

AS APPROVED MARCH 13, 2014

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: January 30, 2014

PLACE: Lyle Shield's Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 6:30 p.m.

MEMBERS PRESENT: Catherine Capel, Debra Griest, Marilyn Lee, Brad Passalacqua, Jim Randol, Eric Thorsland

MEMBERS ABSENT : Roger Miller

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

OTHERS PRESENT : Jean Fisher, Mark Fisher, Larry Hall, Julia Hall, Alena Nierenhausen, Kenny Nierenhausen, Kevin Cagle, Scott Reifsteck, Eric Sebens

1. Call to Order

The meeting was called to order at 6:30 p.m.

2. Roll Call and Declaration of Quorum

The roll was called and a quorum declared present with one Board member absent.

3. Correspondence

None

4. Approval of Minutes (December 12, 2013)

Mr. Thorsland stated that staff emailed an amended version of the minutes for the Board's review. He asked the Board if there were any additional corrections to the minutes and there were none.

Mr. Thorsland entertained a motion to approve the December 12, 2013, minutes as amended.

Mr. Randol moved, seconded by Ms. Griest to approve the December 12, 2013, as amended. The motion carried by voice vote.

5. Continued Public Hearing

Case 768-AT-13 Petitioner: Zoning Administrator Request: Amend the Champaign Zoning

1 **Ordinance by adding the following standard conditions and special provisions to Section 6.1.3: Part**
2 **A. Revise the use category “heliport/restricted landing area” to heliport-restricting landing area: and**
3 **revise the existing standard conditions and special provisions for the use category “heliport-restricted**
4 **landing area” and add new standard conditions and special provisions, as follows: (1) Number the**
5 **existing standard condition and special provision 1. (2) Add the following standard conditions and**
6 **special provisions for a limited time not to exceed 365 days from the date of adoption: (a) Add a**
7 **standard condition and special provisions to require the Final Approach and Takeoff Area to be no**
8 **closer than 800 feet from the nearest CR District when measured in a straight line from the Final**
9 **Approach and Takeoff Area in an approach/takeoff path and no closer than 500 feet when measured**
10 **from the Final Approach and Takeoff Area in other than an approach/takeoff path and that no part**
11 **of the approach/takeoff path may be less than 100 feet above the nearest CR District. (b) Add a**
12 **standard condition and special provision to require that the Final Approach and Takeoff Area may be**
13 **no closer than 1,320 feet from the nearest dwelling under different ownership than the heliport-**
14 **restricted landing area. (c) Add a standard condition and special provision to require that the Final**
15 **Approach and Takeoff Area may be closer than 300 feet from the nearest property under different**
16 **ownership than the heliport-restricted landing area. Part B. Revise the existing standard conditions**
17 **and special provisions for the use category “restricted landing area” and add new standard conditions**
18 **and special provisions as follows: (1) Number the existing standard conditions and special provisions**
19 **for the use category “restricted landing area” and add new standard conditions and special provisions**
20 **as follows: (1) Number the existing standard conditions and special provisions 1-4; and (2) Add the**
21 **following standard conditions and special provisions for a limited time not to exceed 365 days from**
22 **the date of adoption: (a) Add a standard condition and special provision to require the end of the**
23 **runway to be at least 1,500 feet from the nearest CR District when measured in a straight line form**
24 **the end of the runway and not less than 500 feet when measured from the edge of the runway and that**
25 **no part of the approach surface may be less than 100 feet above the nearest CR District. (b) Add as**
26 **standard condition and special provision to require that the runway may be no closer than 1,320 feet**
27 **from the nearest dwelling under different ownership than the restricted landing area. (c) Add a**
28 **standard condition and special provision to require that the runway may be no closer than 300 feet**
29 **from the nearest property under different ownership than the restricted landing area.**

30
31 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.

32
33 Mr. John Hall, Zoning Administrator stated that this case was spurred when a group of citizens, who had
34 attended hearings regarding a map amendment and an RLA Special Use Permit over the past few years,
35 made a request to ELUC to amend the Ordinance to add some separations that the citizen’s felt were
36 warranted. He said that ELUC discussed the citizen proposal, but staff put together a proposal that staff felt
37 was a little more realistic and presented that proposal to ELUC for review. He said that the case before the
38 ZBA tonight is the proposal prepared by staff. He said that the Supplemental Memorandum that was
39 prepared for the January 16, 2014, meeting included an analysis of the RLAs in the County and it was a more
40 factual analysis than the information given to ELUC to review. He said that the Supplemental Memorandum
41 included staff’s recommendation of lowering the separation distance to the nearest dwelling under different

1 ownership to 940 feet based on the average of the current separations in the County. He said that he doubts
2 that the lower separation distance will be well received by the neighbors of the previous zoning case because
3 obviously they are interested in seeing the greatest amount of separation as possible but as in most cases this
4 is the ZBA and the Board should make the separation as to what the ZBA believes it should be after they
5 hear of the evidence.
6

7 Mr. Hall stated that no new information has been provided for this case tonight and he assumes that the
8 Board saw that this is a text amendment which will only be in place for one year after it is adopted. He said
9 that the hope is that making it a temporary amendment will help spur this public hearing along so that this
10 amendment can be adopted as quickly as possible and then the ZBA will have another text amendment
11 which will either make the separations permanent or if more research is required staff will do that for the
12 permanent amendment. He said that he would like to see this amendment get in place before the County has
13 any more applications for a new RLA. He said that hopefully staff has answered all of the Board's questions
14 at this point but only time will tell.
15

16 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
17 sign the witness register for that public hearing. He reminded the audience that when they sign the
18 witness register they are signing an oath
19

20 Mr. Thorsland called Larry Hall to testify.
21

22 Mr. Larry Hall, who resides at 177 North CR 1600E, Villa Grove, stated that he would like to ask Mr. John
23 Hall a question before he reads his prepared statement.
24

25 Mr. Thorsland allowed Mr. Larry Hall to ask Mr. John Hall his question.
26

27 Mr. Larry Hall asked Mr. John Hall if he is correct in understanding that the separation distance was changed
28 to 940 feet.
29

30 Mr. John Hall stated that he only reminded everyone that the Supplemental Memorandum which was
31 distributed at the last meeting recommended reducing the separation to a dwelling under other ownership
32 from the proposed 1,320 feet to 940 feet simply based on that being the average. He said that he did a more
33 careful analysis for this public hearing and found that it was actually an average of 940 feet.
34

35 Mr. Larry Hall stated that he obviously missed that revision therefore he was not aware that it was included
36 in the Supplemental Memorandum.
37

38 Mr. John Hall stated that he wanted to be clear that the Board has not done anything about staff's
39 recommendation for a lower separation.
40

41 Mr. Larry Hall stated that after approximately two years of personally dealing with a disputed case, which

1 most of the ZBA here tonight experienced or tolerated, he came to believe that there needed to be some
2 reasonable restrictions imposed to clarify and minimize future events and protect the concerns that the
3 citizens of the area had. He said that the sentiment was echoed at that time by the Zoning Administrator
4 therefore at the September 5, 2013, ELUC meeting he presented, on behalf of residents of Champaign
5 County, detailed and proposed revisions and/or amendments to the Champaign County Zoning Ordinance
6 regarding future approvals of RLAs. He said that the Board received their proposal as Attachment B in the
7 last mailing for the January 16, 2014, meeting.

8
9 Mr. Larry Hall stated that as discussed at the ELUC meeting there were a few differences between their
10 proposal and the one presented by the Zoning Administrator. He said that during his original statement he
11 was going to indicate that they have reviewed the differences and felt that the request from John Hall,
12 Zoning Administrator, satisfactorily addresses the concerns for public safety and for conservation area
13 preservation that they had stressed. Mr. Larry Hall stated that he can only speak for himself, he has not
14 discussed this with the neighbors, but the reduction of the separation distance from a non-participating
15 dwelling to 940 feet is not acceptable. He said that if 940 feet is an average he does not recall what the
16 extremes were in the examples but he would still strongly recommend a separation of 1,320 feet because it is
17 a compromise from the original request that was presented to ELUC which was a 2,000 feet separation. He
18 said that Mr. John Hall previously stated that 1,320 feet seemed a lot more reasonable than the 2,000 feet and
19 Mr. Larry Hall stated that he would concede that it does seem more reasonable and he would endorse it. Mr.
20 Larry Hall stated that with the exception of the separation change from 1,320 feet to 940 feet, which he does
21 not recommend or agree with, he would otherwise support the request that is submitted by the Zoning
22 Administrator and urge the ZBA's expedient approval and adoption of additions and amendments to the
23 standards and special provisions for both a Heliport-RLA and regular RLAs as stated in the Champaign
24 County Zoning Ordinance.

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

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

29
30 Mr. Thorsland called Julia Hall to testify.

31
32 Ms. Julia Hall, who resides at 177 North CR 1600 East, Villa Grove, thanked the Zoning Administrator for
33 doing so much diligent work in drafting the proposed amendment to the Zoning Ordinance for the RLA with
34 or without a Heliport. She said that as her husband indicated they have spent the better part of two years
35 opposing an RLA that would have been 100 feet from their property and approximately 140 feet from their
36 bedroom. She said that these restrictions need to be made whether they are set at 940 feet or 1,320 feet
37 because any additional restrictions which are more than 140 feet from her bedroom window would be
38 appreciated. She said that the restrictions would hopefully alleviate anyone from having to endure what they
39 have endured as well as saving everyone a lot of time, money and energy. She said that the proposed
40 restrictions will ensure public safety and comfort and will mitigate the services to the habitat in the CR
41 District. She said that sounds ammoniating from an RLA in the vicinity of the CR District or residential area

1 could well disturb the peace of either and the closer that an RLA is to the CR District or to a residential area
2 the more disturbance there would be. She said that she is in support of the originally proposed restriction of
3 1,320 feet from property under different ownership and she hopes that the proposed restrictions will become
4 permanent.

5
6 Mr. Thorsland asked the Board if there were any questions for Ms. Hall and there were none.

7
8 Mr. Thorsland asked if staff had any questions for Ms. Hall and there were none.

9
10 Mr. Thorsland called Ms. Fisher to testify.

11
12 Ms. Jean Fisher, who resides at 195 North CR 1600E, Villa Grove, thanked the Board for allowing her to
13 address this matter tonight. She said that she would also like to express her gratitude to the RPC staff, and
14 Planning and Zoning staff for their promotions and efforts in trying to update and correct the Champaign
15 County Zoning Ordinance in regards to the definition of RLAs and Heliport-RLAs use on non-conservation
16 property. She said that during previous ZBA meetings she has stated that Champaign County only has 1% of
17 its area in the CR Zoning District. She said that Champaign County has deemed these limited areas
18 necessary to the vitality of the large trees in the forested area and protection of wildlife species living within
19 them of great importance and crucial for the filtration of water flow which includes streams and aquifer. She
20 said that the discussion for Case 768-AT-13, an eventual permanent ordinance, benefits all people residing in
21 Champaign County as well as people that use these areas for recreation and other allowable uses in the CR
22 District. She said that it strengthens and affirms the importance of CR District vitality to the general public
23 and it strengthens and corrects the promotion and integrity of the beauty and lasting natural resources that
24 she and her family specifically selected and have lived at their home for 26 years.

25
26 Ms. Fisher stated that she cannot express her gratitude and support of this amendment. She said that she is
27 in favor of the originally proposed 1,320 separation distance from a separate property under different
28 ownership and everything else that is included in the proposed amendment. She expressed her support of the
29 amendment and urged the Board to vote in favor of the Ordinance tonight.

30
31 Mr. Thorsland asked the Board if there were any questions for Ms. Fisher and there were none.

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

34
35 Mr. Thorsland called Mark Fisher to testify.

36
37 Mr. Mark Fisher, who resides at 195 North CR 1600E, Villa Grove, stated that 80% of the County is already
38 zoned appropriately for an RLA and he doesn't know how much more of the County the ZBA wants
39 available for RLA zoning.

40
41 Mr. Thorsland asked the Board if there were any questions for Mr. Fisher and there were none.

1
2 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
3 regarding Case 768-AT-13 and there was no one.

4
5 Mr. Thorsland closed the witness register.

6
7 Mr. Thorsland stated that the Supplemental Memorandum dated January 16, 2014, indicates the proposed
8 change to the separation from a dwelling under different ownership. He said that the chart included in the
9 memorandum on page 3 indicates that the minimum separation was 590 feet to the nearest dwelling under
10 other ownership and 10 feet separation to the nearest property line. He said that the average of 940.9 feet
11 came from the high of 1,600 feet and the minimum of 590 feet. He asked the Board if there was discussion
12 regarding the 940 feet separation. He reminded the Board that this amendment is effective for one year and
13 at that time the Board will review the amendment again to affirm the numbers and make the Ordinance
14 revision permanent.

15
16 Ms. Lee stated that she strongly feels that the Board should retain the separation distance of 1,320 feet. She
17 said that her husband had his own airplane for years and he always told her that the most dangerous time in
18 operating the airplane was during the landing and the take-off. She said that she resides in the rural area and
19 feels that 1,320 feet is a more preferable separation.

20
21 Ms. Griest asked Mr. Hall why we approached the separation distance by taking an average rather than the
22 original approach of one-quarter mile.

23
24 Mr. Hall stated that he did not want to argue for a separation distance of 1,320 feet when the County has
25 never had any complaints about the six RLAs included in the chart therefore there is no record of
26 incompatibility based on them.

27
28 Ms. Griest stated that if no complaints have been received regarding the Schmidt RLA, which has the lowest
29 separation distance to the nearest dwelling under other ownership, then the 940 feet separation average is
30 consistent.

31
32 Mr. Thorsland asked Mr. Hall if staff had any data regarding the average use of the RLAs that exist in the
33 County currently.

34
35 Mr. Hall stated no. He said that it may be relevant evidence to add but to be truthful the previous petitioner
36 in the last RLA case was willing to settle for restrictions and it was never really clear as to how much those
37 restrictions were going to be. Mr. Hall said that he compared and graphed those restrictions and the
38 proposed 940 feet separation to the nearest dwelling versus the RLAs included in the chart where there are
39 no restrictions but he did not include it as a Document of Record. He said that the restrictions that the
40 previous petitioner was willing to accept actually argued for a greater amount of separation because on the
41 face of it even that petitioner saw how reasonable it was to limit the use of the RLA based on proximity.

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Mr. Passalacqua stated that the chart is handy but he believes that the most recent RLA case illustrated that it is not necessarily a chart that can be applied because of the unique layout of the where the landing strip was going to be in comparison to the non-participating dwelling. He said that the average may not be applicable to every RLA case. He said that if everything was a perfect square and was laid out on a grid then the County could use averages more accurately but because every single zoning case is either erratically shaped or “L” shaped or some other oddity the County cannot use averages. He said that he supports the one-quarter mile separation.

Mr. Thorsland stated that he senses a consensus of support for a separation of 1,320 in lieu of the 940 feet.

The Board agreed.

Mr. Thorsland asked the Board if there were other parts of the amendment that the Board desired to work on or does the Board desire to move to the Finding.

Mr. Hall stated that when this amendment is forwarded to the County Board for final approval or denial all of the questions that he needs to ask the Board must be answered. He reminded the Board that in regards to the proposed separation to a property line was advertised at 300 feet and in the course of preparing this evidence he realized that 300 feet on either side of a runway makes it just wide enough that it will not fit on a typical narrow 40 acre parcel. He said that he does not know how many such parcels are in the County but at a certain point when the Board does adopt regulations like this it always helps to recognize the common way that land is divided in the County and a narrow 40 acre parcel is not unusual. He said that if the 300 feet is adopted and someone desires to put an RLA on a narrow parcel they could ask for a waiver but if he knows one thing it is not to make people have to ask for waivers when a little bit could have been changed in the beginning therefore not needing a waiver.

Ms. Griest asked Mr. Hall how much of a difference he is discussing.

Mr. Hall stated 20 feet.

Ms. Griest agreed. She said that this separation does not affect glide slope in or out. She said that the most vulnerable time is during the take-off and landing and that occurs in the glide slope and not out to the tips of the wings. She asked Mr. Hall if Aero-Place was included in the review or is it exempt from the discussion.

Mr. Hall stated that Aero-Place is exempt and it was not originally an RLA but it may be now under IDOT’s regulations but it is so hard to obtain a determination therefore he hasn’t followed up on it. He said that the Department of Planning and Zoning has spent hundreds of hours over the years dealing with complaints about Aero-Place but since the second special use permit was granted on Aero-Place staff has not received one complaint therefore it is difficult to see where Aero-Place fits into this review.

1 Mr. Thorsland stated that the Board has come to the conclusion that the Final Approach and Takeoff Area
2 may be no closer than 1,320 feet from the nearest dwelling under different ownership than the heliport-
3 restricted landing area and no part of the Final Approach and Takeoff Area may be closer than 280 feet from
4 the nearest property under different ownership than the Heliport-Restricted Landing Area. He said that Parts
5 A(5) and B(8) of the amendment, which are indicated on pages 26 and 27 of the Preliminary Draft Finding
6 of Fact and Final Determination dated January 16, 2014, should be revised to reflect this change.
7

8 Mr. Passalacqua stated that this change is to the property line and not the dwelling.
9

10 Mr. Thorsland stated that Mr. Passalacqua was correct.
11

12 Mr. Hall stated that he would appreciate any evidence that the Board could offer to justify a separation that is
13 400 feet more than our average separation.
14

15 Ms. Lee stated that all it takes is one accident.
16

17 Mr. Thorsland stated that perhaps the Board could turn Ms. Lee's comment into a finding.
18

19 Ms. Capel stated that one of the ways would be to determine the amount of use of the RLA.
20

21 Mr. Hall stated that perhaps an item of evidence could be that the Board knows what the separations are but
22 does not know the frequency of use therefore increasing the separation distance would be equivalent to a
23 factor of safety.
24

25 Ms. Griest stated that this is an interim step that will only be in place for one year and the Board will be
26 taking at approach to provide the highest degree of separation while examining it further to see if a more
27 reduced level could be provided in the final Ordinance.
28

29 Mr. Randol asked why this amendment is only for one year.
30

31 Mr. Hall stated that the Board has done this in at least one other instance when the Board wanted to get
32 something on the books as quickly as possible. He said that many people believe that a moratorium can be
33 imposed but that is not true because this is the Zoning Ordinance and any change has to go through a public
34 hearing process. He said that he fears that an amendment like this could result in a rush of RLAs so that
35 someone could have it proposed before the new regulations are adopted. He said that it is good to get a
36 conservative regulation in place and then take a year to make sure that nothing was overlooked or if the
37 regulation needs reduced. He said that the Board works diligently on amendment cases and he would never
38 want to rush the Board unless it is an interim amendment and then he will prod as much as he can just to get
39 something in place.
40

41 Mr. Passalacqua stated that the Board could say that they could well argue for 1,600 feet therefore 1,320 feet

1 is a compromise.

2

3 Ms. Capel asked Mr. Hall if the case would require re-advertisement.

4

5 Mr. Hall stated no, only if the Board were increasing any of the original proposals by a significant amount.

6

7 Mr. Thorsland asked Mr. Hall where he would like to insert the evidence proposed by Ms. Griest.

8

9 Mr. Hall stated that much to the disappointment of everyone present for this case tonight he would request
10 that the Board continue the case to the February 13, 2014, meeting. He said that there is no ELUC meeting
11 in February therefore not taking action on this case tonight will not slow down how quickly it gets adopted
12 and we are all much better off if evidence does not have to be invented during the public hearing.

13

14 Mr. Thorsland entertained a motion to continue Case 768-AT-13 to the February 13, 2014, meeting.

15

16 **Ms. Griest moved, seconded by Ms. Capel to continue Case 768-AT-13 to the February 13, 2014,**
17 **meeting. The motion carried by voice vote.**

18

19 Ms. Griest noted that two Board members will be absent from the February 13th meeting.

20

21 Mr. Hall stated that he overlooked the fact that two members will be absent at the February 13th meeting. He
22 said that the Board could continue Case 768-AT-13 to the February 27th meeting and it could be added
23 tentatively to the March ELUC agenda based on the discussion that the Board has had tonight. He said that
24 continuing the case to February 27th would allow maximum ZBA member participation and still get the case
25 to ELUC with no loss in time.

26

27 Mr. Thorsland stated that five Board members will be present at the February 13th meeting and the consensus
28 of the Board present tonight appears to agree with what is being proposed and amended.

29

30 Mr. Hall stated that he is fine with February 13th.

31

32 **6. New Public Hearings**

33

34 **Case 766-AM-13 Petitioner: Eric L. Sebens d.b.a. Prairieview Landscaping Request: Amend the**
35 **Zoning Map to change the zoning district designation from the AG-1, Agriculture Zoning District to**
36 **the B-1 Rural Trade Center Zoning District in order to authorize the proposed Special Use in related**
37 **zoning Case 767-S-13. Location: A 5-acre tract in Tolono Township in the East Half of the Southeast**
38 **Quarter of the Northeast Quarter of Section 9 of Township 18 North, Range 8 East of the Third**
39 **Principal Meridian and commonly known as Prairieview Landscaping at 1069 CR 900E, Champaign.**

40

41 **Case 767-S-13 Petitioner: Eric L. Sebens d.b.a. Prairieview Landscaping Request: Authorize the**

1 following as a Special Use in the B-1 Rural Trade Center Zoning District: Part A. Authorize multiple
2 principal buildings on the same lot consisting of the following: (1) a landscape contractor's facility
3 with outdoor storage that was originally authorized in Case 101-S-97; and (2) Self-Storage
4 Warehouses, providing heat and utilities to individual units as a special use proposed in Part B.
5 Authorize the construction and use of Self-Storage Warehouses, providing heat and utilities to
6 individual units as a special use. Location: A 5-acre tract in Tolono Township in the East Half of the
7 Southeast Quarter of the Northeast Quarter of Section 9 of Township 18 North, Range 8 East of the
8 Third Principal Meridian and commonly known as Prairieview Landscaping at 1069 CR 900E,
9 Champaign.

10
11 Mr. Thorsland informed the audience that Case 767-S-13 is an Administrative Case and as such the County
12 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
13 show of hands for those who would like to cross examine and each person will be called upon. He requested
14 that anyone called to cross examine go to the cross examination microphone to ask any questions. He said
15 that those who desire to cross examine are not required to sign the witness register but are requested to
16 clearly state their name before asking any questions. He noted that no new testimony is to be given during
17 the cross examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
18 exempt from cross examination.

19
20 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
21 sign the witness register for that public hearing. He reminded the audience that when they sign the
22 witness register they are signing an oath.

23
24 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.

25
26 Mr. Eric Sebens, who resides at 3008 Cherry Hills Drive, Champaign, stated that he is proposing to have his
27 zoning changed from AG-1 to B-1 with a Special Use Permit. He said that the rezoning and Special Use
28 Permit will allow a dual purpose use of his property that he has owned for 17 years. He said that he is
29 proposing to erect self-storage units on the south side of his property and removing the older dilapidated
30 buildings which includes what is left of a barn and a garage.

31
32 Mr. Sebens stated that he has not prepared any plans for his proposed use but he has contacted an architect to
33 start beginning some preliminary plans to outline what he plans to do on his property.

34
35 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Sebens.

36
37 Mr. Hall asked Mr. Sebens if he has contacted an engineer regarding stormwater drainage and detention or
38 does he have someone in mind that he desires to contact soon.

39
40 Mr. Sebens stated yes. He said that the architect that he spoke with today employs an engineering firm to
41 review the regulations which need to be met and to review stormwater drainage. He said that he has an

1 existing water drainage area that comes from Willard Airport under the road and runs to the southeast corner
2 of his property. He said that this drainage area provides excellent drainage for the property because the
3 property is sloped in that direction and often during the biggest rains very little water comes through there.
4

5 Mr. Hall stated that one thing that will be discussed a lot during the review of the stormwater plan is that this
6 is the most complicated situation that one can find in Champaign County which is property on a sloping site
7 with nothing but farmland below and somehow we have to manage the stormwater in a detention basin
8 without causing erosion downhill.
9

10 Mr. Sebens stated that the location where he is proposing to construct the buildings actually slopes down to
11 the grassy area where the stormwater runoff travels through and it is an established waterway which has a
12 purpose of preventing erosion.
13

14 Mr. Hall stated that the 2011 aerial photograph included in the memorandum mentioned that up in the
15 northwest corner of the property it appears that there has been some field erosion. He said that field erosion
16 can have multiple causes but one thing that the aerial does show is that the subject property does drain in two
17 different directions and that should be considered during the stormwater design. He said that he is glad that
18 Mr. Sebens has an engineer on board who can figure out what needs to be done because it will be a
19 challenge.
20

21 Mr. Sebens stated that he understands the challenge and in having an agricultural background he also
22 understands what water can do to bare soil. He said that this issue has been addressed by himself and Mr.
23 Scott Reifsteck, tenant farmer for the surrounding farmland, because they installed a drain tile that terminates
24 at the edge of his parking lot where he had built a catch basin to funnel the water that is coming off of the
25 parking lot into the drain tile.
26

27 Mr. Hall stated that the drain tile and the catch basin should be indicated on the engineering plans so that it is
28 documented.
29

30 Mr. Passalacqua stated that Building #3, indicated on the site plan, would not be acceptable due to its
31 location in the swale.
32

33 Mr. Hall stated no and he hopes that neither the building nor the paving would be acceptable in that swale.
34

35 Mr. Passalacqua asked Mr. Hall if the rule of thumb is 60 feet.
36

37 Mr. Hall stated that 60 feet is more than he is familiar with.
38

39 Mr. Passalacqua stated 60 feet from side to side and 30 feet from the centerline of the swale.
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41 Mr. Hall stated yes, that is typical.

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Ms. Lee asked if the water flows northeast to the southwest.

Mr. Hall stated yes.

Mr. Sebens stated that if the Board would visit the property they would find that approximately two-thirds to three-quarters of the property is sloped towards Duncan Road to the southeast corner of the property.

Mr. Passalacqua asked Mr. Sebens if the swale runs southwest.

Mr. Sebens stated yes.

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

Mr. Thorsland called Mr. Scott Reifsteck to testify.

Mr. Scott Reifsteck, who resides at 1341 CR 600N, Tolono, stated that he is present tonight on behalf of himself and his aunt, who owns adjoining property to the subject property. He said that he has been the tenant farmer on his aunt's property for over 20 years and he has some concerns regarding the request by Mr. Sebens. He said that he would like to make it clear that he has known Mr. Sebens for a long time and he has had nothing but a good relationship in working with Eric and he does not want of any of comments to be construed to be negative to Eric's business or to Eric personally. Mr. Reifsteck stated that his comments are to address his concerns regarding the requested zoning change and also some of the impacts that he has seen with Mr. Sebens' existing business in relation to the drainage. He said he and Mr. Sebens have tried to work together to address the drainage issues but there are some things that he sees with the development which could very adversely affect what is going on with the drainage and not just with the additional mini-warehouses but with the change of relative use near the landscaping shed and what has happened in that area.

Mr. Reifsteck stated that he does not believe that there is a need to rezone the subject property because the use currently is fairly compatible with the agriculture district and he and Mr. Sebens have worked well together for 17 years but there are some issues. He said that the aerial shows the drainage area coming from the west on the northern part of the property has always been there but over the years as this property has been developed and the big shed that was built changed a lot of the water flow and significantly increased the amount of water that goes down that drainageway. He said that he tried to address the water issue in various ways and in 2011 he ran a six-inch tile up to the property line and built a small retaining wall around the inlet to try to catch all the water to keep it from coming down into the field. He said that he is concerned that if more construction is allowed on the property a lot of the water activity that is now going to the south and east of that spot will greatly impact the amount of water that he has to deal with that comes down through that area.

Mr. Reifsteck stated that when the landscaping shed was built there was some re-grading done to the

1 property which actually increased some of the water that comes that way from where it was originally. He
2 said that originally there was very little area there that drained down that way but now he receives a lot of
3 water off of the shed that comes down through there and it has accelerated the runoff and generated a lot of
4 the problems. He said that drainage has been a continual issue that he has tried to address and hopefully he
5 has found a solution with the tile but the tile is very limited in capacity and if more buildings are allowed on
6 the property he is afraid that the six-inch tile will not be sufficient enough to handle the problem.
7

8 Mr. Reifsteck stated that in regards to the water that flows to the south and east into the drainage swale that
9 runs down through the subject property, there is currently an eight or ten-inch tile that runs through the swale
10 that drains the agricultural land on the east of the road. He said that this issue will have to be addressed to
11 provide drainage to the farmland which is located east of the road if there is a detention pond installed on the
12 subject property. He said that drainage is a very serious issue through the subject property and there hasn't
13 been much running water through there but since the landscaping business has gone in the area immediately
14 to the east and south has a tendency for the ground to be more saturated than it had in the past and if you are
15 subjecting more water to the area it will stay wet for a longer period of time. He said that this an issue that
16 must be addressed and taken care of because the extra water will have further consequences down in the
17 waterway where there are already problems.
18

19 Mr. Reifsteck stated that if more construction is placed on the subject property and the landscaping business
20 is moved to the north to further confine it that area will become more impervious therefore the proposal will
21 affect both drainageways. He said that he installed the tile at his own expense to try to eliminate the
22 drainage problems and Mr. Sebens cooperated in trying to build a berm across there to hold the drainage
23 onto his property but any additional drainage is something that we will have to keep an eye on.
24

25 Mr. Reifsteck stated that in regards to the use as a storage facility, approximately one-quarter of a mile there
26 is a gravel road that abuts I-57 and for years he has hauled dump truck loads of other people's refuse out of
27 that area and he is concerned that a storage facility south of that road will exacerbate that problem. He said
28 that he knows that people do not intend to dump their refuse but when people fill a storage facility with items
29 and they run out of room he is concerned that some of those items will end up on that road to the north. He
30 said that the Tolono Township Highway Commissioner has been very forthcoming in the last five or six
31 years and has been very proactive in keeping stuff out of there but that dead end road has been a problem
32 with dumped trash and Mr. Reifsteck is afraid that this type of a facility will make that problem worse.
33

34 Mr. Reifsteck stated that the traffic generated by the proposed storage facility is not something that is desired
35 in an agricultural area. He said that a potential problem with blowing debris should be addressed and at a
36 minimum perhaps some type of fencing should be required around the subject property to maintain any
37 debris within the property. He said that regardless of the property owner's best intentions and efforts, there
38 is still debris which blows onto adjacent properties and interferes with combines and other equipment. He
39 said that on the west side of the property there has been an issue with encroachment and Mr. Sebens has
40 done his best to contain it but when there are as many employees that park on a property as there are for Mr.
41 Sebens' business it is hard to regulate. Mr. Reifsteck stated that even though he understands that it is not

1 intentional the landscaping business also tends to creep further onto his property. He said that he and Mr.
2 Sebens have been good neighbors for years and he does not want these requests to affect that relationship but
3 he does have concerns about this type of development on the subject property.

4
5 Mr. Reifsteck stated that he has not seen any LESA data on the subject property and he does not know if it is
6 even relevant but he would tend to think that, with the surrounding agricultural area, a business use of this
7 type would not be in the best interest of the County.

8
9 Mr. Thorsland asked the Board if there were any questions for Mr. Reifsteck.

10
11 Mr. Randol asked Mr. Reifsteck if the ten-inch drainage tile was located within a formal drainage district.

12
13 Mr. Reifsteck stated that the ten-inch drainage tile is not located within a formal drainage district. He said
14 that at one time it used to be a mutual drainage tile and when the airport came in it restricted some of the use
15 of the tile but there is approximately 240 acres that drains through there from the east and drains to the north
16 side of the swale. He said that he installed a stand pipe in the bottom of the waterway when he did the other
17 tile work and that has helped alleviate the saturated water condition there but it has not cured it.

18
19 Mr. Randol asked Mr. Reifsteck if the west side of Duncan Road is typically lower than the roadway itself.

20
21 Mr. Reifsteck stated that on the south of the subject property yes, but to the north of Duncan Road it is high.
22 He said that the subject property sort of comes down off of the hill and to the north of the subject property
23 the road is lower than the adjoining field and to the south it is higher.

24
25 Mr. Randol stated that he would think that the natural retention on the subject property could not be changed.

26
27 Mr. Reifsteck stated that he won't say that the natural retention on the subject property could not be changed
28 into a detention pond but the issue will definitely have to be addressed.

29
30 Mr. Passalacqua asked Mr. Reifsteck if the saturated area meets the culvert on the east side of Duncan Road.

31
32 Mr. Reifsteck stated no. He said that saturated area is about twenty feet north of the property line and then
33 south 150 feet out into his aunt's property. He said that the grass grows in that area but the water table is
34 extremely high and he installed a surface inlet there and it has alleviated the problem somewhat but it has not
35 cured the issue.

36
37 Mr. Passalacqua asked Mr. Reifsteck if the road to the north that he discussed during his testimony accesses
38 the pond along I-57. He asked Mr. Reifsteck who maintains that road.

39
40 Mr. Reifsteck stated that Mr. Passalacqua was correct and that the Tolono Township Highway
41 Commissioner maintains the road currently.

1
2 Mr. Passalacqua stated that the property to the north does not have anything to do with the subject property.
3 He asked Mr. Reifsteck if he included it in his testimony because he has seen the debris being dumped on it.
4
5 Mr. Reifsteck stated that he included the property in his testimony because for years he was responsible for
6 keeping the property cleaned up.
7
8 Mr. Passalacqua noted that the debris that was being dumped was not a result of Mr. Seben's landscaping
9 business.
10
11 Mr. Reifsteck stated that he did not mean to imply that it was from Mr. Seben's landscaping business but it
12 is local dumping area for people.
13
14 Mr. Thorsland stated that Mr. Sebens must submit a new site plan which includes elevations. He said that
15 the memorandum indicates several items which the Board requires for review. He asked the Board if there
16 are other items which need to be submitted or included on the site plan before the Board moves forward with
17 these cases.
18
19 Mr. Passalacqua stated that the third building will be a problem and with the drainage concerns on the
20 property it may not be feasible at all. He stated that Mr. Sebens should obtain input from an engineer
21 regarding the third building before he puts a lot of effort towards it.
22
23 Mr. Thorsland asked the Board if there were any questions for Mr. Reifsteck and there were none.
24
25 Mr. Thorsland asked if staff had any further questions for Mr. Reifsteck and there were none.
26
27 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Reifsteck regarding Case 767-S-13
28 and there was no one.
29
30 Mr. Thorsland requested that Mr. Sebens return to the witness microphone.
31
32 Mr. Thorsland informed Mr. Sebens that if a sign is anticipated for the storage facility then it should be
33 included on the site plan. He said that staff may have informed him that there are lighting requirements for
34 any special use permit therefore he should review those requirements.
35
36 Mr. Sebens stated that his goal is to improve the property and the area and he would not do the proposed use
37 unless it was done well and in compliance.
38
39 Mr. Thorsland stated that Mr. Reifsteck mentioned the possibility of installing a fence around the storage
40 facility. He said that the farmer north of Walmart on Prospect Avenue called his self a bag farmer because
41 he was farming a lot of bags therefore Mr. Sebens should consider fencing around the storage facility to keep

1 any debris within the confines of the subject property.

2

3 Mr. Hall stated that Mr. Sebens worked a little bit with the previous Associate Planner and he wonders if Mr.
4 Kass discussed the issue of security at the self-storage warehouse. He said that the Board has seen self-
5 storage warehouses with locked access as a way for users to get into the facility after hours and the Board has
6 also seen caretaker dwellings on the subject property so that the facility is staffed 24 hours. He said that
7 security is not something that is written into the Ordinance and it depends on what the ZBA believes is
8 necessary at a given location so there is only so much guidance that staff can give the petitioner ahead of
9 time. He said that this would be a good time to receive input from the ZBA as to what they feel is necessary
10 for security.

11

12 Mr. Passalacqua stated that the plan that Mr. Jesse presented to the Board was excellent and it might be a
13 good example for Mr. Sebens to review as a point of reference.

14

15 Mr. Thorsland stated that he is sure that staff could provide a copy of Mr. Jesse's plan. He asked Mr. Sebens
16 if he had an idea of how he would provide security to the self-storage warehouse. He asked Mr. Sebens if
17 the units would have individual doors and locks or was it going to be more elaborate.

18

19 Mr. Sebens stated that if you look at other storage unit facilities in the area you will find a little bit of
20 everything. He said that most of the facilities are not fenced and the units have locks. He said that
21 encompassing his facility with a fence is certainly something that could be done to make it more secure and
22 he also has plans to provide adequate lighting to detour any activity.

23

24 Ms. Lee asked Mr. Sebens if he is planning on three or four storage facility buildings.

25

26 Mr. Sebens stated that after reviewing the plans again he is proposing only three buildings. He said that as
27 Mr. Passalacqua pointed out earlier the third building will be difficult due to its location. He said that the
28 plan that was submitted was completed by himself through his own CAD system and it was not generated by
29 an architect or engineer.

30

31 Mr. Randol stated that in reviewing the layout he believes that a detention pond is required. He asked Mr.
32 Sebens if the detention pond could be placed in the western portion of the property.

33

34 Mr. Sebens stated that the grass area could be utilized as an area for the detention pond. He said that he only
35 keeps this area mowed and Mr. Reifsteck uses it for parking his agricultural equipment when he is in the
36 field.

37

38 Mr. Randol stated that he is not talking about the wet green area but the area to the west where it appears that
39 there is landscape debris being stored. He asked if the area to the west of that area could be used for a
40 detention pond in order to stay away from the natural drainage area.

41

1 Mr. Sebens stated that this area could also be used for the detention pond. He said that the road may be
2 slightly higher than his landscaping shed but from the south side of his parking lot slopes to the south and
3 there is a ridge along the west property line that separates his property and Mr. Reifsteck's field which also
4 slopes to the east.

5
6 Mr. Passalacqua stated that he understands that the old buildings will be demolished but having purchased
7 green material from Mr. Sebens before he wonders where he would stock his trees and other items for his
8 landscaping business if he builds the storage units.

9
10 Mr. Sebens stated that this is part of the reason why he has scaled the size of the buildings back. He said that
11 as a result of the economy his business is now less than one-half of the size that it was four years ago. He
12 said that at one time he would stock as many as 300 ball and burlap trees but last year he didn't stock any
13 trees. He said that his landscape business has been scaled back and he does not do as much as he used to and
14 if he did decide to stock some trees he has adequate area to do so.

15
16 Mr. Passalacqua stated that any storage for the landscaping materials should be indicated on the complete
17 site plan.

18
19 Mr. Sebens stated that at one time he indicated four buildings on the site plan, three long buildings and one
20 short building, but after review he eliminated the fourth building and now the third building will have to be
21 scaled back to probably half of what is indicated on the preliminary site plan. He said that if he has to
22 construct a detention pond he may find that the third building is not even feasible. He said that the proposed
23 use will help supplement his landscape business, provide a service to the public and help pay for the
24 property.

25
26 Mr. Thorsland stated that the Board is requiring a complete site plan and if there are things that may be done
27 on the property in the future they should be indicated as well.

28
29 Mr. Hall stated that if we were looking at the aerial photo today as a proposed plan for a contractor's facility
30 Mr. Sebens would have to have detention but this was done under the old Stormwater Management Policy
31 and we were not as careful defining when detention was necessary. He said that in the old Stormwater
32 Policy the fact that Mr. Sebens had gravel wasn't considered to the degree that it is considered today. He
33 said that if Mr. Sebens was doing just the contractor's facility today he would need stormwater detention but
34 he didn't need it in 1997. He said that there has been discussion about existing problems and presumably the
35 Board will consider all of the existing problems as well as the proposal to create more impervious area with
36 the self-storage. He said that the drainage plan needs to address all of the gravel paving that exists on the
37 site because it is considered impervious and is considered gravel when it comes to the design for stormwater
38 detention. He said that he hopes that Mr. Sebens' engineer will find out that there is a lot of detention
39 necessary for just the contractor's facility and that is because there are in fact problems which Mr. Sebens
40 and Mr. Reifsteck have attempted to correct and yet the engineer will be able to tell them if they have done
41 enough or if Mr. Sebens will have to do some more. Mr. Hall stated that it is unusual for the Board to

1 receive testimony where there have been problems but both landowners have worked together to resolve
2 them. He said that he is eager to hear what Mr. Sebens' engineer comes up with and what Mr. Reifsteck
3 thinks about it. He encouraged Mr. Sebens to work closely with Mr. Reifsteck as well as his engineer so that
4 when the cases come back to the ZBA everyone will be reasonably satisfied. He noted that Mr. Sebens does
5 not have to do exactly what Mr. Reifsteck wants but Mr. Sebens will have to address all those issues and he
6 has already proven that he can do so which is all good news but there is a lot more to do.

7
8 Mr. Passalacqua stated that the packet addressed that the current parking is too close to the property line
9 therefore the new site plan should indicate compliancy to the Ordinance.

10
11 Mr. Hall stated that any parking or any storage area has to be at least five feet from the property line and he
12 would recommend a grass filter strip around all of the landscaping area.

13
14 Mr. Passalacqua stated that all of this stuff is subtracting from useful square footage.

15
16 Mr. Thorsland stated that Mr. Sebens did mention that the architect will indicate proper setbacks on the
17 complete site plan.

18
19 Mr. Thorsland asked Mr. Sebens how much time will be required to obtain a complete site plan.

20
21 Mr. Sebens stated that he spoke with the architect today therefore he could probably have preliminary plans
22 put together within a couple of weeks.

23
24 Mr. Thorsland asked Mr. Sebens if the February 27th meeting would allow ample time for the architect to
25 have his plans completed.

26
27 Mr. Sebens stated yes.

28
29 Mr. Thorsland asked the Board and staff if there were any additional items that are required for the site plan
30 and there were none at this time.

31
32 Mr. Hall stated that for the case to be before the Board on February 27th staff will send out a mailing on
33 February 19th therefore staff requires information for that mailing a few days before the mailing for review.
34 He said that if the information is received on the day of the mailing the information can be sent out without
35 review by staff but when staff does not have a chance to review it the meeting is not very productive. He
36 said that sending out the information the day that staff receives it will at least give the Board the opportunity
37 to see what kind of progress has been made in four weeks.

38
39 Ms. Griest suggested that Cases 766-AM-13 and 767-S-13 be continued to the March 13, 2014, public
40 hearing. She said that she does not believe that continuing these cases to February 27th would give staff
41 adequate time to give the Board a good analysis of what has been submitted.

1

2 Mr. Thorsland stated that he agrees because March 13th would give Mr. Sebens plenty of time to get the
3 information to staff and then staff could provide commentary to the Board in a memorandum form.

4

5 Mr. Sebens agreed.

6

7 Mr. Thorsland entertained a motion to continue Cases 766-AM-13 and 767-S-13 to the March 13, 2014,
8 meeting.

9

10 **Mr. Passalacqua moved, seconded by Ms. Griest to continue Cases 766-AM-13 and 767-S-13 to the**
11 **March 13, 2014, meeting. The motion carried by voice vote.**

12

13 **Case 770-V-13 Petitioner: Kenneth and Alena Nierenhausen Request: Authorize the following variances**
14 **in the AG-2, Agriculture Zoning District on the subject property described below, in order to**
15 **construct a new dwelling to replace a dwelling damaged in the November 17, 2013, tornado: Part A.**
16 **The creation and use of a lot that is 5.79 acres in area on best prime farmland in lieu of the maximum**
17 **allowed three acres on best prime farmland required by Footnote 13 in Section 5.3; and Part B.**
18 **Application fee of \$0 for a Zoning Use Permit Application in lieu of the standard Zoning Use Permit**
19 **Application fee required by Section 9.3.1B.; and Part C. Application fee of \$0 for a Variance**
20 **Application in lieu of the standard \$200 Variance Application fee required by Section 9.3.3B.1.b.**
21 **Location: A proposed 5.79 acre tract in St. Joseph Township in the Northwest Quarter of the**
22 **Northwest Quarter of Section 23 of Township 19 North, Range 10 East of the Third Principal**
23 **Meridian and commonly known as the farmstead located at 1486 CR 2200E, St. Joseph.**

24

25 Mr. Thorsland informed the audience that Case 770-V-13 is an Administrative Case and as such the County
26 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
27 show of hands for those who would like to cross examine and each person will be called upon. He requested
28 that anyone called to cross examine go to the cross examination microphone to ask any questions. He said
29 that those who desire to cross examine are not required to sign the witness register but are requested to
30 clearly state their name before asking any questions. He noted that no new testimony is to be given during
31 the cross examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
32 exempt from cross examination.

33

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

37

38 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.

39

40 Ms. Alena Nierenhausen, who resides at 1360 CR 2575E, Homer, stated that she and her husband lost their
41 home in the November 17, 2013, tornado event and they are currently living with her parents. She said that

1 she was born and raised in St. Joseph and when they found the subject property they decided that they would
2 like to purchase the property and build a new home upon it. She said that the property is currently three
3 acres in size and most of it is pretty low and it is not possible to build on it therefore they are requesting an
4 additional two acres to set the new home back further from the road.

5
6 Mr. Thorsland noted that there is an issue with a guard rail as well on the property.

7
8 Ms. Nierenhausen stated yes and that the guardrail is located on most of the property.

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

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

13
14 Mr. Passalacqua asked Mr. Hall if Mr. Kurtz, Champaign County Board Chairman, announced that all fees
15 would be waived for reconstruction of homes destroyed during the tornado.

16
17 Mr. Hall stated yes, and we have always waived zoning use permit fees and we have never had a zoning case
18 pursuant to something like this tragic event. He said that many years ago a request like this would have gone
19 to ELUC but that procedure is not provided for in the current Ordinance and neither is waiving zoning use
20 permit fees.

21
22 Mr. Passalacqua asked Mr. Hall if the waivers of the fees should be included in this particular zoning case.

23
24 Mr. Hall stated that the reason why the fees are part of this case is because of the zoning case fees and it is
25 not clear to him that this is something that is unique to the land and therefore a valid variance. He said that it
26 is okay if the Board does not want to deal with Parts B and C.

27
28 Mr. Passalacqua stated that in order to simplify this case it appears that the consensus is to waive the fees
29 and not burden this petitioner with two more steps.

30
31 Mr. Thorsland asked Mr. Hall if it is up to this Board to decide whether or not the ZBA can remove Parts B
32 and C from this case.

33
34 Mr. Hall stated that the Board does need to decide whether or not it is a viable variance. He said that if the
35 Board decides that Parts B and C are not viable variances he will deal with them administratively.

36
37 Mr. Thorsland entertained a motion to remove Parts B and C from Case 770-V-13.

38
39 Ms. Griest stated that she believed that Parts B and C were included because this is not the parcel where the
40 tornado destroyed the structure so having it say that it is a different structure is an inaccurate statement
41 therefore to ensure that the petitioner is as fully protected as possible Parts B and C should be left in the case.

1 She said that even if the County indicated that they would waive all of the fees for properties in Gifford that
2 were affected by the tornado this particular parcel was not within Gifford and the subject parcel was not hit
3 by the tornado therefore she would advocate for leaving Parts B and C in the variance request and waiving
4 the fees.

5
6 Mr. Hall asked Ms. Griest if she could find that this is related to some special condition of this land.
7

8 Ms. Griest stated only that purchase of the land was for the displacement.
9

10 Mr. Passalacqua stated that he was only considering terms of simplicity because the petitioners would not be
11 before us tonight if it were not for the tornado destroying their home.
12

13 Mr. Thorsland stated that the Board does not consider permits in the Village of Gifford.
14

15 Mr. Hall stated that Mr. and Mrs. Nierenhausen lived outside of Gifford and they were located within the
16 County's zoning jurisdiction and their house was destroyed by the tornado. He said that he is perfectly
17 comfortable in waiving both of these fees administratively but when it is an issue that goes to the ZBA he
18 will always give the ZBA a chance to weigh in.
19

20 Ms. Griest stated that if the fees can be waived then they should be waived.
21

22 Mr. Hall stated that having an approved variance is absolutely safe and anything else is administratively
23 done.
24

25 Mr. Thorsland stated that if there is a complaint they can come testify before this Board.
26

27 Mr. Passalacqua stated that the minutes will reflect the Board's discussion.
28

29 **The consensus of the Board was to remove Parts B and C from Case 770-V-13.**
30

31 Mr. Thorsland asked the Board if there were any additional questions for the petitioners.
32

33 Ms. Lee stated that two acres will be taken out of production and in order to the petitioners a larger lot size.
34

35 Ms. Niernenhausen stated that the two acres are not being farmed.
36

37 Mr. Hall stated that the Zoning Ordinance does not recognize that there are things like farmsteads that have
38 never been in row crop production. He said that as far as he can tell this land has never been in row crop
39 production and he would assume that it may have been a pasture. He said that the land is best prime
40 farmland on average and part of it is not even considered best prime farmland but the whole parcel is overall.
41 He said that no land is being taken out of production.

1
2 Ms. Lee stated that the Area Summary submitted by Berns, Clancy and Associates indicates a 40' x 860'
3 strip of land on the east side of the homesite parcel which appears to be farmland.
4
5 Mr. Hall stated that Ms. Lee is correct and he had forgotten about the strip of land to the east. He said that
6 Ms. Lee was also correct in assuming that the strip had been in row crop production.
7
8 Mr. Thorsland asked Ms. Nierenhausen if she is purchasing the additional 40' x 860' strip from the owner of
9 the farmland.
10
11 Ms. Nierenhausen stated yes.
12
13 Mr. Thorsland asked Ms. Nierenhausen if the landowner was present tonight.
14
15 Ms. Nierenhausen stated no.
16
17 Mr. Thorsland asked Ms. Nierenhausen if the sale has already been worked through.
18
19 Ms. Nierenhausen stated yes. She said that the landowner desires selling them the entire five acres.
20
21 Ms. Griest stated that the current farmstead has never been broken off of the larger tract of farmland and is
22 not presently a separate parcel.
23
24 Ms. Nierenhausen stated that Ms. Griest was correct.
25
26 Mr. Hall stated that Ms. Nierenhausen explained it perfectly in that the strip along the east side is two acres
27 in area and is being taken out of production. He asked Ms. Nierenhausen if he is correct in assuming that the
28 strip will become part of the residential lot or will it remain in production.
29
30 Mr. Nierenhausen stated that it will be taken out of production.
31
32 Mr. Passalacqua asked Ms. Nierenhausen if the new construction will occur in the strip of land or will it just
33 be further back on the lot.
34
35 Ms. Nierenhausen stated that the home will be set back further on the lot,
36
37 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
38 regarding this case.
39
40 Mr. Thorsland called Kevin Cagle to testify.
41

1 Mr. Kevin Cagle, who resides at 1360 CR 2575 E, Homer, stated that in order to meet the County's front
2 yard requirement the house needs to be set further off of the road therefore requiring the additional two acres
3 to the east. He said that the current owner of the entire tract wanted to make the new parcel a full five acres
4 for the Nierenhausen's purchase. He said that there is a guardrail that is located on three-quarters of the
5 frontage and the property slopes down. He said that the old house, garage and small shed will be demolished
6 and removed from the property and the new home will be placed behind the current location of the old home.
7

8 Mr. Passalacqua asked Mr. Cagle if the new home would encroach upon the existing well.
9

10 Mr. Cagle stated that a new well and septic will be required.
11

12 Mr. Thorsland asked the Board if there were any additional questions for Mr. Cagle and there were none.
13

14 Mr. Thorsland asked if staff had any questions for Mr. Cagle and there were none.
15

16 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Cagle and there was no one.
17

18 Mr. Thorsland asked the Board if there were any further questions for Ms. Nierenhausen and there were
19 none.
20

21 Mr. Thorsland closed the witness register.
22

23 Mr. Thorsland asked the Board and staff if they desired to add any testimony heard tonight to the Summary
24 of Evidence. He said that a lot of the discussion tonight has already been included in the Summary of
25 Evidence such as the guard rail takes a piece of the subject property and makes it unusable.
26

27 Mr. Passalacqua stated that testimony was received tonight indicating that a portion of the property is low.
28

29 Mr. Hall stated that Item 7.C and 8.B could be revised as follows: The existing farmstead area has never
30 been in row crop production and appears on the 1973 aerial photograph but the eastern two acres has been in
31 production. He said that Item 9.B should be revised as follows: The subject property is that portion of an
32 existing 40 acre tract of farmland and all but two acres as never been in crop production. He said that the
33 second sentence in Item 9.B should be stricken.
34

35 Mr. Thorsland stated in Item 12 the petitioner states the following: "We lost our home in the Gifford
36 tornado and would like to start construction on a new home but without this variance the lot would not be
37 deep enough." He said that the Board could add evidence regarding the guard rail and the slope of the
38 property under Item 12.
39

40 Ms. Griest asked if the road has a larger setback than a normal rural road since it is a slab.
41

1 Mr. Hall stated that a 40 feet of right-of-way has been dedicated which is more than is expected for a
2 township road but the road is not a County Highway.

3
4 Ms. Lee stated that the ditches are fairly deep in this area because of the river to the west.

5
6 Ms. Griest stated that she believed that the road was a County Highway.

7
8 Mr. Hall stated that he does not believe that the road is a County Highway.

9
10 Mr. Thorsland called Kevin Cagle to the witness microphone.

11
12 Mr. Thorsland asked Mr. Cagle if the road was considered a County Highway, State Highway or Township
13 Highway.

14
15 Mr. Cagle stated that he is pretty sure that the road from Sidney to St. Joseph is maintained by the township.

16
17 Mr. Thorsland stated that he would like to add the following evidence to Item 12: The front of the lot has a
18 guard rail, a slope, and a large ditch moving buildable area back from the front lot line.

19
20 Mr. Passalacqua stated that this evidence could be added to Finding 1 as well.

21
22 Mr. Thorsland stated that no special conditions have been proposed and there are no new Documents of
23 Record therefore the Board can move to the Finding of Fact.

24
25 **Finding of Fact for Case 770-V-13:**

26
27 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
28 770-V-13 held on January 30, 2014, the Zoning Board of Appeals of Champaign County finds that:

- 29
30 **1. Special conditions and circumstances DO exist which are peculiar to the land or**
31 **structure involved, which are not applicable to other similarly situated land and**
32 **structures elsewhere in the same district.**

33
34 Mr. Passalacqua stated that 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 or structures elsewhere in the
36 same district because there is a guard rail, relative low elevation at the current home site and a substantial
37 ditch which shrinks buildable area.

38
39 Ms. Capel stated that the finding could indicate that there are relative low elevations of significant portions
40 of the lot.

41

1 Mr. Randol stated that the finding should indicate that the low elevation is at the front of the lot so that it is
2 not believed that the entire lot is low.

3

4 Mr. Hall read the Board’s findings as follows:

5

- 6 • **There is a guard rail; relative low elevations of significant portions of the**
- 7 **western and northern portions of the lot, and a substantial ditch all reduce**
- 8 **buildable area.**

9

10 The Board agreed with the findings for Finding 1.

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 permitted use of**
- 14 **the land or structure or construction.**

15

16 Ms. Capel stated that practical difficulties or hardships created by carrying out the strict letter of the
17 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
18 or construction because adequate setbacks are not possible without the variance.

19

20 Mr. Hall read the Board’s findings as follows:

21

- 22 • **Adequate setbacks are not possible without the variance.**

23

24 The Board agreed with the finding for Finding 2.

25

- 26 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT**
- 27 **result from actions of the applicant.**

28

29 Mr. Randol stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT
30 result from actions of the applicant because there is a guard rail, relative low elevations of significant
31 portions of the western and northern portions of the lot, and a substantial ditch at this pre-existing farmstead.

32

33 Mr. Griest stated that the subject property is a pre-existing homestead that is being purchased for a new
34 home to replace a home lost in the November 17, 2013, tornado near Gifford.

35

36 Mr. Hall read the Board’s findings as follows:

37

- 38 • **There is a guard rail, relative low elevations of significant portions of the**
- 39 **western and northern portions of the lot, and a substantial ditch at this pre-**
- 40 **existing farmstead.**

41

- **The subject property is being purchased as a home site for a new home to**

1 **replace a home lost in the November 17, 2013, tornado near Gifford.**

2
3 The Board agreed with the findings for Finding 3.

4
5 **4. The requested variance IS in harmony with the general purpose and intent of the**
6 **Ordinance.**

7
8 Mr. Passalacqua stated that the requested variance IS in harmony with the general purpose and intent of the
9 Ordinance because this is a minimal variance that will allow construction on the more suitable portion of the
10 subject property.

11
12 Ms. Griest stated that it conforms to all other Zoning Ordinance requirements.

13
14 Mr. Hall read the Board’s findings as follows:

- 15
- 16 • **This is a minimal variance that will allow construction on the more suitable**
- 17 **portion of the subject property.**
- 18 • **It conforms to all other Zoning Ordinance requirements.**
- 19

20 Mr. Hall noted that since the Board is not dealing with anything but one variance part the final finding will
21 be prepared in the regular format rather than the three part format. He said that the findings will appear as
22 they do in the Draft Summary of Evidence.

23
24 The Board agreed with the findings for Finding 4.

25
26 **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**
27 **detrimental to the public health, safety, or welfare.**

28
29 Mr. Randol stated that the requested variance WILL NOT be injurious to the neighborhood or otherwise
30 detrimental to the public health, safety, or welfare because it will be an improvement to a property which has
31 been vacant for two years.

32
33 Ms. Griest stated that it will allow an increased setback from the right-of way. She said that no comments
34 have been received from either the Township Highway Commissioner or the Fire Protection District.

35
36 Mr. Hall read the Board’s findings as follows:

- 37
- 38 • **It will allow an improvement to this property that has been vacant for sometime**
- 39 • **It will allow an increased setback**
- 40 • **No comments have been received from either the Highway Commissioner or the**
- 41 **Fire Protection District.**

1
2 The Board agreed with the findings for Finding 5.
3

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

7 Mr. Thorsland stated that the requested variance IS the minimum variation that will make possible the
8 reasonable use of the land/structure.
9

10 The Board agreed with the finding for Finding 6.
11

12 **7. No special conditions are hereby imposed.**
13

14 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings
15 of Fact as amended.
16

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

20 Mr. Thorsland entertained a motion to move to the Final Determination for Case 770-V-13.
21

22 **Ms. Capel moved, seconded by Mr. Randol to move to the Final Determination for Case 770-V-13.**
23 **The motion carried by voice vote.**
24

25 Mr. Thorsland informed the petitioners that one Board member is absent tonight therefore it is at their
26 discretion to either continue Case 770-V-13 until a full Board is present or request that the present Board
27 move forward to the Final Determination. He informed the petitioners that four affirmative votes are
28 required for approval.
29

30 Ms. Alena Nierenhausen requested that the present Board move to the Final Determination.
31

32 **Final Determination for Case 770-V-13:**
33

34 **Ms. Griest moved, seconded by Mr. Passalacqua that the Champaign County Zoning Board of**
35 **Appeals finds that, based upon the application, testimony, and other evidence received in this case,**
36 **that the requirements of Section 9.1.9.C HAVE been met, and pursuant to the authority granted by**
37 **Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**
38 **Champaign County determines that the Variance requested in Case 770-V-13 is hereby GRANTED to**
39 **the petitioners, Kenneth and Alena Nierenhausen, to authorize the following: Part A. The creation**
40 **and use of a lot that is 5.79 acres in area on best prime farmland in lieu of the maximum allowed three**
41 **acres on best prime farmland required by Footnote 13 in Section 5.3.**

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Mr. Thorsland requested a roll call vote.

The roll was called:

Capel-yes	Griest-yes	Lee-yes
Miller-absent	Randol-yes	Passalacqua-yes
Thorsland-yes		

Mr. Hall informed the petitioners that they have received an approval for their request in Case 770-V-13.

7. Staff Report

Ms. Lee asked if staff is going to pursue the violation related to Case 765-V-13.

Mr. Hall stated that notice of violation was mailed today although in October, 2013 he sent out a letter stating that if Case 765-V-13 was not approved that something would have to be done.

Ms. Griest asked Mr. Hall if the State’s Attorney provided comment regarding the Harshbarger case. She said that the Board’s question was the following: Since Mr. Harshbarger, the current owner, was a party in the petition could the Board approve the same variance that the Board had previously denied to Mr. Harshbarger.

Mr. Hall stated that he never sent the question to the State’s Attorney and he is lucky to get an answer to questions which are of the most immediate urgency. He said that the Board’s question is no longer urgent and when this Board is presented with a second look at a case like that as long as the Board completes the case properly the case is always subject to a new determination. He said that the Board is not locking itself into something but it does need to be done consistent with all of the Ordinance requirements.

Mr. Passalacqua stated that if the Board grants the variance for the people who are buying the land the Board is basically removing the responsibility of Mr. Harshbarger in building the structure incorrectly and the fact that the building is still nonconforming.

Ms. Griest stated that her concern was that the petitioners requesting the variance were not owners of the land.

Mr. Passalacqua stated that Mr. Harshbarger was given a determination that the building needed to be moved or renovated to meet the Ordinance requirements and the Board’s dilemma was that he was going to sell the property and the new owners would be granted a variance for a building that was built outside of the Ordinance. He said that the Board’s issue was whether the variance was for Pickle Construction, Mick Harshbarger, or the people who desired to purchase the property. He said that he struggled with the fact that

1 Mr. Harshbarger had already been told to correct the violation and he is going to skate that requirement if the
2 Board approves the requested variance for the new buyer. He said that he was having a hard time with the
3 fact that the Board was going to decide a case for someone who hasn't adhered to the Board's previous
4 finding. He said that he was also having a hard time with the fact that the Board could approve the variance
5 for the new owners but if the sale falls through Mr. Harshbarger will still own the property and the case for
6 the building which violates the Ordinance will just go away.

7
8 Mr. Hall stated that if the Board makes a new finding on a case like that then the Board will make a new
9 finding with the substance of which this is not a problem because the highway commissioner was okay with
10 it, there was a waterway that caused many problems, etc. He said that the Board will make a whole new
11 finding that would presumably stand on its own regardless of who was the petitioner. He said that Mr.
12 Harshbarger could have come back to the Board and requested a new variance.

13
14 Mr. Passalacqua asked if Mr. Harshbarger could come back on his own to request the same variance even
15 though he had been denied previously.

16
17 Mr. Hall stated yes.

18
19 Mr. Passalacqua asked Mr. Hall how many times Mr. Harshbarger could request the same variance.

20
21 Mr. Hall stated that Mr. Harshbarger could request the same variance once per year.

22
23 Mr. Passalacqua stated that the opportunity to come back and request the same variance once per year is
24 ridiculous.

25
26 Mr. Randol asked if Mr. Harshbarger could back every year if he desired.

27
28 Mr. Hall stated that obviously he would not get more than a second time because the Board will do whatever
29 it takes to get is corrected.

30
31 Mr. Passalacqua stated that Mr. Harshbarger already had a final determination that the structure required
32 renovation to meet the Ordinance requirements.

33
34 Ms. Griest stated that perhaps the circumstance has changed where Mr. Harshbarger no longer parks his
35 construction equipment at that location.

36
37 Mr. Thorsland stated that he could argue that he got rid of the trailer or something.

38
39 Mr. Passalacqua stated the testimony was received from the neighbor indicating that the structure was still
40 too close.

41

- 1 Mr. Hall stated that like most neighbors some are interested in penalizing someone and that is not what the
2 Zoning Board of Appeals is about.
3
- 4 Mr. Passalacqua stated that even though he understands Mr. Hall's comments he still would have a hard
5 time with the case.
6
- 7 Ms. Lee stated that there was more evidence received other than attempting to penalize the owner because
8 the neighbor discussed the school bus having to drive over other lots because they could not drive where
9 they needed to drive due to the truck being parked there.
10
- 11 Mr. Randol stated that he believes that the testimony was somewhat exaggerated because the entire street
12 width is 60 feet therefore a truck being parked there would not force a school bus to drive 40 feet out of
13 the way.
14
- 15 Ms. Lee stated that the testimony indicated that the issue was in the turn-around.
16
- 17 Ms. Griest stated that the cul-de-sac or turn-around is located south of Mr. Harshbarger's property but the
18 testimony was discussing when the vehicles owned by Mr. Harshbarger were parked inappropriately that the
19 school bus had to pull around them.
20
- 21 Mr. Randol stated that the school bus may have had to pull over into the grass but a 60 foot street should
22 had provided adequate room for the bus.
23
- 24 Ms. Griest asked Mr. Hall why during Case 765-V-13 staff requested that Mr. Harshbarger, the current
25 owner, be included as a petitioner but did not request that the current owner be included as a petitioner in
26 Case 770-V-13.
27
- 28 Mr. Hall stated that knowing the background on the property for Case 765-V-13 the owner of that property
29 would have to be included in any zoning case.
30
- 31 Ms. Griest stated that the Zoning Ordinance does indicate that the current owner must be a co-petitioner to
32 any zoning case for the property.
33
- 34 Mr. Randol asked if the sale of the Harshbarger property fell through due to the discussion at the meeting for
35 that case.
36
- 37 Mr. Hall stated that the sale did fall through but staff still receives calls regarding the property because the
38 callers believe that it is a marvelous property.
39
- 40 Mr. Hall clarified that the Ordinance does not contain the same requirements for ownership to be involved in
41 the application for a variance as it does for a special use permit.

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8. Other Business
A. Review of Docket

Mr. Hall stated that Case 774-V-14 has been withdrawn. He said that at the February 13th meeting the Board will be beginning one of those text amendments, Case 769-AT-13, that the Board will hate before it is over. He said that Case 769-AT-13 is the text amendment that is on par with the LESA amendment which the Board received a nice notebook which held everything so that the Board could refer back to it every time there were any questions. He said that everyone will receive new notebooks regarding this case and he is not sure how long this will take for the Board but it is a very significant amendment that needs to be done as soon as possible.

Mr. Passalacqua asked Mr. Hall if Cases 771-AM-13 and 772-S-13 are located on Mr. Courson’s old property.

Mr. Hall stated yes.

Mr. Passalacqua stated that he thought that the property had two uses on it already.

Mr. Hall stated that the property was zoned B-3 and for some reason contractor facilities are not allowed. He said that previously the two uses on the property were storage and a commercial nursery but now it will be a contractor’s facility which is not allowed in the B-3 District. He said that the owner originally informed staff that there would only be a storage building but employees would be coming there and there would be an office therefore staff informed him that it is not just a storage building but is a second principal use and he required a special use permit. He said that a second large building is also proposed.

Mr. Passalacqua stated that it is his understanding that the new owner has an option to purchase the land next to the subject property for these cases therefore it is possible that he will obtain more land.

Mr. Hall noted that the subject property is located in Hensley Township and he hopes that the current owner has discussed his plans with the township.

B. 2014 Zoning Board of Appeals Calendar

Mr. Thorsland entertained a motion to approve the 2014 Zoning Board of Appeals Calendar.

Mr. Randol moved, seconded by Ms. Griest to approve the 2014 Zoning Board of Appeals Calendar. The motion carried by voice vote.

Mr. Thorsland reminded the Board to complete their electronic Statement of Economic Interest.

1 Mr. Hall stated that Case 732-AT-12 has been sitting at the County Board since November. He said that
2 Case 732-AT-12 was protested by Hensley Township using facts that the Board addressed in its finding. He
3 said that there has never been enough County Board members at a County Board meeting since November to
4 actually attempt to acquire the 17 votes required to override the Hensley Township protest because there
5 have never been more than 19 Board members in attendance. He said that it is known that at least two
6 County Board members are going vote no. He said that he hopes to get Case 732-AT-12 adopted one of
7 these days.

8
9 **9. Audience Participation with respect to matters other than cases pending before the Board**

10 None

11
12
13 **10. Adjournment**

14
15 Mr. Thorsland entertained a motion to adjourn the meeting.

16
17 **Ms. Griest moved, seconded by Ms. Capel to adjourn the meeting. The motion carried by voice vote.**

18
19 The meeting adjourned at 8:46 p.m.

20
21 Respectfully submitted

22
23
24
25
26 Secretary of Zoning Board of Appeals