ZONING BOARD OF APPEALS
MARCH 25, 2010

DOCUMENTS DISTRUBUTED TO THE ZONING BOARD OF APPEALS AT THE MEETING

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2. Supplemental Memorandum for Case 665-AT-10 dated March 25, 2010

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4. Supplemental Evidence submitted by John Hall

5. Written Comments submitted by Herb Schildt, dated March 25, 2010

CASE NO. 664-AT-10

SUPPLEMENTAL MEMORANDUM
March 25, 2010

Champaign County Department of

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Brookens Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance as follows:**

1. **Delete paragraph 6.1.4 A.1.(c).**
2. **Revise paragraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.**

STATUS

This is the first meeting for this case. Since the mailing staff has added new information to the Finding of Fact regarding the Second Industrial Land Use Goal and the Land Use Regulatory Policies.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as revised Item 7 on page 4 of 7, as follows:
(Underline and ~~strikeout~~ text indicate changes from the Preliminary Draft)

7. Regarding Land Use Goals and Policies for specific categories of land uses:
   A. There are goals and policies for agricultural, commercial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment, except for the Second Industrial Land Use Goal.

   B. The Second Industrial Land Use Goal appears to be relevant to the proposed amendment. The Second Industrial Land Use Goal is:

      Location and design of industrial development in a manner compatible with nearby non-industrial uses.

      The proposed amendment appears to *{ACHIEVE}* the Second Industrial Land Use Goal because it will make clear that a wind farm developer is required to provide mitigation for shadow flicker for land that receives more than 30 hours of shadow flicker in a given year.

2. The following should be added as new Item 9. on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant to the proposed amendment.

CASE NO. 665-AT-10

SUPPLEMENTAL MEMORANDUM
March 25, 2010
Petitioner: **Zoning Administrator**

Champaign County Department of

Brookens Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Request: **Amend the Champaign County Zoning Ordinance by revising paragraph 4.3.3 G. to increase the maximum fence height allowed in side and rear yards from six feet to eight feet for fences in Residential Zoning Districts and on residential lots in the AG-1 and AG-2 Zoning Districts.**

STATUS

This is the first meeting for this case. Since the mailing staff has prepared additional information for the Finding of Fact.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as new Items 9, 10, 11, and 12 on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant.

10. Increasing the allowable fence height will provide landowners in the unincorporated area as much freedom in regards to fencing as property owners in municipalities.

11. Increasing the allowable fence height to eight feet will reduce the need for variances which will reduce the costs of the County's zoning program.

12. Regarding the economic soundness of the proposed amendment:
    A. The proposed three-inch ground clearance is reasonable in regards to pre-manufactured fence panels for the following reasons:
        (1) Pre-manufactured fence panels are available in standard six-feet high panels.
        (2) Adding the proposed three inch clearance to ground means that standard six-feet high pre-manufactured fence panels can be installed above the surface of the ground without the need to cut off any of the fence panel.
        (3) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.
    B. The proposed three-inch ground clearance is reasonable in regards to custom made fence panels for the following reasons:
        (1) Eight-feet high fences are generally custom built.

(2) Eight feet is a standard increment of length for lumber.

(3) Adding the proposed three-inch clearance to ground means that custom made eight-feet high fencing can be installed above the surface of the ground without the need to cut off and waste so much of the lumber.

(4) Three inches is an arbitrary amount for the ground clearance but it allows the fence to be at least one inch above the highest point of a ground surface that could vary by as much as two inches.

CASE NO. 666-AT-10

Champaign County Department of

SUPPLEMENTAL MEMORANDUM
March 25, 2010

Petitioner: **Zoning Administrator**

Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner

Brookens Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance by revising Subsection 6.1 and paragraph 9.1.11 D.1. to clarify that the standard conditions in Subsection 6.1 which exceed the requirements of Subsection 5.3 in either amount or kind are subject to waiver by the Zoning Board of Appeals or County Board.**

STATUS

This is the first meeting for this case. Since the mailing staff has prepared new information for the Finding of Fact.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as new Item 8.A.(7) on page 5 of 7, as follows:

(7) Easing the review of special use permit cases and eliminating the filing of parallel variance cases will help keep the costs of the County zoning program lower than it would be otherwise and reduce the application costs to applicants and leave applicants more freedom and flexibility in developing their special use.

2. The following should be added as new Item 9. on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant.

1. A special use permit is not required by statute to have standards. Standards are a convenience for both the County and the special use applicant.

2. Whether or not a special use permit has standards that are subject to a variance or standard conditions that are subject to a waiver, applicants can in either case make a request for something less than is otherwise required in the Ordinance.

3. A special use should always be in accordance with the general purpose and intent of the ordinance and should never be injurious to the neighborhood or to the public health, safety, and welfare whether or not that special use permit has standards that are subject to a variance or standard conditions that are subject to a waiver i~~n either case the spec~~ial ~~use. e~~

4. Maintaining standard conditions that are subject to a waiver rather than standards that are subject to a variance should result in quicker and easier public hearings at the Zoning Board of Appeals (and County Board when relevant); lower overall costs of the zoning program; and lower application costs for special use permit applicants.

March 25, 2010

My name is Herb Schildt. Tonight I am expressing the opinions of myself and my wife.

I strongly recommend that you **do not** adopt Case 666-AT-10 because it will make all of the regulations contained in the wind farm amendment (Section 6.1.4) subject to waiver. It is clear to me that, as the zoning code is currently written, the wind farm regulations cannot be waived. Therefore, adopting this amendment will cause a very significant change to the zoning code, and I oppose it.

As you know, I believe that the wind farm amendment adopted last year is seriously flawed. I also have a problem with the substantial changes made to the amendment after the close of ZBA hearings. Furthermore, I am troubled that the legal notice for the wind farm amendment included an overlay district, but this requirement was not part of the final amendment.

That said, the wind farm regulations provide at least a baseline of protection for the residents of the county. They also set expectations about where a wind farm can or cannot be located. These minimum standards should not be subject to waiver. And, as the zoning code is currently written, they are not subject to waiver. This is as it should be. No changes to the zoning code in this regard are needed.

It is useful to point out why I believe that the wind farm provisions are not currently subject to waiver. Section 9.1.11.D.1 defines situations in which a standard condition for a special use permit can be waived. It specifically refers to the special uses enumerated in Section 6.1.3. Quoting a portion of section 9.1.11.D.1, it says:

> "Any other provision of this ordinance not withstanding, the BOARD or GOVERNING BODY, in granting any SPECIAL USE, may waive upon application any standard or requirement for the specific SPECIAL USE enumerated in Section 6.1.3 Schedule of Requirements and Standard Conditions, to the extent that they exceed the minimum standards of the DISTRICT . . ."

As the ordinance is currently written, Section 6.1.3 contains a table that depicts a schedule of standard conditions for specific types of special uses. This table **does not**, however, include wind farms. Wind farms are handled separately by Section 6.1.4. Therefore, the ordinance specifically exempts wind farm standard conditions from waiver. I see no ambiguity here. In the current ordinance, the wind farm regulations cannot be waived.

Furthermore, the types of conditions that can be waived for the special uses in Section 6.1.3 are listed in the table in Section 5.3. It includes such things as minimum lot size and average width, maximum height, required yards, and maximum lot coverage. It has nothing to say about the vast majority of the provisions in the wind farm ordinance.

In my view, the law is clear: the wind farm regulations define the minimum standards that pertain to wind farms, and these standards can't be waived. Attempting to make the wind farm regulations subject to waiver, as the proposed amendment seeks to do, will result in a fundamental alteration in the meaning of the zoning code. Make no mistake, this is not a small or clerical change. It makes a radical change in the meaning of the ordinance.

The wind farm rules are important because they deal with important things, such as setbacks, turbine height, noise, damage to farmland, electromagnetic interference, impact on wildlife, decommissioning, site reclamation, liability, shadow flicker -- the list goes on. Making these regulations subject to waiver simply puts it all up for grabs again.

It is my strong belief that making the wind farm requirements subject to waiver will have a profoundly negative effect on property values because no one will be able to know where a wind farm might be built, what setbacks will be used, what the noise limits are, the impact of shadow flicker -- again, the list goes on. If all of these conditions are subject to change, who will know where they stand? I believe that this uncertainty will fundamentally destabilize property values throughout Newcomb Township where I live, and throughout the county in general.

Furthermore, if the wind farm regulations become subject to waiver, landowners who want turbines will no longer be assured of the protections that the current ordinance offers. These protections include reclamation, decommissioning, and farm land damage mitigation, among others. It is important that these protections remain requirements. They provide critical safeguards for landowners who will have turbines -- especially those who have already signed leases. These protections must not be subject to waiver.

As I see it, having a fixed set of minimum standards is beneficial to all landowners, whether a landowner will be hosting a turbine or not. Look, it's not about whether you like wind turbines or don't like wind turbines. It's about providing a baseline of protection for all, and about maintaining continuity in the zoning code.

Therefore, I recommend that you reject Case 666-AT-10. This will leave the zoning ordinance as it currently stands, and thus prevent a major change to the law. Simply put, this text amendment is not needed.

However, if you choose to move forward with Case 666-AT-10, it must, at minimum, be changed to explicitly exempt the wind farm regulations from waiver. This would mean that the reference to Section 6.1.3 must remain in paragraph 9.1.11.D.1, and Section 6.1 could begin something like this:

> Except for the provisions specified in Section 6.1.4, the standards listed in this Subsection ...

Doing this will keep the ordinance unchanged as it relates to wind farms.