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5 **MINUTES OF REGULAR MEETING**

6 **CHAMPAIGN COUNTY ZONING BOARD OF APPEALS**

7 **1776 E. Washington Street**

8 **Urbana, IL 61802**

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11 **DATE: March 28, 2013**

PLACE: Lyle Shields Meeting Room

1776 East Washington Street

Urbana, IL 61802

12
13 **TIME: 6:30 p.m.**

14
15 **MEMBERS PRESENT:** Catherine Capel, Thomas Courson, Eric Thorsland, Paul Palmgren, Brad
16 Passalacqua, Roger Miller

17
18 **MEMBERS ABSENT :** None

19
20 **STAFF PRESENT :** Connie Berry, Lori Busboom, John Hall, Andrew Kass

21
22 **OTHERS PRESENT :** David Reineke, Phil Iverson, Kristi Pflugmacher, Gene Warner, Paul Cole,
23 James Rusk, Deb Griest, Vicki Warner, Kenny Warner, Kent Follmer, Tom
24 Brown

25
26
27 **1. Call to Order**

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29 The meeting was called to order at 6:32 p.m.

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

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

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

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39 **3. Correspondence**

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41 None

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43 **4. Approval of Minutes**

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45 None

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47 **5. Continued Public Hearings**

1 None

2

3 Mr. Thorsland entertained a motion to re-arrange the agenda and hear Case 739-V-12 prior to Case 731-S-
4 12.

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6 **Ms. Capel moved, seconded by Mr. Courson to re-arrange the agenda and hear Case 739-V-12 prior**
7 **to Case 731-S-12. The motion carried by voice vote.**

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10 **6. New Public Hearings**

11 **Case 731-S-12** Petitioner: **Warner Brothers, Inc, with owners Joseph H. Warner and Gerald Warner**
12 **and shareholder/officers Kristi Pflugmacher, Kathy McBride, Denise Foster, Angela Warner** Request:
13 **Authorize the storage and dispensing of agriculture fertilizer as a “Farm Chemicals and Fertilizer**
14 **Sales including incidental storage and mixing of blended fertilizer” facility as a Special Use in the AG-**
15 **1 Agriculture Zoning District. Location: A .96 acre (41,817.6 square feet) portion of a 38.55 acre tract**
16 **in the East One-Half of the Southeast Quarter of Section 18 of Rantoul Township and commonly**
17 **known as the farm field adjacent to the Kinze farm equipment dealership at 1254 CR 2700N, Rantoul.**

18

19 **Case 747-AM-13** Petitioner: **Warner Farm Equipment, Inc. with owners Joseph H., Warner and**
20 **Gerald E. Warner** Request: **Amend the Zoning Map to change the zoning district designation from**
21 **the AG-1 Agriculture Zoning District to the B-1 Rural Trade Center zoning District to bring an**
22 **existing Farm Equipment Sales and Service business into compliance. Location: A 3.8 acre tract in**
23 **the Southwest Quarter of the Southwest Quarter of the Southeast Quarter and in the Southeast**
24 **Quarter of the Southeast Quarter of the Southwest Quarter of Section 18 of Rantoul Township and**
25 **commonly known as the Kinze farm equipment dealership at 1254 CR 2700N, Rantoul.**

26

27 Mr. Thorsland called Cases 731-S-12 and 747-AM-13 concurrently.

28

29 Mr. Thorsland informed the audience that Case 731-S-12 is an Administrative Case and as such the County
30 allows anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a
31 show of hands for those who would like to cross examine and each person will be called upon. He requested
32 that anyone called to cross examine go to the cross examination microphone to ask any questions. He said
33 that those who desire to cross examine are not required to sign the witness register but are requested to
34 clearly state their name before asking any questions. He noted that no new testimony is to be given during
35 the cross examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are
36 exempt from cross examination.

37

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

41

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

2
3 Mr. Paul Cole, attorney for the petitioners, stated that he would like to address Case 731-S-12 first. He
4 noted that he contacts the Planning and Zoning Department each and every time that he has a question
5 regarding lot division and whether or not subdivision regulations need to be addressed. He said that the last
6 question on the Plat Act Affidavit that he uses asks if the transaction will violate any local ordinance. He
7 said that the last question should be a clear indication to someone who is holding the Plat Affidavit in hand
8 that they should probably call someone to make sure whether or not the transaction is violating any local
9 ordinance. He said that he does not know if the Plat Act Affidavit that he uses is an official form but it is the
10 form that he has always used.

11
12 Mr. Hall stated that the last question that Mr. Cole mentions is not included on the standard form but it
13 would be nice if it were.

14
15 Mr. Cole stated that his client has operated their business at the subject property for almost 40 years. He said
16 that the tank, which is the heart of the special use issue, is something that is built and is large which excited
17 people's attention to this situation. He said that when Joe and Gene Warner decided to install a tank for their
18 own use to store fertilizer they had an opportunity to increase the tank's size. Mr. Cole compared the
19 increased size of the tank to a situation in which a homeowner planned for a \$30,000 two-car garage but the
20 contractor informed the homeowner that for another \$5,000 they could have a three-car garage therefore the
21 homeowner went for it. He said that a larger tank is cost effective and the larger tank would allow the
22 opportunity to purchase additional product when the price is right and keep the product for multiple years to
23 utilize on the petitioner's own land. He said that the petitioner's discovered that since the tank is on
24 agricultural property that there might be a potential for other people to use the tank to take advantage of the
25 fact that there may be excess storage capacity, which is why the petitioner contacted the Zoning
26 Administrator. Mr. Cole stated that the Zoning Administrator informed the petitioner that they would need a
27 Special Use Permit because allowing other people to take advantage of the excess storage capacity of the
28 tank is a business use in the AG-1 Zoning District. He said that since there is the potential that the tank
29 would be used for the storage of fertilizer that other people might want to use and the mailing material
30 included a letter which indicated that this is an important addition to the storage capacity potential for the
31 area. He said that there may be times when no one has the room to store this stuff and it will be a good thing
32 that there is excess capacity in that tank.

33
34 Mr. Cole stated that the Special Use Permit was not the only issue because the Zoning Administrator
35 informed the Warners that they have been operating a farm implement business on the subject property,
36 which is zoned AG-1, since 1974 without any complaints being filed with the department. Mr. Cole stated
37 that the Zoning Administrator informed the Warners that since no complaints have been filed against the
38 farm implement business that this would be a good time to cooperate with the County and petition to rezone
39 the subject property to B-1, Rural Trade Center Zoning District and the petitioner agreed. Mr. Cole stated
40 that the map amendment appears to be as easy of a call as the special use permit because the map
41 amendment acknowledges a fact that has existed for almost 40 years and the special use permit will be very

1 valuable to the farming community for a long period of time and more than one person has acknowledged
2 that fact.
3
4 Mr. Thorsland asked the Board if there were any questions for Mr. Cole and there were none.
5
6 Mr. Miller stated that due to conflicting interests he must abstain from Cases 731-S-12 and 747-AM-13.
7
8 Mr. Thorsland asked if staff had any questions for Mr. Cole.
9
10 Mr. Hall stated that one issue that staff has tried to get clear from the beginning is whether the petitioner has
11 applied for the commercial permit from the Illinois Department of Agriculture and in light of the letter from
12 Crop Production Services it would seem to make clear that this would be used commercially. He said that it
13 is his understanding that using the tank commercially requires a different permit from the Illinois
14 Department of Agriculture.
15
16 Mr. Cole stated that he does not have any information regarding this permit although Ms. Pflugmacher may
17 be able to answer Mr. Hall's question.
18
19 Mr. Thorsland called Kristi Pflugmacher to testify.
20
21 Ms. Kristi Pflugmacher, who resides at 203 W. Shelly Drive, Thomasboro, stated that the permit has been
22 approved through the Illinois Department of Agriculture and the Illinois Environmental Protection Agency.
23 She said that she spoke to their consultant today and was informed that they should have the permit in their
24 hands today although she does not.
25
26 Mr. Hall stated that the only application that staff is aware of that was filed with the Illinois Department of
27 Agriculture was for a private fertilizer tank.
28
29 Ms. Pflugmacher stated that they applied for a commercial permit for the tank and the fertilizer.
30
31 Mr. Thorsland asked Ms. Pflugmacher if the permit is pending.
32
33 Ms. Pflugmacher stated that the permit has been approved although she does not have the actual permit in
34 her hand.
35
36 Mr. Cole stated that the petitioner understands that having the permit in hand would be one of the conditions
37 of the special use.
38
39 Mr. Thorsland stated that the Board will assume that the permit is on its way.
40
41 Mr. Hall stated that the petitioner has decided to include the entire east/west oriented building because they

1 use it to varying degrees for the implement dealership. He asked Mr. Cole and Ms. Pflugmacher if there is
2 also a secondary welding/fabricating business operating on the property which would be consistent with a
3 farm implement dealership.

4
5 Ms. Pflugmacher started yes, but the business is very small.

6
7 Mr. Hall stated a secondary welding/fabricating business operating on the property would be fine as an
8 accessory use but it would be a shame to go through the public hearing process and still not have all of the
9 activities occurring on the property in the record.

10
11 Mr. Thorsland asked the Board if there were any questions for Mr. Cole or Ms. Pflugmacher and there were
12 none.

13
14 Mr. Thorsland asked if staff had any additional questions for Mr. Cole or Ms. Pflugmacher and there were
15 none.

16
17 Mr. Thorsland called John Hall to testify.

18
19 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated March 28, 2013,
20 for Case 747-AM-13 to the Board for review. He said that the original Finding of Fact has several places
21 where staff was going to propose new evidence. He said that an updated Finding of Fact has been attached
22 to the new memorandum and a Plat of Survey which indicates the east/west oriented building and also a
23 north/south building which is the main building for the implement dealership.

24
25 Mr. Hall stated that the County adopted the Stormwater Management Policy on December 17, 1991, and if
26 this entire development was being proposed right now there would be a requirement for stormwater
27 detention. He said that the development has grown over time and it is his understanding that both buildings
28 that are involved started out as agricultural buildings and there are no hard dates as to when each part of this
29 development was constructed. He said that the map amendment itself is actually not adding any new
30 impervious area so the Stormwater Management Policy doesn't require anything. He said that the ZBA can
31 make stormwater detention a requirement as a special condition if the Board sees a need although staff is not
32 aware of any existing drainage problem other than the normal drainage problem that is expected on best
33 prime farmland in Champaign County. He said that the petitioner has provided a map of tile lines which
34 indicates that the property is very well tiled and since the tiles belong to the petitioners if they disturb any it
35 is their problem. He said to be clear, there does not appear to be a need for stormwater detention but if this
36 was all being proposed right now there would be detention required. He said that new information has been
37 added to the Finding of Fact and he believes that staff has made a recommendation that the map amendment
38 will not impede or will help achieve on everything that has been reviewed.

39
40 Mr. Andrew Kass, Associate Planner, stated that staff has made a recommendation on everything and there is
41 not one instance where the Board needs to make a choice. He said that the Board only needs to indicate

1 whether they agree or disagree with staff's recommendation.
2
3 Mr. Hall stated that at the right time the Board should review each of those recommendations.
4
5 Mr. Thorsland asked the Board if there were any questions for Mr. Hall.
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7 Mr. Passalacqua asked Mr. Hall when the tank was built.
8
9 Mr. Hall stated that the tank was built in 2012.
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11 Mr. Passalacqua asked if a permit was required for the tank.
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13 Mr. Hall stated yes, a permit is required for the tank.
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15 Mr. Passalacqua asked if a permit was issued for the tank.
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17 Mr. Hall stated no.
18
19 Mr. Courson asked staff if a complete site plan for the entire property has been submitted for review.
20
21 Mr. Hall stated that the best site plan that staff has received to date is attached to the new Supplemental
22 Memorandum dated March 28, 2013. He said he would not go so far as to call the attachment a site plan but
23 a survey showing some of the boundaries, all of the buildings and structures. He said that a site plan would
24 normally call out parking areas, signs, loading berths, driveway access, etc.
25
26 Mr. Courson asked if a lighting plan would need to be submitted as well.
27
28 Mr. Hall stated that currently no lights have been proposed as part of the special use. He said that if the
29 Board desires a complete site plan then that would be a reasonable thing to request.
30
31 Mr. Courson stated that he would like to see a complete site plan which includes all previously mentioned
32 items as well as handicap parking, signage, and lighting.
33
34 Mr. Hall stated that he believes that there are existing lights on the property and that no new lighting has
35 been proposed for the special use.
36
37 Mr. Passalacqua asked Mr. Hall if the shed which is next to the tank is also new construction.
38
39 Mr. Hall stated yes and that another item which is not detailed on the plan is the amount of impervious area
40 added by the Special Use Permit. He said that the area is less than one acre and staff does not believe that
41 the policy requires detention but the most important thing is if there is an existing drainage problem that

1 needs to be corrected. He said that the Plat of Survey calls out the edge of crushed stone and it was his
2 understanding that the new stone added for the Special Use Permit was actually a very small part of the area
3 indicated in dashed lines. He said that as part of the site plan it would be good to call out the new
4 impervious area.

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

7
8 Mr. Thorsland stated that he has witness registers for both cases but will begin with the witness register for
9 Case 731-S-12 first and once all of the Board's questions are answered he will move to the witness register
10 for Case 747-AM-13.

11
12 Mr. Thorsland called Paul Cole to testify.

13
14 Mr. Cole stated that he had no additional testimony at this time.

15
16 Mr. Thorsland called Kent Follmer to testify.

17
18 Mr. Kent Follmer, attorney representing Kenneth and Victoria Warner who are adjacent neighbors to the
19 subject property, submitted an Entry of Appearance for Cases 731-S-12 and 747-AM-13. He said that the
20 new Supplemental Memorandum for Case 747-AM-13 includes a Plat of Survey that indicates a tract in the
21 lower left hand corner which is 314.5 feet x 300.6 feet. He said that the circle within this tract is the
22 approximate location of Kenneth and Victoria Warner's residence and Mr. and Mrs. Warner have some
23 concerns and questions that he has agreed to express for them.

24
25 Mr. Follmer stated that the Preliminary Memorandum dated March 22, 2013, refers to the 765,818 gallon
26 storage tank that has been constructed on the subject property. He said that Mr. Cole discussed the fact that
27 it was the petitioner's intent to build big for the sake of efficiency and that in order to save money they
28 decided to build the tank larger than originally anticipated. Mr. Follmer stated that the Preliminary
29 Memorandum indicates that the petitioner's primary intent is to use this tank for their own farm operation.
30 Mr. Follmer stated that if the petitioner's intent is to use this tank for their own farm operation then they
31 would not require a permit but since they are requesting a permit more information might be warranted to
32 indicate what is going to happen when they receive the permit. He asked what is going to happen when
33 tankers begin driving down the gravel drive of his client's property creating dust and there will probably be a
34 fair amount of chemicals being sprayed and washed. He said that the Plat of Survey doesn't even indicate
35 that his client's home exists but the corner of his client's lot is 250 feet from the storage tank and their home
36 is approximately 500 feet from the storage tank. He said that his client's have not made a lot of noise about
37 this project yet because they have been listening, watching and talking to neighbors and have witnessed Crop
38 Production Services trucks traveling to the tank therefore giving them the impression that there is product,
39 28% nitrogen fertilizer, in the tank currently. He said that he has information from reliable sources is that
40 there is approximately 500,000 gallons of product in the tank currently therefore he believes that the ZBA is
41 entitled to know whether or not this information is accurate. He said that the Board is also entitled to an

1 explanation as to how they have been put into this position to be asked to approve something that was built
2 illegally. He said that Mr. Hall wrote a letter to the petitioners on January 31, 2013, indicating that the
3 constructed tank is illegal and that enforcement action will be enacted if the tank is filled with product. Mr.
4 Follmer stated that there has not been any enforcement action and the Warners are doing business which is a
5 large commercial business.

6
7 Mr. Follmer stated that according to the letter from Crop Production Services it appears that they require
8 additional storage for their product in Paxton. He said that Crop Production Services has 9,000 employees,
9 900 branches and terminals in the United States, Canada and South America. He submitted internet
10 information regarding Crop Production Services to the Board as a Document of Record. He said that the
11 information indicates that in 2009 Crop Production Services did 6.1 billion dollars in sales and the map
12 indicates locations of each of their facilities in Illinois. He said that if the subject tank is the biggest tank
13 around there is reason to believe that there will be a huge increase in traffic for large tankers on this minor
14 road which is only 20 feet wide. He said that according to his research it would take 160 full size tankers to
15 fill a tank of this size and no one knows how many times this tank will be filled during one season. He said
16 that everyone agrees that a complete site plan is required and he believes that the site plan should include
17 Kenneth and Victoria Warner's home and how the tankers will maneuver in and out of the property. He said
18 that Victoria Warner enjoys spending time in her back yard and if there are employees at this tank facility his
19 clients would like to know where they will utilize bathroom facilities. He said that it appears that not only
20 have the Warner Brothers moved too fast but it is a situation where there are several things which require
21 further discussion.

22
23 Mr. Follmer stated that the Board is now put into the position that when they review the criteria and policy
24 considerations they are not allowed to exercise any reasonable discretion because the Warner Brothers have
25 already made that decision for the Board. He said that the Warner Brothers have indicated where the tank is
26 going to go and where the tanker trucks are going to enter and exit therefore requesting approval after the
27 fact. He said that it's difficult to believe how the representative cannot remember the name of Crop
28 Production Services when it is such a major operation and if there is 500,000 gallons of product in the tank
29 his clients are entitled to know who owns that and based upon representations made will other people be
30 allowed to use it. He said that this is a commercial enterprise and the petitioner contends that they have the
31 proper permits from the various state agencies but they do not have them here tonight. He said that his
32 clients would like to know that there are some reasonable safeguards for the protection of their property
33 including the obvious reduction in value to the property. He asked who would want to purchase a beautiful
34 rural farmhouse when there is a fertilizer plant right next door. He said that currently there are 765,000
35 gallons of liquid nitrogen proposed in this storage tank and what is to prevent the petitioners from building
36 dry fertilizer storage facilities. He said that perhaps there should be restrictions placed upon the facility and
37 the Board should determine what those restrictions should be. He asked if there should be restrictions upon
38 the number of trucks that are allowed per day or year and the weight limit of the trucks should be restricted.
39 He asked what is going to happen when the road, which is 2.5 miles from IL. Route 45, to his client's home
40 disintegrates. He asked how the Board can believe someone who hasn't been straight forward and upfront.
41 He said that the Board and his clients need to know what the petitioner's plans are and that additional

1 information be presented answering all questions and concerns.
2
3 Mr. Thorsland asked the Board if there were any questions for Mr. Follmer.
4
5 Mr. Courson asked Mr. Follmer if he knew the weight rating for CR 2700 North.
6
7 Mr. Follmer stated no.
8
9 Mr. Courson asked Mr. Follmer if he has spoken with the township road commissioner.
10
11 Mr. Follmer stated that he did speak with the township supervisor and he was informed that there would be a
12 concern voiced at tonight's meeting regarding the road.
13
14 Mr. Thorsland asked if staff had any questions for Mr. Follmer and there were none.
15
16 Mr. Thorsland called Kenneth Warner to testify.
17
18 Mr. Kenneth Warner, who resides at 1254 CR 2700N, Rantoul, stated that he owns the residence mentioned
19 in Mr. Follmer's testimony. He said that he and his wife would like to have answers to Mr. Follmer's
20 questions and apparently there are no answers available yet. He said that the subject property has housed a
21 Kinze dealership for many years and there are a few semi-trucks which travel in and out but if they are going
22 to load approximately 700,000 gallons of product to use during corn planting season, which is two or three
23 weeks, it appears that there will be 320 semi-trucks traveling in and out of the property. He said that he does
24 not understand how there will not be a traffic issue.
25
26 Mr. Thorsland asked the Board if there were any questions for Mr. Kenneth Warner and there were none.
27
28 Mr. Thorsland asked if staff had any questions for Mr. Kenneth Warner.
29
30 Mr. Hall asked Mr. Kenneth Warner if his primary concern is just the truck traffic or is he concerned about
31 property value or any safety concerns related to the storage.
32
33 Mr. Warner stated that it depends on how many vehicles travel in and out of the property. He said that if
34 there was some information regarding the truck traffic then he and his wife could determine whether or not
35 they were still concerned. He said that if it takes 160 semi-trucks to fill the tank and they may haul 80 trucks
36 one day and 80 the next. He said that it is hard telling where they are hauling the product to and from
37 therefore there must be some sort of regulations about what is happening with the tank.
38
39 Mr. Hall stated that he is sure that the case will be continued therefore giving the petitioner a chance to
40 present information regarding the truck traffic. He asked Mr. Warner if he had any additional concerns that
41 he would like to see information on prior to the next public meeting.

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Mr. Warner stated that at the present time until everything is constructed he cannot say anything about the watershed but once it is all constructed it will be apparent if any drainage needs to be changed. He said that he has lived at his residence for 44 years and he believes that he should have been notified that a commercial fertilizer plant was being proposed next to his house.

Mr. Hall stated that notices were mailed out to all adjacent landowners.

Mr. Warner stated yes, but that was after the storage tank was constructed. He said that the petitioner should have addressed all regulations and permits before they constructed the tank.

Mr. Hall stated that the petitioner has always maintained to staff that this facility could serve their needs and their needs alone therefore the tank could have been constructed without a public hearing as a private use facility.

Mr. Warner stated that he would not have a problem with the tank if the petitioner would use it for their own farming operation.

Mr. Hall asked Mr. Warner if he would have a problem with the truck traffic for the petitioner's personal use of the tank or does Mr. Warner believe that the commercial use would result in even more truck traffic.

Mr. Warner stated that he believes that commercial use of the tank would result in a lot more truck traffic. He said that if the petitioner has 5,000 acres of corn and they use 50 gallon of chemical per acre that is 250,000 gallons of chemical required for their operation not 780,000 gallons. He said that 50 semi-loads of product for the farming operation versus 320 loads for the commercial use is a big difference. He said that the 320 loads could change because if 50 loads of product is hauled out of the facility they will probably haul 50 loads back in to fill the tank.

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

Mr. Courson asked Mr. Warner if there are any drainage issues due to the current facility.

Mr. Warner stated no drainage issues have been experienced yet but that doesn't mean that there won't be any in the future.

Mr. Courson asked Mr. Warner if the construction was completed this winter.

Mr. Warner stated that the construction is not complete.

Mr. Passalacqua stated that a better site plan is required from the petitioners as well as photographs of the subject property and Mr. Ken Warner's property.

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2 Mr. Warner stated that he would submit photographs of his property.
3
4 Mr. Hall asked Mr. Warner if he believes that there is 500,000 gallons of product in the tank currently.
5
6 Mr. Warner stated that he was told that there are 500,000 gallons of product in the tank currently by a pretty
7 good source.
8
9 Mr. Hall asked Mr. Warner to indicate how many truck trips in and out of the subject property he has
10 observed.
11
12 Mr. Warner stated that he may have only observed ten or twelve trucks but he is not at home all of the time.
13 He said that each truck holds 4,500 to 5,000 gallons of product which is approximately 80,000 pounds or 28
14 tons per truck.
15
16 Mr. Hall asked Mr. Warner if he only saw 10 to 12 trucks.
17
18 Mr. Warner stated yes. He said that he was told by several people that over 500,000 gallons of product is in
19 the tank currently although it was his understanding that there was not supposed to be any product in the
20 tank.
21
22 Mr. Thorsland stated that it would be helpful if the people who informed Mr. Warner of the 500,000 gallons
23 of product in the tank could either testify before this Board or submit their statement in writing.
24
25 Mr. Warner stated that he was told by Crop Production that they had 30 rail cars full of product to unload.
26
27 Mr. Thorsland stated that unless the Board can actually view a picture or read a document that information is
28 hearsay.
29
30 Mr. Warner stated that staff could call Therese Wyman, Manager at Crop Production Services in Paxton for
31 confirmation.
32
33 Mr. Hall stated that staff received several calls therefore staff visited the subject property and could not
34 document any evidence of trucks loading or unloading at the subject property and no rail cars were
35 witnessed. He said that staff has followed up on complaints that have been received.
36
37 Mr. Passalacqua asked Mr. Hall if the letter that he sent the petitioners indicated that the tank should not be
38 filled with any product.
39
40 Mr. Hall stated yes. He said that if the Board would like to view the letter he would be happy to provide
41 copies. He asked the Board if they would like to see all of his letters to the petitioner.

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Mr. Passalacqua stated that he would only like to see the letter regarding the use of the tank.

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

Mr. Thorsland asked the audience if anyone would like to cross examine Mr. Warner and there was no one.

Mr. Thorsland called Gene Warner to testify.

Mr. Paul Cole, attorney for the petitioners, stated that he will pose informative questions to Mr. Gene Warner and Mr. Warner can address the Board with his responses.

Mr. Cole asked Mr. Warner to indicate how the truck traffic travels on the subject property.

Mr. Gene Warner, who resides at 1006 Churchill Downs Drive, Champaign, stated that trucks normally enter along the east side of the Kinze dealership. He said that Warner Bros. owns property on both sides of the dealership therefore it should not matter which side the trucks enter although currently the trucks enter on the east side of the property which is further away from Kenneth Warner's home.

Mr. Cole stated that some characterizations of the tank have been mentioned that it will be used for personal storage for the Warner's farming operation and that it will be used for commercial purposes. He asked Mr. Warner if the tank will be used for storage.

Mr. Warner stated yes, storage for Warner Bros.

Mr. Cole asked Mr. Warner if Warner Bros. understood that the construction of the tank was perfectly legal.

Mr. Warner stated yes.

Mr. Cole asked Mr. Warner if he understood that the only way that the construction of the tank would be illegal was that if the tank was used for commercial purposes and not Warner Bros. Mr. Cole stated that Mr. Follmer's testimony indicated that the tank was built illegally. Mr. Cole stated that the tank was built legally so long as it was for the use of the Warner Bros.

Mr. Thorsland noted that staff addressed the legality of the tank.

Mr. Cole asked Mr. Warner to indicate the percentage of increase over the current business' truck traffic there would be if there is a use of full capacity for the tank.

Mr. Gene Warner stated for Warner Bros. use the increase would be very little but in relationship to the

1 amount of pickup trucks and cars that comes in and out of the Kinze dealership on a daily basis it may
2 increase 10%.

3

4 Mr. Cole asked Mr. Warner if that increase would be seasonal.

5

6 Mr. Warner stated yes, in the spring when the product is being delivered and hauled out. He said that the
7 product would be delivered in January or February and hauled out in April. He said that he believes that the
8 weight limit for the road is 80,000 pounds. He said that the delivery trucks will not weigh more than a
9 standard semi-truck that hauls grain off of the farm during harvest. He said that the request had to be
10 approved by the township and during their meeting last night and although he does not have any
11 documentation the township had issue with the tank's location.

12

13 Mr. Cole asked Mr. Warner if they could fill the tank to capacity to use personally for multiple seasons and
14 not expect to sell the product to anyone else or allowing anyone else to store their product in the tank.

15

16 Mr. Warner stated yes. He said that the tank could be filled for Warner Bros. to use during multiple seasons.

17

18 Mr. Cole asked Mr. Warner if the truck traffic for Warner Bros. use would be any different than the truck
19 traffic for other people's use of the product in the tank.

20

21 Mr. Warner stated that on average the truck traffic would be the same because more than likely the tank will
22 be filled once in early spring.

23

24 Mr. Thorsland asked Mr. Cole if there was anything else that he would like to add.

25

26 Mr. Cole stated no.

27

28 Mr. Warner stated that ever since Warner Bros. has been farming the ground around the subject property
29 they have tiled and maintained it. He said that Mr. Kenneth Warner has not installed any tile of his own for
30 drainage and Warner Bros. tiled along the west side of Kenneth's property at no charge. He said that
31 Kenneth has not tiled his own yard therefore it does stay wet in his yard area. He said that if Kenneth is
32 concerned about water on the Warner Bros. property he should not be because Warner Bros. has already
33 taken care of their drainage issues. He said that Kenneth should worry about water on his own property if he
34 is concerned about drainage.

35

36 Mr. Warner stated that bathroom facilities are located within the Kinze dealership and there will be a wash
37 station in the new building in case someone is exposed to the chemicals.

38

39 Mr. Thorsland asked the Board if there were any questions for Mr. Gene Warner.

40

41 Mr. Passalacqua asked Mr. Gene Warner if the tank has product in it.

1
2 Mr. Gene Warner stated yes. He said that the tank has been filled with ten train car loads.
3
4 Mr. Passalacqua stated that he does not understand how full the tank is by stating ten car loads.
5
6 Mr. Warner stated that there are eight rings on the tank and there are only two rings which have fertilizer in
7 it.
8
9 Mr. Passalacqua asked Mr. Warner if he received the letter from Mr. Hall indicating that filling the tank is a
10 bad idea.
11
12 Mr. Gene Warner stated that he did not see the letter.
13
14 Mr. Cole stated that Mr. Hall's letter encouraged the petitioners to not use the tank to store agricultural
15 product prior to approval but Warner Bros. assumed that Mr. Hall's letter was in reference to commercial
16 product and not personal product. He said that Warner Bros. has not placed any chemical in the tank for
17 commercial use.
18
19 Mr. Passalacqua asked Mr. Warner if this is the only fertilizer type business that Warner Bros. is part of in
20 the County.
21
22 Mr. Gene Warner stated no, at this time Warner Bros. owns 10% of Farmer's Ag Service in Gifford which is
23 also owned by Kenneth Warner.
24
25 Mr. Courson asked Mr. Gene Warner if the product that is currently in the tank is owned by Warner Bros.
26 and if so could receipts be submitted to prove that such is true.
27
28 Mr. Gene Warner stated yes.
29
30 Mr. Courson asked Mr. Warner if he is indicating that on average Warner Bros. would only use one tank per
31 year for personal use.
32
33 Mr. Warner stated yes.
34
35 Mr. Courson asked Mr. Warner if Warner Bros. would constantly fill the tank.
36
37 Mr. Warner stated no.
38
39 Mr. Thorsland asked the Board if there were any other questions for Mr. Gene Warner and there were none.
40
41 Mr. Thorsland asked if staff had any questions for Mr. Warner and there were none.

1
2 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Warner. He reminded the
3 audience that they may only ask Mr. Warner questions which are based on his testimony.
4
5 Mr. Kent Follmer asked Mr. Gene Warner if there is the capacity of ten rail cars in the tank currently. He
6 asked Mr. Warner when the product was placed in the tank.
7
8 Mr. Warner stated yes, there is the capacity of ten rail cars in the tank which was filled approximately five
9 weeks ago.
10
11 Mr. Follmer asked Mr. Warner if March and April is the time when the product is needed by the farmers for
12 their corn.
13
14 Mr. Warner stated yes.
15
16 Mr. Follmer asked Mr. Warner how many gallons of product have been sold thus far.
17
18 Mr. Warner stated none because the product is for Warner Bros. use only.
19
20 Mr. Follmer asked Mr. Warner if the product came from Crop Production Services.
21
22 Mr. Warner stated yes, Crop Production Services ordered the product for Warner Bros.
23
24 Mr. Follmer asked Mr. Warner how the ordering process works.
25
26 Mr. Warner stated that Warner Bros. orders the product from Crop Production Services for application in the
27 spring.
28
29 Mr. Follmer asked Mr. Warner how many tankers would equal ten rail cars.
30
31 Mr. Warner stated that a rail car holds approximately 3-1/2 times what a semi-tanker would hold.
32
33 Mr. Follmer stated that it would take approximately 35 semi-tankers to equal ten rail cars.
34
35 Mr. Cole stated that the math is irrelevant because what matters is the tanks capacity and how often is it
36 emptied.
37
38 Mr. Thorsland stated that Mr. Gene Warner's testimony was in reference to the traffic direction and the
39 amount of trucks is very relevant to his testimony. He said that the Board is trying to determine how many
40 trucks have been at the subject property thus far based on the rail car testimony versus truck. He said that
41 two rings of the tank would indicate that the tank is at approximately 25% capacity.

1
2 Mr. Follmer asked Mr. Warner if it is true that Warner Bros. has had persons contact them for purchase of
3 the product which is stored in the tank.
4
5 Mr. Thorsland noted that Mr. Warner did not testify to such and only indicated that the product was
6 purchased for Warner Bros. use. He said that if someone has information regarding this case then they are
7 welcome to attend the meeting to testify or they can submit their statement in writing.
8
9 Mr. Thorsland asked the audience if anyone else would like to cross examine Mr. Warner at this time and
10 there was no one.
11
12 Mr. Thorsland called James Rusk to testify.
13
14 Mr. James Rusk, Rantoul Township Supervisor, stated that Danny Sage, Rantoul Township Highway
15 Commissioner was unable to attend tonight's meeting therefore Mr. Rusk has attended the meeting in Mr.
16 Sage's behalf. He said that the Rantoul Plan Commission met last night with Rantoul Township and they
17 did not vote on the special use permit because they are not allowed to by state law. He said that the Plan
18 Commission has no protest on the map amendment because they feel that it should have been changed 30
19 years ago. He said that there was concern with the volume of vehicles that would be on the township road
20 and it is true that vehicles of 80,000 pounds will travel the road but the number of vehicles is the concern if
21 the special use permit is approved. He asked that if the facility becomes a full blown fertilizer operation
22 what would be the number of vehicles up and down the road. He said that the township understands that due
23 to the facility that additional tax dollars would be brought into the township but it is unsure if the amount
24 would equal the repair that will be required for the road. He said that the township has no other concerns
25 regarding the request other than the volume of trucks that will travel the road.
26
27 Mr. Thorsland asked Mr. Rusk if he would submit the letter from Rantoul Township as a Document of
28 Record.
29
30 Mr. Rusk stated yes.
31
32 Mr. Thorsland stated that the findings for the special use permit indicates that the average daily trips for the
33 road in question is 75. He asked Mr. Rusk if the ADT seems reasonable for the road with the current
34 dealership.
35
36 Mr. Rusk stated yes. He said that the township's concern is the heavy trucks. He said that currently almost,
37 but not all, farmers have semi-trucks to haul their grain during harvest season and the township has
38 constantly been improving the roads to handle that heavy traffic. He said that if this request is approved the
39 township would like to know how much more heavy traffic would be traveling the road.
40
41 Mr. Thorsland asked Mr. Rusk if the road's weight limit is 80,000 pounds.

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Mr. Rusk stated that he is not sure and would have to have Mr. Sage discuss that with the Board. He said that the road is a gravel based road with oil chip over it. He said that there are 80,000 pound vehicles that travel the road daily and the concern is that there will be more 80,000 pound vehicles traveling the road.

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

Mr. Courson asked Mr. Rusk if he knows whether the road has any seasonal weight restrictions.

Mr. Rusk stated that the road does not have any seasonal weight restrictions. He said that it is a double edged knife in that if you post the road it is posted for everyone therefore the farmer down the road can't get his grain to the elevator as well as people not being able to bring the tankers to the subject property. He said that the road is a 10-inch base road which is a well built township road but it is not a hard pavement road.

Mr. Courson stated that it would be helpful if Mr. Sage could provide a written statement discussing his concerns.

Mr. Rusk submitted Mr. Sage's letter as a Document of Record.

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

Mr. Thorsland asked if staff had any questions for Mr. Rusk.

Mr. Hall stated that the Board is always interested in the concern of the highway commissioners, even if the township does not have a plan commission, this Board is always very interested in what the highway commissioner thinks. He said that in addition to the volume of traffic, when there is heavy business use, many times just the actual driveway entrance to the public street becomes an issue. He asked Mr. Rusk if Mr. Sage had any concerns about the driveway entrance to the public street.

Mr. Rusk stated that he cannot answer Mr. Hall's question because Mr. Sage did not mention anything regarding the driveway entrance. Mr. Rusk stated that the township discussed this issue for over one hour and the actual meeting issue only lasted three minutes because the main topic was about a zoning change that should have occurred over 30 years ago. He said that all of the plan commission members voiced concern about the volume of traffic that may occur although no formal protest is being made.

Mr. Hall stated that even municipalities do not have protest rights in special use cases but the Board always asks a municipality if they have concerns that they could take into consideration. He said that he cannot speak for the Board other than what he has observed in previous cases but the Board is always interested in the comments of townships or municipalities in regards to a special use permit and they usually do everything that they can to address those concerns although this is not saying that the Board will be able to solve every problem but they do work very hard. He said that if the Rantoul Plan Commission wrestled that

1 long they might want to document their concerns in writing so that the ZBA can see what those concerns are
2 and if those concerns only had to do with traffic then those concerns have been made pretty clear. He said
3 that just because there is no protest right does not mean that the Board is not interested.
4

5 Mr. Rusk stated that he has always felt that the Board has done a good job with cases and that their concern
6 is always legitimate. He said that he wanted to attend the meeting tonight because Mr. Sage could not to
7 indicate the township's concerns regarding the volume of traffic especially since almost every vehicle that
8 would be on the subject property would be a heavy vehicle. He noted that the township always appreciates
9 the possibility of new tax dollars coming in but he is not sure that the tax dollars would cover the \$50,000
10 required per mile to fix the road for extensive repair.
11

12 Mr. Thorsland asked the Board if there were any additional questions for Mr. Rusk.
13

14 Mr. Passalacqua stated that since these cases would be continued it would be beneficial to have Mr. Rusk
15 and Mr. Sage included on the mailing list for future meeting packets.
16

17 Mr. Rusk stated that if he and Mr. Sage continue to receive information from staff then he will be sure that
18 he and Mr. Sage are in attendance.
19

20 Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Rusk and there were
21 none.
22

23 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Rusk. He noted that any questions
24 should be limited to Mr. Rusk's testimony at tonight's public hearing.
25

26 Mr. Paul Cole, attorney for the petitioners, asked Mr. Rusk if he would have any concerns about who is
27 driving the heavy vehicles up and down the road, for instance, if it were the Warners or someone else that
28 they had sold chemicals to.
29

30 Mr. Rusk stated that he is concerned about the volume of trucks and not who is driving the trucks.
31

32 Mr. Cole asked Mr. Rusk if his concern would be lessened if the chemical that is in the tank is only for the
33 use of Warner Bros. farm operation. He said that the petitioner has testified that a certain number of trucks
34 would be present on the road and subject property in January when the tank is being filled and then the same
35 number of trucks would be present in April when the chemical is utilized on the farm ground. He asked Mr.
36 Rusk if it would matter if all of the trucks were driven by the Warner family and no one else was storing
37 fertilizer in the tank.
38

39 Mr. Rusk stated that the volume of trucks is the only thing that matters to the township.
40

41 Mr. Cole asked Mr. Rusk if he understood that if the trucks were only driven by the Warners for their farm

1 operation they would be in full compliance.
2
3 Mr. Rusk stated yes, but there is still a volume issue.
4
5 Mr. Thorsland asked the audience if anyone else desired to cross examine Mr. Rusk and there was no one.
6
7 Mr. Thorsland asked the audience if anyone else desired to sign the witness register at this time to present
8 testimony regarding 731-S-12 and there was no one.
9
10 Mr. Thorsland stated the Board will take a five minute break.
11
12 **The Board recessed at 8:20 p.m.**
13 **The Board resumed at 8:27 p.m.**
14
15 Mr. Thorsland stated that the Board will now hear testimony regarding the map amendment case.
16
17 Mr. Thorsland called Paul Cole to testify.
18
19 Mr. Paul Cole, attorney for the petitioner, stated that the map amendment is being requested because the
20 petitioner intends to cooperate with the County in connection with the Special Use Permit application. He
21 said that the implement dealership has been in operation for nearly 40 years and if it had been 40 years or
22 more we would not be here today but since it has only been approximately 39 years the County has asked the
23 petitioner to clean up the map and create what is a true fact, a business district into a business district, and
24 acknowledge it as such. He said that this is tied to the Special Use Permit application because the petitioner
25 is not permitted is go to the tank across the property that is the present subject of the map amendment request
26 because it is business use that is different from what is being used now. He said that he is attempting to
27 explain the rationale for the map amendment and asked Mr. Hall if the petitioner receives the Special Use
28 Permit then they must also have the map amendment.
29
30 Mr. Hall stated yes.
31
32 Mr. Cole stated that it is interesting how the two cases are tied together and he does not know if the
33 petitioner would really want to pursue a map amendment if they didn't have the special use and he does not
34 know why they wouldn't cooperate with the County in that respect anyway. He said that there is a
35 disconnect between the two and they can be treated separately but the petitioner is willing to do the map
36 amendment if that is what the County desires.
37
38 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Cole and there were none.
39
40 Mr. Thorsland called Kent Follmer to testify.
41

1 Mr. Kent Follmer, attorney for Kenneth and Victoria Warner, stated that his clients reside next to the subject
2 property and there is photograph in the Preliminary Memorandum that depicts the residential property. He
3 said that Kenneth and Victoria Warner have resided at their property for many years and they have not made
4 any objections over the years because the proposed business is much different than what they are concerned
5 about in the other case. He said that there are some notations on page 8 of the Findings of Fact under item
6 14.A(3)(a) indicating that the proposed rezoning will remove less than one acre of best prime farmland from
7 production. He asked how it is less than one acre of best prime farmland when it is a 3.8 acre tract being
8 requested to rezone. He said that he is sure that there is a very simple answer to his question.

9
10 Mr. Follmer stated that on page 10 of the Finding of Fact item 14. C(1)(d) indicates that there is one nearby
11 dwelling that is adjacent to the subject property and no complaint has ever been received about the existing
12 business from the owner of the adjacent property. Mr. Follmer stated that item 14.C(1)(d) is true. He said
13 that on page 14 of the Finding of Fact item 21.B(2) indicates that in regards to the value of nearby residential
14 properties, it is not clear if the requested map amendment would have any affect and whatever reduction in
15 value that has occurred would have occurred along time ago. He said that there may be some evidence or
16 testimony in respect to the values and Mr. and Mrs. Warner have considered hiring an appraiser to determine
17 if the value of their property would be lowered if the proposed map amendment and special use would be
18 approved. He said that just because the current business has been in existence for 20 years does not mean
19 that it must remain and just because there has not been any objections voiced in 20 years does not mean that
20 can't be objections now.

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

23
24 Mr. Thorsland asked if staff had any questions for Mr. Follmer.

25
26 Mr. Hall stated that if there is going to be a claim of property value impacts or incompatibilities of any kind
27 then the next question would be what can be done to mitigate that. He said that normally staff would ask if
28 screening, buffers, etc, could be used to mitigate the impacts or incompatibilities.

29
30 Mr. Follmer stated that he does appreciate Mr. Hall's comments and he has completed some preliminary
31 investigations regarding buffers and fences. He said that the intent is to be a good neighbor but at the same
32 time his clients' desire to protect the value of their property.

33
34 Mr. Kass stated that in regards to Mr. Follmer's question regarding removing less than one acre of best
35 prime farmland from production the intent of the statement was to document that the expansion of the area
36 will be less than one acre. He said that the existing lot has already taken up farmland but accommodating the
37 full east/west building will be less than one acre.

38
39 Mr. Follmer thanked Mr. Kass for that clarification.

40
41 Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Follmer and there

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were none.

Mr. Thorsland called Kenneth Warner to testify.

Mr. Kenneth Warner, who resides at 1254 CR 2700, Rantoul, stated that he had no further comments to add at this time.

Mr. Thorsland asked the audience if anyone would like to present testimony regarding either Case 731-S-12 or 747-AM-13 at there was no one.

Mr. Follmer stated that after much discussion it appears that Warner Bros. wants to use this tank for their own farming operation but they have solicited and obtained a letter from Crop Production Services which is evidence of doing business with other businesses. He said that Crop Production Services is a billion dollar company with branches all over Illinois and elsewhere.

Mr. Passalacqua stated that the Board has requested a new site plan indicating Ken and Victoria Warner's property and everything that exists and is proposed on the subject property.

Mr. Thorsland stated that there will be a homework session for the petitioner very soon.

Mr. Thorsland asked if anyone else desired to present testimony regarding either case.

Mr. Paul Cole stated that he desires to speak very briefly about both cases. He said that he finds the need to give a small rebuttal to Mr. Follmer's testimony regarding Warner Bros. intended use for the property. He said that the fact that Warner Bros. solicited a letter of support from a very large fertilizer dealer does not mean that the proposed use is a commercial operation. He said that Warner Bros. farms over 5,800 acres therefore they constructed a large tank to store the fertilizer for their use and they do not need to do a commercial business for fertilizer sales or storage. He said that the uses are relevant and why they decided to build a large tank is irrelevant and what matters is what Warner Bros. will be allowed to do with the tank. He said that Warner Bros. will be allowed to use the tank for their own purpose.

Mr. Cole stated that this is a very useful process because it is the push and shove of arguments and an exchange of ideas and not the truth of what will happen. He said that he appreciates the attention that the Board and staff have given to this issue and he understands that the cases will be continued to a later date. He said that the petitioners will gather the best information for submittal to the Board and will address the site plan issues and the Board's concerns.

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

Mr. Passalacqua asked Mr. Cole how many gallons of chemical would be sprayed on one acre of farm ground.

1
2 Mr. Gene Warner stated that 60 to 65 gallons of chemical would be sprayed upon one acre of farm ground.
3
4 Mr. Passalacqua stated that based upon 5,800 acres at 60 to 65 gallons of chemical per acre Warner Bros.
5 could possibly store two seasons of chemical in the tank.
6
7 Mr. Cole stated yes and is not only what Warner Bros. would do but could do. He said that he understands
8 that things change from season to season and Warner Bros. may need more or less chemical, depending upon
9 which type of crops are grown each year. He said that the tank could be devoted strictly to Warner Bros.
10 operation but why should it be limited to only that intention. He asked why other users who need storage
11 capacity should not have it if the issues and concerns can be addressed.
12
13 Mr. Passalacqua asked Mr. Cole if the space available in the tank would be rented or would it be offered to
14 the neighbor for storage.
15
16 Mr. Cole stated someone is going to have to pay for the storage space for their fertilizer.
17
18 Mr. Passalacqua asked Mr. Cole if charging for the storage makes this a commercial operation.
19
20 Mr. Cole stated yes, which is why a Special Use Permit is necessary. He said that the tank can be used for
21 the petitioner's own use and it may be feasible to purchase more than one year's worth of fertilizer.
22
23 Mr. Passalacqua asked Mr. Cole if he understands that if the Special Use Permit is approved then all of the
24 concerns regarding the neighbor's property value, volume of trucks and, road repair are very relevant issues.
25
26 Mr. Cole stated that the concerns are legitimate but the petitioners are attempting to assist the County in
27 cleaning up the zoning map.
28
29 Mr. Palmgren asked Mr. Cole if the entire 5,800 acres is planted in corn.
30
31 Mr. Gene Warner stated that 5,800 acres is the total acreage farmed by Warner Bros. He said that
32 approximately one-half of the acreage is planted in corn.
33
34 Mr. Palmgren asked if the chemical is only applied to corn ground.
35
36 Mr. Gene Warner stated yes.
37
38 Mr. Thorsland asked the Board and staff if there were any additional questions and there were none.
39
40 Mr. Thorsland stated that the Board has requested the following items from the petitioner: 1. Complete site
41 plan indicating all existing and future uses; and 2. Lights; 3. Drainage on the Kenneth Warner property and

1 the subject property; 4. Address staff concerns regarding the entrance by obtaining comments from the
2 Rantoul Township Highway Commissioner; 5. Tank status; and 6. Receipts or documents from witnesses to
3 uphold their testimony.

4
5 Mr. Passalacqua reminded the audience that no hearsay is allowed therefore new testimony regarding what
6 someone heard or said must be documented in writing.

7
8 Mr. Thorsland stated that there is an implication that all of the state and federal permitting requirements have
9 been met therefore the Board is requiring a copy of the approved permit or certificate from these entities.

10
11 Mr. Thorsland entertained a motion to continue Cases 731-S-12 and 747-AM-13 to the May 16, 2013,
12 meeting.

13
14 **Ms. Capel moved, seconded by Mr. Passalacqua to continue Cases 731-S-12 and 747-AM-13 to the**
15 **May 16, 2013, meeting. The motion carried by voice vote.**

16
17
18 **Case 739-V-12 Petitioner: David and Kathy Reineke Request: Authorize the expansion of an existing**
19 **2 acre lot that consists of best prime farmland by an addition of 2.11 acres to create a 4.11 acre lot in**
20 **lieu of the maximum lot size of 3 acres on best prime farmland in the AG-1 District. Location: Lot 5**
21 **of Hedgerows of Bloomfield (Phase 1) Subdivision and an adjacent 2.11 acre parcel in the Northwest**
22 **Quarter of the northeast Quarter of Section 8 of Mahomet Township and commonly known as the**
23 **home at 155 CR 2300N, Mahomet.**

24
25 Mr. Thorsland informed the audience that this is an Administrative Case and as such the County allows
26 anyone the opportunity to cross examine any witness. He said that at the proper time he will ask for a show
27 of hands for those who would like to cross examine and each person will be called upon. He requested that
28 anyone called to cross examine go to the cross examination microphone to ask any questions. He said that
29 those who desire to cross examine are not required to sign the witness register but are requested to clearly
30 state their name before asking any questions. He noted that no new testimony is to be given during the cross
31 examination. He said that attorneys who have complied with Article 7.6 of the ZBA By-Laws are exempt
32 from cross examination.

33
34 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must
35 sign the witness register for that public hearing. He reminded the audience that when they sign the witness
36 register they are signing an oath.

37
38 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.

39
40 Mr. David Reineke, who resides at 155 CR 2300N, Mahomet stated that he has petitioned to correct an
41 error regarding his property. He said that he purchased the property in 2002 from Tom Brown, adjacent

1 landowner and developer of the Hedgerows of Bloomville (Phase One), and Mr. Reineke assumed that the
2 additional two acres that he purchased would be combined with his residential lot, Lot 5 of the Hedgerows
3 of Bloomville, although the two parcels remained separate because he receives two real estate tax bills. He
4 said that he recently found out that the two acre parcel is an illegal lot therefore he could not build upon it
5 and if he wanted to sell his home in the future he could not. He said that he plans to live at his current
6 residence for at least another ten years and would like to have the zoning issue corrected.

7
8 Mr. Thorsland asked the Board if there were any questions for Mr. Reineke and there were none.

9
10 Mr. Thorsland asked if staff had any questions for Mr. Reineke and there were none.

11
12 Mr. Thorsland asked the audience if anyone desired to cross examine Mr. Reineke and there was no one.

13
14 Mr. Thorsland called John Hall to testify.

15
16 Mr. John Hall, Zoning Administrator, distributed a new Supplemental Memorandum dated March 28, 2013,
17 to the Board for review. He said that attached to the memorandum is a copy of the recorded plat for The
18 Hedgerows Phase I and a copy of the Warranty Deed for the 2.11 acre tract purchased by Mr. Reineke. He
19 said that the property is Lot 5 of The Hedgerows Phase I and the total area, lot 5 and the 2.11 acre tract,
20 comprises a 4 acre lot. He said that the following evidence is proposed to be added to Item 7: C. The
21 subdivision The Hedgerows Phase I was filed with the Champaign County Recorder of Deeds on June 14,
22 2000, as Recorder document 2000R12823; and D. The petitioner purchased Lot 5 and the adjacent 2.11 acre
23 tract in 2002 but did not apply for subdivision approval with the Village of Mahomet at that time; and E.
24 The subject property became within 1.5 miles of the Village of Mahomet sometime between 1980 and 1991;
25 and F. The Village of Mahomet has had subdivision jurisdiction since approximately 1961 when they first
26 adopted a comprehensive plan; and G. The maximum lot size on best prime farmland was not added to the
27 Zoning Ordinance until July 22, 2004.

28
29 Mr. Hall stated that staff proposes the following evidence to be added to Item 9. of the Summary of
30 Evidence: C. Regarding the purchase of the subject property: (1) The petitioner purchased Lot 5 and the
31 adjacent 2.11 acre tract in 2002 but did not apply for subdivision approval with the Village of Mahomet at
32 that time; and (2) The Plat Act Affidavit recorded with the deed as Recorder's Document 2003R38042 was
33 sworn by the previous owner, Thomas Brown, and indicates that the conveyance of the 2.11 acre tract was a
34 "sale or exchange of parcels of land between owners of adjoining and contiguous land" which was accurate
35 but did not address the fact that the division of land was in an area subject to municipal subdivision
36 jurisdiction; and D. The maximum lot size on best prime farmland was added to the Zoning Ordinance on
37 July 22, 2004. He said that the deed was attached because the Recorder requires that a Plat Act Affidavit is
38 completed and it accurately indicates that this was a sale of land between owners of adjoining and
39 contiguous land. Mr. Reineke's purchase of Lot 5 was actually recorded before this therefore in terms of
40 timing this is all accurate. He said that he wonders if the Plat Act Affidavit could be improved. He said that
41 the Plat Act goes on to talk about when there is a Plat of Subdivision in an area affected by a Comprehensive

1 Plan it has to be signed by the relevant municipal authority but it apparently never anticipates that even
2 though there are exemptions the municipalities do not generally accept those exemptions and still require a
3 plat. He said it is easy to imagine a better form of a Plat Act Affidavit which would recognize that if the
4 land is in an area where there is a municipal comprehensive plan it would mention something about
5 municipal approval but it doesn't. He said that this is a glaring problem although the Plat Act was written at
6 a point in time and deals primarily with Plats of Subdivision. He said that the point is that in regards to item
7 9, "was this the action of the petitioner," the answer would be "no" because the petitioner did not sign the
8 Plat Act Affidavit and even if he had the Plat Act Affidavit is accurate. He said that this is just one of those
9 things in which the petitioner had the property reviewed by an attorney but apparently the attorney thought
10 that the Plat Act Affidavit automatically took care of municipal subdivision issues. He said that this is all
11 relevant evidence and when he read the petitioner's statement on the application he wondered if the
12 petitioner had thought that the two parcels had been joined before the petitioner's purchase. Mr. Hall stated
13 that the 2.11 acre tract was created at the time that the petitioner purchased the property and did not exist
14 prior to that purchase.

15
16 Mr. Reineke stated that the 2.11 acre tract was created at the time of his purchase. He said that Mr. Brown
17 has the adjoining farmland and the 2.11 acre tract was part of the deal when he purchased Mr. Brown's
18 original home. He said that the property was surveyed and he believed that the two parcels would
19 automatically be combined but it appears that he was incorrect. He said that he always wondered why he
20 received two real estate tax bills but didn't think much about it until last year when he was told that he
21 owned an illegal lot that he could not sell or build upon.

22
23 Mr. Hall stated that although this is an expansion of a lot that is best prime farmland the 2.11 acres contains
24 no best prime farmland. He said that the way that best prime farmland is defined and the maximum lot size
25 of three acres, yes this is increasing the size of a best prime farmland lot but it isn't taking any more best
26 prime farmland out of production. He said that there isn't any way to fix the Ordinance so that variances like
27 this would not be necessary but he is sure that there are a lot of people who wouldn't want things like this to
28 be anything other than a required variance and yet the 2.11 acres is not best prime farmland itself.

29
30 Mr. Reineke stated that he currently uses the 2.11 acres as a balloon launch site.

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

33
34 Mr. Thorsland asked Mr. Hall if the ZBA could apply some guidance or do they even have an opportunity to
35 voice a change in the Plat Act Affidavit to make it clearer.

36
37 Mr. Hall stated that such a change would be up to the Recorder of Deeds and the Recorder is required to
38 have people sign the affidavit but the Recorder is not supposed to be a policeman. He said that the Plat Act
39 never contemplates that while there may be a municipal subdivision required to create a new lot it does not
40 contemplate that there would be a municipal subdivision required for the sale of land between adjacent
41 landowners and that only comes about because of the way that the municipal statutes relate to the Plat Act.

1 He said that this is just an unfortunate circumstance and the Recorder has to require the Plat Act Affidavit
2 but nothing more, as frustrating as it might be he does not believe that anything can be changed. He said that
3 staff read the Plat Act today and it is clear that this kind of situation is not anticipated by the Plat Act but
4 nonetheless staff can pass Mr. Thorsland's question along to the State's Attorney.
5

6 Mr. Thorsland stated that this is not the first time that a situation like this has occurred and there is no handy
7 guide book for someone to read. He said that there have been issues where the public does not understand
8 the need for a permit, or the difference between a rural lot versus a lot in a municipality's ETJ, etc. He said
9 that the information is available for the public but somewhere along the lines either the County, the
10 Recorder, the realtor or the attorney are failing people in properly informing the public before they either
11 make a purchase or change to their property. He said that he does not know where, if any place, the ZBA
12 could do a better job but to file data indicating that the job needs to get done.
13

14 Mr. Hall maintained that the knowledge is out there and it is hard to believe that a practicing attorney in
15 Champaign County in 2013 does not understand something like this but it is known that engineers and
16 attorneys have specialties so maybe that is the beginning but there is no way to stamp out ignorance because
17 it exists and always will exist. He said that ignorance is one reason why the ZBA has to have the variance
18 process included in the Zoning Ordinance and there has to be a way to fix things like this. He said that he
19 cannot imagine that the ZBA would be able to develop an information system that would make everyone
20 fully cognizant at all times and prevent things like this, it is not possible.
21

22 Mr. Thorsland stated that one can dream.
23

24 Mr. Hall stated that all that has to be done is for the public to call the office and ask.
25

26 Mr. Palmgren asked Mr. Hall if many attorneys call the office.
27

28 Mr. Hall stated that there are some attorneys who call the office almost every week.
29

30 Mr. Palmgren stated that perhaps there would be a way to promote that more.
31

32 Mr. Hall stated that it is hard to believe that calling the office is not an automatic thing. He said that the
33 attorney should know to call the Department of Planning and Zoning to see if it is okay to divide a property
34 in Champaign County.
35

36 Mr. Thorsland asked the Board if there were any additional questions for Mr. Hall or the petitioner and there
37 were none.
38

39 Mr. Thorsland asked the audience if anyone desired to sign the witness register at this time to present
40 testimony regarding Case 739-V-12 and there was no one.
41

1 Mr. Thorsland closed the witness register at this time.
2
3 Mr. Thorsland asked the Board if there was any additional input to the findings other than what staff
4 recommended and there was none.
5
6 Mr. Passalacqua asked Mr. Hall if the Village of Mahomet had any objection with this request.
7
8 Mr. Hall stated no. He said that the petitioner has contacted the Village of Mahomet and they were
9 supportive of the variance.
10
11 Mr. Hall stated that as the Board goes through the evidence everywhere where it refers to the total area being
12 4.11 acres should be revised to indicate 4.0 acres. He said that the acreage correction is a small difference
13 but every difference helps and the name of the subdivision needs to be revised to indicate The Hedgerows
14 Phase I. He said that due to the acreage revision the percentage of the variance should be revised to indicate
15 133%.
16
17 Mr. Thorsland read the proposed special conditions as follows:
18 **A. The petitioner shall file an application for subdivision approval with the Village of**
19 **Mahomet within 30 days after final action to Case 739-V-12.**
20 The special condition stated above is required to ensure the following:
21 **That the petitioner files an application for subdivision approval in a timely manner.**
22
23 **B. The Zoning Administrator shall not authorize a Zoning Use Permit Application or**
24 **issue a Zoning Compliance Certificate on the subject property until the petitioner**
25 **has received subdivision approval from the Village of Mahomet.**
26 The special condition stated above is required to ensure the following:
27 **That the proposed lot expansion is in compliance with the Village of Mahomet**
28 **subdivision regulations.**
29
30 Mr. Thorsland asked Mr. Reineke if he agreed to the proposed special conditions as read.
31
32 Mr. Reineke stated that he agreed.
33
34 Mr. Thorsland entertained a motion to approve the proposed special conditions as read.
35
36 **Mr. Miller moved, seconded by Mr. Palmgrem to approve the proposed special conditions as read.**
37 **The motion carried by voice vote.**
38
39 Mr. Thorsland stated that a new Item 4 should be added to the Documents of Record as follows: 4.
40 Supplemental Memorandum dated March 28, 2013, with attachments.
41

1 **Findings of Fact for Case 739-V-12:**

2
3 From the documents of record and the testimony and exhibits received at the public hearing for zoning case
4 739-V-12 held on March 28, 2013, the Zoning Board of Appeals of Champaign County finds that:

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

9
10 Mr. Passalacqua stated that special conditions and circumstances DO exist which are peculiar to the land or
11 structure involved, which are not applicable to other similarly situated land and structures elsewhere in the
12 same district because of the maximum lot size requirement for best prime farmland.

13
14 Ms. Capel stated that the property was purchased with the assumption that it was one parcel when it was
15 actually two and granting the variance will allow the petitioner to build on the lot.

16
17 Mr. Courson stated that the land was purchased prior to the effective date of the Ordinance regulating the
18 maximum lot size on best prime farmland.

19
20 Mr. Kass read the Board’s findings for Finding #1 as follows: Special conditions and circumstances DO
21 exist which are peculiar to the land or structure involved, which are not applicable to other similarly situated
22 land and structures elsewhere in the same district because of the maximum lot size requirement for best
23 prime farmland; and the property was purchased under the assumption that it was one lot; and granting the
24 variance will allow the petitioner to build on the lot; and the land was purchased prior to the adoption of the
25 ordinance regulating the maximum lot size on best prime farmland.

26
27 The Board agreed with the findings for Finding #1.

- 28
29 **2. Practical difficulties or hardships created by carrying out the strict letter of the**
30 **regulations sought to be varied WILL prevent reasonable or otherwise permitted use of**
31 **the land or structure or construction.**

32
33 Mr. Passalacqua stated that practical difficulties or hardships created by carrying out the strict letter of the
34 regulations sought to be varied WILL prevent reasonable or otherwise permitted use of the land or
35 structure or construction because it would be non-compliant without the variance.

36
37 Mr. Thorsland stated that the lot is not buildable without the variance.

38
39 Mr. Kass read the Board’s finding for Finding #2 as follows: Practical difficulties or hardships created by
40 Carrying out the strict letter of the regulations sought to be varied WILL prevent reasonable or otherwise
41 permitted use of the land or structure or construction because: It would be non-compliant without the

1 variance; and the lot is not buildable without the variance.

2
3 The Board agreed to the findings for Finding #2.

4
5 **3. The special conditions, circumstances, hardships, or practical difficulties DO NOT**
6 **result from actions of the applicant.**
7

8 Ms. Capel stated that special conditions, circumstances, hardships, or practical difficulties DO NOT result
9 from actions of the applicant because the land was purchased prior to the Ordinance regulating the
10 maximum lot size on best prime farmland.

11
12 Mr. Passalacqua stated that it was assumed to be one parcel at the time of purchase.

13
14 Mr. Thorsland stated that perhaps we could indicate that based on the Plat Act Affidavit that had gone
15 through the Recorder’s Office there was the assumption that this was one parcel at the time of purchase.

16
17 Ms. Capel stated that there was no indication on the Plat Act Affidavit that there was a problem.

18
19 Mr. Kass read the Board’s finding for Finding 3 as follows: The special conditions, circumstances,
20 hardships, or practical difficulties DO NOT result from actions of the applicant because: The land was
21 purchased prior to the ordinance regulating the maximum lot size on best prime farmland; and it was
22 assumed to be one parcel at the time of purchase because there was no indication on the Plat Act Affidavit
23 that there was a problem.

24
25 The Board agreed to the findings for Finding #3.

26
27 **4. The requested variance, subject to the proposed special conditions, IS in harmony with**
28 **the general purpose and intent of the Ordinance.**
29

30 Ms. Capel stated that the requested variance, subject to the proposed special conditions, IS in harmony with
31 the general purpose and intent of the Ordinance the additional 2.11 acre parcel is not best prime farmland
32 and it is not easily farmed and the 2.11 acre parcel is not currently being farmed so no best prime farm land
33 is being taken out of production.

34
35 Mr. Palmgren stated that the variance will make an unusable lot legal and useful.

36
37
38 Mr. Kass read the Board’s finding for Finding #4 as follows: The requested variance, subject to the
39 proposed special conditions, IS in harmony with the general purpose and intent of the Ordinance because:
40 The 2.11 acre parcel is not best prime farmland and it is not easily farmed; and the 2.11 acre parcel is not
41 currently being framed, therefore no land will be taken out of production; and the variance will correct a

1 violation and will allow the land to be used if the petitioner chooses to do so.

2
3 The Board agreed with the findings for Finding #4.

- 4
- 5 **5. The requested variance, subject to the proposed special conditions, WILL not be**
- 6 **injurious to the neighborhood or otherwise detrimental to the public health, safety, or**
- 7 **welfare.**

8
9 Mr. Miller stated that the requested variance, subject to the proposed special conditions, WILL not be
10 injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because the
11 existing lot will not change anything or add any extra burden to the existing infrastructure.

12
13 Ms. Capel stated that all of the neighbors have been contacted and are supportive and the Village of
14 Mahomet also supports the variance.

15
16 Mr. Kass read the Board’s findings for Finding #5 as follows: The requested variance, subject to the
17 proposed special conditions, WILL NOT be injurious to the neighborhood or otherwise detrimental to the
18 public health, safety, or welfare because: The existing lot will not be changing and will not be adding any
19 burden to the existing infrastructure; and the surrounding neighbors are supportive of the variance, as well
20 as the Village of Mahomet.

21
22 The Board agreed to the findings for Finding #5.

- 23
- 24 **6. The requested variance, subject to the proposed special conditions, IS the minimum**
- 25 **variation that will make possible the reasonable use of the land/structure.**

26
27 Mr. Passalacqua stated that the requested variance, subject to the proposed special conditions, IS the
28 minimum variation that will make possible the reasonable use of the land/structure because it corrects a
29 violation that makes the parcel useful and sellable.

30
31 Mr. Kass read the Board’s finding for Finding #6 as follows: The requested variance, subject to the
32 proposed special conditions, IS the minimum variation that will make possible the reasonable use of the
33 land/structure because it will correct a violation and will make the parcel useful and sellable.

34
35 The Board agreed to the findings for Finding #6.

- 36
- 37 **7. The special conditions imposed herein are required for the particular purposes**
- 38 **described below:**

- 39
- 40 **A. The petitioner shall file an application for subdivision approval with the Village of**
- 41 **Mahomet within 30 days after final action to Case 739-V-12.**

The special condition stated above is required to ensure the following:

That the petitioner files an application for subdivision approval in a timely manner.

B. The Zoning Administrator shall not authorize a Zoning Use Permit Application or issue a Zoning Compliance Certificate on the subject property until the petitioner has received subdivision approval from the Village of Mahomet.

The special condition stated above is required to ensure the following:

That the proposed lot expansion is in compliance with the Village of Mahomet subdivision regulations.

Mr. Thorsland entertained a motion to approve the Findings of Fact as amended.

Ms. Capel moved, seconded by Mr. Passalacqua to approve the Findings of Fact as amended. The motion carried by voice vote.

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

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

Mr. Thorsland entertained a motion to move to a Final Determination for Case 739-V-12.

Ms. Capel moved, seconded by Mr. Palmgren to move to a Final Determination for Case 739-V-12. The motion carried by voice vote.

Final Determination for Case 739-V-12:

Mr. Courson moved, seconded by Ms. Capel that the Champaign County Zoning Board of Appeals finds that, based upon the application, testimony, and other evidence received in this case, that the requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority granted by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that the Variance requested in Case 739-V-12 is hereby GRANTED WITH CONDITIONS to the petitioners David and Kathy Reineke to authorize the expansion of an existing 1.89 acre lot that consists of best prime farmland by an addition of 2.11 acres to create a 4.0 acre lot in lieu of the maximum lot size of 3 acres on best prime farmland in the AG-1 District. Subject to the following conditions:

A. The petitioner shall file an application for subdivision approval with the Village of Mahomet within 30 days after final action to Case 739-V-12.

The special condition stated above is required to ensure the following:

That the petitioner files an application for subdivision approval in a timely manner.

B. The Zoning Administrator shall not authorize a Zoning Use Permit Application or issue a Zoning Compliance Certificate on the subject property until the petitioner has received subdivision approval from the Village of Mahomet.

The special condition stated above is required to ensure the following:

That the proposed lot expansion is in compliance with the Village of Mahomet subdivision regulations.

Mr. Thorsland requested a roll call vote.

Miller-yes	Palmgren-yes	Passalacqua-yes
Capel-yes	Courson-yes	Thorsland-yes

Mr. Hall informed the petitioner that he has received an approval and staff will send out the final paperwork as soon as possible. He noted that if the petitioner has any questions he should feel free to contact staff.

Case 743-AT-13 Petitioner: Zoning Administrator Request: Amend the Champaign County Zoning Ordinance as follows: Part A. Revise Section 9.1.9 as follows: 1. Authorize County Board approved variances as authorized in Section 13; and 2. Require Findings for County Board approved variances; and 3. Authorize the conditions for County Board approved variances; and 4. Require three-fourths of all members of the County Board to approve a variance when a written protest against the variance is submitted by a township board in a township that has a plan commission, within 30 days after the close of the public hearing at the Zoning Board of Appeals. Part B. Revise Section 13 as follows: 1. Add “or the Governing Body” after each use of “Board”; and 2. Authorize that a variance or special use permit or zoning use permit or zoning compliance certificate may be authorized when a construction or use would violate the subdivision regulations of a municipality when the use would violate the subdivision regulations of a municipality when the requirement for annexation is a requirement for plat approval by that municipality involving the expansion and/or construction of a water treatment plant or related facilities owned and operated by a predominately rural water district, when the municipality has its own water treatment plant and related facilities. If no plat approval shall be considered without the requirement for annexation then a VARIANCE from the requirement for compliance with the municipal SUBDIVISION regulations may be considered by the GOVERNING BODY. Part C. Revise Section 9.2.2 to require three-fourths of all members of the County Board to approve a text amendment or map amendment when a written protest against the amendment is submitted by a township board in a township that has a plan commission, within 30 days after the close of the public hearing at the Zoning Board of Appeals.

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

1
2 Mr. Thorsland asked the petitioners if they desired to make a statement outlining the nature of their request.
3

4 Mr. John Hall, Zoning Administrator, stated that the way that this case was advertised with a time limit of 30
5 days after the close of the public hearing for township protest astute readers would have noticed that the way
6 that it was actually written in the proposed amendment is 15 days and that is because the statute only
7 provides for a 15 day limit which is an extraordinary short time. He said that he hopes the Board can take
8 action on this case tonight but even if they can't he would recommend an item #18 to the Summary of
9 Evidence recognizing that the statutory limits is 15 days and encourage the County Board to increase that to
10 30 days if possible. He said that he has not had a chance to consult with the State's Attorney about proposed
11 item #18 but having a 15 day limit in the Ordinance when all of the other limits are 30 days is a recipe for
12 disaster and he believes that the County will be better served by indicating 30 days. He said that sometimes
13 things that seem so reasonable are just not possible because the State does not authorize it. He said that if
14 the ZBA agrees with proposed item #18 it can be added to the Summary of Evidence and leave it up to the
15 County Board to approve or leave the case at the ZBA for another meeting so that it can be fixed at that time.
16 He said that he does not intend to rush the Board through this case but this case is intended to provide a
17 means by which the Sangamon Valley Public Water District could actually obtain a Zoning Use Permit
18 within a reasonable time to allow the expansion of their water treatment plant. He said that it is written
19 generally but the Board should recognize that the text amendment is intended to facilitate Sangamon Valley.
20

21 Mr. Hall distributed new Supplemental Memorandum dated March 28, 2013, which indicates the proposed
22 revision to paragraph 13.2.1.A.4.a. He said that the original amendment language for the variance was
23 rushed at the time and so when the case was advertised staff continued to improve the language. He said that
24 paragraph 13.2.1A.4.a. in the new memorandum indicates the new wording which is hopefully clearer and
25 uses the phrase "construction or change of use" and also includes the following text after water treatment
26 plant and sewage treatment plant: owned and operated by a predominately rural water district. He said that
27 the last sentence in 13.2.1A.4.a. has been changed as follows: The governing body may consider a variance
28 from the requirement for compliance with the municipal subdivision regulations if the municipality will not
29 consider plat approval without the requirement for annexation. He said that if the municipality documents in
30 writing that they would fully consider plat approval without annexation then no variance would be required
31 with the County although the subject case does not have such a statement in writing therefore a variance is
32 required. He said that approving the text amendment does not pre-judge any variance because the variance is
33 its own case with facts that either support or do not support the approval of the variance and this is only a
34 text amendment. He said that even though this is a complicated concept it is really very simple because the
35 Board needs to decide whether or not they are going to recommend that the variance be possible or not and
36 hopefully no matter what the Board's recommendation is hopefully the Board will have time to finish the
37 case. He said that staff has already added the case to the ELUC agenda for next Thursday but if no action is
38 taken tonight by the ZBA then the case will be pulled from the ELUC agenda. He noted that if the Board is
39 not ready for action tonight then he recommended that they do not take action.
40

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

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Ms. Capel asked Mr. Hall if staff had received any information from the municipalities.

Mr. Hall stated no. He said that a Regional Planning Commission Technical meeting is scheduled for next Tuesday and one of things that staff does during that meeting is review the list of amendments and cases and he expects that staff will hear something next Tuesday. He said that the municipalities now have a good understanding that it doesn't make a lot of sense in providing comments to an ongoing hearing and makes more sense to wait and see what the ZBA recommendation actually is and then make comments on that recommendation. He said that no comments from the municipalities is no reason for the ZBA to not take action tonight.

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

Mr. Thorsland asked the Board if they agreed to the addition of new item #18.

The Board agreed.

Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony regarding this case and there was no one.

Mr. Thorsland closed the witness register.

Mr. Thorsland read staff's recommendations for the Summary Finding of Fact as follows: 1. The proposed text amendment will NOT IMPEDE the Land Resource Management Plan because of the following: A. The proposed test amendment will NOT IMPEDE the following LRMP goals: 1-10; and 2. The proposed amendment HELPS ACHIEVE the purpose of the Zoning Ordinance as follows: Fixes regulations and standards to which buildings, structures, or uses therein shall conform; and 3. The proposed text amendment will IMPROVE the Zoning Ordinance as follows: Allows the County Board to authorize a variance from the Section 13 requirement of compliance with municipal subdivision regulations; and allows the Zoning Administrator to authorize a Zoning Use permit for the expansion and/or construction of a water treatment plant or related facility that is predominately owned and operated by a rural water district if the proposed use is in compliance with County zoning regulations; and provides relief from County enforcement of municipal subdivision regulations, but will still allow a municipality to enforce their regulations; and clarify the effect of a township protest by a township with a planning commission for map amendments and for county Board authorized variances.

Mr. Thorsland asked the Board if they agreed with staff's recommendations for the Summary Finding of Fact.

The Board agreed.

1 Mr. Hall read new item #18 to the Summary of Evidence as follows: The ZBA recognizes that the statutory
2 requirement is 15 days for a township protest on a County Board authorized variance but feels that 30 days is
3 a more reasonable deadline for a township protest on a County Board authorized variance, if permissible by
4 law.

5
6 Mr. Thorsland asked if indicating, if permissible by law, means that if the State's Attorney determines that it
7 is not permissible then staff is willing to do 15 days.

8
9 Mr. Hall stated that is all staff can do.

10
11 Mr. Thorsland asked the Board if they agreed to the text for proposed item #18.

12
13 The Board agreed.

14
15 Mr. Thorsland stated that a new item #2. should be added to the Documents of Record indicating the
16 Supplemental Memorandum dated March 28, 2013.

17
18 Mr. Thorsland entertained a motion to approve the Summary Findings of Fact.

19
20 **Ms. Capel moved, seconded by Mr. Palmgren to approve the Summary Finding of Fact as amended.**
21 **The motion carried by voice vote.**

22
23 Mr. Thorsland entertained a motion to adopt the Summary of Evidence, Documents of Record and Findings
24 of Fact as amended.

25
26 **Mr. Courson moved, seconded by Mr. Miller to adopt the Summary of Evidence, Documents of**
27 **Record and Findings of Fact as amended. The motion carried by voice vote.**

28
29 Mr. Thorsland informed the petitioner that a full Board is present tonight.

30
31 Mr. Thorsland entertained a motion to move to a Final Determination for Case 743-AT-13.

32
33 **Mr. Courson moved, seconded by Mr. Passalacqua to move to the Final Determination for Case 743-**
34 **AT-13. The motion carried by voice vote.**

35
36 **Final Determination for Case 743-AT-13:**

37
38 **Ms. Capel moved, seconded by Mr. Courson that pursuant to the authority granted by Section 9.2 of**
39 **the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County**
40 **determines that he Zoning Ordinance Amendment requested in Case 743-AT-13 should BE**
41 **ENACTED by the County Board in the form attached hereto.**

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Mr. Thorsland requested a roll call vote.

Miller-yes	Palmgren-yes	Passalacqua-yes
Capel-yes	Courson-yes	Thorsland-yes

Mr. Hall stated that this case will be included on the ELUC agenda for next Thursday’s meeting.

7. Staff Report

None

8. Other Business

A. Review of Docket

B. April 11, 2013, Special Meeting at 7:00 p.m. in John Dimit Meeting Room

Mr. Hall stated that the meeting is to be held at 7:00 p.m. unless the Board desires an earlier time.

Mr. Passalacqua stated that he prefers 7:00 p.m.

Mr. Thorsland stated that the meeting will remain at 7:00 p.m.

Mr. Hall asked the Board if they would prefer that the April 25th meeting begin at 6:30 p.m. in lieu of 7:00 p.m.

Mr. Miller asked if redundant testimony is necessary.

Mr. Thorsland stated that he is going to be very hard about redundant testimony. He said that the witness who was last at the previous meeting, who was a contributor as to why the meeting went so long, complained that he wished that the Board could take final action. Mr. Thorsland stated that he stated that the only reason why the Board was not able to move to final action was because all of the witnesses testified far too long.

The Board agreed that the April 25, 2013, meeting should begin at 6:30 p.m.

Mr. Passalacqua asked staff for clarification of Case 748-V-13.

Mr. Hall stated that Case 748-V-13 is in regard to the Rural Home Occupation at a different location. He said that this is a variance for the number of employees. He noted that this case is in a different township than the previous cases by the same petitioner.

1
2 Mr. Kass stated that the township does not have protest rights although they are allowed to submit
3 comments.
4
5 Mr. Hall stated that townships only have protest rights if they have a plan commission and only if it is a
6 County Board variance.
7
8 Mr. Miller asked if there is any reason why Case 752-S-13, Premier Cooperative Inc, could not be bumped
9 up to an earlier date on the docket., preferably May 16th.
10
11 Mr. Kass stated that he is not comfortable with moving Case 752-S-13 to the May 16th meeting. He said that
12 the documentation that staff has received to date are pretty good but stormwater management may need to be
13 provided but he needs to complete some calculations to decide whether or not it will be necessary because it
14 is his understanding that there will be some removals and replacements of structures. He said that he is
15 concerned about the number of new cases that the Board has prior to this case that may need to be continued.
16
17 Mr. Miller asked Mr. Kass if, based on the submitted material, this would be a one meeting case.
18
19 Mr. Kass stated that it is unknown at this time. He said that he has not had a chance to review new
20 information that was submitted on Tuesday although Premier Cooperative has always been very cooperative
21 with staff in submitting pertinent information for their cases. He said that the application is pretty complete
22 except for the stormwater information.
23
24 Mr. Miller stated that he represents Premier Cooperative as a director therefore he is asking if, since Premier
25 is a reputable company that is trying to go about this process in the correct manner as opposed to other
26 people in the County that construct prior to requesting permission, could Premier begin construction. He
27 said that timing is of the essence.
28
29 Mr. Kass stated that his concern is in regards to the amount of new cases ahead of Premier Cooperative's
30 case and also the amount of cases that have already been continued.
31
32 Mr. Miller asked if there is a chance that Premier could be granted permission to go ahead and begin
33 construction since Premier has been so cooperative and has a reputation based on their previous cases.
34
35 Mr. Kass stated that this would be a question to ask the Zoning Administrator.
36
37 Mr. Hall stated that in regards to whether or not Case 752-S-13 could be moved up there are two cases
38 docketed for June 13, 2013. He said that staff could check with the petitioner for Cases 750-S-13 and 751-S-
39 13 to see if they are in a hurry, but he would suspect that they are in as much of a hurry as Premier
40 Cooperative therefore staff cannot pick and choose which applicant gets moved up. He said that generally
41 staff tries to find a way to move everyone up on the docket. He said that during Mr. Kass' first year he has

1 already learned that when there are seven new cases in a space of a month trying to move yet another case in
 2 that month is not going to happen because we do not have staff for that. He said that it is true that Premier
 3 Cooperative does provide staff with superlative site plans which are submitted on time and it is normally
 4 staff who cannot keep up with them. He said that staff does do its best for uses like Premier Cooperative
 5 because they are highly valuable and if staff can find a way to move them forward on the docket staff will
 6 but we can't move them up at the detriment to other applicants and we don't want to move it up and find out
 7 that staff cannot meet the deadlines.

8
 9 Mr. Miller stated that Premier's biggest challenge is making contact with the State Fire Marshal. He asked
 10 Mr. Hall if there is any chance that Premier could begin construction.

11
 12 Mr. Hall apologized but he has lost track of what Premier is requesting.

13
 14 Mr. Kass stated that Premier is requesting a special use permit for multiple principal uses on the property
 15 which is 50+ acres.

16
 17 Mr. Hall stated that he can review this case later with Mr. Kass but staff always advises people that they can
 18 always prepare their foundations and even pour them but once you get above foundations you are
 19 approaching something that really does need zoning approval. He said that if you put in foundations at your
 20 own risk and find out that a foundation is all that it can ever be used for then that is at that their cost but you
 21 are willing to do it then it will be allowed to happen. He said that maybe this would be all the flexibility that
 22 Premier would need at this point because it sounds like even that would be a lot of work but he does not
 23 know if Premier wants to go to that kind of risk. He said that the other thing is that the total facility is
 24 probably one of the most complicated land uses in our jurisdiction which makes completing the
 25 memorandums and findings of fact more difficult and that being said this is a valued use that has never
 26 received a complaint therefore hopefully we can get this case through in a timely fashion and provide a little
 27 flexibility if the petitioner decides to take advantage of it.

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

30
 31 None

32
 33 **10. Adjournment**

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

36
 37 **Mr. Courson moved, seconded by Mr. Palmgren to adjourn the meeting at 9:17 p.m. The motion**
 38 **carried by voice vote.**

39
 40 The meeting adjourned at 9:17 p.m.

41

ZBA

AS APPROVED MAY 16, 2013

3/28/13

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Respectfully submitted

Secretary of Zoning Board of Appeals