

**MINUTES OF REGULAR MEETING****CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

1776 E. Washington Street  
Urbana, IL 61802

**DATE:** May 11, 2023**PLACE:** Shields-Carter Meeting Room

1776 East Washington Street

Urbana, IL 61802

**TIME:** 6:30 p.m.**MEMBERS PRESENT:** Ryan Elwell, Larry Wood, Lee Roberts, Tom Anderson, Nolan Herbert, Jim Randol**MEMBERS ABSENT:** Thaddeus Bates**STAFF PRESENT:** John Hall, Susan Burgstrom, Stephanie Berry**OTHERS PRESENT:** Josh Kamerer, Stephanie Bryant, Roger Henning, Susan Schwartz, Jan Carter Niccum, Darrel Rice, Todd Herbert, Justin Leerkamp, Ted Hartke**1. Call to Order**

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

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

The roll was called, and a quorum declared present.

Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the Witness Register.

**3. Correspondence - None****4. Minutes – March 30, 2023**

Mr. Elwell asked if there was any discussion on the March 30, 2023 minutes.

**Mr. Randol moved, seconded by Mr. Roberts, to approve the March 30, 2023 minutes. The motion carried by voice vote.**

Mr. Elwell asked if there was any discussion on the April 13, 2023 minutes.

**Mr. Roberts moved, seconded by Mr. Herbert, to approve the April 13, 2023 minutes. The motion carried by voice vote.**

**5. Audience participation with respect to matters other than cases pending before the Board - None****6. Continued Public Hearings****Case 086-AT-23**

1 Petitioner:  
2 Request:

**Zoning Administrator**  
**Amend the Champaign County Zoning Ordinance as follows in order to ensure compliance with Public Act 102-1123:**

- 3
- 4 **1. Add the following definitions to Section 3.0 Definitions: FACILITY**
- 5 **OWNER, NON-PARTICIPATING PROPERTY, OCCUPIED**
- 6 **COMMUNITY BUILDING, PARTICIPATING PROPERTY.**
- 7
- 8 **2. Revise the following definitions in Section 3.0 Definitions:**
- 9 **PARTICIPATING DWELLING, NON-PARTICIPATING**
- 10 **DWELLING, COMMUNITY PV SOLAR FARM**
- 11
- 12 **3. Revise Section 6.1.4 WIND FARM SPECIAL USE PERMIT to**
- 13 **establish an effective date for regulating previously authorized WIND**
- 14 **FARMS.**
- 15
- 16 **4. Add new Section 6.1.5 PROPOSED WIND FARM SPECIAL USE**
- 17 **PERMIT to establish regulations applicable after an effective date for**
- 18 **proposed WIND FARMS, including but not limited to:**
- 19 **a. Establish a separation from each WIND FARM TOWER of 1.1**
- 20 **times the maximum blade tip height to the nearest**
- 21 **PARTICIPATING DWELLING, to the center point of a public**
- 22 **street right-of-way, to the nearest non-participating property**
- 23 **line, and to third-party transmission lines.**
- 24
- 25 **b. Establish a separation from each WIND FARM TOWER of 2.1**
- 26 **times the maximum blade tip height to the nearest NON-**
- 27 **PARTICIPATING DWELLING or OCCUPIED**
- 28 **COMMUNITY BUILDING, and to the nearest point on the**
- 29 **property line of fish and wildlife areas and Illinois Nature**
- 30 **Preserve Commission protected lands.**
- 31
- 32 **c. Establish that the total WIND FARM TOWER HEIGHT**
- 33 **(measured to the tip of the highest rotor blade) must receive a**
- 34 **Determination of No Hazard to Air Navigation by the Federal**
- 35 **Aviation Administration under 14 CFR Part 77.**
- 36
- 37 **d. Establish that the financial assurance for WIND FARMS will**
- 38 **be based on the requirements in the Agricultural Impact**
- 39 **Mitigation Agreement but will be required to be an Escrow**
- 40 **Account.**
- 41
- 42 **e. Add other new standard conditions consistent with Public Act**
- 43 **102-1123.**
- 44
- 45 **5. Renumber existing Section 6.1.5 to new Section 6.1.6**
- 46 **PHOTOVOLTAIC (PV) SOLAR FARM and establish an effective**
- 47 **date for regulating previously authorized PHOTOVOLTAIC (PV)**
- 48 **SOLAR FARMS.**
- 49

- 1                   **6. Add new Section 6.1.7 PROPOSED PHOTOVOLTAIC (PV) SOLAR**  
 2                   **FARM to establish regulations applicable after an effective date for**  
 3                   **proposed PHOTOVOLTAIC (PV) SOLAR FARMS, including but not**  
 4                   **limited to:**
- 5                   **a. Establish a separation of 50 feet between the PV SOLAR**  
 6                   **FARM fencing and the street centerline.**
- 7
- 8                   **b. Establish a separation of 50 feet between the nearest edge of any**  
 9                   **component of the PV SOLAR FARM and the nearest point on**  
 10                   **the property line of the non-participating property.**
- 11
- 12                   **c. Establish a separation of 150 feet from the nearest edge of any**  
 13                   **component of the PV SOLAR FARM and the nearest point on**  
 14                   **the outside wall of an OCCUPIED COMMUNITY BUILDING**  
 15                   **or NON-PARTICIPATING DWELLING.**
- 16
- 17                   **d. Establish that the financial assurance for PV SOLAR FARMS**  
 18                   **will be based on the requirements in the Agricultural Impact**  
 19                   **Mitigation Agreement.**
- 20
- 21                   **e. Add other new standard conditions consistent with Public Act**  
 22                   **102-1123.**
- 23

24 Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign  
 25 the witness register for that public hearing. He reminded the audience that when they sign the witness  
 26 register, they are signing an oath.

27

28 Mr. Hall, Zoning Administrator, stated that at the Board's desks tonight is a letter from the State's  
 29 Attorney. He said these are letters to each Zoning Board of Appeals member and staff needs to have them  
 30 back at the end of tonight's meeting. He said staff doesn't like these to circulate, but they are the Board's  
 31 during the meeting. He said these letters give a little bit more detail about the State's Attorney's opinion.  
 32 He said in the mailing that went out, Staff had proposed a new version of the amendment, that Staff is  
 33 calling the less strict interpretation, based on information that was given at a March 27, 2023 seminar in  
 34 Springfield, Illinois put on jointly by the Farm Bureau and the Association of County Boards. He said that  
 35 he can't stress enough that the materials presented at the meeting was one view of what amendments could  
 36 be following on the passage of Public Act 102-1123. He said that material was presented by an attorney  
 37 who made it clear that, that wasn't the only interpretation; in fact, that wasn't Staff's interpretation when  
 38 they first read Public Act 102-1123 and it wasn't the interpretation of the Champaign County State's  
 39 Attorney. He said after sitting through that seminar, in his view, if someone is saying that they don't have  
 40 to follow a strict interpretation of Public Act 102-1123, then he felt like Staff needed to raise that as a  
 41 possibility to this Board, so the less strict interpretation adds back almost everything that they cut out that  
 42 doesn't contradict the requirements of the Public Act 102-1123. He said from day one Staff had questions  
 43 about whether they could require a noise study, because requiring a noise study is more restrictive than  
 44 not requiring a noise study, so that is in the less strict version. He said all the safety requirements that were  
 45 in the original amendment are in this and, in fact, they included other things, because by the nature of the  
 46 Public Act 102-1123 establishing statutory requirements that are not supposed to be changed, Staff wanted  
 47 to landmark that in the amendment for future Zoning Administrators and future Zoning Boards. He said  
 48 the Board saw several places where Staff added items; for example, the separations were added as a  
 49 common statement. He said this separation is a statutory requirement by 55 ILCS 5/5-12020 and shall not

1 be increased.  
2

3 Mr. Hall said likewise, Staff added a new section in Section 9, no wind farm or PV solar farm approval  
4 shall include any special condition or waiver, that changes in these statutory requirements in Section 6.1.5  
5 or Section 6.1.7, because five years from now, they won't remember what was in Public Act 102-1123,  
6 and he thinks it is important to put these things in the text amendment. He said Staff added a new  
7 requirement regarding findings for Special Use Permits, reading as follows, "statutory requirements in  
8 Section 6.1.5 or Section 6.1.7 shall not be construed to be inadequate in any way, and shall not be the  
9 basis for negative findings of fact for any wind farm or PV solar farm." He called on Mr. Anderson.  
10

11 Mr. Anderson asked what page number he was reading from.  
12

13 Mr. Hall said the new section in Section 9, he was reading from page 46 of 46 in Attachment B, but they  
14 also appear in Attachment C, because they apply whether they are following the strict interpretation or the  
15 less strict interpretation. He said the new information about the statutory requirement he read, he was  
16 reading that from page five of 46 in Attachment B, but it is also in Attachment C, because it applies either  
17 way. He read from page three in Supplemental Memo #2, that went out today or yesterday to the Board,  
18 also adds to the paragraph talking about the deadlines for the beginning of a public hearing and for the  
19 final determination following the close of the public hearing. He said they decided to include a proviso in  
20 there that those deadlines could be waived by the developer. He said they found that three months every  
21 year, they just can't meet the 30-day deadline for final action by the County Board, unless the County  
22 Board changes their calendar and they have never had luck with the County Board changing its calendar  
23 for the Zoning Board of Appeals. He said for example, there was a final decision for say in September; if  
24 the wind farm developer wasn't willing to waive that deadline, they would recommend to the Zoning  
25 Board of Appeals to continue the public hearing to October, so they could meet that 30-day deadline. He  
26 said that it is likely they would get cooperation from a wind farm developer in a situation like that, but if  
27 they want to go for another month and half, that is fine too – kind of housekeeping on those things. He  
28 said the big idea though is that there is legal risk if they don't follow the strict interpretation. He said that  
29 they don't know how much risk, they know that the State's Attorney's Office would be willing to defend  
30 them in that situation, so they're not opposed to adopting the less strict interpretation, and his guess is that  
31 municipalities in Champaign County would like them to follow the less strict interpretation. He would  
32 assume the neighbors would prefer a less strict interpretation, because it includes more provisions for  
33 protection of neighbors, but it doesn't change those separations that everybody is going to disagree with,  
34 and he knows that, but it does do other good things. He said from a staff level, they think the less strict  
35 interpretation is better than the stricter even though it carries some legal risk.  
36

37 Mr. Elwell asked if there were any questions from the Board.  
38

39 Mr. Wood stated on the solar stuff, there is part in there that states the separation from an incorporated  
40 municipality was the one and one-half mile and that is in the less strict interpretation, but there is no  
41 restriction on that in the strict interpretation.  
42

43 Mr. Hall said that is right, because there is no separation in the Public Act 102-1123 and in the stricter  
44 version, they were hewing to the Public Act 102-1123 as much as possible.  
45

46 Mr. Wood asked him if he thought that was a liability, he means just like the case they just did on the  
47 Medanos Solar Farm where they were asking for a variance to be within the one and one-half mile from  
48 the Village of Homer's municipality. He asked if that would result in a litigation issue for the County to  
49 maintain that one and one-half mile if a solar company wanted to come back and request that again.

1 Mr. Hall said that is probably one of the more prominent things that might be subject to some legal risks,  
2 but on the other hand, he knows it is terribly important to municipalities.

3  
4 Mr. Wood agreed with him.

5  
6 Mr. Elwell asked if there were any other questions. Seeing none, he moved to the Witness Register. He  
7 called Justin Leerkamp to step up to the testimony microphone and state his full name and address and  
8 commence with his testimony.

9  
10 Justin Leerkamp, 548 County Road 1900 East, Sidney, Illinois, stated that he had noticed the improved  
11 audio in the meeting room, and it is much better. He only really has one question for the Board tonight.  
12 He said last year the Board heard a lot of testimony in Case 037-AT-22, and the Board voted on it, sent it  
13 to ELUC, had the joint meeting, then ELUC entertained it at least one more meeting, and then ELUC sent  
14 it back. He said now they are in this situation with the State, so really, they are now operating on a new  
15 case number – Case 086-AT-23. He asked if all the testimony that was given in those prior four meetings,  
16 emails, and evidence from Case 037-AT-22 was considered a part of Case 086-AT-23. He asked if all that  
17 testimony given from Case 037-AT-22 is not a part of the public record for Case 086-AT-23, since that  
18 case is gone now. He guesses his concern is the turnout is weighed, he feels like a lot of people have said  
19 their peace, but if they are starting from scratch, then maybe they need to be encouraged to be here and it  
20 would frankly be a waste of time for the Board and staff to hear it again.

21  
22 Mr. Hall said that ZBA could add that back to the Finding of Fact as relevant evidence, but from a staff  
23 view, it's not terribly useful, because his recollection is that most of the comments had to do with  
24 separation and noise level, which the State is telling them what that has to be. He said while the County  
25 Board can do whatever they want and the ZBA can recommend whatever they want, from a staff level  
26 they are not going to be recommending anything that runs counter to what the State has clearly come out  
27 and said is a requirement.

28  
29 Mr. Leerkamp said his thought was that maybe all that testimony might provide a little bit of background  
30 to why this Board or the other boards voted the way they did even if it is perhaps not in compliance with  
31 the new Public Act 102-1123. He said just if it was a matter of record, then if they only looked back at  
32 Case 086-AT-23 and said there wasn't much public outcry or testimony about the separation. He knows  
33 their hand is forced by the State, but he felt like there was a lot of good community involvement and would  
34 hate to see that go to waste.

35  
36 Mr. Wood said it is a matter of public record regardless, they went through all that work. He said it is not  
37 necessarily attached to Case 086-AT-23, but it is a matter of public record. He could see later down the  
38 road around three or four years into this and have several wind farms go up, and all sudden they have a  
39 lot of problems out there with noise and stuff like that.

40  
41 Mr. Hall said if the wind farm is meeting the Illinois Pollution Control Board noise limit, then there is no  
42 liability even though there may be complaints. He said yes, it is a matter of public record, he understands  
43 Mr. Leerkamp's comments about seeming to give short shrift to all the work and effort that everybody put  
44 in. He said on the other hand, the Finding is only about 14 pages long, so if the ZBA wants staff to go  
45 back and add what was in those previous Findings of Fact, they could do that.

46  
47 Mr. Leerkamp said he is not trying to make more work or make it more complicated for Staff, it is probably  
48 in these rare cases where they get a lot of public involvement like Cases 037-AT-22 and 086-AT-23, and  
49 he would hate to see that be for nothing.

1 Mr. Wood asked Staff if it was more work, they would just cut and paste, right.  
2  
3 Mr. Hall said it is just cut and paste.  
4  
5 Mr. Leerkamp said that seems straightforward.  
6  
7 Mr. Randol said he thinks it should be included in Case 086-AT-23.  
8  
9 Mr. Wood said given the litigious society that they have these days, he would not be surprised at some  
10 point that somebody is going to sue regardless. He said tied up at the State level, they have things that  
11 have been passed out there and one judge goes this way, and another judge goes this way, and where it is  
12 going to land, they really have no idea. He said if it ends up being a health issue at some point down the  
13 line like a lot of things that they never thought would be a health issue way back when, but they are now,  
14 they'll find out. He agrees about including the previous testimony so it is there for the public record.  
15  
16 Mr. Hall said okay they can do that.  
17  
18 Mr. Elwell asked if there was anything else or any questions for Mr. Leerkamp. Seeing none, he thanked  
19 Mr. Leerkamp. He asked if anyone else would like to testify in Case 086-AT-23 and if so, please raise  
20 their hand. He asked Roger Henning to please state his full name and address.  
21  
22 Roger Henning, 1664 East County Road 600 N, Philo, stated that he had more of a question for the Board  
23 and Staff. He said the State is forcing this rule upon them, then is it up to the County to police this then.  
24  
25 Mr. Hall said the County enforces the Zoning Ordinance; the State is telling them that if they have a  
26 Zoning Ordinance with wind farm and solar farm requirements, they can't have anything stricter than this,  
27 so yes, it would be the County enforcing it.  
28  
29 Mr. Henning asked who does the noise testing.  
30  
31 Mr. Hall said they would have to get a noise consultant to do that at whatever point that became necessary.  
32  
33 Mr. Henning asked who pays for that.  
34  
35 Mr. Hall said the taxpayers unless the wind farm is found to be in violation with the Illinois Pollution  
36 Control Board rules, then they can charge back the cost of the noise study, but if there is a complaint and  
37 it's not a violation of the Illinois Pollution Control Board rules, that cost is absorbed by the County.  
38  
39 Mr. Henning said he could see a lot of people complaining and the County paying a lot of bills; he is just  
40 curious how this is all going to pan out if it happens, which he believes it will, but he wondered who was  
41 going to police it. He asked the Board if there was anything else and thanked them.  
42  
43 Mr. Elwell asked if there were any questions for this witness. Seeing none, he thanked Mr. Henning. He  
44 asked if anyone else would like to testify in this case and if so, please raise their hand.  
45  
46 Ms. Burgstrom told him that Mr. Hartke had told her he was going to present at tonight's meeting.  
47  
48 Mr. Elwell said that he wouldn't close the Witness Register for Case 086-AT-23, they could wait for a  
49 little bit. He said asked if there were any thoughts or further discussion from the Board or staff.

1 Mr. Randol said he wants it to go on record that it burns his behind that they have a Champaign County  
2 Zoning Board of Appeals, and the State can tell them what they can and cannot do in their county. He said  
3 what is the point of this Board when it comes to making important decisions.  
4

5 Mr. Hall said in fact a couple of Illinois counties have decided that it is not worth holding public hearings  
6 for wind farms and solar farms. He said they are making them by-right, and when making them by-right  
7 they are not even holding a public hearing to disseminate the information and to be able to ask questions  
8 of the wind farm and solar farm developers. He thinks an important part of what the ZBA does simply is  
9 have a forum where they must give honest answers under oath. He said neighbors can ask questions of the  
10 wind farm and solar farm developers and they must get an answer under oath, and that is really the only  
11 reason to have Special Use Permit requirements even though the County could still add special conditions  
12 related to things that are not in the new Public Act 102-1123. He said things like any safety concerns and  
13 things like that, but he agrees the pivotal issues and especially the wind farms have been taken over by the  
14 State, but having a public hearing is still an important part of the whole process.  
15

16 Mr. Randol said he finds it pretty interesting since he has traveled around the central part of the State  
17 pretty well and hasn't seen any wind farms or big solar farms yet around the Springfield/Sangamon County  
18 area. He said he could be wrong, he could have missed them, but he hasn't seen them.  
19

20 Mr. Hall said they have multiple thousands of acres solar farm going in Sangamon County sometime soon.  
21 He said he thinks it has been approved or if it's not, it will be approved soon, and it's literally thousands  
22 and thousands of acres. He said he doesn't know which part of the county it's going to be in.  
23

24 Mr. Elwell said he believe he heard where Senator Chapin Rose added, and it probably won't make it into  
25 legislation, a wind farm to Millennium Park in Chicago. He said he doesn't anticipate that going too far,  
26 but there was work done in that area.  
27

28 Mr. Wood asked Mr. Hall which counties are doing it by right that he knows of.  
29

30 Mr. Hall said Kankakee and he thinks Woodford.  
31

32 Mr. Wood said McLean County is practically full of wind farm towers; they're not nearly as densely  
33 populated as we are, but all you have to do is cross the line and that's all you see.  
34

35 Mr. Elwell asked if there was anyone who would like to testify in this case, and if so, please raise their  
36 hand. He called on Mr. Rice and asked him to state his name and address and commence with his  
37 testimony.  
38

39 Mr. Darrel Rice, 726 CR 1800E, Philo, said he had a question that he brought up at the last meeting. He  
40 said he didn't know if it was addressed by the State or if there's still something the County can do with  
41 this, and that regards underground farm tile drainage. He said he is a drainage district commissioner, and  
42 he believes Mr. Herbert is too. He said drainage is so important to them; a lot of our ground would just be  
43 swampland without it. He said he was hoping to recommend that the agriculture mitigation part of the  
44 wind farm would require an open trench for inspection before that is closed up so that we can see any  
45 damage as it occurs rather than find it down the road as a much more costly problem. He asked if that is  
46 something that is addressed by the State, and if not, could we discuss adding that at the County level.  
47

48 Mr. Hall said the Agricultural Impact Mitigation Agreement doesn't explicitly provide for that; all they  
49 provide for is how repairs are to be made. He said he spent a lot of time thinking about that, and he is very,

1 very hesitant to say that Champaign County can inspect all the open trenches in a timely enough way for  
2 wind farm contractors to be happy. He said he is not willing to say they have anyone on their staff capable  
3 of going out and inspecting an open trench to see if there are disturbed tiles. He said if it is really obvious,  
4 anyone can do it; he has an idea that that's not really the trick in doing open trench inspections. He said  
5 he hadn't proposed anything and had not forgotten about Mr. Rice's comment – he and Ms. Burgstrom  
6 had talked about it a lot. He said another thing in his experience with their tiny, tiny 30 wind turbine tower  
7 development in California Ridge is that tile interruptions were about the only thing he ever heard about,  
8 and they were always corrected. He said so in his experience, it's not an issue; yes, it may happen, but  
9 we've always gotten a good response. He said that may be because they had a good contractor on that  
10 project, probably won't have the same contractor on other projects. He said it may be because the  
11 developer was more interested in doing a better job, he doesn't know. He said the idea of requiring  
12 inspection of all of the trenching for even a 30-tower wind farm is intimidating to him. He would say that  
13 the ZBA can add that as a special condition if it's in an area where the Board thinks special care should  
14 be taken, the Board could require that as a condition. He said it could be paid for out of the wind farm  
15 application fees. He said frankly he thinks if that were to be done, we should get some engineering firms  
16 lined up to go out and do those inspections in a serious way. He said he does not know what that would  
17 cost, he does not even know that local engineers anymore have enough people on staff to go out and do  
18 those things in a timely way.

19  
20 Mr. Rice suggested to just have the local drainage district commissioners have that option, that  
21 opportunity. He said if they want to do it they can, if they don't, they can pass on it; that way it won't cost  
22 the County anything. He said he thinks all drainage district commissioners would appreciate that  
23 opportunity because it's the big tiles that they're worried about, and they know where they are.

24  
25 Mr. Hall asked Mr. Rice if he was just talking about drainage district tile or all tile.

26  
27 Mr. Rice said he was talking specifically about drainage district tile, what other kind did he have in mind.

28  
29 Mr. Hall said all the private tile.

30  
31 Mr. Rice said oh, okay.

32  
33 Mr. Hall said that's a great idea for the inspection of drainage district tile.

34  
35 Mr. Rice asked what about if any landowner that is affected has that option – drainage district tile for the  
36 drainage district commissioners, and private tile, which where they're at is anything under 12 inches, by  
37 the landowner. He said that way the landowner can ask his tenant farmer to check it out before they cover  
38 it up. He said some of these problems won't surface for what could be years, and you won't know you  
39 even have a problem until it's a big problem.

40  
41 Mr. Hall said in regards to the private landowners, they can already get that into their lease; they could  
42 say they want to be able to go out and inspect every trench on their land. He said he thinks the view from  
43 the County Board would be that is actually more suitable for a private instance. He said with the drainage  
44 districts, he thinks that is something they could, similar to the municipal ETJ, there's probably heightened  
45 risk there because the Agricultural Impact Mitigation Agreement is looked at as controlling all of those  
46 things, but we could come back at the next meeting with a requirement that drainage districts be allowed  
47 to inspect. He asked if drainage districts would always know the exact locations where they need to check  
48 for their tiles.

49



1 Mr. Rice said they're going to have a pretty good idea, but if it's an open trench they can just follow it  
2 and look. He said he would have to disagree that it won't affect anybody that is a participant because if  
3 he's a non-participating landowner, and he's upstream of a participating landowner, their decision can  
4 definitely affect his drainage. He said you can't just look at the people that are participating because it  
5 affects way more than just them. He said that's regarding the private tile, which is less than 12 inches. He  
6 said he would like that to be considered.

7  
8 Mr. Hall said he thought the private tile cutoff was typically eight inches, but Mr. Rice is saying 12 inches.

9  
10 Mr. Rice said it is 12 inches in their drainage district. He said some private tile can be 15 inches. He said  
11 you're going to affect everybody that's upstream, which can be a big watershed of non-participating  
12 landowners.

13  
14 Mr. Wood asked if the absentee landlords are going to be concerned about that.

15  
16 Mr. Rice said some will and some won't, but he thinks the tenants would be and they would talk to their  
17 landlords and stress the importance of it. He said he knows his landlords would be; it affects the ground  
18 and it affects what kind of a crop you can get – it's a big deal.

19  
20 Mr. Elwell asked if there were any questions for Mr. Rice.

21  
22 Mr. Herbert said he thinks it would be kind of tough to stay only on district tile, especially in areas where  
23 there might not be a lot of district tile, but there's a lot of big tile that is draining a lot of land. He said he  
24 knows some districts are more proactive than others on some of this stuff; he thinks it's all important. He  
25 asked how you keep a watchful eye on all of it.

26  
27 Mr. Hall asked Mr. Rice how he could contact him if he wanted his review of something before the next  
28 meeting.

29  
30 Mr. Rice said he put his number on the sign-in sheet. He said just last spring they had a major water  
31 problem on the ground they were farming, and the busted tile wasn't even on their ground, it was upstream  
32 on the neighbor's farm, so they had to get the neighbor excited so they could get their crop planted. He  
33 said it definitely affects everybody downstream.

34  
35 Mr. Randol said sometimes it can take years for a damaged tile to show up. He said he's with the Seymour  
36 Water District, and they just had an issue last fall. He said they ran a lot of water line; the contractor put  
37 it in 20 years ago in 2002. He said last fall a hole showed up in the field and they had a contractor come  
38 in and dig it up and the water line and the power company both had cut a six-inch tile and it took that long  
39 for it to come to the surface. He said when the line was put in, it was trenched by the water company and  
40 the electric company, so obviously a tile showed up whenever they were trenching, but they kept right on  
41 going, and 20 years later a hole shows up that you could put a pickup bed in where it had been eroding all  
42 that time and finally reached a point that it caved in.

43  
44 Mr. Rice said that a wind farm might not be in existence by that time, so then how are you going to get it  
45 fixed.

46  
47 Mr. Elwell thanked Mr. Rice and called Mr. Hartke to testify.

48  
49 Ted Hartke, 1183 CR 2300E, Sidney said we would not go through this whole slide show, it's huge. He

1 said we are going to start on page 17. He said this slide show is from 2016 when he went to Argyle  
2 Township in Sanilac County, Michigan. He said Invenergy was there trying to build a wind farm in Argyle  
3 Township and those citizens wanted to know what happened and needed some input. He said he thought  
4 it was good to show them the June 2011 Invenergy California Ridge project application that they gave to  
5 Vermilion County. He said in this analysis, they found some problems about their statements. He said  
6 they talked about the ambient nighttime sound levels in the wind farm, and then they said the highest  
7 overall predicted wind turbine noise on average was going to be 45 dB(A). He said they said the loudest  
8 modeled predicted turbine sound level at the receptor was 45 dB(A). He said they said this is a relatively  
9 low level of outdoor sound, comparable to a quiet living room, a quiet bedroom, or a soft whisper at five  
10 feet. He said they said with these conservative additions, the analysis indicates that the majority of  
11 locations would experience sound levels of less than 40 dB(A) outside the house. He said they said that  
12 this level is sufficiently low enough to minimize or eliminate any potential for sleep interference. He said  
13 in his previous discussions and requests with this Board he wanted a 39 dB(A) noise level limit so that  
14 way we didn't get to the 40 dB(A) level sleep deprivation/sleep impacts/health impacts that go along with  
15 no sleep and stress. He said he wanted everyone to see that the wind company already says in their  
16 assessments that louder than 40 dB(A) is where they will have sleep interference. He said they also  
17 discussed their preliminary ambient noise levels; they said that the new noise was going to be within a  
18 tolerance of safety for human health and welfare and at or below the ambient noise existing on site today.  
19 He said he is here to tell you that this production from Invenergy was absolutely wrong. He said that was  
20 all happening in 2009. He said in 2014, this noise level compliance analysis came out of Invenergy's  
21 acousticians, Mr. Hankard and Dr. Schomer. He said that Michael Hankard has been consulted by this  
22 Board or the County Administrator and referred to and asked questions of; he's given us feedback here in  
23 Champaign County. He said the first time he met Michael Hankard was at his property; he was there on a  
24 Saturday in August, and he started this noise study. He said the first thing Mr. Hankard said to him was "I  
25 don't envy you one bit" because he knew he was having troubles. He said Dr. Schomer, who they had  
26 talked to earlier in the spring, couldn't help him because Dr. Schomer said he was under contract doing  
27 research for Invenergy. He said he wants everyone here to know that Dr. Schomer, who says wind turbines  
28 should be 3,250 feet away from homes, couldn't help them because he was already tied up with Invenergy  
29 at the time.

30  
31 Mr. Hartke referred to a map of where they took the noise measurements. He referred to the closest turbine  
32 to his home and said they put the microphone at the north property line. He said they put another  
33 microphone over by the Hope Church, which has since been torn down. He referred to a second turbine  
34 that was 2,225 feet from his home; this is the one they were downwind of and that caused them the most  
35 problems. He said in the analysis, they took the noise from the microphones, and they didn't measure any  
36 noise at his house. He said what they did was they gave him a modeled estimate of what the noise was at  
37 his home. He said they would not provide any of the noise levels from his property line – they refused to  
38 tell them what the noise levels were there. He said they deducted that extra little bit of distance and gave  
39 him the loudest allowable numerical IPCB noise level at his home and told him it was like 45.5-46 dB(A).

40  
41 Mr. Hartke said he would like to fast-forward this into the future of Champaign County. He referred to a  
42 piece of land on the map and said he saw a potential for a home site right there in the empty field; this  
43 would probably meet the Champaign County zoning requirements to build a home on. He said if it's  
44 already too loud at his house here (pointed at his house nearby on the map) and there just happens not to  
45 be a home on this property yet, and this property here is not signed up with an easement, they don't have  
46 any interest in wind turbines, they think they're bad, let's say, and that person wants to build a home on  
47 that site and there's two trees, the well is already dug because they planned ahead, how is it constitutional  
48 that these folks get to become a noise abatement zone with noise levels that are so high that they have  
49 sleep disturbance in the home that they have yet to build. He said he wanted everyone to consider that

1 when you worry about having a lawsuit filed against you for protecting a vulnerable, weak person who  
2 doesn't have enough money to file their own lawsuit in the opposite direction. He said he is asking our  
3 County Board, the ELUC committee, and this Board not to be the middleman who gives this land away  
4 for a free easement for noise and flicker and whatever else we are going to discuss.  
5

6 Mr. Hartke said that Michael Hankard delivered this noise study, and Mr. Hartke had a couple of  
7 acousticians, one from Maine and another from Michigan, look at the noise study. He said they looked at  
8 it and he wanted to point out a few things. He said that Invenergy hurried up and got Hankard to start their  
9 work in August. He said on October 8, his birthday, Invenergy brought the results to a board meeting. He  
10 said a few minutes before Invenergy could present their results, a citizen named Kim from McLean County  
11 came up and said she wanted everyone to know that this noise study is baloney because they did this noise  
12 analysis in August and September. He said those are the periods when the U.S. Fish and Wildlife Service  
13 has a curtailment order and those turbines at night are not running at full RPM to allow the bats to migrate  
14 and not be killed by wind turbines. He said she sat down, and the Invenergy attorney, Michael Blazer,  
15 stood up and said they didn't really get very many windy nights and they think their noise study needs to  
16 go for another two months. He said he thinks Invenergy was trying to get by with a fast one there. He said  
17 the acoustician was there that night, but he said nothing, and he thought that was pretty revealing.  
18

19 Mr. Hartke said Steven Ambrose then stepped in. He said in December 2014, about a year after the noise  
20 study was done, Mr. Ambrose did an analysis of the noise study and wrote these comments: he reviewed  
21 the noise level compliance analysis, and it's lacking; the measurements were made without an observer,  
22 which contradicts the IPCB rules. He said also the measurements were made during mandatory operation  
23 curtailment months August and September, or during harvesting months October and November. He said  
24 Mr. Ambrose had a lot of criticisms; he talks about some of the justifications that were made in that wind  
25 study noise analysis. He said Mr. Hankard said at a certain point the turbines will reach a maximum  
26 rotational speed and the noise levels do not continue to increase with increasing wind speed. He said that  
27 Hankard said this is false, because blades can be feathered back – they can tip the blades back, maintain  
28 their speed, but the wind pressure and the flex on those blades are going to be greatly reduced, and the  
29 only way to know if the wind company was being honest in doing the noise analysis correctly is to find  
30 out what the actual electrical production was out of those turbines, which could have had feathered blades  
31 spinning at the full rotational speed but not have the air pressure pulse or blade flex that was causing their  
32 sleep disturbances.  
33

34 Mr. Hartke said the next one talked about ground winds making noise. He said that Mr. Ambrose wanted  
35 Mr. Hankard to reposition the microphones; he just didn't like where they were positioned. He then moved  
36 on to a statement that was made about the uncertainties with the noise levels and at times when they  
37 exceeded, they blamed it on harvest noise or cars driving by and things. He said this is the part where  
38 IPCB rules require that the noise analysis be observed with a person present to make notes about those  
39 sections of noise levels that were exceeded, and they could delete those from the data. He said there was  
40 no certainty or confidence that the overages were blamed on tractors or traffic or whatever. He said that  
41 Mr. Ambrose also pointed out that the curtailment in August and September should have been completely  
42 thrown out, that October was contaminated by the harvest noise. He said the wind company was unwilling  
43 to cause Mike Hankard to release his raw data; he was trying to get that from them, and they refused.  
44

45 Mr. Hartke said the last of the comments was that none of the results produced any power output  
46 specifically for the turbines located closest to their house. He said the only power output and the noise  
47 analysis was for the entire wind farm all together. He said it would have been way better and was also  
48 possible for the wind company to give Mr. Hartke just the power output for just the four closest turbines  
49 being tested. He said in summary, Mr. Ambrose said the study doesn't comply with IPCB rules, it doesn't

1 meet the intent to prove noise level compliance, and he said the compliance report from 2014 should not  
2 be used as a reference source for any purpose.

3  
4 Mr. Hartke said that when you folks get a document that comes from Invenergy, Michael Hankard, he  
5 wants to point out that this acoustician was rejecting, but he would like to point out in his own note shown  
6 below that he takes exception to Mr. Ambrose's statement, because he thinks that Mr. Hankard's report  
7 should be used and looked at, studied, and used to show the giant hole that exists in this kind of an analysis.  
8 He said that sums up the Hankard noise study that happened at his house.

9  
10 Mr. Hartke said that the next slide is going to help us hold up the fact that the noise level is too high. He  
11 referred to some notes from the Irish Doctor Environmental Association, which said the setback distance  
12 of 500 meters is not enough. He said 500 meters is 1,640 feet and should be increased to at least a minimum  
13 of 1,500 meters or 4,921 feet. He said they note because of the impulsive, intrusive, and incessant noise  
14 generated by wind turbines, it is particularly likely to disturb sleep, the young and elderly are particularly  
15 at risk, children who are sleep deprived are more likely to become obese, predisposing them to diabetes  
16 and heart disease in adulthood. He continued, as memory is reinforced during sleep, they also exhibit  
17 impaired learning. He said it talks about being sleep deprived and all kinds of issues. He said at the bottom  
18 it says they can achieve this by raising the turbine setback to at least 1,500 meters, which is 4,921 feet, in  
19 accordance with the growing international consensus. He said he wanted to have this document filed here  
20 to show that the standards forced upon us by Illinois and that were written by the wind industry are  
21 absolutely not appropriate for our rural area.

22  
23 Mr. Hartke referred to a slide and said if anyone wants to know what Michael Blazer looks like, this is a  
24 picture of him at a meeting where he said that turbine blades are designed to fall straight down, after a  
25 turbine came apart over by the Newtown Middle School. He said when his family had the sleep issues  
26 happening, they already knew and had learned enough to know it's a low frequency noise content that was  
27 causing their problems. He said at this particular meeting, Mr. Blazer claimed that today was the first time  
28 he had heard Mr. Hartke accuse them of low frequency noise, and he found it disheartening and said he  
29 changed his complaint after his attorney received the noise report at 2:00 that day. He said Mr. Blazer  
30 repeated again that they heard for the first time tonight that all of a sudden low frequency bands, each and  
31 every time they received a complaint it would be forwarded to him and the sound engineer, all the way  
32 back to February, and so he accused Mr. Hartke of this in December. Mr. Hartke said on March 25<sup>th</sup>, seven  
33 months before that meeting, he wrote to Matt Wingler that if the turbines were turned off, he thought they  
34 could sleep; this morning they were awakened at 5:15 to throbbing, low frequency noise, which they take  
35 issue with. He said and then, at 11:05 p.m., he complained that they could still hear the turbine low  
36 frequency noise inside their house – this is the thumping rumbling noise he keeps describing. He continued  
37 that he thought insulation would be better – this was before they knew that insulation was going to do  
38 nothing for low frequency noise. He said that Mr. Blazer wrote he had been forwarded the complaints  
39 every time since February. Mr. Hartke pointed out on February 20<sup>th</sup>, they have the speed of the rotation of  
40 turbines 57 and 75 that were turning at 15 RPM, the maximum speed and the wind farm is running at 95  
41 percent noise level. He said one of his complaints was at 10:00 p.m. and at 10:45 p.m. he wrote to his  
42 County Board members that tomorrow he would talk to a fourth contractor and maybe they would have a  
43 solution for soundproofing against low-frequency noise. He said in his previous comments, he asked about  
44 finding out from our State's Attorney if it was constitutional or not to cause unleased areas to have noise,  
45 flicker, sound abatement areas that makes it unhealthy to build your home there and sleep in that house  
46 and he would like to hear any kind of discussion about that. He said he thought the changes to the ordinance  
47 are going in the right direction and he thinks that there were good comments about having a pre-  
48 development noise study to know about the noise being created before the project gets built. He said it  
49 seems like we have a couple of choices on what version this Board should move forward with; there was

1 one called “more strict” and one that was called “less strict” version to move forward because the Board  
2 didn’t know what kind of legal authority it had and how you could push it before you get pushback legally.  
3 He said he was sorry if they discussed that before he got to the meeting since he walked in a little bit late  
4 and asked to hear more about the reasoning or fear behind that. He said that’s all he had for today, and he  
5 would be happy to take any questions.

6  
7 Mr. Elwell thanked Mr. Hartke and asked if there were any questions from the Board.

8  
9 Mr. Elwell said it seems like the setback and the IPCB are set at the State. He asked with what the Board  
10 has in front of us what should the Board do.

11  
12 Mr. Hartke said here is what you can do: put the noise levels for IPCB, measured at the property line  
13 because that’s what the Illinois law says, and that needs to apply for all of the unleased, all of the land  
14 with no easements, because feasibly we could put homes on all of these little hills in the countryside or  
15 any place that used to have a farmstead could have a new home on it. He said his company gets a lot of  
16 requests to carve out a two- or three-acre piece of land, and he thinks we’re coming up on every available  
17 former homesite in our county will eventually have a home on it due to our current zoning restrictions that  
18 only allow one or two tracts per large farm field because we’re trying to preserve farm ground and the size  
19 limitation and orientation of those possible home sites. He said he thinks it does equal justice for folks to  
20 still be able to put the homes on those places that are still not tied up with leases and it should apply to the  
21 property just because it doesn’t have an occupied dwelling. He said even an unoccupied dwelling could  
22 be removed or replaced or repaired to be able to make a nice home out of it. He said if you steal it from  
23 them, just because the wind turbine gets there first, he thinks that’s an uncompensated taking of land  
24 because you ruin the ability to use it for its intended purpose, to live on or whatever. He said that he thinks  
25 that to fix what he calls a loophole is any property that is not under lease by the wind company or with a  
26 good neighbor agreement then that is excluded from this as being a possible noise abatement zone. He  
27 said one of the things that you could do as a county is let’s say you have some neighbors who object, and  
28 they keep saying they intend to build a house there someday for their grandkids. He said how about we  
29 create a zoning overlay district, let’s say AG/R-1 or AG/R-2 zoning for those areas to protect them from  
30 this cross-property noise level. He said he thinks the other thing that he saw was bad was if someone wants  
31 to develop an airport and they come to the Board today and get a Special Use Permit to put in an airstrip,  
32 it seems to him that if you put in the airstrip today, you don’t get the same protection as your airstrip had,  
33 he doesn’t know what the cutoff was, fifteen years ago, there was some kind of a cutoff. He said if your  
34 airstrip was young, you don’t get the same setbacks as your airstrip that was old. He said that stood out to  
35 him and he didn’t think of it until the Board asked him about how to protect people. He said he thinks  
36 folks should still be able to build an airstrip on their unleased land and have that ability. He said if they  
37 can get their airstrip built and in place before a turbine shows up, he thinks they should be able to maintain  
38 and keep their approach path, and since it’s a Special Use Permit for a new runway, that gives the  
39 opportunity for the neighbor to come in and say “hey if you give this guy a new runway that’s going to  
40 keep me from having a turbine” and then you can work it out in the details of that specific Special Use  
41 Permit. He said he could just spell out all kinds of ways to protect ourselves, but he really doesn’t want to  
42 tell them his strategy to protect his own home, but certainly rezoning potential home sites in the country  
43 for unleased land would be a good benefit that would keep those places as possible home sites.

44  
45 Mr. Elwell asked Mr. Hartke what about the two options that are in front of us right now, what can we do,  
46 taking action today, it seems like we have one of two options, what would he have the Board do.

47  
48 Mr. Hartke thinks the Board shouldn’t do anything – you force the wind company to come in here and sue  
49 you, and you say “hey, we’re not doing this because this is unconstitutional” and we’re sworn to uphold

1 the Constitution, he thinks County Board members are, you say it's unconstitutional, it's taking of land  
2 without compensation or an easement. He said we're not the middleman, they have to work it out with  
3 individual landowners, because we're not going to let you ruin people's property for their ability to build  
4 a home. He said or they can go get the good neighbor agreement, negotiate with the neighbors, purchase  
5 a noise easement, whatever they want to do, leave that up to the citizens. He said earlier today, we talked  
6 about field tiles. He said if a crane is crossing your field and smashing your field tiles, and they don't fix  
7 them, that's a contract between the landowner or tenant and the wind company or the contractor. He said  
8 he didn't get in the way of field tiles; the only thing he got in the way of was if the noise comes into  
9 somebody who hasn't been paid. He said he thinks a private negotiation between a wind company and a  
10 homeowner is perfect for noise, just as much as it is for a field tile repair agreement. He said he thinks the  
11 Board just doesn't give this a positive recommendation; tell them it's unconstitutional – that's what he  
12 thinks the Board should do today. He said it's a hard one to go, it takes some guts to do it, but that's what  
13 he would do.

14  
15 Mr. Elwell thanked Mr. Hartke and asked if there were any questions from the Board or Staff. Seeing  
16 none, he asked if anyone else would like to testify.

17  
18 Mr. Todd Herbert, 435 CR 1700E, Philo, said he had a couple of more comments on drainage. He told  
19 Mr. Hall that he thinks the Illinois Drainage District Association, he can get the address and contact, would  
20 be a good one to get some language to use; they've dealt with a lot of wind turbines in the western part of  
21 Illinois. He said like Mr. Hartke was just saying, he was sitting back there thinking that those guys don't  
22 want to knock those cranes down, they want to go across the fields, there's not going to be an open trench  
23 there and those clay tiles are pretty fragile to crush. He said he's sure if they go in his district, he will be  
24 flagging them or something for them.

25  
26 Mr. Elwell thanked Mr. Herbert and asked if there were any questions for Mr. Herbert. Seeing none, he  
27 called Mr. Kamerer to testify.

28  
29 Mr. Josh Kamerer, 1782 R 300N, Philo, said he had just one question to kind of tie everything together.  
30 He said we keep hearing a lot of potential expenses to the County. He said for the last year, the Board has  
31 done its due diligence, we had a pretty straightforward plan, and now the State has given us the cards  
32 they've given us. He asked if it starts costing the County a bunch of money, how will the County recoup  
33 the expenses it incurred by what the State is making the County do or is that just going to be the burden  
34 of the County.

35  
36 Mr. Hall said it will be the burden of the County.

37  
38 Mr. Kamerer said he didn't think it was right for the County to have to eat all of that as well as the  
39 taxpayers, because maybe what we had before was a little more moderate, a little more difficult to proceed  
40 forward, but now with their rules, the County is going to end up being in court for the next five years, and  
41 that's a hell of a lot of money to recoup for what we're going to get out of it. He asked if that is where our  
42 County lawyers go against the State and countersue them to try to recoup, or is that just lost.

43  
44 Mr. Hall said he can't imagine the State's Attorney agreeing to sue the State to recoup any costs. He said  
45 the legal action that the State's Attorney is anticipating involves more than Champaign County so this will  
46 probably be fought out by multiple counties. He said it's still going to be expensive for each county that's  
47 involved.

48  
49 Mr. Elwell asked if there were any questions for Mr. Kamerer. Seeing none, he asked if anyone else would

1 like to testify. Seeing no one, he asked for a motion to close the Witness Register for Case 086-AT-23.

2  
3 **Mr. Roberts moved, seconded by Mr. Wood, to close the Witness Register. The motion passed by**  
4 **voice vote.**

5  
6 Mr. Elwell asked how the Board would like to proceed.

7  
8 Mr. Herbert asked Mr. Hall if there are multiple counties that he has heard of in protest to how some of  
9 this is going and is it such a deal that those counties can kind of team up with each other to get something  
10 worked out, or do we know.

11  
12 Mr. Hall said all he knows is that the State's Attorney would anticipate that there might be a group of  
13 counties that might challenge this. He said he assumes that's based maybe on rumor that they've heard  
14 from other State's Attorney's offices, but he wouldn't want the Board to count on something like that  
15 happening.

16  
17 Mr. Herbert asked how we join up.

18  
19 Mr. Hall said that's obviously the decision of the State's Attorney.

20  
21 Mr. Randol said in his opinion, the Board made its decision a couple of months ago, and he's sticking by  
22 his decision at that point in time. He said he doesn't see any point; for his part, he is not going to vote in  
23 favor of changing anything that we decided because the State says we can't do it. He said he's just not  
24 going to vote any different.

25  
26 Mr. Hall asked Mr. Randol if he wouldn't recommend either the less strict or the more strict, he wouldn't  
27 recommend either one.

28  
29 Mr. Randol said not tonight, because he has very mixed emotions about the fact that we made a decision  
30 and then we have two options here to look at to choose rather than the decision that we made. He said he's  
31 not going to vote to do anything tonight. He said the rest of the Board would have to convince him to  
32 change his mind, and why we should change and pick one of these, whichever one would be the lesser of  
33 two evils after we made a decision to do something.

34  
35 Mr. Elwell asked if it was his understanding that it's the litigation, or the potential cost of litigation from  
36 future potential petitioners.

37  
38 Mr. Herbert said he would rather see the litigation from petitioners than citizens; people live in our county.

39  
40 Mr. Hall said he didn't catch Mr. Elwell's actual question.

41  
42 Mr. Elwell said that Mr. Randol was asking for evidence why he should vote one way or the other, and  
43 his question was, is a lot of that evidence of why we should vote on one or the other due to the potential  
44 litigation from future petitioners, or navigating away from that.

45  
46 Mr. Hall said the concern about potential litigation is that if the County Board adopts a less strict version,  
47 a wind farm or solar farm developer could say we're trying to impose requirements that the State has said  
48 we can't impose. He said that's the source of that litigation, if it would ever happen.

49

1 Mr. Elwell asked if it was his understanding that there is one decision to be made: either we accept the  
2 strict, or we don't do anything, because there would be litigation if we adopted the less strict and there  
3 would be litigation if we didn't do anything at all.  
4

5 Mr. Hall said if you don't do anything, your ordinance is in fact in violation. He said some of the  
6 separations we allow in our current ordinance exceed what is allowed in the Public Act, so on their face  
7 they violate the new State law. He said to him that is a greater risk of litigation rather than amending the  
8 ordinance to incorporate the specific standards the State has said we have to have and then keeping  
9 everything else that we already have; that's a reduced level of risk of litigation - keeping what we can  
10 keep and not actually violating the Public Act. He said that's the question: someone could sue over it still  
11 violating the Public Act.  
12

13 Mr. Elwell said that's why he feels there's one fork in the road: either we violate State law, or we accept  
14 State law.  
15

16 Mr. Hall said it remains to be seen that the less strict version is actually a violation of State law. He said  
17 a legal question is out there which normal interpretation would say yes, the less strict would be a violation,  
18 but that remains to be seen – maybe it isn't. He said his concern is if you adopt the more strict, you're  
19 absolutely abiding by State law, but you're not doing anything to defend your citizens to the extent that  
20 you can. He said yes, you could sue the State over the whole thing, but isn't that like tilting at a windmill,  
21 it's probably not going to go anywhere. He said he doesn't see Champaign County leading an attack with  
22 other counties against the State rules, but other counties might get an effort up and Champaign County  
23 might join that. He said he doesn't really think that's going to happen either.  
24

25 Mr. Wood asked isn't the issue still whether we do anything here or not the County Board is still going to  
26 make their own decision. He said it's kind of a moot point, we can either go along with the State rules or  
27 we can take a less strict version, or we can do nothing at all, or we can decide that we want to stay where  
28 we are, whatever we went through before, to maintain that. He said and of course ELUC and the County  
29 Board already overruled what we did, so they will end up being the final decision maker on that whole  
30 process. He said not doing anything of course we're just sticking our heads in the sand.  
31

32 Mr. Elwell asked if anyone else wanted to speak. Seeing no one, he said he'd put in his two cents. He said  
33 he didn't necessarily see it as sticking your head in the sand, he sees it as protecting their neighbors. He  
34 said there was a list of people that he went through, around 24 he believes, and it was overwhelmingly  
35 evidence in one direction. He said if we are going to violate State law in the name of protecting our  
36 neighbor than taking a less opportunity, then he has to live next to his neighbors. He said he feels that you  
37 probably wouldn't sell your house if it wasn't causing a problem; that's a pretty big deal. He said he does  
38 understand and realize that they are not the final say all be all voice, but he does think it's their  
39 responsibility to vote and put forth what they think is best on their conscience. He said he understands  
40 what you're saying about not doing anything, but in his mind not doing anything is actually protecting the  
41 property rights of their neighbors.  
42

43 Mr. Wood said it is definitely taking a position if you do nothing. He said one thing he is really curious  
44 about, and he goes into McLean County and into Bloomington a lot, the county has wind towers all over  
45 the place, are there any complaints coming out of there that you're aware of, or have we even asked the  
46 question whether there are complaints coming out of that county. He said he knows it's not as densely  
47 populated as Champaign County is, but it's not that less densely populated, Bloomington is a pretty good-  
48 sized town. He said a lot of those wind towers have been there for quite a while. He said he is just curious  
49 whether or not there are real issues there around having those. He said nobody wants one of these in their



1 backyard, but he can tell them that technology is moving along and it's changing things fast. He said  
2 sometimes when you get in the way of technology changes it's just going to run right over you. He said  
3 maybe the State moved a little too far in one direction with the standards that they set, and he's probably  
4 in that camp that they did, but it's going to be a tough thing to fight, he thinks with the fact that technology  
5 is moving like it is. He said maybe there will be technology that is going into the new machines going up  
6 will be less intrusive on people than the ones that were put up ten years ago. He said he doesn't know the  
7 answer to that question, there's a lot of unanswered questions out there about all this stuff, but there's  
8 definitely a drive toward producing energy using these types of devices. He said he is much more in favor  
9 of solar than he is of wind, because it's a lot more benign, but that's all he can say at this point.

10  
11 Mr. Elwell said anecdotally speaking, they just closed on a house with a rural Newman address; it was  
12 between Villa Grove and Newman. He said he didn't measure it, but the turbine was pretty darn close to  
13 the house, and that parcel was a compensated, non-participating address. He said the seller said you'd be  
14 surprised how much they gave him to sign whatever he did. He said it was basically more than the taxes  
15 that they paid on the parcel. He said the owner said they just gave him all of this money for nothing. He  
16 said he does know one particular parcel that didn't have any issues, but obviously there were parcels that  
17 did have issues.

18  
19 Mr. Randol said that he mentioned some time back that he's not opposed to wind farms; he is opposed to  
20 them being so close to residents. He said last fall, he had the opportunity to work in the farm industry with  
21 a gentleman harvesting corn. He said he couldn't say exactly where they were at, other than the fact that  
22 he was east of Elliott. He said they were within a half mile of a wind farm, and they spent a good day there  
23 working. He said part of the day, that's how harvesting goes in this industry, they would just be sitting  
24 waiting on trucks to come. He said the way the field was laid out and the way they were harvesting,  
25 invariably they were facing the windmills every time they were stopped and waiting for trucks, sometimes  
26 for 30 minutes. He said to just sit there watching the windmills for 30 minutes you get kind of mesmerized,  
27 at least he did – he's not saying everybody does. He said sitting there not moving, because of that it  
28 changed his outlook on the wind farms as far as locations and such. He said the farther away they are from  
29 a residence, the better off people are.

30  
31 Mr. Elwell asked Mr. Hall to give him some insight on the heights that he has run across with all of his  
32 research into this.

33  
34 Mr. Hall said he would expect any wind farm in the next few years to have 690-foot-tall height.

35  
36 Mr. Elwell asked Mr. Hall if he knew what the tallest national monument is.

37  
38 Mr. Hall said no.

39  
40 Mr. Elwell said it's the St. Louis Arch. He asked Mr. Hall if he knew how tall it is.

41  
42 Mr. Hall said 650 feet.

43  
44 Mr. Elwell said 630 feet. He said potentially speaking, taller structures than the Arch could be built in the  
45 rural areas. He asked the Board how they would like to proceed.

46  
47 Mr. Roberts asked Mr. Hall if he knew what the County Board is going to recommend.

48  
49 Mr. Hall said no, he didn't.

1 Mr. Roberts said it's their final decision, right.  
2  
3 Mr. Hall said yes.  
4  
5 Mr. Roberts said he thought we'd made ourselves pretty clear about how we felt and how we voted the  
6 last time we talked with them. He said it's their decision, as he told them, the ball is in their court.  
7  
8 Mr. Hall said if this Board is not going to recommend anything, then they could just take action on this  
9 case tonight and not recommend anything.  
10  
11 Mr. Roberts asked if that's an option that's not going to get their underwear in a bunch and have them  
12 come back at us.  
13  
14 Mr. Hall said from what he's hearing, the Board doesn't care if it gets their underwear in a bunch, the  
15 Board is going to do what it thinks best, and that is to do nothing.  
16  
17 Mr. Roberts said we did something.  
18  
19 Mr. Hall said you keep saying you did something, but you haven't amended the ordinance yet. He said  
20 the Board basically added the ADLS lighting, but he's a little confused about what the ZBA recommended.  
21 He said the Board recommended some changes that were not accepted, and he knows the current Board  
22 remembers that. He said but now you've been faced with a new problem; you've been told to adopt a  
23 certain set of standards, and he can understand why you don't want to do that, but you don't want to do  
24 anything.  
25  
26 Mr. Roberts said but the State has already told us that we have to do this, so our hands are tied, so he  
27 doesn't understand.  
28  
29 Mr. Wood said so the changes that came back from ELUC or from the County Board versus the things  
30 that the Board passed here originally, they were never enacted, is that what you're saying.  
31  
32 Mr. Hall said yes. He said we never held a public hearing and adopted them.  
33  
34 Mr. Wood said yes, so what's out there is still what was originally out there, and nothing has changed at  
35 this point in time.  
36  
37 Mr. Elwell asked if we move to the Summary Findings of Fact and take them one by one, maybe doing a  
38 roll call vote on each one.  
39  
40 Mr. Herbert asked if you just pass one thing as a recommendation of denial, do we need to go through all  
41 of that one by one.  
42  
43 Mr. Elwell asked Mr. Herbert if he was referring to denying everything tonight, and if so, would we need  
44 to go one by one.  
45  
46 Mr. Hall said the Draft Finding of Fact has been prepared anticipating that it would include a  
47 recommendation of approval of something, and you would attach to it the thing that you're recommending.  
48 He said so if you're not going to recommend anything because adopting the State-mandated standards  
49 would in effect harm Champaign County, his recommendation would be to go through and revise each

1 finding along those lines, that's the only way it would make sense. He said he suspects there are at least  
2 20 or so things that you would go in and amend. He said they would need to think about the Land Resource  
3 Management Plan goals, and you would tailor these negative findings to make sense with that. He said  
4 the easiest way to make a negative finding is on Item 16, which talks about the purpose of the Zoning  
5 Ordinance, and you would go in there and point out that adopting the State-mandated standards is actually  
6 counter to the purpose of the Zoning Ordinance, for example. He said on Item 17, a text amendment to  
7 adopt the State standards would not improve the text of the Zoning Ordinance because of the same reason,  
8 you feel it would in effect hurt Champaign County.  
9

10 Mr. Herbert said he guesses he is just having a hard time trying to come up with all of these. He said if all  
11 this is being told "this is what it is going to be", and that is changing everything that Champaign County  
12 currently has in its ordinance now, not counting what we've proposed doing, we're talking about two  
13 years ago what was in effect then. He said that needed updated, we tried to start that process, they came  
14 out with this, and parts are worse off than what we currently already have. He said in no way, shape, or  
15 form can he see how that benefits anything for that matter. He asked if that made sense.  
16

17 Mr. Elwell asked Mr. Hall if it was his understanding that Mr. Hall would recommend that the Board go  
18 through and point out why we feel at every point how it's harmful to or contradictory to our mission.  
19

20 Mr. Hall said yes.  
21

22 Mr. Elwell said he did not anticipate being able to take care of that at this meeting.  
23

24 Mr. Hall said unfortunately you're going to have a Finding of Fact, and if you don't go through and revise  
25 it consistent with your recommendation, nothing is going to make sense. He said a shorter way of doing  
26 that would be simply dealing with 16 and 17, or maybe just one overall finding where you write one single  
27 finding that encapsulates what you think about the State-mandated changes. He said that's one of the  
28 difficult things about the way we do Findings of Fact; they're very intensive, they're meant to support a  
29 point of view, and now if you're going to change that point of view, the whole thing needs to be changed.  
30 He said we could come back with a different one at the next meeting geared towards not recommending  
31 anything, and then you'd have two Findings of Fact that you could select from.  
32

33 Mr. Elwell said it's his understanding, he doesn't want to speak for the Board, he thinks it would be  
34 beneficial for us to be able to go through one by one saying this is the reason why I believe with all of the  
35 previous testimony and stuff like that and explicitly state why he doesn't think this is good for Champaign  
36 County. He said instead of just saying no to everything, being diligent with our negative findings. He  
37 asked if there were any thoughts from the Board.  
38

39 Mr. Herbert said that would take them all night to right that, and he doesn't think we're as eloquently  
40 worded.  
41

42 Mr. Elwell said this would be at the next meeting.  
43

44 Mr. Wood said there's nothing in here that really talks about any of the detail that goes into the changes  
45 to the Zoning Ordinance. He said really, if you don't do anything, it just falls back to whatever we had  
46 prior to any of the discussions that we had in previous meetings because nothing has changed. He said if  
47 you're really going to do something, then you go through something like the less strict interpretation here  
48 and you go through and make changes to whatever it is you want to change, whether it's the setbacks or  
49 whatever, and then you have something that you can approve. He said and then you have to deal with

1 whatever fights you're going to have with the State or any organization or wind developer. He said he  
2 didn't see an issue with anything going on with the solar stuff, just the wind farm facts that are going to  
3 be the issue. He said if you alter those in here, and then you pass something like this, because this has a  
4 lot of the safety issues in here covered, whether or not you ever end up getting sued about it or not, a lot  
5 of them might only be minor issues that you get sued about as opposed to a major issue. He said but if you  
6 change the setbacks, that will end up probably being contested.

7  
8 Mr. Hall said to be clear on that, we advertised a legal advertisement advertising what we were changing  
9 the setbacks to; we can't now increase those setbacks because that would not be consistent with the legal  
10 advertisement.

11  
12 Mr. Wood said then you'd have to go through a legal advertisement if you really wanted to do that. He  
13 said he thinks that a lot of folks here are on board but it's a much longer process.

14  
15 Mr. Hall said we would only advertise a legal advertisement for a hearing that was authorized by ELUC,  
16 so you'd have to go back to ELUC and say we want to increase these separations, and good luck with that.  
17 He said he couldn't imagine that is going to fly in the face of the new Public Act.

18  
19 Mr. Wood said the County Board still has the final decision. He said all we're doing is taking the time to  
20 go through and say this is where we think it really ought to be, if you want to go down that road and spend  
21 that time and energy doing that, we can do that. He said he doesn't know if they have the appetite for that.

22  
23 Mr. Elwell said he didn't know if he had the appetite for it, but he thinks they deserve it.

24  
25 Mr. Wood said all we have to do is vote on it to make a decision to go down that road if that's what the  
26 Board wants to do. He said it's going to take a lot longer than one more meeting.

27  
28 Mr. Elwell asked Mr. Hall what he thought the timeline would look like.

29  
30 Mr. Hall said he didn't know, he hoped that staff could come back with a Finding of Fact that would be  
31 greatly simplified and just basically take every opportunity to explain that the setbacks and noise limit in  
32 the State-mandated standard, he doesn't know if this Board is unhappy with that, but based on what the  
33 Board recommended back in case 037-AT-22, he guesses the Board would be unhappy with the Pollution  
34 Control Board. He said staff could produce a Finding of Fact that would just simply state that you're not  
35 recommending any changes that would be consistent with the Public Act. He said we can't produce a  
36 Finding of Fact asking for greater separations and lower noise levels because those were not part of the  
37 legal advertisement; that is off limits at this point. He said the Findings of Fact could include calls for that,  
38 recommendations that the County Board do that in the future, but it can't actually have any changes in it.  
39 He said at the end of the day, all that the County Board would know is that you're opposed to the State-  
40 mandated standards. He said he suspects they'd like to have more guidance than that, but that's really all  
41 you can do at this point; you're unhappy with those standards and you don't want to recommend their  
42 adoption.

43  
44 Mr. Herbert said and go right back and start revisiting 037-AT-22 that never got cleaned up anyway.

45  
46 Mr. Elwell asked if that was how the Board wanted to proceed.

47  
48 Mr. Herbert said by altering the Findings of Fact and Final Determination is the path forward.

49

1 Mr. Randol said based on 16 and 17.

2  
3 Mr. Hall said he thinks for the Finding of Fact to make sense the whole thing needs to be consistently  
4 revised, because a lot of these talk about the amendment helping achieve the Land Resource Management  
5 Plan policies, objectives and goals, but that's not what you think.

6  
7 Mr. Randol said we didn't agree with that in the beginning; that's why he's kind of confused because it's  
8 back in here to deal with again.

9  
10 Mr. Elwell said so we agreed on 037-AT-22's findings of fact. He asked if there was any overlay between  
11 037-AT-22's findings of fact and the current findings of fact. He said obviously we can't do anything with  
12 the setback and anything with the IPCB.

13  
14 Mr. Hall said the only overlap that he knows of is that the Board had two particular findings in 037-AT-  
15 22 which spurred the joint meeting with ELUC. He said those two statements explain he thinks what the  
16 Board is wanting, the only thing you would recommend approval of.

17  
18 Mr. Herbert asked Mr. Hall if he is talking about noise and setbacks.

19  
20 Mr. Hall said yes.

21  
22 Mr. Herbert said he thinks he would also put from property lines in there and protecting the non-  
23 participating people. He said that was talked about in 037-AT-22 and he thinks that was even a  
24 recommendation in there – setbacks were from property lines and not from occupied dwellings.

25  
26 Mr. Randol said yes, because he remembers making the statement that if any one of us owned a piece of  
27 property and had a house on it, we'll say the condition of the house due to age or a natural disaster or  
28 whatever and we needed to relocate on our property, then we would really be kind of limited because of  
29 the issues of it not coming to the property lines as to where we could relocate. He said wherever it deals  
30 with residence, he thinks it needs to have something in there with the property lines. He hates to say that  
31 he agrees with our earlier speaker, but if you have a piece of property there that would fall within the  
32 guidelines to build a home on that is vacant, it's preventing someone from building a house on there  
33 sometime if they're going to have to deal with the noise and everything.

34  
35 Mr. Hall said that is a lot of work to get done in time for the May 25<sup>th</sup> hearing; he can't promise it's going  
36 to be done but he can promise we'll do our best. He said but he can't promise we're going to get all the  
37 testimony that everyone has given over the past couple of years, all the good stuff from 037-AT-22, and  
38 in here in a way that makes sense; that's actually quite a challenge because this stuff has to be mailed out  
39 in one week. He said he's pretty confident it won't be mailed out in one week. He said when you look at  
40 the cases that we have coming up after the May 25<sup>th</sup> meeting, we're working on those also. He said so we  
41 may have hit a concrete block wall tonight, but we'll do the best we can for May 25<sup>th</sup>.

42  
43 Mr. Randol asked Mr. Hall what happens if we don't get it done by the deadline.

44  
45 Mr. Hall said we were never going to get it done by the deadline; we're just going to do the best we can.  
46 He said the deadline is May 27<sup>th</sup>, and that was never going to happen.

47  
48 Mr. Randol said even so, what are the consequences of not meeting that deadline.

49

1 Mr. Elwell said potential litigation.  
2  
3 Mr. Hall said he's pretty confident that we're not going to be sued by the State on May 28<sup>th</sup> for not meeting  
4 that deadline, but he can't say anything else beyond that. He said that some of the counties were able to  
5 pass an ordinance after one meeting of their Zoning Board, and he is always amazed at how different  
6 counties do things different ways. He said we're going to be lucky to have ZBA action by the end of May  
7 25<sup>th</sup>; we're doing the best we can. He said like he always advises the Board, don't rush; don't approve this  
8 until you have a Finding of Fact that you agree with. He said if that doesn't happen until sometime in  
9 August, that's when it happens.  
10  
11 Mr. Elwell said shall we just make it by-right and call it a day.  
12  
13 Mr. Hall said if you don't think a public hearing provides any benefits, yes you could recommend making  
14 it by-right, but he thinks there would be a lot of unhappy people in that situation.  
15  
16 Mr. Elwell said looking at continuing the case, Mr. Hall had mentioned into August.  
17  
18 Mr. Hall said we have reserved May 25<sup>th</sup>, so we need to continue to May 25<sup>th</sup>. He said what he is uncertain  
19 of is that we'll have everything ready for final action on May 25<sup>th</sup> and if it's not, then the next available  
20 meeting time is in August.  
21  
22 Mr. Elwell asked for a motion to continue Case 086-AT-23 to May 25, 2023.  
23  
24 **Mr. Randol moved, seconded by Mr. Roberts, to continue case 086-AT-23 to May 25, 2023. The**  
25 **motion passed by voice vote.**  
26  
27 **7. New Public Hearings - None**  
28  
29 **8. Staff Report - None**  
30  
31 **9. Other Business**  
32  
33 Mr. Elwell asked the Board if any absences were coming up.  
34  
35 Mr. Wood said he would be absent May 25<sup>th</sup>.  
36  
37 **10. Adjournment**  
38  
39 Mr. Elwell entertained a motion to adjourn the meeting.  
40  
41 **Mr. Randol moved, seconded by Mr. Roberts, to adjourn the meeting. The motion carried by voice**  
42 **vote.**  
43  
44 The meeting adjourned at 8:31 p.m.  
45  
46 Respectfully Submitted,  
47  
48  
49 Secretary of the Zoning Board of Appeals