

1 AS APPROVED NOVEMBER 3, 2011

2
3 **MINUTES OF SPECIAL MEETING**

4 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

5 1776 E. Washington Street

6 Urbana, IL 61802

7
8
9 **DATE:** October 20, 2011

PLACE: John Dimit Meeting Room
1776 East Washington Street

10
11 **TIME:** 6:00 p.m.

Urbana, IL 61802

12
13 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Roger Miller, Melvin Schroeder,
14 Eric Thorsland, Paul Palmgren, Brad Passalacqua

15
16 **MEMBERS ABSENT :** None

17
18 **STAFF PRESENT :** Connie Berry, Lori Busboom, John Hall, Andrew Kass

19
20 **OTHERS PRESENT :** Mike Blazer, Marvin Johnson, Sherry Schildt, Herb Schildt, Kevin
21 Parzyck, Greg Leuchtman, Rob Parker, Greg Frerichs, Bruce
22 Stickers, Harold Hovel, Trish Gale, Steve Burdin, Jeff Bussert

23
24
25 **1. Call to Order**

26
27 The meeting was called to order at 6:01 p.m.

28
29 **2. Roll Call and Declaration of Quorum**

30
31 The roll was called and a quorum declared present.

32
33 **3. Correspondence**

34
35 None

36
37 **4. Approval of Minutes (September 29, 2011)**

38
39 Mr. Palmgren noted that on Page 26, Line 12 the draft minutes indicate that he said the following:
40 Mr. Palmgren asked if the County has a copy of the relevant stamp. Mr. Palmgren stated that his
41 statement should be revised to indicate the following: Mr. Palmgren asked if the County has a copy
42 of the relevant standards.

43
44 **Mr. Palmgren moved, seconded by Mr. Passalacqua to approve the September 29, 2011,**
45 **minutes as amended. The motion carried by voice vote.**

46
47 **5. Continued Public Hearing**

48

10/20/11

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

20
21 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County
22 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will
23 ask for a show of hands for those who would like to cross examine and each person will be called
24 upon. He requested that anyone called to cross examine go to the cross examination microphone to
25 ask any questions. He said that those who desire to cross examine are not required to sign the
26 witness register but are requested to clearly state their name before asking any questions. He noted
27 that no new testimony is to be given during the cross examination. He said that attorneys who have
28 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.

29
30 Mr. Thorsland informed the audience that anyone who desires to present testimony must sign the
31 witness register. He reminded the audience that when they sign the witness register they are
32 signing an oath.

33
34 Mr. Thorsland asked the petitioner would like to make a statement outlining the nature of their
35 request prior to introducing evidence.

36
37 Mr. Michael Blazer, legal counsel for Invenergy, stated that the Reclamation Agreement has been
38 substantially rewritten incorporating Mr. Fletcher’s additional comments. He said that the version

10/20/11

1 that the Board may have seen yesterday is pretty much identical to the version currently before the
2 Board. He said that Paragraph 4 of the Reclamation Agreement is still the paragraph which relates to
3 financial assurance but after last week's meeting Paragraph 4 was completely rewritten. He said that
4 Paragraph 4 incorporates almost verbatim the words of the Ordinance. He said that original Waiver
5 #10 which requested a modification of the pay down relationship between the Letter of Credit and
6 the Escrow account has been withdrawn. He said that they are simply incorporating the requirements
7 of the Ordinance and is indicated as such in Paragraph 4(b). He said that they are starting with a
8 Letter of Credit for 210% of the decommissioning cost estimate and slowly paying it down over 13
9 years and putting it into an escrow account, as required by the Ordinance.

10
11 Mr. Blazer stated that there are a lot of language changes in the new version as compared to the one
12 that the Board reviewed at last week's meeting. He said that one significant change is in response to
13 some of the conversations that occurred during last week's meeting. He said that Paragraph 4(c)(2)
14 proposes that regardless of what may happen with the increase in salvage value over time there will
15 always be a minimum of \$25,000 per turbine in the financial assurance. He said that the minimum
16 will never be less than the \$25,000 plus inflation and that was to address some of the concerns posed
17 at last week's meeting about the possibility that the salvage value could go up to a point where there
18 would be no financial assurance whatsoever. Mr. Blazer stated that Invenergy is attempting to deal
19 with that by assuring that there will never be less than \$25,000 per turbine which is \$750,000. He
20 said that rather than trying to tinker with the words of the Ordinance and recognizing that this is the
21 first time that the Ordinance has been applied, Invenergy, simply to the extent possible, incorporated
22 the language into the agreement and will work with it in any way required. He said that this past
23 week he and Mr. Fletcher have spent a lot of time with each other by phone and via e-mail and there
24 is not much left to do other than some noise things to talk about.

25
26 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer and there were none.

27
28 Mr. Thorsland asked if staff had any questions for Mr. Blazer and there were none.

29
30 Mr. Thorsland requested that Mr. Hall address the Board.

31
32 Mr. Hall distributed a new Supplemental Memorandum dated October 20, 2011, for the Board's
33 review. He said that attached to the Supplemental Memorandum is a Supplemental Memorandum
34 dated October 19, 2011, with a Reclamation Agreement received on October 19, 2011, with an
35 annotated and non-annotated version. He said that Attachment C is the revised agreement which was
36 received on October 20, 2011, and as Mr. Blazer indicated the new version is virtually identical but
37 the wording is more consistent with other parts of this case. He said that the Summary of Evidence
38 that the Board received tonight does reflect the October 20th revised draft.

10/20/11

1
2 Mr. Hall stated that Attachment D, Revised Assessment of Compliance with 6.1.4 P. Standard
3 Condition for Decommissioning Plan and Site Reclamation Agreement, has been updated with the
4 October 20th version of the Reclamation Agreement. He said that Attachment E, Revised Table of
5 Required Waivers, has been greatly reduced. He said that there are two waivers for which the Board
6 has yet to prepare preliminary findings. He said that Attachment F, Revised Draft and Adopted
7 Preliminary Findings for Required Waivers, indicates the findings for all of the waivers which the
8 Board has adopted preliminary findings as well as the two which have no preliminary findings
9 adopted. He said that both of the waivers awaiting the Board's final findings are in regards to noise.
10 He said that Attachment G, Revised Special Conditions of Approval, indicates everything that the
11 Board has seen in previous meetings and is not underlined and there is very little new underlined.
12 He said that the text which is underlined has to do with the Reclamation Agreement and he advised
13 the Board to briefly walk through the conditions again tonight to make sure that the Board recalls all
14 of the changes that have been made thus far during the hearing.

15
16 Mr. Hall stated that Attachment H, Values in the Wind: A Hedonic Analysis of Wind Power
17 Facilities, is an updated version of a report which was submitted by Ms. Schildt as a Document of
18 Record at the October 6th meeting. He said that a discussion regarding Attachment H. has been
19 included in the Supplemental Memorandum dated October 20th. He said that Attachment I is a
20 newspaper article from the *Watertown Daily Times* titled, *Wind power sometimes hurts property*
21 *values, Clarkson study says*. Mr. Hall stated that the article substantiates what he found about the
22 Clarkson University study. He said that Attachment J, included separately, are the draft minutes
23 from the public hearing held on October 6, 2011. He said that Ms. Berry has an incomplete version
24 of the October 13, 2011, draft minutes available if the Board would like to see them.

25
26 Ms. Berry indicated that Mr. Hall distributed the incomplete October 13, 2011, draft minutes to the
27 Board. She said that the October 6, 2011, draft minutes are completed and ready for editing.

28
29 Mr. Hall stated that Attachment J should be revised to indicate the incomplete October 13, 2011,
30 draft minutes (included separately). He said that Attachment K is the Revised Draft Summary of
31 Evidence, Finding of Fact, and Final Determination. He said that there may be some new minor bits
32 of evidence inserted into the Draft Summary of Evidence that the Board has not seen and they are
33 indicated with double underlining. He said that he has not been able to put into the Draft Summary
34 of Evidence the testimony by Mr. Bill Ingram and Mr. Rob Parker regarding questions having to do
35 with the Reclamation Agreement. He said that he did not insert anything into the Summary of
36 Evidence regarding the concerns of Mary Mann however there is the condition regarding the limit on
37 flexibility that is in direct response to Mary Mann's concerns. He said that the Board has received
38 specific comments from Champaign County residents regarding various aspects of this special use

10/20/11

1 and those comments are not in the Summary of Evidence.

2
3 Mr. Hall stated that regarding the new evidence about property value concerns he had previously
4 proposed evidence regarding the Lawrence Berkeley National Laboratory study titled, *The Impact of*
5 *Wind Power Projects on Residential Property Values in the United States*. He said that at the same
6 meeting which he proposed this evidence Ms. Schildt presented the research report from Clarkson
7 University but he has not had a chance to propose evidence about that report. He said that he did
8 check with Professor Heintzelman of Clarkson University and Professor Heintzelman indicated that
9 the report has been accepted for publishing in a peer reviewed journal that would make it only the
10 second report like that in this country. Mr. Hall stated that during his discussions with Professor
11 Heintzelman he provided Mr. Hall the most recent copy of the report . Mr. Hall stated that the last
12 page of the new report is a figure illustrating where the three counties are located in the state of New
13 York and where they are in relation to Adirondack Park. He said that two of the counties Franklin
14 and Clinton are generally half way or more inside Adirondack Park. He said that very little of Lewis
15 County is located in Adirondack Park. Mr. Hall suggested that the following evidence be added to
16 Item #8.M(2) as follows: (a): the study analyzed data from 11,331 residential and agricultural
17 property transactions in three counties in northern New York which have six wind farms combined;
18 and (b): a map is included that illustrates that two of the counties have half or more of their
19 geographic areas inside of Adirondack Park and the third county has only a small portion of its area
20 inside the Park. The report explains that “approximately 43% of Adirondack Park is publically
21 owned and constitutionally protected to remain “forever wild” forest preserve; and (c): Parcels
22 included in the study were those which were sold between the years 2000-2009. Of the 11,331
23 transactions only 461 of those transactions were for parcels within 3 miles to the nearest turbine.
24 Some of the parcels were sold more than once. Within three miles, 142 parcels were sold at least
25 twice; and (d): Parcel data, turbine locations, land cover data, sales data, lot size, and other relevant
26 data were compiled using Geographic Information Systems (GIS) software. The parcels were
27 mapped to determine the distanced to the nearest turbine in order to estimate the nuisance effects o
28 the turbines. Statistical software was also used to compile data; and (e) the study used a repeat sales
29 fixed-effects hedonic analysis. This approach was used to estimate the “treatment” of effect of a
30 parcel’s proximity to a wind turbine; and (f) the study findings are summarized in the Discussion
31 section as follows: i: in the two counties with the most geographic area inside Adirondack Park it
32 was found that wind turbines typically had a negative impact on property values; and ii: in the third
33 county that had only a small portion of its area inside Adirondack Park the study found no effect on
34 property values because of wind turbines. He said that the last item is a change from the previous
35 version of the study and it is not known when the study will appear in a peer reviewed journal but it
36 has been accepted. He said that the two studies are the only two studies like this in this country.

37
38 Mr. Hall stated that Andrew Kass, Planning and Zoning Associate Planner, found a new study from

10/20/11

1 Illinois State University which arguably goes into more detail than either of the two previous studies
2 regarding property values prior to the announcement of the wind farm project and property values at
3 various stages throughout the life of the wind farm project. He said that the ISU study has very
4 interesting results but it is a master's thesis and he would not want to try to find all of the master's
5 thesis reports that may be interesting so staff hasn't provided any information on that study.
6

7 Mr. Hall stated that it is up to the Board whether to retain this new information in the Summary of
8 Evidence or strike it.
9

10 Mr. Thorsland asked the Board if there were any questions for Mr. Hall and there were none.
11

12 Mr. Thorsland called Mr. Marvin Johnson to testify.
13

14 Mr. Marvin Johnson, Compromise Township Highway Commissioner, stated that if Invenergy has
15 met all of the conditions it would mean a lot to his road district to have this wind farm project due to
16 the required permit fees that Compromise Township has asked for and received and the future tax
17 dollars that would be generated for the township. He said that the wind farm project will be a great
18 help to Compromise Township which they will never have a chance to obtain any other time.
19

20 Mr. Johnson stated that he resides across from the wind farm project although he is not involved in it
21 and he will have a wind turbine pretty close to his house and he has no concerns.
22

23 Mr. Thorsland asked the Board if there were any questions for Mr. Johnson and there were none.
24

25 Mr. Thorsland asked if staff had any questions for Mr. Johnson and there were none.
26

27 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Johnson and there was no
28 one.
29

30 Mr. Thorsland called Ms. Sherry Schildt to testify.
31

32 Ms. Sherry Schildt, who resides at 398 CR 2500N, Mahomet, thanked Mr. Hall for following up on
33 the Hedonic Study. She said that she has not had a chance to look at the updated report closely but
34 even with their revised assessment on the one area the report still indicates that the results indicate
35 that existing compensation to local homeowners/communities may not be sufficient to prevent a loss
36 of property values.
37

38 Ms. Schildt stated that Item #2.b. on Pages D-1 and D-2 of Attachment D. to the Supplemental

10/20/11

1 Memorandum dated October 20, 2011, indicates the following: Subparagraph 6.1.1A.2.of the
2 Ordinance requires that each landowner shall record a covenant incorporating the provisions of the
3 Reclamation Agreement on the deed of the lot. The recorded easement between California Ridge
4 Wind Energy LLC and each landowner fulfills that requirement. She said that she had previously
5 questioned this matter when the waiver which required that private waivers be recorded along with
6 the deed for the lot. She said that during the discussion Mr. Hall had indicated that an easement
7 agreement was recorded but Mr. Blazer stated at the September 8, 2011, public hearing that the
8 easement agreements are private agreements and are not recorded at the Recorder's Office. She said
9 that Item #2.b and Mr. Blazer's testimony contradict each other.

10
11 Mr. Hall stated that this is for the Board to decide. He said that the reason that he believes that this
12 fulfills the requirement is that someone could not buy a property that is participating in this wind
13 farm, provided that that person checked with the Recorder of Deeds, and not be made aware of that
14 easement. He said that there is nothing that the ZBA can do to make people check with the Recorder
15 of Deeds office and even if the Board required the specific fulfillment of the condition in the
16 Ordinance if people do not take the time to check with the Recorder of Deeds they will not find out
17 about any easements. He recommended that the documents which have been recorded fulfill this
18 requirement but it is the Board's call.

19
20 Ms. Schildt stated that the question was that Mr. Blazer specifically said that they are not recorded.

21
22 Mr. Hall stated that there is a document recorded at the Recorder of Deeds office that would reveal
23 the presence of a contract with Invenergy.

24
25 Ms. Schildt stated that the specifics of the agreement are not recorded.

26
27 Mr. Hall stated yes. He said that the point of recording something in the Recorder of Deeds office is
28 to make people aware.

29
30 Ms. Schildt stated that she is aware of the purpose of the Recorder of Deeds' office because she and
31 her husband have purchased property but the two statements appear to contradict each other.

32
33 Mr. Thorsland asked the Board if there were any questions for Ms. Schildt and there were none.

34
35 Mr. Thorsland asked if staff had any questions for Ms. Schildt and there were none.

36
37 Mr. Thorsland called Mr. Michael Blazer to testify.

38

10/20/11

1 Mr. Michael Blazer stated that a Memorandum of Agreement is recorded for each property. He said
2 that recordation of this document puts on record that this agreement exists with respect to the
3 property. He said that Invenergy does the same thing with the road agreements and will be doing the
4 same thing with the Reclamation Agreement. He said that rather than recording the entire agreement
5 they record a Memorandum of Agreement that is notice to the world that an agreement with respect
6 to an individual property exists. He said that the full easement agreement, full road agreement, full
7 reclamation agreement do not get recorded against each parcel but each parcel does have a
8 Memorandum of Agreement recorded against each parcel.

9
10 Mr. Thorsland asked the Board if there were any question for Mr. Blazer and there were none.

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

13
14 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
15 testimony regarding this case and there was no one.

16
17 Mr. Thorsland stated that the witness register will remain open at this time for convenience of
18 allowing the petitioner to present additional testimony.

19
20 Mr. Thorsland called Mr. Joel Fletcher to testify.

21
22 Mr. Joel Fletcher, Assistant State's Attorney, thanked Mr. Blazer for his patience during the course
23 of last week. He said that he cannot bargain a special use because it is ultimately the ZBA's decision
24 as to what is approved based on the information that the petitioner presents. He said that as he
25 stated at the last hearing he has some concerns about the reliance upon salvage value and those
26 concerns are still present. He said that his primary concern is that the lien holder can jump in front
27 of the County when it comes to reclaim salvage and cherry picking of the salvage which would
28 prevent the County from getting the full benefit of the salvage that is credited to the reclamation
29 costs. He said that ultimately this is a risk that the ZBA and the County Board are going to either
30 accept or reject when they consider the special use permit. He said that demanding 100% of the
31 financial assurance would probably kill the project which could be a probable cause whether or not
32 the County is willing to accept the risks.

33
34 Mr. Fletcher stated that at the last public hearing the Board discussed requiring a minimal level of
35 financial assurance per turbine and that would address both concerns somewhat. He said that the
36 primary concern is not the cherry picking but that the lien holder could take the salvage that is worth
37 reclaiming and leaving the salvage that is not. He said that the two concerns, the lien holders and the
38 salvage value, are related to each other.

10/20/11

1
2 Mr. Fletcher stated that earlier this week he came to the realization that if the lien holder executes
3 their rights under the lien they would be reducing the decommissioning cost therefore to that extent
4 the County would have some protection although there would be some litigation costs associated.
5 He said that the County would have reduced decommissioning costs if the lien holder jumps ahead of
6 the County but there is still the risk of cherry picking and it is his understanding that they could take
7 the turbine and leave the turbine or take the tower and leave the turbine because of the differences in
8 steel costs. He said that the \$25,000 per turbine does give the County some assurance that there
9 would be some money per turbine to cover the reclamation of each turbine which is not perfect in
10 terms of protection but it does give some protection. He said that if the lien holder takes the turbine
11 and leaves the tower or takes the tower and leaves the turbine they are reducing the salvage on that
12 part of the project but they are not reducing the decommissioning costs by an equal amount because
13 there is a certain fixed cost.

14
15 Mr. Fletcher stated that the \$25,000 per turbine does provide the County some protection although it
16 is unknown if it is adequate and he cannot guarantee that it is adequate. He said that the risks that he
17 outlined at the last hearing do remain but the new version is better than the version that was
18 presented to the Board last week but he cannot guarantee the Board that a bankruptcy will not disrupt
19 clean-up. He said that he will not bog the record down with details regarding noise but if the Board
20 has questions he will answer those questions. He said that he and Mr. Blazer have a disagreement
21 regarding the meaning of the noise regulations because Mr. Fletcher's reading of the regulations are
22 consistent with Mr. Hall's in that absent of a conflicting use between the residence and the property
23 line that a violation can occur anywhere between the residence and the property line. Mr. Fletcher
24 stated that Mr. Blazer disagrees with his reading. Mr. Fletcher stated that he attempted to contact the
25 Attorney General's office who sent him to the Environmental Protection Agency who then sent him
26 back to the Attorney General's office. Mr. Fletcher stated that he is not an environmental attorney
27 but at this point he believes that the waiver of the special condition is required.

28
29 Mr. Thorsland asked the Board if there were any questions for Mr. Fletcher and there were none.

30
31 Mr. Blazer stated that regarding "cherry picking," Paragraph 5 of the Reclamation Agreement
32 received October 20, 2011, indicates that absent a one for one replacement of whatever was being
33 removed or replacing equipment that had gone bad, Invenergy is required to obtain permission from
34 the Zoning Administrator before they can remove anything. He said that to address the lien holder's
35 cherry picking the following sentence, provided by Mr. Fletcher, has been included in Paragraph 5
36 without modification: If the principal's lien holders remove equipment or property credited to the
37 salvage value, the principal shall promptly notify Champaign County. He said that the last sentence
38 of paragraph has also been revised to indicate the following: In either event, the financial assurance

10/20/11

1 shall be adjusted to reflect any change in total salvage value and/or total decommissioning expenses
2 resulting from any such removal or installation. He said that the phrase “and/or” was inserted to
3 make it clear that whichever one of those numbers changes, either or both of them, Invenergy has to
4 address that with respect to the financial assurance. He said that whatever Invenergy does which
5 results in some change, Invenergy has to address that with the financial assurance.
6

7 Mr. Blazer stated that there are two noise waivers that are really all that is left because one of the
8 original waivers was withdrawn because they took care of it with the new Paragraph #4 in the
9 Reclamation Agreement. He said that the two original waivers that are left are Waivers #4
10 (originally #8) and Waiver #6 (originally #11). He said that over the last two days his e-mails back
11 and forth from Mr. Fletcher have gotten longer, more like legal briefs, and more strident. He said
12 that he has provided not only statutory and regulatory authority, IPCB decisions but also a Sub-
13 Circuit US Court of Appeals decision from last year which addressed the distinction between
14 numerical standards and noise nuisances. He said that regarding Waiver #11, the Ordinance requires
15 that Invenergy comply with the IPCB regulations and the noise data in the application confirms that
16 Invenergy has complied. He said that a separate section of the Ordinance requires that Invenergy, in
17 effect, comply with whatever Invenergy informs the Board that they are going to do. He said that if
18 the noise report indicates that they will not exceed 46dBA but the IPCB standard is 51dBA at night
19 time and 61dBA at day time then the IPCB standard is what Invenergy has to meet. He said that the
20 Ordinance can be interpreted as lowering the IPCB regulatory limit down to what Invenergy has
21 indicated that they will not exceed but there are two problems with that because the Ordinance will
22 be creating a conflict. He said that the conflict will be that the Ordinance requires Invenergy to meet
23 the IPCB regulations but from a legal perspective since Champaign County is not a home rule county
24 Champaign County does not have the authority to modify the IPCB regulations. He said that he
25 hates to tell a body of government that they do not have the authority to do something because
26 normally he receives the response, “Watch Us!” He said that with respect to non-home rule bodies
27 of government has been pre-empted by the *Illinois Environmental Protection Act* and the IPCB
28 regulations. He said that if the Board was going to create a more stringent standard than the
29 regulations the County does not have the authority to do so because there is a conflict in the
30 Ordinance, that has not been applied previously, Invenergy is asking for the waiver. He clarified that
31 Invenergy is not asking for a waiver of the regulations because they plan to meet them but they are
32 asking for the waiver to clarify the conflict that has created by the two separate sections of the
33 Ordinance.
34

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

36
37 Mr. Palmgren asked Mr. Blazer if either of the waivers, if granted, will result in more distance and
38 less noise actually reaching non-participating parcels.

10/20/11

1

2 Mr. Blazer stated that the only area in which that occurs is at turbines #20, #21 and #22. He said that
3 these turbines are clustered together which brought them very close to the limit and based on the
4 latest plan that was submitted turbine #20 is still located at its original location but turbines #21 and
5 #22 have been moved further away. He said that the one specific situation where they were coming
6 close has been rectified. He said that whether the Board grants the waivers or not the Board is not
7 waiving the IPCB regulations and the Board cannot waive the IPCB regulations because the Board
8 does not have the authority to do so.

9

10 Mr. Thorsland asked the Board if there were any additional questions for Mr. Blazer and there were
11 none.

12

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

14

15 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
16 regarding Case 696-S-11 and there was no one.

17

18 Mr. Thorsland stated that the witness register will remain open at this time for convenience of
19 allowing the petitioner to present additional testimony.

20

21 Mr. Thorsland stated that this is the seventh meeting for Case 696-S-11. He said that Case 696-S-11
22 is a zoning case first before the ZBA and the County Board will receive this case once the ZBA has
23 made its recommendation. He said that this is not a referendum on wind power or property taxes or
24 subsidies but it is a zoning case and the ZBA is applying the County's Ordinance to the special use
25 permit application. He said that the ZBA has tried to be very fair to everyone and it is a rare
26 occasion when the ZBA has a zoning case that carries so much weight and care and attention on non-
27 participating parcels. He said that he believes that the ZBA has done a good job but there is a lot of
28 work left to do tonight therefore he would like to make sure that the Board takes as much time as
29 possible to get as much completed as possible and perhaps make a final recommendation.

30

31 Mr. Thorsland asked the Board if they desired to work back through the latest version of the
32 Reclamation Agreement. He stated that Page 5 indicates the most noticeable changes that were
33 discussed at last week's public hearing.

34

35 Ms. Capel stated that Paragraph 12 on Page 11 of the Reclamation Agreement indicates the
36 following sentence: The landowner shall have thirty (30) days to respond in writing to this request.

37 Ms. Capel asked if the sentence should indicate that the principal shall have thirty (30) days to
38 respond in writing to this request.

1
2 Mr. Fletcher stated yes. He thanked Ms. Capel for catching the typo.

3
4 Mr. Blazer agreed with Ms. Capel and Mr. Fletcher.

5
6 Ms. Capel stated that Sub-paragraph 8(d) on Page 9 indicates the following: The Zoning
7 Administrator may draw upon the financial assurance immediately, to perform the any work
8 reasonably necessary to respond, etc. She said that the word “the” should be removed prior to any
9 work reasonably necessary to respond, etc.

10
11 Mr. Fletcher and Mr. Blazer agreed with Ms. Capel’s correction.

12
13 **Review of Required Waivers:**

14
15 Mr. Thorsland requested that the Board turn to Page F-1, of Attachment F. Revised Draft and
16 Adopted Preliminary Findings for Required Waivers, to the Supplemental Memorandum dated
17 October 20, 2011.

18
19 Mr. Thorsland read Waiver #1 (originally #4) as follows:

20 **Waive the standard condition of 6.1.4 D. 1(a) that requires certificates of design**
21 **compliance from Underwriters Laboratories (“UL”) or equivalent third party.**

22
23 Mr. Thorsland stated that on September 29, 2011, the Board adopted preliminary findings for Waiver
24 #1. He said that all of the changes by the Board are reflected in the Supplemental Memorandum for
25 Waiver #1.

26
27 Mr. Thorsland requested that the Board indicate their final vote for Waiver #1 by a show of hands.

28
29 **Seven Board members voted in favor of Waiver #1 with none opposed.**

30
31 Mr. Thorsland read Waiver #2 (originally #6) as follows:

32 **Waive the standard condition of 6.1.4 F.1. that requires a signed Roadway Upgrade**
33 **and Maintenance Agreement prior to the close of the public hearing before the Zoning**
34 **Board of Appeals.**

35
36 Mr. Thorsland stated that on October 13, 2011, the Board adopted preliminary findings for Waiver
37 #2.

38

10/20/11

1 Mr. Hall stated that he believes that it would be improper for the County Board to deal with the
2 County Road Agreement while the special use permit sits at the ZBA. He said that if the County
3 Board dealt with the County Road Agreement and approved it in the public's eyes then it could be
4 viewed as biasing the decision on the special use permit. He said that this is a question that he had
5 wanted to forward to the State's Attorney to help the Board in dealing with this waiver although he
6 did not have a chance to do so. He said that regardless even without the State's Attorney's opinion
7 he believes that this is a reasonable concern therefore it makes a lot more sense to forward the
8 agreement with the recommendation for the special use permit. He said that this information was not
9 flagged in the waiver language but if the Board desires to add such language then it may be the best
10 reason why to approve the waiver.

11
12 Mr. Thorsland asked Mr. Hall if he had any suggested language to add to the waiver regarding this
13 concern.

14
15 Mr. Hall stated that new language could be added to finding #1 of Waiver #2 therefore revising
16 finding #1 as follows: The waiver, subject to the proposed special condition is in accordance with the
17 general purpose and intent of the Zoning Ordinance and will not be injurious to the neighborhood or
18 to the public health, safety, and welfare because even though the County Engineer approves the Draft
19 county road agreement only the County Board can authorize a signature on the road agreement and
20 County Board action on the draft county road agreement prior to considering the special use permit
21 could create a public perception of prejudice.

22
23 Mr. Thorsland asked the Board if they agree with Mr. Hall's language or does the Board assume that
24 the County Board will do this anyway. He said that this will basically allow the ZBA to set a
25 timeline on how the County Board progresses.

26
27 Mr. Hall stated that it is more of an issue of public perception.

28
29 Mr. Passalacqua asked if the waiver is granted could the County Road Agreement change before it
30 gets to the County Board.

31
32 Ms. Capel stated the County Board can't execute it until the ZBA approves the special use permit
33 therefore the Board has no choice.

34
35 Mr. Blazer stated that if for no other reason other than exhaustion neither he nor Mr. Fletcher have
36 any more changes to the Reclamation Agreement. He said that he cannot say that the County Board
37 will not request additional changes.

38

10/20/11

1 Mr. Thorsland informed Mr. Blazer that the Board is discussing the County Road Agreement at this
2 time and not the Reclamation agreement.

3
4 Mr. Blazer apologized. He said that the County Road Agreement is absolutely complete and has
5 been approved by Mr. Blue and Ms. Kuzman and it is carved in stone.

6
7 Mr. Thorsland stated that the Board received testimony from Mr. Blue that he was done and the only
8 thing that prevented the County Road Agreement from moving forward was Ordinance conflict with
9 the timeline.

10
11 Ms. Capel stated that she is comfortable with Mr. Hall's addition to finding #1 for Waiver #1.

12
13 Mr. Thorsland read amended finding #1 for Waiver #1 as follows:

14
15 **The waiver, subject to the proposed special condition is in accordance with the general**
16 **purpose and intent of the Zoning Ordinance and will not be injurious to the**
17 **neighborhood or to the public health, safety, and welfare because even though the**
18 **County Engineer approves the Draft County Road Agreement only the County Board**
19 **can authorize a signature on the road agreement and County Board action on the Draft**
20 **County Road Agreement prior to considering the special use permit could create a**
21 **public perception of prejudice.**

22
23 Mr. Thorsland requested that the Board indicate their vote for amended finding #1 for Wavier #2 by
24 a show of hands.

25
26 **Four members of the Board agreed with amended finding #1 for Waiver #2 with three**
27 **opposed.**

28
29 Mr. Thorsland read Waiver #2 (originally #6) again for the Board as follows:

30
31 **Waive the standard condition of 6.1.4 F.1. that requires a signed Roadway**
32 **Upgrade and Maintenance Agreement prior to the close of the public hearing**
33 **before the Zoning Board of Appeals.**

34
35 Mr. Thorsland requested that the Board indicate their final vote for Wavier #2 by a show of hands.

36
37 **Four members of the Board agreed with amended finding #1 for Waiver #2 with three**
38 **opposed.**

10/20/11

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

Mr. Thorsland read Waiver #3 (originally #7) as follows:

Waive the standard condition of 6.1.4 F.1.u. that requires street upgrades be in accordance with IDOT Bureau of Local Roads manual, 2005 edition.

Mr. Thorsland stated that on October 6, 2011, the Board adopted preliminary findings for Waiver #3.

Mr. Thorsland requested that the Board indicate their final vote for Wavier #3 by a show of hands.

Five members of the Board agreed with Waiver #3 with two opposed.

Mr. Thorsland read Waiver #4 (originally #8) as follows:

Waive the standard condition 6.1.4 I.1. that requires the noise level of each wind farm tower and wind farm to be in compliance with the Illinois Pollution Control Board regulations at the residential property line rather than to be in compliance just at the dwelling.

Mr. Thorsland stated that the Board has received testimony regarding this issue and he asked the Board if there were any additional comments or questions for staff at this time and there were none.

Mr. Thorsland read required finding #1 for Waiver #4 as follows: The waiver IS/IS NOT in accordance with the general purpose and intent of the Zoning Ordinance and WILL/WILL NOT be injurious to the neighborhood or to the public health, safety, and welfare because: (i) there is some question about whether the noise regulations apply at the property line or the dwelling but the IPCB noise regulations are not regularly enforced by any state agency and so there is no official answer to that question; and (ii) the noise results submitted in the application indicate that only 9 receptors are within approximately 3 dBA or less of the noise limit and the other 251 receptors are below the limit by more than 3 dBA; and (iii) for residential properties less than 5 acres in area the difference between the sound level at the property line versus the sound level at the dwelling is not likely to differ by much given the small distance involved and granting the waiver will not make much difference in the actual sound level; and (iv) the petitioner submitted evidence indicating that for larger properties the IPCB noise regulations apply at the dwelling; and (v) it is more important to agree to a standard at this time that can be enforced by the County in the future if there are complaints rather than to debate whether the standard applies at the property line or the dwelling.

Mr. Thorsland stated that the waiver IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public

10/20/11

1 health, safety, and welfare because: (i) there is some question about whether the noise
2 regulations apply at the property line or the dwelling but the IPCB noise regulations are not
3 regularly enforced by any state agency and so there is no official answer to that question; and
4 (ii) the noise results submitted in the application indicate that only 9 receptors are within
5 approximately 3 dBA or less of the noise limit and the other 251 receptors are below the limit
6 by more than 3 dBA; and (iii) for residential properties less than 5 acres in area the difference
7 between the sound level at the property line versus the sound level at the dwelling is not likely
8 to differ by much given the small distance involved and granting the waiver will not make
9 much difference in the actual sound level; and (iv) the petitioner submitted evidence indicating
10 that for larger properties the IPCB noise regulations apply at the dwelling; and (v) it is more
11 important to agree to a standard at this time that can be enforced by the County in the future
12 if there are complaints rather than to debate whether the standard applies at the property line
13 or the dwelling.

14

15 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

16

17 **Three of the Board members agreed with Mr. Thorsland's statement with four opposed.**

18

19 Mr. Hall pointed out that every finding needs to be affirmative and finding #1 just failed.

20

21 Mr. Thorsland stated that just to make sure that the Board is consistent with their vote he read
22 finding #1 for Waiver #4 as follows:

23

24 **Mr. Thorsland stated that the waiver IS NOT in accordance with the general purpose and**
25 **intent of the Zoning Ordinance and WILL be injurious to the neighborhood or to the public**
26 **health, safety, and welfare because: (i) there is some question about whether the noise**
27 **regulations apply at the property line or the dwelling but the IPCB noise regulations are not**
28 **regularly enforced by any state agency and so there is no official answer to that question; and**
29 **(ii) the noise results submitted in the application indicate that only 9 receptors are within**
30 **approximately 3 dBA or less of the noise limit and the other 251 receptors are below the limit**
31 **by more than 3 dBA; and (iii) for residential properties less than 5 acres in area the difference**
32 **between the sound level at the property line versus the sound level at the dwelling is not likely**
33 **to differ by much given the small distance involved and granting the waiver will not make**
34 **much difference in the actual sound level; and (iv) the petitioner submitted evidence indicating**
35 **that for larger properties the IPCB noise regulations apply at the dwelling; and (v) it is more**
36 **important to agree to a standard at this time that can be enforced by the County in the future**
37 **if there are complaints rather than to debate whether the standard applies at the property line**
38 **or the dwelling.**

10/20/11

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

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four Board members agreed with the second reading of finding #1 for Waiver #4 with three opposed.

Mr. Thorsland stated that the vote is consistent and required finding #1 for Waiver #4 failed.

Mr. Thorsland read required finding #2 for Waiver #4 as follows: Special conditions and circumstances DO/DO NOT exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because this is the first wind farm reviewed under the provisions of 6.1.4 and no other wind farm will have that burden.

Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because this is the first wind farm reviewed under the provisions of 6.1.4 and no other wind farm will have that burden.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Ms. Capel's statement with three opposed.

Mr. Thorsland read required finding #3 for Waiver #4 as follows: Practical difficulties or hardships created by varying out the strict letter of the regulations south to be varied WILL/WILL NOT prevent reasonable or otherwise permitted use of the land or structure or construction because the applicant has gone to great trouble and expense to plan the wind farm so as to comply with the Illinois Pollution Control Board (IPCB) regulations as they understand the regulations should be applied.

Mr. Miller stated that practical difficulties or hardships created by varying out the strict letter of the regulations south to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or construction because the applicant has gone to great trouble and expense to plan the wind farm so as to comply with the Illinois Pollution Control Board (IPCB) regulations as they understand the regulations should be applied.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Mr. Miller's statement with three opposed.

10/20/11

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

Mr. Thorsland read required finding #4 for Waiver #4 as follows: The special conditions, circumstances, hardships, or practical difficulties DO/DO NOT result from actions of the applicant because they result from a new Ordinance requirement that has not been thoroughly tested.

Mr. Thorsland stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT result from actions of the applicant because they result from a new Ordinance requirement that has not been thoroughly tested.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Mr. Thorsland’s statement with three opposed.

Mr. Thorsland read finding #5 for Waiver #4 as follows: The requested waiver IS/IS NOT the minimum variation that will make possible the reasonable use of the land/structure because it is the minimum waiver necessary to resolve the question regarding whether the IPCB noise regulation applies at the property line or the dwelling for small residential properties.

Mr. Thorsland stated that the requested waiver IS the minimum variation that will make possible the reasonable use of the land/structure because it is the minimum waiver necessary to resolve the question regarding whether the IPCB noise regulation applies at the property line or the dwelling for small residential properties.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Mr. Thorsland’s statement with three opposed.

Mr. Thorsland stated that the Board needs to vote on the overall waiver.

Mr. Hall stated that the rules in the Bylaw’s only relate to final determinations and this is not a final determination.

Mr. Thorsland stated that due to finding #1 was not an affirmative finding the overall waiver failed.

Mr. Hall stated that the rules in the By-laws only relate to final determinations and this is not a final determination. He said that there is only one final determination for this case and that is the entire kit and caboodle and all waivers and all special conditions matters and it is a good rule to follow the By-

10/20/11

1 laws but they are very clear that the guidance is only for final determinations.

2
3 Mr. Thorsland stated that he would be comfortable in reading the waiver again for clarity. He read
4 Waiver #4 as follows:

5
6 **Waive the standard condition 6.1.4 I.1. that requires the noise level of each wind farm**
7 **tower and wind farm to be in compliance with the Illinois Pollution Control Board**
8 **regulations at the residential property line rather than to be in compliance just at the**
9 **dwelling.**

10
11 Mr. Thorsland requested that the Board indicate their final vote for Waiver #4 by a show of hands.

12
13 **Three Board members voted in favor of the waiver with four members opposed.**

14
15 Mr. Thorsland read Waiver #5(originally #9) as follows: Waive the standard condition of 6.1.4 J.
16 that required the application to contain a copy of the Agency Action Report from the Illinois
17 Department of Natural Resources Endangered Species Program.

18
19 Mr. Thorsland stated that on September 29, 2011, the Board adopted preliminary findings for Waiver
20 #5.

21
22 Mr. Thorsland requested that the Board indicate their final vote for Waiver #5 by a show of hands.

23
24 **Seven Board members voted in favor of the waiver with none opposed.**

25
26 Mr. Thorsland read Waiver #6 (originally #11) as follows:

27 **Waive the standard condition of 6.1.4 s. 1. (c)(3) that requires that locations of wind**
28 **turbines for the zoning use permit application cannot increase the noise impact over**
29 **that approved in the special use permit.**

30
31 Mr. Thorsland stated that a special condition has been proposed that would limit the flexibility in
32 adjustment of the final location of wind farm towers.

33
34 Mr. Passalacqua asked if this does or does not give them permission to get closer to the original
35 design.

36
37 Mr. Thorsland stated that the Board placed a limit on the flexibility that they never get closer than
38 what the Ordinance requires.

10/20/11

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

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

Ms. Capel stated that the waiver, subject to the proposed special condition, IS in accordance with the general purpose and intent of the Zoning Ordinance and WILL NOT be injurious to the neighborhood or to the public health, safety and welfare because there is only one allowable noise level and that is the noise level established in the Illinois Pollution Control Board (IPCB) regulations as established by 6.1.4 I. 6. (a) and the requirement of 6.1.4 S. 1. (c)(3) is in direct conflict with 6.1.4 I. 6. (a).

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Six Board members agreed with Ms. Capel’s statement with one opposed.

Mr. Thorsland read required finding #2 for Waiver #6 as follows: Special conditions and circumstances DO/DO NOT exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because this is the first wind farm reviewed under the provisions of 6.1.4 and no other wind farm will have that burden.

Ms. Capel stated that Special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the same district because this is the first wind farm reviewed under the provisions of 6.1.4 and no other wind farm will have that burden.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four Board members agreed with Ms. Capel’s statement with three opposed.

Mr. Thorsland read required finding #3 for Waiver #6 as follows: Practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL/WILL NOT prevent reasonable or otherwise permitted use of the land or structure or construction because the applicant has gone to great trouble and expense to plan the wind farm so as to comply with the

10/20/11

1 Illinois Pollution Control Board (IPCB) regulations as established by 6.1.4 I. 6.(a) and not the lower
2 noise levels that are incorrectly indicated by the reference to 6.1.4 S. 1. (c) (3).

3
4 **Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter**
5 **of the regulations sought to be varied WILL prevent reasonable or otherwise permitted use of**
6 **the land or structure or construction because the applicant has gone to great trouble and**
7 **expense to plan the wind farm so as to comply with the Illinois Pollution Control Board (IPCB)**
8 **regulations as established by 6.1.4 I. 6.(a) and not the lower noise levels that are incorrectly**
9 **indicated by the reference to 6.1.4 S. 1. (c) (3).**

10
11 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

12
13 **Four Board members agreed with Ms. Capel's statement with three opposed.**

14
15 Mr. Thorsland read required finding #4 for Waiver #6 as follows: The special conditions,
16 circumstances, hardships, or practical difficulties DO/DO NOT result from actions of the applicant
17 because they result from a new Ordinance requirement that has not been thoroughly tested.

18
19 **Ms. Capel stated that the special conditions, circumstances, hardships, or practical difficulties**
20 **DO NOT result from actions of the applicant because they result from a new Ordinance**
21 **requirement that has not been thoroughly tested.**

22
23 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

24
25 **Five Board members agreed with Ms. Capel's statement with two opposed.**

26
27 Mr. Thorsland read required finding #5 for Waiver #6 as follows: The requested waiver, subject to
28 the proposed special condition, IS/IS NOT the minimum variation that will make possible the
29 reasonable use of the land/structure because it is the minimum waiver necessary to resolve the
30 contradiction between 6.1.4 I.6. (a) and 6.1.4 S. 1. (c) (3).

31
32 **Ms. Capel stated that the requested waiver, subject to the proposed special condition, IS the**
33 **minimum variation that will make possible the reasonable use of the land/structure because it**
34 **is the minimum waiver necessary to resolve the contradiction between 6.1.4 I.6. (a) and 6.1.4 S.**
35 **1. (c) (3).**

36
37 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

10/20/11

1 **Four Board members agreed with Ms. Capel's statement with three opposed.**

2
3 Mr. Thorsland read Waiver #6 (originally #11) again for the Board as follows: **The waiver, subject**
4 **to the proposed special condition, IS/IS NOT in accordance with the general purpose and**
5 **intent of the Zoning Ordinance and WILL/WILL NOT be injurious to the neighborhood or to**
6 **the public health, safety and welfare because there is only one allowable noise level and that is**
7 **the noise level established in the Illinois Pollution Control Board (IPCB) regulations as**
8 **established by 6.1.4 I.6. (a) and the requirement of 6.1.4 S. 1. (c)(3) is in direct conflict with**
9 **6.1.4 I. 6. (a).**

10
11 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

12
13 **Four Board members voted in favor of the waiver with three members opposed.**

14
15 Mr. Thorsland stated that the Board will recess for a ten minute break.

16
17 **The Board recessed at 7:28 p.m.**

18 **The Board resumed at 7:38 p.m.**

19
20 **Review of Special Conditions for Case 696-S-11:**

21
22 Mr. Thorsland stated that Attachment G, Revised Special Conditions of Approval, of the
23 Supplemental Memorandum dated October 20, 2011, indicates the previously reviewed special
24 conditions. He said that for clarity he will read the special conditions for the Board.

25
26 **A. This special use permit authorizes a wind farm as follows:**

- 27 **1. The type of wind turbine authorized is the General Electric 1.6-100 wind**
28 **turbine with a hub height of 100 meters (328 feet) and a rotor diameter of 100**
29 **meters (328 feet).**
30 **2. The maximum overall height of each wind farm tower shall be 492 feet.**
31 **3. The maximum number of wind turbine towers (wind turbines) is 30 with a total**
32 **nameplate capacity of not more than 48 megawatts (MW) of which not more**
33 **than 29 wind farm towers with a total nameplate capacity of not more than 44.8**
34 **MW are proposed in Compromise Township (Part A) and not more than 2 wind**
35 **farm towers with a total nameplate capacity of not more than 3.2 MW are**
36 **proposed in Ogden Township (Part B), and including access roads, wiring and**
37 **related work on specified public roads (highways).**

1 The special condition is required to ensure that the constructed wind farm is
2 consistent with the special use permit approval.

3
4 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition A.

5
6 **B. The approved site plan consists of the following documents:**

- 7 **1. California Ridge Wind Energy Project Champaign County Special Use Permit**
8 **Application received July 1, 2011.**
9 **2. Status Summary Map with Setbacks California Ridge Wind Energy Center,**
10 **Champaign and Vermilion Counties, received July 21, 2011 (an excerpt of only**
11 **the Champaign County portion).**
12 **3. Champaign County Non-Participating Dwelling Separation Summary map**
13 **received July 29, 2011 Parcel.**
14 **4. Map of Conservation Recreation Zoning District and Incorporated Municipality**
15 **Setback Compliance received September 29, 2011.**

16
17 The special condition is required to ensure that the constructed wind farm is
18 consistent with the special use permit approval.

19
20 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition B.

21
22 **C. The County Board shall not make a final decision in Case 696-S-11 until it has**
23 **authorized the County Board Chair to sign the Roadway Upgrade and**
24 **Maintenance Agreement recommended by the County Engineer and received**
25 **copies of all necessary signed township road agreements.**

26
27 The special condition is required to ensure that all relevant highway jurisdictions are
28 allowed to fulfill their responsibilities without unduly delaying a final decision in
29 Case 696-S-11.

30
31 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition C.

32
33 **D. The Roadway Upgrade and Maintenance Agreements shall require road repair**
34 **work to be performed in accordance with the IDOT Bureau of Local Roads**
35 **Manual, 2006 edition, and the IDOT *Standard Specifications for Road and***
36 ***Bridge Construction*, but the relevant street jurisdiction may, on a case by case**
37 **basis, exercise their discretion to waive the BLR standards so long as public**
38 **safety is not compromised.**

1 The special condition is required to ensure that road use agreements ensure
2
3 adequate public safety but also provide necessary flexibility in road repair work.
4

5 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition D.
6

7 **E. Construction activities to build the wind farm shall generally only occur during**
8 **the weekday daytime hours of 7AM to 10PM but never on Sunday, provided,**
9 **however, that construction activities may occasionally commence earlier in the**
10 **day if required but not earlier than 4AM. Those construction activities include**
11 **but are not limited to the following:**

- 12 1. Construction of access roads
- 13 2. Delivery and unloading of wind farm equipment and materials
- 14 3. Excavation for and construction of wind farm tower foundations
- 15 4. Installation of wind farm wiring
- 16 5. Assembly of wind farm turbines
- 17 6. Erection of wind farm towers

18
19 The special condition is required to ensure that the affects of wind farm construction
20 on neighbors is consistent with the special use permit approval.
21

22 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition E.
23

24 **F. No Non-participating dwelling or other principal structure shall receive more**
25 **than 45 hours of shadow flicker per year.**
26

27 The special condition is required to ensure that the actual shadow flicker cast on non-
28 participating neighbors is similar to the anticipated shadow flicker that was presented
29 in the public hearing.
30

31 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition F.
32
33

34 **G. This special use permit shall expire on the following dates and /or for the**
35 **following reasons:**

- 36 1. If no zoning use permit application has been received by the Department
37 of Planning and Zoning by 4:30PM on March 1, 2013, which is
38 consistent with the expiration deadline in the Roadway Upgrade and

10/20/11

- 1 **farm tower location has been identified and marked on the ground so**
- 2 **that the Zoning Administrator or a representative can verify that the**
- 3 **location is consistent with the approved site plan in the special use**
- 4 **permit case.**
- 5 **(b) The Zoning Administrator shall issue a wind farm tower Foundation**
- 6 **Permit after verifying that the wind farm tower location is consistent**
- 7 **with the approved site plan.**
- 8 **(c) The applicant shall not excavate any wind farm tower footing until the**
- 9 **wind farm tower Foundation Permit has been approved.**

10

11 The special conditions are required to ensure that the wind farm towers are

12 located in general conformance with the assertions and studies documented in the

13 *California Ridge Wind Energy Project Champaign County Special Use Permit*

14 *Application* received July 1, 2011, and that the Applicant has some flexibility for

15 optimizing location based on circumstances at each wind farm tower site.

16

17 Mr. Thorsland stated that the Board and the Petitioner agreed to Special Condition H.2.

- 18
- 19 **I. A Reclamation Agreement is required at the time of application for a zoning use**
 - 20 **permit that complies with the following:**
 - 21 **1. The Revised Draft Reclamation Agreement received on 10/10/11 with all**
 - 22 **required signatures including a guaranteed minimum amount of \$25,000 that**
 - 23 **shall be updated annually to reflect the known rate of inflation.**

24

25 Ms. Capel stated that I.1. should be revised to indicate \$25,000 per turbine.

26

27 Mr. Thorsland read revised I.1. as follows:

- 28
- 29 **1. The Revised Draft Reclamation Agreement received on 10/10/11 with all**
 - 30 **required signatures including a guaranteed minimum amount of \$25,000 per**
 - 31 **turbine that shall be updated annually to reflect the known rate of inflation.**
 - 32 **2. The expenses and values, including salvage value, as listed in the Base**
 - 33 **Decommissioning Cost Estimate received 10/06/11 and that is Attachment A to**
 - 34 **the Draft Reclamation Agreement received on 10/20/11.**
 - 35 **3. An irrevocable letter of credit. If required by the County Board the letter of**
 - 36 **credit shall be provided as multiple letters of credit based on the regulations**
 - 37 **governing federal insurance for deposit as authorized in 6.1.4 P.4. (a) of the**
 - 38 **Ordinance.**

10/20/11

- 1 **4. An escrow account that is at a mutually acceptable financial institution that is**
- 2 **either identified in the County Board determination of this special use permit or**
- 3 **included as a special condition of that determination, as authorized in 6.1.4 P.**
- 4 **4.(b)(1) of the Ordinance.**

5

6 The special conditions are required to ensure that the special use permit complies

7 with Ordinance requirements and as authorized by waiver.

8

9 Mr. Blazer stated that regarding the reference in Item #3 to FDIC insurance, letters of credit are not

10 subject to FDIC insurance although the Ordinance assumes that they were and they are not. He said

11 that to Invenergy this reference is harmless because it doesn't go anywhere but he would like the

12 record to be clear that there is no FDIC regulation which applies to letters of credit. He said that he

13 did not know if the Board wanted to strike this reference in Item #3 or leave there. He said that the

14 reference is the language of the Ordinance therefore Invenergy can raise this issue with the County

15 Board.

16

17 Mr. Thorsland stated that the language will remain in Item #3.

18

19 Mr. Thorsland asked the Board and the Petitioner if they agreed with Special Condition #I. and they

20 indicated that they did agree with Special Condition #I.

21

22 **J. The following submittals are required prior to the approval of any**

23 **zoning use permit for a wind farm tower:**

- 24 **1. Certification by an Illinois Professional Engineer or Illinois Licensed**
- 25 **Structural Engineer that the foundation and tower design of each wind**
- 26 **farm tower is within accepted professional standards, given local soil and**
- 27 **climate conditions, as required by 6.1.4 d. 1.(b).**
- 28 **2. A Transportation Impact Analysis provided by the applicant that is**
- 29 **acceptable to the County Engineer and the State's Attorney; and for**
- 30 **highways in Compromise Township is acceptable to the Compromise**
- 31 **Township Highway Commissioner; and for highways in Ogden**
- 32 **Township is acceptable to the Ogden Township Highway Commissioner,**
- 33 **as required by 6.1.4 F. 2.**
- 34 **3. A signed Reclamation Agreement in conformance with all special**
- 35 **conditions and waivers included in the special use permit approval.**
- 36 **4. A copy of the Recorded Covenant pursuant to 6.1.1 A.2.**
- 37 **5. The telephone number for the complaint hotline required by 6.1.4 Q.**
- 38 **6. A site plan for the installation of the specific wind farm tower indicating**

10/20/11

1 the specific proposed location of the wind farm tower, other principal
2 structures within 1,500 feet separation, property lines (including
3 identification of adjoining properties), required separations, public
4 access roads and turnout locations, substations(s), electrical cabling from
5 the wind farm tower to the substations(s), and layout of all structures
6 within the geographical boundaries of any applicable setback.

- 7 7. A copy of the approved access permit for the access road by the relevant
- 8 highway jurisdiction.
- 9 8. A copy of any required permits for use of public highways by overweight
- 10 vehicles.
- 11 9. A permanent soil erosion and sedimentation plan for all wind farm
- 12 tower sites and access roads that conforms to the relevant Natural
- 13 Resources Conservation Service guidelines and that is prepared by an
- 14 Illinois Licensed Professional Engineer.

15
16 The special condition is required to ensure that the wind farm is constructed
17 consistent with the special use permit approval and in compliance with the
18 Ordinance requirements.

19
20 Mr. Hall stated that he has a concern with Item #4 regarding the recorded covenant. He said that the
21 Reclamation Agreement, thus far, does not require the covenant and he has questioned this matter a
22 couple of times. He stated that perhaps Item #4 could be modified to indicate the following: A copy
23 of the Recorded Covenant pursuant to 6.1.1 A. 2, if required by the Reclamation Agreement.

24
25 Mr. Blazer stated that the Reclamation Agreement provides for the recording of a Memorandum of
26 Agreement.

27
28 Mr. Hall stated that a Memorandum of Agreement is between the petitioner and the County and Item
29 #4 is talking about a covenant on each property and there is no plan to do that because it is not seen
30 to be necessary.

31
32 Mr. Blazer stated that the Draft Reclamation Agreement provides for recording of a Memorandum of
33 Agreement on each parcel. He said that Invenergy was not sure if this was a requirement of the
34 Ordinance but it was Invenergy's way to further address any concerns about salvage value and
35 reclamation value and assure the County that there is a notice to the world that there is a break on the
36 title relating to a reclamation agreement.

37
38 Mr. Hall stated that it would be in the County's interest to have a copy of the Memorandum of

10/20/11

1 Agreement in the case file. He said that with clarification from Mr. Blazer he would suggest that the
2 Board leave Item #4 as written.

3
4 Mr. Thorsland asked the Board and the Petitioner if they agreed with Special Condition #J. and they
5 indicated that they did agree with Special Condition #J.
6

7 **K. A Zoning Compliance Certificate shall be required for each wind farm
8 tower prior to the wind farm going into commercial production of
9 energy. Approval of a Zoning Compliance Certificate shall require the
10 following:**

- 11 **1. An as-built site plan of each specific wind farm tower indicating the
12 specific as-built location of the wind farm tower, other principal
13 structures within 1,500 feet separation, property lines (including
14 identification of adjoining properties), as-built separations, public access
15 roads and turnout locations, substation(s), electrical cabling from the
16 wind farm tower to the substations(s), and layout of all structures within
17 the geographical boundaries of any applicable setback.**
- 18 **2. As-built documentation of all permanent soil erosion and sedimentation
19 improvements for all wind farm tower sites and access roads prepared
20 by an Illinois Licensed Professional Engineer.**
- 21 **3. A copy of the approved as-built access road by the relevant highway
22 jurisdiction.**

23
24 The above special condition is required to ensure that the wind farm is
25 constructed consistent with the special use permit approval and in compliance
26 with the Ordinance requirements.
27

28 Mr. Thorsland stated that the Board and the Petitioner agreed with Special Condition #K.
29

30 **L. The California Ridge Wind Farm shall not begin commercial production
31 of energy until the Zoning Administrator has approved a Zoning
32 Compliance Certificate for the entire California Ridge Wind Farm based
33 on submission and acceptance of all of the following:**

- 34 **1. A Zoning Compliance Certificate has been approved for all wind farm
35 towers approved in the Special Use Permit.**
- 36 **2. A copy of a certificate of design compliance for the General Electric 1.6-
37 100 wind turbine has been received from Underwriters Laboratories
38 (“UL”) for an equivalent third party such as TUV NORD Group, as**

10/20/11

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

- authorized in 6.1.4 D. 1 (a).
- 3. Documentation of compliance with all required post-wind farm construction requirements has been received from the relevant highway jurisdictions.
- 4. The Zoning Administrator has verified that informational signs have been erected at each wind farm accessway as follows:
 - a. The purpose of the signs shall be to publicize the telephone number of the wind farm complaint hotline required by 6.1.4 Q.
 - b. The minimum size of each sign shall be 2 feet by 2 feet.

The special condition is required to ensure that the wind farm is constructed consistent with the special use permit approval and in compliance with the Ordinance requirements.

Mr. Thorsland stated that the Board and the Petitioner agreed with Special Condition #L.

- M. The applicant or owner or operator of the wind farm shall comply with the following:
 - 1. Cooperate with local fire protection districts to develop the districts emergency response plan as required by 6.1.4 G.2.
 - 2. Take all reasonable steps to resolve complaints of interference caused by the wind farm to microwave transmission providers, local emergency service providers (911 operators), and broadcast residential television as required by 6.1.4 H.
 - 3. Cooperate fully with Champaign County and in resolving any noise complaints including reimbursing Champaign County any costs for the services of a qualified noise consultant pursuant to any proven violation of the IPCB noise regulations as required by 6.1.4 I.6.
 - 4. Complete all post-wind farm construction mortality studies on birds and bats are required by 6.1.4 L.3. and as proposed in the *California Ridge Wind Energy Project Champaign County Special Use Permit Application received July 1, 2011*, particularly pages 5-22 through 5-24, and submit written reports to the Environment and Land Use Committee at the end of the first two years of wind farm operation and cooperate with the Environment and Land Use Committee in resolving mortality concerns that might arise as required by 6.1.4L.3(e).
 - 5. Maintain a current general liability policy as required by 6.1.4 N.
 - 6. Submit annual operation and maintenance reports to the Environment

10/20/11

1 **and Land Use Committee as required by 6.1.4 O.1.**

2 **7. Maintain compliance with the approved Reclamation Agreement**
3 **including replacement irrevocable commercial letters of credit as**
4 **required in the Reclamation Agreement.**

5 **8. Submit to the Zoning Administrator copies of all complaints to the**
6 **telephone hotline on a monthly basis and take all necessary actions to**
7 **resolve all legitimate complaints as required by 6.1.4 Q.**

8
9 The special condition is required to ensure that the future requirements for the
10 applicant or owner or operator of the wind farm are clearly identified.

11
12 Mr. Thorsland stated that the Board and the Petitioner agreed with Special Condition #M.

13
14 **Ms. Capel moved, seconded by Mr. Courson to approve the special conditions as amended.**
15 **The motion carried by voice vote.**

16
17 **Review of Summary of Evidence:**

18
19 Mr. Hall stated that new Item #8.L(3) was added to Page 10 of the Revised Draft Summary of
20 Evidence dated October 20, 2011, regarding best prime farmland. He said that Item #8.L(3) points
21 out the concerns in the *Natural Resources Report for the California Ridge Wind Farm Champaign*
22 *County, Illinois*, from the Soil and Water Conservation District and it refers to the special condition.

23 He said that the new item does not add to the special condition but points the condition out where
24 the summary is discussing best prime farmland.

25
26 Mr. Hall stated that Item #8.M(2) was added to Page 12 of the Revised Draft Summary of Evidence
27 dated October 20, 2011, regarding the study from Clarkson University. He said that the added
28 information has been added to the Summary of Evidence unless the Board decides to strike it.

29
30 Mr. Thorsland asked the Board if there were any questions for Mr. Hall regarding the Summary of
31 Evidence.

32
33 Mr. Hall noted that the single underlining is all of the information which the Board reviewed in
34 previous memorandums but was not in the version of the Preliminary Draft Summary of Evidence
35 that the Board received in September.

36
37 Mr. Thorsland asked the Board if they desired to include study from Clarkson University. He said
38 that he would propose to leave the new item #8.M(2) in the Summary of Evidence.

10/20/11

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

The Board agreed to leave the new Item #8.M(2) in the Summary of Evidence.

Ms. Capel stated that the following sentence in Item #9.B.(6)(a) on Page 15 of the Revised Draft Summary of Evidence dated October 20, 2011, should be revised to indicate the following: Invenergy representative Greg Leuchtmann testified at the September 29, 2011, public hearing that the design certification would be from TUV NORD.

Mr. Thorsland requested that the Board review the Documents of Record.

Mr. Thorsland stated that Item #48.J. of the Documents of Record should be revised to indicate the following: Partial Draft minutes of public hearing on October 13, 2011 (included separately).

Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony regarding Case 696-S-11.

Mr. Thorsland closed the witness register for Case 696-S-11.

Findings of Fact for Case 696-S-11:

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 696-S-11 held on August 25, 2011; September 1, 2011; September 8, 2011; September 29, 2011; October 6, 2011; and October 13, 2011; and October 20, 2011, the Zoning Board of Appeals of Champaign County finds that:

- 1. The requested Special Use Permit, subject to the special conditions imposed herein, IS necessary for the public convenience at this location.**

Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed herein, IS necessary for the public convenience at this location because it is advantageous to have a wind energy project in Champaign County where the wind resource has been found to be appropriate for the use.

Mr. Thorsland added that the wind resource and electrical grid is favorable for a wind farm.

Mr. Thorsland read the combined statements for Finding #1 as follows: the requested Special Use Permit, subject to the special conditions imposed herein, IS necessary for the public convenience at this location because it is advantageous to have a wind farm located at this location because the wind

10/20/11

1 resources and the electrical grid are favorable for a wind farm.

2

3 Ms. Capel agreed with Mr. Thorsland's reading.

4

5 Ms. Berry indicated that the version of the finding which Mr. Thorsland read is a combined effort
6 between him and Ms. Capel and is different than what was originally indicated by Ms. Capel.

7

8 Mr. Thorsland requested that Ms. Berry read the finding.

9

10 Ms. Berry stated that following for the Board regarding Finding #1:

11 **The requested Special Use Permit, subject to the special conditions imposed, IS**
12 **necessary for the public convenience at this location because it is advantageous to have**
13 **the wind energy project at this specific location where the wind resource has been**
14 **found appropriate for the use. The wind resource and the existing electrical grid are**
15 **favorable for this wind farm project.**

16

17 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

18

19 **Four members of the Board agreed with the Finding #1 with three opposed.**

20

21 Mr. Hall recommended that the Board add any additional concerns that require addressing. He
22 recommended adding a new sub-finding g. indicating the following: noise impacts will be
23 {NON-INJURIOUS/INJURIOUS}to the district because:

24

25 Mr. Hall stated that the Board has a specific reason why the special use permit has to be denied and
26 the Board should make that clear so that if it is corrected at the County Board there will be no
27 questions.

28

29 Mr. Hall recommended that the Board a new sub-finding h. indicating the following: The
30 Reclamation provides {ADEQUATE/INADEQUATE} assurance for decommissioning the wind
31 farm because:

32

33 Mr. Hall stated that if the Board is happy with the Reclamation Agreement the Board could stop sub-
34 finding h. at because but what is key is that if the Board has a problem with the Reclamation
35 Agreement the Board needs to make it clear in the finding so that the petitioner and the County
36 Board are made aware of what the Board's specific concerns were. He said that if the Board has no
37 concerns then the Board should just indicate that the Board is happy with the Reclamation
38 Agreement. He said that he is not aware of any other issue like this where they may be this much

1 disagreement on.
2

3 **2. The requested Special Use Permit, subject to the special conditions imposed**
4 **herein, is so designed, located, and proposed to be operated so that it**
5 **WILL be injurious to the district in which it shall be located or**
6 **otherwise detrimental to the public health, safety, and welfare.**
7

8 **a. The street has ADEQUATE traffic capacity and the entrance location**
9 **has ADEQUATE visibility.**
10

11 Mr. Miller stated that the street has ADEQUATE traffic capacity and the entrance location has
12 ADEQUATE visibility.
13

14 **b. Emergency services availability is ADEQUATE.**
15

16 Ms. Capel stated that emergency services availability is ADEQUATE.
17

18 **c. The Special Use will be designed to CONFORM to all relevant County**
19 **Ordinances.**
20

21 Mr. Miller stated that the Special Use will be designed to CONFORM to all relevant County
22 Ordinances.
23

24 **d. The Special Use WILL be compatible with adjacent uses.**
25

26 Mr. Thorsland stated that the Special Use WILL be compatible with adjacent uses.
27

28 **e. Surface and Subsurface drainage will be ADEQUATE.**
29

30 Mr. Miller stated that surface and subsurface drainage will be ADEQUATE.
31

32 **f. Public safety will be ADEQUATE.**
33

34 Ms. Capel stated that public safety will be adequate.
35

36 **g. Noise impacts will be injurious to the district.**
37

38 Ms. Capel stated that noise impacts will be INJURIOUS to the district because of the difference of

10/20/11

1 the interpretation of the IPCB standards at the property line or the dwelling.

2
3 Mr. Thorsland stated that the Board could state that it will be INJURIOUS to the district due to the
4 conflict of the application of the IPCB standards.

5
6 Ms. Capel stated injurious because it will cause possible noise levels that are above the IPCB
7 standards in areas that are considered Class A property.

8
9 Ms. Berry requested that Ms. Capel repeat her finding.

10
11 Ms. Capel stated that noise impacts will be injurious to the district because the way some of the
12 turbines are sited could cause noise level standards above the IPCB standards on Class A property.

13
14 Mr. Hall noted that Ms. Capel's previous finding is different than every other version that has been
15 read yet because the last version indicates a problem with the turbines and the only way to fix a
16 problem with the turbines is to change the turbine locations.

17
18 Ms. Capel stated that the noise level on Class A property is what she is concerned about.

19
20 Mr. Thorsland stated that where the measurement is taken is Ms. Capel's concern.

21
22 Mr. Hall stated that the last reading did not say anything about the confusion as to where it is
23 measured which appears to be Ms. Capel's root concern.

24
25 Ms. Capel stated that noise impacts will be INJURIOUS to the district because of the difference of
26 the interpretation of the IPCB standards regarding measurement at the property line or the dwelling.

27
28 Mr. Hall asked Ms. Capel if she feels that this is a concern because in some instances it appears that
29 there could be some violation.

30
31 Ms. Capel stated yes.

32
33 **h. The Reclamation Agreement provides ADEQUATE assurance**
34 **for decommissioning of the wind farm.**

35
36 Mr. Thorsland stated that the Reclamation Agreement provides ADEQUATE assurance for
37 decommissioning of the wind farm.

10/20/11

1 Ms. Capel stated that the Reclamation Agreement provides INADEQUATE assurance for the
2 decommissioning of the wind farm because salvage value in twenty years may or may not be
3 adequate for a financial assurance for the cost of decommissioning in addition to the \$25,000 per
4 turbine.

5
6 Mr. Hall asked Ms. Capel if she does not believe that reviewing it every three years for the first
7 twelve years and every two years after that is not often enough.

8
9 Ms. Capel agreed and retracted her previous statement of INADEQUATE.

10
11 Mr. Passalacqua stated that he is concerned about the creditors which are listed in front of the
12 County.

13
14 Mr. Thorsland stated that Mr. Passalacqua's concern was addressed in the review of the Reclamation
15 Agreement.

16
17 Mr. Passalacqua stated that there was still some question because it appeared that there were still
18 some other people in line. He said that the State's Attorney also addressed this concern. Mr.
19 Passalacqua stated that he would indicate that the Reclamation Agreement provides INADEQUATE
20 assurance for the decommissioning of the wind farm because it does not address the other creditors
21 which are in front of the County.

22
23 Mr. Thorsland asked Mr. Hall if there were any rules for the sub-findings.

24
25 Mr. Hall stated that there are no rules for the sub-findings except that they need to work for the
26 Board.

27
28 Mr. Passalacqua stated that the sub-findings are just a matter of record for the County Board.

29
30 Mr. Miller stated that if the lien holder or any other creditor takes it they are still subject to the
31 Ordinance.

32
33 Mr. Hall stated that the Special Use Permit is between California Wind Energy LLC and Champaign
34 County. He said that the financial lien holders are not obligated under the Special Use Permit. He
35 said that it is suppose to conform to the Ordinance but they are not a party to the Special Use Permit.
36 He said that he is not an attorney but there are two in the meeting room.

37
38 Mr. Courson stated that if there was a bankruptcy and the creditors could come in and take the

10/20/11

1 towers and the turbines and anything else of value. He said that the roads will be left behind.

2
3 Mr. Hall stated that if the creditors came in and took everything above ground the County would be
4 in pretty good shape because that is where the greatest costs are located.

5
6 Mr. Thorsland stated that he agrees with Mr. Hall and does not care if the lien holder comes in and
7 takes everything away or if the County does it or if it is taken care of with what is left. He said that if
8 the lien holders come in because the value of scrap is high and takes all of the valuable scrap leaving
9 the County with only the concrete and the road the new agreement guarantees that there is money in
10 the bank to take care of those things.

11
12 Mr. Courson stated that he wants to make sure that the County Board sees all of these items therefore
13 they will not ask the same questions that the ZBA has already covered.

14
15 Mr. Thorsland stated that he cannot predict which questions the County Board will ask but he
16 assumes that this will be brought up at the County Board meeting anyway. He said that if the Board
17 desires to indicate INADEQUATE because there is some concern that the lien holder will take some
18 of the scrap and leave the County with the remainder which is of less value.

19
20 Mr. Miller stated that it is a matter of collateral position which is the real concern.

21
22 Mr. Thorsland stated that sub-finding h. could indicate the following: The Reclamation Agreement
23 provides INADEQUATE assurance for the decommissioning of the wind farm because of the
24 possibility of lien holder's collateral position.

25
26 Ms. Capel stated that sub-finding h. could indicate the following: The Reclamation Agreement
27 provides INADEQUATE assurance for the decommissioning of the wind farm because of the
28 possibility of lien holder's collateral position could result in the County having to pay out of pocket
29 to complete the decommissioning.

30
31 Mr. Thorsland stated that sub-finding h. could also indicate the following: The Reclamation
32 Agreement provides INADEQUATE assurance for the decommissioning of the wind farm because
33 of the possibility of lien holder's collateral position may leave limited financial resources to remove
34 the remainder.

35
36 Ms. Capel asked Mr. Hall if this addressed his concerns.

37
38 Mr. Hall clarified that it is the Board's concerns that need to be addressed and clear as possible so

10/20/11

1 that people know how to fix it. He said that the Board has been working for almost two months to
2 fix the problem of collateral position and the only fix is to not rely on salvage value. He said that if
3 Ms. Capel's version works for the Board then that is what staff will indicate as the finding for sub-
4 finding h. He read Ms. Capel's version as follows: The Reclamation Agreement provides
5 INADEQUATE assurance for the decommissioning of the wind farm because of the possibility of
6 lien holder's collateral position could result in the County having to pay out of pocket to complete
7 the decommissioning.

8
9 Mr. Thorsland asked the Board if Ms. Capel's version satisfies the Board's concerns and the Board
10 indicated yes.

11
12 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed
13 herein, is so designed, located, and proposed to be operated so that it WILL be injurious to the
14 district in which it shall be located or otherwise detrimental to the public health, safety, and welfare.

15
16 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

17
18 **Four members of the Board agreed with the Finding #2 with three opposed.**

19
20 **3a. The requested Special Use Permit, subject to the special conditions imposed**
21 **herein DOES conform to the applicable regulations and standards of the**
22 **DISTRICT in which it is located.**

23
24 Mr. Thorsland stated that the requested Special Use Permit, subject to the special conditions imposed
25 herein DOES conform to the applicable regulations and standards of the DISTRICT in which it is
26 located.

27
28 Mr. Passalacqua stated that if it CONFORMS then there would be no need for the waivers.

29
30 Mr. Hall stated that granting a waiver is a way of assuring compliance. He said that if the Board
31 agrees with the waivers then there should not be a problem but if a Board member disagrees with the
32 waivers then they should indicate opposition.

33
34 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

35
36 **Three members of the Board agreed with the Finding #3a. with three opposed.**

37
38 Mr. Thorsland requested that Mr. Schroeder indicate his vote.

1
2 **Four members of the Board agreed with Finding #3a. with three opposed.**

3
4 **3b. The requested Special Use Permit, subject to the special conditions, imposed**
5 **herein DOES preserve the essential character of the DISTRICT in which it is**
6 **located.**

7
8 **3b(a): The Special Use will be designed to CONFORM to all relevant County**
9 **Ordinances and codes.**

10
11 Mr. Thorsland stated that the Special Use will be designed to CONFORM to all relevant County
12 ordinances and codes.

13
14 **3b(b): The Special Use WILL be compatible with adjacent uses.**

15
16 Mr. Thorsland stated that the Special Use WILL be compatible with adjacent uses.

17
18 **3b(c): Public safety will be ADEQUATE.**

19
20 Mr. Thorsland stated that public safety will be ADEQUATE.

21
22 Mr. Miller stated that the requested Special Use Permit, subject to the special conditions,
23 imposed herein, DOES preserve the essential character of the DISTRICT in which it is located.

24
25 Mr. Thorsland requested that the Board indicate their vote by a show of hands.

26
27 **Four members of the Board agreed with Finding #3b. with three opposed.**

28
29 **4. The requested Special Use Permit, subject to the special conditions imposed**
30 **herein, IS in harmony with the general purpose and intent of the Ordinance.**

31
32 **4a. The Special Use is authorized in the District.**

33
34 **4b. The requested Special Use Permit IS necessary for the public convenience at**
35 **this location.**

36
37 Mr. Thorsland stated the requested Special Use Permit IS necessary for the public convenience at
38 this location.

10/20/11

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

4c. The requested Special Use Permit, subject to the special conditions imposed herein, WILL be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety and welfare.

Mr. Miller stated that the requested Special Use Permit, subject to the special conditions imposed herein, WILL be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety and welfare.

4d. The requested Special Use Permit, subject to the special conditions imposed herein, DOES preserve the essential character of the DISTRICT in which it is located.

Mr. Thorsland stated that the requested Special Use Permit, subject to the special conditions imposed herein, DOES preserve the essential character of the DISTRICT in which it is located.

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Four members of the Board agreed with Finding #4 with three opposed.

5. The requested Special USE IS NOT an existing nonconforming use.

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

Mr. Thorsland requested that the Board indicate their vote by a show of hands.

Seven members of the Board agreed with Finding #4 with none opposed.

6. Regarding necessary waivers of standard conditions:

Mr. Thorsland stated that the Board previously reviewed and approved the waivers of standard conditions with the exception of Waiver #D.

7. The Special conditions imposed herein are required to ensure compliance with the criteria for Special Use Permits and for the particular purposes described below.

Ms. Capel asked if all of the findings were positive and the Board did not approve one of the waivers

10/20/11

1 is it still a denial.

2
3 Mr. Hall stated that the Board would have to deny it if the Board did not approve the waiver. He
4 said that, thus far, the finding that the Board has constructed is entirely consistent. He said that once
5 the Board adopts the waivers and the special conditions before they do the finding it is just left at
6 that.

7
8 Mr. Thorsland stated that the Board has previously approved the waivers with the exception of
9 Waiver #D.

10
11 Mr. Hall stated that Waiver #D is still part of the record but the Board denied it.

12
13 Mr. Thorsland requested a motion to adopt the Summary of Evidence, Documents of Record and
14 Finding of Fact as amended.

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

18
19 **Ms. Capel moved, seconded by Mr. Courson to move to the Final Determination for Case 696-
20 S-11. The motion carried by voice vote.**

21
22 Mr. Thorsland informed the petitioner that the full Board is present at tonight's public hearing and
23 four affirmative votes are required.

24
25 **Final Determination for Case 696-S-11:**

26
27 **Mr. Courson moved, seconded Mr. Passalacqua that the Champaign County Zoning Board of
28 Appeals finds that, based upon the application, testimony, and other evidence received in this
29 case, that the requirements for approval of Section 9.1.11B. HAVE NOT been met, and
30 pursuant to the authority granted by Section 9.1.6 B. of the Champaign County Zoning
31 Ordinance, determines that the Special Use requested in Case 696-S-11 is hereby DENIED to
32 the petitioners California Ridge Wind Energy LLC and the participating landowners listed in
33 the attached public notice to authorize a Wind Farm consisting of 30 Wind Farm Towers
34 (wind turbines) in total with a total nameplate capacity of 48 megawatts (MW) in the AG-1
35 Zoning District of which 28 Wind Farm Towers with a total nameplate capacity of 44.8 MW
36 are proposed in Compromise Township (Part A) and 2 Wind Farm Towers with a total
37 nameplate capacity of 3.2 MW are proposed in Ogden township (Part B), and including access
38 roads, wiring, and public road improvements, and subject to the waivers of Standard**

10/20/11

1 **Conditions as follows:**

- 2
- 3 **A. This special use permit authorizes a wind farm as follows:**
- 4 1. **The type of wind turbine authorized is the General Electric 1.6-100 wind**
- 5 **turbine with a hub height of 100 meters (328 feet) and a rotor diameter**
- 6 **of 100 meters (328 feet).**
- 7 2. **The maximum overall height of each wind farm tower shall be 492 feet.**
- 8 3. **The maximum number of wind turbine towers (wind turbines) is 30 with**
- 9 **a total nameplate capacity of not more than 48 megawatts (MW) of**
- 10 **which not more than 29 wind farm towers with a total nameplate**
- 11 **capacity of not more than 44.8 MW are proposed in Compromise**
- 12 **Township (Part A) and not more than 2 wind farm towers with a total**
- 13 **nameplate capacity of not more than 3.2 MW are proposed in Ogden**
- 14 **Township (Part B), and including access roads, wiring and related work**
- 15 **on specified public roads (highways).**
- 16
- 17 **B. The approved site plan consists of the following documents:**
- 18 1. **California Ridge Wind Energy Project Champaign County Special Use**
- 19 **Permit Application received July 1, 2011.**
- 20 2. **Status Summary Map with Setbacks California Ridge Wind Energy**
- 21 **Center, Champaign and Vermilion Counties, received July 21, 2011 (an**
- 22 **excerpt of only the Champaign County portion).**
- 23 3. **Champaign County Non-Participating Dwelling Separation Summary**
- 24 **map received July 29, 2011 Parcel.**
- 25 4. **Map of Conservation Recreation Zoning District and Incorporated**
- 26 **Municipality Setback Compliance received September 29, 2011.**
- 27
- 28 **C. The County Board shall not make a final decision in Case 696-S-11 until it has**
- 29 **authorized the County Board Chair to sign the Roadway Upgrade and**
- 30 **Maintenance Agreement recommended by the County Engineer and received**
- 31 **copies of all necessary signed township road agreements.**
- 32 **D. The Roadway Upgrade and Maintenance Agreements shall require road repair**
- 33 **work to be performed in accordance with the IDOT Bureau of Local Roads**
- 34 **Manual, 2006 edition, and the IDOT *Standard Specifications for Road and***
- 35 ***Bridge Construction*, but the relevant street jurisdiction may, on a case by case**
- 36 **basis, exercise their discretion to waive the BLR standards so long as public**
- 37 **safety is not compromised.**
- 38 **E. Construction activities to build the wind farm shall generally only occur**

10/20/11

1 during the weekday daytime hours of 7AM to 10PM but never on Sunday,
2 provided, however, that construction activities may occasionally commence
3 earlier in the day if required but not earlier than 5AM. Those construction
4 activities include but are not limited to the following:

- 5 1. Construction of access roads
- 6 2. Delivery and unloading of wind farm equipment and materials
- 7 3. Excavation for and construction of wind farm tower foundations
- 8 4. Installation of wind farm wiring
- 9 5. Assembly of wind farm turbines
- 10 6. Erection of wind farm towers

11
12 **F. No Non-participating dwelling or other principal structure shall receive more**
13 **than 45 hours of shadow flicker per year.**

14
15 **G. This special use permit shall expire on the following dates and /or for the**
16 **following reasons:**

- 17 1. If no zoning use permit application has been received by the Department
18 of Planning and Zoning by 4:30PM on March 1, 2013, which is
19 consistent with the expiration deadline in the Roadway Upgrade and
20 Maintenance Agreements and the approved Reclamation Agreement; or
- 21 2. Upon completion of all decommissioning and reclamation requirements
22 of the wind farm Reclamation Agreement and the subsequent release of
23 the financial assurance required by 6.1.4 P. following the requirements
24 of a written agreement with the County.

25
26 **H.1. The Zoning Administrator shall not approve a Zoning Use Permit for**
27 **construction of a wind farm tower if the location indicated on the Zoning**
28 **Use Permit site plan differs from that in the approved site plan for the**
29 **special use permit as follows:**

- 30 (a) The Zoning Use Permit location shall not differ more than 500
31 feet from the approved site plan for the special use permit except
32 that a wind farm tower more than 1,500 feet from a non-
33 participating principal structure on the approved site plan for the
34 special use permit shall not be approved to be less than 1,350 feet
35 from that same structure on a Zoning Use Permit; and provided
36 that
- 37 (b) A wind farm tower that is 1,500 feet or less from a non-
38 participating principal structure on the approved site plan for the

10/20/11

1 special use permit shall not be located less than 90% of that
2 distance to the same structure on a Zoning Use Permit; and
3 provided that

4 (c) A new noise analysis meeting the requirement of 6.1.4 I. shall be
5 submitted with the Zoning Use Permit for any wind farm tower
6 with a new location that is less than 1,500 from a non-
7 participating principal structure; and provided that

8 (d) No separation to a non-participating property or principal
9 structure shall be less than the minimum required by the
10 Ordinance.
11

12 **H.2 Prior to excavation for any wind farm tower footing:**

13 (a) The Applicant shall notify the Zoning Administrator when each
14 wind farm tower location has been identified and marked on the
15 ground so that the Zoning Administrator or a
16 representative can verify that the location is consistent
17 with the approved site plan in the special use permit
18 case.

19 (b) The Zoning Administrator shall issue a wind farm tower
20 Foundation Permit after verifying that the wind farm
21 tower location is consistent with the approved site plan.

22 (c) The applicant shall not excavate any wind farm tower footing
23 until the wind farm tower Foundation Permit has been
24 approved.
25

26 **I. A Reclamation Agreement is required at the time of application for a
27 zoning use permit that complies with the following:**
28

29 1. The Revised Draft Reclamation Agreement received on 10/10/11 with all
30 required signatures including a guaranteed minimum amount of \$25,000
31 per turbine that shall be updated annually to reflect the known rate of
32 inflation.

33 2. The expenses and values, including salvage value, as listed in the Base
34 Decommissioning Cost Estimate received 10/06/11 and that is
35 Attachment A to the Draft Reclamation Agreement received on 10/20/11.

36 3. An irrevocable letter of credit. If required by the County Board the
37 letter of credit shall be provided as multiple letters of credit based on the
38 regulations governing federal insurance for deposit as authorized in 6.1.4

10/20/11

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

P.4. (a) of the Ordinance.

- 4. An escrow account that is at a mutually acceptable financial institution that is either identified in the County Board determination of this special use permit or included as a special condition of that determination, as authorized in 6.1.4 P. 4.(b)(1) of the Ordinance.**

J. The following submittals are required prior to the approval of any zoning use permit for a wind farm tower:

- 1. Certification by an Illinois Professional Engineer or Illinois Licensed Structural Engineer that the foundation and tower design of each wind farm tower is within accepted professional standards, given local soil and climate conditions, as required by 6.1.4 d. 1.(b).**
- 2. A Transportation Impact Analysis provided by the applicant that is acceptable to the County Engineer and the State’s Attorney; and for highways in Compromise Township is acceptable to the Compromise Township Highway Commissioner; and for highways in Ogden Township is acceptable to the Ogden Township Highway Commissioner, as required by 6.1.4 F. 2.**
- 3. A signed Reclamation Agreement in conformance with all special conditions and waivers included in the special use permit approval.**
- 4. A copy of the Recorded Covenant pursuant to 6.1.1 A.2.**
- 5. The telephone number for the complaint hotline required by 6.1.4 Q.**
- 6. A site plan for the installation of the specific wind farm tower indicating the specific proposed location of the wind farm tower, other principal structures within 1,500 feet separation, property lines (including identification of adjoining properties), required separations, public access roads and turnout locations, substations(s), electrical cabling from the wind farm tower to the substations(s), and layout of all structures within the geographical boundaries of any applicable setback.**
- 7. A copy of the approved access permit for the access road by the relevant highway jurisdiction.**
- 8. A copy of any required permits for use of public highways by overweight vehicles.**
- 9. A permanent soil erosion and sedimentation plan for all wind farm tower sites and access roads that conforms to the relevant Natural Resources Conservation Service guidelines and that is prepared by an Illinois Licensed Professional Engineer.**

10/20/11

- 1 **K.** **A Zoning Compliance Certificate shall be required for each wind farm**
2 **tower prior to the wind farm going into commercial production of**
3 **energy. Approval of a Zoning Compliance Certificate shall require the**
4 **following:**
 - 5 **1.** **An as-built site plan of each specific wind farm tower indicating the**
6 **specific as-built location of the wind farm tower, other principal**
7 **structures within 1,500 feet separation, property lines (including**
8 **identification of adjoining properties), as-built separations, public access**
9 **roads and turnout locations, substation(s), electrical cabling from the**
10 **wind farm tower to the substations(s), and layout of all structures within**
11 **the geographical boundaries of any applicable setback.**
 - 12 **2.** **As-built documentation of all permanent soil erosion and sedimentation**
13 **improvements for all wind farm tower sites and access roads prepared**
14 **by an Illinois Licensed Professional Engineer.**
 - 15 **3.** **A copy of the approved as-built access road by the relevant highway**
16 **jurisdiction.**
- 17
18 **L.** **The California Ridge Wind Farm shall not begin commercial production**
19 **of energy until the Zoning Administrator has approved a Zoning**
20 **Compliance Certificate for the entire California Ridge Wind Farm based**
21 **on submission and acceptance of all of the following:**
 - 22 **1.** **A Zoning Compliance Certificate has been approved for all wind farm**
23 **towers approved in the Special Use Permit.**
 - 24 **2.** **A copy of a certificate of design compliance for the General Electric 1.6-**
25 **100 wind turbine has been received from Underwriters Laboratories**
26 **(“UL”) for an equivalent third party such as TUV NORD Group, as**
27 **authorized in 6.1.4 D. 1 (a).**
 - 28 **3.** **Documentation of compliance with all required post-wind farm**
29 **construction requirements has been received from the relevant highway**
30 **jurisdictions.**
 - 31 **4.** **The Zoning Administrator has verified that informational signs have**
32 **been erected at each wind farm accessway as follows:**
 - 33 **a.** **The purpose of the signs shall be to publicize the telephone**
34 **number of the wind farm complaint hotline required by 6.1.4 Q.**
 - 35 **b.** **The minimum size of each sign shall be 2 feet by 2 feet.**
- 36
37 **M.** **The applicant or owner or operator of the wind farm shall comply with**
38 **the following:**

10/20/11

- 1 1. **Cooperate with local fire protection districts to develop the districts**
- 2 **emergency response plan as required by 6.1.4 G.2.**
- 3 2. **Take all reasonable steps to resolve complaints of interference caused by**
- 4 **the wind farm to microwave transmission providers, local emergency**
- 5 **service providers (911 operators), and broadcast residential television as**
- 6 **required by 6.1.4 H.**
- 7 3. **Cooperate fully with Champaign County and in resolving any noise**
- 8 **complaints including reimbursing Champaign County any costs for the**
- 9 **services of a qualified noise consultant pursuant to any proven violation**
- 10 **of the IPCB noise regulations as required by 6.1.4 I.6.**
- 11 4. **Complete all post-wind farm construction mortality studies on birds and**
- 12 **bats are required by 6.1.4 L.3. and as proposed in the *California Ridge***
- 13 ***Wind Energy Project Champaign County Special Use Permit Application***
- 14 ***received July 1, 2011, particularly pages 5-22 through 5-24, and submit***
- 15 **written reports to the Environment and Land Use Committee at the end**
- 16 **of the first two years of wind farm operation and cooperate with the**
- 17 **Environment and Land Use Committee in resolving mortality concerns**
- 18 **that might arise as required by 6.1.4L.3(e).**
- 19 5. **Maintain a current general liability policy as required by 6.1.4 N.**
- 20 6. **Submit annual operation and maintenance reports to the Environment**
- 21 **and Land Use Committee as required by 6.1.4 O.1.**
- 22 7. **Maintain compliance with the approved Reclamation Agreement**
- 23 **including replacement irrevocable commercial letters of credit as**
- 24 **required in the Reclamation Agreement.**
- 25 8. **Submit to the Zoning Administrator copies of all complaints to the**
- 26 **telephone hotline on a monthly basis and take all necessary actions to**
- 27 **resolve all legitimate complaints as required by 6.1.4 Q.**

28
29 The roll was called:

31 Capel-yes	Courson-yes	Miller-no
32 Palmgren-yes	Schroeder-yes	Passalacqua-yes
33 Thorsland-no		

34
35 Mr. Hall informed the Petitioner that the Board has determined a recommendation for denial and this
36 case will be forwarded the County Board Committee of the Whole at their meeting on November 1st.
37 He said that staff will send this information to the County Board as soon as possible so that they have
38 the maximum time available to consider this case. He said that he appreciates the efforts of the

1 petitioner in getting everything done over the course of this public hearing.
2

3 **6. New Public Hearings**
4

5 None
6

7 **7. Staff Report**
8

9 None
10

11 **8. Other Business**

12 **A. Review of ZBA Docket**
13

14 Mr. Hall informed the Board that the docket has been updated. He said that the next ZBA meeting
15 will be on November 3rd at 7:00 p.m. He said that the Board still has a meeting scheduled for
16 December 29th and the Board can leave it on the docket, eliminate or leave it on the docket for
17 determination at a later date.
18

19 Mr. Passalacqua stated that he will not be in attendance at the December 29th meeting.
20

21 Mr. Thorsland stated that at this point the Board will leave the December 29th meeting on the docket
22 until a later date.
23

24 **9. Audience Participation with respect to matters other than cases pending before the**
25 **Board.**
26

27 None
28

29 **10. Adjournment**
30

31 Mr. Thorsland entertained a motion to adjourn the meeting.
32

33 **Mr. Courson moved, seconded by Mr. Passlacqua to adjourn the meeting. The motion carried**
34 **by voice vote.**
35

36 The meeting adjourned at 8:53 p.m.
37
38

ZBA

AS APPROVED NOVEMBER 3, 2011

10/20/11

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

Respectfully submitted

Secretary of Zoning Board of Appeals

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

DRAFT SUBJECT TO APPROVAL DRAFT ZBA //

1
2