLean County and drove up and down some of the access roads  
5 and some of those roads are washed out leaving huge gullies extending out into the fields and they  
6 were not being addressed. He said that with the *EPA Clean Water Act* they are going to fall under  
7 some of the stringent erosion controls to make sure that we are not getting runoff into these  
8 waterways.

9

10 Mr. Passalacqua asked if Invenergy has indicated in the Reclamation Agreement that they are willing  
11 to put up 25% of the salvage value.

12

13 Mr. Hall stated that the October 6, 2011, Reclamation Agreement did include that language.

14

15 Mr. Passalacqua stated that since salvage value of material is a gray area and there has been  
16 discussion as to whether or not salvage value should be included perhaps the Board should assign a  
17 percentage to that speculated number also.

18

19 Mr. Hall stated that based on the October 6, 2011, Reclamation Agreement even if the salvage value  
20 is underestimated by 20% there would be enough to do the reclamation. He said that that agreement  
21 would result in \$1.9 million dollars being available to the County and the total cost of  
22 decommissioning is estimated at \$5.7 million dollars. He said that the salvage value is estimated at  
23 \$4.8 million dollars and so the difference between the estimated salvage value is less than what they  
24 are posting. He said that it is fair to say that the proposal does not rely on the salvage value being  
25 100% correct but he would say that it is well documented.

26

27 Mr. Thorsland asked the Board if there were any further questions for Mr. Hall and there were none.

28

29 Mr. Thorsland stated that Page 6 of the latest version of the Reclamation Agreement Item #6(d) is  
30 stricken indicating that each landowner shall be jointly and severally responsible for performing the  
31 reclamation work on his or her land, and paying the costs of doing so.

32

33 Mr. Blazer stated that the reason why the Board has this version is because Mr. Fletcher started with  
34 the version that the Board reviewed last week and generated his own version by which he made  
35 comments and so forth and so forth. He said that the Board's current version is not an intentionally  
36 incomplete version but is a work in progress between himself and Mr. Fletcher and they took out the  
37 numbers because they are still going back and forth on salvage value issues. He said that one way or  
38 another by the time that they are finished the Board will have a reclamation agreement that will

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1 reflect the best that he and Mr. Fletcher can do in agreement and the areas that they cannot agree is  
2 the best that Invenergy can do. He said that with respect to Item #6(d) the reason why it was stricken  
3 is because in terms of the easement agreements with the landowners they are indemnified therefore  
4 on behalf of those landowners Invenergy cannot bind them to pay something under a reclamation  
5 agreement when Invenergy has already agreed to indemnify them. He said that this has nothing to do  
6 with the legal issue that was raised before as to whether or not the County has the legal right, either  
7 statutorily or under its Ordinances, to pursue a landowner with respect to a non-conforming use.

8  
9 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer and there were none.

10  
11 Mr. Thorsland asked if staff had any questions for Mr. Blazer and there were none.

12  
13 Mr. Thorsland called Mr. Kevin Parzyck to testify.

14  
15 Mr. Kevin Parzyck, Vice-President of Development for Invenergy, stated that Greg Leuchtmann  
16 could not be present tonight because he is getting married this weekend therefore he is filling in for  
17 him. Mr. Parzyck said that he wanted to address what Mr. Blazer brought up about the Reclamation  
18 Agreement and the work that Invenergy has done in regards to that agreement and what Invenergy  
19 feels that would be reasonable for this project in respect to other projects that they have worked on.  
20 He said that they have provided an engineering estimate for the complete removal including the  
21 disposal of the turbine blades to a recycler or landfill to the steel of the wind turbine itself to the  
22 point where it would be financially viable for the contractor to take that equipment to a landfill. He  
23 said that in working with HDR the movement of the product from the site dismantling it, cutting it  
24 into pieces, transporting it to the landfill for salvage value, is included in the cost estimate. He said  
25 that removal is part of the scope of removing the project. He said that this project is financially  
26 liable from a financing standpoint because it does have a 20-year power purchase agreement. He  
27 said that the 20-year power purchase agreement holds a lot of weight for Invenergy and for the  
28 investment group which will be investing in the project and of course the Board has to take the  
29 responsibility if this all goes away. He said that it is a situation where Invenergy is looking twenty  
30 years out as to if this type of situation would happen and the whole financial basis of a wind farm is a  
31 lot of money where millions of dollars is put into the project and if the turbines continue running  
32 they will generate revenue. He said that the expectation is that once power generators are put onto  
33 the grid unless there is a reason why they would become obsolete they will be re-powered and  
34 repaired as necessary to continue generating power for the grid. He said that there is a strong  
35 possibility that this wind farm could last for a very long time. He said that the salvage value that is  
36 included is based on a specific weight that comes from the manufacturer, the number of tons of steel  
37 and copper, so there is no variability. He said that the variability in salvage has to do with the  
38 commodity price and the values that have been included are based on a five-year average of

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1 commodity prices and that this price will be re-evaluated every three years. He said that there is a  
2 three-year risk in regards to the commodity price that is included in the salvage value. He said that  
3 the engineer can include upon request the spot price at the time the estimate is done in lieu of the  
4 five-year average therefore if there is a dip in commodity prices that could be included at the next  
5 point at which the cost estimate would be done.  
6

7 Mr. Parzyck stated that carrying this kind of Letter of Credit/Escrow combination places a significant  
8 burden on the project which was accounted for in the business plan and was built into the project.  
9 He said that they built in carrying \$1.92 million dollars of financial assurance which is generally  
10 going to cost approximately \$95,000 per year early on but over 25 years that is about a \$3.7 million  
11 dollar cost to the project and none of the money flows towards the County but to a bank or financial  
12 institution where that money sits. He said that if they remove the salvage value they would suddenly  
13 be required to carry \$12.2 million dollars worth of financial assurance and the first year of payment  
14 for that financial assurance is about \$600,000 which would not be paid to the County but a bank or  
15 financial institution and over the life of the project it would add up to about \$23 million dollars. He  
16 said that as they review this information it makes it unreasonable for them to provide turbines in this  
17 location. He said that they feel that they have shown good faith in putting together the pricing for  
18 this project and they have worked with the County as to what is reasonable and they feel that \$2  
19 million dollars works within their financial plan and they are prepared to move forward on that but  
20 unfortunately going beyond that would be very difficult and they would have to look at alternatives  
21 to their layout if that is the case.  
22

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

25 Mr. Courson asked Mr. Parzyck if there were any federal subsidies expected from the 2.2 cents per  
26 kilowatt hour that is produced from the 30 turbines.  
27

28 Mr. Parzyck stated that there per the tax code there is a production tax credit that comes from this  
29 project that is available to every megawatt hour that is produced and that would be available to the  
30 investment group for ten years. He said that he does not have a specific number at his finger tips as  
31 to what that tax credit is worth at this point but it is a tax credit and not a subsidy.  
32

33 Mr. Thorsland asked if it was based on power produced or potential power produced.  
34

35 Mr. Parzyck stated that it is based on power produced so the credit is available at the end of the year  
36 after the power has been produced and the investment has been made.  
37

38 Mr. Thorsland stated that the Board previously heard that a good wind farm with 30 to 40% of the

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1 power production nameplate capacity is considered a pretty good output rating.

2

3 Mr. Courson stated that he did some rough estimates and it appears that almost \$1 million dollars per  
4 year in tax credits will be received from federal subsidies for this project. He said that he is looking  
5 at the federal tax dollars that will be going into the project and he wants to make sure that the County  
6 is covered with decommissioning.

7

8 Mr. Thorsland asked the Board if there were any further questions for Mr. Parzyck.

9

10 Mr. Parzyck stated that Mr. Hall previously discussed the erosion plan. He said that the project does  
11 have a licensed stormwater protection plan during construction which has been approved by the State  
12 for Invenergy's construction efforts. He said that the concern that has been brought up is the long  
13 term performance of the roads and the plan has been to work with Mr. Stickers and his agency in  
14 terms of where there is a feeling that the roads could be washed out therefore doing what is necessary  
15 to reinforce the roads. He said that it is in Invenergy's best interest to maintain the road for the  
16 ability to get to the turbine as well as be a good tenant with the landowner because when the roads  
17 are washed out it gets into the landowners field and eliminates their ability to produce in that area.  
18 He said that this situation will come back to Invenergy because they will need to reimburse the  
19 landowner for non-production of those fields.

20

21 Mr. Thorsland asked if the expectation is that if the wind farm is still producing power in twenty  
22 years that the power purchase agreement will be re-negotiated and renewed.

23

24 Mr. Parzyck stated yes.

25

26 Mr. Thorsland asked if anyone has repowered any of these towers.

27

28 Mr. Parzyck stated no. He said that some of the turbines in California have been repowered and  
29 there have been efforts within the industry of placing larger blades on the existing towers to generate  
30 additional power. He said that the infrastructure, the foundation and the wiring cables, that is in  
31 place is very valuable therefore sites such as the one in California will take down an old lattice type  
32 tower and replace it with the new monopole turbine and connecting it to the grid with the existing  
33 conductivity to the grid. He said that this is one reason why there is so much money up front to put  
34 up not just the turbine but the infrastructure to carry the power away and it is in the best interest of  
35 the power company and Invenergy to continue to operate that site so that the power can be put back  
36 into the grid.

37

38 Mr. Thorsland asked if the project cabling is intentionally oversized.

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Mr. Parzyck stated yes.

Mr. Thorsland asked the Board if there were any further questions for Mr. Parzyck and there were none.

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

Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Parzyck and there was no one.

Mr. Thorsland called Mr. Joel Fletcher to address the Board.

Mr. Joel Fletcher, Assistant State's Attorney, stated that he is not an advocate for or against the project and his goal is to make sure that the policy decisions that are made by the ZBA are implemented in the way that makes sense legally. He said that he did not reach an agreement on the issue of the role of salvage value because he thought that in doing so he would be taking the most central policy issue away from the ZBA. He said that the ZBA needs to make the decision as to what role the ZBA wants salvage value to play and at that point he will be in the position to implement the decision of the ZBA and ultimately the County Board.

Mr. Fletcher stated that he agrees with Mr. Blazer that the largest issue that remains at this point is the role of salvage value in calculating of the financial assurance. He said that the decommissioning expenses are estimated at \$5.7 million dollars and of that \$4.8 million dollars would be covered by salvage value which is roughly 84% of financial assurance. He stressed that the salvage value approach is not unusual in Illinois and he has made a few calls this week, although he cannot claim that he has done an exhaustive search, and it appears that McLean County, Bureau County, Dekalb County and Henry County have at least considered salvage value in determining the financial assurance for a wind farm. He said that Mr. Blazer has indicated that Ford County explicitly requires salvage value as part of its wind farm ordinance. He also stressed that the amount of financial assurance minus the salvage value, as proposed by Invenergy, is not on the low end of what has been accepted in Illinois. He said that McLean County's projects required the developer to put \$25,000 per turbine up, not including salvage value, and that is not up-front but up to that amount after 12 years. He said that two of Bureau County's projects required \$30,000 and \$33,000 per turbine. He said that LaSalle County required \$25,000 per turbine. He said that the highest amount that he has come across so far is roughly \$58,000 per turbine and that was in Dekalb County. He said again, that this is not an exhaustive search but this is what he has been able to find out in the last week.

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1 Mr. Fletcher stated that he is not sure that other counties have been as careful in documenting the  
2 salvage value or in documenting the total decommissioning cost. He said that he is not sure what  
3 weight to give to any comparisons but he does think that it does speak to Mr. Blazer's point  
4 regarding their expectations while moving into this project. He said that Mr. Blazer has stressed that  
5 it is common for regular demolition contracts to receive salvage value for what is demolished. Mr.  
6 Fletcher stated that this is a little unusual because we are contemplating a demolition that will occur  
7 decades into the future and that adds uncertainty to the salvage value. He said that the Zoning  
8 Ordinance does require 210% of the reclamation costs and that does provide some room for error.  
9 He said that the 210% is intended to compensate, in part, for inflation but there is some room for  
10 error.

11  
12 Mr. Fletcher stated that requiring the entire value of the project up front with no salvage value  
13 deduction would impose a significant outlay of resources by Invenergy and those resources would  
14 not, in large part, contract to the County. He said that he has significant concerns about including  
15 salvage value. He said that he and Mr. Blazer have an honest disagreement about what the  
16 Ordinance requires. He said that he believes that the Ordinance gives the County the flexibility to  
17 accept the salvage value approach but it does not require that the County accept the salvage value  
18 approach. He said that the amount posted up front per turbine is high relative to other counties at  
19 \$63,000 and that number needs to be compared to the reclamation cost of the turbine which is  
20 \$192,000. He said that even though there is some uncertainty in estimating the decommissioning  
21 costs they are adding to that uncertainty to salvage value estimate and making that second uncertainty  
22 requiring 84% of financial assurance. He said that there is a significant policy decision to be made if  
23 the Board takes this approach.

24  
25 Mr. Fletcher stated that there is an argument that at the end of the life of the project Invenergy  
26 can take their own salvage and sell it or do whatever they want to with it but if you look at the  
27 economic life of the project as a whole that the salvage should really belong to them and he  
28 understands that this is a financing matter which may not be realistic.

29  
30 Mr. Fletcher stated that there are some logistical issues in dealing with salvage value which is a  
31 matter that he and Mr. Blazer have spent a great amount of time on this week. He said that one of  
32 the issues which they discussed is how the demolisher jumps ahead of any other lien holders on the  
33 property therefore he suggested using the mechanic's lien. He said that he did indeed come up with  
34 the use of the mechanic's lien although he is not confident with his suggestion because there are  
35 many things which need to be decided on this in particular as to how we value the mechanic's lien  
36 and whether it really reflects the reclamation cost at the end of the day. He said that the only iron  
37 clad way to make sure the demolisher's interest jumps ahead of the financing liens would be to make  
38 the financing liens expressly subordinate to any demolition liens but he takes Invenergy's word that

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1 is not feasible from a financial standpoint.

2  
3 Mr. Fletcher stated that relying on salvage value does pose some litigation risks in implementing it  
4 even if we have some ways of ironing out the mechanic's liens. He said that he suspects that a  
5 bankruptcy is not likely and the County's position is likely to be looked upon favorably and a  
6 bankruptcy could cause delays in clean-up and litigation costs. He said that one of the Board  
7 members mentioned the risk of cherry picking and that has been a recurrent theme in his  
8 conversations with Mr. Blazer. He said that the project is their project and they can go on the project  
9 and remove property at any given time and there is a risk that they could remove property that is  
10 easily salvageable and has high salvage value but associated with low decommissioning costs. He  
11 said that this practice could lower the protection of the salvage value. He said that he and Mr. Blazer  
12 have done what they can to address these issues in the current Reclamation Agreement and Mr.  
13 Blazer has been very accommodating to his concerns in that regard but this is not a concern that can  
14 be waived over and there is no magic language that he can come up that would be perfectly  
15 enforceable that would address this issue completely.

16  
17 Mr. Fletcher stated that there is a policy issue that needs to be resolved at the ZBA and the County  
18 Board as to what role salvage value is to play during this project. He said that obviously there are  
19 legal ramifications but it is a policy issue which is central to the entire project. He said that salvage  
20 value is not an unusual consideration in a project such as this and the amount that Invenergy is  
21 proposing is not unusual related to what is offered in other counties and is at the high end. He said  
22 that without crediting the salvage value to the reclamation costs the project may not be financially  
23 feasible. He said that given that the salvage value is at issue and its percentages of total reclamation  
24 costs the ZBA needs to be confident in the salvage value estimate and needs to be confident as to  
25 how that salvage value estimate will change over time. He said that he has no problems in  
26 continuing to work with Mr. Blazer about addressing the underlying legal concerns and he does not  
27 know if there are perfect answers to the questions but the decision as to what role salvage value will  
28 play in this project needs to be addressed by the ZBA so that he knows which direction to go in. he  
29 said that he believes that if the Board insists on no salvage value credit then we are probably at an  
30 impasse in negotiating a Reclamation Agreement but he is not about to submit a contract which  
31 binds the County to that approach without more input from the ZBA or the County Board.

32  
33 Mr. Thorsland asked the Board if there were any questions for Mr. Fletcher.

34  
35 Mr. Palmgren asked if there is any way for Invenergy to shift the salvage value to a third party in the  
36 form of a bond or insurance.

37  
38 Mr. Fletcher stated that he would be happy to discuss this with Mr. Blazer but it maybe something

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1 that Mr. Blazer can speak about tonight.

2  
3 Mr. Blazer stated that Invenergy is already posting a mix of a Letter of Credit and a cash escrow for  
4 the decommissioning costs which is what the Ordinance requires. He said that Mr. Palmgren's  
5 suggestion would cause Invenergy to significantly exceed what the Ordinance requires. He said that  
6 Item #5 on Page 5 of the Reclamation Agreement addresses the issue of cherry picking. He said that  
7 the portion of Item #5 is the language from last week and the part that is underlined is the language  
8 that is proposed to address this issue. He said if Invenergy wants to take a piece of equipment off of  
9 this project without replacing it with an equivalent piece of equipment the first thing that must be  
10 done is to obtain the Zoning Administrator's approval. He said that after obtaining the approval the  
11 decommissioning estimate has to be adjusted to reflect this change therefore Invenergy cannot cherry  
12 pick the project unless Mr. Hall or his successor allows it and even then the decommissioning  
13 estimate has to be adjusted. He said that this is the best that he can do to assure the County that  
14 Invenergy is not going to cherry pick the project and that even if they wanted to they couldn't  
15 without the County's permission.

16  
17 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer and there were none.

18  
19 Mr. Fletcher stated that the language in the Reclamation Agreement is a good faith effort in  
20 addressing the cherry picking issue and he does not believe that Invenergy is likely to engage in this  
21 conduct but the agreement is to prepare for worst case scenarios in the future when Invenergy may  
22 not be who the County is dealing with. He said that the County can put whatever words that the  
23 Board wants regarding the cherry picking issue but unless the County is prepared to hire someone  
24 with binoculars outside of each turbine the County cannot enforce it. He said that this is an issue  
25 which creates significant enforcement problems of what the agreement indicates and this should be  
26 considered when determining salvage value.

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

29  
30 Mr. Passalacqua asked if the County has a Letter of Credit and Invenergy goes out of business is the  
31 Letter of Credit still worth anything.

32  
33 Mr. Fletcher stated yes. He said that the Letter of Credit is at less risk than an escrow account if  
34 Invenergy goes out of business because it is an agreement between the County and a bank and not  
35 between the County and Invenergy. He said that the significant risk with a Letter of Credit would be  
36 if the bank goes under, which is why he suggested that the Letter of Credit be split so it is covered by  
37 the FDIC, and there are some enforcement issues with a Letter of Credit but they are not unusual  
38 enforcement issues. He said that a Letter of Credit gives the County significant protection if

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1 Invenergy goes bankrupt.

2

3 Mr. Fletcher stated that there was some question regarding the liability of Invenergy and Items #6(b),  
4 (c), and (e) on Page 6 of the Reclamation Agreement addresses those concerns. He said that with any  
5 of the changes that have been made to the Reclamation Agreement it is entirely up to the Board to  
6 approve or deny it and forward it to the County Board and nothing is set in stone at this point. He  
7 said that if the Board has any questions or concerns regarding the Reclamation Agreement they  
8 should feel free to contact him. He said that there is one policy issue that he needs the Board's input  
9 on and it has to do with the definition of abandoned which is located at the top of Page 2 of the  
10 Reclamation Agreement. He said that he has e-mailed Mr. Blazer a couple of times regarding a  
11 drop-dead timeline of 12 months. He said that this is a policy choice and it seems to be an  
12 accommodation of the County's need to have some end point and their need to have the flexibility to  
13 find a new owner for the project. He said that this is the kind of judgment call that has to be made  
14 when drafting this type of agreement but he wanted to draw this issue to the Board's attention  
15 because he thought that it might be cause for concern.

16

17 Ms. Capel asked if in regards to the role of salvage value could the Board assign a percentage. She  
18 said that salvage value is calculated to be 84% of the cost of decommissioning.

19

20 Mr. Fletcher stated that this is just how the numbers work out.

21

22 Ms. Capel asked if the role of salvage value could be a specific percentage of the overall financial.

23

24 Mr. Fletcher stated that we can but everything would turn from their and the Board's standpoint on  
25 the percentage.

26

27 Mr. Blazer stated that there a couple of problems with Ms. Capel's suggestion. He said that there is  
28 an engineering estimate, which is what the Ordinance requires, and Invenergy would be making up  
29 numbers if they assigned a percentage and they cannot do that because they have an engineering  
30 estimate. He said that he and Mr. Fletcher can always differ on what the Ordinance does or doesn't  
31 require and salvage value may be something that will be addressed in the future in an amendment to  
32 the Ordinance. He said that Ford County's Ordinance specifically states that salvage value is taken  
33 into account.

34

35 Mr. Thorsland asked if Ford County assigned a percentage.

36

37 Mr. Blazer stated no. He said that he did not bring Ford County's Decommissioning Plan with him  
38 but he has provided it to Mr. Fletcher and it is on Ford County's website. He said that most county

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1 ordinances do not mention salvage value and simply indicate costs, not net or gross costs, and every  
2 agreement determines cost by taking the gross cost minus the salvage value. He said that by saying  
3 that for the County to indicate that they are not going to take the salvage value which is based on the  
4 engineer's estimate but come up with some percentage of that would be making up a number and the  
5 Ordinance does not allow for that because it says cost.

6  
7 Mr. Hall stated that he would never suggest that the Board do anything in regards to salvage value  
8 other than to accept a good engineer's estimate. He said that the question more specifically was if  
9 the Board has the ability to accept less than 100% of salvage value. He said that this is what staff  
10 and Mr. Blazer have been debating since the project began.

11  
12 Mr. Blazer stated that his position is that the County does not have that ability.

13  
14 Mr. Hall stated that is not staff's position.

15  
16 Mr. Blazer stated that his understanding of the law is that the Board is authorized to interpret the  
17 Ordinance but not authorized to alter the Ordinance but the County Board is authorized. He said that  
18 the ZBA is authorized to make recommendations based on what the Ordinance states. He said that  
19 he and Mr. Fletcher have come to a line in the sand and no one has drawn it but it is there.

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

22  
23 Mr. Fletcher stated that he and Mr. Blazer have an honest disagreement on how the Ordinance reads.  
24 He said that the Ordinance indicates that at the time of approval the amount of the irrevocable Letter  
25 of Credit shall be 210% of an independent engineer's cost estimate to complete the work described  
26 or less if specifically authorized by the Board. He said that section does not specifically identify  
27 salvage value and the portion of the Ordinance that he just read does not specify salvage value and  
28 the phrase "an independent engineer's cost estimate" is what appears to be the point of dispute. He  
29 said that the Ordinance does not state gross costs and it also does not say net costs therefore his take  
30 on this is that the word "cost" does not generally include a credit which is what he, Mr. Fletcher,  
31 feels that salvage value would be the authority to consider salvage value comes from the phrase "or  
32 less specifically authorized by the Board," and that is why, he believes, salvage value can play a role  
33 here. He said that this is why he, Mr. Fletcher, believes that this is a policy decision for the Board  
34 and not a black and white legal decision. He said that Mr. Blazer obviously disagrees with him  
35 based upon the practice of other counties but the only time that Champaign County has implemented  
36 this specific language the County did not consider salvage value as a deduction from "cost" but did  
37 consider salvage value in that reclamation agreement. He said that Mr. Blazer believes that an  
38 engineer's cost estimate requires the Board to consider salvage value but he, Mr. Fletcher, believes

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1 that it does not. He said that he believes that the authority to consider salvage value comes from the  
2 phrase, "or less specifically authorized by the Board."

3  
4 Mr. Thorsland asked the Board if there were any questions for Mr. Fletcher and there were none.  
5

6 Mr. Thorsland stated that when you read an article about a particular car you begin seeing that car  
7 everywhere and he has somehow become involved in the topic of salvage value and at the same time  
8 they are recycling materials at his place of work for credit and they are tearing down a building next  
9 to his place of work. He said that, as observation on his part only, outside of the building that is  
10 being demolished are four dumpsters which they are filling one with the aluminum parts, one with  
11 the metal parts and putting the trash in the third, although the fourth he has not figured out its use yet  
12 but he is imagining it will be used for carpet. He said that at his work place they are recycling  
13 materials therefore he is directly involved in the cost that he is receiving for the materials from a  
14 local recycler. He said that the materials are placed in a truck and transported to the facility. He said  
15 that he asked the recycler what he is getting for the materials and he was informed that \$340 per ton  
16 for steel is what they are getting for it if the material is prepared. He said that some of the numbers  
17 in the estimate are fairly accurate and some are dead-on accurate although copper has taken a little  
18 dip. He said that the Board's biggest decision is to decide whether, as a policy decision, the Board  
19 makes some credit of the salvage part of that cost of decommissioning that \$63,000.  
20

21 Mr. Thorsland stated that the Board will recess for a ten minute break.  
22

23 **The Board recessed at 8:27 p.m.**

24 **The Board resumed at 8:35 p.m.**  
25

26 Mr. Thorsland called Ms. Sherry Schildt to testify.  
27

28 Ms. Sherry Schildt, who resides at 398 CR 2500N, Mahomet, Illinois, stated that at the last public  
29 hearing she read from the Iowa State Study and when she got home she realized that she may have  
30 not submitted a copy of the study as a Document of Record.  
31

32 Mr. Thorsland confirmed that at the October 6, 2011, meeting Ms. Schildt did submit a copy of the  
33 Iowa State Study as a Document of Record.  
34

35 Mr. Thorsland asked the Board if there were any questions for Ms. Schildt and there were none.  
36

37 Mr. Thorsland asked if staff had any questions for Ms. Schildt and there were none.  
38

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1 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Schildt and there was no  
2 one.

3  
4 Mr. Thorsland called Ms. Deanne Sims to testify.

5  
6 Ms. Deanne Sims, who resides at 2765 CR 2500N, Penfield, Illinois, stated that she wanted to call  
7 attention to the McCann Appraisal which is a document that Ms. Schildt submitted at the October 6,  
8 2011, meeting. She said that Page 7, Paragraph 1 suggests that the County require the developer to  
9 basically buy out homeowners located within 2-miles of any turbines if they elect to relocate away  
10 from the turbine project and cannot sell for the pre-project market value of their property and such  
11 guarantee is nominal in cost, relative to total project costs. She said that she heard on the radio that  
12 the proposed wind farm is a \$350 million dollar project therefore she would like the Zoning Board to  
13 consider this information. She said that Paragraph 4 the appraiser discusses sound and recommends  
14 that there be sound monitors given to the non-participating landowners in the project site so that they  
15 would be able to monitor and log the sound levels.

16  
17 Ms. Sims stated that last week Mr. Blazer stated that a follow-up sound survey would be done at  
18 post-construction and this is a matter of course for each project. She said that she thought that this  
19 statement was odd because she recalls specifically asking Mr. Casey about post-construction  
20 monitoring at the September 1, 2011, meeting and the minutes indicate the following: Ms. Sims  
21 asked if any post-construction monitoring will be conducted. Mr. Casey stated that the requirement  
22 for post-construction monitoring is a fairly new one relative to the age of the industry therefore there  
23 is not an overwhelming abundance of post-construction monitoring data. He said that he and his  
24 staff are dying to go measure and record noise from wind turbines and have attempted to get  
25 permission to do so but have not been successful.

26  
27 Ms. Sims stated that the map that was distributed indicates one of the sound monitoring sites at CR  
28 2200N and CH 22 although that location is not within the footprint of the proposed project area  
29 therefore only one actual location in the project area was monitored for sound. She said that the map  
30 also indicates the power lines that are in the project area and it appears that the power lines will be  
31 going very close to her house. She is concerned where the power lines will be located and if the lines  
32 will be placed under-ground or above-ground on poles.

33  
34 Mr. Thorsland asked the Board if there were any questions for Ms. Sims and there were none.

35  
36 Mr. Thorsland asked if staff had any questions for Ms. Sims.

37  
38 Mr. Hall stated that the discussion about noise had to do with doing a new noise analysis based on

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1 changed location of turbines and part of that revised condition on turbine flexibility does require a  
2 new noise analysis for any turbine proposed to be less than 1,500 feet. He said that the discussion, as  
3 far as he can remember, was not a whole new noise analysis after construction but it was a new noise  
4 study to document that the changed locations would still be compliant with the IPCB.

5  
6 Ms. Sims stated that even at that the noise study would be modeled on a computer program.

7  
8 Mr. Hall stated yes.

9  
10 Mr. Sims stated that there is no post-construction monitoring

11  
12 Mr. Hall stated that post-construction monitoring has not been proposed and he has not suggested  
13 that the Board require such.

14  
15 Ms. Sims stated that she is sure that post-construction monitoring is what was being discussed.

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

18  
19 Mr. Thorsland asked if staff had any questions for Ms. Sims and there were none.

20  
21 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Sims and there was no  
22 one.

23  
24 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony  
25 regarding this case and there was no one. He said that at this time he will not close the witness  
26 register.

27  
28 Mr. Thorsland stated that Waivers #2, #4 and #6 are pending for approval. He informed the Board  
29 that Page E-3 of the Supplemental Memorandum dated September 22, 2011, indicates Waiver #2  
30 (originally #6) and requested staff input regarding Waiver #2.

31  
32 Mr. Hall stated that testimony has been received and the Ordinance requirement indicates that prior  
33 to the close of the public hearing the applicant shall enter into a Roadway Upgrade and Maintenance  
34 agreement approved by the County Engineer, Township Highway Commissioner or municipality  
35 where relevant and the signed and executed agreements must provide for the following. Mr. Hall  
36 stated that the Board knows that we can't have a signed County agreement until the County Board  
37 authorizes that signature and there has been testimony tonight and he received an e-mail today that  
38 the township road agreements have been executed. He said that Mr. Blazer indicated that he could

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1 provide a copy of one of the township road agreements. Mr. Hall stated that as far as he knows all of  
2 the township road agreements have been signed but they have not been made public pursuant to the  
3 requests of the highway commissioners. He said that he believes that the township road agreements  
4 meet the letter of the Ordinance at this time.

5  
6 Mr. Thorsland stated that one of the needs of this waiver was because the County Road Agreement  
7 has to go to the Board to be signed and come back so on some level the waiver is still required to  
8 cover the glitch of when the Board was not clear on the timeline.

9  
10 Mr. Thorsland read Waiver #2 (originally #6) as follows: **Waive the standard condition of**  
11 **6.1.4F.1.that requires a signed Roadway Upgrade and Maintenance Agreement prior to the**  
12 **close of the public hearing before the Zoning Board of Appeals.** The following special condition  
13 has been proposed: **The County Board shall not make a final decision in Case 696-S-11 until it**  
14 **has authorized the County Board Chair to sign the Roadway Upgrade and Maintenance**  
15 **Agreement recommended by the County Engineer and received copies of all necessary signed**  
16 **township road agreements.**

17  
18 Mr. Thorsland read required finding (1) for Waiver #2 as follows: The waiver, subject to the special  
19 condition, IS/IS NOT in accordance with the general purpose and intent of the Zoning Ordinance and  
20 WILL/WILL NOT be injurious to the neighborhood or to the public health, safety, and welfare  
21 because even though the County Engineer approves the Draft county road agreement only the County  
22 Board can authorize a signature on the road agreement.

23  
24 **Ms. Capel stated that the waiver, subject to the special condition, IS in accordance with the**  
25 **general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the**  
26 **neighborhood or to the public health, safety, and welfare because even though the County**  
27 **Engineer approves the Draft county road agreement only the County Board can authorize a**  
28 **signature on the road agreement.**

29  
30 **Five members of the Board agreed with Ms. Capel's statement with two opposed.**

31  
32 Mr. Thorsland read required finding (2) for Waiver #2 as follows: Special conditions and  
33 circumstances DO/DO NOT exist which are peculiar to the land or structure involved, which are not  
34 applicable to other similarly situated land and structures elsewhere in the same district because this is  
35 the first wind farm reviewed under the provisions of 6.1.4 and no other wind farm will have that  
36 burden.

37  
38 **Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the**

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1 **land or structure involved, which are not applicable to other similarly situated land and**  
2 **structures elsewhere in the same district because this is the first wind farm reviewed under the**  
3 **provisions of 6.1.4 and no other wind farm will have that burden.**

4  
5 **Five members of the Board agreed with Ms. Capel's statement with two opposed.**

6  
7 Mr. Thorsland read required finding (3) for Waiver #2 as follows: Practical difficulties or hardships  
8 created by carrying out the strict letter of the regulations sought to be varied WILL/WILL NOT  
9 prevent reasonable or otherwise permitted use of the land or structure or construction because  
10 without the waiver the ZBA recommendation would be delayed at least one month which is an undue  
11 financial burden for the construction of the wind farm.

12  
13 **Ms. Capel stated that Practical difficulties or hardships created by carrying out the strict letter**  
14 **of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of**  
15 **the land or structure or construction because without the waiver the ZBA recommendation**  
16 **would be delayed at least one month which is an undue financial burden for the construction**  
17 **of the wind farm.**

18  
19 **Four members agreed with Ms. Capel's statement with three opposed.**

20  
21 Mr. Thorsland read required finding (4) for Waiver #2 as follows: The special conditions,  
22 circumstances, hardships, or practical difficulties DO/DO NOT result from actions of the applicant  
23 because the applicant has negotiated in good faith and the County road agreement is ready for  
24 approval.

25  
26 **Ms. Capel stated that the special conditions, circumstances, hardships, or practical difficulties**  
27 **DO NOT result from actions of the applicant because the applicant has negotiated in good**  
28 **faith and the County road agreement is ready for approval.**

29  
30 **Five members agreed with Ms. Capel's statement with two opposed.**

31  
32 Mr. Thorsland read required finding for Waiver #2 as follows: The requested waiver, subject to the  
33 special condition, IS/IS NOT the minimum variation that will make possible the reasonable use of  
34 the land/structure because it is the minimum waiver necessary to allow the wind farm special use  
35 permit to move ahead without delay.

36  
37 **Ms. Capel stated that the requested waiver, subject to the special condition, IS the minimum**  
38 **variation that will make possible the reasonable use of the land/structure because it is the**

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1 **minimum waiver necessary to allow the wind farm special use permit to move ahead without**  
2 **delay.**

3  
4 **Four members agreed with Ms. Capel's statement with two opposed.**

5  
6 Mr. Thorsland informed the Board that Page E-8 of the Supplemental Memorandum dated  
7 September 22, 2011, indicates Waiver #4 (originally #8). He read Waiver #4 as follows: **Waive the**  
8 **standard condition 6.1.4 I.1. that requires the noise level of each wind farm tower and wind**  
9 **farm to be in compliance with the Illinois Pollution Control Board regulations at the**  
10 **residential property line rather than to be in compliance just at the dwelling.**

11  
12 Mr. Fletcher stated that this waiver addresses a legal issue that he and Mr. Blazer has not had a  
13 chance to discuss. He said that he needs to contact the Attorney General's Environmental Division  
14 so that he can obtain more clarification on their position on this issue. He said that there is a  
15 disagreement between staff and Mr. Blazer about whether the noise level is measured at the property  
16 line. He said that before he gives any advice to staff or the Board he would like to receive input from  
17 the Attorney General's office. He requested that the Board defer this Waiver to the October 20,  
18 2011, meeting.

19  
20 Mr. Thorsland informed the Board that Page E-14 of the Supplemental Memorandum dated  
21 September 22, 2011, indicates Waiver #6 (originally #11). He read Waiver #6 as follows: **Waive**  
22 **the standard condition of 6.1.4. S. 1.(c) (3) that requires that locations of wind turbines for the**  
23 **zoning use permit application cannot increase the noise impact over that approved in the**  
24 **special use permit.**

25  
26 Mr. Thorsland stated that Page F-4 of the Supplemental Memorandum dated October 13, 2011,  
27 includes the following special condition: **The Zoning Administrator shall not approve a Zoning**  
28 **Use Permit for construction of a wind farm tower if the location indicated on the Zoning Use**  
29 **Permit site plan differs from that in the approved site plan for the special use permit as**  
30 **follows: (a) the Zoning Use Permit location shall differ more than 500 feet from the approved**  
31 **site plan for the special use permit except that a wind farm tower more than 1,500 feet from a**  
32 **non-participating principal structure on the approved sit plan for the special use permit shall**  
33 **not be approved to be less than 1,350 feet from that same structure on a Zoning Use Permit;**  
34 **and provided that (b) a wind farm tower that is 1.500 feet or less from a non-participating**  
35 **principal structure on the approved site plan for the special use permit shall not be located less**  
36 **than 90% of that distance to the same structure on a Zoning Use Permit; and provided that (c)**  
37 **a new noise analysis meeting the requirement of 6.1.4 I. shall be submitted with the Zoning**  
38 **Use Permit for any wind farm tower with a new location that is less than 1,500 feet from a non-**

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1 **participating principal structure; and provided that (d) no separation to a non-participating**  
2 **property or principal structure shall be less than the minimum required by the Ordinance.**

3  
4 Mr. Hall stated that the petitioner must approve the special condition before the Board can move  
5 forward.

6  
7 Mr. Thorsland stated that the language in the condition is not part of the condition that the Board  
8 walked through last week. He said that this condition and Waiver #6 can be deferred to the October  
9 20, 2011, meeting.

10  
11 Mr. Blazer agreed to the special condition as read.

12  
13 Mr. Thorsland stated that the petitioner has indicated that they are in agreement with the proposed  
14 special condition.

15  
16 Mr. Hall stated that if the new evidence related to the table was useful at all the Board might consider  
17 that in the finding because these draft findings were drawn up before that table.

18  
19 Mr. Thorsland stated that the table that Mr. Hall is referring to is Table of 32 Closest Dwellings and  
20 32 Receptors with Loudest Noise Levels which is attached to the Supplemental Memorandum dated  
21 October 13, 2011.

22  
23 Mr. Hall stated that he would summarize the table like he did previously by saying that the  
24 adjustments allowed in the proposed condition will not result in an increase of even 3dBA which  
25 means that the change in noise should not be noticeable.

26  
27 Mr. Thorsland stated that it is his intent to do all of the conditions at once. He said that the Board  
28 has gone through all of the conditions and staff has written them in tonight's handout with the  
29 changes that the Board made next week therefore the Board does not need to vote on this particular  
30 condition until the Board votes on all the others. He said that if the condition is in agreement with  
31 the Board as it is with the petitioner then that is one more thing that can be checked off the Board's  
32 list so that it is ready for the next hearing. He said that if the Board finishes Waiver #6 that would  
33 only leave the Board with Wavier #4 regarding the Reclamation Agreement.

34  
35 Mr. Courson requested that the Board proceed with the approval of Wavier #4.

36  
37 Mr. Thorsland asked the Board if they were agreeable to the special condition as previously read.  
38

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1 The Board indicated that they agreed to the special condition.

2  
3 Mr. Thorsland read Waiver #6 again for the Board as follows: **Waive the standard condition of**  
4 **6.1.4. S. 1.(c) (3) that requires that locations of wind turbines for the zoning use permit**  
5 **application cannot increase the noise impact over that approved in the special use permit.**

6 The following special condition has been proposed: **The Zoning Administrator shall not approve**  
7 **a Zoning Use Permit for construction of a wind farm tower if the location indicated on the**  
8 **Zoning Use Permit site plan differs from that in the approved site plan for the special use**  
9 **permit as follows: (a) the Zoning Use Permit location shall differ more than 500 feet from the**  
10 **approved site plan for the special use permit except that a wind farm tower more than 1,500**  
11 **feet from a non-participating principal structure on the approved sit plan for the special use**  
12 **permit shall not be approved to be less than 1,350 feet from that same structure on a Zoning**  
13 **Use Permit; and provided that (b) a wind farm tower that is 1.500 feet or less from a non-**  
14 **participating principal structure on the approved site plan for the special use permit shall not**  
15 **be located less than 90% of that distance to the same structure on a Zoning Use Permit; and**  
16 **provided that (c) a new noise analysis meeting the requirement of 6.1.4 I. shall be submitted**  
17 **with the Zoning Use Permit for any wind farm tower with a new location that is less than 1,500**  
18 **feet from a non-participating principal structure; and provided that (d) no separation to a**  
19 **non-participating property or principal structure shall be less than the minimum required by**  
20 **the Ordinance.**

21  
22 Mr. Thorsland read required finding (1) for Wavier #6 as follows: The waiver, subject to the special  
23 condition, IS/IS NOT in accordance with the general purpose and intent of the zoning Ordinance and  
24 WILL/WILL NOT be injurious to the neighborhood or to the public health, safety, and welfare  
25 because there is only one allowable noise level and this is the noise level established in the Illinois  
26 Pollution Control Board (IPCB) regulations as established by 6.1.4 I.6.(a) and the requirement of  
27 6.1.4 S. 1.(c)(3) is in direct conflict with 6.1.4 I.6.(a).

28  
29 **Mr. Thorsland stated that the waiver, subject to the special condition, IS in accordance with**  
30 **the general purpose and intent of the zoning Ordinance and WILL NOT be injurious to the**  
31 **neighborhood or to the public health, safety, and welfare because there is only one allowable**  
32 **noise level and this is the noise level established in the Illinois Pollution Control Board (IPCB)**  
33 **regulations as established by 6.1.4 I.6.(a) and the requirement of 6.1.4 S. 1.(c)(3) is in direct**  
34 **conflict with 6.1.4 I.6.(a).**

35  
36 Ms. Capel stated that she would prefer that the Board defer Waiver #6 to the October 20, 2011,  
37 meeting.

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1 Mr. Thorsland stated that the Board will now review the Reclamation Agreement. He said that the  
2 biggest question before the Board is whether the ZBA allows salvage value to be part of the  
3 assurance.

4  
5 Mr. Passalacqua stated that salvage value is part of the assurance but there is too much weight placed  
6 on that variable number. He said that Mr. Blazer refers to it as a made-up number but it is no more a  
7 made-up number than the estimate. He said that they have a legitimate estimate from an engineer  
8 and a percentage of that number is not made up but is a weight just like their 25% escrow number is  
9 not made up but is a weighted amount of the costs. He said that he would like to open up discussion  
10 of putting a little less of the percentage of the guarantee on the recyclable value because it is a very  
11 volatile market and there are real expenses with realizing the cash value of the scrap.

12  
13 Mr. Thorsland stated that from testimony received tonight only one county made mention of the  
14 salvage value and the rest of them did not. He said that Mr. Hall did his best with Attachment D to  
15 explain this ever changing situation with the Reclamation Agreement's compliance to the Ordinance.

16 He said that the draft agreement uses the five-year average of \$323 per ton.

17  
18 Mr. Hall reminded the Board that it is updated every three years for the first 12 years.

19  
20 Mr. Passalacqua stated that the base decommissioning expense is held to 210% and of that 210%  
21 they have guaranteed 25% of that amount in escrow and the Letter of Credit secures the remainder.  
22 He asked if he was correct in stating that these numbers are derived less estimated salvage value.

23  
24 Mr. Hall stated that the total financial assurance is determined by subtracting the salvage value from  
25 the decommissioning cost multiplied by 210%.

26  
27 Mr. Passalacqua asked if the County can use a percentage of the salvage value in that formula.

28  
29 Mr. Hall stated that he agrees that the salvage value is what the engineer estimated it to be and what  
30 Mr. Passalacqua is wanting to do is only use a portion of the salvage value. He said that Page 5 of  
31 the Reclamation Agreement there is a note that indicates that the role and adjustment of salvage  
32 value is to be determined. He said that this would be one place to start in stating how much salvage  
33 value is to be assumed towards the financial assurance.

34  
35 Mr. Passalacqua stated that he realizes that it is a percentage of a projected value but at the time of  
36 re-evaluating that spot price of salvage we simply play with that formula. He said that with the  
37 salvage value being 84% of the value of the reclamation agreement and that is too much weight on a  
38 variable.

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1  
2 Mr. Thorsland stated that Invenergy has to put up money in the Irrevocable Letter of Credit and that  
3 is effectively 75% less the salvage value. He said that since salvage value is a variable then another  
4 variable is being added to what they have to be put in the Irrevocable Letter of Credit.  
5  
6 Mr. Passalacqua stated that it is not a variable when the County does its spot check on the price.  
7  
8 Mr. Thorsland stated that the spot check will be every three years.  
9  
10 Mr. Passalacqua stated that it is a variable if we are trying to decide what salvage value will be in ten  
11 years but if there is a spot price taken on that commodity it is no longer a variable.  
12  
13 Mr. Thorsland stated that Invenergy is adjusting the salvage value now every three years.  
14  
15 Mr. Passalacqua stated that he wants to take a little of the weight off of salvage value from the  
16 guarantee. He said that Mr. Fletcher stated that number becomes in the low 80% of the formula. He  
17 said that there is a projected value, or guess, which is 80% of the financial assurance amount  
18 therefore he is basically projecting a potential short fall.  
19  
20 Mr. Courson stated that perhaps we could consider capping the amount of salvage value that can be  
21 taken off the total amount. He said that if the estimate for decommissioning was \$1 million dollars  
22 the salvage value could be capped of no more than 50% of the \$1 million dollars. He said that the  
23 salvage value could fluctuate but it could never be over-weighted to more than 1/2 of the value of  
24 what it would take to decommission.  
25  
26 Mr. Hall stated that the current total cost is \$5.7 million dollars and the current financial assurance is  
27 \$1.9 million dollars so if reduced by \$2.4 million dollars the financial assurance goes up by almost  
28 double.  
29  
30 Mr. Passalacqua stated that doing business costs a lot of money.  
31  
32 Mr. Courson stated that he is just making a suggestion to reduce the weight of the variable from 84%  
33 of the total down to 50%. He said that at the 50% level there would be more protection for the  
34 County. He said that it could be any percentage that the Board is comfortable with.  
35  
36 Mr. Thorsland stated that if we give them a value of 50% of the value of what it's worth at the time  
37 then who gets the other 50%.  
38

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1 Mr. Courson stated that they can keep whatever is left over. He said that after everything is taken  
2 down and reclaimed and back to row crops then they get what is left.

3  
4 Mr. Passalacqua stated that this is already in the agreement.

5  
6 Mr. Courson stated that he is not sure what will be left at the end but he does want to make sure that  
7 the County does not get stuck with the bill.

8  
9 Mr. Hall stated that he has not heard anyone suggest what they want to see.

10  
11 Mr. Passalacqua stated that the Board has made two suggestions. He said that he asked that the  
12 weight of the salvage value be 25% and Mr. Courson suggested that the salvage value be capped.

13  
14 Mr. Thorsland stated that before Mr. Fletcher negotiates the salvage value or not the salvage value as  
15 part of the reclamation the Board needs to decide if the salvage value should be part of that  
16 negotiation. He said that Mr. Fletcher stated that he did not want to pin down the salvage value and  
17 how it applies to this until he received direction from the Board on how to do so.

18  
19 Mr. Thorsland stated that he believes that the Board would like to apply a value from the salvage to  
20 the reclamation cost. He said that some Board members would like the attorney's to do the dirty  
21 work in coming up with the numbers.

22  
23 Mr. Fletcher stated that the dirty work is policy work. He said that he can go into a room and say no  
24 until Invenergy suddenly indicates yes but he is not sure if the number that he proposes is a number  
25 that the Board will accept. He said that normally when collective bargaining agreements are entered  
26 into they go into closed session and he requests a bargaining range and the ZBA does not have a  
27 mechanism for doing that here. He said that Invenergy has informed him repeatedly that without the  
28 salvage value credit the project will not be feasible although he understands that there is a certain  
29 amount of risk in using the salvage value credit. He said that it is obvious that he and Mr. Blazer  
30 know how to argue but there are very few parameters on that argument for him right now.

31  
32 Mr. Passalacqua asked if there was any way to weight the salvage value.

33  
34 Mr. Fletcher stated that he and Mr. Blazer have a difference in opinion about the role of salvage  
35 value in the Zoning Ordinance and Mr. Fletcher believes that this falls under the language that it  
36 gives the Board the flexibility to authorize less than 210% of the independent engineer's cost  
37 estimate. He said that there is flexibility for this type of conversation to happen but if it can happen  
38 financially for Invenergy is unknown. He said that he needs to know what the Board's position is

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- 1 during this bargaining.  
2
- 3 Mr. Passalacqua asked if there is a way that the Board can come up with a number that limits the  
4 value of the salvage.  
5
- 6 Mr. Fletcher stated that he believes that he can come up with a legal mechanism to do that although  
7 Mr. Blazer disagrees.  
8
- 9 Mr. Passalacqua stated that he understands salvage value because he salvages things and he believes  
10 that it applies to taking the project apart but he is not comfortable with the amount weighted towards  
11 this value that is proposed.  
12
- 13 Mr. Fletcher stated that he understands but currently Mr. Passalacqua is in the same boat that he is  
14 and he views the number as a policy decision.  
15
- 16 Mr. Passalacqua stated that it appears that the Board needs to discuss numbers.  
17
- 18 Mr. Thorsland stated that he has no suggestion at the moment. He said that there is a true value to  
19 what is being put up and the risk at the beginning of the project is quite low because we know what  
20 the cost of salvage is currently and when they begin rolling steel towers down the road the intent is to  
21 put them up and not begin cutting them up right away.  
22
- 23 Mr. Passalacqua stated that he does not assume that the County is going to have scrap this and make  
24 into salvage steel in five years. He said that he is concerned about 15 years and beyond because we  
25 do not really know how long this wind farm will operate.  
26
- 27 Mr. Thorsland noted that Invenergy has a power purchase agreement for twenty years.  
28
- 29 Mr. Passalacqua stated that he understands that they have a twenty year power purchase agreement but  
30 that does not mean that the machine is going to work that long.  
31
- 32 Mr. Thorsland stated that the power company evidently believed that it would or they would not have  
33 agreed to purchase power from them for twenty years.  
34
- 35 Mr. Passalacqua stated that the project is based on modeling and projections therefore he sees no  
36 reason not to protect ourselves.  
37
- 38 Mr. Thorsland stated that the Ordinance required Invenergy to submit a decommissioning cost and

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1 the Board requested that they put up 210% of that cost and Invenergy has done that. He said that the  
2 Board is deciding whether or not the decommissioning estimates are wrong or may not be valid in  
3 twenty years.

4  
5 Ms. Capel stated that the cost estimate is going to be revisited every three years for the first twelve  
6 years.

7  
8 Mr. Hall stated that after the first twelve years the cost estimate is checked more often. He said that  
9 the October 6, 2011, version states that on January 1 of every third year for the first twelve years  
10 after the special use permit is granted and every second year for the remainder of the agreement. He  
11 said that after year twelve the Board will review this estimate every two years. He said that the  
12 Board will become very familiar with the estimates by year 18.

13  
14 Ms. Capel stated that over time the 84% will change.

15  
16 Mr. Hall stated that he would not expect that because if the Board goes with what the petitioner  
17 proposed the only thing that we are doing is checking to make sure that if there has been more than  
18 3% inflation and what the five year average is for steel and copper and what is the spot average and  
19 are we in a sweet spot.

20  
21 Ms. Capel asked what happens if we are not.

22  
23 Mr. Hall stated that the engineer will make a recommendation for the sweet spot. He said that the  
24 Board can always ask for the engineer to make a recommendation the Board can always make sure  
25 that the financial assurance is good for what it projected for two years. He said that we should  
26 always be looking at what has happened and what is projected and make sure if we are going to be  
27 okay for that two or three years. He said that it is pretty defined.

28  
29 Mr. Blazer stated that at those three year intervals, if the number changes the financial assurance  
30 changes to meet that new number.

31  
32 Mr. Thorsland stated that there is 210% and if the scrap value gets very low there is still 210% of  
33 what it costs to take it down.

34  
35 Mr. Courson stated if steel prices go up for a few years and are higher than the decommissioning cost  
36 they will not have to put anything down or carry a Letter of Credit and their decommissioning costs  
37 would essentially be zero.

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1 Mr. Thorsland stated that if it is worth that much money at that time then where is the risk.

2

3 Mr. Passalacqua stated that he understands that there is no risk but potentially it is a good thing for  
4 them.

5

6 Mr. Thorsland stated that Invenergy is making a bet that the turbines will last a long time and that  
7 they will generate power for a long time and when the time comes to take them down everyone is  
8 going to make money.

9

10 Ms. Capel stated that the Board is also concerned about the people who are doing the lending have a  
11 prior interest to the County. She said that Mr. Fletcher indicated that he cannot guarantee that the  
12 mechanic's lien language is a solution to that problem.

13

14 Mr. Thorsland stated that most of the things that the Board approves the Board does not care what  
15 happens if they fall down unless it is included in the variance that the structure must be placed back  
16 on the original footprint. He said that this is a more significant construction project than most of the  
17 things that the Board deals with.

18

19 Mr. Courson stated that these are requirements of the Ordinance.

20

21 Mr. Thorsland stated that Mr. Courson is correct but Invenergy has met those rigid requirements.

22

23 Ms. Capel stated that she likes Mr. Courson's idea of a cap where salvage value could be considered  
24 at 75% in terms of the financial assurance.

25

26 Mr. Thorsland stated that Ms. Capel would like give the weight of the salvage value  $\frac{3}{4}$ 's of the  
27 market value.

28

29 Mr. Hall stated that the task is to get that into a proposal so that it will conform to the Ordinance.

30

31 Ms. Capel stated yes.

32

33 Mr. Fletcher stated that it is his understanding that a weighted salvage value will not work from  
34 Invenergy's standpoint although it is up to the Board. He said that he does not want to get direction  
35 from the Board if it is not a productive area to go. He said that it is his understanding that Invenergy  
36 has put forth a proposal which they believe gives as much weight to the salvage value as is needed in  
37 order for this to move forward. He said that it is up to the Board but he does not want a direction  
38 from the Board to give a weight to the salvage value and spend hours with Invenergy being told that

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1 it is not going to work.

2

3 Mr. Hall stated that this Board has spent time on this issue and the Board has made its feelings  
4 known and presumably if the Board is presented with a draft agreement that does not do what is  
5 described there will be a course of action and that is fine because we can then get it to the County  
6 Board.

7

8 Mr. Courson stated that his biggest concern is that Invenergy can come back every year with an  
9 engineer's estimate having that price exceed and they can never put any money to any fund and never  
10 have a Letter of Credit. He said that if they can find the right engineer that will give them a high  
11 enough cost then they exceed the decommissioning value.

12

13 Mr. Hall asked Mr. Courson if he wanted to use a different source for the price of the scrap value.

14

15 Mr. Courson stated that he is just making a point. He said that the way that this is worded is that  
16 they can have it be zero.

17

18 Mr. Hall stated that if the scrap value goes up high enough then that is the situation.

19

20 Mr. Courson stated yes, but at the end when the project is decommissioned and steel prices fall to  
21 nothing the County will be on the hook for it.

22

23 Mr. Hall asked Mr. Courson if he wants an additional provision that would be triggered by a drop in  
24 the salvage value at any point and time.

25

26 Mr. Courson stated that he cannot support the current agreement as it exists.

27

28 Mr. Hall stated that it is his understanding that adding to the escrow account is much easier to do at  
29 any point and time than getting a new Letter of Credit. He said that what Mr. Courson is describing  
30 is a mechanism whereby if there is sudden and significant drop in salvage value the escrow account  
31 would have to be added to in order to make up for any shortage.

32

33 Mr. Passalacqua asked if the current formula already provides for that.

34

35 Mr. Hall stated no. He said that it only provides it every three years and then later at two years and  
36 Mr. Courson is indicating at any point of time. Mr. Hall stated that he does not know if this is  
37 possible but it has already been mentioned at a staff level.

38

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1 Mr. Thorsland stated that being an amateur recycler he can indicate that there has been some drop in  
2 scrap value but at this time it is back above where it was three years ago when everyone thought the  
3 price was high. He asked Mr. Courson if he was unhappy with the re-evaluation at three years and  
4 then at two years.

5  
6 Mr. Courson stated that he is unhappy with the potential that Invenergy will not have to put any  
7 funds in to it. He said that if there is very high scrap price then that is more for Invenergy to make at  
8 the end.

9  
10 Mr. Thorsland asked Mr. Courson if he is concerned about Invenergy having more at the end or  
11 about them making sure that there is enough money available to take the turbines down.

12  
13 Mr. Courson stated that he does not care how much Invenergy makes at the end as long as the  
14 County is off the hook for paying a dime to take these things down.

15  
16 Mr. Thorsland asked Mr. Courson if he did not believe that the 210% is enough to take them down.

17  
18 Mr. Courson stated that 210% of nothing is nothing. He said that you are not going to take scrap to  
19 the scrap yard and get 210% for scrap value. He said that the 210% of zero means nothing and  
20 1000% of zero is still zero. He said that if Invenergy can get the decommissioning costs down to  
21 zero because of scrap value the 210% means absolutely nothing.

22  
23 Mr. Thorsland stated that there is not a point where Invenergy does not have to have the escrow  
24 account.

25  
26 Mr. Hall stated no, not if the salvage value gets high enough which is the reason why many counties  
27 do not receive anything because the salvage value is higher than the decommissioning costs so they  
28 don't need anything.

29  
30 Mr. Passalacqua stated that the salvage value computation comes in before the 25% gets applied.

31  
32 Mr. Fletcher stated that the State's Attorney also has a problem with salvage value.

33  
34 Mr. Thorsland stated that he understands the State's Attorney's concern although the Board has not  
35 given Mr. Fletcher any direction at this point except that the Board doesn't like anything.

36  
37 Ms. Capel stated that she still wants to cap the salvage value somehow but it would work better if the  
38 Board required an addition to the escrow account when salvage value drops although who will

10/13/11

1 monitor the salvage price.

2

3 Mr. Hall stated that the Board can ask for a notice. He said that he is unsure if the Board will get it  
4 but it is a condition that can be required of Invenergy.

5

6 Mr. Fletcher asked if the ZBA would be more comfortable if there was a minimum which salvage  
7 value could not drop below. He said that this would be a flat minimum that the financial assurance  
8 could not go beyond.

9

10 Mr. Thorsland stated that in an off-hand way that is the direction that the Board is going.

11

12 Ms. Capel asked if the Board is discussing a flat rate or a percentage. She said that she would prefer  
13 a percentage of the decommissioning expense.

14

15 Mr. Passalacqua stated that he would be comfortable with a minimum percentage.

16

17 Mr. Thorsland asked if the Board is comfortable with the State's Attorney and Invenergy deciding  
18 what the percentage will be.

19

20 Ms. Capel stated that they are certainly welcome to negotiate and present a proposal for Board's  
21 review.

22

23 Mr. Thorsland asked Mr. Fletcher if the Board has given him enough direction to move forward.

24

25 Mr. Fletcher stated that there could be some direction about the policy goals of the ZBA but  
26 whatever Invenergy proposes is what they propose. He said that he has received some input from the  
27 ZBA regarding their concerns and he will discuss these policy concerns with Invenergy. He noted  
28 that he does appreciate the Board's input.

29

30 Mr. Thorsland stated that the Board will make a recommendation on what Invenergy proposes and  
31 then that recommendation will be forwarded to the County Board.

32

33 Ms. Capel stated that it is important for the ZBA to address their concerns regarding this case.

34

35 Mr. Thorsland stated that at the next meeting the Board will discuss Waivers #4 and #6.

36

37 Mr. Thorsland requested a motion to begin the October 20, 2011, meeting for Case 696-S-11 at 6:00  
38 p.m.

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**Mr. Courson moved, seconded by Mr. Passalacqua to begin the October 20, 2011, meeting for Case 696-S-11 at 6:00 p.m. The motion carried by voice vote.**

Mr. Hall stated that the October 20, 2011, meeting could be held in the Lyle Shields Meeting Room but it could only last one hour because there is a County Board meeting at 7:00 p.m. He said that staff has reserved the John Dimit Meeting Room and it appears that there should be sufficient room.

Mr. Thorsland requested a motion to continue Case 696-S-11 to the October 20, 2011 meeting which will be held in the John Dimit Meeting Room.

**Ms. Capel moved, seconded by Mr. Courson to continue Case 696-S-11 to the October 20, 2011, meeting which will be held in the John Dimit Meeting Room. The motion carried by voice vote.**

**6. New Public Hearings**

None

**7. Staff Report**

Mr. Hall introduced Mr. Andrew Kass as the new Department of Planning and Zoning Associate Planner.

**8. Other Business**

**A. Review of ZBA Docket**

Mr. Hall stated that Ms. Busboom has carefully calculated and with the new meeting on October 20<sup>th</sup> and the special meeting on November 3<sup>rd</sup> the Board will use exactly 100% of the per diems for 2011.

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

None

**10. Adjournment**

**Mr. Schroeder moved, seconded by Mr. Palmgren to adjourn the meeting at 9:43 p.m. The motion carried by voice vote.**

ZBA

AS APPROVED NOVEMBER 3, 2011

10/13/11

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The meeting adjourned at 9:43 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

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*DRAFT    SUBJECT TO APPROVAL    DRAFT            ZBA    //*

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