

2
3 **MINUTES OF REGULAR MEETING**

4 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

5 **1776 E. Washington Street**

6 **Urbana, IL 61801**

7
8
9 **DATE: November 3, 2011**

PLACE: Lyle Shields 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, Jamie Hitt, Andrew Kass,
19 Joel Fletcher (Assistant State's Attorney)

20
21 **OTHERS PRESENT :** Emily Cotton, Kay Fiscus, John Fiscus, Joan Grubb, Timothy Herd,
22 Matthew Savage, Cameron Gordon, Steven Bigel, Thomas Mann,
23 Randall Brown, Herb Schildt, Kevin Parzyck, Michael Blazer, John
24 Hummel, Judith Hummel, David Rogers, Joann Keller, Rollae Keller,
25 Marlin Conry, Sherry Schildt,, Mark Hummel, Doug Turner, Leslie
26 Cotton, Bryan Bradshaw, Brenda Rogers, Paul Kograuz, Carl
27 Webber, Kevan Parrett, Randall Brown, Thomas Martin, Don
28 Wauthier, Deanne Sims, R.J. Eaton, Steve Johnson, Harold Hovel, n,
29 Debra Griest, Jonathan Schroeder, Michael Richards, Patsie Petrie,
30 Gary Maxwell, Al Nudo, Marvin Johnson, Greg Frerichs, Roy Knight

31
32
33 **1. Call to Order**

34
35 The meeting was called to order at 6:02 p.m.

36
37 **2. Roll Call and Declaration of Quorum**

38
39 The roll was called and a quorum declared present.

40
41 **3. Correspondence**

42
43 None

44
45 **4. Approval of Minutes (July 28, 2011; October 6, 2011; October 13, 2011, Regular**
46 **Meeting; October 13, 2011, Special Meeting; October 20, 2011)**

47
48 Mr. Thorsland noted that the July 28, 2011, minutes are not available for approval at tonight's

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1 meeting.

2

3 Ms. Capel stated that she had a few corrections to the October 20, 2011, minutes.

4

5 Mr. Thorsland requested a motion to approve the minutes as amended and after the motion he
6 will allow Ms. Capel to indicate her corrections.

7

8 **Ms. Capel moved, seconded by Mr. Schroeder to approve the October 6, 2011; October 13,**
9 **2011, Regular Meeting; October 13, 2011, Special Meeting; and October 20, 2011, minutes as**
10 **amended.**

11

12 Ms. Capel stated that Line 40 on Page 24 of the October 20, 2011, minutes should be revised to
13 indicate the following: required signatures including a guaranteed minimum amount of \$25,000 per
14 turbine. She said that Line 39 on Page 29 of the October 20, 2011, minutes should be revised to
15 indicate the following: Invenergy representative Greg Leuchtmann testified at the September 29,
16 2011, public hearing that. She said that Line 24 on Page 32 of the October 20, 2011, minutes should
17 be revised to indicate the following: Ms. Capel stated that noise impacts will be INJURIOUS to the
18 district because of the difference of. She said that Line 8 on Page 33 of the October 20, 2011,
19 minutes should be revised to indicate the following: Ms. Capel stated that noise impacts will be
20 INJURIOUS to the district because of the difference of.

21

22 Mr. Thorsland asked the Board if there were any additional corrections and there were none.

23

24 **The motion carried by voice vote.**

25

26 **5. Continued Public Hearing**

27

28 **Case 691-S-11 Petitioner: Pastor David L. Rogers and Apostolic Life UPC Church, LLC**
29 **Request to authorize (1) The Apostolic Life UPC Church as a special use and (2) the**
30 **establishment and use of a “Residential Recovery Center” as a second special use on the same**
31 **land, in the AG-2 Agriculture Zoning District. Location: Lot 3 of the Almar First Subdivision**
32 **in the Northeast Quarter of Section 3 of Urbana Township and commonly known as the**
33 **Apostolic Life UPC Church located at 2107 High Cross Road, Urbana.**

34

35 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County
36 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will
37 ask for a show of hands for those who would like to cross examine and each person will be called
38 upon. He requested that anyone called to cross examine go to the cross examination microphone to

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1 ask any questions. He said that those who desire to cross examine are not required to sign the
2 witness register but are requested to clearly state their name before asking any questions. He noted
3 that no new testimony is to be given during the cross examination. He said that attorneys who have
4 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.
5

6 Mr. Thorsland asked if the Petitioner desired to make a statement outlining the nature of their
7 request.
8

9 Pastor David Rogers, who resides at 1802 North Concord Lane, Urbana, stated that he is speaking on
10 behalf of Lifeline-connect Ministry which is supported by the Apostolic Life Church located at 2107
11 High Cross Road. He said that to their knowledge and the best of their ability they have submitted to
12 Director Hall all of the required information and research concerning the application for a Special
13 Use Permit for a Residential Recovery Center.
14

15 Pastor Rogers stated that at the September 15, 2011, ZBA meeting he was instructed to do some
16 homework and provide to Director Hall and the Board a detail of a proposed septic system for a
17 proposed expansion and assessment of existing septic systems and provide to Director Hall and the
18 Board a revised site plan that would include the proposed septic system. He said that these tasks
19 have been completed and some of the information will be provided tonight and referred to by the
20 speakers.
21

22 Pastor Rogers stated that as mentioned before in the previous hearing; they have every intention to
23 meet all of the standard conditions of the Zoning Ordinance concerning Residential Recovery
24 Centers. The ministry of Lifeline-connect Residential Recovery Center, under such a special use
25 permit would not significantly increase the intensity of the use. He said that the special use would
26 allow the ministry to continue providing the benefits to their community and would allow their
27 organization to assist more people in their struggles against substance abuse and addictions.
28

29 Pastor Rogers stated that at every public meeting including County Board, the ZBA, the Urbana City
30 Council, the City of Urbana Planning Commission, the Champaign City Council and the City of
31 Champaign Planning Commission every vote was unanimously “yes” in favor of adding the text
32 amendment. He said that this indicates, I believe, a desire of all the members to those governing
33 boards and councils that voted to see this RRC continue to provide a vital service to those in need.
34

35 Pastor Rogers stated that he would like to briefly address some statements contained in
36 correspondence received by Director Hall and distributed to the Board and the public. He said that
37 the paragraph 3 of the letter dated October 27, 2011 submitted by John Hummel indicates the
38 following: “during the meeting Pastor Rogers and/or his counsel Carl Webber) stated that the work

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1 was done prior to the Apostolic Life UPC Church’s establishment on the property in 1999.” Pastor
2 Rogers stated that during that meeting he spoke about some fill used to level an area for a
3 recreational field and he stated the following: “We have not altered any of the natural flow of storm
4 water since our occupancy on February, 1999. While we did add some fill dirt to level and area for a
5 small recreational field, in doing so, we did not redirect any storm water flow.”

6
7 Pastor Rogers stated that paragraph 4 of Mr. Hummel’s same letter states, “Since 1999, the southeast
8 parking lot has been enlarged and the area south of the utility shed has been filled. The fill added to
9 the south and west of the utility shed has redirected surface flow to the southern edge of the church
10 property and prevented north-eastward flow from the field to the south from entering the church
11 property.”

12
13 Pastor Rogers stated that Mr. Hummel’s statements are incorrect because they did not enlarge the
14 southeast parking lot and the gravel parking lot was already there. He said that the southern one-
15 quarter of the parking lot was covered in vegetation, grass and weeds, due to the lack of traffic and/or
16 weed control. He said that they raked and dressed the lot and established the corners with some
17 additional rock. He said that the area south of the utility shed has had no fill added since our
18 ownership and they have not done any work that redirects or prohibits surface flow onto the church
19 property.

20
21 Pastor Rogers stated that also in paragraph 4 of Mr. Hummel’s letter there is mention of an
22 embankment being removed although Pastor Rogers does not know of any embankment existing and
23 certainly has no knowledge of any embankment being removed. Pastor Rogers stated that paragraph
24 4 also indicates that added curbing along the southern edge of the parking lot has changed the point
25 of entry of surface flow into the backyard of 2103 N. High Cross Road. He said that this is incorrect
26 because there is no curbing along the southern edge of the parking lot and only spaced bumper
27 blocks exist. He said that they have not changed the point of entry of surface flow into the 2103 N.
28 High Cross Road property and the water has always had a point of entry onto that property.

29
30 Pastor Rogers stated that the last paragraph on page 2 of the same letter from Mr. Hummel states that
31 the establishment of a Residential Recovery Center at 2107 High Cross Road will intensify or make
32 worse the surface water management. Pastor Rogers stated that this is incorrect because the
33 engineering firm, BKB Engineering, has designed a storm water management plan for the site that
34 will have no negative impact in the neighborhood and, in fact, will improve the storm water
35 management. He said that Brian Bradshaw of BKB Engineering, who supplied the site plan, is
36 present tonight and is prepared to address and questions.

37
38 Pastor Rogers stated that Steve Johnson of J & S Wastewater Inc., is here to speak and address any

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1 questions concerning the proposed septic system and the existing septic systems. Pastor Rogers said
2 that he has provided Director Hall and the Board with a letter from Steve Johnson and some
3 documentation concerning any maintenance that has been done to the existing septic systems. Pastor
4 Rogers stated that the documentation from Gulliford's Sewer Service indicates service rendered,
5 maintenance provided, and findings by service personnel. He said that they have only has one of the
6 septic systems serviced as a preventative maintenance and not due to malfunction. He said that also
7 indicated in the documentation is the size of the septic tank that is pumped, which is 1,000 gallons.
8 He said that the Board should keep in mind that there are two existing septic systems in use.

9
10 Pastor Rogers noted that their attorney, Carl Webber, is also present tonight to address any legal
11 concerns that the Board may have regarding the requesting use.

12
13 Pastor Rogers requested the opportunity to speak again regarding any concerns that may be brought
14 into discussion. He said that there are several members of their staff, former and current residents
15 and other supporters present tonight and they are ready to give brief presentations on behalf of the
16 approval of the request which is before the Board.

17
18 Pastor Rogers stated that in conclusion they sincerely request approval of the request for the special
19 use so that they may continue the operation of the Residential Recovery Center as part of the
20 church's ministry and so that they can move forward. He thanked the Board for their time and
21 consideration.

22
23 Mr. Thorsland asked the Board if there were any questions for Pastor Rogers and there were none.

24
25 Mr. Thorsland asked if staff had any questions for Pastor Rogers and there were none.

26
27 Mr. Thorsland asked the audience if anyone desired to cross examine Pastor Rogers and there was no
28 one.

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

31
32 Mr. John Hall, Zoning Administrator distributed a new Supplemental Memorandum dated November
33 3, 2011, to the Board for review. He said that the new supplemental memorandum includes the
34 following attachments: 1. Letter from John Hummel, received October 31, 2011; and 2. Letter from
35 John Hummel, received November 1, 2011; and 3. Letter from John Hummel, received November 1,
36 2011; and 4. Letter from Mark Hummel, received November 1, 2011; and 5. Septic system plan,
37 received November 2, 2011. Mr. Hall stated that the septic system is a much different septic system
38 than had been described previously and is designed by Steve Johnson.

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1
2 Mr. Hall continued to list the attachments: 6. Letter from Carl Webber, received November 3, 2011;
3 and 7. Comprehensive site plan, received November 3, 2011. Mr. Hall stated that the new
4 comprehensive site plan was prepared by BKB Engineering indicating the proposed detention basin
5 as well as the revised septic system. He said that Attachment 8. Shapland Construction survey of
6 subject property, received November 3, 2011, was approximately prepared in 1975 and documents
7 elevations at the time of completion. He said that Attachment 9. Impervious surface illustration,
8 dated November 3, 2011, was prepared by staff. He said that in the mailing for this meeting staff
9 included a letter from Tom Berns in 1984. He said that the illustration documents the amount of
10 impervious area that either existed or was anticipated in 1984 and is indicated in orange and there are
11 two blue areas. He said that the blue areas are the new impervious areas since 1984 and the large
12 impervious area was approved by the County and has a catch basin in the middle which carries some
13 portion of the drainage to the west. He said that the only other expansion is to the south parking lot
14 and the illustration indicates staff's estimate of the expansion based on the 1988 aerial photograph.
15 He said that the expansion is approximately 15,000 square feet and it is unknown as to when it
16 occurred but it occurred prior to the time when the Apostolic Church first occupied the property. He
17 said that prior to 2002 when churches were required to obtain special use permits, it is known that
18 the parking lot had been expanded but did not require any detention because it is 15,000 square feet
19 and was constructed when churches were by-right. He said that staff is not aware of any unauthorized
20 expansion of the impervious area on the property. He continued to attachment 10. Drainage plan
21 from Case 502-S-84 (2 different scales); and 11. Finding of Fact and Final Determination for Case
22 668-AT-10. He said that previously the Board had approved all of the Documents of Record for
23 Case 668-AT-10, the amendment which authorized this use, into Case 691-S-11. He said that under
24 Item #14 on pages 32 thru 37 of the Finding of Fact for Case 668-AT-10, staff intends to add all of
25 the testimony regarding this kind of use and how important it is and by doing this the Board has not
26 had to take as much testimony during this hearing. He said that he would recommend that the Board
27 keep this information in the finding for Case 692-S-11, but it is ultimately up to the Board whether to
28 do so or not. He said that even working as much overtime that staff has been doing in the
29 Department of Planning and Zoning staff has not been able to get the Finding of Fact for this case
30 ready for a determination. He said that he stopped working on this case at 3p.m. today so that he
31 could ready for the wind farm and if he had kept working this case would still not be ready for final
32 action tonight.

33
34 Mr. Hall stated that at the last public hearing the Board requested a determination from the State's
35 Attorney regarding claims made by Mr. Randall Brown about the risks that the County would incur if
36 the Board approved the requested special use permit. Mr. Hall said that the State's Attorney's staff
37 has also been working a lot of overtime lately they did not get a formal opinion written up for the
38 Board's request although they did send him an e-mail that he can read to the Board. He said that if

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1 the e-mail is sufficient then we can let it go at that but if the Board requires a formal determination
2 from the State's Attorney then that will have to come at a later date. He said that recently the State's
3 Attorney determined that in this case there is some risk of being sued from either side of the
4 question. He said that two sets of claimants would have potential claims of unlawful discrimination.
5 He said that the petitioner could potentially sue if the petition is denied due to unlawful
6 discrimination based on handicap status under the *Fair Housing Act*, but on the other hand a
7 potential female plaintiff could sue claiming unlawful discrimination based on gender. He said that
8 the State's Attorney was not able to find enough case law on this issue to be able to make a firm
9 recommendation but there is risk either way and the Board should make their determination as they
10 see fit. Mr. Hall stated that if the Board requires additional information regarding this issue then he
11 can attempt to obtain that information but the previously mentioned information is all that staff and
12 the State's Attorney could provide the Board with tonight.

13
14 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.

15
16 Ms. Capel asked Mr. Hall if the case was continued would it be ready for final determination at that
17 point.

18
19 Mr. Hall stated that if the case was continued for at least one week it should be ready for final action.

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

23
24 Mr. Thorsland called Mr. Bryan Bradshaw to testify.

25
26 Mr. Bryan Bradshaw, who resides at 725 CR 2200N, Champaign, stated that he has been hired by the
27 Apostolic Life Church as the site engineer for the project. He said that he has over 15-years
28 experience in land development design from complex projects such as the new Meijer's store in the
29 Chicago suburbs to the 20-acre Boulder Ridge Subdivision in Champaign to more straight forward
30 project such as the new indoor soccer facility located on Willow Road in Urbana.

31
32 Mr. Bradshaw stated that from a drainage standpoint this property is about as simple and straight
33 forward as it gets. He said that since the last meeting he has submitted preliminary drainage plan and
34 since then the church as instructed him to exceed the minimum requirements to further mitigate any
35 possible drainage issues. He said that the plan that was submitted tonight indicates a detention basin
36 with a designed capacity of a 100-year storm in lieu of a 50-year storm as indicated on the previous
37 plan. He said that the capacity has been increased by over 40% and the basin has been extended to
38 the south to intercept as much overflow as possible. He said that the new basin will capture 100% of

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1 the new impervious area and additional .6 acres of water. He said that the new basin will improve
2 the drainage conditions for the downstream properties. He said that at the last meeting the fill area
3 which is located west of the utility shed was discussed. He said that in an effort to compare the
4 current grades with the historic drainage patterns that he obtained a 1975 topographic map prepared
5 by Bill Sheridan, a licensed land surveyor, and the survey is part of the site plan that was submitted
6 for the Pyramid Paper Company. He said that the historic swale location is indicated on the plan and
7 is shown to be justified and 20 feet south and a total length of 100 feet. He said that the adjustment
8 of the swale occurs completely within the church's property. He said that the fill area is located 100
9 feet north of the Hummel property and the on-site fill does not impede any surface drainage from the
10 upstream farm field to the south and the on-site fill does not modify the water surface point of entry
11 for any downstream property.

12
13 Mr. Bradshaw stated that a letter written to Mr. John Hall from Mr. John Hummel dated October 27,
14 2011, discusses the fill area in addition to others. Mr. Bradshaw said that there are several points of
15 disagreement with the letter and Pastor Rogers has mentioned several of those disagreements. Mr.
16 Bradshaw stated that no fill was added to the south of the utility shed and the grades have not been
17 revised along the east edge of the property. He said that the revised grades shown on the Champaign
18 GIS are the result of different datum and levels of accuracy. He said that the existing contours of the
19 entire site vary greatly between the 2005 and 2008 contours therefore no real comparison can be
20 made between the two. Mr. Bradshaw stated that no curbing is present along the east side of the
21 property and the fill area does not violate the *Illinois Drainage Law*.

22
23 Mr. Bradshaw stated that at the last meeting he made an open invitation to speak with the Hummel
24 family at any time in his office to discuss drainage issues of the site. He said that since the Hummel
25 family has not accepted his offer to date he would like to extend that same invitation again tonight
26 outside of this public hearing.

27
28 Mr. Thorsland asked the Board if there were any questions for Mr. Bradshaw and there were none.

29
30 Mr. Thorsland asked if staff had any questions for Mr. Bradshaw.

31
32 Mr. Hall stated that he and Mr. Bradshaw discussed the fact that the 12-inch storm sewer that is
33 being proposed to connect to the detention basin apparently discharges to the surface of the ground to
34 the west. Mr. Hall stated that his concern is that if special concern is not taken with the outlet the
35 addition of the detention basin could actually exacerbate the erosion. He asked Mr. Bradshaw if he
36 believes that adequate control of the erosion at the outlet could be successful.

37
38 Mr. Bradshaw stated yes. He said that he spoke to the owner of the property which the outlet

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1 discharges to and Pastor Rogers and the church has agreed to add rip rap to the location as part of the
2 special use requirement. He said that the church received verbal approval from the property owner to
3 have access to the site to install those improvements.

4
5 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Bradshaw.

6
7 Mr. Don Wauthier approached the cross examination microphone.

8
9 Mr. Carl Webber indicated his objection to Mr. Wauthier representing the opposition. Mr. Webber
10 stated that he works for the firm that provided an opinion as to drainage for the manifest in title and
11 the opinion has been distributed to the Board for review. He said that it is a complete conflict of
12 interest for Mr. Wauthier and his company, who provided the church with an opinion regarding
13 drainage, to represent someone who is complaining about the drainage.

14
15 Mr. Thorsland explained that this period is only for cross examination and Mr. Wauthier is only
16 allowed to ask questions about Mr. Bradshaw's testimony. Mr. Thorsland said that at this time he
17 will allow Mr. Wauthier the opportunity to cross examine Mr. Bradshaw although if it appears that
18 Mr. Wauthier is presenting testimony or is leading Mr. Bradshaw he will stop Mr. Wauthier just as
19 he has stopped others.

20
21 Mr. Wauthier stated that he has a couple of questions regarding the plan that he reviewed tonight.
22 He said that the plan indicates that the stormwater detention basin outlet is to be connected to an 8-
23 inch diameter storm sewer. He asked Mr. Bradshaw if the capacity of the 8-inch storm sewer was
24 adequate.

25
26 Mr. Bradshaw stated yes.

27
28 Mr. Wauthier asked Mr. Bradshaw if the existing 12-inch storm sewer has adequate capacity to
29 provide stormwater drainage for the entire site for and the lands that are connected to it.

30
31 Mr. Bradshaw stated that he did not complete a study regarding such.

32
33 Mr. Wauthier stated that Mr. Bradshaw's testimony was that the proposed stormwater detention
34 basin will resolve any drainage issues.

35
36 Mr. Bradshaw stated that he did not testify to such.

37
38 Mr. Wauthier asked Mr. Bradshaw if his testimony is that he is providing a stormwater detention

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1 basin to resolve stormwater runoff from the watershed that is directed to it.

2
3 Mr. Bradshaw stated yes, for new development.

4
5 Mr. Wauthier asked Mr. Bradshaw if he completed an evaluation of the downstream stormwater
6 drainage system to determine whether or not it is adequate for the proposed basin that is going to be
7 connected to it.

8
9 Mr. Webber objected to Mr. Wauthier's question to Mr. Bradshaw. He said that this is not a
10 question about the current drainage and any questions regarding the current drainage is in direct
11 conflict with his firm's prior determination. He said that this is not question about the current status
12 of the building and the only thing that is in question is whether the small proposed addition will be
13 addressed. He said that if Mr. Wauthier would like to address how the petitioner suggested how they
14 will handle the drainage off of the small addition then he will withdraw his objection.

15
16 Mr. Thorsland requested that Mr. Wauthier only address the testimony that Mr. Bradshaw has
17 presented. He said that he does not believe that Mr. Bradshaw provided testimony regarding the
18 existing drainage but did provide testimony regarding the new development.

19
20 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Bradshaw at this time and
21 there was no one.

22
23 Mr. Thorsland called Mr. Carl Webber to testify.

24
25 Mr. Carl Webber, legal counsel for the petitioner, stated that he appreciates the Board's
26 consideration. He said that the Board received a copy of his letter to Mr. Hall and the State's
27 Attorney regarding the *Fair Housing Act*. He said that he appreciates the fact that the State's
28 Attorney has suggested that the raised concern regarding the *Fair Housing Act* is not a reason to not
29 move forward. He said that the petitioner has presented a number of examples of where single
30 gender facilities are more successful although some believe that there may not be a direct difference
31 but most believe that single gender facilities are better and none believe that a combined facility is
32 better. Mr. Webber submitted, as a Document of Record, a letter from Michael Dye, CADAC, NCAC
33 II, with the Genesis Process Organization, regarding gender separated facilities.

34
35 Mr. Webber read Mr. Dye's letter as follows: I have worked in the addiction recover field for 32
36 years and have directed and designed recovery programs in the U.S. and abroad. Most all addiction
37 recovery programs are gender specific and coed programs have a high attrition and relapse rate. It is
38 in the best interest of the clients to be gender separated.

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1
2 Mr. Webber stated that his letter to Mr. Hall and the State's Attorney addressed the question
3 regarding the 14th Amendment which had already been addressed at the last meeting. He said that
4 the 14th Amendment addresses action by a state or subsidiary thereof and the Board is not making the
5 suggestion that this facility should be coed but is allowing a facility that allows 25 residents. He said
6 that if the facility had the room he believes that the petitioner would like to provide a separate facility
7 for women and men. He said that the problem is that one facility for twelve men and twelve women
8 is not possible because it doesn't work. He said that the Board has heard testimony regarding this
9 issue time after time and it has been stated that there is a tremendous advantage for the people in the
10 program to connect to other people in the program and with a group of 25 people of their own gender
11 there is a chance that can indeed connect. He said that the suggestion that they divide the facility
12 between twelve men and twelve women would unfortunately not work for that needed connection.
13

14 Mr. Webber stated that even if the procedure of having one facility for twelve men and twelve
15 women the cost of doing it would require additional funding of over \$37,000 but the main cost
16 would be over \$160,000 in additional annual staffing fees which would create more people and more
17 parking. He said that if there is a concern about the amount of activity that currently exists then such
18 a change to the facility would only exacerbate the increase in activity. He said that as the Board may
19 have seen in the numerous quotes that he had in his letter to Mr. Hall and the State's Attorney he
20 believes that there are a lot of reasons why these facilities are gender specific. He said that there is
21 a very substantial reason why the petitioner cannot, on this site, have two facilities because the
22 Ordinance limits the locations therefore if the petitioner cannot have this use at this site then he is not
23 sure that it can be done anywhere in the County. He said that the petitioner believes that it is
24 appropriate to have the facility designed as it is and the issue of safety goes beyond whether a bullet
25 goes by your head or you can count on the possibility of being rehabilitated. He said that in order to
26 have good and effective programs they are almost all gender specific and that is just the way it is. He
27 submitted a cost estimate as a Document of Record indicating a list of expenses that would incur if
28 the proposed dorm would be men and women and if women were enrolled in the residential program.
29

30 Mr. Webber stated that he understands that when they started this question there were issues which
31 must be addressed such as drainage and septic and he believes that they have addressed those issues.
32 He said that in regards to septic the petitioner agreed with Mr. Hall that prior to obtaining a Zoning
33 Use Permit rather than waiting until the end of the construction they will show that the new septic
34 system will work. Mr. Webber stated that the petitioner has been in the chicken and the egg situation
35 where they cannot obtain the Champaign County Public Health Department opinion until they
36 provide the application and the application is not submitted to the Champaign County Public Health
37 Department until the approval from the County is obtained. He said that the petitioner is going to
38 short-cut that situation by agreeing that before they obtain their building permit they will assure the

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1 County that the new septic system will work. He said that the petitioner has done everything that
2 they can do to indicate that the new septic system will work and a continuing increase of some
3 modest amount of effluent each day will be better for the septic system than having a lot of use on
4 Sunday and none for six days. He said that septic systems work better if they have continuous flow.
5

6 Mr. Webber stated that the way that the addition has been designed the Stormwater Policy does not
7 require that the petitioner does anything. He said that they will be a conforming building and use so
8 that at the time that they build the new property they have the 10,000 square foot exception and as
9 long as they keep it under 10,000 square feet they are a reasonable exception to the Stormwater
10 Policy. He said that even though they are an exception the petitioner has agreed that they will
11 address the runoff from all 10,000 square feet of the addition therefore they will have a 100%
12 addressing not at the level of the 50-year runoff that is required in the County Ordinance but at a
13 100-year runoff. He said that if the petitioner designs it the way that has been presented to the Board
14 tonight they will detain more than the 10,000 square foot addition runoff and only improve the
15 system and if someone is complaining about that then they have another agenda because the agenda
16 cannot be drainage. He said that the issue is not how we are today. He said that if today the
17 petitioner has caused problems then perhaps someone has a civil action against the petitioner that has
18 never been brought to the petitioner's attention. He said that the farmer, which is next door to the
19 subject property, has never complained and there are no other complaints filed against the petitioner
20 but now it is handy, as an excuse, to be complaining about the proposed project.
21

22 Mr. Webber stated that based upon what he has learned by speaking to other people and hearing
23 discussion the only evidence that the Board has is testimony that the drainage area was not adversely
24 effected and if they had added some fill upstream from the neighbor that would tend to slow down
25 the rate of flow and not increase the rate of flow. He said that if the Board reviews the 2005 aerial
26 photograph it does appear that there is a little bump on the west side of the complainant's property.
27 He said that the only testimony that has been given is that the bump was not there in the 2002,
28 although the bump is not apparent in the 2008 aerial photograph. He said that the systems used in
29 designing the aerial photographs between 2005 and 2008 are different systems. He said that there is
30 a suggestion that there is a two foot rise and if the Board reviews the 2005 aerial there is a distance
31 between the topographic lines indicated as 716 and 718. He said that he is not sure how much
32 distance is between the two lines but the aerial photograph would suggest that in an area used as a
33 parking lot in 10 or 20 feet the elevation went up 2 feet which is highly unlikely.
34

35 Mr. Webber stated that there was some concern regarding where the tile empties into the field to the
36 south. He said that when the subdivision was developed there was an easement given to put a tile
37 across and emptied into the middle of the property to the south and that is not uncommon. He said
38 that over the years it has become somewhat eroded and at the request of John Hall it would be

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1 appropriate for the petitioner to add concrete and rip rap at that site to protect any further erosion.
2 He said that he would argue that if they are going to slow the water down there will be less erosion
3 but he understands that one can argue either way therefore they agreed to Mr. Hall's request. He said
4 that the petitioner is a non-for-profit organization which is trying to build this facility and they do not
5 have money to throw around but if Mr. Hall believes that the placement of rip rap is an appropriate
6 thing to do then they will do it. He said that the petitioner is paying for detention, the acreage where
7 the detention will be placed, the detention basin and the requested rip rap.

8
9 Mr. Webber stated that this is no longer a drainage issue but an issue about whether a Residential
10 Recovery Center should be located on this site and he pleads with the Board to allow this to happen.
11 He said that the Board has the opinion from Tom Berns to Al Miller indicating, at that time, there
12 were, in their opinion, no troubles. He said that the petitioner has not heard anything from anyone
13 that there are difficulties caused since then therefore he again would suggest that drainage is not the
14 issue and the issue is whether on this 4+ acre property the petitioner can add 10,000 square feet of
15 impervious surface in order to provide for this Residential Recovery Center. He said that hopes that
16 the Board will agree that the request is a reasonable thing to do.

17
18 Mr. Thorsland asked the Board if there were any questions for Mr. Webber and there were none.

19
20 Mr. Thorsland asked if staff had any questions for Mr. Webber and there were none.

21
22 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Webber and there was no
23 one.

24
25 Mr. Thorsland called Mr. Don Wauthier to testify.

26
27 Mr. Don Wauthier, Engineer with Berns, Clancy and Associates.

28
29 Mr. Webber stated that if the Board is going to allow Mr. Wauthier to present testimony in a manner
30 that he and the petitioner believes is improper would it be possible for the entire room to see what he
31 is doing.

32
33 Mr. Thorsland stated that the nature of the hearing is that the Board allows public participation or
34 public testimony and Mr. Webber may object to what is presented and he can cross examine Mr.
35 Wauthier but the cross examination must only be based on Mr. Wauthier's testimony. Mr. Thorsland
36 stated that this is a public hearing therefore the Board will allow the public to speak. He said that if
37 Mr. Wauthier desires to speak as a member of the public then is allowed that courtesy. Mr.
38 Thorsland stated that the Board understands Mr. Webber's concern. He informed Mr. Webber that

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1 he and the petitioner may position themselves so that may clearly observe Mr. Wauthier's
2 presentation.

3
4 Mr. Thorsland asked Mr. Wauthier to position himself so that everyone in the room could view his
5 presentation.

6
7 Mr. Wauthier thanked the Board for allowing him the opportunity to provide information regarding
8 the subject property. He said that hopefully he can clarify some of the issues that are involved in this
9 case. He said that as Mr. Webber has previously mentioned, Mr. Wauthier's firm, Berns, Clancy and
10 Associates, was involved in the review of stormwater drainage issues at this site in 1984. He said
11 that at that time Mr. Berns issued an opinion letter, which is now more than 25 years old, that the
12 stormwater drainage system proposed for the development at that time could provide an adequate
13 level of service and drainage for that site. Mr. Wauthier stated that this letter was provided in
14 support of a hearing before construction occurred but unfortunately what was being proposed and
15 discussed in front of the ZBA never got built which changes things. He said that obviously if the
16 opinion is that what is being proposed will be adequate when it is built and it doesn't actually get
17 built the opinion changes to not adequate.

18
19 Mr. Wauthier stated that his firm has copies of the 1976 site plan and the design analysis for the
20 storm sewer. He said that he plans to walk the Board through what the conditions are for this site.
21 Mr. Wauthier said that the original site that the stormwater drainage was related to is indicated in the
22 green area on the aerial photo exhibit prepared by Berns, Clancy and Associates which was
23 submitted as a Document of Record. He said that the area outlined in green is what was more or less
24 originally constructed in the first couple of phases with the storm sewer outlet that goes with it. He
25 said that the storm sewer was designed for something between a 2-year and 5-year storm event for
26 that area. He said that subsequently as other additions occurred including in 1984 was construction
27 of the building that was approved by the ZBA, indicated in pink on the aerial photograph. He said
28 that after the case, what was to be done with drainage was that the parking lot area would be drained
29 into the 12-inch diameter storm sewer. He said that the gravel area parking lot was to be re-graded to
30 drain north and west but that never occurred and so as a result the testimony and opinion in 1984
31 was that there would be minimal impact to the downstream landowners. He said that since the 12-
32 inch line was not being modified there was not going to be any change to the outlet conditions the
33 stormwater was going to be directed to the 12-inch line and whatever needed to stay and wait and
34 provide by way of onsite retention/detention was going to stay on site therefore there would be no
35 adverse impacts to the east or to the west. He said that this would provide adequate drainage with
36 some informal onsite stormwater retention/detention in whatever fashion that happened would
37 provide adequate drainage for the site. He said that subsequently the large parking lot has also been
38 connected to the 12-inch line and the gravel parking lot has been added. He said that when it is

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1 reviewed as to what is connected to the 12-inch storm sewer today, which does not include a big
2 section that has an 8-inch inlet and outlet line, handles the flow when there is a minor amount of
3 flow. He said that when the calculations and analysis are completed, which he has done, it is
4 discovered that the storm sewer now has the capacity to handle less than the one-year storm for the
5 watershed area that is connected to it. He said that once you get above the one-year storm the system
6 becomes overloaded and over and flow must be addressed because some of the flow will go into the
7 storm sewer but other parts will go over land. He said that the contours are clear indicating that the
8 over land flow will continue down the driveway and out and then down the road side ditch to the
9 cross-road culvert at High Cross Road. He said that the gravel parking lot area was not graded to
10 drain north and west because it never occurred or if it did occur it has since been re-graded to take
11 that back out and it also drains to the east and is not connected to the storm sewer system.
12

13 Mr. Wauthier stated that when the elevations are reviewed the elevation for the inlet is approximately
14 four feet higher than the elevation of the other inlet, invert wise. He said that if the storm sewer
15 system gets surcharged it is actually possible for the storm water to bubble up the other way. He said
16 that the elevation differences are even more severe when you get to the inlet at an elevation of 719
17 and an inlet at 724, as indicated by Mr. Bradshaw. He said that if the 12-inch storm sewer is
18 surcharged water can actually backflow and flow east towards the Hummel property which is what
19 he believes is actually occurring. He said that there is a drainage problem occurring and it is not a
20 problem that can be resolved because it can be fixed.
21

22 He said that the other element of this issue has to do with the overall watershed. He said that there is
23 a 15-inch diameter, correlated metal pipe culvert under High Cross Road in front of the Hummel
24 property. He said that if you include the storm sewer area there is about 13 acres draining to the 15-
25 inch pipe and diverts out of the water shed. He said that if you delete the flow that the 12-inch storm
26 sewer is going to handle then it is discovered that the remainder of the flow handles about a 9 month
27 storm. He said that any storm bigger than a 9-month storm will involve ponding in the Hummel's
28 yard and overflow of the township road which is a significant concern. He said that this is an issue
29 that the Hummel family has discussed with this Board previously and without having a full
30 understanding of the analysis regarding the addition of fill he is not sure that the Hummel family
31 understood what was actually happening. He said that this situation is not a situation that cannot be
32 resolved but it is a significant issue because if there is a culvert only can provide a 9-month storm
33 flow capacity there will be flooding next door. He said that unfortunately when you add up the
34 impervious and hard-surfaced/rock area that is indicated inside the pink area on the map plus along
35 the south edge there is over an acre of hard-surface ground that for the most part was never intended
36 to flow towards the Hummel property. He said that this is what the 1984 designed plan was which
37 was to have it go north and west and not towards the Hummel property.
38

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1 Mr. Wauthier stated that he just saw the storm water detention basin system design tonight and it
2 certainly appears to be able to handle the kind of issues or could be suitable for the site for the
3 proposed improvement, for just those existing conditions. He said that the new design does not
4 resolve the fact that the 1984 plan was not implemented and that is where the drainage problem
5 comes from. He said that there was no stormwater management plan in 1984 and there was no
6 Stormwater Management Ordinance. He said that the stormwater management plan was never
7 implemented and he is not sure why. He said that in regards to the overall 13 acre shed new
8 development has occurred since 1984. He said that there has been hard surface added to the roadway
9 and the residential area therefore it is up to over 40% hard surface for this watershed and yet the
10 township road culvert has never been changed. He said that it doesn't take a rocket scientist to know
11 that at 13 acre watershed that is 45% hard surfaced is not good because something is going to
12 happen. He said that if further development is to occur it must occur in a matter that will not
13 aggravate the existing drainage problem and that the existing drainage problem be resolved. He said
14 that it appears that the high water surface of the proposed stormwater detention basin is going to be
15 two or three feet higher than the rim of the inlet that is proposed. He said that the basin is at an
16 elevation of 721 or 722 and 719 is the rim of the inlet for the 8-inch line. He said that if the 12-inch
17 is full, which means that the 8-inch cannot flow, the water come out of the basin flow to the inlet and
18 squirt up out of the top of the rim. He said that it is 722 on one end and 719 on the other and the
19 water will flow straight to the Hummel's property. He said that without doing a full analysis to
20 understand the system he does not know that it can be said that it will not add to the flow that is
21 traveling towards the Hummel property.

22
23 Mr. Thorsland asked the Board if there were any questions for Mr. Wauthier.

24
25 Mr. Courson stated that these problems occur now and if the request was denied the problems would
26 continue to exist and drainage issues would not be resolved.

27
28 Mr. Wauthier stated yes.

29
30 Mr. Courson asked Mr. Wauthier if the additional work that is proposed would help alleviate some
31 of the drainage issues.

32
33 Mr. Wauthier stated that the proposed design would not resolve the existing drainage issues.

34
35 Mr. Courson stated that he did not ask if the proposed design would resolve the existing drainage
36 issues but would it make the drainage better.

37
38 Mr. Wauthier stated that if the proposed work was properly designed and constructed then it could

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1 make the drainage issues better but he does not know if that will be the case. He said that if the
2 water surface elevation at the basin is higher than the rim of the inlet that it is connecting to and the
3 downstream storm sewer system is already overloaded the water will add to the flow.
4
5 Mr. Courson stated that it will not add anymore than what is already existing.
6
7 Mr. Wauthier stated maybe and maybe not.
8
9 Mr. Courson asked Mr. Wauthier to locate the Hummel property.
10
11 Mr. Wauthier indicated on the location of the Hummel property on the aerial photograph.
12
13 Mr. Courson asked Mr. Wauthier if he would agree that the Hummel residence was built at the
14 bottom of a swale.
15
16 Mr. Wauthier stated that he would agree that the residence is at the edge of a swale.
17
18 Mr. Courson stated that before all of the development the natural flow of the water would have
19 flowed right through the Hummel property. He said that the house was built at the bottom of a
20 natural drainage swale.
21
22 Mr. Wauthier stated that it wasn't built at the bottom of a natural drainage swale but was built at the
23 side of a natural drainage swale.
24
25 Mr. Courson stated that anyone who builds a structure in a swale should expect water to flow across
26 the front.
27
28 Mr. Wauthier stated that none of the construction was built in what would have been the natural
29 swale.
30
31 Mr. Courson stated that if the yard gets water in it you would expect water to flow through the swale.
32
33 Mr. Wauthier stated yes.
34
35 Mr. Passalacqua stated that it appears that the Hummel's property was divided knowing that it had a
36 wet corner because it appears to be twice the size as the neighboring lots. He asked Mr. Wauthier if
37 the culvert pre-dates the home on the Hummel's property. He said that based upon the lay of the
38 land it appears that the culvert existed before the house was built.

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1
2 Mr. Wauthier stated that he cannot say with any certainty that the culvert pre-dates the house but he
3 can indicate that the culvert existed in 1976 because his firm has field survey data for the culvert in
4 1976.
5
6 Mr. Passalacqua asked Mr. Wauthier if he was hired, in his professional capacity, to help design the
7 existing house would he have suggested that the house be located on the southern portion of the lot.
8
9 Mr. Wauthier stated yes.
10
11 Mr. Thorsland asked the Board if there were any additional questions for Mr. Wauthier and there
12 were none.
13
14 Mr. Thorsland asked if staff had any questions for Mr. Wauthier and there were none.
15
16 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Wauthier.
17
18 Mr. Thorsland called Mr. Carl Webber. He informed Mr. Webber that his cross examination can
19 only be in regards to Mr. Wauthier's testimony and no new testimony will be allowed.
20
21 Mr. Carl Webber, legal counsel for the petitioner, stated that Mr. Wauthier suggested that the opinion
22 by Tom Berns', was in Case 582-S-04.
23
24 Mr. Wauthier stated that he does know what the case number was but he does know that it was a case
25 in 1984.
26
27 Mr. Webber asked Mr. Webber if he reviewed the handout that was available to everyone which
28 related to Case 502-S-84 indicated the proposed new building.
29
30 Mr. Wauthier stated that he has not reviewed the handout.
31
32 Mr. Webber asked Mr. Wauthier if he knew if Mr. Berns' opinion was based upon a request in Case
33 502-S-84 to build the proposed building.
34
35 Mr. Wauthier stated that the opinion was provided in response to a zoning case to construct an
36 additional structure.
37
38 Mr. Webber asked Mr. Wauthier if the building was constructed.

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1
2 Mr. Wauthier stated that he does believe that the building was constructed and is indicated in the
3 pink area on the submitted map.

4
5 Mr. Webber stated that the proposed new building is 90 feet by 48 feet to the north of the existing
6 warehouse. He asked Mr. Wauthier if his opinion is based upon the fact that the new warehouse was
7 built.

8
9 Mr. Wauthier stated that his opinion is based upon what exists currently.

10
11 Mr. Webber asked Mr. Wauthier if the opinion in 1984, suggesting that certain things were required,
12 was based upon the assumption that this building would be built.

13
14 Mr. Wauthier stated that he does not know.

15
16 Mr. Webber stated that Mr. Wauthier does not know the basis for this document that his firm drafted.

17
18 Mr. Thorsland suggested that the parties involved get together outside of the public hearing to work
19 out the issues at hand rather than during cross examination. He said that this is quasi-legal but not a
20 trial. He said that there have been efforts by the Apostolic Church to meet with Mr. Hummel and it
21 would be nice for the efforts to be satisfied. He said that the case will be continued because staff has
22 been overwhelmed with other work and the Board does not have a final determination at this time.
23 He said that there are other names on the witness register awaiting the opportunity to address the
24 Board. He strongly encouraged that both parties meet to resolve the drainage issues. He said that he
25 does not believe that the petitioner is responsible for the inadequacy of the township road culvert and
26 the testimony has wandered off the path of the zoning case before the Board.

27
28 Mr. Hall stated that the information that is being received tonight is very important. He said that we
29 do not have an engineer on staff and he would not pretend to be an engineer. He said that staff's
30 intention was to have Bryan Bradshaw's engineering design reviewed by a licensed professional
31 engineer at such time as it is submitted. He said that it is at the discretion of this Board to require an
32 approved engineering design before approving the special use permit. He said that based on what
33 Mr. Wauthier presented tonight this is literally what the Ordinance calls a drainage system of unusual
34 conditions. He said that if what the Board has heard tonight is true there is no limit to what the
35 petitioner will have to pay for engineering review of this design because we have no idea how
36 complicated this is going to be to resolve until there is a resolution. He said that this is a serious
37 problem because this is the tile that the petitioner is proposing to outlet the new basin to and he does
38 not see how the Board can really consider the basin that has been proposed until they have a

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1 response. He said that the response is not going to happen tonight and the Board could sit here until
2 midnight and there is not going to be any answer on this issue.
3
4 Mr. Hall stated that he does not mean to interrupt Mr. Webber and he has every right to ask his
5 questions but this has put the Board in a very difficult position.
6
7 Mr. Webber stated that the fancy document that has been put forth was not created this afternoon.
8 He said that he and the petitioner could have been consulted and why they were not is unknown.
9
10 Mr. Hall informed Mr. Webber that his comment is not relevant.
11
12 Mr. Thorsland informed Mr. Webber that at this time is at the cross examination table and is not
13 allowed to present new testimony.
14
15 Mr. Webber asked if and when he and the petitioner are able to meet with Mr. Wauthier and Mr.
16 Hummel is the petitioner responsible to address the current status or are they responsible to show
17 that their requested addition will actually result in an approved situation rather than a worse
18 situation.
19
20 Mr. Thorsland stated that this will be up to staff and the Board. He said that he would like to see an
21 answer to the drainage issues but that answer is not going to come tonight.
22
23 Mr. Thorsland asked Mr. Webber if he had any further questions for Mr. Wauthier based on his
24 testimony.
25
26 Mr. Webber stated no.
27
28 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Wauthier and there was no
29 one.
30
31 Mr. Thorsland called Mr. John Hummel to testify. He said that Mr. Hummel has previously
32 presented testimony regarding this case therefore he encouraged Mr. Hummel to only add new
33 testimony.
34
35 Mr. John Hummel, who resides at 504 East Mumford, Urbana, stated that he is a registered
36 professional engineer and he is the father of Mark Hummel who resides at 2103 North High Cross
37 Road, Urbana. He said that Pastor Rogers read most of his letter dated October 27, 2011, therefore he
38 will not read it again. He said that Mr. Wauthier's comments essentially underline what he and his

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1 son have been trying to tell the Board during the last couple of hearings that there is a drainage
2 problem at the subject property. He said that it is their opinion that additional development of a 24/7
3 dormitory in a low use AG-2 district is an increase in density and is something that belongs in the
4 AG-2 district. He said that he applauds Mr. Hall's suggestion that the case be continued to a later
5 date. He said that he and his son are willing to meet with the petitioner and his representatives to
6 seek a solution to the drainage issues.

7
8 Mr. Thorsland asked the Board if there were any questions for Mr. Hummel and there were none.

9
10 Mr. Thorsland asked if staff had any questions for Mr. Hummel and there were none.

11
12 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Hummel and there was no
13 one.

14
15 Mr. Thorsland called Mr. Mark Hummel to testify.

16
17 Mr. Mark Hummel, who resides at 2103 North High Cross Road, Urbana, stated that he and his
18 family are the only residents downstream and they are willing to come to some kind of resolution.
19 He said that the Zoning Ordinance has clear steps that deal with drainage therefore he believes that
20 the Board should take a moment to review those steps. He said that the Ordinance, in regards to
21 stormwater management, also indicates that the drainage needs to be fixed before more happens.

22
23 Mr. Thorsland asked the Board if there were any questions for Mr. Hummel and there were none.

24
25 Mr. Thorsland asked if staff had any questions for Mr. Hummel and there were none.

26
27 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Hummel.

28
29 Mr. Thorsland called Carl Webber to the cross examination microphone.

30
31 Mr. Webber asked Mr. Hummel if he built the home.

32
33 Mr. Hummel stated no.

34
35 Mr. Webber asked Mr. Hummel if he knew when the home was built.

36
37 Mr. Hummel stated that he did not know when his home was built.

38

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1 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Hummel and there
2 was no one.
3
4 Mr. Thorsland called R.J. Eaton to testify.
5
6 Mr. R.J.Eaton declined to testify.
7
8 Mr. Thorsland called Mr. Thomas Martin.
9
10 Mr. Thomas Martin declined to testify.
11
12 Mr. Thorsland called Les Cotton to testify.
13
14 Mr. Les Cotton declined to testify.
15
16 Mr. Thorsland called John Grubb.
17
18 Mr. John Grubb declined to testify.
19
20 Mr. Thorsland called Steve Johnson.
21
22 Mr. Steve Johnson stated that he had no new information to add but would answer any questions that
23 the Board or staff may have.
24
25 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Johnson and there were
26 none.
27
28 Mr. Thorsland called Randall Brown to testify.
29
30 Mr. Randall Brown, who resides at 2408 North High Cross Road, Urbana, thanked Mr. Courson for
31 pointing out his error regarding the 14th Amendment. He said that there has been a lot of discussion
32 about the drainage plan, etc, but the main focus is still about the use of the property. He said that in
33 his last testimony he mentioned fair treatment under the Ordinance for a private business versus a
34 church business. He said that this is a very important thing because the Zoning Administrator has
35 glossed over this without considering the rights of individuals versus the rights of the church. He
36 said that by omitting the third special use associated with the property, if enacted, the amendment
37 violates the Zoning Ordinance relative to Rural Home Occupation. He said that we, the general
38 public, deserve a complete analysis and appropriate authorization of each special use on this

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1 property. He said that there is a third special use and it is not listed on the amendment therefore we
2 must wake up and get it resolved because he is tired about having to come before the Board to
3 complain about use. He asked why he has to continually attend these meetings because someone
4 cannot identify what is truly going on at the subject property.

5
6 Mr. Brown stated that he feels that the special use permit is flawed because the third use is not
7 discussed. He said that the church is running a business and it needs to be stopped. He said that the
8 case should be thrown out and a new case filed.

9
10 Mr. Thorsland asked the Board if there were any questions for Mr. Brown and there were none.

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

13
14 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Brown.

15
16 Mr. Thorsland called Pastor Rogers to the cross examination microphone.

17
18 Pastor Rogers asked Mr. Brown to indicate the third use that he refers to as a business.

19
20 Mr. Brown stated that he has referred to the business at every meeting. He said that Lifeline-
21 connect's website offers services for yard clean-up, construction, and roofing. He said that even
22 though it is a 501-C-3 it is still a business and there is nothing on the application that describes this
23 third special use and it has to stop. He said that tonight the case should be thrown out due to the
24 drainage issues and the omitted third special use.

25
26 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Brown and there was
27 no one.

28
29 Pastor Rogers asked Mr. Thorsland if Mr. Webber could address Mr. Brown's comments.

30
31 Mr. Thorsland called Mr. Webber.

32
33 Mr. Webber stated that not only is it the church's strong opinion that the services that are offered is
34 to help support the facility, consisting of a simple accessory use to the church, County staff has also
35 offered this opinion. He said that after reviewing several similar cases he finds the opinion to be
36 supported.

37
38 Mr. Thorsland asked the Board if there were any questions for Mr. Webber and there were none.

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1
2 Mr. Thorsland asked if staff had any questions for Mr. Webber and there were none.
3
4 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Webber and there was no
5 one.
6
7 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
8 testimony regarding Case 691-S-11.
9
10 Mr. Thorsland called Brenda Rogers to testify.
11
12 Ms. Rogers, Administrative Director for Lifeline-connect, stated that they have fundraisers and there
13 is no charge for the services that are offered although they do accept donations. She said that the
14 fundraiser teaches the residents in the program a trade or offers them work. She said that someone
15 may call requesting to have their yard raked or whatever type of service that they need completed.
16 She said that it is no different than a youth group would do a car wash and is just a fundraiser of 501-
17 C-3, not-for-profit. She said that the fundraiser incorporates very few hours and she would like to
18 see more in the future but it is not a business. She said that there is tremendous support from the
19 public and they are glad to offer a donation for the program.
20
21 Mr. Thorsland asked the Board if there were any questions for Ms. Rogers.
22
23 Mr. Passalacqua asked Ms. Rogers if the website indicates that the services offered are by-donation
24 only.
25
26 Ms. Rogers stated yes.
27
28 Mr. Thorsland asked if staff had any questions for Ms. Rogers and there were none.
29
30 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Rogers.
31
32 Mr. Thorsland called Mr. Randall Brown to the cross examination microphone.
33
34 Mr. Brown asked Ms. Rogers if the activity involves more than one person parking on the property.
35
36 Ms. Rogers stated that if the residents travel to a location they are with R.J.Eaton in the church van.
37
38 Mr. Thorsland asked the audience if anyone else desired to cross examine Ms. Rogers and there was

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1 no one.

2

3 Mr. R. J. Eaton requested the opportunity to address the Board.

4

5 Mr. Thorsland called R. J. Eaton to testify.

6

7 Mr. R.J. Eaton, who resides at 2107 North High Cross Road, Urbana, stated that the program has
8 never done a fundraiser on the property and no one comes to the property for services.

9

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

11

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

13

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

16

17 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
18 regarding Case 691-S-11 and there was no one.

19

20 Mr. Thorsland closed the witness register.

21

22 Mr. Thorsland stated that this case will not be completed at tonight's hearing therefore the Board
23 should consider a continuance date. He said that the Board would like information regarding
24 whether or not the 12-inch drainage tile is adequate or whether the outlet basin could be relocated.
25 He again encouraged all parties to make an attempt to work out their private issues outside of the
26 public hearing so that the Board may utilize their time in completing this case. He asked the Board if
27 there was any additional information required from staff or the petitioner.

28

29 Mr. Hall asked if the Board is indicating that when the case comes back before them the Board wants
30 to know that there is an adequate drainage outlet for the detention basin that is part of the proposal
31 meaning that there has been engineering analysis done to verify that it is an adequate outlet. He
32 asked if this is the information that the Board will require prior to taking final action.

33

34 Mr. Passalacqua stated that it was mentioned that this is a unique drainage situation. He asked who
35 the responsible party is for the existing under-road culvert that pre-dates 1976.

36

37 Mr. Hall stated that township highway commissioner is responsible for that culvert and the under-
38 road culvert is not the problem. He said that the problem, as he understands it, is that it is assumed

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1 that the existing tile will accept the flow from the basin.

2

3 Mr. Passalacqua stated that Bryan Bradshaw testified that this issue has not been addressed.

4

5 Mr. Hall stated no, because the Board has not requested for such extensive engineering.

6

7 Mr. Passalacqua stated that he would like a third party engineer to determine whether or not what is
8 being added to the existing condition will work.

9

10 Mr. Hall stated that the only way to do that is to require a design that a third party consultant can
11 review. He said that this will be a lot more investment than the petitioner wanted to do but obviously
12 it will need to be done at some point. He said that an alternative would be to determine if there is a
13 different outlet which may work.

14

15 Mr. Passalacqua asked how much of the responsibility can be assigned to the petitioner and how
16 much of the responsibility is placed on the person who lives on the property that has the existing
17 conditions.

18

19 Mr. Hall stated that the Board has been informed by a practicing engineer that the outlet that is
20 proposed for the basin, Don Wauthier has indicated that he has completed the calculations and Mr.
21 Bradshaw indicated that he has not done any calculations, will not work as it proposed. He said that
22 the Board needs to know that the outlet will work or that there is an alternative outlet that is not so
23 problematic. He said that this is not related to the other property except to the extent that if the outlet
24 doesn't work there will be more flow going to the other property. He said what is being described as
25 a detention basin would not actually function as a detention basin. He said that Carl Webber is
26 accurate in stating that the petitioner is not proposing to add more than 10,000 square feet but he
27 believes that there is enough evidence of inadequate drainage conditions on this property that the
28 Board should not approve even 1,000 square feet without knowing that it won't do more damage.

29

30 Mr. Carl Webber stated that perhaps the best approach would be to install a new 6-inch tile along the
31 existing drainage easement to drain the new basin to assure that there is adequate flow from the basin
32 that will not only address this question but improve the entire situation.

33

34 Mr. Courson stated that calculation would be required to indicate that a 6-inch tile would be
35 adequate. He said that he does not believe that a 6-inch tile would be adequate for a basin of this
36 size or would address all of the existing drainage issues.

37

38 Mr. Webber stated that they would install a new drainage tile that would drain the new basin and

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1 assure the Board that the new basin drains properly so that, at minimum, not hurting things but
2 helping.

3
4 Mr. Courson recommended that the petitioner does everything possible to alleviate existing drainage
5 problems on the property.

6
7 Mr. Hall stated that the situation that he just described would ultimately end up draining through a
8 farm field swale and the Board would need confirmation that draining through the farm field swale
9 would not be exacerbating existing problems. He said that either way when the petitioner returns
10 before this Board there are serious issues which must be made clear.

11
12 Mr. Webber stated that they will certainly address all of these issues and they would appreciate
13 appearing before the Board again as soon as possible.

14
15 Mr. Thorsland asked the Board if there were any further suggestions for the petitioner.

16
17 Ms. Capel asked if the Board will require that the drainage plan be reviewed by a third party
18 consultant.

19
20 Mr. Hall stated that it is up to the Board and it has to be done eventually.

21
22 Ms. Capel stated that it would make more sense to have the review completed now.

23
24 The Board agreed that the drainage plan should be reviewed by a third party consultant.

25
26 Mr. Thorsland requested a continuance date.

27
28 Mr. Hall stated that he cannot believe that the answers that are required will be available until the
29 second week of January, 2012. He said that staff is not aware of a specific date for that meeting but
30 the Board can continue the case to the second meeting in January and as soon as the date is identified
31 notice is sent to everyone that attended tonight's meeting related to this case.

32
33 **Ms. Capel moved, seconded by Mr. Courson to continue Case 691-S-11, to the second meeting**
34 **in January, 2012. The motion carried by voice vote.**

35
36 Mr. Thorsland stated that the Board will take a five minute recess.

37
38 **The Board recessed at 7:45 p.m.**

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1 **The Board resumed at 7:50 p.m.**

2
3 **Case 692-V-11 Petitioner: Rollae Keller Request to authorize the division of a lot that is 4.03**
4 **acres in area into two lots in total in lieu of the requirement that a lot to be divided must be**
5 **more than five acres in area, in the AG-1, Agriculture Zoning District. Location: A 4.03 acre**
6 **tract in the North Half of the Northeast Quarter of Section 32, of Newcomb Township and**
7 **commonly known as the house at 169 CR 2500N, Mahomet.**

8
9 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County
10 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will
11 ask for a show of hands for those who would like to cross examine and each person will be called
12 upon. He requested that anyone called to cross examine go to the cross examination microphone to
13 ask any questions. He said that those who desire to cross examine are not required to sign the
14 witness register but are requested to clearly state their name before asking any questions. He noted
15 that no new testimony is to be given during the cross examination. He said that attorneys who have
16 complied with Article 7.6 of the ZBA By-Laws are exempt from cross examination.

17
18 Mr. Thorsland asked if the Petitioner desired to make a statement outlining the nature of their
19 request.

20
21 Ms. Joanne Keller, who resides at 378 County Road 2425N, Mahomet, stated that they provided
22 additional information for the Board regarding the curtain drain. She said that they have addressed
23 the concerns regarding the mailbox and she did contact the United States Post Master and the post
24 office indicated that placement of the new mailbox beside the existing mailbox was not an issue.
25 She said that if the storage shed is allowed to become a home again they would like to install the
26 driveway 20 feet from the west of the property line.

27
28 Mr. Thorsland asked the Board if there were any questions for Ms. Keller and there were none.

29
30 Mr. Thorsland asked if staff had any questions for Ms. Keller and there were none.

31
32 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Keller and there was no
33 one.

34
35 Mr. Hall distributed a new Supplemental Memorandum dated November 3, 2011, for the Board's
36 review. He said that attached to the new Supplemental Memorandum is a revised Summary of
37 Evidence. He said that he does not believe that the revised Summary of Evidence includes any new
38 evidence other than what was included in the October 28, 2011, memorandum. He said that there are

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1 three conditions proposed and those conditions were included in the October 28, 2011,
2 memorandum. He said that the three special conditions of approval are as follows:

- 3 **1. The Zoning Administrator shall include a copy of Champaign County**
- 4 **Resolution No. 3425 with the Zoning Use Permit for the dwelling.**
- 5 **2. Any driveway on the proposed lot shall be more than 20 feet away from**
- 6 **the west property line of said lot.**
- 7 **3. The curtain drain outlet must be at least 80 feet from a property line so**
- 8 **as to not create a nuisance condition on adjacent property.**
- 9

10 Mr. Hall stated that when the Board prepares their findings the Ordinance requires that every finding
11 be affirmative in order for the variance to be approved. He said that if even one finding is not
12 supportive of an approval then the variance cannot be approved. He said that if the variance is not
13 approved the building can only ever be a storage building and no occupancy can take place in the
14 building if the variance is not approved.

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

17
18 Mr. Thorsland called Kevan Parrett to testify.

19
20 Mr. Kevan Parrett, who resides at 180 County Road 2400N, Mahomet, stated that his residence is
21 approximately one-mile south of the subject property. He said that he uses County Road 2500N
22 during the farming season to travel to his different fields. He said that he still has concerns about the
23 issuance of variances and the increased traffic. He said that within the past five years there have
24 been seven or eight new houses built due to the allowance of a farm to obtain variances allowing
25 more lots than what is normally allowed. He said that he has some concerns over Item #3 of the
26 Findings of Facts and whether or not the special conditions, circumstances, hardships or practical
27 difficulties result from actions of the applicant. He said that the petitioner indicated that they
28 purchased four acres and did not realize that they could not divide the property. Mr. Parrett stated
29 that the petitioner's statement is open to interpretation as to whether it is the fault of the petitioner or
30 the County. He said that the County does not want to continue offering variances to everyone
31 because the subject property is located in an agricultural area and not a residential area.

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

34
35 Mr. Thorsland asked if staff had any questions for Mr. Parrett.

36
37 Mr. John Hall stated that Mr. Parrett was present when staff reviewed the number of five acres lots
38 which were generally located north of the subject property and generally in the area of the Manlove

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1 Gas Storage Field and generally in the vicinity of gas pipelines and generally within Pipeline Impact
2 Radius. He asked Mr. Parrett if those five acre lots north of CR 2500N could not be divided does he
3 still have a problem with added traffic from divisions of lots similar to this request.

4
5 Mr. Parrett stated no, not if the lots that are along CR 200E cannot be further divided.

6
7 Mr. Hall stated that the Board cannot pre-judge any variance therefore the Board cannot say whether
8 a variance along CR 200E would be approved or not. He said that his belief that the variances for
9 the division of lots which are five acres or less that are within Pipeline Impact Radius are not likely
10 to be approved by this Board. Mr. Hall stated that he has the impression that Mr. Parrett does not
11 share his belief.

12
13 Mr. Parrett stated that Mr. Hall is correct because the variances were offered for the lots to begin
14 with on CR 200E.

15
16 Mr. Hall stated that a rezoning occurred and not variances.

17
18 Mr. Parrett stated that this is agricultural land in an agricultural area and it appears that there has
19 been a great influx of residential development in the area.

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

23
24 Mr. Thorsland called Mr. Doug Turner to testify.

25
26 Mr. Doug Turner, who resides at 248 County Road 2500N, Mahomet, stated that his property is
27 adjacent to the subject property. He said that he too has concerns regarding the petitioner's response
28 to Finding of Fact #3 and it appears that by their answer the variance would be denied just for that
29 fact. He said that the Finding of Fact #4 is in regards to the intent of the Ordinance. He said that the
30 Ordinance indicates that five acres cannot be subdivided and that amendment went into effect in
31 2004 and the Keller's purchased the property in 2006 which is after the Ordinance was amended and
32 whether or not Mr. and Mrs. Keller were aware of the change in the Ordinance is not pertinent. Mr.
33 Turner stated that there are a lot of houses around his property and he agrees with Mr. Hall in that if
34 the other lots are within the Pipeline Impact Radius they may not be approved for division. He said
35 that if we look at Champaign County and the hundreds of five acre lots that could be divided and the
36 Board approves this request based on the current owner's ignorance then the owners of those five
37 acre lots could come before the Board requesting the same variance. He said that if the Board begins
38 granting these requests then it could be creating a monster and the Board should consider this fact

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1 very seriously not just on this particular five acre lot but county wide.
2
3 Mr. Thorsland asked the Board if there were any questions for Mr. Turner and there were none.
4
5 Mr. Thorsland asked if staff had any questions for Mr. Turner.
6
7 Mr. Hall stated that the Board has, in the past, approved variances like this and it is very difficult to
8 have any two variances with the exact same condition but there have been variances authorized. He
9 said that there have been instances where the variances were denied.
10
11 Mr. Turner stated that one of these days the County has to take a stance. He said that if the County
12 has an Ordinance that indicates five acre lots then that limitation should be enforced because there
13 are a lot of properties for sale in the County which have already been divided.
14
15 Mr. Thorsland asked the Board and staff if there were any further questions for Mr. Turner and there
16 were none.
17
18 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Turner and there was no
19 one.
20
21 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
22 regarding Case 692-V-11, and there was no one.
23
24 Mr. Thorsland closed the witness register.
25
26 Mr. Hall stated that staff did insert testimony from the previous hearings into the Summary of
27 Evidence. He said that Ms. Keller's testimony regarding the special conditions or circumstances that
28 may apply. He said that the Summary of Evidence also includes Kevan Parrett's testimony and Doug
29 Turner's previous testimony regarding his concerns about the possible impacts on his livestock
30 facility.
31
32 Mr. Thorsland asked the Board if there was any testimony from tonight's public hearing which the
33 Board would like to add to the Summary of Evidence. He said that there are three special conditions
34 which have been proposed and they are as follows:
35
36 **1. The Zoning Administrator shall include a copy of Champaign County**
37 **Resolution No. 3425 with the Zoning Use Permit for the dwelling.**
38 To ensure that that farming should be expected on adjacent property and that it

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1 is not considered a nuisance to neighboring properties.

2
3 Mr. Thorsland asked the petitioner if they agreed to Condition #1 and the petitioner stated that they
4 did agree.

5
6 Mr. Thorsland asked the Board if they agreed to Condition #1 and the Board indicated that they did
7 agree.

8
9 **2. Any driveway on the proposed lot shall be more than 20 feet away from
10 the west property line of said lot.**

11 To help ensure that public safety by minimizing road safety concerns associated
12 with the increased traffic.

13
14 Mr. Thorsland asked the petitioner if they agreed to Condition #2 and the petitioner stated that they
15 did agree.

16
17 Mr. Thorsland asked the Board if they agreed to Condition #2 and the Board indicated that they did
18 agree.

19
20 **3. The curtain drain outlet must be at least 80 feet from a property line so
21 as to not create a nuisance condition on adjacent property.**

22 To prevent nuisance water problems on neighboring properties.

23
24 Mr. Thorsland asked the petitioner if they agreed to Condition #3 and the petitioner stated that they
25 did agree.

26
27 Mr. Thorsland asked the Board if they agreed to Condition #3 and the Board indicated that they did
28 agree.

29
30 Mr. Hall stated that a new Item #10 should be added to the Documents of Record as follows:
31 Supplemental Memorandum dated November 3, 2011, with attachment.

32
33 **Findings of Fact for Case 692-V-11:**

34
35 From the documents of record and the testimony and exhibits received at the public hearing for
36 zoning case 692-V-11 held on July 28, 2011, October 13, 2011, and November 3, 2011, the Zoning
37 Board of Appeals of Champaign County finds that:

38

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

4
 5 Ms. Capel stated that special conditions and circumstances DO exist which are peculiar to the land or
 6 structure involved, which are not applicable to other similarly situated land and structures elsewhere
 7 in the same district because the petitioner had the intent of buying the lot to divide and did not realize
 8 they could not divide the lot. She said that the subject property is a small parcel and is not being
 9 farmed therefore the proposed use will not take any best prime farmland out of production.

10
 11 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
 12 **regulations sought to be varied WILL prevent reasonable or otherwise**
 13 **permitted use of the land or structure or construction.**

14
 15 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
 16 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
 17 structure or construction because the structure, even though currently acting as a storage shed, was
 18 purchased for their son to reside in and if the variance is not approved the son will not have
 19 anywhere to live.

20
 21 Mr. Thorsland stated that a second dwelling is not permitted in the Ordinance.

22
 23 **3. The special conditions, circumstances, hardships, or practical difficulties DO**
 24 **result from actions of the applicant.**

25
 26 Ms. Capel stated that special conditions, circumstances, hardships, or practical difficulties DO NOT
 27 result from actions of the applicant because the applicant was unaware the property could not be
 28 divided and used in the manner that they intended.

29
 30 Mr. Courson stated that ignorance of the zoning law is not a reason to approve the variance.

31
 32 Ms. Capel stated that the petitioner did create the hardship and their actions were not intentional.

33
 34 Mr. Courson stated that even though it wasn't their intent it is still ignorance of the law.

35
 36 Mr. Passalacqua stated that the information is in the Ordinance.

37
 38 Ms. Capel stated that the petitioner was unaware that the property could not be divided and used in

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1 the manner in which they intended.

2

3 Mr. Passalacqua asked Ms. Capel if it makes it right just because the petitioner did not know about
4 it.

5

6 Ms. Capel stated that the hardship was not directly the result of the petitioner's action.

7

8 Mr. Passalacqua and Mr. Courson disagreed with Ms. Capel's recommendation.

9

10 Mr. Thorsland stated that it is the Board's purview to vote on Ms. Capel's recommendation.

11

12 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties
13 DO result from the actions of the applicant because they were not aware of the law.

14

15 Mr. Thorsland stated that the Ordinance was amended in 2004 and the Keller's purchased the
16 property in 2006.

17

18 Mr. Thorsland requested that Mr. Passalacqua stated his recommendation.

19

20 Mr. Passalacqua stated that the special conditions, circumstances, hardships, or practical difficulties
21 DO result from actions of the applicant because the Ordinance was in place prior to the petitioner's
22 purchase of the property.

23

24 **4. The requested variance, subject to the proposed special conditions, IS NOT in**
25 **harmony with the general purpose and intent of the Ordinance.**

26

27 Mr. Miller stated that the requested variance, subject to the proposed special conditions, IS NOT in
28 harmony with the general purpose and intent of the Ordinance because it is not the intent of the
29 Ordinance to establish residences in storage buildings.

30

31 Mr. Thorsland stated that the petitioner did not purchase the manufactured home to be a storage shed
32 in the first place. He said that the petitioner has turned the manufactured home into a storage shed
33 pending the outcome of this case.

34

35 Mr. Thorsland stated that perhaps it is not in harmony because the intent is to preserve the lot as one.

36

37 Ms. Capel stated that the intent is to preserve the agricultural characteristics of the district.

38

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1 **5. The requested variance, subject to the proposed condition, WILL NOT be**
2 **injurious to the neighborhood or otherwise detrimental to the public health,**
3 **safety, or welfare.**

4
5 Mr. Thorsland stated that the requested variance, subject to the proposed special conditions, WILL
6 NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare
7 because the petitioner made efforts to address the concerns of surrounding agricultural activities.

8
9 **6. The requested variance, subject to the proposed special conditions IS the**
10 **minimum variation that will make possible the reasonable use of the**
11 **land/structure.**

12
13 Ms. Capel stated that the requested variance IS the minimum variation that will make possible the
14 reasonable use of the land/structure because it is the only way the petitioner can establish a second
15 residence on the parcel.

16
17 Mr. Passalacqua asked if reasonable use of the land/structure would be related to the existing primary
18 house. He said that the letter of the Ordinance is that there only be one residence on a five acre
19 parcel.

20
21 Mr. Hall stated that certain members of the Board may remember a zoning case east of Rantoul a few
22 years ago where the Board had the same situation. He said actually the case was inverse in that they
23 had converted a building into a second dwelling on the lot and the outcome of the variance was that
24 the County does allow accessory structures on a lot and can be used by people provided that they
25 don't constitute a second dwelling. He said that by terms of the Ordinance a dwelling has both a
26 kitchen and a bath. He said that he has not discussed this situation with Mr. and Mrs. Keller but as
27 long as the second structure does not have both a kitchen and a bath there can be someone staying in
28 the structure. He said that what he indicated previously was in error because the building which has
29 been modified into a storage shed can continue to have someone live in it and it would be called a
30 "mother-in-law cottage" and not a dwelling. He said that the structure will not be a dwelling unit
31 and it cannot be divided and it must remain as part of the property. He said that the way that the
32 Board has constructed the findings this variance cannot be approved and it has to be denied. He said
33 that so everyone understands this does not mean that what is happening on the property currently has
34 to stop. He said that he does have a problem with the existing grill that has been noted sitting
35 outside of the existing building and although the grill is not a kitchen he would encourage the owners
36 of the property to not have cooking in the vicinity of the eastern structure because it creates a
37 difficult situation. He said that the property cannot be divided once the variance is not granted but in
38 general what he understands is occurring on the property can continue to occur but there cannot be a

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1 kitchen added onto the inside of the structure. He said that this is a difficult enforcement situation
2 but the Ordinance has allowed this practice for a long time and this is what staff always tells people
3 since he has been a member of the department.

4
5 Mr. Courson asked if the County Ordinance does not require an occupancy permit for someone to
6 live in a structure.

7
8 Mr. Hall stated that a compliance certificate is required. He said that the compliance certificate
9 allows staff to inspect and verify that the structure is not a dwelling but is just an accessory structure.
10 He asked Ms. Hitt, Zoning Officer, to indicate what staff normally calls these types of structures.

11
12 Ms. Hitt stated that normally staff would call these units accessory apartments.

13
14 Mr. Courson stated that this would be like having an apartment above a detached garage or next to
15 the house.

16
17 Mr. Hall stated yes, although the apartment cannot have a kitchen or a kitchenette and it is an
18 enforcement problem for staff.

19
20 Ms. Capel stated that someone could have a kitchen but not a bathroom.

21
22 Mr. Hall stated yes.

23
24 Mr. Passalacqua asked what happens to the drainage requirements since there is no kitchen.

25
26 Mr. Hall stated that the Board cannot impose a condition if there is no variance granted.

27
28 Ms. Capel asked if finding #6 should be IS NOT.

29
30 Mr. Hall stated that this variance is the minimum for this to be a dwelling.

31
32 Mr. Thorsland read the Findings of Fact for the Board.

- 33
34 **1. Special conditions and circumstances DO exist which are peculiar to the land or**
35 **structure involved, which are not applicable to other similarly situated land and**
36 **structures elsewhere in the same district.**
37

38 Ms. Berry stated that Ms. Capel recommended that special conditions and circumstances DO exist

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1 which are peculiar to the land or structure involved, which are not applicable to other similarly
2 situated land and structures elsewhere in the same district because the petitioner had the intent of
3 buying the lot to divide and did not realize they could not divide the lot. She said that the subject
4 property is a small parcel and is not being farmed therefore the proposed use will not take any best
5 prime farmland out of production.

6
7 Mr. Thorsland requested that the Board indicate a voice vote.

8
9 **Five Board members agreed with Ms. Capel's recommendation for Finding #1 with two**
10 **opposed.**

11
12 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
13 **regulations sought to be varied WILL prevent reasonable or otherwise**
14 **permitted use of the land or structure or construction.**

15
16 Ms. Berry stated that Ms. Capel recommended that practical difficulties or hardships created by
17 carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or
18 otherwise permitted use of the land or structure or construction because the structure, even though
19 currently acting as a storage shed, was purchased for their son to reside in and if the variance is not
20 approved the son will not have anywhere to live.

21
22 Mr. Thorsland requested that the Board indicate a voice vote.

23
24 **One Board member agreed with Ms. Capel's recommendation for Finding #2 with six opposed.**

25
26 Mr. Thorsland stated that the Board has contradicted itself therefore perhaps the Board would like to
27 revisit the finding.

28
29 Mr. Thorsland stated that practical difficulties or hardships created by carrying out the strict letter of
30 the regulations sought to be varied WILL NOT prevent reasonable or otherwise permitted use of the
31 land or structure or construction because the structure, even though currently acting as a storage
32 shed, was purchased for their son to reside in and if the variance is not approved the son will not
33 have anywhere to live.

34
35 Ms. Capel asked if the Board just decided that the use was not reasonable or permitted. She asked
36 how the Board is to keep the finding consistent.

37
38 Mr. Hall stated that if the Board feels that granting the variance is reasonable then the Board should

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1 stick with WILL.

2
3 Ms. Capel stated that she believes that Finding #2 should be WILL NOT because it is not a permitted
4 use of the land.

5
6 Mr. Thorsland stated that the second structure is not permitted to be used as a dwelling.
7

8 Mr. Thorsland stated that practical difficulties or hardships created by carrying out the strict letter of
9 the regulations sought to be varied WILL NOT prevent reasonable or otherwise permitted use of the
10 land or structure or construction because a second dwelling is not permitted in the Ordinance.

11
12 Mr. Thorsland requested that the Board indicate a voice vote.

13
14 **Seven Board members agreed with Mr. Thorsland’s recommendation for Finding #2.**

15
16 **3. The special conditions, circumstances, hardships, or practical difficulties DO**
17 **result from actions of the applicant.**

18
19 Ms. Berry stated that Mr. Passalacqua stated that the special conditions, circumstances, hardships, or
20 practical difficulties DO result from actions of the applicant because the Ordinance was in place
21 prior to the petitioner’s purchase of the property.

22
23 Mr. Thorsland requested that the Board indicate a voice vote.

24
25 **Seven Board members agreed with Mr. Passalacqua’s recommendation for Finding #3.**

26
27 **4. The requested variance, subject to the proposed special conditions, IS NOT in**
28 **harmony with the general purpose and intent of the Ordinance.**

29
30 Ms. Berry stated that Ms. Capel recommended that the requested variance, subject to the proposed
31 special conditions, IS NOT in harmony with the general purpose and intent of the Ordinance because
32 the intent is to preserve the agricultural characteristics of the district.

33
34 Mr. Thorsland requested that the Board indicate a voice vote.

35
36 **Seven Board members agreed with Ms. Capel’s recommendation regarding Finding #4.**

37
38 **5. The requested variance, subject to the proposed condition, WILL NOT be**

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injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Ms. Berry stated that Mr. Thorsland stated that the requested variance, subject to the proposed special conditions, WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety or welfare because the petitioner made efforts to address the concerns of surrounding agricultural activities.

Mr. Thorsland requested that the Board indicate a voice vote.

Six Board members agreed with Mr. Thorsland’s recommendation regarding Finding #5 with one opposed.

6. The requested variance, subject to the proposed special conditions IS NOT the minimum variation that will make possible the reasonable use of the land/structure.

Ms. Berry stated that Ms. Capel stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because it is the only way the petitioner can establish a second residence on the parcel.

Ms. Berry stated that Mr. Passalacqua stated that reasonable use of the land/structure would be related to the existing primary house. He said that the letter of the Ordinance is that there only be one residence on the property.

Mr. Thorsland stated that the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because it is the only way the petitioner could establish a second residence on parcel. He said that the Board should remember that the requested variance is to establish a second residence therefore the granting of this variance would allow the petitioner to do that.

Mr. Hall stated that the second finding stated that practical difficulties or hardships created by carrying out the strict letter of the regulations sought to be varied WILL NOT prevent reasonable or otherwise permitted use of the land.

Mr. Thorsland stated that if the proposal is to go with IS NOT then the Board should use Mr. Passalacqua’s recommendation which is that the letter of the Ordinance is that there only be one

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1 residence on the property.

2

3 Mr. Passalacqua stated that a reasonable use under today’s standard would be the existing dwelling
4 with an accessory dwelling.

5

6 Mr. Thorsland stated that the requested variance IS NOT the minimum variation that will make
7 possible the reasonable use of the land/structure because the current configuration is a reasonable
8 use.

9

10 Mr. Thorsland requested that the Board indicate a voice vote.

11

12 **Seven Board members agreed with Mr. Thorsland’s recommendation of Finding #6.**

13

14 **7. The special conditions imposed herein are required to ensure compliance with**
15 **the criteria for special use permits and for the particular purposes described**
16 **below:**

17

18 **1. The Zoning Administrator shall include a copy of Champaign County**
19 **Resolution No. 3425 with the Zoning Use Permit for the dwelling.**
20 To ensure that that farming should be expected on adjacent property and that it
21 is not considered a nuisance to neighboring properties.

22

23 **2. Any driveway on the proposed lot shall be more than 20 feet away from**
24 **the west property line of said lot.**
25 To help ensure that public safety by minimizing road safety concerns
26 associated with the increased traffic.

27

28 **3. The curtain drain outlet must be at least 80 feet from a property line so**
29 **as to not create a nuisance condition on adjacent property.**
30 To prevent nuisance water problems on neighboring properties.

31

32 **Mr. Courson moved, seconded by Mr. Passalacqua to adopt the Summary of Evidence,**
33 **Documents of Record and Finding of Fact as amended. The motion carried by voice vote.**

34

35 **Mr. Courson moved, seconded by Mr. Miller to move to the Final Determination for Case 692-**
36 **V-11. The motion carried by voice vote.**

37

38 **Final Determination for Case 692-V-11:**

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1
 2 **Mr. Courson moved, seconded by Mr. Miller that the Champaign County Zoning Board of**
 3 **Appeals finds that, based upon the application, testimony, and other evidence received in this**
 4 **case, that the requirements for approval in Section 9.1.9.C HAVE NOT been met, and**
 5 **pursuant to authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance,**
 6 **the Champaign County Zoning Board of Appeals of Champaign County determines that the**
 7 **variance requested in Case 692-V-11, is hereby DENIED to the petitioner Rollae Keller to**
 8 **authorize the division of a lot that is 4.03 acres in area into two lots in total in lieu of the**
 9 **requirement that a lot to be divided must be more than five acres in area, in the AG-1,**
 10 **Agriculture Zoning District, subject to the following conditions:**

- 11
- 12 **1. The Zoning Administrator shall include a copy of Champaign County**
 13 **Resolution No. 3425 with the Zoning Use Permit for the dwelling.**
 14 To ensure that that farming should be expected on adjacent property and that it
 15 is not considered a nuisance to neighboring properties.
 16
 - 17 **2. Any driveway on the proposed lot shall be more than 20 feet away from**
 18 **the west property line of said lot.**
 19 To help ensure that public safety by minimizing road safety concerns associated
 20 with the increased traffic.
 21
 - 22 **3. The curtain drain outlet must be at least 80 feet from a property line so**
 23 **as to not create a nuisance condition on adjacent property.**
 24 To prevent nuisance water problems on neighboring properties.
 25

26 The roll was called:

27

28 Capel-yes	Courson-yes	Miller-yes
29 Palmgren-yes	Schroeder-yes	Passalacqua-yes
30 Thorsland-yes		

31

32 Mr. Hall informed Mr. and Mrs. Keller that they have received a denial of the requested variance.
 33 He said that staff will get the paperwork out to them as soon as possible. He said that he is sure that
 34 Mr. and Mrs. Keller have questions regarding the property at this point and he suggested that they
 35 call the office in the morning to resolve those questions.
 36

37 Mr. Thorsland stated that the Board will take a five minute recess.
 38

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1 **The Board recessed at 8:33 p.m.**

2 **The Board resumed at 8:39 p.m.**

3

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

21

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

30

31 Mr. Thorsland stated that anyone wishing to testify in this case must sign the witness register by
32 which they solemnly swear that they evidence to be presented at the hearing will be the truth, the
33 whole truth, and nothing but the truth, so help me God. He asked the audience if anyone desired to
34 sign the witness register at this time and there was no one. He stated that there will be other
35 opportunities during the public hearing for this case to sign the witness register.

36

37 Mr. Thorsland asked if the Petitioner desired to make a statement outlining the nature of their request
38 prior to introducing evidence.

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1
2 Mr. Michael Blazer, legal counsel for the petitioner, stated that he plans to focus on the two issues
3 which caused the denial recommendation at the ZBA. He said that there has been a significant
4 revision to the Draft Reclamation Agreement since the version that the ZBA reviewed at their last
5 meeting. He said that the revision was based on the reading of the basis for the denial
6 recommendation and the focus on the concern of the possibility that someone with a collateral
7 position or security interest could somehow affect the County's rights on the decommissioning of
8 this project. He said that they provided an updated draft to Joel Fletcher, Assistant State's Attorney,
9 last week and the version that the Board has before them tonight is exactly like the one that was
10 submitted to Mr. Fletcher except for the attachments which are the exhibits referenced in the
11 agreement.

12
13 Mr. Blazer stated that additional language was added to address the concern regarding secured
14 parties. He said that Paragraph 7(a) and (b) are located on Page 7 of the Reclamation Agreement
15 dated November 2, 2011. He said that this language is to address the concern about the possibility
16 that someone with a security interest, lender, could assert their security interest in the event that in
17 25-years from now Invenergy has disappeared and abandonment is found to have occurred. He said
18 that Paragraph 7(a) provides that the obligation to perform the reclamation work shall constitute a
19 covenant running with the land. He said that this is consistent with Paragraph 6.1.1.A.2 of the
20 Ordinance which likewise requires that the reclamation obligation be a covenant running with the
21 land. He said that this is a very significant because it means that this obligation is superior to any
22 other person or interest that comes on to that land. He said that anyone who has an interest or takes
23 an interest in the property has that interest subject to the reclamation obligation. He said that to the
24 extent possible they wanted to minimize risk therefore proposing Paragraph 7(b) because over and
25 above the fact that anyone who has a security interest would have that interest subject to the covenant
26 running with the land therefore they would come behind the County's interest. He said that they also
27 included a requirement that any financing agreement that Invenergy enters into in regards to this
28 project would have to have an expressed acknowledgment of the reclamation obligation and
29 Invenergy cannot obtain a Zoning Use Permit from the County until they provide satisfactory
30 evidence that those financial risks have been eliminated for the County that any future lienholder
31 could step ahead of the County. He said that any future lienholder will be obligated if California
32 Ridge disappears to decommission the project just as if it were California Ridge. He said that if
33 anyone in the future steps into California Ridge's shoes with respect to the obligations under this
34 agreement and that is what Paragraph 7(a) and (b) does.

35
36 Mr. Blazer stated that the second issue for the denial recommendation was noise. He said that the
37 denial recommendation spoke in terms that there is a possibility that there could be a violation of the
38 Illinois Pollution Control Board noise standards. He said that they thought at length about how

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1 Invenergy had addressed that issue and how could they address that issue. He said that the petitioner
2 and the Board spoke for weeks and weeks about where noise is modeled and not enough time
3 discussing about what the results of the modeling were.
4

5 Mr. Blazer stated that Tim Casey, Acoustic Engineer, sent a supplemental letter to the County
6 confirming the impact of the noise model indicating that it is not just at a pinpoint but covers the
7 entire residential portion of all of the properties that were modeled. He said that part of the reason
8 why there was disconnect between everyone was because of the use of the phrase “property line
9 noise standards.” He said that the assumption became from a number of people that this meant that
10 it is measured or modeled at the receiving property line and remember we have discussed the noise
11 source and the receptor which would be the wind turbine and someone’s home on a non-participating
12 property which is more than 1,200 feet away. He said that in using the term property line noise
13 standard it was assumed by some that what that meant was that it is modeled or measured at the
14 property line of the receiving property and unfortunately that is not what property line noise
15 standards mean. He said that property line noise standard means that the Illinois regulations in the
16 *Illinois Environmental Protection Act* only regulates noise that goes beyond the emitters property
17 line. He said that he could make as much noise as he wants on his own property but what he cannot
18 do is cause noise to go outside of his property line in excess of the numerical limits that have been
19 established by the Illinois Pollution Control Board. He said that Section 24 of the *Illinois*
20 *Environmental Protection Act* indicates that no person shall emit beyond the boundaries of his
21 property. Mr. Blazer stated that this is why it is caused a property line noise standard and that is
22 where the regulations kick in. He said that Section 25 of the *Illinois Environmental Protection Act*,
23 which is the place where the General Assembly authorizes the Illinois Pollution Control Board to
24 enact regulations, indicates that the Illinois Pollution Control Board pursuant to the procedures
25 prescribed in Title 7 of this Act may adopt regulations prescribing limitations on noise emissions
26 beyond the boundaries of any person. He said that the regulations address noise that is emitted
27 beyond the boundary of the property.
28

29 Mr. Blazer stated that the question of where noise is measured or modeled to determine if the noise
30 exceeds the numerical limitations once the noise goes beyond the boundary of the property. He said
31 that there was an Illinois Appellate decision, which was discussed in a previous memorandum in
32 August that was submitted as a Document of Record, which came shortly after the IPCB regulations
33 were first adopted in 1976. He said that the case tracked the history of the adoption of the IPCB
34 regulations. He said that the original proposal in 1972, the proposal for the regulations, indicates that
35 the *Illinois Environmental Protection Act* was passed in 1970 which is what created the Illinois
36 Environmental Protection Agency and the Illinois Pollution Control Board. He said that the original
37 proposal set up a system of land use classification based on the standard land use coding manual
38 devised by the U.S. Department of Transportation which classified all land into classes A, B and C

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1 corresponding to residential, business, and manufacturing uses. He said that at that time emissions
2 were to be measured at the property line of the emitter which meant that the original version of the
3 regulations as proposed would have measured the noise at the common property line. He said that
4 the final draft, subsequently approved and updated in 1972, incorporated several major changes in
5 the applicability of the numerical limits to various noise situations. He said that under the final
6 proposal emissions were to be measured at the point of reception not less than 25 feet from the event.

7 He said that this is the point that has been discussed at several meetings in that noise is not measured
8 at the property line, a concept which was rejected when the regulations were adopted, but at the point
9 of reception. He said that the report that is before the Board from Tim Casey along with his follow-
10 up letter discusses that he modeled at 260 specific points but the issue that became was what was the
11 breath of the modeling in terms of going beyond the house because the initial version of the report
12 that is attached to the application discusses measurement at the residence.

13
14 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer.

15
16 Ms. Capel asked if the obligation to decommission runs with a covenant to the land is there any
17 situation under which the landowner would be obligated to decommission.

18
19 Mr. Blazer stated in theory yes and this is a question which came up Tuesday evening however under
20 all of the easement agreements that Invenergy has with each of the landowners there are several
21 obligations. He said that Invenergy has an obligation to provide insurance of a minimum of \$5
22 million dollars and they have an obligation to indemnify the landowner for any and everything
23 having to do with the presence of the turbine on the landowner's land and Invenergy has an
24 independent obligation to decommission. He said that Invenergy is also required to provide the
25 landowner with financial assurance to secure that obligation. He said that the obligation running
26 with the land would in theory be enforced on the landowner himself but that obligation has been
27 assumed by Invenergy. He said that the easement agreements also run with the land and they would
28 also by operation be imposed on the lenders therefore if California Ridge disappeared the obligation
29 in the easement agreement would be assumed by the lender.

30
31 Mr. Blazer stated that the Committee of the Whole requested an additional condition related to the
32 Reclamation Agreement. He said that a discussion occurred regarding the use of roads at the time of
33 decommissioning because there will not be the same type of situation that would occur during the
34 beginning construction. He said that if the turbines are decommissioned and sold for scrap they are
35 going to be cut up on site and taken off the site. He said that the condition that was requested and
36 Invenergy agreed to was an obligation that if and when decommissioning has to occur, outside of
37 abandonment, Invenergy or its successor would be required at that time to enter into a road use
38 agreement to address any potential impacts on roads. He said that the language which is being

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1 suggested is as follows as special condition 13.I.5: At such time as decommissioning takes place the
2 applicant, or its successor in interest, shall enter into a roadway use and repair agreement with the
3 relevant highway authorities. He said that this is somewhat similar to the upfront obligation that is in
4 the Ordinance currently but this would be a condition at the time of that abandonment or
5 decommissioning takes place. He said that the Committee of the Whole asked Sheryl Kuzma and
6 Jeff Blue and both township highway commissioners if this would be something that could be done
7 today and Ms. Kuzma stated that she does not have a crystal ball big enough to figure out how it
8 would be done and the people who will be involved are probably not even born yet.

9
10 Mr. Thorsland asked the Board if there were any additional questions for Mr. Blazer.

11
12 Mr. Courson stated that when the Board originally reviewed the Ordinance they had a lot of
13 participation from the public regarding noise and the Board originally set setbacks at 1,500 feet and
14 the County Board reduced those setbacks to 1,200 feet. He said that this was one of the reasons that
15 this Ordinance did not obtain a unanimous vote because there are members on the ZBA that are
16 highly concerned about the noise and that concern placed a lot of weight into their decision.

17
18 Mr. Blazer stated that Invenergy recognized that concern. He said that the Board has heard a lot
19 about micro-siting and the fact that Invenergy cannot submit a specific site plan today as to the exact
20 location where the turbines are going to be installed. He said that where the Ordinance has a
21 minimum setback of 1,200 feet from the principal residence or non-participating property with
22 respect to the micro-siting there is a condition that Invenergy has agreed to that takes that back to
23 1,350 feet. He said that they understand it and they recognize it and they have done their best to
24 address it and he believes that they have.

25
26 Mr. Thorsland entertained a motion to extend the meeting to 10:00 p.m.

27
28 **Ms. Capel moved, seconded by Mr. Palmgren to extend the November 3rd meeting to 10:00**
29 **p.m. The motion carried by voice vote.**

30
31 Mr. Thorsland called Kevin Parzyck to testify.

32
33 Mr. Kevin Parzyck, Vice-President of Development for Invenergy, distributed copies of a
34 PowerPoint presentation that he presented to the Committee of the Whole. He said that Slide 11 of
35 the presentation indicates that the Ordinance requires "Noise levels from each Wind Farm Tower or
36 Wind Farm shall be in compliance with the applicable IPCB regulations." He said that the IPCB
37 regulates emission of sound from any source located on any Class A, B or C land to any receiving
38 Class A land. He said that Class A land being the critical land that we have been discussing during

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1 these meetings. He said that Class A land is defined as including residential property and can exist
2 with Class C land within a larger legal parcel. He said that the residential property includes the
3 swing set in the backyard or the pool but it would not extend to a barn or some other function. He
4 said that he is not a land use specialist but it is basically the area around the house.
5

6 Mr. Parzyck stated that Slide 12 indicates that the noise level must be in compliance “at any point
7 within” the receiving Class A land, not just at the edge or at the middle of the property line. He said
8 that if you have land but the noise analysis identifies your land as a point receptor, which means that
9 the noise level was only predicted at the house. He said that the letter from Tim Casey with HDR
10 indicates that the state-of-the-art environmental acoustic analysis utilized by HDR accounts for
11 variations across Class A land within rural properties and confirms compliance with the IPCB
12 regulations. He said that the engineering analysis identified the house but the noise level away from
13 the house is minimal when you are doing the analysis. He said that HDR’s analysis that indicated
14 satisfactory noise levels at that point receptor accounts for the entire Class A land. He said that it
15 comes down to the engineering analysis that is done and are we talking about a point or the area and
16 going back and confirming with the engineer that it accounts for the area.
17

18 Mr. Parzyck stated that the methodology is used throughout Illinois for most of the wind farms in
19 Illinois as well as when IDOT does analysis for roadways next to homes. He said that the bottom
20 line is that this is all a predictor and California Ridge’s responsibility is that they must be in
21 compliance regardless of what the engineering analysis indicates. He said that throughout the life of
22 the project they must meet the IPCB noise levels and they may not know where that level is within
23 the property but they have to meet it. He said that based on HDR’s analysis, and Invenergy’s history
24 they are very comfortable investing hundreds of millions of dollars based on the analysis that they
25 will be in compliance with the IPCB noise levels. He said that during the operation of the wind farm
26 there may be a condition such as a mechanical bearing going bad therefore the wind turbine becomes
27 very loud possibly exceeding IPCB requirements. He said that Invenergy must bring the turbine into
28 compliance based on the mechanical change that no one could have predicted therefore such an
29 occurrence is an ongoing responsibility that Invenergy has. He said that if there are complaints they
30 will be addressed by Invenergy’s local operations facility to take noise levels and take the necessary
31 action to be in compliance and not in violation of the State and County regulations.
32

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

35 Mr. Thorsland asked if staff had any questions for Mr. Parzyck and there were none.
36

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

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1
2 Mr. Hall distributed a new Supplemental Memorandum dated November 3, 2011, to the Board for
3 review. He said that memorandum outlines the minimum steps necessary to complete Case 696-S-11
4 tonight. He said that he will review the memorandum with the Board beginning with the
5 Recommendations Related to the Revised Draft Reclamation Agreement. He said that revised items
6 9.B(18)(a) *vi.* and *vii.* reads as follows: and *vi.*: Further revised Reclamation Agreements were
7 received on October 13, 2011; October 18, 2011; October 19, 2011; October 20, 2011; and
8 November 2, 2011; and *vii.*: The current proposed Reclamation Agreement was received on
9 November 2, 2011, after the case was remanded from the Champaign County Board Committee of
10 the Whole. The compliance with the Ordinance requirements are reviewed below and an overall
11 summary is provided at the end of this part.
12

13 Mr. Hall stated the new items 9.B(18)(k) and (l) are as follows: (k): the only substantive change to
14 the Revised Draft Reclamation Agreement received on November 2, 2011, is the addition of
15 paragraphs (7)(a) and (b) which do the following: i: the obligation to perform the Reclamation Work
16 is made a covenant running with the land and that makes any and all financing and/or security
17 agreements entered into by the Principal subject to that covenant; and ii: an all financing and/or
18 security agreements entered into by the Principal shall expressly provide that they are subject to the
19 foregoing covenant. Evidence of the same must be submitted to the Zoning Administrator prior to
20 any Zoning Use Permit. He said that new item (l) is as follows: The State's Attorney has advised
21 that the Revised Draft Reclamation Agreement received on November 2, 2011, is a clear
22 improvement over the previous Drafts but it does not eliminate all concerns about superior collateral
23 position nor is it possible to eliminate all concerns about superior collateral position.
24

25 Mr. Hall stated that revised special condition 13.I and 7.I is as follows: I. Regarding the approved
26 Reclamation Agreement: A Reclamation Agreement is required at the time of application for a
27 zoning use permit that complies with the following: 1. The Revised Draft Reclamation Agreement
28 received on 11/2/11 with all required signatures including a guaranteed minimum amount of \$25,000
29 per turbine that shall be updated annually to reflect the known rate of inflation; and 2. The expenses
30 and values, including salvage value, as listed in the Base Decommissioning Cost Estimate received
31 10/06/11 and that is Attachment A to the Draft Reclamation Agreement received on 11/2/11; and 3.
32 An irrevocable letter of credit. If required by the County Board the letter of credit shall be provided
33 as multiple letters of credit based on the regulations governing federal insurance for deposit as
34 authorized in 6.1.4 P.4 (a) of the Ordinance; and 4. And escrow account that is at a mutually
35 acceptable financial institution that is either identified in the County Board determination of this
36 special use permit or included as a special condition of that determination, as authorized in 6.1.4
37 P.4(b)(1) of the Ordinance.
38

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1 Mr. Hall stated that Mr. Blazer recommended a subparagraph #5 which reads as follows: At such
2 time as decommissioning takes place the applicant, or its successor in interest, shall enter into a
3 roadway use and repair agreement with the relevant highway authorities.

4
5 Mr. Hall stated that at the appropriate time the Board can adopt a new Finding of Fact 2.h. He said
6 that the memorandum indicates a draft version and the Board can vote for or against the revision. He
7 read new finding 2.h. as follows: The Reclamation Agreement provides
8 ADEQUATE/INADEQUATE assurance for decommissioning the wind farm {EVEN THOUGH
9 THERE IS SOME SLIGHT/BECAUSE OF THE} possibility that the lien holder's collateral position
10 could result in the County having to pay out of pocket to complete the decommissioning
11 {BECAUSE THE AMOUNT OF FINANCIAL ASSURANCE BEING PROVIDED SHOULD BE
12 ADEQUATE FOR ANY LIKELY CONDITION.} Mr. Hall stated that even if the Board believes it
13 is adequate it does admit that there is some doubt likewise since there is some doubt the Board could
14 find that it is inadequate.

15
16 Mr. Hall stated that memorandum includes recommendations related to compliance with the noise
17 standard. He said that new item 9.b.(11)(d) *x.(viii)* and *(ix.)* as follows: *(viii)*: A letter dated
18 November 3, 2011, was received from Timothy Casey, Senior Environmental Scientist with HDR
19 Engineering, Inc. which can be summarized as follows: the purpose of the letter is to explain the
20 basis of a single modeled receptor per residence in the noise model HDR prepared for the California
21 Ridge project; and the modeled receptor is representative of the residential portion of the larger
22 parcel including the residence itself and it therefore adequately and appropriately represents the
23 entire residential portion of residential lots in the study area. He read 9.B.(11)(d)*(ix)*: At the public
24 hearing on November 3, 2011, the Zoning Board of Appeals {ELIMINATED/AFFIRMED THE
25 NEED FOR} the waiver of standard condition 6.1.4I. Mr. Hall stated that he believes that if the
26 Board was back at its first meeting on this case he would not have included that waiver in the legal
27 advertisement.

28
29 Mr. Hall stated that if the ZBA determines that the waiver of 6.1.4I. is no longer required it should
30 eliminate item 12.D from the Summary of Evidence and eliminate waiver 6.D from the Finding of
31 Fact.

32
33 Mr. Hall stated that at the appropriate time the Board may adopt a new Finding of Fact 2.g. based on
34 the following: g. Noise impacts will {NOT BE INJURIOUS/BE INJURIOUS} to the District
35 because the petitioner {HAS/HAS NOT} clarified questions of compliance with the Illinois Pollution
36 Control Board standards regarding the noise standard anywhere within the receiving Class-A
37 property and because Champaign County shall enforce the Illinois Pollution Control Board noise
38 regulations as authorized in the Champaign County Zoning Ordinance including any violation that is

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1 found to be consistent with the noise study included in the petitioner's application. Mr. Hall stated
2 that this is meant to confirm that the County hasn't had their own noise specialist review the noise
3 study and if there is a violation approving Case 696-S-11 does not approve the violation and the
4 County can come back and enforce that.

5
6 Mr. Hall stated that once the Board makes those changes based on those two changed items he
7 recommended that the Board review and adopt all final waivers although it is not necessary that the
8 Board reads each one but the Board needs to confirm that it is adopting the waivers. He said that the
9 Board should review and adopt all of the special conditions and again the Board does not need to
10 read through each one and only make it clear that there were reviewed and adopted. He said that the
11 Board should update the Documents of Record as follows: item #50: Revised Draft Reclamation
12 Agreement with attachments received on November 2, 2011; and item #51: Supplemental
13 Memorandum on Remand dated November 2, 2011, with attachments; and item #52 Letter dated
14 November 3, 2011, from Tim Casey, HDR Acoustics Program Manager; and item #53 Supplemental
15 Memorandum on Remand dated November 3, 2011, with attachments; and item #54: PowerPoint
16 presentation printouts submitted by Kevin Parzyck at the public hearing held on November 3, 2011.
17 Mr. Hall stated that once the Board adopts the Documents of Record the Board needs to go through
18 and read the Findings of Fact and make sure that the Board has appropriately coordinated them with
19 whatever the Board's findings are and once the Board has adopted the Findings of Fact the Board
20 should make a final determination that is consistent with those findings.

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

23
24 Mr. Thorsland called Ms. Deanne Sims to testify.

25
26 Ms. Deanne Sims, who resides at 2765 County Road 2500N, Penfield, stated that with all of the
27 language she is still not sure if Class-A and Class-B land has been defined. She said that at
28 Tuesday's meeting Mr. Blazer stated that generally Class-A land is 25 feet outside of the residence
29 and Mr. Parzyck stated that if there is a playground which sits on the property that property is
30 considered Class-A although if there is a building between the house and the playground the
31 playground would no longer be considered Class-A but would be considered Class-C. She said that all
32 of the language regarding property lines, Class-A and Class-C land does not mean much if there is no
33 definition of what those terms mean and it appears to be very variable at this point as to who is doing
34 the reading and who is doing the interpreting. She said that she has a detached two-car garage on her
35 property and she would like to know how it would be classified and if the garage is considered Class-
36 C would her property taxes be lowered.

37
38 Mr. Hall stated that Ms. Sims' question is a complicated question. He said that he believes that Ms.

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1 Sims' garage is a residential structure therefore it is his view that it would be considered Class-A but
2 that is inherent to the Illinois Pollution Control Board Regulations and it is unavoidable.

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

5
6 Mr. Thorsland asked if staff had any questions for Ms. Sims and there were none.

7
8 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Sims and there was no
9 one.

10
11 Mr. Thorsland called Mr. Blazer to the witness microphone to address Ms. Sims' concern.

12
13 Mr. Mike Blazer stated that he wished that he could give Ms. Sims a definitive answer. He said that
14 in terms of where the properties are defined, they are defined in the regulations. He said that the he
15 has mentioned the 1976 case and the SLUCM that would replace in 2002 with something called the
16 LBCS, Land Based Classification System. He said that those systems contain lists of uses divided by
17 Class-A, Class-B and Class-C. He said that unfortunately a garage is not specifically called out and
18 one of the examples that he discussed with Mr. Hall was a septic system. He said that one would
19 think that a septic system would be part of a residence but under the classification system it is not
20 and the septic system is considered Class-C, except that the septic system is connected to the house.
21 He said that the only time that the answer is defined is if someone contends that there has been a
22 violation of the numerical standards and either brings it to the County or the Illinois Pollution
23 Control Board. He said that an assessment is made as to where the violation is taking place, what the
24 decibel level is at that location and what the classification is of that particular location. He said that
25 if there is a house, a barn and a swing set beyond the barn disconnect was created between two
26 potential residential uses because the barn isn't a residential use and considered Class-C. He said
27 that the best that he can inform Ms. Sims is that Tim Casey confirms in his letter that the modeling
28 that has been done takes into account a much broader swath because it is not pinpoint specific. Mr.
29 Blazer stated that the modeling takes into account the entire residential usage. He said that the
30 definition as to what is considered Class-A, Class-B and Class-C is in the regulations and that is
31 what everyone has to follow. He said that he has checked the entire Illinois Pollution Control data
32 base, going back to the 70's, and the entire Illinois Appellate and Supreme Court Reports and found
33 that there has not been a single wind turbine noise case that has been reported in the State of Illinois
34 and that is because the analysis is done the same way every time and the wind companies are not in
35 the business of keeping people awake at night.

36
37 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer and there were none.

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

2
3 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Blazer and there was no
4 one.

5
6 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
7 testimony regarding Case 696-S-11.

8
9 Mr. Thorsland called Sherry Schildt to testify.

10
11 Ms. Sherry Schildt, who resides at 398 County Road 2500N, Mahomet, stated that she is somewhat
12 confused about the new language in the Reclamation Agreement. She said that there is an obligation
13 to perform reclamation work hereunder shall constitute a covenant running with the land. She said
14 that the first sentence of the Reclamation Agreement indicates California Ridge Wind Energy LLC,
15 and the Landowners are firmly bound unto Champaign County, State of Illinois, as set forth in this
16 Reclamation Agreement to satisfy requirements of the Zoning Ordinance. Ms. Schildt asked that if
17 since the Reclamation Agreement runs with the land, in a worst case scenario, if California Ridge
18 LLC goes under and the lender are no longer solvent would the reclamation requirement fall upon
19 the shoulders of the landowner. She said that she does not know if this was intended or if it was an
20 oversight in the thinking because it appears that it would eventually, in worst case, fall upon the
21 landowner. She asked if the responsibility does fall upon the landowner and the landowner has
22 agreed to the responsibility does California Ridge LLC have the authority to sign the Reclamation
23 Agreement on the landowner's behalf. She also asked if the responsibility falls upon the landowner
24 would such a covenant be acceptable to local lending institutions or could it make it more difficult to
25 sell the land thus impacting land value.

26
27 Mr. Thorsland requested that Mr. Blazer address Ms. Schildt's concerns.

28
29 Mr. Michael Blazer stated that with respect to the most horrible case scenario concern he would
30 respond by indicating that this is why there is financial assurance. He said that Invenergy is
31 providing two levels of financial assurance which is to the County and to the landowner and those
32 financial assurances are separate and distinct and have nothing to do with each other. He said that
33 before 2008 he would have dismissed a notion that a lender who is able to lend \$400 million dollars
34 could go out of business but that was before the failure of Bear Stearns and Lehman Brothers. He
35 said that in regards to the covenant running with the land there are two things that must be noted: 1.
36 it is a requirement of the Ordinance that the covenant runs with the land; and 2. anyone who
37 purchases this property also assumes the rights under the wind easement agreements which include
38 Invenergy's obligation to provide insurance, obligation to indemnify the owner and the obligation to

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1 provide the landowner with financial assurance with respect to the reclamation obligation. He said
2 that there is no way to eliminate every single risk but he will say that Champaign County has
3 received the best, longest and most protective and most expensive reclamation agreement than any
4 county in Illinois has ever gotten. He said that the Champaign Reclamation Agreement is the most
5 protective agreement that any wind company in Illinois has entered in to and it is the best that anyone
6 can do.

7
8 Mr. Thorsland asked the Board if there were any questions for Mr. Blazer and there were none.

9
10 Mr. Thorsland asked if staff had any questions for Mr. Blazer and there were none.

11
12 Mr. Thorsland requested that Ms. Schildt return to the witness microphone to continue her testimony.

13
14 Ms. Schildt stated that the financial assurance of the California Ridge Wind Energy LLC, is only as
15 good as the limited liability company is because some of the irrevocable letters of credit may not be
16 renewed. She said that she is still not sure whether or not the landowners are safe. She said that
17 even though she is not in favor of the waiver regarding the Illinois Pollution Control Board standards
18 she does believe that it is a good idea to eliminate it. She said that she is confused about Mr.
19 Blazer's testimony because on September 8, 2011, he stated that Waiver #8 requests to waive the
20 standard condition 6.1.4 I.1. that requires the noise level of each wind farm tower and that the wind
21 farm is to be in compliance with the Illinois Pollution Control Board regulations at the residential
22 property line rather than to be in compliance just at the dwelling. He said that he provided a
23 memorandum dated August 26, 2011, to John Hall for distribution at the September 1, 2011, public
24 hearing for Board review regarding the point of measurement for IPCB Noise Regulations. He said
25 that the Ordinance requires compliance with the IPCB noise regulations and those regulations require
26 the measurement to be at the residence and not at the property line. Ms. Schildt stated she was never
27 for one moment confused about property line noise source but was simply arguing that Mr. Blazer
28 indicated that the requirement was that the measurement is to be measured at the residence and not
29 the property line and she was indicating that it had to be at the property line of the Class-A property
30 and not the residence. She said that she is glad that Mr. Casey was able to clear this matter up but
31 she would like to point out that Mr. Blazer appears to be contradicting himself.

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 asked the audience if anyone desired to cross examine Ms. Schildt and there was no
38 one.

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34

Mr. Thorsland called Ms. Debra Griest to testify.

Ms. Debra Griest, who resides at 1802 Cindy Lynn, Urbana, stated that she is concerned about new item #7(b) of the Reclamation Agreement and its long term management. She said that she has no problem with it being a covenant that runs with the land and no problem with the initial security agreement being placed on file. She said that she does have some question with the second sentence in new item 7(b) which reads as follows: Evidence of the same must be submitted to the Zoning Administrator prior to any Zoning Use Permit approval. She said that the way that the language reads it only requires that the first, and only the first, financing agreement be placed on file with our Zoning Administrator and in the interest of zoning enforcement so that we are chasing our tail further down the road she asked the petitioner to consider an additional sentence or an amendment to that sentence that would require them to willingly file any refinancing agreement or subsequent financing agreement with the Zoning Administrator to maintain compliance with the permit.

Mr. Thorsland asked the Board if there were any questions for Ms. Griest and there were none.

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

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

Mr. Blazer stated that he would like to address Ms. Griest's concern.

Mr. Blazer stated that by the use of any and all he truly intended to make the agreement indicate what Ms. Griest stated. He said that rather than revising the Reclamation Agreement again, he would suggest adding a special condition #6 as follows: Applicant shall provide evidence of any new, additional, or subsequent financial or security agreement to the Zoning Administrator throughout the operating lifetime of the project.

Mr. Miller asked Mr. Blazer if there should be time period stated. He said that the proposed special condition indicated throughout the lifetime of the project but does that mean one day before it goes out of business or within 30 days of any changes.

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1 Mr. Hall stated that he believes that, “throughout the lifetime of the project,” means throughout the
2 lifetime of the special use permit. He said that the special use permit exists until there is
3 abandonment and at that point the County takes it over.

4

5 Ms. Capel asked Mr. Miller if he is indicating that a timeframe should be set for submission of any
6 new agreement.

7

8 Mr. Hall stated that there is already a provision for such therefore there is no use in repeating those
9 things.

10

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

13

14 Mr. Thorsland stated that the Board will now review the new information included in the
15 Supplemental Memorandum dated November 3, 2011. He said that the Board needs to add items
16 9.B.(18)(a)vi. and vii. as indicated on the first page of the Supplemental Memorandum. He asked the
17 Board if there were any questions, comments or additions to the items and there were none.

18

19 Mr. Thorsland stated that the Board needs to add items 9.B.(18)(k) and (l) as indicated on page 2 of
20 the Supplemental Memorandum. He asked the Board if there were any questions, comments or
21 additions to the items and there were none.

22

23 Mr. Thorsland stated that the Board just reviewed the revised special conditions with the addition of
24 two additional conditions proposed by the applicant. He said that the language in special condition
25 #1 should include the following: “\$25,000 per turbine.” He requested that Ms. Berry read new
26 special conditions #5 and #6.

27

28 Ms. Berry read the special conditions as follows: 5. At such time as decommissioning takes place the
29 applicant or it’s successors in interest are required to enter into a Roadway Use and Repair
30 Agreement with the relevant highway authorities; and 6. Applicant shall provide evidence of any
31 new, additional, or subsequent financial or security agreement to the Zoning Administrator

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1 throughout the operating lifetime of the project.

2
3 Mr. Thorsland stated that the petitioner previously agreed to the special conditions therefore he asked
4 the Board if there were any comments, questions, or additions to the special conditions and there
5 were none.

6
7 Mr. Thorsland stated that Page 3, of the Supplemental Memorandum dated November 3, 2011,
8 includes the suggested language for new Finding of Fact 2.h. as follows:

9
10 **h. The Reclamation Agreement provides ADEQUATE/INADEQUATE assurance**
11 **for decommissioning the wind farm {EVEN THOUGH THERE IS SOME**
12 **SLIGHT/BECAUSE OF THE} possibility that the lien holder’s collateral**
13 **position could result in the County having to pay out of pocket to complete the**
14 **decommissioning {BECAUSE THE AMOUNT OF FINANCIAL ASSURANCE**
15 **BEING PROVIDED SHOULD BE ADEQUATE FOR ANY LIKELY**
16 **CONDITION.}**

17
18 Ms. Capel stated that the Reclamation Agreement provides ADEQUATE assurance for
19 decommissioning the wind farm EVEN THOUGH THERE IS SOME possibility that the lien
20 holder’s collateral position could result in the County having to pay out of pocket to complete the
21 decommissioning because the amount of financial assurance being provided should be adequate for
22 any likely condition.

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

25
26 **Four Board members agreed with Ms. Capel’s recommendation for Finding of Fact 2.h. with**
27 **three opposed.**

28
29 Mr. Thorsland read new items 9.B.(11)(d)x.(viii) and (ix) on page 28 of the Supplemental
30 Memorandum dated November 3, 2011, as follows:

- 31
32 (viii) A letter dated November 3, 2011, was received from Timothy Casey, Senior
33 Environmental Scientist with HDR Engineering, Inc. which can be summarized as follows:
34 • the purposed of the letter is to explain the basis of single modeled receptor per
35 residence in the noise model HDR prepared for the California Ridge project.
36 • the modeled receptor is representative of the residential portion of the larger parcel
37 including the residence itself and it therefore adequately and appropriately represents

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1 the entire residential portion of residential lots in the study area.

2 **The consensus of the Board was to add new item 9.B.(11)(d)x.(viii).**

3
4 (ix) At the public hearing on November 3, 2011, the Zoning Board of Appeals
5 {ELIMINATED/AFFIRMED THE NEED FOR} the waiver of standard condition
6 6.1.4I.

7 Ms. Capel stated that new item 9.B.(11)(d) x. (ix) should read as follows:

8 (ix) **At the public hearing on November 3, 2011, the Zoning Board of Appeals**
9 **ELIMINATED the waiver of standard condition 6.1.4I.**

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

12
13 **Five Board members agreed with Ms. Capel’s recommendation for new item 9.B.(11)(d)x.(ix)**
14 **with two opposed.**

15
16 Mr. Thorsland stated that since the waiver for 6.1.4I. is no longer required the Board should also
17 eliminate item 12.D from the Summary of Evidence and eliminate waiver 6.D from the Finding of
18 Fact.

19
20 Mr. Thorsland read the recommended language for new Finding of Fact 2.g. as follows:

21
22 **g. Noise impacts will {NOT BE INJURIOUS/BE INJURIOUS} to the District**
23 **because the petitioner {HAS/HAS NOT} clarified questions of compliance with**
24 **the Illinois Pollution Control Board standards regarding the noise standard**
25 **anywhere within the receiving Class-A property and because Champaign**
26 **County shall enforce the Illinois Pollution Control Board noise regulations as**
27 **authorized in the Champaign County Zoning Ordinance including any violation**
28 **that is found to be consistent with the noise study included in the petitioner’s**
29 **application.**

30
31 Ms. Capel stated that Noise impacts will NOT BE INJURIOUS to the District because the petitioner
32 HAS clarified questions of compliance with the Illinois Pollution Control Board standards regarding
33 the noise standard anywhere within the receiving class-a property and because Champaign County
34 shall enforce the Illinois Pollution Control Board noise regulations as authorized in the Champaign
35 County Zoning Ordinance including any violation that is found to be consistent with the noise study
36 included in the petitioner’s application.

37
38 Ms. Capel asked Mr. Hall if it would be appropriate to replace “Class A property” with “residential

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1 property.”

2

3 Mr. Hall suggested that “residential” could be inserted in front of “property.”

4

5 Ms. Capel agreed.

6

7 Mr. Thorsland read new Finding of Fact 2.g., as recommended by Ms. Capel, as follows:

8

9

10 **Noise impacts will NOT BE INJURIOUS to the District because the petitioner**
11 **HAS clarified questions of compliance with the Illinois Pollution Control Board**
12 **standards regarding the noise standard anywhere within the receiving class-a**
13 **“residential” property and because Champaign County shall enforce the Illinois**
14 **Pollution Control Board noise regulations as authorized in the Champaign**
15 **County Zoning Ordinance including any violation that is found to be consistent**
16 **with the noise study included in the petitioner’s application.**

17

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

19

20 **Four Board members agreed with Ms. Capel’s recommendation for new item 2.g. with three**
21 **opposed.**

22

23 Mr. Thorsland stated that the Board has reviewed the all of the final waivers therefore he is not going
24 to read each one tonight. He asked the Board if there were any comments regarding the final
25 waivers.

26

27 Mr. Hall stated that the final waivers are listed on pages 74-80 of the Summary of Evidence. He said
28 that the short version of the waivers is indicated on the first page of the Summary of Evidence dated
29 October 20, 2011, and reduced now to only five waivers because the Board just voted to delete
30 Waiver #4.

31

32 Mr. Thorsland requested that the Board indicate their vote for the final waivers by a show of hands.

33

34 **Four Board members agreed to adopt the final waivers with three opposed.**

35

36 Mr. Thorsland stated that the Board reviewed the special conditions and added new language. He
37 said that he is not going to read each one tonight. He said that the special conditions are listed on
38 pages 80-95 of the Summary of Evidence. He said that new items 5 and 6 were added to special
condition 13.I and 7.I. He said that the petitioner has agreed to all of the modifications to the special

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1 conditions.

2
3 Mr. Thorsland requested that the Board indicate their vote for the amended special conditions by a
4 show of hands.

5
6 **Five Board members agreed to adopt the amended special conditions with two opposed.**

7
8 Mr. Thorsland stated that new items 50-54, as indicated on page 4 of the Supplemental
9 Memorandum dated November 3, 2011, should be added to the Documents of Record.

10
11 Mr. Hall stated that the date November 3, 2011, should be added to the first paragraph of the
12 Summary of Evidence and the Finding of Fact.

13
14 Mr. Thorsland directed the Board to Page 73 of the Summary of Evidence dated October 20, 2011.
15 He said that he will read the amended Findings of Fact.

16 **Finding of Fact for Case 696-S-11:**

17
18 From the documents of record and the testimony and exhibits received at the public hearing for
19 zoning case 696-S-11 held on August 25, 2011; September 1, 2011; September 8, 2011, September
20 29, 2011; October 6, 2011; October 13, 2011; October 20, 2011; and November 3, 2011, the Zoning
21 Board of Appeals of Champaign County finds that:

- 22
23 **1. The requested Special Use Permit, subject to the special conditions imposed**
24 **herein IS necessary for the public convenience at this location because it is**
25 **advantageous to have the wind energy project at this specific location where the**
26 **wind resource has been found appropriate for the use and the wind resource**
27 **and the existing electrical grid are favorable for this wind farm project.**

28
29 Mr. Thorsland requested that the Board indicate their vote for Finding #1 by a show of hands.

30
31 **Four Board members agreed with Finding #1 with three opposed.**

- 32
33 **2. The requested Special Use Permit, subject to the special conditions imposed**
34 **here, is so designed located, and proposed to be operated so that it WILL NOT**
35 **be injurious to the district in which is shall be located or otherwise detrimental**
36 **to the public health, safety, and welfare because:**

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

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- 1 **ADEQUATE visibility.**
- 2 **b. Emergency services availability is ADEQUATE.**
- 3 **c. The Special Use will be designed to CONFORM to all relevant County**
- 4 **ordinances and codes.**
- 5 **d. The Special Use WILL be compatible with adjacent uses.**
- 6 **e. Surface and subsurface drainage will be ADEQUATE.**
- 7 **f. Public safety will be ADEQUATE.**
- 8 **g. Noise impacts will NOT BE INJURIOUS to the District because the**
- 9 **petitioner HAS clarified questions of compliance with the Illinois Pollution**
- 10 **Control Board standards regarding the noise standard anywhere within the**
- 11 **receiving Class-A “residential” property and because Champaign County**
- 12 **shall enforce the Illinois Pollution Control Board Regulations as authorized**
- 13 **in the Champaign County Zoning Ordinance including any violation that is**
- 14 **found to be consistent with the noise study included in the petitioner’s**
- 15 **application.**
- 16 **h. The Reclamation Agreement provides ADEQUATE assurance for**
- 17 **decommissioning of the wind farm EVEN THOUGH THERE IS SOME**
- 18 **SLIGHT possibility that the lien holder’s collateral position could result in**
- 19 **the County having to pay out of pocket to complete the decommissioning**
- 20 **because the amount of financial assurance being provided should be**
- 21 **adequate for any likely condition.**

22

23 Ms. Capel stated that the requested Special Use Permit, subject to the special conditions imposed

24 here, is so designed located, and proposed to be operated so that it WILL NOT be injurious to the

25 district in which is shall be located or otherwise detrimental to the public health, safety, and welfare.

26

27 Mr. Thorsland requested that the Board indicate their vote for finding #2 by a show of hands.

28

29 **Four Board members agreed with Ms. Capel’s recommendation for finding #2 with three**

30 **opposed.**

- 31
- 32 **3a. The requested Special Use Permit, subject to the special conditions imposed**
- 33 **herein, DOES conform to the applicable regulations and standards of the**
- 34 **District in which it is located.**

35

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

37

38 **Four Board members agreed with finding #3.a. with three opposed.**

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- 3b. 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 because:
 - a. The Special USE will be designed to CONFORM to all relevant County ordinances and codes.
 - b. The Special Use WILL be compatible with adjacent uses.
 - c. Public Safety will be ADEQUATE.

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

Four Board members agreed with finding #3.b. with three opposed.

- 4. The requested Special Use Permit, subject to the special conditions imposed herein, IS in harmony with the general purpose and intent of the Ordinance because:
 - a. The Special Use Permit is authorized in the District.
 - b. The requested Special Use Permit IS necessary for the public convenience at this location.
 - c. The requested Special Use Permit, subject to the special conditions imposed herein, is so designed, located, and proposed to be operated so that it WILL NOT be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare.
 - d. 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 for finding #4 by a show of hands.

Four Board members agreed with finding #4 with three opposed.

Mr. Thorsland requested a motion to continue the meeting to 10:15 p.m.

Ms. Capel moved, seconded by Mr. Palmgren to continue the November 3, 2011, meeting to 10:15 p.m. The motion carried by voice vote.

Mr. Thorsland continued to finding #5.

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

2
3 Mr. Thorsland requested that the Board indicate their vote for finding #5 by a show of hands.

4
5 **Five Board members agreed with finding #5 with two opposed.**

6
7 **6. Regarding necessary waivers of standard conditions:**

8
9 Mr. Thorsland stated that the Board previously adopted the necessary waivers of standard conditions
10 therefore he will not read the adopted waivers at this time.

11
12 **7. The special conditions imposed herein are required to ensure compliance with**
13 **the criteria for Special Use Permits.**

14
15 Mr. Thorsland stated that the Board previously adopted the special conditions therefore he will not
16 read the adopted special conditions at this time.

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

20
21 Mr. Thorsland requested a confirmation of the previous vote by the Board by a show of hands.

22
23 **Four Board members agreed with the previous motion with three opposed. The motion**
24 **carried.**

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

27
28 **Ms. Capel moved, seconded by Mr. Miller that the Champaign County Zoning Board of**
29 **Appeals finds that, based on the application, testimony, and other evidence received in this**
30 **case, that the requirements for approval of Section 9.1.11B. HAVE been met, and pursuant to**
31 **the authority granted by Section 9.1.6 B. of the Champaign County Zoning Ordinance,**
32 **determines that the Special Use requested in 696-S-11, is hereby GRANTED to the petitioners**
33 **California Ridge Wind Energy LLC and the participating landowners listed in the attached**
34 **public notice to authorize a Wind Farm consisting of 30 Wind Farm Towers (wind turbines) in**
35 **total with a total nameplate capacity of 48 megawatts (MW) in the AG-1 Zoning District of**
36 **which 28 Wind Farm Towers with a total nameplate capacity of 44.8 MW are proposed in**
37 **Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate capacity of**
38 **3.2 MW are proposed in Ogden Township (Part B), and including access roads, wiring, and**

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1 public road improvements, subject to waivers of standard conditions and special conditions of
2 approval as follows:

3
4 **I. Waivers of Standard Conditions**

5 **A. Waiver of the standard condition 6.1.4 D. 1 (a) that requires certificates of**
6 **design compliance from Underwriters Laboratories (“UL”) or equivalent third**
7 **party.**

8 **B. Waiver of the standard condition 6.1.4 F.1. that requires a signed Roadway**
9 **Upgrade and Maintenance Agreement prior to the close of the public hearing**
10 **before the Zoning Board of Appeals.**

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

13 **D. Waiver of the standard condition 6.1.4 J. that requires the application to**
14 **contain a copy of the Agency Action Report from the Illinois Department of**
15 **Natural Resources Endangered Species Program.**

16 **E. Waiver of the standard condition 6.1.4 S.1.(c)(3) that requires that locations of**
17 **wind turbines for the Zoning Use Permit Application cannot increase the noise**
18 **impact over that approved in the special use permit.**

19

20 **II. Special Conditions**

21 **A. This special use permit authorized a Wind Farm as follows:**

22 **1. The type of wind turbine authorized as the General Electric 1.6-100**
23 **wind turbine with a hub height of 100 meters (328 feet) and a rotor**
24 **diameter of 100 meters (328 feet).**

25 **2. The maximum overall height of each WIND FARM TOWER shall be**
26 **492 feet.**

27 **3. The maximum number of WIND TURBINE TOWERS (wind turbines)**
28 **is 30 with a total nameplate capacity of not more than 48 megawatts**

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1 (MW) of which not more than 28 WIND FARM TOWERS with a total
 2 nameplate capacity of not more than 44.8 MW are proposed in
 3 Compromise Township (Part A) and not more than 2 WIND FARM
 4 TOWERS with a total nameplate capacity of not more than 3.2 MW are
 5 proposed in Ogden Township (Part B) and including access roads,
 6 wiring, and related work on specified public roads (highways).

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

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

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

21

22 **D. The Roadway Upgrade and Maintenance Agreements shall require road repair**
 23 **work to be performed in accordance with the IDOT Bureau of Local Roads**
 24 **Manual, 2006 edition, and the IDOT *Standard Specification for Road and Bridge***
 25 ***Construction*, but the relevant street jurisdiction may, on a case by case basis,**
 26 **exercise their discretion to waive the BLR standards so long as public safety is**
 27 **not compromised.**

28

29 **E. Construction activities to build the WIND FARM shall generally only occur**

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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**
13 **shall receive more 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 4:30 PM 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
23 release of the financial assurance required by 6.1.4 P. following the
24 requirements of a written agreement with the County.

25 **H. To ensure that the WIND FARM TOWERS are located and constructed in**
26 **conformance with the approved site plan:**

11/3/11

1 (c) The Applicant shall not excavate any WIND FARM TOWER
2 footing until the WIND FARM TOWER Foundation Permit has
3 been approved.

4

5 I. A Reclamation Agreement is required at the time of application for a zoning use
6 permit that complies with the following:

7 1. The Revised Draft Reclamation Agreement received on 10//20/11 with all
8 required signatures including a guaranteed minimum amount of \$25,000
9 per turbine that shall be updated annually to reflect the known rate of
10 inflation.

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

14 3. An irrevocable letter of credit. If required by the County Board the
15 letter of credit shall be provided as multiple letters of credit based on the
16 regulations governing federal insurance for deposit as authorized in 6.1.4
17 P.4(a) of the Ordinance.

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

22 5. At such time as decommissioning takes place the applicant or it's
23 successors in interest are required to enter into a Roadway Use and
24 Repair Agreement with the relevant highway authorities.

25 6. Applicant shall provide evidence of any new, additional, or subsequent
26 financial or security agreement to the Zoning Administrator throughout
27 the operating lifetime of the project.

28 J. The following submittal submittals are required prior to the approval of any
29 zoning use permit for a WIND FARM TOWER.

11/3/11

- 1 **1. Certification by an Illinois Professional Engineer or Illinois Licensed**
2 **Structural Engineer that the foundation and tower design of each WIND**
3 **FARM TOWER is within accepted professional standards, given local**
4 **soil and climate conditions, as required by 6.1.4 S. 1.(b).**

- 5 **2. A Transportation Impact Analysis provided by the applicant that is**
6 **acceptable to the County Engineer and the State’s Attorney; and for**
7 **highways in Compromise Township is acceptable to the Compromise**
8 **Township Highway Commissioner; and for highways in Ogden**
9 **Township is acceptable to the Ogden Township Highway Commissioner,**
10 **as required by 6.1.4F.2.**

- 11 **3. A signed Reclamation Agreement in conformance with all special**
12 **conditions and waivers included in the special use permit approval.**

- 13 **4. A copy of the Recorded Covenant pursuant to 6.1.1 A. 2.**

- 14 **5. The telephone number for the complaint hotline required by 6.1.4Q.**

- 15 **6. A site plan for the installation of the specific WIND FARM TOWER**
16 **indicating the specific proposed location of the WIND FARM TOWER,**
17 **other PRINCIPAL STRUCTURES within 1,500 feet separation,**
18 **property lines (including identification of adjoining properties), required**
19 **separations, public access roads and turnout locations, substation(s),**
20 **electrical cabling from the WIND FARM TOWER to the Substation(s)**
21 **and layout of all structures within the geographical boundaries of any**
22 **applicable setback.**

- 23 **7. A copy of the approved access permit for the access road by the relevant**
24 **highway jurisdiction.**

- 25 **8. A copy of any required permits for use of public highways by overweight**
26 **vehicles.**

- 27 **9. A permanent soil erosion and sedimentation plan for all WIND FARM**
28 **TOWER sites and access roads that conforms to the relevant Natural**
29 **Resources Conservation Service guidelines and that is prepared by an**
30 **Illinois Licensed Professional Engineer.**

11/3/11

- 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**
6 **the specific as-built location of the WIND FARM TOWER, other**
7 **PRINCIPAL STRUCTURES within 1,500 feet separation, property lines**
8 **(including identification of adjoining properties), as-built separations,**
9 **public access road and turnout locations, substation(s), electrical cabling**
10 **from the WIND FARM TOWER to the Substation(s), and layout of all**
11 **structures within 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**
14 **prepared by an Illinois Licensed Professional Engineer.**
- 15 **3.** **A copy of the approved as-built road by the relevant highway**
16 **jurisdiction**
- 17 **L.** **The California Ridge WIND FARM shall not begin commercial production of**
18 **energy until the Zoning Administrator has approved a Zoning Compliance**
19 **Certificate for the entire California Ridge WIND FARM based on submission**
20 **and acceptance of all of the following:**
- 21 **1.** **A Zoning Compliance Certificate has been approved for all WIND**
22 **FARM TOWERS approved in the Special Use Permit.**
- 23 **2.** **A copy of a certificate of design compliance for the General Electric 1.6-**
24 **100 wind turbine has been received from Underwriters Laboratories**
25 **(“UL”) or an equivalent third party such as TUV NORD Group, as**
26 **authorized in 6.1.4 D. 1(a).**
- 27 **3.** **Documentation of compliance with all required post-WIND FARM**
28 **construction requirements has been received from the relevant highway**
29 **jurisdictions.**
- 30 **4.** **The Zoning Administrator has verified that information signs have been**
31 **erected at each WIND FARM accessway as follows:**

11/3/11

- 1 a. **The purpose of the signs shall be to publicize the telephone**
- 2 **number of the WIND FARM complaint hotline required by**
- 3 **6.1.4Q.**

- 4 b. **The minimum size of each sign shall be 2 feet by 2 feet.**

- 5

- 6 **M. The Applicant or Owner or Operator of the WIND FARM shall comply with the**
- 7 **following:**

- 8 1. **Cooperate with local fire protection districts to develop the districts**
- 9 **emergency response plan as required by 6.1.4 G. 2.**

- 10 2. **Take all reasonable steps to resolve complaints of interference caused by**
- 11 **the WIND FARM to microwave transmission providers, local emergency**
- 12 **service provides (911 operators), and broadcast residential television as**
- 13 **required by 6.1.4H.**

- 14 3. **Cooperate fully with Champaign County and in resolving any noise**
- 15 **complaints including reimbursing Champaign County any costs for the**
- 16 **services of a qualified noise consultant pursuant to any proven violation**
- 17 **of the I.P.C.B. noise regulations as required by 6.1.4 I.6.**

- 18 4. **Complete all post-WIND FARM construction mortality studies on birds**
- 19 **and bats as required by 6.1.4 L.3. and as proposed in the *California***
- 20 ***Ridge Wind Energy Project Champaign County Special Use Permit***
- 21 ***Application received July 1, 2011, particularly pages 5-22 through 5-24,***
- 22 **and submit written reports to the Environment and Land Use**
- 23 **Committee at the end of the first two years of WIND FARM operation**
- 24 **and cooperate with the Environment and Land Use Committee in**
- 25 **resolving mortality concerns that might arise as required by 6.1.4 L.3(e).**

- 26 5. **Maintain a current general liability policy as required by 6.1.4N.**

- 27 6. **Submit annual operation and maintenance reports to the Environment**
- 28 **and Land Use Committee as required by 6.1.4 O.1.**

- 29 7. **Maintain compliance with the approved Reclamation Agreement**

11/3/11

1 including replacement irrevocable commercial letters of credit as
2 required in the Reclamation Agreement.

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

6

7 The roll was called:

8

9 Courson-no Miller-yes Palmgren-no

10 Schroeder-yes Passalacqua-no Capel-yes

11 Thorsland-yes

12

13 Mr. Hall informed that petitioner that they have received a recommendation for approval therefore
14 the case will be forwarded to the County Board on November 17, 2011.

15

16 6. New Public Hearings

17

18 None

19

20 7. Staff Report

21

22 None

23

24 8. Other Business

25 A. Review of the Docket

26

27 No review of the docket occurred.

28

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

ZBA

AS APPROVED DECEMBER 15, 2011

11/3/11

1 **Board.**

2

3 None

4

5 **10. Adjournment**

6

7 **Ms. Capel moved, seconded by Mr. Schroeder to adjourn the meeting. The motion carried by**
8 **voice vote.**

9

10

11 The meeting adjourned at 10:07 p.m.

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15 Respectfully submitted

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20 Secretary of Zoning Board of Appeals

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