

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61802

DATE: June 28, 2012

PLACE: Lyle Shield's Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

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

MEMBERS ABSENT : None

STAFF PRESENT : Connie Berry, John Hall, Andrew Kass, Susan Monte (County Planner for RPC)

COUNTY BOARD MEMBERS PRESENT: Gary Maxwell, Pattsy Petrie

OTHERS PRESENT : Mike Buzicky, Kerry Gifford, Charlotte Padgett, Denny Anderson, Patricia Belleville, Kevin Donoho, Norman Stenzel

1. Call to Order

The meeting was called to order at 7:03 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present with one vacant seat.

3. Correspondence

None

4. Approval of Minutes (May 17, 2012 and May 31, 2012)

Mr. Passalacqua moved, seconded by Mr. Courson to approve the May 17, 2012 and May 31, 2012, minutes as submitted. The motion carried by voice vote.

Mr. Thorsland entertained a motion to re-arrange the agenda and hear new public hearing Cases 715-V-12, 717-AM-12, 718-S-12 and 719-V-12 prior to continued Cases 710-AT-12 and 711-AT-12.

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Ms. Capel moved, seconded by Mr. Passalacqua to re-arrange the agenda and hear New Public Hearing Cases 715-V-12, 717-AM-12, 718-S-12 and 719-V-12 prior to Continued Cases 710-AT-12 and 711-AT-12. The motion carried by voice vote.

Mr. Thorsland stated that a new ZBA policy will be to place text amendments from the Zoning Administrator at the end of the agenda.

**5. Continued Public Hearing**

**Case 710-AT-12 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning Ordinance by amending the Champaign County Land Evaluation and Site Assessment (LESA) System that is referred to in Section 3; and Footnote 13 in Section 5.3; and subsection 5.4 as follows: Part A. Revise the Land Evaluation (LE) part as follows: 1. Revise all soil information to match the corresponding information in the *Soil Survey of Champaign County, Illinois* 2003 edition. 2. Revise all existing soil productivity information and replace with information from *Bulletin 811 Optimum Crop Productivity Rating for Illinois Soils* published August 2000 by the University of Illinois College of Agricultural, Consumer and Environmental Sciences Office of Research. 3. Delete the 9 existing Agriculture Value Groups and existing Relative Values ranging from 100 to 0 and add 18 Agriculture Value Groups with Relative LE ranging from 100 to 0. Part B. Revise the Site Assessment (SA) part as follows: 1. Add definitions for “agriculture”; “agricultural production”; “animal units”; “best prime farmland”; “farm dwelling”; “livestock management facility”; “non-farm dwelling”; “principal use”; and “subject site”.; and 2. Delete SA Factors A.2.; A.3.; B.2.; B.3.; C.2.; D.2.; E.1.; E.2.; E.3.; E.4.; F.1.; F.2.; F.3.; F.4.; and F.5.; and 3. Revise SA Factor A.1. to be new Factor 8; Factor B.1. to be new Factor 7; Factor C.1. to be new Factor 5; Factor D.1. to be new Factor 1; and revise scoring guidance for each revised Factor, as described in the legal advertisement; and 4. Add new SA Factors 2a.; 2b.; 2c.; 3.; 4.; 6.; 9.; 10.; and scoring guidance for each new Factor, as described in the legal advertisement. Part C. Revise the Rating for Protection as described in the legal advertisement. Part D. Revise the general text and reformat.**

**Case 711-AT-12 Petitioner: Zoning Administrator Request to amend the Champaign County Zoning Ordinance as follows: Part A. In Section 3, revise the definition of “best prime farmland” as follows: a) delete “Relative Value of 85” and “Land Evaluation rating of 85” and replace with “average Land Evaluation rating of 91 or higher”; and b) add “prime farmland soils and under optimum management have 91% to 100% of the highest soil productivities in Champaign County, on average, as reported in the *Bulletin 811 Optimum Crop Productivity Ratings for Illinois Soils*”; and c) add “soils identified as Agriculture Value Groups 1, 2, 3 and/or 4 in the Champaign County Land Evaluation and Site Assessment (LESA) System”; and d) add “Any development site that includes a significant**

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1 **amount (10% or more of the area proposed to be developed) of Agriculture Value Groups 1, 2, 3**  
2 **and/or 4 soils:. Part B. Revise Footnote 13 of Section 5.3 to strike references to “has a Land Score**  
3 **greater than or equal to 85 on the County’s Land Evaluation and Site Assessment System” and**  
4 **replace with “is made up of soils that are BEST PRIME FARMLAND” Part C. Revise paragraph**  
5 **5.4.4 to strike references to “has a Land Evaluation score greater than or equal to 85 on the County’s**  
6 **Land Evaluation and Site Assessment System” and replace with “is made up of soils that are BEST**  
7 **PRIME FARMLAND”**

8  
9 Mr. Thorsland called Cases 710-AT-12 and 711-AT-12 concurrently.

10  
11 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must  
12 sign the witness register for that public hearing. He reminded the audience that when they sign the  
13 witness register they are signing an oath.

14  
15 Mr. Thorsland called John Hall to testify.

16  
17 Mr. John Hall, Zoning Administrator, stated that regarding Case 710-AT-12, the Board received a copy of  
18 the draft March 7, 2012, minutes of the LESA Update Committee meeting which will forever remain draft  
19 because the Committee no longer exists. He said that the March 7, 2012, meeting was the meeting of the  
20 Committee where they took their final vote. He said that the Regional Planning Commission staff had  
21 prepared the previous LESA Update Committee meeting minutes although our staff prepared the March 7,  
22 2012, minutes and Susan Monte reviewed the minutes for accuracy. Mr. Hall said that in addition to the  
23 minutes is the most relevant staff memoranda having to do with site assessment factors and as an attachment  
24 to the March 7, 2012, minutes is a memorandum dated February 28, 2012. He said that the reason why he is  
25 giving the ZBA their own personal set of minutes is not necessarily to read, although the March 7, 2012,  
26 minutes are very entertaining, but he is working on evidence for the Finding of Fact and in that evidence he  
27 will refer to the work done by the LESA Update Committee. He said that when the Board receives the  
28 evidence in the Finding of Fact the Board will have their own minutes that they can go back to verify the  
29 evidence. He said that at the first meeting, June 8, 2011, of the LESA Update Committee the Committee  
30 was presented with three alternative sets of site assessments factors and they worked with those three  
31 alternative sets and did not look at or talk about the existing site assessment factors. He said that the  
32 Committee worked with those three sets and modified them and at the August 12, 2011, meeting they had  
33 reduced 21 site assessment factors down to 12 and by the November 2, 2011, meeting they had reduced 12  
34 very draft site assessment factors down to 11 with guidance for each and it was at that point that they began  
35 with test sites. He said that between June and August the Committee worked with several hypothetical sites  
36 to make sure that the beginning set of factors was at least in the ball park.

37  
38 Mr. Hall stated that a blue notebook has been placed at each table before the Board that contains every one  
39 of the different versions of the draft LESA. He said that there are about nine versions and the coversheet  
40 appears very similar for each version but that is about it. He said that the Committee worked very hard  
41 improving and revising the site assessment factors and he would like them to be added as Documents of

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1 Record thus the reason why the ZBA has been presented with access to every version. He said that the ZBA  
2 members may borrow the blue notebooks if they so desire but they will be available at every meeting so that  
3 the final Finding of Fact will include every set of minutes for the LESA Update Committee in the  
4 Documents of Record as well as every version of the draft LESA.

5  
6 Mr. Hall stated that regarding Case 711-AT-12, he distributed a one page handout, Level of Regulation  
7 Versus Level of Protection of LE=100 Soils, to the Board for review. He said that throughout the LESA  
8 Update Committee work, and throughout the two text amendments, he has been trying to find some way to  
9 compare the recommendation for best prime farmland with an alternative that would consist simply of Ag  
10 Value Groups 1 and 2. He said that this is important because it is the obvious alternative to that  
11 recommendation and it is what many people think of when they think of best prime farmland and he has  
12 been searching for some way to compare. He said that if you consider the acres of prime farmland regulated  
13 as best prime farmland under each of the approaches obviously one regulates more than 100,000 acres more  
14 than the other and because that regulates so much more prime farmland as best prime farmland it tends to be  
15 more productive and protected. He said that if you think about this thing that is called "At Risk Best Prime  
16 Farmland" the recommendation only leaves approximately 4% at risk which means that 96% of best prime  
17 farmland is not at risk at all. He said that the current best prime farmland only protects about 82% of what it  
18 calls best prime farmland so there is a big improvement in protection and the recommendation ends up  
19 calling 79% of all prime farmland best prime farmland. He said that 79% of all prime farmland in the  
20 County is considered best prime farmland under the recommendation which is a huge improvement over the  
21 existing approach which considers 85% of prime farmland to be best prime farmland.

22  
23 Mr. Hall stated that an alternative is that if AG Value Groups 1 and 2, LE 100 soils, were considered best  
24 prime farmland that is only 64% of the prime farmland in the County which is less than two-thirds. He said  
25 that the recommendation considers more than three-quarters prime farmland to be best prime farmland. He  
26 said that if you consider the amount of best prime farmland protected versus the amount of prime farmland  
27 burdened with the designation of best prime farmland both of those approaches ends up with almost the  
28 same amount of land burdened per acre therefore one doesn't burden a lot more land on a per acre basis it  
29 just protects a lot more land. He said that what best prime farmland is trying to get at is what is the best  
30 prime farmland in the County and the unanimous recommendation from the Update Committee was AG  
31 Value Groups 1, 2, 3 and 4 in the new draft LESA. He said that if the Board reads the minutes from the  
32 March 7, 2012, meeting they will get a sense that it was a unanimous vote. He said that the Committee was  
33 trying to show some unanimity on that even though there was some disagreement but that is up to the Board  
34 to decide. He said that primarily he wanted to point out that there is an alternative, actually an infinite  
35 number of alternatives, and the reason why he is bringing up this one in this table is because it is an  
36 alternative that considers only LE 100 soils to be best prime farmland and as a result it leaves a little bit  
37 more at risk, 3%.

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1 Ms. Capel stated that if it redefines best prime farmland as percentage.

2  
3 Mr. Hall stated that it identifies 64% of prime farmland as best prime farmland and of that it leaves 26,000  
4 acres at risk as opposed to the recommendation which leaves 16,000 acres at risk. He said that Champaign  
5 County has 640,000 acres in its area and that 10,000 acre difference is very small and there are people in  
6 Champaign County who believe that if you lose even one acre of AG Value Groups 1, 2, 3 and 4 because  
7 you did not protect it then that is one acre too much. He said that the Board has everything that they need for  
8 the evidence regarding the draft LE, the best prime farmland recommendation and now the site assessment  
9 factors. He said that he intends to sort through the site assessment factors at least at the first draft level and  
10 then the Board can go back through and modify the draft evidence as the Board pleases. He said that the  
11 mailing included the score sheets therefore the Board can compare the existing site assessment factors with  
12 the proposed.

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

15  
16 Mr. Courson asked if the changes increases staff's work load.

17  
18 Mr. Hall stated that based on the draft, for every zoning case involving rural property staff will not have to  
19 evaluate 22 factors but will only have to evaluate 10. He said that a lot of those factors are things that staff  
20 already analyzes anyway therefore it is not adding anything new. He said that the current LESA asks for the  
21 percent of land within a one and one-half mile area that is agriculture and for 99% of the cases that is an easy  
22 call because it is always more than 90% but in the future when there are cases along the CR district it will be  
23 more difficult. He said that staff has never done a parcel by parcel evaluation because the existing LESA  
24 gives zero guidance on what to consider agriculture and what to not consider as agriculture. He said that  
25 starting in 2004 he had a really good idea of what was considered agriculture because that is when the  
26 County added the new maximum lot size requirements and the new RRO requirements which exempts  
27 everything 35 acres and larger. He said that if there is a rezoning case in the CR district staff will be  
28 spending a lot more time on that one factor about how much of the land use in the surrounding mile is  
29 agriculture. He said that staff will have new guidelines to go by and it will take more work but it is what  
30 those types of cases deserve and it is what staff should be doing and staff will be spending several hours  
31 using the GIS to refine that to obtain an accurate estimate of agricultural land use based on how we do it. He  
32 said that staff will be using half as many factors but will be spending a lot more time on those ten factors to  
33 make sure that it is right because that is what the public expects and deserves. He said that staff has a  
34 comprehensive set of guidelines to go by which is a major improvement over the existing LESA.

35  
36 Mr. Passalacqua stated that it appears that the proposed LESA had more discrepancies in scores for the much  
37 smaller parcels than the larger parcels. He said that the new score compared to the score under the old LESA  
38 varied more as the parcel was smaller.

39  
40 Mr. Hall stated that it is fair to say that larger parcels, typically best prime farmland parcels, under both  
41 LESAs would be expected to get high scores and the new LESA is expected to get at least 30 points higher

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1 because it gives points for best prime farmland and the existing LESA does not. He said that the existing  
2 LESA has a factor for how much of the site is suitable for production with no guidance on how to make that  
3 assessment. He said that the new LESA gets rid of that factor and replaces it with a factor simply of how  
4 much has been in production during the last five years and aerial photographs from the SWCD can be  
5 obtained to help with that determination. He said that the new LESA also has a factor discussing how much  
6 of the property is in production and if there are woodlands that are being managed for timber and the  
7 petitioner indicates that then staff will consider that portion of the land in production but if the petitioner  
8 does not manage or harvest that woodland then it will not be considered in production. He said that this is a  
9 fair approach and it could result in a big difference. He said that if a parcel is small and is considered best  
10 prime farmland it will receive the initial 30 points just because it is best prime farmland. He said that even a  
11 small best prime farmland parcel will probably end up with a higher score under the draft LESA than under  
12 the existing LESA. He said that one of the biggest areas where there will be a difference is when a parcel is  
13 within one and one-half miles of a municipality but not within the CUGA. He said that the existing LESA  
14 would not distinguish between CUGA or that part of the one and one-half mile area where there will not ever  
15 be water or sewer, it treats it the same way. He said that the draft LESA will make that distinction and a  
16 higher score will be obtained if the parcel is within one and one-half miles of a municipality, but not in a  
17 CUGA, than the existing LESA because the existing LESA simply asks how far the parcel is from sewer and  
18 water and doesn't take into account whether it is feasible for sewer or water to be there just how far is it from  
19 it which is not very useful. He said that the current LESA has been used since 1984 but it is not a very  
20 useful approach in many instances. He said that in general, many times the scores will be higher although  
21 sometimes they may be lower and that is what the Update Committee tried to achieve for small properties  
22 where there has not been a lot of production even if it is best prime farmland. He said that it was asked that  
23 if a parcel has not historically been farmed and it is small should it get a higher rating and some of the  
24 Committee members thought that it shouldn't but those same people indicated that the draft LESA was not  
25 getting as low a score as they had hoped for but they thought that the Committee had done all it could do.

26

27 Ms. Capel asked if a small parcel is one, five, twenty-five or thirty five acres.

28

29 Mr. Hall stated that for a parcel to be the subject of a LESA analysis the property is the subject of a rezoning  
30 and people generally do not rezone one acre even for a one lot RRO. He said that the Zoning Ordinance  
31 prohibits division of a five acre parcel therefore, in his judgement, small is a parcel which is ten acres or less.

32

33 Ms. Capel stated that one of her concerns had to do with local food production type agriculture. She asked if  
34 the Committee had any concerns regarding local food production type agriculture.

35

36 Mr. Hall stated that the Committee recognized that larger properties are more suitable for agriculture in  
37 general. He said that the Committee stopped awarding extra points for area at 25 acres as opposed to the  
38 current LESA which goes up to 100 acres. He said that the Committee also thought that to a certain extent

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1 that all agriculture is agriculture but they made a distinction in regards to livestock facilities. He said that the  
2 consensus of the Committee was that livestock facilities, of any size, are more incompatible with non-  
3 agricultural land uses therefore extra points were awarded and was cut off at 50 animal units. He said that a  
4 horse stable with less than 25 horses would not get any points in the draft LESA evaluation and the existing  
5 LESA does not award any points for 400 horses. He said that the Committee did not consider all agriculture  
6 the same and no special provision was given for local food production.

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8 Ms. Capel asked if there is anything in the draft LESA about existing agricultural infrastructure.

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10 Mr. Courson stated yes.

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12 Mr. Hall stated no, not in the final version of the site assessment factors.

13  
14 Mr. Thorsland stated that the Board could try to include such.

15  
16 Mr. Hall stated that the only deadline is that it would be nice to have this case to the County Board before  
17 harvest season but if the ZBA is not ready to recommend it then so be it.

18  
19 Mr. Thorsland stated that he has a lot of experience with small food production and they started out with  
20 seven acres and have grown to 38 acres. He said that they produce food and they have a tremendous amount  
21 of infrastructure and they have drainage and have made improvements but he sees a score sheet that puts his  
22 farm very low. He said that he is not going to ask for a zoning change nor is he going to sell his property but  
23 his farm scores very low with the draft LESA and is hardly considered a farm because it is too close to  
24 Mahomet and is on poor soil. He said that his farm's score on the LE side would be very low but on the SA  
25 side it be low or moderate and someone looking to farm his particular application would find it an ideal site  
26 and he would hope to see it as a protected site for future generations. He said that he intends to read all of  
27 the minutes to see how the Committee got to the proposed draft LESA. He encouraged the Board to read the  
28 documentation supplied by staff to learn as much as possible about the existing and proposed draft LESA.

29  
30 Mr. Thorsland called Kevin Donoho to testify.

31  
32 Mr. Kevin Donoho, District Conservationist for Champaign County, with the USDA-Natural Resources  
33 Conservation Service and member of the LESA Update Committee, stated that the LESA Committee was  
34 formed hoping to accomplish its mission in three meetings although it ended up being 15 meetings. He said  
35 that it goes without saying that a terrific effort was put forth by everyone on the Committee and he does not  
36 believe that a single stone was left unturned during the process. He said that in order to make it the process  
37 in as streamlined as much as possible but yet to be thorough was a difficult task. He said that he would be  
38 happy to address any questions that the Board may have regarding the draft LESA.

39  
40 Mr. Thorsland asked the Board if there were any questions for Mr. Donoho and there were none.

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

2  
3 Mr. Thorsland called Norman Stenzel to testify.

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5 Mr. Norman Stenzel, who resides at 545A CR 1900N, Champaign, stated that he spoke at the last public  
6 hearing regarding validity and reliability and provided written testimony for the Board's review. He said that  
7 he does not believe that the idea of the viability of agriculture at any scale is adequately protected under the  
8 old or new LESA. He said that neither LESA is particularly good in considering what the Federal legislation  
9 provides. He said that Federal legislation protects prime farmland not suitable farmland and that is a  
10 national need because we need a secure food supply. He said that if we were in the Eisenhower  
11 administration it would be labeled under national defense.

12  
13 Mr. Stenzel stated that the second characteristic of a LESA according to the census is the viability of  
14 agriculture. He said that the current LESA does not adequately address local food production and it does not  
15 take into account the characteristics of large scale agriculture. He said that one of the things that have  
16 happened in agriculture is that farms are becoming larger and there are investors who are purchasing a lot of  
17 land to convert the land into other purposes. He said that every acre that is converted threatens another  
18 farmer because they need land to be able to afford the large equipment, maintenance of the infrastructure,  
19 and construction of grain bins and machine sheds. He said that if a farm is next to an elevator facility points  
20 may be taken away for protection. He said that farms are increasing in size with a result of fewer farmers  
21 and the age of the average farmer is older these days because younger people are not going into farming like  
22 they did in the past.

23  
24 Mr. Stenzel stated that another aspect of the large scale farm is that the equipment is getting larger and  
25 increases traffic and the liability on the farmer. He said that he has friends who farm near Illinois Route 47  
26 who have a difficult time getting their equipment across to their farms due to the commuter traffic. He said  
27 that he lives on CR 1900N which is a commuter road which residents along the Sangamon River travel past  
28 his residence every morning and evening. He said that when traffic is assessed it never adds to the traffic  
29 that already exists on the road therefore any existing traffic can change large scale agriculture. He said that a  
30 local food producer may have difficulty with their clients picking up their produce due to the traffic on the  
31 road. He said that the Federal legislature questions the impact on neighbors and the proposed LESA does  
32 not have a significant review on the impact on neighbors. He said that the Federal legislature also questions  
33 the impact on businesses that serve agriculture and he is not sure if the existing or proposed LESA looks at  
34 that kind of thing. He said that if viability of agriculture is discussed then you have to have the infrastructure  
35 locally or on the property but also agricultural businesses.

36  
37 Mr. Stenzel stated that he has an alternative LESA that he will send to staff for distribution to the ZBA for  
38 review. He said that his alternative LESA is a demonstration of an alternative and it is not a final document

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1 because he has not had time to apply particular ideas or locations. He said that if you review the instrument  
2 you will see different ways of looking at what a LESA might do. He said that one of the problems that  
3 LESAs all over the United States have is that they have taken the Federal model and tried to apply it locally.  
4 He said that trying to apply an instrument with different goals and intent and converting it to a local version  
5 is not doing a good job because it is not necessarily valid or reliable. He said that Mr. Hall has spent some  
6 time in getting the ZBA a set of points and justification for the set of points but the Board should look at the  
7 narrative of the proposed LESA because in various places it indicates that it is arbitrary. Mr. Stenzel stated  
8 that there needs to be a process and development that has a way to justify the weighing of items and it is not  
9 clear in the distributed information as to how those items were weighted. He said that the Board may ask  
10 why one item is more important than another and maybe that item should be because it is really necessary to  
11 make a judgment whether something is good or bad. He said that the weighing needs to be justified and  
12 identified and that process did not occur.

13  
14 Mr. Stenzel stated that if the Board will review Mr. Hall's comparison of the old LESA to the new LESA is  
15 bad because it is hard to tell whether one is really better than another. Mr. Stenzel stated that his handout  
16 suggested that the County not approve the proposed LESA and that the County try it out for a year or so as  
17 one of several instruments that are compared over the year and set a standard as to what those instruments  
18 should do. He said that the instrument could be compared to a real life situation to see how they work and if  
19 it looks right when it is applied. He said that there are cases from the past that can be utilized to compare the  
20 LESAs to but the proposed LESA should not be approved just because it is a good idea and a lot of work has  
21 been put forth to develop it. He would like the Board to give the proposed LESA a real test before it is  
22 approved to see it is better or if it works.

23  
24 Mr. Stenzel stated that the Board may wonder what the LESA really does. He said that a parcel that is  
25 subject to the LESA has to be more than three miles from town and has to be in agricultural production or a  
26 lumbering plan must be in place for the wooded area. He said that the timber in the wooded area might be  
27 useful for other purposes because in the old days there were hedge rows or the wooded area may be intended  
28 for nut crops. He said that the wooded area could be a buffer between farm property and non-farm property  
29 therefore there are other functions of production for every type of land and the current and proposed LESAs  
30 do not agree.

31  
32 Mr. Thorsland asked the Board if there were any questions for Mr. Stenzel and there were none.

33  
34 Mr. Thorsland asked if staff had any questions for Mr. Stenzel and there were none.

35  
36 Mr. Thorsland called Susan Monte to testify.

37  
38 Ms. Susan Monte, County Planner for the Regional Planning Commission, stated that she facilitated the  
39 LESA Update Committee and is attending the ZBA meetings to hear a fresh prospective provided by the  
40 Board. She said that one of the major focuses of the LESA Update Committee was to be able to be  
41 consistent with the method of applying the proposed Site Assessment Factors and LE Factors.

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

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

Mr. Thorsland stated that the Board has homework for these cases. He said that the Board has been given a lot of materials and the Board needs to read the materials and become familiar with their content. He said that many of the Board's questions can be answered by reading the materials. He said that all of the materials are available on the County website. He asked the Board if there were any questions for staff at this point.

Mr. Thorsland asked Mr. Hall if both cases could be included on each docket date.

Mr. Hall stated that they could but it would be an unrealistic expectation to continue these cases to the July 12, 2012, meeting but it could be on the agenda to address any questions from the Board.

Mr. Thorsland stated that the cases are to be heard as the last cases of the evening.

Mr. Hall stated that staff will place these cases on the July 12, 2012, agenda as the last two cases of the evening with a note indicating the following: For Board discussion only. He said that the cases will be included on the July 26, 2012, meeting for a more robust discussion. He said that the cases will be placed on every meeting possible until a final determination is made.

**Ms. Capel moved, seconded by Mr. Palmgren to continue Cases 710-AT-12 and 711-AT-12 to the July 12, 2012, and July 26, 2012, meetings. The motion carried by voice vote.**

**6. New Public Hearings**

**Case 715-V-12 Petitioner: John Behrens Estate and Anne and Denny Anderson Request to authorize the following in the R-1 Single Family Residence Zoning District: Part A. Variance for a side yard and rear yard of an existing shed of 1 foot in lieu of the minimum side yard and rear yard of 5 feet; and Part B. Variance for a rear yard of an existing shed of 1 foot in lieu of the minimum required rear yard of 5 feet; and Part C. Variance from Section 4.2.D. requirement that no construction shall take place in a recorded utility easement; and Part D. Variance from a minimum separation from a rear property line for parking spaces of 1 foot in lieu of the minimum required 5 feet. Location: Lot 1 of Windsor Park Subdivision in the Northwest Quarter of Section 25 of Champaign Township and commonly known as the home at 1 Willowbrook Court, Champaign.**

Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows

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1 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show  
2 of hands for those who would like to cross examine and each person will be called upon. He requested that  
3 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that  
4 those who desire to cross examine are not required to sign the witness register but are requested to clearly  
5 state their name before asking any questions. He noted that no new testimony is to be given during the cross  
6 examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are exempt  
7 from cross examination.

8  
9 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must  
10 sign the witness register for that public hearing. He reminded the audience that when they sign the  
11 witness register they are signing an oath.

12  
13 Mr. Thorsland asked if the petitioner would like to make a statement outlining the nature of their request.

14  
15 Mr. Denny Anderson, who resides at 1 Willowbrook Court, Champaign, stated that he and his wife are 99%  
16 owners of the subject property and will not be 100% owners until the John Behrens Estate is settled. He said  
17 that he is doing his best to clean up the backyard but as a Scoutmaster for the Boy Scouts he has a lot of  
18 materials and equipment for the troop that must be stored in a shed. He said that he built the large shed in  
19 the backyard although he was not aware that a permit was required for construction. He said that as soon as  
20 he was notified by the County he stopped construction immediately. He said that there was an older existing  
21 two track down the edge of the property and he placed concrete over the top of it only to discover that it too  
22 should have been five feet from the property line. He said that he lives on a cul-de-sac and everyone else  
23 parks next to their property lines therefore he did not realize that was an issue. He said that the whole idea is  
24 to get the back yard cleaned up so that he can park the scout trailer, store seven troop canoes, 2 troop sleds,  
25 coolers, etc. in the tool shed once it is completed. He said that it was alleged that he built the shed around a  
26 utility pole although the utility pole was abandoned and topped a few years ago and the power lines were  
27 moved off of the pole. He said that when he inquired about the pole to the utility company they indicated  
28 that he could have the pole to do with whatever he desired therefore he built his shed around the pole. He  
29 said that Chris Elliott, Engineering Representative with Ameren Illinois, was contacted about the situation  
30 and he indicated that there was no issue.

31  
32 Mr. Passalacqua asked Mr. Anderson if the easement was removed by Ameren as well.

33  
34 Mr. Anderson stated no. He said that the when the pole was replaced a few years ago the power company  
35 discovered that they could not access the front of the property due to a 30 degree slope therefore they had to  
36 access the back yard through a neighbor's yard on the other side of his property. He said that the area that  
37 has the 5 foot easement has a slope of 30 degrees.

38  
39 Mr. Passalacqua asked Mr. Anderson if the easement still exists.

40  
41 Mr. Anderson stated yes.

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1  
2 Mr. Thorsland asked the Board if there were any further questions for Mr. Anderson and there were none.

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

5  
6 Mr. Thorsland called John Hall to testify,

7  
8 Mr. John Hall, Zoning Administrator, distributed a Supplemental Memorandum dated June 28, 2012, to the  
9 Board for review. He said that attached to the new memorandum is an e-mail and photographs that were  
10 received from Dick Barker, a neighbor who lives one block south of the subject property. Mr. Hall stated  
11 that the photographs indicate the materials that are being stored outside which is a violation of the  
12 Champaign County Nuisance Ordinance but if the materials were stored inside of the shed the violation  
13 would be resolved. He said that he is only mentioning this to make the Board aware that this case points out  
14 the relationship between the Nuisance Ordinance and the Zoning Ordinance. He said that normally outdoor  
15 storage of any kind like this is a violation and when he first viewed the photographs of the subject property it  
16 appeared to be a contractor's facility but he has no evidence that it is a contractor's facility. He said that if it  
17 were a contractor's facility or a home occupation of a contractor they would register as a contractor and no  
18 outdoor storage would be allowed unless granted by variance. He said that no such variance was included  
19 because it was never asserted to staff that this was a home occupation. He said that he does not know what  
20 the public hearing will reveal but there are nuisance violations that may be rectified if the variance is granted  
21 but if it is not granted or not granted in its entirety the nuisance violations could still exist. He said that the  
22 ZBA has no jurisdiction over the Nuisance Ordinance therefore staff would work with the landowner to clear  
23 up the nuisance and if it is not cleaned up in a reasonable amount of time staff will forward the nuisance case  
24 on to the State's Attorney.

25  
26 Mr. Thorsland asked the Board if there were questions for Mr. Hall.

27  
28 Mr. Courson asked Mr. Hall if he would consider the storing of materials for the Boy Scout troop a home  
29 occupation.

30  
31 Mr. Hall stated that we could but outdoor storage is not allowed unless there is a variance. He said that the  
32 Home Occupation regulations goes beyond what the basic Ordinance allows and the Home Occupation  
33 regulations do not allow outdoor storage on a residential property regardless of the reason.

34  
35 Mr. Passalacqua asked if the ZBA has the power to indicate what could or could not be built inside of the  
36 easement.

37  
38 Mr. Hall stated that it is up to the power company. He said that documenting that an easement has been

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1 vacated is very difficult and the ZBA would need to know that all of the interested parties involved have  
2 been contacted about the vacation. He said that in this part of Champaign-Urbana he does not believe that  
3 there very many utilities inside of the easement but he is sure that it is more than just Ameren.

4  
5 Mr. Passalacqua stated that he can understand why the field guy indicated that the abandoned pole was not a  
6 big deal although it is not his jurisdiction, per say, to indicate such.

7  
8 Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall or Mr. Anderson and there  
9 were none.

10  
11 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Anderson.

12  
13 Ms. Charlotte Padgett, who resides at #1 Lyndhurst Place, Champaign, stated that she has reviewed the  
14 County's records and those records indicate that Mr. and Mrs. Anderson only have 1/3<sup>rd</sup> interest in the  
15 subject property. She asked Mr. Anderson if he is indicating that he and his wife own 99% of the subject  
16 property.

17  
18 Mr. Anderson stated yes, based on the settlement of the estate. He said that Mrs. Anderson's brother is  
19 taking care of the estate and it could take several months to finalize it. He said that as the estate process  
20 continues they are awaiting a final amount so that they can write a check to the estate to finalize their  
21 ownership.

22  
23 Ms. Padgett asked Mr. Anderson why he believed that no permit was required for the construction.

24  
25 Mr. Anderson stated that he believed that since he was in the County and not in Champaign or Savoy that a  
26 permit was not required although he now knows that his belief was incorrect.

27  
28 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Anderson.

29  
30 Ms. Pat Belleville, who resides at 511 Park Lane Drive, Champaign, stated that she is the Chair of the  
31 Windsor Park Homeowner's Association and is present tonight to represent the neighborhood. She asked  
32 Mr. Anderson why one of the organizations which sponsors the Boy Scout Troop doesn't store the  
33 equipment at their site.

34  
35 Mr. Anderson stated that their sponsoring organization is Private Financial for Lutherans and they have no  
36 property per say although the Boy Scout troop does meet at a Lutheran Church. He said that he builds tree  
37 houses and the materials that are located on his property are for the next tree house. He said that there is a  
38 plan to do several others although because of this process he does not want to be a storage facility therefore  
39 all materials will be moved to Camp Drake in Vermilion County.

40  
41 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Anderson and there was no

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1 one.

2

3 Mr. Thorsland asked Mr. Anderson if after the next tree house project is completed all of the materials will  
4 be removed from the subject property.

5

6 Mr. Anderson stated yes.

7

8 Mr. Thorsland asked Mr. Anderson if the materials are removed would the shed still be required.

9

10 Mr. Anderson stated yes, because he has a lot of troop equipment and the trailer. He said that the four foot  
11 shed is full of the materials for the next project but once that is complete the materials will be gone.

12

13 Mr. Thorsland stated that the shed which includes the abandoned utility pole is the structure that is in the  
14 easement and requires the variance.

15

16 Mr. Anderson stated yes.

17

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

19

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

21

22 Mr. Thorsland called Charlotte Padgett to testify.

23

24 Ms. Charlotte Padgett, who resides at #1 Lyndhurst Place, Champaign, stated that she is attending the  
25 meeting tonight as a resident of Windsor Park and as Deputy Assessor for Champaign Township. She asked  
26 if there was a penalty for not obtaining a permit for new construction in the County.

27

28 Mr. Hall stated that there is no penalty.

29

30 Ms. Padgett stated that if there is no penalty what would prompt someone into getting a permit.

31

32 Mr. Hall stated that if no permit is issued then it becomes an enforcement case and if the enforcement case is  
33 not resolved the case is forwarded to the State's Attorney and if the case ends up in court the judge can  
34 impose a fine up to \$500 per day. He said that it is unusual for a judge to impose such a penalty because  
35 they are generally only interested in compliance.

36

37 Ms. Padgett stated that she has pictures of the subject property that were taken over the weekend that she  
38 would like to distribute to the Board for review and submit as a Document of Record. She said that the

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1 pictures show the hay bales that are stored next to the house, the van blocking the public sidewalk and  
2 extending out into the cul-de-sac. She said that Mr. Anderson indicated that when Ameren abandoned the  
3 old power pole and installed the new power pole that they went through the property to the east although  
4 there is currently a fence on that property and Ameren would not be able to gain access. She said that one of  
5 the pictures in the packet indicates the roof of the large shed which appears to be a fire hazard due to  
6 exposed insulation. She said that she can see, upon occasion, when people will fail to obtain a permit for  
7 new construction but ignorance is no excuse. She said that if the variance is approved Mr. Anderson's  
8 property will be reassessed.

9  
10 Mr. Thorsland asked if staff had any questions for Ms. Padgett.

11  
12 Mr. Hall asked Ms. Padgett if she had any solid evidence that would indicate that the subject property is  
13 hurting the property values of the neighboring properties.

14  
15 Ms. Padgett stated yes. She said that the house on the corner of Lyndhurst Place went into foreclosure after  
16 it was on the market for three years. She said that houses in Windsor Park do sell and last year it was one of  
17 the better sales areas in the market.

18  
19 Mr. Hall stated that in regards to the house that had been on the market for three years, our office only  
20 became aware of this case since February 2012.

21  
22 Ms. Padgett stated that the construction on the subject property has been going on for some time and it is her  
23 understanding, from neighbors living in the Willowbrook cul-de-sac, that when #2 Willowbrook Ct. was on  
24 the market and for sale is when the additional parking drive on the subject property was installed and the  
25 construction began. She said that she has a copy of the 2008 GIS map which indicates the concrete  
26 driveway.

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

29  
30 Mr. Thorsland asked the Board if there were any questions for Ms. Padgett.

31  
32 Mr. Courson stated that the parking on the sidewalk would be an issue for the Sheriff's office.

33  
34 Ms. Padgett stated that she has not called the Sheriff's office but she has contacted the township highway  
35 commissioner and he will be addressing the issue.

36  
37 Mr. Thorsland asked if the Board or staff had any further questions for Ms. Padgett and there were none.

38  
39 Mr. Thorsland called Patricia Belleville to testify.

40  
41 Ms. Patricia Belleville, who resides at 511 Park Lane Drive, Champaign, stated that she is the Chair of the

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1 Windsor Park Homeowner's Association. She said that she has offered to attend the meeting the meeting to  
2 represent the neighborhood because there were concerns about the property located at #1 Willowbrook  
3 Court. She said that the original owner of the property, John Behrens, kept the property extremely neat and  
4 he was good neighbor and he was loved by everyone who resided on Willowbrook Court. She said that since  
5 Mr. Behrens' passing there has been concerns and complaints submitted to the homeowner's association  
6 concerning the subject property. She said that the covenants stated that no storage of building materials is  
7 allowed on the property. She said that she spoke to Steve Estes with Ameren and he indicated that Ameren  
8 would be happy to see the buildings removed because it restricts access to the lines and they prefer to not  
9 have any structures under the power lines however Ameren cannot enforce this therefore they leave it up to  
10 the County to enforce.

11  
12 Ms. Belleville stated that the residents of Windsor Park are concerned about the buildings which are located  
13 under the power lines because recently two transformers caught on fire in the neighborhood. She said that  
14 the residents are also concerned about the condition of the property and most people have all of their assets  
15 tied up in their property therefore any lowering of their property value concerns the residents of the  
16 neighborhood. She said that all driveways that were originally designed for Windsor Park were approved by  
17 an architectural board and were installed when the homes were built. She said that the additional driveway  
18 was not approved by the architectural board.

19  
20 Ms. Belleville stated that she would like to submit 18 e-mails and letters from the neighbors opposing the  
21 requested variance and one letter supporting the variance request.

22  
23 Mr. Passalacqua asked Ms. Belleville if the covenants require certain materials for construction of a home or  
24 shed.

25  
26 Ms. Belleville stated no, but it does detail placement. She said that it appears that the variances of the  
27 covenants is the same as the County Ordinance in that structures must be placed away from power lines and  
28 property lines.

29  
30 Mr. Courson asked Ms. Belleville if the Homeowner's Association has any enforcement process.

31  
32 Ms. Belleville stated that she has asked about enforcement and the previous members of the association  
33 indicated that they did not remember ever having any issues that required enforcement. She said that there  
34 are several lawyers within the neighborhood who have helped with various issues over the years but she has  
35 not had anyone indicate that the association has had to enforce the covenant's requirements.

36  
37 Mr. Thorsland asked the Board if there were any additional questions for Ms. Bellville and there were none.  
38

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

2

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

4

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

7

8 Mr. Anderson requested the opportunity to address the Board.

9

10 Mr. Thorsland called Mr. Anderson.

11

12 Mr. Anderson stated that, assuming that he gains permission to complete the shed, the first thing that is to be  
13 done is to install the metal roof on the shed. He said that he had to stop construction as soon as he was  
14 notified of the violation.

15

16 Mr. Thorsland asked Mr. Anderson to indicate how long he has resided at the subject property.

17

18 Mr. Anderson stated that he has resided at the property for ten years.

19

20 Mr. Thorsland asked Mr. Anderson if there is a start or completion date of the second tree house that will  
21 consume most, if not all, of the materials that are being stored on the property.

22

23 Mr. Anderson stated that the second tree house will be completed within 12 months. He said that the first  
24 tree house took about 3 months of construction at the end of the year when he had more free time to commit  
25 to the project. He said that once the construction begins the materials will go away and if there is a delay or  
26 complication then he is sure that he can obtain permission to move the project to Camp Drake.

27

28 Mr. Thorsland asked Mr. Anderson if the two vehicles which are parked in the driveway in the photograph  
29 belong to him.

30

31 Mr. Anderson stated he just got back from summer camp with the Boy Scouts and he has not had time to  
32 move things around and yes he does have a vehicle which crosses the sidewalk but the sidewalk does not go  
33 anywhere therefore no one uses it. He said that all of the vehicles in the neighborhood park across this  
34 sidewalk in a similar fashion but once he has time to get everything situated and the troop trailer parked in  
35 back the van will be relocated to not block the sidewalk.

36

37 Mr. Courson asked Mr. Anderson if the slate, metal, flag stone and other masonry materials are used for the  
38 tree house.

39

40 Mr. Anderson stated that some of the materials are donated and the flag stone and masonry materials will be  
41 used for the entryway. He said that anything that is not used will be moved out of the yard.

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- 1  
2 Mr. Courson asked Mr. Anderson if he had considered moving the materials and equipment to a self-storage  
3 warehouse.  
4  
5 Mr. Anderson stated that he would rather not have to spend the money and spend the time in moving the  
6 materials therefore he would rather move everything to Camp Drake.  
7  
8 Mr. Thorsland asked Mr. Anderson if he had any written information from Mr. Elliott other than his card.  
9  
10 Mr. Anderson stated that he does not have any written information. He said that he has called Ameren and  
11 they indicated that Mr. Elliott is the point of contact and visited the site and approved it. He said that it is  
12 physically not possible for Ameren to access the area and the neighbor's fence was in place when the new  
13 pole was installed.  
14  
15 Mr. Passalacqua asked Mr. Anderson if leading a Boy Scout troop is his full-time occupation.  
16  
17 Mr. Anderson stated that one would think so but he does do design and construction to support his scouting  
18 habit.  
19  
20 Mr. Passalacqua asked Mr. Anderson if he uses some of the same materials in his full-time position as well.  
21  
22 Mr. Anderson stated yes, but not the materials that are on his property because they are donated.  
23  
24 Mr. Passalacqua asked Mr. Anderson where he keeps his materials for his employment projects.  
25  
26 Mr. Anderson stated that he does not keep materials because he mostly does sub-contracting.  
27  
28 Mr. Hall asked Mr. Anderson that if he does design and construction does he understand that any  
29 construction in Champaign County requires a permit.  
30  
31 Mr. Anderson stated yes.  
32  
33 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Anderson.  
34  
35 Ms. Charlotte Padgett asked Mr. Anderson if he uses the bales of hay for the tree houses as well.  
36  
37 Mr. Anderson stated that the bales of hay are used for an archery merit badge and they will be gone in  
38 August because there is a merit badge seminar scheduled.

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41

Ms. Padgett stated that the bales of hay have been on his property since last August.

Mr. Anderson stated yes, because that was the last date that the hay bales were used and the casual observer would not see the hay bales.

Mr. Courson asked Mr. Anderson if, as a contractor in Champaign County, there are other structures that he has contracted or constructed which did not obtain permits.

Mr. Anderson stated a lot of his work is in Danville and the inner-community of Champaign for interior renovations and room additions.

Mr. Thorsland asked the Board if there were any additional questions for Mr. Anderson and there were none.

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

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

Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony regarding Case 715-V-12 and there was no one.

Mr. Thorsland closed the witness register.

Mr. Thorsland asked staff to clarify who is responsible for utility easement enforcement. He said that the ZBA does not normally grant variances within an easement.

Mr. Hall stated that staff would discourage a request for an easement like this because it is his understanding that it is difficult to document that no utility company requires that easement. He said that he suspects that even if Ameren did vacate the easement as the principal user of the easement that there are other service providers that use utility easements.

Mr. Passalacqua stated that even if the pole has been abandoned he does not believe that they will vacate the easement.

Mr. Thorsland re-opened the witness register and allowed Ms. Padgett to address the Board.

Ms. Padgett stated that she has a photograph of the power lines and will submit it as a Document of Record. She said that there are four lines that travel from the south to the north that would have to be attached or go through one or both of the existing poles. She said that the subject property is located in Phase I of Windsor Park in which all of the major utilities are placed overhead. She said that she lives in Phase VII of Windsor Park which has all of its major utilities underground but the original phases of Windsor Park have major

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- 1 utilities overhead. She said that everyone on Willowbrook Court and Lyndhurst are serviced by that power  
2 pole and that line runs on the east side of the property along the fence line.  
3  
4 Mr. Courson asked Ms. Padgett if the subdivision is connected to municipal water and sewer.  
5  
6 Ms. Padgett stated yes.  
7  
8 Mr. Thorsland asked the audience if anyone desired to cross examine Ms. Padgett and there was no one.  
9  
10 Mr. Thorsland asked if the Board had any further questions for Ms. Padgett and there were none.  
11  
12 Mr. Thorsland asked if staff had any questions for Ms. Padgett.  
13  
14 Mr. Hall asked Ms. Padgett if she was the person who spoke to Steve Estes.  
15  
16 Ms. Padgett stated no.  
17  
18 Mr. Thorsland stated that he would like to hear from a representative of the power company because  
19 currently all of the comments related to the power company have come from someone who is not from the  
20 power company. He asked the Board if there were any other questions that the Board would like answered.  
21  
22 Mr. Courson stated that he would like to know what other services utilize the easement.  
23  
24 Ms. Capel stated that perhaps staff could call J.U.L.I.E. to see what types of utilities are in the easement.  
25  
26 Mr. Hall stated the requested variances are very large variances that will result in very small yards and he  
27 does not know what degree of confidence he has in the one foot yards.  
28  
29 Mr. Passalacqua stated that the Board needs to discuss the three other variances that have nothing to do with  
30 the easement before we consider anything further.  
31  
32 Mr. Hall stated that a sticking point for him would be the degree of confidence that the one foot is an  
33 accurate measurement. He said that the only way to assure the accuracy of the measurement is to require a  
34 boundary survey which could also indicate anything located underground.  
35  
36 Mr. Thorsland asked Mr. Hall if the expense of the survey would be burdened upon the petitioner.  
37  
38 Mr. Hall stated yes.

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1  
2 Ms. Charlotte Padgett, #1 Lyndhurst Place, Champaign, stated that her husband used to work for the Urbana-  
3 Champaign Sanitary District and they have the sanitary lines platted out on the lots.  
4  
5 Mr. Thorsland stated that the Board needs to decide how confident they are regarding the measurements  
6 indicated on the site plan. He asked if the measurements were taken by the petitioner or staff.  
7  
8 Mr. Kass stated that the indicated measurements are from the petitioner.  
9  
10 Mr. Thorsland stated that it may be appropriate for the Board to review the Finding of Fact to determine if  
11 the Board has enough information to move forward. He said that personally his comfort level is not very  
12 high but he hates to have the petitioner burdened with additional expense if the Board does not intend to  
13 grant the other three variances.  
14  
15 Mr. Courson stated that he is not in favor of granting a variance if the easement exists. He said that he  
16 requires documentation regarding the status of the easement before he would consider anything else.  
17  
18 Mr. Thorsland stated that the first question to answer is whether or not the easement has been abandoned in a  
19 documented form.  
20  
21 Ms. Capel stated the Board could be giving a variance that is over the property line.  
22  
23 Mr. Thorsland stated that the Board cannot grant such a variance.  
24  
25 Mr. Passalacqua stated that it has been determined that it is not the Board's venue to grant a variance in  
26 regards to an easement. He said that it is highly unlikely that the easement has been abandoned for all of the  
27 pertinent parties therefore documentation must be submitted to clarify the easement status.  
28  
29 Mr. Hall stated that he does not know how Mr. Anderson determined the dimensions indicated on the site  
30 plan but if he identified the corner pins then the Board may have a high degree of confidence of where the  
31 five foot wide easement is located.  
32  
33 Mr. Passalacqua stated that perhaps the Board should ask Mr. Anderson that question.  
34  
35 Mr. Thorsland called Denny Anderson to address the Board.  
36  
37 Mr. Anderson stated that there is a very obvious pin located at the front drive and the flag stone and concrete  
38 was placed one foot off of that pin running along the side yard. He said that he could not locate the other  
39 pins on the property but he believes that it is a law that if a fence is in place for more than 20 years then its  
40 location establishes the property line and on both sides of his property the fences have existed for more than  
41 20 years.

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1  
2 Mr. Passalacqua asked staff to verify Mr. Anderson's statement regarding the fences.  
3  
4 Mr. Hall stated that he is aware of the principal but he would not want the ZBA to rely on it.  
5  
6 Mr. Miller stated that perhaps that pertains to other areas where survey pins did not exist.  
7  
8 Mr. Anderson stated that there has been a lot of disturbance in the area with replacement of the old pole that  
9 has been abandoned and was left in place due to his request to the power company. He said that the new  
10 pole was placed and does not touch any portion of his construction.  
11  
12 Mr. Passalacqua stated that he is not comfortable with any action until the measurements are verified and  
13 the status of the easement is documented.  
14  
15 Mr. Anderson stated that he understands the Board's concerns but it was his understanding that the easement  
16 was of no interest to them because they could not easily access it. He said that rather than just assuming that  
17 Ameren has abandoned the easement he would appreciate the opportunity to obtain documentation indicating  
18 that Ameren actually has abandoned the easement.  
19  
20 Mr. Passalacqua stated that Mr. Anderson will need to contact any utility that may share the easement for  
21 phone, cable, water, sanitary, etc.  
22  
23 Mr. Anderson stated that the water lines are located in front of the property. He said that he could start with  
24 Ameren and contact everyone else.  
25  
26 Mr. Thorsland stated that he would be willing to continue the case to a later date to give Mr. Anderson the  
27 opportunity to obtain the appropriate documentation regarding the easements as well as accurate  
28 measurements on the site plan. He said that it is in Mr. Anderson's best interest that he does a good job in  
29 obtaining this information and to assure the Board that all of the information is accurate. He said that even  
30 with this information the variances could still be denied but he is willing to give Mr. Anderson the  
31 opportunity to address the Board's questions that have come forward at tonight's meeting.  
32  
33 Mr. Passalacqua stated that he must see the information because at this point he is not comfortable with  
34 anything about this case.  
35  
36 Mr. Hall asked if the Board wants Mr. Anderson to have the property lines documented in a formal manner  
37 so that if the ZBA denies the variance in the easement at least Mr. Anderson can tell staff absolutely where  
38 the easement is located so that we will know where to cut the building.

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1  
2 Mr. Passalacqua asked if, based on the map that has been provided, does there exist enough space to build  
3 the building within compliance or can it not be built in compliance regardless of the location of the property  
4 line. He said that the Board will have to either grant a variance or require that a portion of the building must  
5 be removed from the property.

6  
7 Mr. Anderson stated that he is certainly hoping that the requested variance to the south of the property be  
8 acceptable because his neighbor has four large dogs and one of them has no hesitation in jumping across  
9 through the fence. He said that he would like to be able to properly secure that area.

10  
11 Mr. Passalacqua stated that it would be in Mr. Anderson's best interest to research the covenants of the  
12 subdivision.

13  
14 Mr. Thorsland encouraged Mr. Anderson to speak with Ms. Padgett and the sanitary district regarding the  
15 easements but it is very possible that Mr. Anderson may wind up with a much smaller shed in the near  
16 future. Mr. Thorsland stated that better documentation must be submitted to the ZBA regarding the property  
17 lines and the utility easements.

18  
19 Mr. Passalacqua stated that Mr. Hall needs to know if the Board is comfortable, if everything else is made  
20 right, in granting a variance for a one foot yard.

21  
22 Mr. Hall asked Mr. Passalacqua how the Board knows that the requested side and rear yard is only one foot.

23  
24 Mr. Passalacqua stated that he is not comfortable with granting a one foot yard on the property therefore will  
25 Mr. Anderson be conducting a lot of research and foot work for something that is not appearing favorable.

26  
27 Mr. Hall asked Mr. Passalacqua that even if the one foot is proven by the best surveyor in the County would  
28 he still not be in favor of the variance.

29  
30 Mr. Passalacqua stated that by reviewing the photographs and noting the congestion of the site with the rest  
31 of the neighborhood he is not sure that he would be comfortable with a one foot yard. He said that if the rest  
32 of the Board feels the same way then it isn't fair to have Mr. Anderson run around for one month spending  
33 his efforts and money jumping through hoops to acquire the requested documentation.

34  
35 Mr. Anderson stated that he is willing to jump through the hoops and both of his neighbors on either side of  
36 his property also have buildings which are only one foot from the property line as well therefore what is fair  
37 for one should be fair for another.

38  
39 Mr. Courson asked Mr. Anderson if he can verify that the neighbor's buildings are only one foot from their  
40 property line.

41

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1 Mr. Anderson stated yes.

2

3 Mr. Courson stated that until Mr. Anderson knows where his own property lines are he cannot make the  
4 claim that his neighbors have buildings which are only one foot from their property line.

5

6 Mr. Anderson stated that if his estimate of where his property line is located is accurate then his neighbor's  
7 buildings are only one foot from their property line.

8

9 Mr. Thorsland asked Mr. Anderson if he indicated that there is potentially only two feet between his  
10 structure and his neighbors.

11

12 Mr. Anderson stated yes.

13

14 Mr. Passalacqua stated that just because the neighbor's buildings are out of compliance does not mean that  
15 Mr. Anderson's building should be allowed to be out of compliance.

16

17 Mr. Thorsland requested a continuance date for Case 715-V-12.

18

19 Mr. Hall stated that if Case 707-S-12 is not heard on July 26<sup>th</sup> then there will only be two cases to be heard at  
20 that meeting. He said if one month would give Mr. Anderson enough time to have a high degree of  
21 confidence that he can come back to this Board with all of the information that he needs then the case could  
22 be continued to the July 26<sup>th</sup> meeting.

23

24 Mr. Anderson stated that he has a reasonable degree of confidence that he could come back to the Board  
25 with all of the information that he needs and he will put forth his best effort.

26

27 Mr. Thorsland asked Mr. Anderson if he would prefer to have a later date for the continuance.

28

29 Mr. Anderson stated that he suspects that he will run into bureaucracy therefore he will start this process  
30 soon.

31

32 Mr. Thorsland stated that the case could be continued to August 30<sup>th</sup>.

33

34 Mr. Anderson stated that he would prefer that his case be continued to August 30<sup>th</sup>.

35

36 Mr. Thorsland entertained a motion to continue Case 715-V-12 to the August 30, 2012, meeting.

37

38 **Ms. Capel moved, seconded by Mr. Courson to continue Case 715-V-12 to the August 30, 2012,**

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1 meeting. The motion carried by voice vote.

2  
3 Mr. Thorsland called for a ten minute recess.

4  
5 The Board recessed at 8:03 p.m.

6 The Board resumed at 8:12 p.m.

7  
8 Case 717-AM-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General  
9 Manager and landowner Parkhill Enterprises. Request to amend the zoning Map to change the  
10 district designation from the R-4 Multiple Family Residence Zoning District to the AG-2 Agriculture  
11 Zoning District. Location: Approximately 2.9 acres of an approximately 3.6 acre tract located in the  
12 South Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 12  
13 of Mahomet Township and commonly known as the Sangamon Valley Public Water District  
14 treatment plant at 709 North Prairieview Road, Mahomet and subject to the proposed Special Use  
15 Permit in related Case 718-S-12 and the variance requested in related Case 719-V-12.

16  
17 Case 718-S-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General  
18 Manager and landowner Parkhill Enterprises. Request to authorize the following on land that is  
19 proposed to be rezoned to the AG-2 Zoning District in related Case 717-AM-12 subject to the required  
20 variance in related Case 719-V-12. Part A. Authorize expansion and use of a non-conforming water  
21 treatment plant as a Special Use with waivers (variance) of standard conditions; and Part B.  
22 Authorize the replacement of a non-conforming water treatment tower that is 131 feet in height as a  
23 Special Use with waivers (variance) of standard conditions. Location: An approximately 3.6 acre tract  
24 located in South Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of  
25 Section 12 of Mahomet Township and commonly known as the Sangamon Valley Public Water  
26 District treatment plant a 709 North Prairieview Road, Mahomet.

27  
28 Case 719-V-12 Petitioner: Sangamon Valley Public Water District and Kerry Gifford, General  
29 Manager and landowner Parkhill Enterprises. Request to authorize the following for expansion of a  
30 non-conforming water treatment plant in related Case 718-S012 on land that is proposed to be  
31 rezoned to the AG-2 Zoning District in related Case 717-AM-12: Part A. The expansion of a non-  
32 conforming lot of record that does not abut and have access to a public street right of way and does  
33 not abut a private accessway as required by Zoning Ordinance paragraph 4.2.1H; and Part B. The  
34 use of a 3.6 acre lot on best prime farmland in the AG-2 District for construction and use of a water  
35 treatment plant in related Special Use Permit Case 718-S-12. Part C. Waiver (variance) of standard  
36 conditions for a lot area of 3.6 acres in lieu of the required 5 acres; a front yard of 18 feet in lieu of the  
37 required 30 feet; a side yard of 40 feet in lieu of the required 50 feet; and a rear yard of 22 feet in lieu  
38 of the required 50 feet; and Part D. Waiver (variance) for a elevated water storage tank that is 131  
39 feet in height in lieu of the maximum allowed 50 feet. Location: An approximately 3.6 acre tract  
40 located in South Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of  
41 Section 12 of Mahomet Township and commonly known as the Sangamon Valley Public Water

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1 **District treatment plant a 709 North Prairieview Road, Mahomet.**

2  
3 Mr. Thorsland called Cases 717-AM-12, 718-S-12 and 719-V-12 concurrently.

4  
5 Mr. Thorsland informed the audience that Cases 718-S-12 and 719-V-12 are Administrative Cases and as  
6 such the County allows anyone the opportunity to cross examine any witness. He said that at the proper time  
7 he will ask for a show of hands for those who would like to cross examine and each person will be called  
8 upon. He requested that anyone called to cross examine go to the cross examination microphone to ask any  
9 questions. He said that those who desire to cross examine are not required to sign the witness register but  
10 are requested to clearly state their name before asking any questions. He noted that no new testimony is to  
11 be given during the cross examination. He said that attorneys who have complied with Article 7.6 of the  
12 ZBA By-Laws are exempt from cross examination.

13  
14 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must  
15 sign the witness register for that public hearing. He reminded the audience that when they sign the  
16 witness register they are signing an oath.

17  
18 Mr. Thorsland asked if the petitioner would like to make a statement outlining the nature of their request.

19  
20 Mr. Kerry Gifford, General Manager of the Sangamon Valley Public Water District, stated that he is present  
21 tonight regarding the subject of building a new water treatment plant and rezoning the subject property from  
22 R-2 to AG-2. He said that the Sangamon Valley Public Water District was established in 1967 and they  
23 serve an area which is north of US 74 and east of IL Route 47 and Mahomet. He said that they have  
24 approximately 1,560 water customers and 1,460 sewer customers. He said that he is available for any  
25 questions that the Board may have regarding these requests.

26  
27 Mr. Thorsland asked the Board if there were any questions for Mr. Gifford and there were none.

28  
29 Mr. Thorsland asked if staff had any questions for Mr. Gifford and there were none.

30  
31 Mr. Thorsland called John Hall to testify.

32  
33 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum and Finding of Fact  
34 dated June 28, 2012, for Case 717-AM-12 and a new Supplemental Memorandum and Finding of Fact for  
35 Cases 718-S-12 and 719-V-12. He said that the new Supplemental Memorandum for Case 717-AM-12  
36 includes a proposed special condition that staff would recommend for each case regarding compliance with  
37 the Village of Mahomet's Subdivision Regulations. He said that the new Supplemental Memorandum for  
38 Case 718-S-12 and 719-V-12 includes new maps as attachments and the proposed special condition. He said

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1 that given the complex nature of the rezoning, the special use, and the variance and the fact that the Zoning  
2 Ordinance has both a maximum lot size on best prime farmland and a minimum lot size for a water  
3 treatment plant the case does need re-advertised because staff omitted important items in the legal. He said  
4 that at this point he hopes that staff knows enough about the project to include everything in the legal but it  
5 is a fairly complicated site plan for the water treatment plant and to be fair staff was trying to honor the  
6 request of the petitioner to get these cases to a public hearing as soon as possible because they are facing a  
7 tight deadline in trying to meet the demands of the water district.

8  
9 Mr. Hall stated that attached to the new Supplemental Memorandum dated June 28, 2012, for Cases 718-S-  
10 12 and 719-V-12 is an annotated site plan that indicates staff's best guess for dimensions from the property  
11 lines to all of the existing and proposed structures. He said that the Zoning Ordinance establishes a  
12 minimum 50 foot rear yard and side yard for a water treatment plant and it also establishes a minimum 5 acre  
13 lot size. He said that the existing water treatment plant meets the 55 foot minimum front yard but the  
14 elevated water tank does not. He requested that the petitioner consider the proposed placement of the new  
15 ground storage tank and the backwash tank and whether those proposed locations are fixed because if their  
16 placement could be adjusted it would minimize the required variance and might make the Board a little more  
17 likely to grant the variance. He said that staff will discuss this issue with the petitioner prior to re-  
18 advertising the case so that staff is assured that the next legal advertisement will be the last one for this case.

19  
20  
21 Mr. Hall stated that he does not know how much the Board can complete tonight but the petitioner's attorney  
22 has provided two letters to the State's Attorney regarding plat act compliance and of course in this location,  
23 based on our Zoning Ordinance, it is not plat act compliance that we are concerned about but compliance  
24 with the municipal subdivision regulations. He said that the State's Attorney has confirmed that the  
25 County's Ordinance does not allow a variance from that requirement therefore it is an absolute requirement  
26 that we have no flexibility on. He said that he knows that the Village of Mahomet, from a staff level, is  
27 supportive of the proposed expansion but they are in the same boat that the County's staff is in because our  
28 Ordinances say what they say. He said that he has asked if the Village of Mahomet would entertain a  
29 subdivision approval without requiring annexation and he was told that the Village of Mahomet has never  
30 done such before and they are not interested in doing it now, which is unfortunate. He said that he believes  
31 that the proposed special condition requiring compliance with the Village of Mahomet Subdivision  
32 Regulations is all that this Board needs to worry about and when it goes to the County Board perhaps that is  
33 all the County Board will worry about. He said that sooner or later there will be a need for a permit for  
34 construction of this badly needed water treatment plant and at the time that they apply for the zoning use  
35 permit application staff must know that the subdivision approval process has been initiated and before he can  
36 approve a zoning use permit for the water treatment plant, which would authorize construction, he would  
37 need to know that there is substantial compliance with the Village of Mahomet requirements. He said that  
38 this will not mean that the plat has been recorded but it does mean that the Village of Mahomet is willing to  
39 allow the County to issue the zoning use permit. He said that he hopes that there will be comments from the  
40 Village of Mahomet when this case comes back to the ZBA.

41

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

2

3 Mr. Thorsland called Mike Buzicky to testify.

4

5 Mr. Mike Buzicky, Engineer for Sodemann and Associates, Inc., stated that he represents the Sangamon  
6 Valley Public Water District. He said that the site plan can be revised and some of the structures can be  
7 moved to meet the requirements. He said that the various side and rear yard issues can be met but they were  
8 trying to submit an early site plan to staff to get the case started. He said that this is a public sanitary water  
9 district and it is a strange unique area where there are two public water districts overlapping another. He  
10 said that the water district is in extreme need of the addition to the water plant and they are almost  
11 landlocked by residential areas and the area to the north is the only land available for the addition. He said  
12 that the other area that appears to be available on the site plan has already been taken up by an Ameren  
13 easement therefore going north is the only option.

14

15 Mr. Thorsland asked Mr. Buzicky if he plans to check with staff during his revisions to the site plan for  
16 compliance.

17

18 Mr. Buzicky stated yes.

19

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

21

22 Mr. Thorsland asked if staff had any questions for Mr. Buzicky.

23

24 Mr. Hall stated that staff had anticipated the cases coming back before the ZBA on August 30<sup>th</sup> and staff  
25 would need to have the best site plan available by the end of July. He asked Mr. Buzicky if he could meet  
26 such a deadline.

27

28 Mr. Buzicky stated yes, he will provide the best site plan that he can at that time realizing that they are trying  
29 to get the property rezoned so that they can move forward.

30

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

32

33 Mr. Thorsland called Kerry Gifford to testify.

34

35 Mr. Gifford stated that the Ordinance could be modified or changed and they would like to see a variance  
36 based off of the plat act and the exemption being that the use is for public use.

37

38 Mr. Hall stated that if this were in the County's subdivision jurisdiction where the plat act would be the

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1 relevant standard then the Ordinance would not need to be amended but in this location the plat act is  
2 secondary to the Village of Mahomet's subdivision jurisdiction and the Ordinance is very clear.

3  
4 Mr. Gifford stated that ordinances can be modified.

5  
6 Mr. Hall stated that he would not want Mr. Gifford to believe that the Ordinance could be changed in such a  
7 way because it would be protested by every municipality in the County and that amendment would not see  
8 the light of day. He said that there is just plainly the matter of legal jurisdiction. He said that Champaign  
9 County has a lot of disagreements with municipalities but at the level of subdivision approval in their  
10 jurisdiction it is pretty resolved. He said that the County Board might be convinced otherwise but he is not  
11 sure how long that process would take.

12  
13 Mr. Gifford stated that they are trying to provide good services to their customers and provide a good quality  
14 of life to the residents of Mahomet.

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

17  
18 Mr. Thorsland asked if staff had any questions for Mr. Gifford and there were none.

19  
20 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Gifford and there was no one.

21  
22 Mr. Thorsland asked Mr. Gifford if a continuance to August 30<sup>th</sup> is acceptable.

23  
24 Mr. Gifford stated yes.

25  
26 Mr. Thorsland entertained a motion to continue Cases 717-AM-12, 718-S-12 and 719-V-12 to the August  
27 30, 2012, meeting.

28  
29 **Mr. Courson moved, seconded by Mr. Miller to continue Cases 717-AM-12, 718-S-12, and 719-V-12 to**  
30 **the August 30, 2012, meeting. The motion carried by voice vote.**

31  
32 Mr. Thorsland stated that the Board will now hear Cases 710-AT-12 and 711-AT-12.

33  
34 **7. Staff Report**

35  
36 Mr. Kass distributed a Case Wrap Sheet to the Board for review.

37  
38 Mr. Hall stated that the amount of time that Mr. Kass spends working with petitioners in obtaining site plans  
39 that make sense in time both for the legal advertisement and for this Board is unbelievable. He said that Mr.  
40 Kass is doing a wonderful job during a time when staff has been receiving such poor applications from  
41 petitioners and it is unfortunate that Mr. Kass has to work so hard to obtain the minimum amount of required

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1 information. He said that he had hoped that the new Associate Planner could assist the Zoning Officer with  
2 enforcement cases but that is totally unrealistic given the inadequate information that petitioners submit for  
3 these cases. He said that it isn't like staff does not inform the petitioners that certain documentation is  
4 required at the hearings.  
5

6 Mr. Thorsland stated that he has not been on the Board for a terribly long time but he has determined that  
7 basic crayon skills would serve many people and that it would be a community service to hold an adult  
8 education class to teach them how to draw a line.  
9

10 Mr. Hall stated that he just wanted to give kudos to Mr. Kass for working with the petitioners because it is  
11 not always an easy job. He said that Mr. Kass is also doing a good job in wrapping up the cases but more  
12 than 90% of his time is spent trying to get information to the Board that they can understand.  
13

14 **8. Other Business**  
15 **A. Review of Docket**  
16

17 Mr. Kass stated that Daniel Williams, petitioner for Case 707-S-12, did not meet the previous deadline for  
18 applying for the required variance and submitted his application today. Mr. Kass stated that he does not have  
19 time to prepare the legal advertisement by tomorrow's deadline therefore both cases must be heard at a later  
20 date. He asked the Board if they would like to hear both cases at the same time which would be at the  
21 September 13, 2012, meeting.  
22

23 Mr. Passalacqua stated yes.  
24

25 Mr. Thorsland agreed with Mr. Passalacqua. He suggested that staff inform the petitioner that the  
26 information needs to be complete and submitted in a timely manner.  
27

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

30 None  
31

32 **10. Adjournment**  
33

34 Mr. Thorsland entertained a motion to adjourn the meeting.  
35

36 **Ms. Capel moved, seconded by Mr. Miller to adjourn the meeting at 9:33 p.m. The motion carried by**  
37 **voice vote.**  
38

ZBA

AS APPROVED JULY 26, 2012

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Respectfully submitted

Secretary of Zoning Board of Appeals

ZBA //

*DRAFT SUBJECT TO APPROVAL DRAFT*

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