

# CHAMPAIGN COUNTY ZONING BOARD OF APPEALS NOTICE OF REGULAR MEETING

Date: February 27, 2014  
Time: **6:30 P.M.**  
Place: **Lyle Shields Meeting Room  
Brookens Administrative Center  
1776 E. Washington Street  
Urbana, IL 61802**

*Note: NO ENTRANCE TO BUILDING  
FROM WASHINGTON STREET PARKING  
LOT AFTER 4:30 PM.  
Use Northeast parking lot via Lierman Ave.  
and enter building through Northeast  
door.*

*If you require special accommodations please notify the Department of Planning & Zoning at  
(217) 384-3708*

**EVERYONE MUST SIGN THE ATTENDANCE SHEET – ANYONE GIVING TESTIMONY MUST SIGN THE WITNESS FORM**

## AGENDA

1. Call to Order
2. Roll Call and Declaration of Quorum
3. Correspondence
4. Approval of Minutes (January 16, 2014 and January 30, 2014)
5. Continued Public Hearings

*Note: The full ZBA packet is now available  
on-line at: [www.co.champaign.il.us](http://www.co.champaign.il.us).*

- Case 769-AT-13**      Petitioner: **Zoning Administrator**  
Request: **Amend the Champaign County Zoning Ordinance by amending the Champaign County Stormwater Management Policy by changing the name to Storm Water Management and Erosion Control Ordinance and amending the reference in Zoning Ordinance Section 4.3.10; and amend the Storm Water Management and Erosion Control Ordinance as described in the legal advertisement which can be summarized as follows:**
- I. **Revise existing Section 1 by adding a reference to 55 ILCS 5/5-15-15 that authorizes the County Board to have authority to prevent pollution of any stream or body of water. (Part A of the legal advertisement)**
  - II. **Revise existing Section 2 by merging with existing Sections 3.1 and 3.2 to be new Section 2 and add purpose statements related to preventing soil erosion and preventing water pollution and fulfilling the applicable requirements of the National Pollution Discharge System (NPDES) Phase II Storm Water Permit. (Part B of the legal advertisement)**
  - III. **Add new Section 3 titled Definitions to include definitions related to fulfilling the applicable requirements of the National Pollution Discharge Elimination System (NPDES) Phase II Storm Water Permit. (Part C of the legal advertisement)**
  - IV. **Revise existing Sections 3.3, 3.4, and 4 and add new Sections 5, 11, 12, 13, 14, and 15 and add new Appendices C, D, and E. Add requirements for Land Disturbance activities including a requirement for a Land Disturbance Erosion Control Permit including Minor and Major classes of Permits that are required within the Champaign County MS4 Jurisdictional Area; add a requirement that land disturbance of one acre or more in a common plan of development must comply with the Illinois Environmental Protection Agency's ILR 10 Permit requirements; add fees and time limits for each class of Permit; add requirements for administration and enforcement Permits; and add new Appendices with new standards and requirements for both Minor and Major Permits. (Parts D, E, L, M, N, O, T, U, and V of the legal advertisement)**
  - V. **Revise existing Section 7 to be new Section 6 and add a prohibition against erosion or sedimentation onto adjacent properties and add minimum erosion and water quality requirements that are required for all construction or land disturbance.**
  - VI. **Revise existing Section 5 to be new Section 8 and add a Preferred Hierarchy of Best Management Practices. (Part H of the legal advertisement)**
  - VII. **Revise and reformat existing Section 6, 8, 9, 10, 11, 12, and the Appendices and add new Section 18. (Parts G, I, J, P, Q, R, S and W of the legal advertisement)**

6. Staff Report
7. Other Business
  - A. Review of Docket
  - B. March 27, 2014, Meeting Cancellation
8. Audience Participation with respect to matters other than cases pending before the Board
9. Adjournment

1 **MINUTES OF REGULAR MEETING**

2 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

3 1776 E. Washington Street

4 Urbana, IL 61801

5 **DATE:** January 30, 2014

6 **PLACE:** Lyle Shield's Meeting Room

7 1776 East Washington Street

8 Urbana, IL 61802

9 **TIME:** 6:30 p.m.

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

12 **MEMBERS ABSENT :** Roger Miller

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

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

16 **1. Call to Order**

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

18 **2. Roll Call and Declaration of Quorum**

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

20 **3. Correspondence**

21 None

**DRAFT**

22 **4. Approval of Minutes (December 12, 2013)**

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

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

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

28 **5. Continued Public Hearing**

29 **Case 768-AT-13 Petitioner: Zoning Administrator Request: Amend the Champaign Zoning  
30 Ordinance by adding the following standard conditions and special provisions to Section 6.1.3: Part  
31 A. Revise the use category "heliport/restricted landing area" to heliport-restricting landing area: and**

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

28  
29 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.

30  
31 Mr. John Hall, Zoning Administrator stated that this case was spurred when a group of citizens, who had  
32 attended hearings regarding a map amendment and an RLA Special Use Permit over the past few years,  
33 made a request to ELUC to amend the Ordinance to add some separations that the citizen’s felt were  
34 warranted. He said that ELUC discussed the citizen proposal, but staff put together a proposal that staff felt  
35 was a little more realistic and presented that proposal to ELUC for review. He said that the case before the  
36 ZBA tonight is the proposal prepared by staff. He said that the Supplemental Memorandum that was  
37 prepared for the January 16, 2014, meeting included an analysis of the RLAs in the County and it was a more  
38 factual analysis than the information that what he had given to ELUC to review. He said that the  
39 Supplemental Memorandum included staff’s recommendation of lowering the separation distance to the  
40 nearest dwelling under different ownership to 940 feet based on the average of the current separations in the  
41 County. He said that he doubts that the lower separation distance will be well received by the neighbors of  
42 the previous zoning case because obviously they are interested in seeing the greatest amount of separation as

1 possible but as in most cases this is the ZBA and the Board should make the separation as to what the ZBA  
2 believes it should be after they hear of the evidence.  
3

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

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

17 Mr. Thorsland called Larry Hall to testify.  
18

19 Mr. Larry Hall, who resides at 177 North CR 1600E, Villa Grove, stated that he would like to ask Mr. John  
20 Hall a question before he reads his prepared statement.  
21

22 Mr. Thorsland allowed Mr. Larry Hall to ask Mr. John Hall his question.  
23

24 Mr. Larry Hall asked Mr. John Hall if he is correct in understanding that the separation distance was changed  
25 to 940 feet.  
26

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

32 Mr. Larry Hall stated that he obviously missed that revision therefore he was not aware that it was included  
33 in the Supplemental Memorandum.  
34

35 Mr. John Hall stated that he wanted to be clear that the Board has not done anything about staff's  
36 recommendation for a lower separation.  
37

38 Mr. Larry Hall stated that after approximately two years of personally dealing with a disputed case, which  
39 most of the ZBA here tonight experienced or tolerated, he came to believe that there needed to be some  
40 reasonable restrictions imposed to clarify and minimize future events and protect the concerns that the  
41 citizens of the area had. He said that the sentiment was echoed at that time by the Zoning Administrator  
42 therefore at the September 5, 2013, ELUC meeting he presented, on behalf of residents of Champaign

1 County, detailed and proposed revisions and/or amendments to the Champaign County Zoning Ordinance  
2 regarding future approvals of RLAs. He said that the Board received their proposal as Attachment B in the  
3 last mailing for the January 16, 2014, meeting.

4  
5 Mr. Larry Hall stated that as discussed at the ELUC meeting there were a few differences between their  
6 proposal and the one presented by the Zoning Administrator. He said that during his original statement he  
7 was going to indicate that they have reviewed the differences and felt that the request from John Hall,  
8 Zoning Administrator, satisfactorily addresses the concerns for public safety and for conservation area  
9 preservation that they had stressed. Mr. Larry Hall stated that he can only speak for himself, he has not  
10 discussed this with the neighbors, but the reduction of the separation distance from a non-participating  
11 dwelling to 940 feet is not acceptable. He said that if 940 feet is an average he does not recall what the  
12 extremes were in the examples but he would still strongly recommend a separation of 1,320 feet because it is  
13 a compromise from the original request that was presented to ELUC which was a 2,000 feet separation. He  
14 said that Mr. John Hall previously stated that 1,320 feet seemed a lot more reasonable than the 2,000 feet and  
15 Mr. Larry Hall stated that he would concede that it does seem more reasonable and he would endorse it. Mr.  
16 Larry Hall stated that with the exception of the separation change from 1,320 feet to 940 feet, which he does  
17 not recommend or agree with, he would otherwise support the request that is submitted by the Zoning  
18 Administrator and urge the ZBA's expedient approval and adoption of additions and amendments to the  
19 standards and special provisions for both a Heliport-RLA and regular RLAs as stated in the Champaign  
20 County Zoning Ordinance.

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

23  
24 Mr. Thorsland asked if staff had any questions for Mr. Larry Hall and there were none.

25  
26 Mr. Thorsland called Julia Hall to testify.

27  
28 Ms. Julia Hall, who resides at 177 North CR 1600 East, Villa Grove, thanked the Zoning Administrator for  
29 doing so much diligent work in drafting the proposed amendment to the Zoning Ordinance for the RLA with  
30 or without a Heliport. She said that as her husband indicated they have spent the better part of two years  
31 opposing an RLA that would have been 100 feet from their property and approximately 140 feet from their  
32 bedroom. She said that these restrictions need to be made whether they are set at 940 feet or 1,320 feet  
33 because any additional restrictions which are more than 140 feet from her bedroom window would be  
34 appreciated. She said that the restrictions would hopefully alleviate anyone from having to endure what they  
35 have endured as well as saving everyone a lot of time, money and energy. She said that the proposed  
36 restrictions will ensure public safety and comfort and will mitigate the services to the habitat in the CR  
37 District. She said that sounds ammoniating from an RLA in the vicinity of the CR District or residential area  
38 could well disturb the peace of either and the closer that an RLA is to the CR District or to a residential area  
39 the more disturbance there would be. She said that she is in support of the originally proposed restriction of  
40 1,320 feet from property under different ownership and she hopes that the proposed restrictions will become  
41 permanent.

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

2  
3 Mr. Thorsland asked if staff had any questions for Ms. Hall and there were none.

4  
5 Mr. Thorsland called Ms. Fisher to testify.

6  
7 Ms. Jean Fisher, who resides at 195 North CR 1600E, Villa Grove, thanked the Board for allowing her to  
8 address this matter tonight. She said that she would also like to express her gratitude to the RPC staff, and  
9 Planning and Zoning staff for their promotions and efforts in trying to update and correct the Champaign  
10 County Zoning Ordinance in regards to the definition of RLAs and Heliport-RLAs use on non-conservation  
11 property. She said that during previous ZBA meetings she has stated that Champaign County only has 1% of  
12 its area in the CR Zoning District. She said that Champaign County has deemed these limited areas  
13 necessary to the vitality of the large trees in the forested area and protection of wildlife species living within  
14 them of great importance and crucial for the filtration of water flow which includes streams and aquifer. She  
15 said that the discussion for Case 768-AT-13, an eventual permanent ordinance, benefits all people residing in  
16 Champaign County as well as people that use these areas for recreation and other allowable uses in the CR  
17 District. She said that it strengthens and affirms the importance of CR District vitality to the general public  
18 and it strengthens and corrects the promotion and integrity of the beauty and lasting natural resources that  
19 she and her family specifically selected and have lived at their home for 26 years.

20  
21 Ms. Fisher stated that she cannot express her gratitude and support of this amendment. She said that she is  
22 in favor of the originally proposed 1,320 separation distance from a separate property under different  
23 ownership and everything else that is included in the proposed amendment. She expressed her support of the  
24 amendment and urged the Board to vote in favor of the Ordinance tonight.

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

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

29  
30 Mr. Thorsland called Mark Fisher to testify.

31  
32 Mr. Mark Fisher, who resides at 195 North CR 1600E, Villa Grove, stated that 80% of the County is already  
33 zoned appropriately for an RLA and he doesn't know how much more of the County the ZBA wants  
34 available for RLA zoning.

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

37  
38 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony  
39 regarding Case 768-AT-13 and there was no one.

40  
41 Mr. Thorsland closed the witness register.

42

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

9  
10 Ms. Lee stated that she strongly feels that the Board should retain the separation distance of 1,320 feet. She  
11 said that her husband had his own airplane for years and he always told her that the most dangerous time in  
12 operating the airplane was during the landing and the take-off. She said that she resides in the rural area and  
13 feels that 1,320 feet is a more preferable separation.

14  
15 Ms. Griest asked Mr. Hall why we approached the separation distance by taking an average rather than the  
16 original approach of one-quarter mile.

17  
18 Mr. Hall stated that he did not want to argue for a separation distance of 1,320 feet when the County has  
19 never had any complaints about the six RLAs included in the chart therefore there is no record of  
20 incompatibility based on them.

21  
22 Ms. Griest stated that if no complaints have been received regarding the Schmidt RLA, which has the lowest  
23 separation distance to the nearest dwelling under other ownership, then the 940 feet separation average is  
24 consistent.

25  
26 Mr. Thorsland asked Mr. Hall if staff had any data regarding the average use of the RLAs that exist in the  
27 County currently.

28  
29 Mr. Hall stated no. He said that it may be relevant evidence to add but to be truthful the previous petitioner  
30 in the last RLA case was willing to settle for restrictions and it was never really clear as to how much those  
31 restrictions were going to be. Mr. Hall said that he compared and graphed those restrictions and the  
32 proposed 940 feet separation to the nearest dwelling versus the RLAs included in the chart where there are  
33 no restrictions but he did not include it as a Document of Record. He said that the restrictions that the  
34 previous petitioner was willing to accept actually argued for a greater amount of separation because on the  
35 face of it even that petitioner saw how reasonable it was to limit the use of the RLA based on proximity.

36  
37 Mr. Passalacqua stated that the chart is handy but he believes that the most recent RLA case illustrated that it  
38 is not necessarily a chart that can be applied because of the unique layout of the where the landing strip was  
39 going to be in comparison to the non-participating dwelling. He said that the average may not be applicable  
40 to every RLA case. He said that if everything was a perfect square and was laid out on a grid then the  
41 County could use averages more accurately but because every single zoning case is either erratically shaped  
42 or "L" shaped or some other oddity the County cannot use averages. He said that he supports the one-quarter

1 mile separation.

2  
3 Mr. Thorsland stated that he senses a consensus of support for a separation of 1,320 in lieu of the 940 feet.

4  
5 The Board agreed.

6  
7 Mr. Thorsland asked the Board if there were other parts of the amendment that the Board desired to work on  
8 or does the Board desire to move to the Finding.

9  
10 Mr. Hall stated that when this amendment is forwarded to the County Board for final approval or denial all  
11 of the questions that he needs to ask the Board must be answered. He reminded the Board that in regards to  
12 the proposed separation to a property line was advertised at 300 feet and in the course of preparing this  
13 evidence he realized that 300 feet on either side of a runway makes it just wide enough that it will not fit on  
14 a typical narrow 40 acre parcel. He said that he does not know how many such parcels are in the County but  
15 at a certain point when the Board does adopt regulations like this it always helps to recognize the common  
16 way that land is divided in the County and a narrow 40 acre parcel is not unusual. He said that if the 300 feet  
17 is adopted and someone desires to put an RLA on a narrow parcel they could ask for a waiver but if he  
18 knows one thing it is not to make people have to ask for waivers when a little bit could have been changed in  
19 the beginning therefore not needing a waiver.

20  
21 Ms. Griest asked Mr. Hall how much of a difference he is discussing.

22  
23 Mr. Hall stated 20 feet.

24  
25 Ms. Griest agreed. She said that this separation does not affect glide slope in or out. She said that the most  
26 vulnerable time is during the take-off and landing and that occurs in the glide slope and not out to the tips of  
27 the wings. She asked Mr. Hall if Aero-Place was included in the review or is it exempt from the discussion.

28  
29 Mr. Hall stated that Aero-Place is exempt and it was not originally an RLA but it may be now under IDOT's  
30 regulations but it is so hard to obtain a determination therefore he hasn't followed up on it. He said that the  
31 Department of Planning and Zoning has spent hundreds of hours over the years dealing with complaints  
32 about Aero-Place but since the second special use permit was granted on Aero-Place staff has not received  
33 one complaint therefore it is difficult to see where Aero-Place fits into this review.

34  
35 Mr. Thorsland stated that the Board has come to the conclusion that the Final Approach and Takeoff Area  
36 may be no closer than 1,320 feet from the nearest dwelling under different ownership than the heliport-  
37 restricted landing area and no part of the Final Approach and Takeoff Area may be closer than 280 feet from  
38 the nearest property under different ownership than the Heliport-Restricted Landing Area. He said that Parts  
39 A(5) and B(8) of the amendment, which are indicated on pages 26 and 27 of the Preliminary Draft Finding  
40 of Fact and Final Determination dated January 16, 2014, should be revised to reflect this change.

41  
42 Mr. Passalacqua stated that this change is to the property line and not the dwelling.

- 1  
2 Mr. Thorsland stated that Mr. Passalacqua was correct.  
3  
4 Mr. Hall stated that he would appreciate any evidence that the Board could offer to justify a separation that is  
5 400 feet more than our average separation.  
6  
7 Ms. Lee stated that all it takes is one accident.  
8  
9 Mr. Thorsland stated that perhaps the Board could turn Ms. Lee's comment into a finding.  
10  
11 Ms. Capel stated that one of the ways would be to determine the amount of use of the RLA.  
12  
13 Mr. Hall stated that perhaps an item of evidence could be that the Board knows what the separations are but  
14 does not know the frequency of use therefore increasing the separation distance would be equivalent to a  
15 factor of safety.  
16  
17 Ms. Griest stated that this is an interim step that will only be in place for one year and the Board will be  
18 taking at approach to provide the highest degree of separation while examining it further to see if a more  
19 reduced level could be provided in the final Ordinance.  
20  
21 Mr. Randol asked why this amendment is only for one year.  
22  
23 Mr. Hall stated that the Board has done this in at least one other instance when the Board wanted to get  
24 something on the books as quickly as possible. He said that many people believe that a moratorium can be  
25 imposed but that is not true because this is the Zoning Ordinance and any change has to go through a public  
26 hearing process. He said that he fears that an amendment like this could result in a rush of RLAs so that  
27 someone could have it proposed before the new regulations are adopted. He said that it is good to get a  
28 conservative regulation in place and then take a year to make sure that nothing was overlooked or if the  
29 regulation needs reduced. He said that the Board works diligently on amendment cases and he would never  
30 want to rush the Board unless it is an interim amendment and then he will prod as much as he can just to get  
31 something in place.  
32  
33 Mr. Passalacqua stated that the Board could say that they could well argue for 1,600 feet therefore 1,320 feet  
34 is a compromise.  
35  
36 Ms. Capel asked Mr. Hall if the case would require re-advertisement.  
37  
38 Mr. Hall stated no, only if the Board were increasing any of the original proposals by a significant amount.  
39  
40 Mr. Thorsland asked Mr. Hall where he would like to insert the evidence proposed by Ms. Griest.  
41  
42 Mr. Hall stated that much to the disappointment of everyone present for this case tonight he would request

1 that the Board continue the case to the February 13, 2014, meeting. He said that there is no ELUC meeting  
2 in February therefore not taking action on this case tonight will not slow down how quickly it gets adopted  
3 and we are all much better off if evidence does not have to be invented during the public hearing.  
4

5 Mr. Thorsland entertained a motion to continue Case 768-AT-13 to the February 13, 2014, meeting.  
6

7 **Ms. Griest moved, seconded by Ms. Capel to continue Case 768-AT-13 to the February 13, 2014,**  
8 **meeting. The motion carried by voice vote.**  
9

10 Ms. Griest noted that two Board members will be absent from the February 13<sup>th</sup> meeting.  
11

12 Mr. Hall stated that he overlooked the fact that two members will be absent at the February 13<sup>th</sup> meeting. He  
13 said that the Board could continue Case 768-AT-13 to the February 27<sup>th</sup> meeting and it could be added  
14 tentatively to the March ELUC agenda based on the discussion that the Board has had tonight. He said that  
15 continuing the case to February 27<sup>th</sup> would allow maximum ZBA member participation and still get the case  
16 to ELUC with no loss in time.  
17

18 Mr. Thorsland stated that five Board members will be present at the February 13<sup>th</sup> meeting and the consensus  
19 of the Board present tonight appears to agree with what is being proposed and amended.  
20

21 Mr. Hall stated that he is fine with February 13<sup>th</sup>.  
22

## 23 **6. New Public Hearings**

24

25 **Case 766-AM-13 Petitioner: Eric L. Sebens d.b.a. Prairieview Landscaping Request: Amend the**  
26 **Zoning Map to change the zoning district designation from the AG-1, Agriculture Zoning District to**  
27 **the B-1 Rural Trade Center Zoning District in order to authorize the proposed Special Use in related**  
28 **zoning Case 767-S-13. Location: A 5-acre tract in Tolono Township in the East Half of the Southeast**  
29 **Quarter of the Northeast Quarter of Section 9 of Township 18 North, Range 8 East of the Third**  
30 **Principal Meridian and commonly known as Prairieview Landscaping at 1069 CR 900E, Champaign.**  
31

32 **Case 767-S-13 Petitioner: Eric L. Sebens d.b.a. Prairieview Landscaping Request: Authorize the**  
33 **following as a Special Use in the B-1 Rural Trade Center Zoning District: Part A. Authorize multiple**  
34 **principal buildings on the same lot consisting of the following: (1) a landscape contractor's facility**  
35 **with outdoor storage that was originally authorized in Case 101-S-97; and (2) Self-Storage**  
36 **Warehouses, providing heat and utilities to individual units as a special use proposed in Part B.**  
37 **Authorize the construction and use of Self-Storage Warehouses, providing heat and utilities to**  
38 **individual units as a special use. Location: A 5-acre tract in Tolono Township in the East Half of the**  
39 **Southeast Quarter of the Northeast Quarter of Section 9 of Township 18 North, Range 8 East of the**  
40 **Third Principal Meridian and commonly known as Prairieview Landscaping at 1069 CR 900E,**  
41 **Champaign.**  
42

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

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

13  
14 Mr. Thorsland asked the petitioner if he desired to make a statement outlining the nature of his request.

15  
16 Mr. Eric Sebens, who resides at 3008 Cherry Hills Drive, Champaign, stated that he is proposing to have his  
17 zoning changed from AG-1 to B-1 with a Special Use Permit. He said that the rezoning and Special Use  
18 Permit will allow a dual purpose use of his property that he has owned for 17 years. He said that he is  
19 proposing to erect self-storage units on the south side of his property and removing the older dilapidated  
20 buildings which includes what is left of a barn and a garage.

21  
22 Mr. Sebens stated that he has not prepared any plans for his proposed use but he has contacted an architect to  
23 start beginning some preliminary plans to outline what he plans to do on his property.

24  
25 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Sebens.

26  
27 Mr. Hall asked Mr. Sebens if he has contacted an engineer regarding stormwater drainage and detention or  
28 does he have someone in mind that he desires to contact soon.

29  
30 Mr. Sebens stated yes. He said that the architect that he spoke with today employs an engineering firm to  
31 review the regulations which need to be met and to review stormwater drainage. He said that he has an  
32 existing water drainage area that comes from Willard Airport under the road and runs to the southeast corner  
33 of his property. He said that this drainage area provides excellent drainage for the property because the  
34 property is sloped in that direction and often during the biggest rains very little water comes through there.

35  
36 Mr. Hall stated that one thing that will be discussed a lot during the review of the stormwater plan is that this  
37 is the most complicated situation that one can find in Champaign County which is property on a sloping site  
38 with nothing but farmland below and somehow we have to manage the stormwater in a detention basin  
39 without causing erosion downhill.

40  
41 Mr. Sebens stated that the location where he is proposing to construct the buildings actually slopes down to  
42 the grassy area where the stormwater runoff travels through and it is an established waterway which has a

1 purpose of preventing erosion.  
2  
3 Mr. Hall stated that the 2011 aerial photograph included in the memorandum mentioned that up in the  
4 northwest corner of the property it appears that there has been some field erosion. He said that field erosion  
5 can have multiple causes but one thing that the aerial does show is that the subject property does drain in two  
6 different directions and that should be considered during the stormwater design. He said that he is glad that  
7 Mr. Sebens has an engineer on board who can figure out what needs to be done because it will be a  
8 challenge.  
9  
10 Mr. Sebens stated that he understands the challenge and in having an agricultural background he also  
11 understands what water can do to bare soil. He said that this issue has been addressed by himself and Mr.  
12 Scott Reifsteck, tenant farmer for the surrounding farmland, because they installed a drain tile that terminates  
13 at the edge of his parking lot where he had built a catch basin to funnel the water that is coming off of the  
14 parking lot into the drain tile.  
15  
16 Mr. Hall stated that the drain tile and the catch basin should be indicated on the engineering plans so that it is  
17 documented.  
18  
19 Mr. Passalacqua stated that Building #3, indicated on the site plan, would not be acceptable due to its  
20 location in the swale.  
21  
22 Mr. Hall stated no and he hopes that neither the building nor the paving would be acceptable in that swale.  
23  
24 Mr. Passalacqua asked Mr. Hall if the rule of thumb is 60 feet.  
25  
26 Mr. Hall stated that 60 feet is more than he is familiar with.  
27  
28 Mr. Passalacqua stated 60 feet from side to side and 30 feet from the centerline of the swale.  
29  
30 Mr. Hall stated yes, that is typical.  
31  
32 Ms. Lee asked if the water flows northeast to the southwest.  
33  
34 Mr. Hall stated yes.  
35  
36 Mr. Sebens stated that if the Board would visit the property they would find that approximately two-thirds to  
37 three-quarters of the property is sloped towards Duncan Road to the southeast corner of the property.  
38  
39 Mr. Passalacqua asked Mr. Sebens if the swale runs southwest.  
40  
41 Mr. Sebens stated yes.  
42

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

2

3 Mr. Thorsland called Mr. Scott Reifsteck to testify.

4

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

16

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

28

29 Mr. Reifsteck stated that when the landscaping shed was built there was some re-grading done to the  
30 property which actually increased some of the water that comes that way from where it was originally. He  
31 said that originally there was very little area there that drained down that way but now he receives a lot of  
32 water off of the shed that comes down through there and it has accelerated the runoff and generated a lot of  
33 the problems. He said that drainage has been a continual issue that he has tried to address and hopefully he  
34 has found a solution with the tile but the tile is very limited in capacity and if more buildings are allowed on  
35 the property he is afraid that the six-inch tile will not be sufficient enough to handle the problem.

36

37 Mr. Reifsteck stated that in regards to the water that flows to the south and east into the drainage swale that  
38 runs down through the subject property, there is currently an eight or ten-inch tile that runs through the swale  
39 that drains the agricultural land on the east of the road. He said that this issue will have to be addressed to  
40 provide drainage to the farmland which is located east of the road if there is a detention pond installed on the  
41 subject property. He said that drainage is a very serious issue through the subject property and there hasn't  
42 been much running water through there but since the landscaping business has gone in the area immediately

1 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  
2 subjecting more water to the area it will stay wet for a longer period of time. He said that this an issue that  
3 must be addressed and taken care of because the extra water will have further consequences down in the  
4 waterway where there are already problems.

5  
6 Mr. Reifsteck stated that if more construction is placed on the subject property and the landscaping business  
7 is moved to the north to further confine it that area will become more impervious therefore the proposal will  
8 affect both drainageways. He said that he installed the tile at his own expense to try to eliminate the  
9 drainage problems and Mr. Sebens cooperated in trying to build a berm across there to hold the drainage  
10 onto his property but any additional drainage is something that we will have to keep an eye on.

11  
12 Mr. Reifsteck stated that in regards to the use as a storage facility, approximately one-quarter of a mile there  
13 is a gravel road that abuts I-57 and for years he has hauled dump truck loads of other people's refuse out of  
14 that area and he is concerned that a storage facility south of that road will exacerbate that problem. He said  
15 that he knows that people do not intend to dump their refuse but when people fill a storage facility with items  
16 and they run out of room he is concerned that some of those items will end up on that road to the north. He  
17 said that the Tolono Township Highway Commissioner has been very forthcoming in the last five or six  
18 years and has been very proactive in keeping stuff out of there but that dead end road has been a problem  
19 with dumped trash and Mr. Reifsteck is afraid that this type of a facility will make that problem worse.

20  
21 Mr. Reifsteck stated that the traffic generated by the proposed storage facility is not something that is desired  
22 in an agricultural area. He said that a potential problem with blowing debris should be addressed and at a  
23 minimum perhaps some type of fencing should be required around the subject property to maintain any  
24 debris within the property. He said that regardless of the property owner's best intentions and efforts, there  
25 is still debris which blows onto adjacent properties and interferes with combines and other equipment. He  
26 said that on the west side of the property there has been an issue with encroachment and Mr. Sebens has  
27 done his best to contain it but when there are as many employees that park on a property as there are for Mr.  
28 Sebens' business it is hard to regulate. Mr. Reifsteck stated that even though he understands that it is not  
29 intentional the landscaping business also tends to creep further onto his property. He said that he and Mr.  
30 Sebens have been good neighbors for years and he does not want these requests to affect that relationship but  
31 he does have concerns about this type of development on the subject property.

32  
33 Mr. Reifsteck stated that he has not seen any LESA data on the subject property and he does not know if it is  
34 even relevant but he would tend to think that, with the surrounding agricultural area, a business use of this  
35 type would not be in the best interest of the County.

36  
37 Mr. Thorsland asked the Board if there were any questions for Mr. Reifsteck.

38  
39 Mr. Randol asked Mr. Reifsteck if the ten-inch drainage tile was located within a formal drainage district.

40  
41 Mr. Reifsteck stated that the ten-inch drainage tile is not located within a formal drainage district. He said  
42 that at one time it used to be an Embarras River Mutual Drainage District tile and when the airport came in it

1 restricted some of the use of the tile but there is approximately 240 acres that drains through there from the  
2 east and drains to the north side of the swale. He said that he installed a stand pipe in the bottom of the  
3 waterway when he did the other tile work and that has helped alleviate the saturated water condition there  
4 but it has not cured it.

5  
6 Mr. Randol asked Mr. Reifsteck if the west side of Duncan Road is typically lower than the roadway itself.

7  
8 Mr. Reifsteck stated that on the south of the subject property yes, but to the north of Duncan Road it is high.  
9 He said that the subject property sort of comes down off of the hill and to the north of the subject property  
10 the road is lower than the adjoining field and to the south it is higher.

11  
12 Mr. Randol stated that he would think that the natural retention on the subject property could not be changed.

13  
14 Mr. Reifsteck stated that he won't say that the natural retention on the subject property could not be changed  
15 into a detention pond but the issue will definitely have to be addressed.

16  
17 Mr. Passalacqua asked Mr. Reifsteck if the saturated area meets the culvert on the east side of Duncan Road.

18  
19 Mr. Reifsteck stated no. He said that saturated area is about twenty feet north of the property line and then  
20 south 150 feet out into his aunt's property. He said that the grass grows in that area but the water table is  
21 extremely high and he installed a surface inlet there and it has alleviated the problem somewhat but it has not  
22 cured the issue.

23  
24 Mr. Passalacqua asked Mr. Reifsteck if the road to the north that he discussed during his testimony accesses  
25 the pond along I-57. He asked Mr. Reifsteck who maintains that road.

26  
27 Mr. Reifsteck stated that Mr. Passalacqua was correct and that the Tolono Township Highway  
28 Commissioner maintains the road currently.

29  
30 Mr. Passalacqua stated that the property to the north does not have anything to do with the subject property.  
31 He asked Mr. Reifsteck if he included it in his testimony because he has seen the debris being dumped on it.

32  
33 Mr. Reifsteck stated that he included the property in his testimony because for years he was responsible for  
34 keeping the property cleaned up.

35  
36 Mr. Passalacqua noted that the debris that was being dumped was not a result of Mr. Seben's landscaping  
37 business.

38  
39 Mr. Reifsteck stated that he did not mean to imply that it was from Mr. Seben's landscaping business but it  
40 is local dumping area for people.

41  
42 Mr. Thorsland stated that Mr. Sebens must submit a new site plan which includes elevations. He said that

1 the memorandum indicates several items which the Board requires for review. He asked the Board if there  
2 are other items which need to be submitted or included on the site plan before the Board moves forward with  
3 these cases.

4  
5 Mr. Passalacqua stated that the third building will be a problem and with the drainage concerns on the  
6 property it may not be feasible at all. He stated that Mr. Sebens should obtain input from an engineer  
7 regarding the third building before he puts a lot of effort towards it.

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

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

12  
13 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Reifsteck regarding Case 767-S-13  
14 and there was no one.

15  
16 Mr. Thorsland requested that Mr. Sebens return to the witness microphone.

17  
18 Mr. Thorsland informed Mr. Sebens that if a sign is anticipated for the storage facility then it should be  
19 included on the site plan. He said that staff may have informed him that there are lighting requirements for  
20 any special use permit therefore he should review those requirements.

21  
22 Mr. Sebens stated that his goal is to improve the property and the area and he would not do the proposed use  
23 unless it was done well and in compliance.

24  
25 Mr. Thorsland stated that Mr. Reifsteck mentioned the possibility of installing a fence around the storage  
26 facility. He said that the farmer north of Walmart on Prospect Avenue called his self a bag farmer because  
27 he was farming a lot of bags therefore Mr. Sebens should consider fencing around the storage facility to keep  
28 any debris within the confines of the subject property.

29  
30 Mr. Hall stated that Mr. Sebens worked a little bit with the previous Associate Planner and he wonders if Mr.  
31 Kass discussed the issue of security at the self-storage warehouse. He said that the Board has seen self-  
32 storage warehouses with locked access as a way for users to get into the facility after hours and the Board has  
33 also seen caretaker dwellings on the subject property so that the facility is staffed 24 hours. He said that  
34 security is not something that is written into the Ordinance and it depends on what the ZBA believes is  
35 necessary at a given location so there is only so much guidance that staff can give the petitioner ahead of  
36 time. He said that this would be a good time to receive input from the ZBA as to what they feel is necessary  
37 for security.

38  
39 Mr. Passalacqua stated that the plan that Mr. Jesse presented to the Board was excellent and it might be a  
40 good example for Mr. Sebens to review as a point of reference.

41  
42 Mr. Thorsland stated that he is sure that staff could provide a copy of Mr. Jesse's plan. He asked Mr. Sebens

1 if he had an idea of how he would provide security to the self-storage warehouse. He asked Mr. Sebens if  
2 the units would have individual doors and locks or was it going to be more elaborate.

3  
4 Mr. Sebens stated that if you look at other storage unit facilities in the area you will find a little bit of  
5 everything. He said that most of the facilities are not fenced and the units have locks. He said that  
6 encompassing his facility with a fence is certainly something that could be done to make it more secure and  
7 he also has plans to provide adequate lighting to detour any activity.

8  
9 Ms. Lee asked Mr. Sebens if he is planning on three or four storage facility buildings.

10  
11 Mr. Sebens stated that after reviewing the plans again he is proposing only three buildings. He said that as  
12 Mr. Passalacqua pointed out earlier the third building will be difficult due to its location. He said that the  
13 plan that was submitted was completed by himself through his own CAD system and it was not generated by  
14 an architect or engineer.

15  
16 Mr. Randol stated that in reviewing the layout he believes that a detention pond is required. He asked Mr.  
17 Sebens if the detention pond could be placed in the western portion of the property.

18  
19 Mr. Sebens stated that the grass area could be utilized as an area for the detention pond. He said that he only  
20 keeps this area mowed and Mr. Reifsteck uses it for parking his agricultural equipment when he is in the  
21 field.

22  
23 Mr. Randol stated that he is not talking about the wet green area but the area to the west where it appears that  
24 there is landscape debris being stored. He asked if the area to the west of that area could be used for a  
25 detention pond in order to stay away from the natural drainage area.

26  
27 Mr. Sebens stated that this area could also be used for the detention pond. He said that the road may be  
28 slightly higher than his landscaping shed but from the south side of his parking lot slopes to the south and  
29 there is a ridge along the west property line that separates his property and Mr. Reifsteck's field which also  
30 slopes to the east.

31  
32 Mr. Passalacqua stated that he understands that the old buildings will be demolished but having purchased  
33 green material from Mr. Sebens before he wonders where he would stock his trees and other items for his  
34 landscaping business if he builds the storage units.

35  
36 Mr. Sebens stated that this is part of the reason why he has scaled the size of the buildings back. He said that  
37 as a result of the economy his business is now less than one-half of the size that it was four years ago. He  
38 said that at one time he would stock as many as 300 balled and burlaped trees but last year he didn't stock  
39 any trees. He said that his landscape business has been scaled back and he does not do as much as he used to  
40 and if he did decide to stock some trees he has adequate area to do so.

41  
42 Mr. Passalacqua stated that any storage for the landscaping materials should be indicated on the complete

1 site plan.

2

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

9

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

12

13 Mr. Hall stated that if we were looking at the aerial photo today as a proposed plan for a contractor's facility  
14 Mr. Sebens would have to have detention but this was done under the old Stormwater Management Policy  
15 and we were not as careful defining when detention was necessary. He said that in the old Stormwater  
16 Policy the fact that Mr. Sebens had gravel wasn't considered to the degree that it is considered today. He  
17 said that if Mr. Sebens was doing just the contractor's facility today he would need stormwater detention but  
18 he didn't need it in 1997. He said that there has been discussion about existing problems and presumably the  
19 Board will consider all of the existing problems as well as the proposal to create more impervious area with  
20 the self-storage. He said that the drainage plan needs to address all of the gravel paving that exists on the  
21 site because it is considered impervious and is considered gravel when it comes to the design for stormwater  
22 detention. He said that he hopes that Mr. Sebens' engineer will find out that there is a lot of detention  
23 necessary for just the contractor's facility and that is because there are in fact problems which Mr. Sebens  
24 and Mr. Reifsteck have attempted to correct and yet the engineer will be able to tell them if they have done  
25 enough or if Mr. Sebens will have to do some more. Mr. Hall stated that it is unusual for the Board to  
26 receive testimony where there have been problems but both landowners have worked together to resolve  
27 them. He said that he is eager to hear what Mr. Sebens' engineer comes up with and what Mr. Reifsteck  
28 thinks about it. He encouraged Mr. Sebens to work closely with Mr. Reifsteck as well as his engineer so that  
29 when the cases come back to the ZBA everyone will be reasonably satisfied. He noted that Mr. Sebens does  
30 not have to do exactly what Mr. Reifsteck wants but Mr. Sebens will have to address all those issues and he  
31 has already proven that he can do so which is all good news but there is a lot more to do.

32

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

35

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

38

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

40

41 Mr. Thorsland stated that Mr. Sebens did mention that the architect will indicate proper setbacks on the  
42 complete site plan.

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42

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

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

Mr. Thorsland asked Mr. Sebens if the February 27<sup>th</sup> meeting would allow ample time for the architect to have his plans completed.

Mr. Sebens stated yes.

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

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

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

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

Mr. Sebens agreed.

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

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

**Case 770-V-13 Petitioner: Kenneth and Alena Nierenhausen Request: Authorize the following variances in the AG-2, Agriculture Zoning District on the subject property described below, in order to construct a new dwelling to replace a dwelling damaged in the November 17, 2013, tornado: Part A. The creation and use of a lot that is 5.79 acres in area on best prime farmland in lieu of the maximum allowed three acres on best prime farmland required by Footnote 13 in Section 5.3; and Part B. Application fee of \$0 for a Zoning Use Permit Application in lieu of the standard Zoning Use Permit**

1 **Application fee required by Section 9.3.1B.; and Part C. Application fee of \$0 for a Variance**  
2 **Application in lieu of the standard \$200 Variance Application fee required by Section 9.3.3B.1.b.**  
3 **Location: A proposed 5.79 acre tract in St. Joseph Township in the Northwest Quarter of the**  
4 **Northwest Quarter of Section 23 of Township 19 North, Range 10 East of the Third Principal**  
5 **Meridian and commonly known as the farmstead located at 1486 CR 2200E, St. Joseph.**  
6

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

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

21  
22 Ms. Alena Nierenhausen, who resides at 1360 CR 2575E, Homer, stated that she and her husband lost their  
23 home in the November 17, 2013, tornado event and they are currently living with her parents. She said that  
24 she was born and raised in St. Joseph and when they found the subject property they decided that they would  
25 like to purchase the property and build a new home upon it. She said that the property is currently three  
26 acres in size and most of it is pretty low and it is not possible to build on it therefore they are requesting an  
27 additional two acres to set the new home back further from the road.

28  
29 Mr. Thorsland noted that there is an issue with a guard rail as well on the property.

30  
31 Ms. Nierenhausen stated yes and that the guardrail is located on most of the property.

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

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

36  
37 Mr. Passalacqua asked Mr. Hall if Mr. Kurtz, Champaign County Board Chairman, announced that all fees  
38 would be waived for reconstruction of homes destroyed during the tornado.

39  
40 Mr. Hall stated yes, and we have always waived zoning use permit fees and we have never had a zoning case  
41 pursuant to something like this tragic event. He said that many years ago a request like this would have gone  
42 to ELUC but that procedure is not provided for in the current Ordinance and neither is waiving zoning use

- 1 permit fees.  
2
- 3 Mr. Passalacqua asked Mr. Hall if the waivers of the fees should be included in this particular zoning case.  
4
- 5 Mr. Hall stated that the reason why the fees are part of this case is because of the zoning case fees and it is  
6 not clear to him that this is something that is unique to the land and therefore a valid variance. He said that it  
7 is okay if the Board does not want to deal with Parts B and C.  
8
- 9 Mr. Passalacqua stated that in order to simplify this case it appears that the consensus is to waive the fees  
10 and not burden this petitioner with two more steps.  
11
- 12 Mr. Thorsland asked Mr. Hall if it is up to this Board to decide whether or not the ZBA can remove Parts B  
13 and C from this case.  
14
- 15 Mr. Hall stated that the Board does need to decide whether or not it is a viable variance. He said that if the  
16 Board decides that Parts B and C are not viable variances he will deal with them administratively.  
17
- 18 Mr. Thorsland entertained a motion to remove Parts B and C from Case 770-V-13.  
19
- 20 Ms. Griest stated that she believed that Parts B and C were included because this is not the parcel where the  
21 tornado destroyed the structure so having it say that it is a different structure is an inaccurate statement  
22 therefore to ensure that the petitioner is as fully protected as possible Parts B and C should be left in the case.  
23 She said that even if the County indicated that they would waive all of the fees for properties in Gifford that  
24 were affected by the tornado this particular parcel was not within Gifford and the subject parcel was not hit  
25 by the tornado therefore she would advocate for leaving Parts B and C in the variance request and waiving  
26 the fees.  
27
- 28 Mr. Hall asked Ms. Griest if she could find that this is related to some special condition of this land.  
29
- 30 Ms. Griest stated only that purchase of the land was for the displacement.  
31
- 32 Mr. Passalacqua stated that he was only considering terms of simplicity because the petitioners would not be  
33 before us tonight if it were not for the tornado destroying their home.  
34
- 35 Mr. Thorsland stated that the Board does not consider permits in the Village of Gifford.  
36
- 37 Mr. Hall stated that Mr. and Mrs. Nierenhausen lived outside of Gifford and they were located within the  
38 County's zoning jurisdiction and their house was destroyed by the tornado. He said that he is perfectly  
39 comfortable in waiving both of these fees administratively but when it is an issue that goes to the ZBA he  
40 will always give the ZBA a chance to weigh in.  
41
- 42 Ms. Griest stated that if the fees can be waived then they should be waived.

- 1  
2 Mr. Hall stated that having an approved variance is absolutely safe and anything else is administratively  
3 done.  
4  
5 Mr. Thorsland stated that if there is a complaint they can come testify before this Board.  
6  
7 Mr. Passalacqua stated that the minutes will reflect the Board's discussion.  
8  
9 **The consensus of the Board was to remove Parts B and C from Case 770-V-13.**  
10  
11 Mr. Thorsland asked the Board if there were any additional questions for the petitioners.  
12  
13 Ms. Lee stated that two acres will be taken out of production and in order to the petitioners a larger lot size.  
14  
15 Ms. Niernenhausen stated that the two acres are not being farmed.  
16  
17 Mr. Hall stated that the Zoning Ordinance does not recognize that there are things like farmsteads that have  
18 never been in row crop production. He said that as far as he can tell this land has never been in row crop  
19 production and he would assume that it may have been a pasture. He said that the land is best prime  
20 farmland on average and part of it is not even considered best prime farmland but the whole parcel is overall.  
21 He said that no land is being taken out of production.  
22  
23 Ms. Lee stated that the Area Summary submitted by Berns, Clancy and Associates indicates a 40' x 860'  
24 strip of land on the east side of the homesite parcel which appears to be farmland.  
25  
26 Mr. Hall stated that Ms. Lee is correct and he had forgotten about the strip of land to the east. He said that  
27 Ms. Lee was also correct in assuming that the strip had been in row crop production.  
28  
29 Mr. Thorsland asked Ms. Nierenhausen if she is purchasing the additional 40' x 860' strip from the owner of  
30 the farmland.  
31  
32 Ms. Nierenhausen stated yes.  
33  
34 Mr. Thorsland asked Ms. Nierenhausen if the landowner was present tonight.  
35  
36 Ms. Nierenhausen stated no.  
37  
38 Mr. Thorsland asked Ms. Nierenhausen if the sale has already been worked through.  
39  
40 Ms. Nierenhausen stated yes. She said that the landowner desires selling them the entire five acres.  
41  
42 Ms. Griest stated that the current farmstead has never been broken off of the larger tract of farmland and is

1 not presently a separate parcel.  
2  
3 Ms. Nierenhausen stated that Ms. Griest was correct.  
4  
5 Mr. Hall stated that Ms. Nierenhausen explained it perfectly in that the strip along the east side is two acres  
6 in acre and is being taken out of production. He asked Ms. Nierenhausen if he is correct in assuming that the  
7 strip will become part of the residential lot or will it remain in production.  
8  
9 Mr. Nierenhausen stated that it will be taken out of production.  
10  
11 Mr. Passalacqua asked Ms. Nierenhausen if the new construction will occur in the strip of land or will it just  
12 be further back on the lot.  
13  
14 Ms. Nierenhausen stated that the home will be set back further on the lot,  
15  
16 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony  
17 regarding this case.  
18  
19 Mr. Thorsland called Kevin Cagle to testify.  
20  
21 Mr. Kevin Cagle, who resides at 1360 CR 2575 E, Homer, stated that in order to meet the County's front  
22 yard requirement the house needs to be set further off of the road therefore requiring the additional two acres  
23 to the east. He said that the current owner of the entire tract wanted to make the new parcel a full five acres  
24 for the Nierenhausen's purchase. He said that there is a guardrail that is located on three-quarters of the  
25 frontage and the property slopes down. He said that the old house, garage and small shed will be demolished  
26 and removed from the property and the new home will be placed behind the current location of the old home.  
27  
28 Mr. Passalacqua asked Mr. Cagle if the new home would encroach upon the existing well.  
29  
30 Mr. Cagle stated that a new well and septic will be required.  
31  
32 Mr. Thorsland asked the Board if there were any additional questions for Mr. Cagle and there were none.  
33  
34 Mr. Thorsland asked if staff had any questions for Mr. Cagle and there were none.  
35  
36 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Cagle and there was no one.  
37  
38 Mr. Thorsland asked the Board if there were any further questions for Ms. Nierenhausen and there were  
39 none.  
40  
41 Mr. Thorsland closed the witness register.  
42

- 1 Mr. Thorsland asked the Board and staff if they desired to add any testimony heard tonight to the Summary  
2 of Evidence. He said that a lot of the discussion tonight has already been included in the Summary of  
3 Evidence such as the guard rail takes a piece of the subject property and makes it unusable.  
4
- 5 Mr. Passalacqua stated that testimony was received tonight indicating that a portion of the property is low.  
6
- 7 Mr. Hall stated that Item 7.C and 8.B could be revised as follows: The existing farmstead area has never  
8 been in row crop production and appears on the 1973 aerial photograph but the eastern two acres has been in  
9 production. He said that Item 9.B should be revised as follows: The subject property is that portion of an  
10 existing 40 acre tract of farmland and all but two acres as never been in crop production. He said that the  
11 second sentence in Item 9.B should be stricken.  
12
- 13 Mr. Thorsland stated in Item 12 the petitioner states the following: "We lost our home in the Gifford  
14 tornado and would like to start construction on a new home but without this variance the lot would not be  
15 deep enough." He said that the Board could add evidence regarding the guard rail and the slope of the  
16 property under Item 12.  
17
- 18 Ms. Griest asked if the road has a larger setback than a normal rural road since it is a slab.  
19
- 20 Mr. Hall stated that a 40 feet of right-of-way has been dedicated which is more than is expected for a  
21 township road but the road is not a County Highway.  
22
- 23 Ms. Lee stated that the ditches are fairly deep in this area because of the river to the west.  
24
- 25 Ms. Griest stated that she believed that the road was a County Highway.  
26
- 27 Mr. Hall stated that he does not believe that the road is a County Highway.  
28
- 29 Mr. Thorsland called Kevin Cagle to the witness microphone.  
30
- 31 Mr. Thorsland asked Mr. Cagle if the road was considered a County Highway, State Highway or Township  
32 Highway.  
33
- 34 Mr. Cagle stated that he is pretty sure that the road from Sidney to St. Joseph is maintained by the township.  
35
- 36 Mr. Thorsland stated that he would like to add the following evidence to Item 12: The front of the lot has a  
37 guard rail, a slope, and a large ditch moving buildable area back from the front lot line.  
38
- 39 Mr. Passalacqua stated that this evidence could be added to Finding 1 as well.  
40
- 41 Mr. Thorsland stated that no special conditions have been proposed and there are no new Documents of  
42 Record therefore the Board can move to the Finding of Fact.

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

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

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

Mr. Passalacqua stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and or structures elsewhere in the same district because there is a guard rail, relative low elevation at the current home site and a substantial ditch which shrinks buildable area.

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

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

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

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

The Board agreed with the findings for Finding 1.

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

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

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

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

The Board agreed with the finding for Finding 2.

1  
2           **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT**  
3           **result from actions of the applicant.**  
4

5 Mr. Randol stated that the special conditions, circumstances, hardships, or practical difficulties DO NOT  
6 result from actions of the applicant because there is a guard rail, relative low elevations of significant  
7 portions of the western and northern portions of the lot, and a substantial ditch at this pre-existing farmstead.  
8

9 Mr. Griest stated that the subject property is a pre-existing homestead that is being purchased for a new  
10 home to replace a home lost in the November 17, 2013, tornado near Gifford.  
11

12 Mr. Hall read the Board's findings as follows:  
13

- 14           • There is a guard rail, relative low elevations of significant portions of the western and  
15           northern portions of the lot, and a substantial ditch at this pre-existing farmstead.
- 16           • The subject property is being purchased as a home site for a new home to replace a  
17           home lost in the November 17, 2013, tornado near Gifford.  
18

19 The Board agreed with the findings for Finding 3.  
20

21           **4. The requested variance IS in harmony with the general purpose and intent of the**  
22           **Ordinance.**  
23

24 Mr. Passalacqua stated that the requested variance IS in harmony with the general purpose and intent of the  
25 Ordinance because this is a minimal variance that will allow construction on the more suitable portion of the  
26 subject property.  
27

28 Ms. Griest stated that it conforms to all other Zoning Ordinance requirements.  
29

30 Mr. Hall read the Board's findings as follows:  
31

- 32           • This is a minimal variance that will allow construction on the more suitable portion  
33           of the subject property.
- 34           • It conforms to all other Zoning Ordinance requirements.  
35

36 Mr. Hall noted that since the Board is not dealing with anything but one variance part the final finding will  
37 be prepared in the regular format rather than the three part format. He said that the findings will appear as  
38 they do in the Draft Summary of Evidence.  
39

40 The Board agreed with the findings for Finding 4.  
41

42           **5. The requested variance WILL NOT be injurious to the neighborhood or otherwise**

**detrimental to the public health, safety, or welfare.**

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

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

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

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

The Board agreed with the findings for Finding 5.

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

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

The Board agreed with the finding for Finding 6.

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

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

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

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

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

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

1 required for approval.

2  
3 Ms. Alena Nierenhausen requested that the present Board move to the Final Determination.

4  
5 **Final Determination for Case 770-V-13:**

6  
7 **Ms. Griest moved, seconded by Mr. Passalacqua that the Champaign County Zoning Board of**  
8 **Appeals finds that, based upon the application, testimony, and other evidence received in this case,**  
9 **that the requirements of Section 9.1.9.C HAVE been met, and pursuant to the authority granted by**  
10 **Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**  
11 **Champaign County determines that the Variance requested in Case 770-V-13 is hereby GRANTED to**  
12 **the petitioners, Kenneth and Alena Nierenhausen, to authorize the following: Part A. The creation**  
13 **and use of a lot that is 5.79 acres in area on best prime farmland in lieu of the maximum allowed three**  
14 **acres on best prime farmland required by Footnote 13 in Section 5.3.**

15  
16 Mr. Thorsland requested a roll call vote.

17  
18 The roll was called:

19			
20	<b>Capel-yes</b>	<b>Griest-yes</b>	<b>Lee-yes</b>
21	<b>Miller-absent</b>	<b>Randol-yes</b>	<b>Passalacqua-yes</b>
22	<b>Thorsland-yes</b>		
23			

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

25  
26 **7. Staff Report**

27  
28 Ms. Lee asked if staff is going to pursue the violation related to Case 765-V-13.

29  
30 Mr. Hall stated that notice of violation was mailed today although in October, 2013 he sent out a letter  
31 stating that if Case 765-V-13 was not approved that something would have to be done.

32  
33 Ms. Griest asked Mr. Hall if the State’s Attorney provided comment regarding the Harshbarger case. She  
34 said that the Board’s question was the following: Since Mr. Harshbarger, the current owner, was a party in  
35 the petition could the Board approve the same variance that the Board had previously denied to Mr.  
36 Harshbarger.

37  
38 Mr. Hall stated that he never sent the question to the State’s Attorney and he is lucky to get an answer to  
39 questions which are of the most immediate urgency. He said that the Board’s question is no longer urgent  
40 and when this Board is presented with a second look at a case like that as long as the Board completes the  
41 case properly the case is always subject to a new determination. He said that the Board is not locking itself  
42 into something but it does need to be done consistent with all of the Ordinance requirements.

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

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

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

Mr. Hall stated yes.

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

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

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

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

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

1  
2 Mr. Passalacqua stated that Mr. Harshbarger already had a final determination that the structure required  
3 renovation to meet the Ordinance requirements.  
4  
5 Ms. Griest stated that perhaps the circumstance has changed where Mr. Harshbarger no longer parks his  
6 construction equipment at that location.  
7  
8 Mr. Thorsland stated that he could argue that he got rid of the trailer or something.  
9  
10 Mr. Passalacqua stated the testimony was received from the neighbor indicating that the structure was still  
11 too close.  
12  
13 Mr. Hall stated that like most neighbors some are interested in penalizing someone and that is not what the  
14 Zoning Board of Appeals is about.  
15  
16 Mr. Passalacqua stated that even though he understands Mr. Hall's comments he still would have a hard  
17 time with the case.  
18  
19 Ms. Lee stated that there was more evidence received other than attempting to penalize the owner because  
20 the neighbor discussed the school bus having to drive over other lots because they could not drive where  
21 they needed to drive due to the truck being parked there.  
22  
23 Mr. Randol stated that he believes that the testimony was somewhat exaggerated because the entire street  
24 width is 60 feet therefore a truck being parked there would not force a school bus to drive 40 feet out of  
25 the way.  
26  
27 Ms. Lee stated that the testimony indicated that the issue was in the turn-around.  
28  
29 Ms. Griest stated that the cul-de-sac or turn-around is located south of Mr. Harshbarger's property but the  
30 testimony was discussing when the vehicles owned by Mr. Harshbarger were parked inappropriately that the  
31 school bus had to pull around them.  
32  
33 Mr. Randol stated that the school bus may have had to pull over into the grass but a 60 foot street should  
34 had provided adequate room for the bus.  
35  
36 Ms. Griest asked Mr. Hall why during Case 765-V-13 staff requested that Mr. Harshbarger, the current  
37 owner, be included as a petitioner but did not request that the current owner be included as a petitioner in  
38 Case 770-V-13.  
39  
40 Mr. Hall stated that knowing the background on the property for Case 765-V-13 the owner of that property  
41 would have to be included in any zoning case.  
42

1 Ms. Griest stated that the Zoning Ordinance does indicate that the current owner must be a co-petitioner to  
2 any zoning case for the property.

3  
4 Mr. Randol asked if the sale of the Harshbarger property fell through due to the discussion at the meeting for  
5 that case.

6  
7 Mr. Hall stated that the sale did fall through but staff still receives calls regarding the property because the  
8 callers believe that it is a marvelous property.

9  
10 Mr. Hall clarified that the Ordinance does not contain the same requirements for ownership to be involved in  
11 the application for a variance as it does for a special use permit.

12  
13 **8. Other Business**

14 **A. Review of Docket**

15  
16 Mr. Hall stated that Case 774-V-14 has been withdrawn. He said that at the February 13<sup>th</sup> meeting the Board  
17 will be beginning one of those text amendments, Case 769-AT-13, that the Board will hate before it is over.  
18 He said that Case 769-AT-13 is the text amendment that is on par with the LESA amendment which the  
19 Board received a nice notebook which held everything so that the Board could refer back to it every time  
20 there were any questions. He said that everyone will receive new notebooks regarding this case and he is not  
21 sure how long this will take for the Board but it is a very significant amendment that needs to be done as  
22 soon as possible.

23  
24 Mr. Passalacqua asked Mr. Hall if Cases 771-AM-13 and 772-S-13 are located on Mr. Courson's old  
25 property.

26  
27 Mr. Hall stated yes.

28  
29 Mr. Passalacqua stated that he thought that the property had two uses on it already.

30  
31 Mr. Hall stated that the property was zoned B-3 and for some reason contractor facilities are not allowed. He  
32 said that previously the two uses on the property were storage and a commercial nursery but now it will be a  
33 contractor's facility which is not allowed in the B-3 District. He said that the owner originally informed staff  
34 that there would only be a storage building but employees would be coming there and there would be an  
35 office therefore staff informed him that it is not just a storage building but is a second principal use and he  
36 required a special use permit. He said that a second large building is also proposed.

37  
38 Mr. Passalacqua stated that it is his understanding that the new owner has an option to purchase the land next  
39 to the subject property for these cases therefore it is possible that he will obtain more land.

40  
41 Mr. Hall noted that the subject property is located in Hensley Township and he hopes that the current owner  
42 has discussed his plans with the township.

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**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.

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

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

None

**10. Adjournment**

Mr. Thorsland entertained a motion to adjourn the meeting.

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

The meeting adjourned at 8:46 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals

1 **MINUTES OF REGULAR MEETING**  
2  
3 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**  
4 1776 E. Washington Street  
5 Urbana, IL 61801

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6  
7 **DATE:** January 16, 2014 **PLACE:** Lyle Shield's Meeting Room  
8 1776 East Washington Street  
9 **TIME:** 6:30 p.m. Urbana, IL 61802

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10  
11 **MEMBERS PRESENT:** Catherine Capel, Debra Griest, Marilyn Lee, Brad Passalacqua, Jim Randol

12  
13 **MEMBERS ABSENT :** Roger Miller, Eric Thorsland

14  
15 **STAFF PRESENT :** Connie Berry, John Hall, Susan Monte (County Planner, RPC)

16  
17 **OTHERS PRESENT :** Lars Johnson, Shawn Bickers, Larry Hall, Julia Hall, Jean Fisher, Mark  
18 Fisher

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19  
20  
21 **1. Call to Order**

22  
23 The meeting was called to order a 6:30 p.m.

**DRAFT**

24  
25  
26 **2. Roll Call and Declaration of Quorum**

27  
28 The roll was called and a quorum declared present with two members absent.

29  
30 Mr. John Hall, Zoning Administrator stated that Mr. Thorsland is absent tonight due to a medical  
31 procedure that he has scheduled for tomorrow.

32  
33 Mr. John Hall informed the Board that due to the absence of Mr. Thorsland the Board needs to appoint an  
34 acting Chair for tonight's meeting. He entertained a motion for appointment of an acting chair

35  
36 **Mr. Passalacqua moved, seconded by Mr. Randol to appoint Ms. Capel as acting Chair for tonight's**  
37 **meeting. The motion carried by voice vote.**

38  
39 Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must  
40 sign the witness register for that public hearing. She reminded the audience that when they sign the  
41 witness register they are signing an oath

42  
43 **3. Correspondence**

44  
45 None

46  
47 **4. Approval of Minutes**  
48

1 None

2

3 **5. Continued Public Hearing**

4

5 **Case 764-V-13 Petitioner: Lars Johnson with agent Shawn Bickers Request to authorize the following**  
6 **in the R-4 Multiple Family Residence Zoning District: Part A. Authorize the following variance for**  
7 **an existing townhouse: (1) lot coverage of 44% in lieu of the maximum allowed 40%; and (2) a front**  
8 **setback of 40 feet from the centerline of Briar Hill Drive in lieu of the minimum required 55 feet; and**  
9 **(3) a front yard of 20 feet in lieu of the minimum required 25 feet. Part B. Authorize the following**  
10 **variance for an addition to an existing townhouse: (1) authorize construction of a building addition in**  
11 **a recorded utility easement in lieu of the requirement that no construction shall take place in a**  
12 **recorded utility easement; and (2) a side yard of 1 foot in lieu of the minimum required 5 feet.**  
13 **Location: Lot 1 of Wisegarver’s Subdivision in the Southeast Quarter of Section 21 of Champaign**  
14 **Township and commonly known as the townhome at 2120 Briar Hill Drive, Champaign.**

15

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

24

25 Ms. Capel informed the audience that anyone wishing to testify for any public hearing tonight must  
26 sign the witness register for that public hearing. She reminded the audience that when they sign the  
27 witness register they are signing an oath.

28

29 Mr. Passalacqua stated that he has a few construction projects out for bid in which Mr. Shawn Bickers,  
30 co-petitioner, will be a sub-contractor for those projects, therefore due to this conflict he must remove  
31 himself from this case.

32

33 Ms. Capel asked the petitioners if they desired to make a statement outlining the nature of their request.

34

35 Mr. Lars Johnson, who resides at 1956 Berwyn, Chicago, stated that he had no new information to add  
36 tonight.

37

38 Ms. Capel asked Mr. Hall if he had any new information to add to the case tonight.

39

40 Mr. Hall, Zoning Administrator, stated that he had no new information to add to the case. He said that the  
41 information that was included in the mailing packet was very clear. He said that he would be happy to  
42 answer any questions that Board members may have regarding the case. He said that extra copies of

1 Wisegarver's Subdivision were provided to the Board. He said that this was the same copy that was  
2 included in the Preliminary Memorandum but since it was the subject of a lot of the discussion at the last  
3 meeting staff thought that the Board might appreciate receiving fresh copies of the plat for review.

4  
5 Ms. Capel asked Mr. Bickers if he had any new information to add to the case tonight.

6  
7 Mr. Shawn Bickers, who resides at 4306 Summerfield Road, Champaign, stated that he had no new  
8 information to add to the case tonight.

9  
10 Ms. Capel asked the audience if anyone desired to sign the witness register to present testimony regarding  
11 Case 764-V-13 and there was no one.

12  
13 Ms. Capel closed the witness register.

14  
15 Ms. Capel asked the Board if there were any questions for staff.

16  
17 Ms. Griest stated the there is a proposed special condition relating to prohibition of rebuilding a structure  
18 that is not yet built if it were destroyed by 50% or more. She said that the rationale behind this special  
19 condition is a little bit askew to her.

20  
21 Mr. Hall stated that he noticed in the minutes that there was a question regarding the proposed special  
22 condition. He said that while he won't argue with Ms. Griest's view of the proposed special condition, but  
23 when preparing the materials for the Board's review it is not known what state of mind the Board will be in  
24 and one thing that staff has been very sensitive to lately is the irritated state that the Board gets in due to  
25 unauthorized construction that subsequently requires a variance. He said that the proposed special  
26 conditions were prepared early in the case and in his own mind if he had not proposed the special condition  
27 so early he might have not proposed it at all. He said that in the beginning we were posed with unauthorized  
28 construction and if it wasn't approved by the Board it would require removal and the fact that there may be  
29 less than 50% in place now was not as important as thinking that the Board may not want this to stay  
30 permanently unless there is a vacation of that part of the easement. He said that he would prefer no  
31 conditions if possible but early in the process he believed that such conditions may be necessary for the  
32 Board to make the necessary positive findings.

33  
34 Ms. Lee stated that the petitioners are requesting a one foot side yard in lieu of the required five foot. She  
35 said that the petitioners have indicated that the garage type door would be relocated to the west side of the  
36 structure but in essence they will be moving their golf cart past the new addition and across the neighbor's  
37 yard. She said that it appears strange that the Board would indicate that it is okay to have an easement across  
38 the neighbor's yard to the extent that the golf cart exceeds one foot in width.

39  
40 Mr. Hall stated that there is some question regarding how the golf cart will move from the storage area to the  
41 street. He said that there may be some overlap over the property line and there has been some discussion  
42 about maintenance of the lawn has always been based on an assumption that the lot line was down the

1 middle of the large open area when in fact the open area is all on the neighbor's lot. He said that he was  
2 assuming that Mr. Johnson and the neighbors could come to some sort of mutual agreement regarding the  
3 general maintenance of that part of the other lot in exchange for any golf cart traffic that occurs. He said that  
4 if the Board is skeptical that such an agreement would work and desires to see information regarding how  
5 the landscaping will be rearranged so that the golf cart can travel straight to the street and then down the  
6 street to the golf course then the Board would be within its bounds to require such.

7  
8 Mr. Johnson stated that the golf cart idea has been abandoned. He said that the storage area will be for the  
9 personal storage of his lawnmower, tools, etc. He said that they realized that the Board had previous  
10 questions regarding the golf cart access therefore they decided that the golf cart storage was not that  
11 important and moved the access to the west towards the street. He said that Mr. Bickers resubmitted the new  
12 plans indicating the change.

13  
14 Mr. Hall stated that the plan that was received on December 11, 2013, still indicates "golf cart bay."

15  
16 Mr. Johnson stated that Mr. Bickers was informed that he should not change the designation of the area.

17  
18 Mr. Hall asked Mr. Johnson if he is testifying tonight that what was previously indicated as a "golf cart bay"  
19 should now be understood to be "lawnmower and other equipment storage."

20  
21 Mr. Johnson stated yes.

22  
23 Ms. Lee thanked Mr. Johnson.

24  
25 Ms. Capel asked the Board if there were any additional questions regarding the special conditions.

26  
27 Ms. Capel asked Mr. Johnson if he agreed with the proposed special conditions.

28  
29 Mr. Johnson stated yes.

30  
31 Ms. Capel entertained a motion to approve the proposed special conditions.

32  
33 **Mr. Randol moved to approve the proposed special conditions.**

34  
35 Ms. Capel called for a second for Mr. Randol's motion.

36  
37 Mr. Hall noted that a motion must be called three times before it fails.

38  
39 Ms. Capel called for a second to Mr. Randol's motion for a final time.

40  
41 **The motion failed due to the lack of a second.**

42

1 **Ms. Griest moved to approve proposed special conditions A.(1); A.(2); B and C and exclude A.(3).**  
2

3 Ms. Griest stated that she cannot support a special condition that allows building something that will not be  
4 allowed to be replaced. She said that she cannot ethically support building something that she would  
5 prohibit rebuilding should it be destroyed. She said that the structure is less than 50% built currently and she  
6 realizes that the contractor started work without authorization and that is unfortunate but she has an ethical  
7 dilemma in allowing them to continue building something that would not be allowed to be rebuilt if it were  
8 destroyed. She said that her position and the bottom line is whether the Board is going to allow the  
9 petitioner to build his structure and keep it or not to allow them to build it at all.  
10

11 Mr. Hall stated that he would say that there is no need for a special condition if the Board is inclined to allow  
12 the structure to be completed and the structure to be used and there is no need for a special condition if the  
13 Board is inclined to think that there is not a special condition sufficient to allow construction to be  
14 completed therefore no special condition is needed for either one of those polar opposites. He said that  
15 somewhere in between there a special condition may be needed but it may not be any of the proposed  
16 conditions but if the option is either one of those two then he thinks it is real simple, no special condition is  
17 required.  
18

19 Ms. Griest stated that she appreciates Mr. Hall's recommendation and withdrew her motion.  
20

21 Ms. Capel stated that the Board will proceed with no special conditions.  
22

23 Mr. Hall stated that he does not want to make this any more complicated than necessary but Ms. Lee asked a  
24 question about what the Board is approving regarding the use of the structure. He said that if the Board  
25 approves the variance the Board will be approving a site plan and currently the site plan does not indicate  
26 golf cart storage but unless the Board makes a condition that it cannot be used for golf cart storage there is  
27 no prohibition in the future that it can be used for such in the future. He said that if the Board is really  
28 concerned about the storage of a golf cart then a special condition should be considered. He said that he is  
29 not recommending such a condition but he is putting the option out there for the Board's consideration in  
30 case one member believes it is necessary.  
31

32 Mr. Randol stated that at the last meeting there was discussion that there was a mutual agreement between  
33 Mr. Johnson and the neighbors to allow moving back and forth through the area between the two structures.  
34 He said that if that travel ever became an issue it would be an issue between the neighbors and would have  
35 no affect on the ZBA because the property was one foot where everyone thought it was in the middle of the  
36 yard. He said that there is a maintenance agreement in place between the neighbors.  
37

38 Mr. Johnson stated that there is a maintenance agreement in place and it has existed for almost 20 years. He  
39 said that if the neighbors didn't like something they would voice their concerns.  
40

41 Mr. Hall stated that if the Board is comfortable with the neighbor's agreement then there is nothing else that  
42 needs to be done in that regard.

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Mr. Randol stated that he is comfortable with just the neighbor’s agreement. He said that sometimes the Board tries to get too involved in some of this stuff.

Ms. Capel stated that there is not a lot of difference between a riding lawnmower and a golf cart in terms of width and driving over the neighbor’s property.

Mr. Randol agreed.

Ms. Lee stated that the present neighbors may be willing to allow Mr. Johnson to go over the property line but is the ZBA willing to, in effect, grant an easement of use. She said that a permanent easement could be granted between the neighbors.

Mr. Hall stated that he does not consider granting this variance to be the same thing as acquiescing to traveling over a neighbor’s property because the door was moved and there is no need to travel over the property and testimony received tonight indicates that traveling over the property will not be the situation anyhow. He said that if the Board is so concerned that no golf cart storage should be allowed then the Board can certainly impose such a condition. He said that he would not want to have to make inspections to see what is being stored there but again, it is whatever the Board feels is necessary and justifiable. He noted that any condition would have to be accepted by the petitioner and the petitioner has already stated that the site plan doesn’t indicate golf cart storage any longer. He said that the petitioner may accept a condition prohibiting golf cart storage or the petitioner may believe that the Board is getting too detailed.

Ms. Capel asked the Board if they were ready to proceed to the Finding of Fact.

Ms. Capel entertained a motion to proceed to the Finding of Fact for Case 764-V-13.

**Ms. Griest moved, seconded by Mr. Randol to proceed to the Finding of Fact for Case 764-V-13. The motion carried by voice vote.**

**Finding of Fact for Case 764-V-13:**

From the documents of record and the testimony and exhibits received at the public hearing for zoning case 764-V-13 held on November 14, 2013, December 12, 2013, and January 16, 2014, the Zoning Board of Appeals of Champaign County finds that:

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

Mr. Randol stated that special conditions and circumstances DO exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated land and structures elsewhere in the

1 same district because of the undisputed boundary line for years and the unknown issues with utility  
2 easements and the sanitary district had no problem with the construction.

3  
4 Ms. Capel stated that the buildable area on the subject property is significantly smaller than on the other lots.

5  
6 Mr. Hall stated that at the end of Mr. Randol’s statement he mentioned that the utility companies had no  
7 problem with the construction. He asked Mr. Randol to explain his response.

8  
9 Mr. Randol stated that at the last public hearing regarding this case there was a question whether or not there  
10 were sewer lines in the easement. He said that the Urbana Champaign Sanitary District indicated that there  
11 were no lines within the easement and that they had no problem with the structure being constructed.

12  
13 Ms. Griest asked Mr. Randol if his statement intended to include all of the other utility companies that were  
14 involved. She said that although Illinois American Water stipulated that they have nothing running through  
15 the easement and that they would have no objection to vacating, Ameren was unwilling to vacate the  
16 easement.

17  
18 Ms. Capel stated that what Ameren actually said was that the fact that they were willing to allow did not  
19 imply a vacation. She said that the wording that Ameren used did not constitute a vacation.

20  
21 Mr. Hall stated that Ameren’s statement is included as item #11.E(3) in the Summary of Evidence.

22  
23 Ms. Griest stated that item #11.E(3) does indicate that there are electric facilities within the easement along  
24 the north and east easement and that there is no immediate plan to use the south easement, but it is not a  
25 vacation of the south easement.

26  
27 Ms. Capel stated that Ameren did not indicate their willingness one way or the other.

28  
29 Ms. Griest stated that she would disagree and would interpret Ameren’s statement as their willingness to not  
30 object does not mean that they are vacating it in any way. She said that she has no problem with Mr.  
31 Randol’s statement indicating that the UCSD has no problem with the construction but it would be  
32 inaccurate if Ameren were included.

33  
34 Ms. Griest stated that Illinois American Water had no interest in the easement and did not object to a  
35 vacation of the easement.

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

- 38  
39 • **Of the undisputed boundary line for years and the unknown issues with utility**  
40 **easements and the sanitary district had no problem with the construction; and**  
41 • **Illinois American Water had no interest in the easement and did not object to the**  
42 **vacation of the easement; and**

- 1 • **The buildable area on the subject property is significantly smaller than on the other**  
2 **lots; and**  
3

4 Ms. Capel stated that an additional point to add to the finding is that there is adequate space for utility  
5 maintenance between the two buildings.  
6

- 7 • **There is adequate space for utility maintenance between the two buildings.**  
8

9 Ms. Capel asked the Board if they agreed with Finding #1 and the Board agreed.  
10

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

15 Mr. Randol stated that practical difficulties or hardships created by carrying out the strict letter of the  
16 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or structure or  
17 construction due to the open area between the two structures.  
18

19 Ms. Capel stated that the townhome could not be reconstructed in the event of damage without the variance.  
20 She said that the addition, which is required for Mr. Johnson's business, would not obstruct the view to the  
21 golf course.  
22

23 Ms. Griest asked Ms. Capel if she would entertain a minor revision to her previous statement. She said that  
24 the finding could read as follows: There is no alternative buildable area on the side of the building without  
25 obstructing views to the golf course.  
26

27 Ms. Capel stated that she agreed with Ms. Griest's amended finding.  
28

29 Mr. Hall read the Board's findings for Finding #2 as follows:  
30

- 31 • **Of the open area between the two structures**  
32 • **The townhome could not be reconstructed in the event of damage without the variance**  
33 **in Part A.**  
34 • **There is no alternative buildable area on the side of the building without obstructing**  
35 **the views to the golf course.**  
36

37 Ms. Capel asked the Board if they agreed with the findings for Finding #2 and the Board agreed.  
38

- 39 **3. The special conditions, circumstances, hardships, or practical difficulties DO result**  
40 **from actions of the applicant.**  
41

42 Ms. Griest stated that the special conditions, circumstances, hardships, or practical difficulties DO result

1 from actions of the applicant because construction began prior to the issuance of a zoning use permit. She  
2 said that her recommendation would have been different if the construction had not begun and not moved  
3 forward with the request because the construction had begun. She said that this is a choice by the applicant  
4 to build this structure in this location and even if they had not begun the construction the applicant is  
5 choosing to place the structure in the proposed location therefore it would be an action on their part. She  
6 said that if someone has an opposing position on this finding and they would like to state that position she  
7 would be happy to hear it.

8  
9 Ms. Capel stated that Part A. does not fall under Ms. Griest's finding. She said that Part A. involves the  
10 construction of the townhome itself and a permit that was issued in error. She said that Part A. includes lot  
11 coverage of 44% in lieu of the maximum allowed 40%; and a front setback of 40 feet from the centerline of  
12 Briar Hill Drive in lieu of the minimum required 55 feet; and a front yard of 20 feet in lieu of the minimum  
13 required 25 feet.

14  
15 Ms. Griest asked Mr. Hall how the Board should respond to a finding when some parts of the variance apply  
16 to DO and some parts apply to DO NOT.

17  
18 Mr. Hall stated that the Board does have to keep Part A. and Part B. in mind. He said that Finding #3 is  
19 talking about the special conditions which the Board has already said existed. He said that if the Board goes  
20 back and reviews Finding #1 the Board indicated that there was an undisputed boundary line and unknown  
21 issues with utility easements, two major utilities who have indicated that they do not have a problem with it,  
22 and smaller buildable area than on the other lots and adequate space for utility maintenance between the two  
23 buildings. He said that the Board could add that the project was begun without authorization but the Board  
24 needs to be careful with that because these findings are supposed to be about the property and building  
25 without a permit is not related to the property but is related to carelessness. He asked the Board to think  
26 about what it is about the property that DOES or DOES not support the variance. He said that the Board's  
27 findings in Finding #1 are all related to the property and construction without a permit is not related to the  
28 property.

29  
30 Ms. Capel stated that the evidence states that the subcontractor was under the impression that there was a  
31 permit and stopped construction when it became apparent that there was no permit. She said that she would  
32 assume that the variance would have been applied for earlier had the misunderstanding not occurred.

33  
34 Mr. Hall stated that this could work here if there was unauthorized construction indicated under Finding #1  
35 because it would be consistent but in his mind there is a legal question about the Board focusing on things  
36 that are not related to the land. He said that he is not an attorney and he does not want to ever play like he is  
37 an attorney but he will give the Board whatever advice that he can.

38  
39 Ms. Griest stated that she is having difficulty because she understands the conditions for the property when  
40 Mr. Johnson purchased it and the items in the variance that are related to the original construction but this is  
41 also including a request for additional construction which are a choice by the petitioner to include in this.  
42 She said that she is having difficulty being able to separate those two and if this was two separate cases it

1 would be much easier. She said that she has no problem with the lot coverage area and the setbacks in the  
2 front yard but her problem is with the proposal for the construction on the utility easement and up to within  
3 one foot of the side property line. She said that she can be flexible with the side yard variance but requesting  
4 to build something within the utility easement isn't part of the original construction therefore she can see  
5 both sides but there isn't a maybe or sort of in the DO and DO NOT.  
6

7 Mr. Hall stated that this is why staff advertised this case in two parts. He said that if the evidence supports it  
8 he could imagine approval of one part and denial of the other part.  
9

10 Ms. Griest asked if the Board should be preparing their findings as related to Part A. and findings related to  
11 Part B.  
12

13 Mr. Hall stated yes. He said that if the Board wants to provide the possibility of clear approval of one part  
14 and clear denial of another then the findings need to be prepared separately. He said that the Board can  
15 return to Finding #1 and discuss Part A. and Part B. separately. He said that doing Parts A. and B separately  
16 does not lock the Board into any definite outcome but provides flexibility for the Board and if the Board  
17 needs that flexibility then that is what should be done.  
18

19 Ms. Capel stated that there will be a finding for Part A. and Part B. She asked Mr. Hall if both findings have  
20 to be either negative or positive or could the Board find a positive finding for one part and a negative finding  
21 for the other part.  
22

23 Mr. Hall stated yes, the Board could have different findings for each part.  
24

25 Ms. Griest stated that there could be two final determinations, one on Part A. and one on Part B.  
26

27 Mr. Hall stated yes. He asked the Board if they want to do anything else on Finding #3 or would they like to  
28 return to Finding #1 and resort.  
29

30 Ms. Lee stated that if the Board is dealing with Part A. we are just dealing with lot coverage of 44% in lieu  
31 of the maximum allowed 40%; and the front setbacks which all go back to the original construction. She  
32 said that the Board will also deal with the front yard of 20 feet in lieu of the minimum required 25 feet.  
33

34 Ms. Griest asked if Part A.(1) is prior to the addition or after the addition. She said that she would think that  
35 it is after the addition.  
36

37 Mr. Randol stated that it is from the original construction.  
38

39 Ms. Capel stated that there was an existing deck there and the construction is just taking the place of that  
40 deck.  
41

42 Mr. Hall stated that a deck would not have been counted as part of the lot coverage. He said that he does not

1 believe that the area of the addition is 4% of the lot area therefore he is pretty certain that it was over the lot  
2 coverage in the beginning.  
3

4 Mr. Randol stated that if the lot coverage is not taken as the original construction then the whole building  
5 will need to be changed. He said that the building was built over 40 years ago.  
6

7 Ms. Lee stated that there was a Supplemental Memorandum on November 14, 2013, which indicated the  
8 following: Authorize the construction of an addition to an existing townhouse. She said that the  
9 memorandum indicates that the lot coverage is 44% in lieu of the maximum allowed 40% therefore she  
10 would believe that the original construction and the addition would be calculate to the 44%.  
11

12 Ms. Griest asked Mr. Hall if the percentage does not include the addition is the variance adequate if the  
13 addition were approved.  
14

15 Ms. Lee stated that the memorandum indicates that the total lot area is 14,840 square feet and the original  
16 square foot age of the house is 6,496.  
17

18 Mr. Hall stated that the 264 square foot addition is nowhere near 4% of the lot area. He said that the existing  
19 building with no addition already exceeds the lot coverage limit. He apologized for not having this specific  
20 information included in the Summary of Evidence.  
21

22 Ms. Griest stated that her calculations including the addition, indicates lot coverage of 45.55%. She said that  
23 Part A. is without the addition and the pre-construction lot coverage is 44%.  
24

25 Ms. Lee stated that Part A. is incorrect.  
26

27 Mr. Randol asked why the Board is trying to approve a variance for a structure that was built over 40 years  
28 ago rather than just taking care of what is proposed currently.  
29

30 Ms. Capel stated that the building cannot be rebuilt if there was fire without a variance.  
31

32 Ms. Griest stated that the variance would make the existing building compliant which gives them the ability  
33 to rebuild.  
34

35 Ms. Capel asked Mr. Hall if the Board needs to vote on separating the findings into Part A. and Part B.  
36

37 Mr. Hall stated that the Board only needs to vote on findings when there is reason to think that there are not  
38 four Board members in support of the finding. He said that separating the finding into parts does make a lot  
39 of sense. He said that the only way to provide the Board with the flexibility to approve one part and deny the  
40 other is to actually make complete findings for each part and he does not see any way that this one finding  
41 can apply to both parts. He asked the Board if they want to deal with each part separately or move through  
42 both parts concurrently through all of the findings.

1  
2 Ms. Capel stated that the Board should move through each part separately.

3  
4 **Separation of Findings of Fact for Part A. and Part B of Case 764-V-13:**

- 5  
6 **1. Special conditions and circumstances DO exist for Part A which are peculiar to the**  
7 **land or structure involved, which are not applicable to other similarly situated land**  
8 **and structures elsewhere in the same district.**

9  
10 Ms. Lee stated that special conditions and circumstances DO exist which are peculiar to the land or structure  
11 involved, which are not applicable to other similarly situated land and structures elsewhere in the same  
12 district because a permit was issued even though the building did not comply with the Ordinance  
13 requirements.

14  
15 Ms. Capel stated that the lot has significantly smaller buildable area than any of the other lots in the  
16 subdivision.

17  
18 Ms. Griest stated that this unit is of similar size and shape to the adjoining three units on the subject  
19 property.

20  
21 Mr. Hall pointed out that other than the aerial photography there is no evidence specific to Ms. Griest's  
22 finding.

23  
24 **The Board's Findings for Finding 1, Part A.:**

- 25  
26 • **The zoning use permit was approved even though the building did not comply with the**  
27 **Ordinance requirements; and**  
28 • **The buildable area on the subject property is significantly smaller than on the other**  
29 **lots; and**  
30 • **This unit is of similar size and shape to the adjoining three units on the subject**  
31 **property.**

32  
33 **The Board's Findings for Finding 1, Part B.:**

- 34  
35 **1. Special conditions and circumstances DO exist for Part B which are peculiar to the land**  
36 **or structure involved, which are not applicable to other similarly situated land and**  
37 **structures elsewhere in the same district because:**  
38  
39 • **Of the undisputed boundary line for years and the unknown issues with utility**  
40 **easements and the sanitary district had no problem with the construction; and**  
41 • **Illinois American Water had no interest in the easement and did not object to the**  
42 **vacation of the easement; and**

- 1 • **The buildable area on the subject property is significantly smaller than on the other**
- 2 **lots**
- 3 • **There is adequate space for utility maintenance between the two buildings.**

5 Mr. Hall asked the Board if they agreed to the findings for Finding 1 Parts A and B and the Board agreed.

7 **The Board’s Findings for Finding 2, Part A:**

9 **2. For Part A, Practical difficulties or hardships created by carrying out the strict letter of**  
10 **the regulations sought to be varied WILL prevent reasonable or otherwise permitted**  
11 **use of the land or structure or construction because:**

- 13 • **The townhome could not be reconstructed in the event of damage without the variance**
- 14 **in Part A.**

16 **The Board’s Findings for Finding 2, Part B.:**

18 **For Part B, Practical difficulties or hardships created by carrying out the strict letter of**  
19 **the regulations sought to be varied WILL prevent reasonable or otherwise permitted**  
20 **use of the land or structure or construction because:**

- 22 • **Of the open area between the two structures; and**
- 23 • **There is no alternative buildable area on the side of the building without obstructing**
- 24 **the views to the golf course.**

26 Mr. Hall asked the Board if they agreed to the findings for Finding 2 and the Board agreed.

28 **The Board’s Findings for Finding 3, Part A.:**

30 **For Part A, The special conditions, circumstances, hardships, or practical difficulties**  
31 **DO NOT result from actions of the applicant because:**

33 Ms. Lee stated that for Part A, the special conditions, circumstances, hardships, or practical difficulties DO  
34 NOT result from actions of the applicant because the structure was built in the 1970’s which was long before  
35 the applicant came into the picture.

- 37 • **The construction happened in the 1970’s long before the applicant owned the property.**

39 Ms. Lee asked Mr. Hall if the applicant had any idea that the structure was built out of compliance with the  
40 Zoning Ordinance.

42 Mr. Hall stated that he does not believe the applicant or anyone else was aware that the structure was built

1 out of compliance with the Zoning Ordinance.

2  
3 **The Board's Findings for Finding 3, Part B.:**

4  
5 **For Part B, The special conditions, circumstances, hardships, or practical difficulties**  
6 **DO result from actions of the applicant.**  
7

8 Ms. Griest stated that for Part B, the special conditions, circumstances, hardships, or practical difficulties  
9 DO result from actions of the applicant because the petitioner has proposed building in a recorded utility  
10 easement and with a size that would yield a one foot side yard in lieu of the required five feet.

11  
12 Ms. Capel stated that the Board needs to revisit Finding #1, Part B to review what special conditions exist.

13  
14 Mr. Hall stated that in the terms of the logic of the findings the Board could have a special condition in  
15 Finding #1 that construction was begun without a zoning use permit then later Finding 3, Part B, could be  
16 indicated that the special conditions, circumstances, hardships, or practical difficulties DO result from  
17 actions of the applicant.

18  
19 The Board agreed to add the following to Finding #1, Part B: Construction was begun without a zoning use  
20 permit.

21  
22 Mr. Hall read the Board's finding for Finding #3, Part B. as follows:

- 23  
24 • **The proposed construction will reduce the side yard to one foot in lieu of the required**  
25 **five feet.**  
26

27 Mr. Hall stated that the one thing that the Board should be thinking about is that this finding would indicate  
28 that this is causing some injury to the district. He said that Finding #5 refers to injury to the district therefore  
29 hopefully the Board will have some idea as to what injury has been done or will be caused.

30  
31 Ms. Lee stated that Ms. Griest also mentioned that the petitioner was building within a recorded utility  
32 easement.

33  
34 Mr. Hall revised the Board's finding as follows:

- 35  
36 • **The petitioner proposed construction within a recorded utility easement with a size that**  
37 **would require a reduced side yard of one foot in lieu of the required five feet.**  
38

39 Mr. Hall asked the Board if they agreed with the Finding for Finding 3, Part B.

40  
41 Mr. Randol stated that he does not understand why this finding should be there when it has been agreed that  
42 everyone involved in the utility easement has indicated that they have no problem with the proposed

- 1 construction.  
2
- 3 Mr. Hall stated that Mr. Randol's concern is an important consideration.  
4
- 5 Mr. Randol stated that the finding indicates a negative impact and everyone involved has indicated that they  
6 have no problems with it.  
7
- 8 Mr. Hall stated that the Board could move forward with the Finding of Fact and once completed the Board  
9 could revisit all of the findings before they are adopted.  
10
- 11 Ms. Capel asked if it would be appropriate to insert a contrary statement in the finding.  
12
- 13 Mr. Hall stated that the Board could insert a contrary statement as long as the finding remains clear.  
14
- 15 Ms. Griest asked Mr. Hall if this would be an appropriate place to reiterate the Summary of Evidence  
16 information that the UCSD, Illinois American Water and Ameren have no existing utilities in the easement  
17 and have no plans to place utilities in the easement however none of them have vacated the easement. She  
18 said that it is significant information that none the three utility companies have vacated the easement even  
19 though they do not have any utilities located in it.  
20
- 21 Mr. Hall stated that the UCSD's position, as he understands it, is that they have no easement to vacate and  
22 Illinois American Water indicated that they would be happy to support vacating the easement but Ameren  
23 only made clear that even though they had nothing at risk they would not vacate the easement. He said that  
24 he does not know what this information would do for the finding but he could certainly add it if the Board  
25 desires.  
26
- 27 Mr. Randol stated that a ten foot easement is not big enough for water and sewer both because there must be  
28 a ten foot separation unless the sewer is two foot below the water. He said the water main is already located  
29 in front of the subject property.  
30
- 31 Mr. Hall read Item 11.E(3) as follows: In an email dated October 10, 2013, from Elmer Crawford, Ameren  
32 Illinois Senior Engineering Representative, to Shawn Bickers, co-petitioner, Mr. Crawford indicated that  
33 there are electric facilities within the easement along the north and east easement and that there is no  
34 immediate plan to use the south easement, but is not a vacation of the south easement. He asked the Board if  
35 that they believe that this is the same as saying that Ameren is opposed to vacation of the easement.  
36
- 37 Ms. Capel stated no.  
38
- 39 Ms. Griest stated that she disagreed with Ms. Capel.  
40
- 41 Mr. Hall stated that the Board could vote on the interpretation.  
42

1 Ms. Capel stated that the Board cannot vote on someone else's intent. She said that she and Ms. Griest are  
2 interpreting Mr. Crawford's statement in two different ways.

3  
4 Mr. Hall stated that the Board can vote on which interpretation the majority of the Board will support.

5  
6 Ms. Lee stated that it is her opinion that if there is a recorded easement that the utility companies are not  
7 vacating then there is still a recorded easement.

8  
9 Mr. Hall stated that Ms. Griest has suggested evidence which is her understanding that Ameren is opposed to  
10 the easement. He said that he wants the Board to be very careful because if this goes to court the Board does  
11 not have an email from Ameren indicating that they were opposed to the vacation of the easement.

12  
13 Ms. Capel stated that the only evidence that the Board has is the email which indicates that they have not  
14 vacated the easement. She suggested that perhaps the finding should quote the email from Mr. Crawford.

15  
16 Ms. Griest agreed that quoting the email would be appropriate.

17  
18 Mr. Hall stated that quoting from the email will be difficult to do because the actual words are in the context  
19 of a broader statement.

20  
21 Mr. Hall stated that the finding would read as follows:

- 22  
23 • **Even though the proposed construction is located within a recorded utility easement,  
24 neither the UCSD nor Illinois American Water are opposed to vacation of the easement,  
25 Ameren made clear in an email dated 10/10/13 from Elmer Crawford, Senior  
26 Engineering Representative, that there is no immediate plan to use the south easement,  
27 but it is not a vacation of the south easement."**

28  
29 Mr. Hall stated that he wants to make sure that the Board is comfortable with this being a finding related to  
30 whether or not the special conditions result from the applicant.

31  
32 **The Board's Findings for Finding 4, Part A.:**

- 33  
34 **4. For Part A, the requested variance IS in harmony with the general purpose and intent  
35 of the Ordinance.**

36  
37 Ms. Lee stated that For Part A, the requested variance IS in harmony with the general purpose and intent of  
38 the Ordinance because the initial mistake in the permit should not bring consequences to bear in later years.

39  
40 Mr. Hall stated that legally, to allow something like this to go on for 40 years and then all of sudden deciding  
41 that it is so terrible to continue is very questionable.

42

1 Ms. Capel stated that the variance corrects an error that was made during the original construction.

2  
3 Mr. Hall stated that the variance corrects the error and this criteria is the one the Board reviews why there is  
4 a lot coverage limit. He said that the requirement is to allow a certain amount of light and air into the units  
5 and the Board needs to decide if the units have adequate light and air.  
6

7 Ms. Lee asked if there have been previous cases regarding similar lot coverage issues.

8  
9 Mr. Hall stated yes, but each case is so unique that to try a draw some kind of rules from all of the previous  
10 cases is virtually impossible.  
11

12 Ms. Griest stated that the building has always been like this and there has never been any detriment to the  
13 public health, safety, or welfare caused by the building. She said that the Champaign Township Highway  
14 Commissioner has no objection to the variance and the Fire Protection District has not provided comments.  
15 She said that it should be noted that the structure shares a common wall with an adjoining housing unit.  
16

17 Mr. Hall stated that it may be appropriate to note that the structure is adjacent to a large golf course that  
18 provides ample light and air. He said that the variance is literally for the entire building and not just for Mr.  
19 Johnson's portion of that building.  
20

21 Ms. Lee stated that she believes that it is appropriate to note that the structure is adjacent to a large golf  
22 course that provides ample light and air.  
23

24 Ms. Griest stated that the property is bordered by a golf course on two sides and an open space for the  
25 interstate on a third side with a building on only one side that is 50 feet away from the subject building.  
26

27 Ms. Lee asked if the open land to the south of Mr. Johnson's property is entirely owned by the property  
28 owner to the southeast.  
29

30 Mr. Hall stated yes.  
31

32 Ms. Capel stated that the subject property is at the end of Briar Hill Drive and it is very unlikely that the  
33 street will ever be widened or extended.  
34

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

- 37 • **The building has always been like this and there has never been any detriment to the**
- 38 **public health, safety, or welfare caused by the building; and**
- 39 • **The Champaign Township Highway Commissioner has no objection to the variance;**
- 40 **and**
- 41 • **The Fire Protection District has not provided any comments; and**
- 42 • **The property is bordered by a golf course on two sides and an open space for the**

interstate on a third side with a building on only one side that is 50 feet away from the subject building; and

- **The property is at the end of Briar Hill Drive and it is unlikely that the street will ever be widened.**

**The Board’s Findings for Finding 4, Part B.:**

**For Part B, the requested variance IS in harmony with the general purpose and intent of the Ordinance.**

Mr. Randol stated that For Part B, the requested variance IS in harmony with the general purpose and intent of the Ordinance because this is an established subdivision that has been in existence since 1976.

Ms. Capel stated that the construction will not disturb existing utilities. She said that the property is bordered by a golf course on two sides and an open space for the interstate on a third side and the property is at the end of Briar Hill Drive and further development requiring additional utilities in this area is very unlikely.

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

- **This is an established subdivision; and**
- **The construction will not disturb existing utilities; and**
- **The property is bordered by a golf course on two sides and an open space for the interstate on a third side and the property is at the end of Briar Hill Drive; and further development requiring additional utilities in this area is very unlikely;**

Ms. Griest stated that there are two similar additions constructed on townhomes on the property to the south.

Mr. Hall read Ms. Griest’s finding as follows:

- **There are two other similar additions constructed on townhomes on the property to the south.**

**The Board’s Findings for Finding 5, Part A.:**

**For Part A, the requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.**

Ms. Capel stated that for Part A, the requested variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the building has always been like this and there has never been any detriment to the public health, safety, or welfare caused by the building.

1 Ms. Griest stated that the Champaign Township Highway Commissioner has no objection to the variance  
2 and the Fire Protection District has not provided any comments.

3  
4 Mr. Hall read the Boards findings as follows:

- 5
- 6 • **The building has always been like this and there has never been any detriment to the**
- 7 **public health, safety, or welfare caused by the building; and**
- 8 • **The Champaign Township Highway Commissioner has no objection to the variance;**
- 9 **and**
- 10 • **The Fire Protection District has not provided any comments; and**
- 11

12 Ms. Capel stated that the following finding could be added: Adequate light and air is provided by the  
13 abundant open space around the building.

14  
15 Mr. Hall read Ms. Capel’s finding as follows:

- 16
- 17 • **Adequate light and air is provided by the abundant open space around the building.**
- 18

19 **The Board’s Findings for Finding 5, Part B.:**

20  
21 **For Part B, the requested variance WILL NOT be injurious to the neighborhood or otherwise**  
22 **detrimental to the public health, safety, or welfare.**

23  
24 Ms. Capel stated that for Part B, the requested variance WILL NOT be injurious to the neighborhood or  
25 otherwise detrimental to the public health, safety, or welfare because similar additions exist on townhomes  
26 to the south and have not been found to be injurious to the neighborhood. She said that it is unlikely that the  
27 existing easement will be required for new utilities as there are currently no utilities within the easement.

28  
29 Mr. Hall stated that the water lines are within the easement but are in a different location.

30  
31 Ms. Capel stated that she thought that the water lines were across the property line and in the easement on  
32 the property to the south.

33  
34 Mr. Hall stated that Ms. Capel is thinking of the sanitary sewer lines.

35  
36 Ms. Capel stated that the water line runs across the front of the property.

37  
38 Mr. Randol stated that the water line does run across the front of the property and is not in the easement on  
39 the side of the property and actually there is nothing within the side easement.

40  
41 Ms. Capel stated that the Champaign Township Highway Commissioner has no objection to the variance and  
42 the Fire Protection District has no provided any comments.

1

2 Ms. Griest stated that two items of evidence could be added. She said that items 7.H (1) and (2) of the  
3 Summary of Evidence could be added as follows: (1) The subject property is a one lot subdivision that is  
4 unlikely to ever be expanded; and (2) The subject property is at the end of Briar Hill Drive and is bordered  
5 by the Lincolnshire Fields Golf Course on the east and north and Interstate 57 is on the opposite side of the  
6 street so it is unlikely that future development will occur in the vicinity or that new utilities will be needed in  
7 the existing utility easement.

8

9 Mr. Hall read the Board's findings as follows:

10

- 11 • **There are two other similar additions constructed on townhomes on the property to the**  
12 **south which have not been injurious; and**
- 13 • **There are no utilities in the south utility easement; and**
- 14 • **The subject property is a one lot subdivision that is unlikely to ever be expanded; and**
- 15 • **The property is bordered by a golf course on two sides and an open space for the**  
16 **interstate on a third side and the property is at the end of Briar Hill Drive and further**  
17 **development requiring additional utilities in this area is very unlikely; and**
- 18 • **The Champaign Township Highway Commissioner has no objection to the variance;**  
19 **and**
- 20 • **The Fire Protection District has not provided any comments.**

21

22 Ms. Griest stated that she would like to return to Finding 1, Parts A and B and add items of evidence that she  
23 believes is relevant. She said that Items 7.G (1) and (2) should be added to Parts A and B as follows: (1)The  
24 subject property has an average lot width of only 140 feet and has a 10 foot wide utility easement on each  
25 side lot line for an overall net buildable lot width of only 120 feet; and (2) The other five lots on the North  
26 side of Briar Hill Drive have similar sized buildings and are similar in use to the subject property but the lots  
27 are 145 feet wide or wider and 3 of the 4 shared lot lines have no utility easements and therefore the smallest  
28 net buildable lot width among those five lots appears to be Lot 2 with a buildable lot width of 145 feet. She  
29 said that both of these items speak to the overall coverage, setbacks, and utility easement issues. She said  
30 that overall she believes that these findings add weight to won't be injurious to the neighborhood and the  
31 general intent. She said that it shows the evolution of the development in that they made the changes but  
32 continued to build the same sized structures.

33

34 Mr. Hall asked Ms. Griest if the recommendation is to add Items #7.G(1) and (2) from page 11 of the  
35 January 10, 2014, Draft Summary of Evidence, these items have been added to Finding 1, Parts A and B.

36

37 Ms. Griest stated yes. She said that the fact that no utility easement exists on three of the four other shared  
38 lines is a significant factor.

39

40 Mr. Hall added Items #7.G.(1) and (2) to Finding 1, Parts A and B.

41

42 **The Board's Findings for Finding 6, Part A.:**

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41  
42

**For Part A, the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure.**

Ms. Griest stated that for Part A, the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because there is no additional land available for purchase. She said that the Board has not received any evidence that indicates that no additional land is available for purchase but the recorded plat and the current aerial indicates such.

Ms. Capel asked if the Board needs to address that the lot coverage is 44% without the proposed construction and 46% with the proposed construction and does the case require re-advertisement.

Mr. Hall stated that he does not believe that the case requires re-advertisement.

Ms. Griest stated that the 44% is for the existing structure and if the Part B variance were approved that gave approval for the additional 2% in lot coverage.

Ms. Capel agreed.

Ms. Griest stated that an additional finding could be as follows: it maintains the overall appearance of the neighborhood.

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

- **There is no additional land available for purchase; and**
- **It maintains the overall appearance of the neighborhood.**

**The Board’s Findings for Finding 6, Part B.:**

**For Part B, the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure.**

Ms. Capel stated that for Part B, the requested variance IS the minimum variation that will make possible the reasonable use of the land/structure because there is no additional land available for purchase and the addition cannot be sited on any other part of the lot without blocking the view to the golf course.

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

- **There is no additional land available for purchase; and**
- **The addition cannot be sited on any other part of the lot without blocking the view to the golf course.**

1 Ms. Griest stated that the addition is consistent in appearance with similar additions on townhomes to the  
2 south.

3  
4 Mr. Hall read Ms. Griest’s finding as follows:

- 5
- 6 • **The addition is consistent in appearance with similar additions on townhomes to the**
- 7 **south.**
- 8

9 **The Board’s Finding for Finding 7:**

10  
11 **No Special conditions are hereby imposed.**

12  
13 Ms. Capel stated that the Board found positive findings on the following: Finding 1, Parts A and B; and  
14 Finding 2, Part A and B; and Finding 3, Part A; Finding 4, Parts A and B; and Finding 5, Parts A and B; and  
15 Finding 6, Parts A and B; and Finding 7. She said that the Board found a negative finding on Finding 3, Part  
16 B.

17  
18 Ms. Lee asked if there was testimony regarding the one foot space and the neighbor not being opposed.

19  
20 Mr. Hall stated that notices were sent out and staff did not receive any calls from the neighbors voicing  
21 concerns therefore he believes that there were no concerns.

22  
23 Ms. Lee said that the neighbor who believed that the lot line was located in a different area didn’t voice  
24 concerns regarding the addition either.

25  
26 Mr. Hall stated that the Board has no evidence indicating that.

27  
28 Ms. Griest that she does believe that the proposal by the applicant clearly is their action and the finding  
29 should be negative however Items #7.G(1) and (2) speaks volumes towards the DO NOT finding for Finding  
30 3, Part B. She said that there are no utility easements on the 3 of the 4 shared lot lines and the fact that this is  
31 a smaller parcel. She said that the evidence for Finding 1, Parts A and B could also be appropriate for  
32 Finding 3, Part B in support of a finding for DO NOT. She said that if the Board desires to change their  
33 finding for Finding 3, Part B, to DO NOT there might be some alternatives to consider.

34  
35 Mr. Hall stated that the Board must consider that even though construction was begun without a permit there  
36 are other factors that really suggest that the variance is reasonable. He said that there are three findings  
37 which indicate strong support for approval of the variance.

38  
39 Ms. Griest stated that the Board originally included statements regarding the construction beginning without  
40 a permit because it wasn’t critical to the Board’s findings. She said that the Board could indicate that even  
41 though the construction would be located within a recorded utility easement neither the UCSD nor Illinois  
42 American Water are opposed to a vacation of the easement.

1  
 2 Ms. Capel stated that a separate statement could indicate the following: Ameren made clear in an email  
 3 dated October 10, 2013, from Elmer Crawford, Senior Engineering Representative, that “there is no  
 4 immediate plan to use the south easement.”  
 5

6 Ms. Griest stated that the last item would show that there are no similar easements on similar properties that  
 7 are adjacent to the subject property which gives a less likelihood that they would ever want to use them.  
 8

9 Mr. Hall read the Board’s amended finding for Finding 3, Part B as follows:  
 10

11 **The Board’s amended Findings for Finding 3, Part B:**  
 12

13 **For Part B, the special conditions, circumstances, hardships, or practical difficulties DO NOT**  
 14 **result from actions of the applicant because:**  
 15

- 16 • **The subject property has an average lot width of only 140 feet and has a 10 feet wide**  
 17 **utility easement on each side lot line for an overall net buildable lot width of only 120**  
 18 **feet; and**
- 19 • **The other five lots on the North side of Briar Hill Drive have similar sized buildings**  
 20 **and are similar in use to the subject property but the lots are 145 feet wide or wider and**  
 21 **3 of the 4 shared lot lines have no utility easements and therefore the smallest net**  
 22 **buildable lot width among those five lots appears to be Lot 2 with a net buildable lot**  
 23 **width of 145 feet; and**
- 24 • **Even though the proposed construction is located within a recorded utility easement,**  
 25 **neither the UCSD nor Illinois American Water are opposed to vacation of the**  
 26 **easement; and**
- 27 • **Ameren made clear in an email dated 10/10/13 from Elmer Crawford, Senior**  
 28 **Engineering Representative, that “there is no immediate plan to use the south**  
 29 **easement.” ; and**  
 30

31 Ms. Griest stated that Items 7.H.(1) and (2) could be added to the Finding as well to support a DO NOT  
 32 finding.  
 33

34 Mr. Hall read the findings as follows:  
 35

- 36 • **The subject property is a one lot subdivision that is unlikely ever to be expanded; and**  
 37
- 38 • **The subject property is at the end of Briar Hill Drive and is bordered by the**  
 39 **Lincolnshire Fields Golf Course on the east and north and Interstate 57 is on the**  
 40 **opposite side of the street so it is unlikely that future development will occur in the**  
 41 **vicinity or that new utilities will be needed in the existing utility easement.**  
 42

1 Ms. Lee stated that Item # 7.E(2)(j) indicates that the neighbors have been very cooperative in discussing the  
2 addition. She asked if Item # 7.E(2)(j) is discussing the neighbors to the south.

3  
4 Ms. Capel stated yes. She said that Item #7.#(2)(J) is evidence from a previous hearing. She said that the  
5 other thing is that there is 50 foot distance between the two buildings. Ms. Capel stated that a new finding  
6 for Finding #3, Part B, could read as follows: Even though the proposed construction will reduce the side  
7 yard to one foot in lieu of the required five feet, Mr. Bickers, co-petitioner, testified that the neighbors have  
8 been very cooperative in discussing the addition and the nearest building is approximately 50 feet away.

9  
10 Mr. Hall read the Board's finding as follows:

- 11 • **Even though the proposed construction will reduce the side yard to one foot in lieu of**  
12 **the required five feet, Mr. Bickers, co-petitioner, testified that the neighbors**  
13 **have been very cooperative in discussing the addition and the nearest building is**  
14 **approximately 50 feet away.**

15  
16 Ms. Capel asked the Board if they agreed with the amended Finding 3, Part B and the Board agreed,

17  
18 Ms. Capel asked Mr. Hall if the Documents of Record included in the January 10, 2014, Draft Summary of  
19 Evidence and Finding of Fact was current.

20  
21 Mr. Hall stated yes.

22  
23 Ms. Capel entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings of  
24 Fact as amended for Part A.

25  
26 **Ms. Griest moved, seconded by Mr. Randol to adopt the Summary of Evidence, Documents of Record**  
27 **and Findings of Fact as amended for Part A. The motion carried by voice vote.**

28  
29 Ms. Capel entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings of  
30 Fact as amended for Part B.

31  
32 **Ms. Griest moved, seconded by Mr. Randol to adopt the Summary of Evidence, Documents of Record**  
33 **and Findings of Fact as amended for Part B. The motion carried by voice vote.**

34  
35 Ms. Capel entertained a motion to move to the Final Determination for Case 764-V-13.

36  
37 **Ms. Griest moved, seconded by Mr. Randol to move to the Final Determination for Case 764-V-13.**  
38 **The motion carried by voice vote.**

39  
40 Ms. Capel informed the petitioners that two Board members are absent and one Board member has abstained  
41 from the case therefore it is at their discretion to either continue Case 764-V-13 until a full Board is present  
42 or request that the present Board move forward to the Final Determination. She informed the petitioners that

1 four affirmative votes are required for approval.

2  
3 Mr. Johnson and Mr. Bickers requested that the present Board move to the Final Determination.

4  
5 **Final Determination for Case 764-V-13:**

6  
7 **Ms. Griest moved, seconded by Mr. Randol that the Champaign County Zoning Board of Appeals**  
8 **finds that, based upon the application, testimony, and other evidence received in this case, that the**  
9 **requirements for approval in Section 9.1.9C HAVE been met, and pursuant to the authority granted**  
10 **by Section 9.1.6B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**  
11 **Champaign County determines that the Variance requested in Case 764-V-13 is hereby GRANTED to**  
12 **the petitioners Lars Johnson and Shawn Bickers (agent) to authorize the following in the R-4 Multiple**  
13 **Family Residence Zoning District:**

- 14 **Part A. Authorize the following variance for an existing townhouse:**
  - 15 **(1) lot coverage of 44% in lieu of the maximum allowed 40%; and**
  - 16 **(2) a front setback of 40 feet from the centerline of Briar Hill Drive in lieu of**
  - 17 **the minimum required 55 feet; and**
  - 18 **(3) a front yard of 20 feet in lieu of the minimum 25 feet.**

- 19
- 20 **Part B. Authorize the following variance for an addition to an existing townhouse:**
  - 21 **(1) authorize construction of a building addition in a recorded utility**
  - 22 **easement in lieu of the requirement that no construction shall take place**
  - 23 **in a recorded utility easement; and**
  - 24 **(2) a side yard of 1 foot in lieu of the minimum required 5 feet; and**
  - 25 **(3) lot coverage of 45.5% in lieu of the maximum allowed 40%.**

26  
27 Ms. Capel requested a roll call vote:

28			
29	<b>Lee-yes</b>	<b>Randol-yes</b>	<b>Capel-yes</b>
30	<b>Griest-yes</b>	<b>Miller-absent</b>	<b>Passalacqua-abstained</b>
31	<b>Thorsland-absent</b>		

32  
33 Mr. Hall informed Mr. Johnson and Mr. Bickers that they have received an approval for their requested  
34 variance.

35  
36 **6. New Public Hearings**

37  
38 **Case 768-AT-13 Petitioner: Zoning Administrator Request: Amend the Champaign Zoning**  
39 **Ordinance by adding the following standard conditions and special provisions to Section 6.1.3: Part**  
40 **A. Revise the use category “heliport/restricted landing area” to heliport-restricting landing area: and**  
41 **revise the existing standard conditions and special provisions for the use category “heliport-restricted**  
42 **landing area” and add new standard conditions and special provisions, as follows: (1) Number the**

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

26  
 27 Ms. Capel entertained a motion to continue Case 768-AT-13 to the January 30, 2014, meeting and docket  
 28 Case 768-AT-13 as the first case to be heard at that meeting.

29  
 30 Ms. Griest moved, seconded by Ms. Lee to continue Case 768-AT-13 to the January 30, 2014, meeting  
 31 and docket Case 768-AT-13. The motion carried by voice vote.

32  
 33 Ms. Griest moved, seconded by Mr. Passalacqua to move Case 768-AT-13 as the first hearing on the  
 34 January 30, 2013, agenda to be heard to accommodate those who attended tonight's hearing. The  
 35 motion carried by voice vote.

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 37 **7. Staff Report**

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 39 None

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 41 **8. Other Business**  
 42 **A. Review of Docket**

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Mr. Randol asked Mr. Hall why Case 765-V-13 is not indicated on the docket.

Mr. Hall stated that Case 765-V-13 has been withdrawn.

**B. 2014 Zoning Board of Appeals Calendar**

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

None

**10. Adjournment**

Ms. Capel entertained a motion to adjourn the meeting.

**Mr. Randol moved, seconded by Mr. Passalacqua to adjourn the meeting. The motion carried by voice vote.**

The meeting adjourned at 9:26 p.m.

Respectfully submitted

Secretary of Zoning Board of Appeals