

1 Mr. Thorsland asked the Board if there were additional corrections or additions required for the July 28th
2 minutes and there were none.

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4 **The motion carried by voice vote.**

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6 Mr. Thorsland entertained a motion to re-arrange the agenda and hear Case 844-AM-16 prior to Case 843-
7 V-
8 16.

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10 **Mr. Passalacqua moved, seconded by Ms. Capel, to re-arrange the agenda and hear Case 844-AM-16**
11 **prior to Case 843-V-16. The motion carried by voice vote.**

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13 **5. Continued Public Hearing**

14
15 **Case 685-AT-11 Petitioner: Champaign County Zoning Administrator. Request to amend the**
16 **Champaign County Zoning Ordinance by revising Section 6.1 by adding standard conditions required**
17 **for any County Board approved special use permit for a Rural Residential Development in the Rural**
18 **Residential Overlay district as follows: (1) require that each proposed residential lot shall have an**
19 **area equal to the minimum required lot area in the zoning district that is not in the Special Flood**
20 **Hazard Area; (2) require a new public street to serve the proposed lots in any proposed RRO with**
21 **more than two proposed lots that are each less than five acres in area or any RRO that does not**
22 **comply with the standard condition for minimum driveway separation; (3) require a minimum**
23 **driveway separation between driveways in the same development; (4) require minimum driveway**
24 **standards for any residential lot on which a dwelling may be more than 140 feet from a public street;**
25 **(5) require for any proposed residential lot not served by a public water supply system and that is**
26 **located in an area of limited groundwater availability or over a shallow sand and gravel aquifer other**
27 **than the Mahomet Aquifer, that the petitioner shall conduct groundwater investigations and contract**
28 **the services of the Illinois State Water Survey (ISWS) to conduct or provide a review of the results;**
29 **(6) require for any proposed RRO in a high probability area as defined in the Illinois State Historic**
30 **Preservation Agency (ISHPA) about the proposed RRO development undertaking and provide a copy**
31 **of the ISHPA response; (7) require that for any proposed RRO that the petitioner shall contact the**
32 **Endangered Species Program of the Illinois Department of Natural Resources and provide a copy of**
33 **the agency response.**

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35 Mr. Thorsland stated that the Zoning Administrator has requested that Case 685-AT-11 be continued to a
36 later date.

37
38 Mr. John Hall, Zoning Administrator, requested that Case 685-AT-11 be continued to the October 27, 2016,
39 meeting.

40
41 Mr. Thorsland entertained a motion to continue Case 685-AT-11 to the October 27, 2016, meeting.
42

1 Ms. Lee moved, seconded by Ms. Griest, to continue Case 685-AT-11, to the October 27, 2016,
2 meeting. The motion carried by voice vote.
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4

5 Case 828-S-16 and Case 834-V-16 Petitioner: Jonathan Hasselbring, Planning Director for the
6 Champaign County Forest Preserve Request: Authorize as a Special Use as a “public park or
7 recreational facility” those portions of the Kickapoo Rail Trail that are proposed in the
8 unincorporated area only, and that shall connect to those portions of the Kickapoo Trail that are
9 proposed to be located inside the Village of St. Joseph and the City of Urbana, in the AG-1 and AG-2
10 Agriculture Zoning Districts and subject to the variance summarized below but fully described in the
11 legal advertisement, on property that is commonly known as the inactive CSX railroad line located on
12 the south side of U.S. Route 150 and that is described more fully in the legal advertisement but is
13 summarized here as follows: Part A Subject Property: A 13.2 acre tract in the AG-1 District in
14 Sections 10 and 15 of St. Joseph Township and subject to a variance from parking requirements; and
15 Part B Subject Property: An 11.6 acre tract in the AG-1 District in Sections 9 and 16 of St. Joseph
16 Township and subject to a variance for setback of 61 feet in lieu of the minimum required 85 feet; a
17 rear yard of 20 feet in lieu of the minimum required 25 feet, and from parking requirements; and
18 Part C Subject Property: A 9.2 acre tract in the AG-1 District in Section 8 and 17 of St. Joseph
19 Township and subject to a variance for setback of 53 feet in lieu of the minimum required 85 feet; a
20 front yard of 27 feet in lieu of the minimum required 35 feet, and from parking requirements; and
21 Part D Subject Property: A 12.4 acre tract in the AG-1 District in Section 7 and 18 of St. Joseph
22 Township and subject to a variance for setback of 58 feet in lieu of the minimum required 85 feet; and
23 from parking requirements; and Part E Subject Property: A 12.1 acre tract in the AG-2 District in
24 Sections 12 and 13 of Urbana Township and subject to a variance for setback of 65 feet in lieu of the
25 minimum required 85 feet; and from parking requirements; and Part F Subject Property: A 12.1 acre
26 tract in the AG-2 District in Sections 11 and 14 of Urbana Township and subject to a variance for
27 setback of 65 feet in lieu of the minimum required 85 feet; a front yard of 22 feet in lieu of the
28 minimum required 35 feet, and from parking requirements; and Part G Subject Property: A 2.1 acre
29 tract in the R-2 Residential Zoning district in Section 10 and 15 of Urbana Township and subject to a
30 variance for setback of 69 feet in lieu of the minimum required 85 feet; a front yard of 0 feet in lieu of
31 the minimum required 35 feet, and from parking requirements. Location: Generally, 9 different
32 tracts of land totaling 72.7 acres (as amended) comprised of the various Parts described above and
33 commonly known as the inactive CSX railroad line between the City of Urbana and the Village of St.
34 Joseph and that shall connect to those portions of the Kickapoo Rail Trail that are proposed to be
35 located inside of the Village of St. Joseph and the City of Urbana, Illinois and more specifically
36 described in the legal advertisement.

37 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign
38 the witness register for that public hearing. He reminded the audience that when they sign the witness
39 register they are signing an oath. He asked the audience if anyone desired to sign the witness register at this
40 time.
41

42 Mr. Thorsland informed the audience that Cases 828-S-16 and 834-V-16 are Administrative Cases, and as

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

8
9 Mr. DiNovo stated that he would like to make a disclosure statement. He said that 20 years ago he and his
10 wife donated \$500 to the Kickapoo Rail Trail project. He said that if their donation causes a legal conflict of
11 interest he would be willing to abstain from participation in these cases.

12
13 Mr. Thorsland asked the Board and the petitioner if they believed that there was a legal conflict of interest
14 issue regarding Mr. DiNovo's statement. The Board and the petitioner indicated that they had no concerns
15 regarding Mr. DiNovo's disclosure.

16
17 Mr. Thorsland thanked Mr. DiNovo for his statement.

18
19 Mr. Thorsland asked the petitioner if he would like to make a statement regarding his cases.

20
21 Mr. Jonathan Hasselbring, Planning Director for the Champaign County Forest Preserve District, (CCFPD),
22 who resides at 606 E. South Mahomet Road, Mahomet, stated that they are requesting variances for setback
23 and parking as well as a special use permit due to the narrow width of the subject property and its former use
24 as a railroad line. He said that he will attempt to answer as many questions as possible, but the July 7th
25 Supplemental Memorandum addressed many of the Board's and public's concerns regarding private
26 easements for private resident access, maintenance of the bridge, street crossing safety, and agricultural
27 tiling. He said that sign safety would be included in the basic contract. He said that Matt Deering, Attorney
28 for the Champaign County Forest Preserve, submitted information regarding concerns related to ownership.

29
30 Mr. John Hall, Zoning Administrator, stated that the Supplemental Memorandum dated August 25, 2016,
31 includes an email from Matt Deering, Attorney for the Champaign County Forest Preserve, which reviews
32 the Supreme Court ruling in the *Brandt v. United States* case. He said that Mr. Deering's email addresses
33 the Board's concerns but he welcomed any additional concerns that the Board may have.

34
35 Mr. Hall stated that the July 7th Supplemental Memorandum was for the July 14th ZBA meeting but the
36 meeting was cancelled and the Board did not have a chance to review that memorandum. He said that he
37 would like to correct the description for Part C. as follows: A 9.2 acre tract in the AG-1 District in Sections
38 8 and 17 of St. Joseph Township and subject to a variance for setback of 59 feet in lieu of the minimum
39 required 85 feet; a front yard of 23 feet in lieu of the minimum 35 feet; and a rear yard of 23 feet in lieu of
40 the minimum required 25 feet, and from parking requirements. He said that these corrections are minor
41 things, but he wants to make sure that the Board has all of the correction information when they move to the
42 final determination. He said that there is a lot of information included in the July 7, 2016, Supplemental

1 Memorandum and if the Board desires he will review each attachment with the Board.
2

3 Mr. Thorsland stated that Ms. Chavarria included the items of concern/homework in the July 7, 2016,
4 Supplemental Memorandum. He said that at the April 28th public hearing there were 11 concerns that the
5 Board requested clarification from the petitioner, and those points are as follows: 1. Proof of original
6 ownership and that CSX had the full rights to the land that they sold to CCFPS (not just easements); 2. A
7 copy of sheets 144 and 148 showing the private driveways and what is planned around them in terms of
8 vegetation, markings, signage, maintenance; 3. Anyone who might be able to answer the concerns is
9 welcome at the hearing (Natural Resources Director for the CCFPD); 4. If any lights are going to be
10 installed, they need to meet ordinance requirements for full cut-off and a manufacturer's spec sheet of what
11 will be purchased if lighting is planned; 5. A typical plan for vegetation at the street crossings simply to
12 document that the vegetation will not obstruct vision; 6. Written protocol explaining the intent regarding
13 letting farmers work on underground tiles simply to document the intent of the CCFPD and the fact that the
14 landscape would have been restored as part of the tile repair; 7. Written protocol explaining the intent
15 regarding granting of easements especially as it relates to Steve Appl's land; 8. Address concerns about
16 debris building up under the bridge and how maintenance could get vehicles around the trail to clean up this
17 kind of thing; 9. Address CCFPD's thoughts about not having restrooms on the trail. If there were
18 restrooms, that would be an additional case matter for zoning because they are structures, and if there are
19 not, there will be some concern about what people will do; 10. Address the concern of traffic turning off US
20 150 and not having much space in which to stop if there is trail traffic crossing the public street; and 11.
21 Information regarding when "master planning" will occur and an acknowledgement from the CCFPD that
22 master planning could result in the need for a new Special Use Permit.
23

24 Mr. Thorsland asked the Board if there were any questions for Mr. Hasselbring.
25

26 Ms. Lee asked Mr. Hasselbring if the trail will only be for bicycles or will the trail be available for
27 horseback riding.
28

29 Mr. Hasselbring stated that at this point and time equestrian use is not a permitted use for the trail. He said
30 that it is mainly a recreational trail for hiking, cycling, bird watching, cross-country skiing, walking,
31 running, and dog walking.
32

33 Ms. Lee stated that the Board did not receive copies of the Quit Claim Deed, which refers to the railroad
34 company. She said that she has not provided the Board copies of the document that she reviewed at the
35 Recorder's office. She said that the Quit Claim Deed recorded on October 08, 2013, refers to the beginning
36 railroad company and the statute for the Rail to Trail federal legislation. She said that there was a corrected
37 Quit Claim Deed recorded on March 19, 2015. She said that she has some concerns about what the CCFPD
38 believes they own. She said that the Board received testimony from two adjacent landowners indicating that
39 their abstract states that when the land ceases use by the railroad company, it would revert to the
40 landowners. She said that the landowners originally gave the easement to the railroad, but Mr. Hasselbring
41 is claiming that federal legislation also grants the CCFPD an easement for a trail. She said that, from a legal
42 perspective, she believes that the CCFPD only has an easement. She said that County records indicate that

1 in receipt of \$76,000, the CCFPD gave a permanent easement along US Route 150 to the Illinois
2 Department of Transportation (IDOT). She said that if the CCFPD has an easement that was originally for
3 the exclusive use of the railroad and then transferred to the CCFPD for a trail, CCFPD does not have
4 permanent right, but an easement. She said that she does not believe that the CCFPD has the legal authority
5 to give a permanent easement to the IDOT. She said that, during previous hearings, she has requested that
6 the CCFPD submit a copy of their title work, because it would include the distance of the easement given to
7 the railroad. She said that issue of CCFPD granting a permanent easement to IDOT is not consistent with
8 the intention of the easement. She said that she is disappointed that the CCFPD's attorney is not present
9 tonight.

10
11 Mr. Hasselbring stated that Dan Olson might be able to answer some of Ms. Lee's concerns, because he was
12 with the CCFPD during the time of land sales.

13
14 Mr. Thorsland called Dan Olson to testify.

15
16 Mr. Dan Olson, who resides at 6106 N. Lincoln Avenue, Champaign, stated that Ms. Lee has been asking
17 very good questions, but there is a little disconcert. He said that in short, the CCFPD does own the rail line.
18 He said that CCFPD purchased the rail line from CSX and it is not an easement, but is an ownership. He
19 said that the ownership was by Quit Claim Deed.

20
21 Ms. Lee stated that a Quit Claim Deed only gives the CCFPD the rights that the original holder had. She
22 said that the first railroad only had an easement; therefore, the Quit Claim Deed does not pass all rights or
23 Warranty Deed title and only gives the CCFPD the easement that the other person had. She said that she
24 does not see how the CCFPD could claim that they have outright ownership. She said that when they
25 purchased this they were purchasing an easement and the CCFPD is doing the same.

26
27 Mr. Olson stated that the *Railbanking Act* itself allows for that and it does not contain an easement when it is
28 quit claimed through the *Act*. He said that there is a *Railbanking Act* procedure.

29
30 Ms. Lee stated that she has a book that the *Railbanking Act* is in and it does give the CCFPD the right to use
31 it for a trail, but that does not mean that it supersedes Illinois Law. She said that it is not a grant of outright
32 ownership, like what a Warranty Deed would. She said that a Quit Claim Deed only gives the CCFPD what
33 the predecessor already had and you must go back to the original deed to determine that.

34
35 Mr. Olson stated that the question is how much land was originally in the easement and how much land was
36 actually purchased. He said that in the original sale, there was approximately 48% of the mileage of the rail
37 line that was in easement, so we are talking about two different types of land transfers that occurred for the
38 full 24 miles.

39
40 Ms. Lee said that there all type of titles, an easement, which is a type of title, and an outright title, where you
41 own all of the full ownership of title. She said that an easement is not full ownership of title.

42

1 Mr. Olson stated that he understands what Ms. Lee is saying, but this is federally rail banked, not state rail
2 banked, and there is a difference. He said that the State of Illinois Constitution was set up so that, when the
3 railways did come through, the land was ceded as federal land and that is how it remains today.

4
5 Ms. Lee stated that the easement that the first railroad got was an easement just for the term of it operating
6 as a railroad, and that is an easement, not a federal grant. She said that there were instances where the
7 federal government gave the land and it was federal land, but this is a case where the individual landowners
8 gave easements to the initial railroad and federal law does not supersede that. She said that the CCFPD
9 could get the easement from each individual landowner for the purpose of Rails to Trails, although the
10 landowners still have the right for the land to revert to them when it is no longer operated as a trail or a
11 railroad. She said that this process is not simple, but it is a solution.

12
13 Mr. Thorsland noted that Ms. Lee has documentation that the rest of the Board does not have for review. He
14 asked Ms. Lee if she had copies to distribute to the Board.

15
16 Ms. Lee stated that she only made a copy for herself and staff.

17
18 Mr. Thorsland stated that he is not sure how deep the Board can go into this discussion without having the
19 documentation in front of them.

20
21 Ms. Lee stated that she assumes that the cases will be continued to another meeting; therefore, staff can
22 include the documentation from the Recorder's office in the next packet regarding these cases. She said that
23 the one thing that she is concerned about is the actual dimension of the area that was included in the original
24 easements. She said that CCFPD was supposed to provide documentation regarding title, but they have not
25 done so yet. She said that she did not have time to research the original deeds that dated back to the 1800's,
26 but the deeds are there and that research is possible. She said that there is a way to avoid all of this
27 controversy, but she does not believe that the CCFPD has the right to have a permanent easement when they
28 do not have all of the land rights. She said that she does not want the taxpayers of Champaign County to
29 have to pay money for something that should have been done in the beginning. She said that should would
30 like to see copies of the deed for the original railroad.

31
32 Mr. Thorsland asked Ms. Lee if she is certain that those documents are available for viewing.

33
34 Ms. Lee stated that the documents should be in the recorder's office.

35
36 Mr. Thorsland noted that the terms "should" and "are" may be two different things.

37
38 Ms. Lee stated that there should also be abstracts out there that would indicate the same thing that was
39 originally recorded.

40
41 Mr. Dan Olson stated that what it comes down to is the very fine point of when the *Railbanking Act*
42 occurred. He said that the United States Surface Transportation Board has the conveyance of the ownership

1 through the *Railbanking Act*. He said that when a rail line is about to be no longer in use, they file with the
2 United States Surface Transportation Board and they hold it until an agreement, purchase or something else
3 can happen, which is part of the *Railbanking Act*. He said that they hold it in its entirety as it is right then
4 and there. He said that whether it is land in fee simple, or land that is in easement or whatever, the nature of
5 the *Railbanking Act* was to keep all of the rail lines for future rail use, and the CCFPD is still under that,
6 because the land is rail banked and it has diversionary items that could happen within it, and if ever needed
7 it could be reverted back to a railway someday. He said that in every one of these cases, this is the fine
8 sticking point, although not every railroad in the State of Illinois or the United States was successfully
9 conveyed under the *Railbanking Act*. He said that the Brandt case was out west where the land grab
10 happened first, the railroad came second with easement, and after abandonment, it reverted to the original
11 landowners because it was not rail banked. He said that the United States Surface Transportation Board has
12 all of the documents on their website to show the conveyance and how it occurred. He said that the
13 conveyance was with other agencies and not the CCFPD, and those other agencies are not in attendance to
14 speak tonight. He said that after the rail is no longer being use it is turned into the United States Surface
15 Transportation Board and it is conveyed through their process.

16
17 Ms. Lee stated that Section 1248 of the U.S. Statutes discusses easements and right-of-ways.

18
19 Mr. Thorsland asked Ms. Lee to indicate her primary concern because the CCFPD feels that they have the
20 right to ask for this request due to the property being properly rail banked. He asked Ms. Lee if she has
21 doubts as it pertains to the case.

22
23 Ms. Lee stated that she does not want lawsuits to come from this proposed use and a way that they can
24 resolve it from happening is to obtain an easement from the landowners for the trail. She said that it would
25 be nice to know what the original easements included when the landowners gave the original easements to
26 the original railroad.

27
28 Mr. Thorsland asked Ms. Lee if she believes that the requested variances are incorrect because the
29 easements may be different.

30
31 Ms. Lee stated that she would like to know the size of the original easements.

32
33 Mr. Thorsland asked Ms. Lee if she wants this information for some sort of legal cover, or because the
34 Board could grant a variance that the Board does not have the right to grant a variance on.

35
36 Ms. Lee stated that she want to see if the original easement jibes with what the CCFPD is dealing with today
37 in their drawings.

38
39 Mr. Olson stated that the original easements were highly variable and there were some areas that were 40
40 feet wide and some that were 100 feet, but there is one spiked area that is 120 feet wide. He said that the
41 CCFPD does not want to end up in a lawsuit either, but they feel like they do not need to ask for an
42 easement, because the CCFPD owns the land under the *Railbanking Act*, and that is about as simple as it

1 gets as to why they do not need easements.

2
3 Mr. DiNovo asked Mr. Olson to comment on the easements granted by the CCFPD to IDOT. He asked Mr.
4 Hall if he has a copy of those easements.

5
6 Mr. Hall stated that Ms. Lee did provide a copy of the document to staff tonight, but he has not had an
7 opportunity to review it or copy it for the Board's review.

8
9 Mr. DiNovo asked Mr. Hall if there is any precedent regarding how this Board handles conflicting opinions
10 between two competent attorneys.

11
12 Mr. Hall stated that the Board has never had this issue. He said that if the potential cost to the taxpayers is
13 the concern, then following the management of the CCFPD makes a lot of sense. He said that if the concern
14 is about knowing the absolute truth regarding ownership, then that could be very expensive to the taxpayers.

15
16 Mr. Thorsland asked Ms. Lee to indicate who she believes should do all of this research.

17
18 Ms. Lee stated that she does not know if the recorder's office has this information or not. She said that the
19 documentation that was included in the July 07, 2016, mailing packet indicates that the contract said that the
20 sellers were giving the CCFPD a Quit Claim Deed and not a Warranty Deed and that it was the buyer's
21 responsibility to obtain title insurance. She asked Mr. Olson if the CCFPD obtained title insurance.

22
23 Mr. Olson stated that he would need to check with the CCFPD's attorney.

24
25 Ms. Lee stated that the title insurance policy could provide some of the details without having to do a lot of
26 work in research. Ms. Lee stated that two witnesses have testified that their abstracts indicate that when the
27 land is no longer used for a railroad, it would revert to them.

28
29 Mr. Thorsland stated that page 6 of 52 of the July 7, 2016, Supplemental Memorandum #2, states that the
30 buyer may obtain a title examination and purchase title insurance on the premises at its sole cost.

31
32 Ms. Lee stated that she understands the text.

33
34 Mr. Thorsland stated that he got a different impression.

35
36 Ms. Lee stated that normally a seller gets the title insurance and pays for it, but in this case, it was reversed.

37
38 Mr. DiNovo stated that the Board has limited knowledge, and there are conflicting opinions from two
39 competent attorneys and he suspects that there could be documentation that may clarify the situation. He
40 said that at some point the attorneys might have to agree to disagree, because there may not be any black
41 letter reading to resolve the issue. He said that the ZBA is not competent to rule on the law and the ZBA's
42 decision could be based on the uncertainty of a defect in ownership title. He said that the provided

1 information might be as good as it is going to get.

2
3 Mr. Passalacqua stated that, as he understands the petitioner, the reason why this situation is so unique is
4 that the land is rail banked.

5
6 Mr. Olson stated that Mr. Passalacqua is correct. He said that he understands Ms. Lee's concerns, but the
7 reason why the other cases had problems was due to the land not being rail banked, or was rail banked
8 incorrectly. He asked Mr. DiNovo who the other attorney was besides the CCFPD's attorney.

9
10 Mr. DiNovo stated that the other attorney was Ms. Lee.

11
12 Mr. Thorsland stated that at this moment it is assumed that the land was rail banked and, as far as the
13 petitioner is concerned, they have the right to proceed forward with the case. He said that Ms. Lee disputes
14 that and the Board has not had a chance to review the documents that she discovered at the recorder's office.
15 He asked the Board, if they had enough information to proceed tonight or would they like to have a
16 continuation so that the Board can review the documents that Ms. Lee discovered at the recorder's office.
17 He said that if the case is continued, perhaps most of the questions could be settled so that the whole Board
18 is comfortable. He asked the Board, if they desired to go with what they believe is a snap shot and the
19 legality of it or do they want to require proof of actual ownership. He said that Ms. Lee's original
20 motivation was taxpayer cost and to avoid the CCFPD being involved in a potential lawsuit, but
21 continuations do cost the taxpayers. He said that the Board could continue to scratch into the history of the
22 rail and find many, many things due to the amount of tracts of land involved. He asked Ms. Lee if she had
23 any additional concerns.

24
25 Ms. Lee stated not at this time.

26
27 Mr. Hasselbring stated that the permanent easement with IDOT was to allow for material storage during the
28 US 150-improvement process during the summer of 2014.

29
30 Mr. Olson stated that there was a construction easement and a permanent easement along US 150. He said
31 that the CCFPD did convey the easement to IDOT so that they could do the shoulder and drainage
32 improvements along US 150 between Urbana and St. Joseph.

33
34 Ms. Lee stated that her concern is that the CCFPD only has an easement. She said that she has not done as
35 much research that is required, but she did take some time to do some research.

36
37 Mr. Passalacqua asked Ms. Lee to indicate her thoughts regarding the petitioner's comment that the CCFPD
38 does have full ownership due to the *Railbanking Act*.

39
40 Ms. Lee stated that the CCFPD only has what the original railroad had and the *Railbanking Act* only granted
41 them the right to create the trail, but did not necessarily give them the right to grant a permanent easement to
42 someone else. She said that with the railroad putting the land into the railbank and the railbank giving it to

1 the trail, they have the easement that the railroad had. She said that one of the provisions of the *Railbanking*
2 *Act* is that, if necessary, the trail can revert to a rail and the railroad company will not get any more land than
3 what it originally had.

4
5 Mr. Passalacqua asked the petitioner, if it is his understanding that the CCFPD does have outright ownership
6 or just an easement.

7
8 Mr. Olson stated that the CCFPD has outright ownership.

9
10 Mr. Passalacqua asked Mr. Olson if that is unique to the *Railbanking Act*.

11
12 Mr. Olson stated that it is his belief that everything that is conveyed and purchased correctly through the
13 *Railbanking Act*, is outright ownership. He said that he does not know of any other variation that could
14 occur, because that is the normal procedure.

15
16 Mr. Passalacqua asked Mr. Olson if there is a document, other than the *Railbanking Act*, that shows that the
17 CCFPD has an outright deed to the property. He said that, if such a document exists it should be submitted
18 to the Board as evidence for the cases.

19
20 Mr. Olson stated that a Quit Claim deed is the only document that the CCFPD has to submit.

21
22 Ms. Lee stated that the statute not only discusses outright ownership, but also easements.

23
24 Mr. Thorsland asked Ms. Lee if her main concern is the easement granted to IDOT.

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25
26 Ms. Lee stated that the original easements would indicate what the language was in regards to the footage of
27 the easement. She said that she does not think if they didn't get an easement for what they are using, they
28 can't acquire anything more.

29
30 Mr. Thorsland stated that Ms. Lee herself stated that the CCFPD has the right to build the trail.

31
32 Ms. Lee stated that the CCFPD has an easement for the trail, but she does not know that they had the right to
33 grant the permanent easement to IDOT.

34
35 Mr. Passalacqua stated that the granted easement to IDOT is not part of this case.

36
37 Mr. Thorsland agreed.

38
39 Ms. Lee stated that she is concerned that if the dimensions of the original easement is less than what the
40 CCFPD is using now for the trail, then the adjacent landowners could file a lawsuit. She said that the
41 CCFPD is currently indicating some areas of the easement as only having a 40 feet width.

42

1 Mr. Thorsland stated that there is only a problem if the adjacent landowners have a problem. He asked Mr.
2 Olson if the CCFPD would actually use the entire 40 feet for the trail or only the rail bed.

3
4 Mr. Olson stated that the entire square footage will be used and they will maintain it.

5
6 Mr. Thorsland stated that regardless whether the dimension of the easement is 40 feet or 120 feet, the
7 CCFPD is going to maintain it; although there may be some conflict with an adjacent landowner, there
8 should not be any complaints. He said that the easement with IDOT only occurs in one place.

9
10 Mr. Olson stated that the easement is linear down the entirety of US 150 from Urbana to St. Joseph.

11
12 Mr. Thorsland asked Mr. Olson if, as far as he knows, the CCFPD was legally allowed to grant IDOT the
13 permanent easement.

14
15 Mr. Olson stated that the permanent easement was granted in 2014, but there are other easements pending to
16 be approved.

17
18 Mr. Thorsland stated that those other easements are independent of this case. He asked Ms. Lee if she is
19 comfortable with the information that the Board has received tonight.

20
21 Ms. Lee stated no. She said that she has time restraints and she has not been able to do any more research at
22 the recorder's office.

23
24 Mr. Thorsland stated that he is not asking Ms. Lee to do any more research. He asked Ms. Lee if she is at a
25 point during this meeting where the Board could work on some of the other concerns that may require
26 additional information as well. He said that at this point, he would like to set Ms. Lee's concerns aside until
27 copies of the documents, which Ms. Lee has discovered at the recorder's office, can be distributed to the
28 Board for review and then the Board can decide their next step.

29
30 Ms. Griest stated that she has heard the testimony regarding railbanking and she has heard information
31 regarding ownership conversion if the railroad was abandoned, although testimony has been given that the
32 railroad is not being abandoned under the statute that abandons it. She said that Mr. Deering's memo states
33 that the following, "importantly, the *Brandt Case* ruling does not affect ownership of the land that has been
34 railbanked pursuant to the *National Trails System Improvement Act (NTSIA)*." She said that, as a person
35 reading Mr. Deering's statement, Mr. Deering is indicating that the railroad only has an easement; therefore,
36 the CCFPD only has an easement and does not own the parcel. She said that it appears that the CCFPD
37 owns the entire corridor and that is not accurate.

38
39 Mr. Olson stated that they do own the entire parcel.

40
41 Ms. Griest stated that Mr. Deering's memo does not indicate that the CCFPD owns it.

42

1 Mr. Olson stated that he disagrees with Mr. Deering. He said that the *Brandt Case* ruling came about
2 because the land was not rail banked; therefore, anything that has been railbanked is not affected by the
3 *Brandt Case* ruling.

4
5 Mr. Thorsland stated that Mr. Deering also states, "Essentially this is because pursuant to the *NTISA* rail
6 banked corridors are considered to have not been abandoned."

7
8 Ms. Griest stated that it also says that it does not affect the ownership.

9
10 Mr. Thorsland stated that this means that the CCFPD believes that they own the property; therefore, the
11 *Brandt Case* does not affect them.

12
13 Ms. Griest stated that she is reading that differently.

14
15 Mr. Olson stated that he agrees with Mr. Thorsland. He said that the *Brandt Case* referred to railbanking
16 after the fact, and that is not the case here.

17
18 Mr. Thorsland stated that if the property were not railbanked currently, the *Brandt Case* would be effective,
19 but since it has already been railbanked, the *Brandt Case* does not apply.

20
21 Mr. DiNovo stated that it is not the ZBA's position that the holder of the property be part of the case,
22 because the Board has granted special use permits to a lessee. He said that the Board must ask themselves if
23 they are comfortable with the established precedent that the CCFPD possesses the easement. He said that
24 the Board must decide if possession of the easement is sufficient for this request.

25
26 Mr. Thorsland stated that the Board has discussed this concern a lot without the Board having the
27 opportunity to review the documentation that Ms. Lee received from the recorder's office. He said that he
28 would like to call the other witnesses before the Board decides how they want to proceed.

29
30 Mr. Olson stated that he would like to receive copies of the documents submitted by Ms. Lee.

31
32 Mr. Thorsland stated that the petitioner would receive copies of the documents for review.

33
34 Ms. Lee stated that the CCFPD could copy the recording numbers and they should have these documents in
35 their files.

36
37 Mr. Thorsland stated that the petitioners will receive the same documents that the Board receives and if they
38 want to continue to look for more documentation, they may do so.

39
40 Mr. Hall asked Ms. Lee if she submitted all of the recorded documents to staff.

41
42 Ms. Lee stated that she did submit all of the recorded documents to staff.

1
2 Mr. Thorsland stated that he is confident that staff will make copies of those documents and will include
3 them in the next mailing packet regarding these cases.
4
5 Mr. Thorsland asked Mr. Olson and Mr. Hasselbring if they had any additional information to share at this
6 time and they indicated that they did not.
7
8 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Olson or Mr. Hasselbring and
9 there was no one.
10
11 Mr. Thorsland called Michael Daab to testify.
12
13 Mr. Michael Daab, who resides at 2604 Appaloosa Drive, Mahomet, stated that he is the Natural Resources
14 Director for the CCFPD. He said that his primary target is for resource management. He said that there is
15 primitive prairie out there, which is very rare, because the ecosystem today normally only has one-tenth of
16 what was originally in the area. He said that older aerials would indicate the area between Urbana and St.
17 Joseph was open prairie area, with the exception of the trees in the Big Grove area. He said that their goal is
18 to protect and enhance the prairie area that exists and do so with the combination of brush and tree removal
19 as well as prescribed burning. He said that they would seek permits from the Illinois EPA and IDOT. He
20 said that he is a prescribed burn manager, certified by the State of Illinois. He said that they are collecting
21 seed from the subject railroad area as well as other neighboring counties to protect the genetics of the
22 railway.
23
24 Mr. Thorsland stated that the idea is to not only to preserve what is there, but also to expand the area that is
25 under the CCFPD's purview.
26
27 Mr. Daab stated that the original railways management included fires and excessive mowing.
28
29 Mr. DiNovo stated that a healthy prairie can get tall and can obstruct visibility at road crossings. He asked
30 Mr. Daab to indicate the plan for mitigating visibility obstructions at road crossings.
31
32 Mr. Daab stated that a different seeding mix would be planted at road crossings. He said that anything that
33 would grow taller throughout the year would be mowed so that there are no visibility issues.
34
35 Mr. Randol stated that previous testimony indicated that farmers would be able to maintain and repair any of
36 their farm tiles. He asked Mr. Daab to indicate what will happen if prairie plantings are damaged during tile
37 maintenance.
38
39 Mr. Daab stated that the CCFPD has to repair their own tiles and soil damage occurs, but a healthy prairie
40 should restore itself over time.
41
42 Mr. Randol stated that one time, the Sangamon Valley Water District damaged a CCFPD area near the river

1 while boring for a water main, which caused a dispute that cost thousands of dollars. He asked Mr. Daab to
2 indicate how a farmer will deal with such a situation while they are replacing tile.
3

4 Mr. Daab stated that in that instance it was a state endangered plant species along the Sangamon River, but
5 currently there are no state endangered plant species along the trail corridor.
6

7 Mr. Thorsland asked Mr. Olson if the CCFPD would prevent a farmer from replacing or maintaining their
8 field tile, which runs underneath the trail. He asked Mr. Olson if the CCFPD would charge the farmer for
9 restoration of the trail, or is this maintenance for farm tiles under the *Right to Farm Act*.
10

11 Mr. Olson stated that all of their easements include a requirement that the soil shall be returned to its
12 original state, but there is a conundrum because the rail line is so high and it has to meet a certain standard
13 due to the conversionary factor. He said that Mr. Griest came to the trail and they looked at an underground
14 tile that is blocked, and the CCFPD will work with the drainage district to clear the tile. He said that in this
15 case, rather than digging down into the rail line, they discovered that it was better to roto-root it out. He said
16 that in those cases the drainage district has permission to do those things. He said that trenching under the
17 rail trail is not the best option for many of these lines to be repaired; therefore, they anticipate very little
18 disturbance along the easements for the tile repairs.
19

20 Mr. Thorsland asked Mr. Olson if the farmer would pay for the work completed to clear the farm tile under
21 the trail and restore any damage to the prairie that may occur.
22

23 Mr. Olson stated that the farmer would be responsible for the repair to their tiles, and any damage to the
24 prairie will be reviewed on a case-by-case basis.
25

26 Mr. Thorsland stated that it appears that the CCFPD does have a protocol for maintenance and replacement
27 of farm and drainage district tiles.
28

29 Mr. Olson stated that the CCFPD does not intend to prevent repair of private farm or drainage district tiles,
30 because the CCFPD has a lot of tiles themselves to protect and allowing maintenance of private farm and
31 drainage tiles is the best way to do it.
32

33 Mr. Randol stated that boring over trenching could be cost prohibitive to the farmer.
34

35 Mr. Thorsland stated that the protocol exists and replacement and maintenance will more than likely be
36 considered on a case-by-case basis as well.
37

38 Ms. Lee asked Mr. Daab to indicate what happens if some of the prairie plants become invasive in the
39 farmer's fields.
40

41 Mr. Daab stated that with the Round-up Ready crops of today and the weed protection that is used, he does
42 not see that being an issue.

1
2 Mr. Passalacqua stated that he has a prairie restoration and it does not like Round-up.
3
4 Ms. Griest asked Mr. Daab to indicate the CCFPD's maintenance of noxious weeds. She said that this area
5 has a particular problem with Canadian Thistle, especially since IDOT has not been mowing the roadsides, it
6 has proliferated. She said that previous testimony indicated that there was Canadian Thistle along the rail
7 bed; therefore, will the CCFPD assure that there is no Canadian Thistle along the rail trail by strategically
8 removing it before it goes to seed.
9
10 Mr. Daab stated that Canadian Thistle would be managed and removed.
11
12 Ms. Griest asked Mr. Daab to indicate who the farmers and homeowners will contact if they have a problem
13 with Canadian Thistle. She asked how the CCFPD resolves the issue of Canadian Thistle, because she is
14 sure that Mr. Daab and his staff will not be out there every week mowing or removing it from the prairie.
15
16 Mr. Daab stated that Canadian Thistle is one of the top noxious weeds that the CCFPD monitors at their
17 other five locations. He said that they have a maintenance protocol for Canadian Thistle, which they strictly
18 follow.
19
20 Mr. Thorsland asked Mr. Daab to indicate who the farmers or adjacent landowners would contact if they are
21 having an issue with Canadian Thistle along the rail.
22
23 Mr. Daab stated that anyone should contact him directly. He said that he also serves as the Chair of the
24 Head Waters Invasive Plant Partnership, which includes 11 other counties, and their primary interest is the
25 management of invasive and noxious weeds.
26
27 Mr. Thorsland asked Mr. Daab if someone called the CCFPD indicating that Canadian Thistle from the rail
28 bed is taking over their cornfield, would the call eventually be transferred to Mr. Daab.
29
30 Mr. Daab stated that Mr. Thorsland was correct.
31
32 Ms. Griest stated that there is the new Round-Up resistant water hemp plant, which has been a big issue for
33 farmers. She asked Mr. Daab if the CCFPD would maintain this invasive plant along the prairie so that it
34 does not become an issue for the adjacent farmers in their Round-Up Ready crops, because the water hemp
35 is Round-Up Ready resistant.
36
37 Mr. Daab stated that the CCFPD would manage the water hemp as they are able to, but he is not sure if the
38 CCFPD has the duty to do that, but it is also not a prairie plant that they want in a high quality prairie.
39
40 Mr. Thorsland stated that he is not sure whether the CCFPD will have the sole responsibility for the water
41 hemp issue, as there are probably other people who would be held responsible for its maintenance.
42

1 Ms. Griest stated that she is not saying that the CCFPD should be held solely responsible for the maintenance
2 of the water hemp, but if they are putting in the prairie as indicated and the water hemp proliferates the area,
3 she would expect the CCFPD to manage the water hemp so that it does not spread into neighboring fields,
4 because one plant can disperse thousands of seeds each year.

5
6 Mr. Thorsland stated that the CCFPD has testified that it is in their best interest to manage the prairie.

7
8 Mr. DiNovo stated that when there is a program that will carefully manage and maintain permanent
9 vegetative cover, like the restored prairie, that area will be less suitable for weeds that tend to proliferate in
10 disturbed ground. He said that the prairie, which is not disturbed, would be less of a problem with respect to
11 weeds, than the adjacent farm ground.

12
13 Mr. Thorsland stated that the CCFPD has a protocol for weed management. He asked Mr. Olson if the
14 CCFPD has a protocol for when the prairie receives overspray from the farmer's field and the prairie plants
15 are damaged.

16
17 Mr. Olson stated that such an occurrence does and will happen, although due to today's farming practices
18 this occurrence does not happen very often. He said that when it does occur, they discuss the issue with the
19 operator/landowner and they come to some sort of an agreement, but it is actually more common to have
20 accidental tillage rather than overspray situations. He said that the CCFPD does have a plan for such an
21 occurrence, and as with any other instance, each occurrence will be reviewed on a case-by-case basis.

22
23 Mr. DiNovo stated that most of the south side of the trail right-of-way is the Illinois Terminal right-of-way
24 with the power line on it and then the Route 150 right-of-way is on the other side with the township road
25 buffer. He said that the trail does not directly abut the farm fields.

26
27 Mr. Olson stated that there are some patches where the trail and the farm fields abut, but they have protocol
28 for those instances.

29
30 Ms. Lee asked Mr. Olson if the CCFPD had a protocol for any trash left along the trail.

31
32 Mr. Olson stated that typically rail trails do not have a lot of trash, because people are not necessarily
33 carrying picnic lunches. He said most of the trash would be along the trail that is located in town. He said
34 that the CCFPD has an agreement with St. Joseph for trash pickup at some of the parks and they have trail
35 stewards who will look for graffiti, trash pick-up, natural resource management, etc. He said that there
36 would be something put in place in regards to any trash.

37
38 Mr. Thorsland stated that the ZBA has no authority over what occurs in the City of Urbana or the Village of
39 St. Joseph, but the largest amount of trash will probably be in the parking lots for the trail and not the trail
40 itself.

41
42 Mr. Olson stated that there would be trash receptacles along the trail for public use.

1
2 Mr. Thorsland asked staff and the Board if there were any questions for Mr. Olson, Mr. Daab, or Mr.
3 Hasselbring, and there were none.
4
5 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Olson, Mr. Daab, or Mr.
6 Hasselbring and there was no one.
7
8 Mr. Olson asked if the Board has received any opposition regarding the requested variance.
9
10 Ms. Chavarria stated that the only opposition that staff received was generally against the trail itself. She
11 said that the opposition was not from an adjacent landowner, but from a member of the public that was
12 against the trail concept in general.
13
14 Mr. DiNovo stated that Ms. Hill testified about existing railway ties near Mayview. He asked Mr. Olson if
15 the CCFPD intends to remove the railroad ties.
16
17 Mr. Olson stated that he spoke with the owner of the railroad ties and Mr. Olson hopes to see a plan for
18 removal of the railroad ties. He said that if the railroad ties are not removed by the owner, the CCFPD
19 might have to remove them.
20
21 Mr. DiNovo asked Mr. Olson if removal of the concrete bins would be included.
22
23 Mr. Olson stated that the concrete that Ms. Hill referred to is a historic foundation to some older buildings
24 and they do not pose a visual line of threat to Ms. Hill, but are more of an eyesore for Ms. Hill. He said that
25 currently the CCFPD does not plan to remove the foundation. He said that in 1979 the old wood grain bin
26 existed in this area.
27
28 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Olson and there were none.
29
30 Mr. Thorsland called Brian Taylor to testify.
31
32 Mr. Brian Taylor, who resides at 2575 South Homer Lake Road, Homer, stated that he is the Site
33 Superintendent for Homer Lake. He said that he works very closely with Mr. Daab and his crew and he will
34 follow Mr. Daab's lead for management of the trail.
35
36 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Taylor and there were none.
37
38 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Taylor and there was no one.
39
40 Mr. Thorsland asked the audience if anyone desired to sign the witness register to present testimony
41 regarding these cases and there was no one.
42

1 Mr. Thorsland stated that the Board would like to continue the cases to a later date so that the Board can
2 review the documents that Ms. Lee referred to during this hearing.

3
4 Mr. Passalacqua stated that he appreciates Ms. Lee's concern, but if there was some clarification that the
5 *Railbanking Act* facilitated the CCFPD ownership, then he would be happy with that document.

6
7 Mr. Thorsland stated that Mr. Deering provided that clarification.

8
9 Mr. Passalacqua stated that this case pertains to the CCFPD's use, and whether it be ownership or easement,
10 for the purpose of this case, he does not see that it makes any difference.

11
12 Mr. Hall stated that he would like to make it clear that, the documents which Ms. Lee provided staff was a
13 copy of a Quit Claim deed, which was already attached to the July 7, 2016, Supplemental Memorandum. He
14 said that there was a corrected Quit Claim deed, which seems like a relatively minor item. He said that there
15 is a five-page resolution from the Director of the Champaign County Forest Preserve, which includes a
16 fascinating legal description. He said that Ms. Lee submitted a copy of the easement to the IDOT and he is
17 not sure how much value it has on this case.

18
19 Mr. Passalacqua asked Mr. Hall if the easement really has an effect of this case.

20
21 Mr. Hall stated that it depends on each individual Board member.

22
23 Ms. Griest stated that the easement would be pertinent to the case if their use of the easement somehow
24 expanded the use of the variances greater than what the Board would grant. She said that if the variance was
25 granted with a reduced setback, but they wanted to expand the use beyond the variance width, then it would
26 be relevant. She said that as long as they are within the confines of the variance, then it is between the
27 CCFPD and the person who believes they are being harmed.

28
29 Mr. Hall stated that a good question for Mr. Olson would be the following: Are the property lines in the
30 construction documents still the property lines or were any of them changed by the easement. Mr. Hall said
31 that if no property lines were changed, then it does not change any of the variances.

32
33 Mr. Thorsland called Mr. Olson to the witness microphone.

34
35 Mr. Thorsland asked Mr. Olson if the property lines changed due to the IDOT easement.

36
37 Mr. Olson stated that the centerline of US 150 did not change and the easement did not change the boundary
38 of ownership in either case and all it did was grant an easement for a wider shoulder and deeper ditches. He
39 said that the property lines did change due to the sale of the easement.

40
41 Mr. Hall stated that he does not believe that the easement changes anything.

42

1 Mr. DiNovo asked Mr. Olson to indicate what document depicts the basis of the right-of-way on the
2 engineering drawings. He asked Mr. Olson if the engineer relied on material from the railroad.
3

4 Mr. Olson stated that the CCFPD does not have ownership of the original plats through Champaign County
5 when the original easements were granted. He said that he would have to ask the engineering company what
6 they based their information on and it may have been from records that they obtained elsewhere.
7

8 Mr. DiNovo stated that it is hard to say whether the easements are part of the variance case unless the Board
9 knows what the engineering drawings were based upon.
10

11 Mr. Olson stated that the preliminary engineering drawings would not have been based on any of the Quit
12 Claim Deeds, because the preliminary engineering pre-dated any documents that they received from the
13 railroad during the sale, but he will check with the engineering company to see what they used.
14

15 Mr. Thorsland asked the audience if anyone desired to cross-examine Mr. Olson and there was no one.
16

17 Mr. Thorsland asked the Board and staff if there were any questions for Mr. Olson and there were none.
18

19 Mr. Thorsland requested a five-minute recess.
20

21 **The Board recessed at 8:30 p.m.**

22 **The Board resumed at 8:35 p.m.**
23

24 Mr. Thorsland read a portion of the *Brandt Case* as follows: Last week the Supreme Court ruled in favor 8
25 to 1 of Marvin Brandt. While the RTC was disappointed by the decision, after examining the details of its
26 potential impact, we believe that the vast majority of rail-trails and rail-trail projects will not be directly
27 affected. Existing rail trails or trail projects are not affected by this decision if any of the following
28 conditions are met: 1. The rail corridor is "railbanked." (This is the federal process of preserving former
29 railway corridors for potential future railway service by converting them to multi-use trails.); and 2. The rail
30 corridor was originally acquired by the railroad by a federally granted right-of-way through federal lands
31 before 1875; and 3. The railroad originally acquired the corridor from a private landowner; and 4. The trail
32 manager owns the land adjacent to the corridor; and 5. The trail manager owns full title (fee simple) to the
33 corridor; and 6. The railroad corridor falls within the original 13 colonies. Mr. Thorsland stated that Item #1
34 is very pertinent and was referenced by Mr. Deering. Mr. Thorsland asked the Board if they wanted to
35 move forward tonight or continue the case to a later date.
36

37 Mr. Passalacqua stated that by the information and testimony regarding the railbanking, he is happy to move
38 forward.
39

40 Mr. Thorsland agreed with Mr. Passalacqua. He said that he is sure that Ms. Lee would like to have more
41 information and Mr. DiNovo indicated his concern regarding the easement and the property lines. Mr.
42 Thorsland stated that perhaps the concerns from Ms. Lee and Mr. DiNovo would warrant the need for a

1 continuance, so that more information can be submitted to the Board for review.

2
3 Mr. Hall stated that he is very impressed with the fact that the petitioner was asked to indicate the basis for
4 the property lines on the site plan, because that basis is unknown. He said that he wonders how long it
5 would take the petitioner to determine the provenance of the property lines on the site plan. He said that
6 these cases could be continued to the September 15th meeting so that the petitioner could obtain some
7 background information regarding the property lines. He said that this information could be a big deal.

8
9 Mr. Thorsland stated that Mr. DiNovo's concern is valid, and it should be addressed. He said that it could
10 be a very simple answer, but the Board should take the time to obtain an answer to his question.

11
12 Mr. DiNovo stated that the Board does not normally complete independent research on properties. He said
13 that generally the Board accepts the documentation at face value, because the documents are prepared by an
14 engineer/surveyor or an attorney. He asked if it is fair for the Board to do a further, in depth research on the
15 depiction of the property lines for this case than they would do for any other case.

16
17 Mr. Hall stated that this Board does not have a detailed legal description.

18
19 Mr. Thorsland stated that this is not the typical corner lot with a shed, but is approximately 70 acres located
20 in a straight line that goes through half of the county. He said that it is a reasonable request to require
21 information regarding the dimensions. He said that he does not believe that the Board will propose to alter
22 the trail, but it would be ideal to know that the source is reasonably reliable. He said that Ms. Lee is
23 concerned about the easements and the technical ownership.

24
25 Mr. Hall stated that at a staff level, this case was treated like any other case, but staff has not had all of the
26 information that they would normally have. He said that staff has not been able to do what they would
27 normally do.

28
29 Mr. Thorsland asked Mr. Hall why staff has not been able to do what they normally do.

30
31 Mr. Hall stated that the legal description that is included in the Quit Claim deed is one hurdle. He said that
32 the jogs that are indicated on the railroad plans do line up with the jogs indicated on the construction
33 drawings, but that does not mean that either one is accurate.

34
35 Mr. Olson asked if the Board is indicating that they want a survey of the entire rail trail with a complete
36 legal description attached, because he is sure that the engineers have a survey, which was based on such a
37 description. He asked the Board to indicate what information is required before the next meeting.

38
39 Mr. Hall stated that the construction drawings are very easy to read, but he cannot tie that back to a legal
40 description.

41
42 Mr. Olson stated that he will discuss this with his directors, but all of the documentation pre-dates his

1 position with the CCFPD, and he will have to do some research on the information.

2
3 Mr. Thorsland asked Mr. Olson if he would be available for the September 15th meeting.

4
5 Mr. Olson stated yes.

6
7 Ms. Lee stated that previously the petitioners indicated that they would not be available on September 15th.

8
9 Mr. Olson stated that their regularly scheduled Board meeting is on September 15th. He said that his
10 obligation is to the CCFPD Board, but Mr. Hasselbring could attend the ZBA meeting.

11
12 Mr. Thorsland asked Mr. Hasselbring if he is available on September 15th.

13
14 Mr. Hasselbring stated yes.

15
16 Mr. Thorsland entertained a motion to continue Cases 828-S-16 and 834-V-16 to the September 15th
17 meeting.

18
19 **Ms. Capel moved, seconded by Ms. Griest to continue Cases 828-S-16 and 834-V-16 to the September**
20 **15, 2016, meeting. The motion carried by voice vote.**

21
22 Mr. Thorsland stated that the Board would now hear Case 844-AM-16, Aric and Lauryl Silver.

23
24 **6. New Public Hearings**

25
26 **Case 843-V-16 Petitioner: Chris Popovich Request: Authorize the following variances for an existing**
27 **dwelling and existing garage in the R-1, Single Family Residence Zoning District: Part A: An existing**
28 **dwelling with a setback of 47 feet in lieu of 55 feet from the street centerline of Robin Road and a**
29 **front yard of 19 feet in lieu of the minimum required 25 feet, as per Section 5.3 of the Zoning**
30 **Ordinance; and Part B: Lot coverage of 33% in lieu of the maximum allowed 30% as per Section 5.3**
31 **of the Zoning Ordinance; and Part C: Large landscaping (bunker) blocks and earth fill that occupy 3**
32 **feet 4 inches of a 10 feet wide utility and drainage easement in lieu of the requirement that no**
33 **construction shall take place in a recorded utility and drainage easement. Location: Lot 68 in Rolling**
34 **Hills Estates IV Subdivision that is in the Northeast Quarter of the Northwest Quarter of Section 12,**
35 **Township 20N, Range 7E of the Third Principal Meridian in Mahomet Township and commonly**
36 **known as the residence at 2302 Robin Road, Mahomet.**

37
38 Mr. Thorsland informed the audience that anyone wishing to testify for any public hearing tonight must sign
39 the witness register for that public hearing. He reminded the audience that when they sign the witness
40 register they are signing an oath. He asked the audience if anyone desired to sign the witness register at this
41 time.

1 Mr. Thorsland informed the audience that Case 843-V-16 is an Administrative Case and as such, the County
2 allows anyone the opportunity to cross-examine any witness. He said that at the proper time, he will ask for
3 a show of hands for those who would like to cross-examine and each person will be called upon. He
4 requested that anyone called to cross-examine go to the cross-examination microphone to ask any questions.
5 He said that those who desire to cross-examine are not required to sign the witness register, but are
6 requested to clearly state their name before asking any questions. He noted that no new testimony is to be
7 given during the cross-examination. He said that attorneys who have complied with Article 7.6 of the ZBA
8 By-Laws are exempt from cross-examination.
9

10 Mr. Thorsland asked the petitioner if he desired to make a statement regarding his request.

11
12 Mr. Chris Popovich, who resides at 2302 Robin Road, Mahomet, stated that he built the garage, porch and
13 rear addition, because the house was too small and they needed to expand their home.

14
15 Mr. Thorsland stated that the Summary of Evidence indicates that Mr. Popovich had two separate
16 contractors and both contractors indicated that no permits were required for the construction; therefore, Mr.
17 Popovich had the understanding that the construction was within the County's legal boundaries.

18
19 Mr. Popovich stated the contractors told him that no permits were required, because the property was not
20 located within the Village of Mahomet.

21
22 Mr. Thorsland asked Mr. Popovich if he was aware that the ditch was located within a drainage easement.

23
24 Mr. Popovich stated that to the back of their yard was just prairie and they were not exactly sure where the
25 property line was located, so they made sure they stayed back far enough. He said that it was his
26 understanding that someday the prairie area behind their house would be developed into a residential area.
27 He said that the developer for that land constructed a berm in the area behind Mr. Popovich's house. He
28 said that the berm dams the water runoff and to relieve that issue, he hired a contractor to install bunker
29 blocks, leaving enough area for the easement and maintenance of the drainage ditch. He said that his
30 construction is 10'-7" off the property line.

31
32 Mr. Passalacqua asked Mr. Popovich to indicate when the berm was constructed.

33
34 Mr. Popovich stated that the berm was constructed a couple of months ago.

35
36 Mr. Thorsland asked Mr. Popovich if the berm had adverse effects with the recent rain event.

37
38 Mr. Popovich stated yes, and his neighbors are being affected by the berm's construction too.

39
40 Mr. Hall stated that staff is working with the Village of Mahomet so that they can have the opportunity to
41 get this straightened out, because they allowed the berm to be placed within the drainage easement.
42

1 Mr. Thorsland asked Mr. Hall if Mr. Popovich's property is located within the Village of Mahomet.

2
3 Mr. Hall stated that Mr. Popovich's property is located in the County's jurisdiction, but the property north of
4 Mr. Popovich's home is located in the Village of Mahomet and is under development. He said that there
5 have been extensive changes to the drainage, which is a different issue, related to the idea of using the
6 bunker blocks so that as much free drainage area is retained as possible.

7
8 Mr. Popovich stated that he tried to do his part on his end to protect his property.

9
10 Mr. Thorsland stated that in that particular part of the variance, it sounds like the Village of Mahomet was
11 part of the driving force for the immediate action by Mr. Popovich to install the bunker blocks.

12
13 Mr. Popovich stated that the Village of Mahomet was not doing something about the berm, so he took
14 immediate action to protect his property.

15
16 Mr. Hall stated that the bunker blocks are located in the drainage easement as well and they are not because
17 of the berm, but are being used to achieve necessary drainage and to deal with the garage footing.

18
19 Mr. Passalacqua asked Mr. Hall if the garage footing is located in the drainage easement.

20
21 Mr. Hall stated that Mr. Popovich would need to answer Mr. Passalacqua's question.

22
23 Mr. Popovich stated that the garage footing should not be located in the drainage easement.

24
25 Ms. Lee stated that the bunker blocks are 3'-4" inside of the drainage easement. She said that there is a
26 solution for public utilities, but there is not a solution for the bunker blocks impeding drainage easement.

27
28 Mr. Hall agreed that nothing should impede the drainage easement and since it does, the impact is yet to be
29 determined. He said that construction of the berm has completely changed the drainage and they are trying
30 to correct for that. He said that whether the entire ten feet is necessary for the drainage easement is a
31 question for an engineer. He said that with the grading that has occurred so far, there would have to be a
32 couple of feet of water in that swale before it could ever drain past Mr. Popovich's garage. He said that with
33 the grading that has occurred after the berm during the garage construction, the water does not drain past
34 Mr. Popovich's garage until there is a couple of feet of water in the swale.

35
36 Mr. Popovich asked Mr. Hall if he is discussing the northeast portion of his property.

37
38 Mr. Hall stated yes.

39
40 Mr. Popovich stated that all the yards in the neighborhood are different and the swale was already high to
41 begin with. He said that the developer took a bulldozer to his side of the property and left the rest of it as it
42 is so there is going to be a situation. He said that the only way that he could alleviate it was to move the

1 berm back and not to put the berm right against the property line, and he has tried his best to alleviate the
2 situation. He asked Mr. Hall if he is discussing ten feet from his property line, or five feet from his property
3 line and five feet from the developer's property line.

4
5 Mr. Hall stated that the easement is 10 feet on Mr. Popovich's property to the property line.

6
7 Mr. Popovich asked Mr. Hall if that is 10 feet from the developer's property line as well.

8
9 Mr. Hall stated that the developer's property has a different dimension for the easement, 30 feet or more. He
10 said that the entire berm is inside the drainage easement on his property. He said that Ms. Lee stated that
11 she was concerned about blockage of the drainage easement due to the garage.

12
13 Ms. Lee stated that she has a problem with any construction in the drainage easement. She said that the
14 utility companies could make Mr. Popovich move the bunker blocks for maintenance.

15
16 Mr. Thorsland asked Mr. Hall if the full drainage easement is the 10 feet on Mr. Popovich's property and the
17 30 feet on the north property.

18
19 Mr. DiNovo asked Mr. Hall if the area to the north has an approved plat.

20
21 Mr. Hall stated that it is in the subdivision construction process.

22
23 Mr. DiNovo stated that there is an approved plat then.

24
25 Mr. Hall stated that there should be, but this subdivision is inside of the village and the plat has not been
26 copied to staff for review.

27
28 Mr. DiNovo stated that all of the drainage for this part of Rolling Hills goes north. He asked if staff knows
29 whether the Village of Mahomet has any provisions for the drainage.

30
31 Mr. Hall stated that not all of the water goes north and Mr. DiNovo may remember the wetland detention
32 area that was to the west and most of the storm drainage is to the west. He said that there was some amount
33 that was intended to go north, but it was not clear how much was intended to go north and how much was
34 intended to go west. He said that most of the drainage does go west and that is where the offsite wetland
35 stormwater area was constructed and that is the direction that the stormwater takes, but clearly some of the
36 surface drainage does go north.

37
38 Mr. DiNovo stated that this drainage easement is intended to take the stormwater off the north half of lots on
39 Robin Road.

40
41 Mr. Hall stated yes.

42

1 Mr. DiNovo stated that it is not as if the entire watershed goes through this easement.

2
3 Mr. Hall stated that there is approximately 10 acres that drains towards Robin Road, and given the very
4 shallow nature of the drainage system in Rolling Hills Subdivision and during a 50 or 100-year event, those
5 water depths are significant and he could imagine a larger area would drain to the north during a major rain
6 event.

7
8 Mr. DiNovo stated that there are no other drainage easements.

9
10 Mr. Hall stated that there is a drainage easement on the west edge of Mr. Popovich's lot.

11
12 Mr. Passalacqua asked if the berm is actually a berm and not a construction stockpile.

13
14 Mr. Hall stated that it is a very healthy berm. He informed Mr. DiNovo that the drainage easement is
15 actually between Lots 70 and 71, which is several lots away from Mr. Popovich's property.

16
17 Mr. Thorsland asked Mr. Popovich if he personally installed the bunker blocks, or did he hire someone.

18
19 Mr. Popovich stated that he hired someone to install the bunker blocks.

20
21 Mr. Thorsland asked Mr. Popovich if he also hired someone to construct the garage and additions.

22
23 Mr. Popovich stated yes.

24
25 Mr. Thorsland asked Mr. Popovich if he was aware of the drainage easement.

26
27 Mr. Popovich stated that his contractor is aware of the drainage easement.

28
29 Mr. Thorsland asked Mr. Popovich if he realized that he was constructing within a drainage easement.

30
31 Mr. Popovich stated that he did not realize that they were constructing within the drainage easement. He
32 said that his contractor had worked with the developer to the north before; therefore, Mr. Popovich assumed
33 that his contractor knew what he was doing.

34
35 Mr. Hall noted that the contractor that installed the bunker blocks was not the contractor who constructed
36 the garage.

37
38 Mr. Thorsland asked Mr. Popovich if the contractor who constructed the garage advised him that he did not
39 require a permit, because he was located outside of the Village of Mahomet.

40
41 Mr. Popovich stated that his contractor informed him that he did not require a permit, because he was
42 outside of the Village of Mahomet.

1
2 Mr. Randol asked Mr. Popovich if the only utilities that are located within the easement are the telephone
3 and cable.
4
5 Mr. Popovich stated yes. He said that the water, sewer and power lines are located on the front of the
6 property.
7
8 Mr. Thorsland stated that there is only an easement on the rear of Mr. Popovich's property.
9
10 Mr. Randol asked Mr. Popovich if any of the neighbors who indicated they had no objection to the requested
11 variance, were affected by the berm's construction.
12
13 Mr. Popovich stated that the berm affects three of his neighbors.
14
15 Mr. Randol asked Mr. Popovich if his bunker blocks affect his neighbor's drainage.
16
17 Mr. Popovich stated no.
18
19 Mr. Thorsland stated that the intent for the bunker blocks was to protect his foundation from damage. He
20 asked Mr. Popovich if the utility companies have seen the bunker blocks.
21
22 Mr. Popovich stated that they have seen the bunker blocks and they have not said anything about them.
23
24 Ms. Lee asked Mr. Popovich if the swale existed when he purchased the property.
25
26 Mr. Popovich stated that the swale was there, but the berm was not.
27
28 Mr. Randol stated that he is familiar with the property. He said that there was never really a swale between
29 the lot lines, but only a natural drainage area. He said that the water went north until the berm was
30 constructed and once the berm was constructed, it created a flooding issue for everyone on the south side,
31 because the water could not get away from them. He said that this was a natural reaction for Mr. Popovich
32 to attempt to protect his property.
33
34 Mr. Thorsland asked Mr. Randol when the berm was constructed.
35
36 Mr. Randol stated that the subdivision construction began approximately one year ago.
37
38 Mr. Thorsland stated that it appears that this was an intentional berm.
39
40 Mr. Popovich agreed, because the berm has trees on top of it.
41
42 Mr. Thorsland stated that Mr. Popovich did not alter the terrain, except for installing the bunker blocks and

1 placing dirt around the foundation of the garage. He asked Mr. Popovich if, once the berm was constructed
2 and it started to rain, was there a significant water issue. He asked Mr. Popovich to indicate when he
3 purchased his property.

4
5 Mr. Popovich stated that he purchased property ten years ago.

6
7 Mr. Thorsland stated that there was no change to the garage until the adjacent developer constructed the
8 berm.

9
10 Mr. Popovich stated that Mr. Thorsland was correct.

11
12 Mr. Passalacqua asked Mr. Popovich if the side of the garage foundation sits where he has seen water
13 encroachment during the last ten years.

14
15 Mr. Popovich stated no. He said that if he had seen water encroachment in that area he would not have
16 constructed the garage at that location. He said that there was always drainage behind the garage until the
17 berm was constructed.

18
19 Mr. Hall stated that the area had very good drainage, because it is sloped down the hill.

20
21 Mr. DiNovo stated that the subdivision was platted in 1979 and there were no modern stormwater
22 regulations in 1979. He asked Mr. Hall if there were any engineering drawings for the subdivision, which
23 would show that the easement was intended to carry water to the west. He said that the easement was to
24 collect water to the back of those lots and allow it to flow naturally to the north. He said that the Village of
25 Mahomet created the current situation.

26
27 Mr. Hall stated that the berm was modified with a 15-inch culvert so that it will collect water and they are
28 trying to provide drainage again.

29
30 Mr. Thorsland asked Mr. Hall if this could have been an administrative variance.

31
32 Mr. Hall stated that it could have been an administrative variance, but there is more than one variance
33 required; therefore, the need for a full variance.

34
35 Mr. Thorsland stated that it appears that this is very straight forward, and this is a case of reaction to other
36 actions.

37
38 Mr. Hall stated that he is not sure that the Summary of Evidence makes it clear, but there is some direct
39 relationship between having a drainage easement that is supposed to be for drainage and more building area
40 has been constructed than what the ordinance intends to be built. He said that more building area requires a
41 larger drainage easement for water runoff to get away.

42

1 Mr. Thorsland stated that the extent of the lot coverage is no greater than what an administrative variance
2 would have resolved.

3
4 Ms. Lee asked if the berm is changing the natural drainage path.

5
6 Mr. Hall stated yes, and they are attempting to provide alternative drainage by installing the culvert in the
7 berm. He said that it will not restore the natural drainage that was there before, but it will provide an outlet.

8
9 Ms. Lee asked if this is similar to moving water from one side of the hill to the other side of the hill
10 philosophy.

11
12 Mr. Thorsland stated that the berm blocked the water flow and Mr. Popovich did what he needed to do to
13 protect his investment. He said that perhaps Mr. Popovich did not take the proper path, but he did not intend
14 anything malicious and it has nothing to do with the water problems behind the house.

15
16 Ms. Lee asked Mr. Hall if, Mr. Popovich had applied for the proper permits, would staff have been aware of
17 the easement and would not have issued a permit for the garage.

18
19 Mr. Hall stated that staff would have noticed that the garage would not be encroaching on the easement. He
20 said that staff does not require landscaping plans and would not have known about the bunker blocks. He
21 said that even if the petitioner had gotten a permit for the garage addition, there would be no change for this
22 situation, because the berm was constructed and the petitioner was concerned about protecting the bottom of
23 the foundation.

24
25 Ms. Lee asked Mr. Hall when he discovered the garage addition issue.

26
27 Mr. Hall stated that he discovered the garage addition when he conducted a visit for a complaint regarding
28 the berm.

29
30 Ms. Griest asked Mr. Popovich, if he understands that, even with approval of the variances, he could not
31 build anything else on the property without revisiting this Board for approval and obtaining an approved
32 permit from staff.

33
34 Mr. Popovich stated yes.

35
36 Mr. Thorsland called Janice Popovich to testify.

37
38 Ms. Janice Popovich, who resides at 2302 Robin Road, Mahomet, stated that since the installation of the
39 bunker blocks, the drainage behind their home is better and the water flows. She said that there had been
40 times when the neighbor's property would stop draining and the water would become stagnant, but now it
41 flows to the west.

42

1 Mr. Thorsland asked Ms. Popovich if the marginal change in the terrain during installation of the bunker
2 blocks caused the water to flow.

3
4 Ms. Popovich stated yes. She said that they hired a professional and he was aware of the water situation and
5 he understood why they were having the bunker blocks installed. She said that part of the reason why they
6 had the bunker blocks installed was for the protection of the foundation for the garage, but also because of
7 the water situation. She said that they tried to do their part in alleviating the water issue for themselves and
8 their neighbors.

9
10 Mr. Thorsland asked Ms. Popovich if the neighbors who signed the letter are adjacent neighbors.

11
12 Ms. Popovich stated that the neighbors are next door.

13
14 Mr. Thorsland asked Ms. Popovich if the bunker blocks have caused the neighbors any harm.

15
16 Ms. Popovich stated no. She asked the Board to indicate the difference in having the bunker blocks at their
17 location versus a fence that is on the property line. She said that she understands that a fence would not
18 block water, but it would interfere with Mediacom and telephone service.

19
20 Mr. Hall stated that there is a fence west of the subject property and it is located in the easement. He said
21 that typically, fences are allowed in easements, because they are relatively movable, but this particular fence
22 is located in the drainage easement and it will block water. He said that our society does not know what to
23 do about fences along property lines, and if fences were not allowed on the property line, there would be an
24 area created between two fences that no one wants to maintain. He said if a fence is placed on the property
25 line, drainage will probably be blocked and utilities could be interrupted. He said that he is not going to
26 start disallowing fences along property lines, because that battle is too large to take on. He said that the
27 neighbor should provide for drainage at the bottom of the fence and he will be contacting them.

28
29 Ms. Popovich stated that she has nothing against the neighbor's fence, but she would like to know why their
30 bunker blocks are more of an issue than something that is directly in the easement.

31
32 Mr. Hall stated that the bunker blocks would require large equipment to move and a fence is easily moved.

33
34 Ms. Popovich stated that a fence in concrete is not easily moved either.

35
36 Mr. Hall stated that, if necessary the bottom boards could be removed.

37
38 Mr. Popovich stated that their neighbor's shed appears to be located in the easement and it could not be
39 easily moved.

40
41 Mr. Hall asked Mr. Popovich if the shed is actually located in the easement.

42

1 Ms. Popovich stated that the neighbor's shed appears to be in line with their bunker blocks.

2
3 Mr. Hall stated that, at one time, the shed was a movable shed, but he is not sure if that is still accurate. He
4 said that staff would have to research the property to see if a permit was required or issued for the shed, and
5 if not then the Popovich's neighbors could have the same situation as Mr. and Mrs. Popovich. Mr. Hall
6 stated that if a shed is very old, staff will notify the property owner in writing indicating that the shed could
7 not be replaced at the same location without a variance, or the new shed would have to meet the Zoning
8 Ordinance's requirements for accessory structures.

9
10 Ms. Popovich clarified that she had no issue with her neighbors, or what is on their property, but she does
11 not understand why their situation is so different.

12
13 Mr. Hall stated that it is possible that the petitioners have completed more construction without an approved
14 permit than their neighbors have.

15
16 Mr. Thorsland asked the Board if there were any questions for Ms. Popovich and there were none.

17
18 Mr. Passalacqua asked staff if they are confident that the Village of Mahomet will breach the berm enough
19 so that the water will flow as freely as it once did.

20
21 Mr. Hall stated that the water would never flow as freely as it once did.

22
23 Mr. Passalacqua asked Mr. Popovich if the bunker blocks were in his original garage plan.

24
25 Mr. Popovich stated no.

26
27 Mr. Thorsland stated that it has been established that the bunker blocks were installed as a reaction to an
28 action by the adjacent developer's construction.

29
30 Mr. Hall stated that the garage is supposed to be accessory to the house, but it is much larger than the house.
31 He said that this is the first time that he has seen a building stretched the entire length of what could be built
32 on the side of the lot, as it goes from setback to the rear drainage easement, it is all one wall. He noted that
33 no one is complaining.

34
35 Mr. Thorsland asked Mr. Hall if the petitioners had applied for a permit, would the garage have been
36 constructed differently.

37
38 Mr. Hall stated that if the petitioners had applied for a permit, staff would have informed them that they
39 were over their lot coverage and that they needed to shorten the garage. He said that he is not suggesting
40 that the petitioners remove a part of the garage, but he is pointing out that there are some unusual aspects in
41 this case.

42

1 Mr. Thorsland read that proposed special condition of approval as follows:
2

- 3 A. Regarding the bunker blocks and fill that are the subjects of Part C of the variance:
4 **Upon written request of any utility with an interest in using the utility and drainage**
5 **easement, the owner shall be responsible for the full cost of removing the bunker blocks**
6 **and fill and refusing to remove the bunker blocks and fill shall be considered a**
7 **violation of the Zoning Ordinance.**

8 The special condition stated above is to ensure the following:
9

10 **To ensure that utility companies have appropriate access to their easements.**

11
12 Mr. Thorsland asked the petitioners if they agreed to Special Condition A.

13
14 Mr. and Mrs. Popovich indicated that they agreed to Special Condition A.
15

16 Mr. Hall stated that with the approval of this variance, future buyers of the lot would not know that no
17 further construction could occur on the property. He said that the Board could propose a special condition
18 regarding such or the next buyer will discover this information when they contact staff regarding any future
19 permit for construction. He said that as the Zoning Administrator, he is okay with no additional conditions,
20 but it is up to the Board.
21

22 Mr. DiNovo stated that we are discussing footprint and not floor area. He asked if the intent is not to allow
23 the construction of a second floor.
24

25 Mr. Hall stated that he is only discussing an increase in the footprint. He said that the owner could add
26 square footage vertically.
27

28 Mr. Thorsland asked the Board to indicate their preference regarding a special condition regarding filing a
29 miscellaneous document at the Recorder's Office regarding the exhaustion for construction on the lot and
30 that no additional footprint can be added to the existing structures.
31

32 Ms. Lee stated that it might be a good idea.
33

34 Mr. Hall stated that the whole idea of the Zoning Ordinance is that if the new owner contacts staff regarding
35 their intent for construction, they will receive this information.
36

37 Mr. Passalacqua asked Mr. Hall if the Village of Mahomet has a long-range plan to absorb this subdivision
38 in the future.
39

40 Mr. Hall stated no.
41

42 Mr. Thorsland stated that such a special condition not only protects the future owner of the property, but it

1 also, on a small level, protects the seller as well. He said that such a special condition is included in many of
2 the Board's cases.

3
4 Mr. Thorsland read staff's proposed language for Special Condition B. as follows:

5
6 **B. Within 30 days of Final Action of Case 843-V-16, the petitioners shall file a**
7 **miscellaneous document with the Champaign County Recorder of Deeds that**
8 **documents the following:**

9 **(1) Lot coverage for this property has been exhausted; no additional area can be**
10 **added to the footprint of existing buildings and structures.**

11
12 The special condition stated above is required to ensure the following:

13 **That potential buyers of the property are aware of the possible limitations of the**
14 **property.**

15 Mr. Passalacqua stated that it is a known fact that he hates receiving things after the fact, but it seems logical
16 that when people hire a reputable contractor, they should be able to trust what they indicate regarding
17 permits, etc.

18
19 Mr. Thorsland stated that it would be wonderful if the County could reach out to all of the contractors in
20 Illinois to inform them about the requirements of the Zoning Ordinance.

21
22 Mr. Passalacqua stated that he is a contractor and he personally seeks information from the jurisdictions
23 before he begins construction, but he does know that there are contractors out there who do not. He said that
24 he does believe that the petitioners asked the reputable contractor about required permits and they believed
25 what he told them.

26 Mr. Thorsland asked the petitioners if they agreed with Special Condition B.

27 Mr. and Mrs. Popovich agreed to Special Condition B.

28 Mr. Thorsland entertained a motion to approve the special conditions as read.

29 **Ms. Griest moved, seconded by Mr. Randol, to approve the special conditions as read. The motion**
30 **carried by voice.**

31 Mr. Thorsland stated that there are no new Documents of Record.

32 **FINDINGS OF FACT FOR CASE 843-V-16:**

1
2 From the documents of record and the testimony and exhibits received at the public hearing for zoning
3 case **843-V-16** held on **August 25, 2016**, the Zoning Board of Appeals of Champaign County finds that:
4

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

8 Mr. Randol stated that special conditions and circumstances DO exist which are peculiar to the land or
9 structure involved, which are not applicable to other similarly situated land and structures elsewhere in
10 the same district, because the contractor did not inform them of the need for the construction permit.

11
12 Mr. Thorsland stated that the contractor in the new subdivision to the north created a drainage issue that
13 did not exist.

14
15 Mr. DiNovo stated that the lot is at the bottom of the watershed for the Rolling Hills Sub.
16

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

20
21 Mr. Passalacqua stated that practical difficulties or hardships created by carrying out the strict letter of
22 the regulations to be varied WILL prevent reasonable or otherwise permitted use of the land or structure
23 or construction because it would be an undue expense because everything is in place.
24

25 Mr. DiNovo stated that with respect to the bunker blocks in the drainage easement, their removal would
26 subject the otherwise lawful garage to potential damage.
27

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

30
31 Mr. Passalacqua stated that special conditions, circumstances, hardships, or practical difficulties DO
32 NOT result from actions of the applicant because they were under the advice of a professional
33 contractor.
34

35 Mr. Thorsland entertained a motion to grant a fifteen-minute extension to the meeting.
36

37 **Mr. Passalacqua moved, seconded by Mr. DiNovo, to grant a fifteen-minute extension to the**
38 **meeting. The motion carried by voice vote.**

39
40 Ms. Griest stated that the contractor on the adjacent subdivision constructed a berm in the drainageway
41 under the approval of the Village of Mahomet.
42

4. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS in harmony with the general purpose and intent of the Ordinance.

Mr. Thorsland stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS in harmony with the general purpose and intent of the Ordinance.

5. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare.

Mr. Randol stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, WILL NOT be injurious to the neighborhood or otherwise detrimental to the public health, safety, or welfare because since the blocks have been put in the utility easement, the petitioner stated that the water drains rather than sitting stagnant.

Mr. Thorsland stated that a special condition ensures that should the blocks become a problem for utility companies, they will be removed.

6. The requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS the minimum variation that will make possible the reasonable use of the land/structure.

Mr. Thorsland stated that the requested variance, SUBJECT TO THE PROPOSED CONDITIONS, IS the minimum variation that will make possible the reasonable use of the land/structure.

7. THE SPECIAL CONDITIONS IMPOSED HEREIN ARE REQUIRED FOR THE PARTICULAR PURPOSES DESCRIBED BELOW:

- A. Regarding the bunker blocks and fill that are the subjects of Part C of the variance: **Upon written request of any utility with an interest in using the utility and drainage easement, the owner shall be responsible for the full cost of removing the bunker block and fill and refusing to remove the bunker block and fill shall be considered a violation of the Zoning Ordinance.**

The special condition stated above is required to ensure the following:
To ensure that utility companies have appropriate access to their easements.

- B. **Within 30 days of Final Action of Case 843-V-16, the petitioners shall file a miscellaneous document with the Champaign County Recorder of Deeds that documents the following:**
 - (1) **Lot coverage for this property has been exhausted; no additional area can be added to the footprint of existing buildings and structures.**

1 The special condition stated above is required to ensure the following:
 2 **That potential buyers of the property are aware of the possible limitations of the**
 3 **property.**

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

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

8 **FINAL DETERMINATION FOR CASE 843-V-16:**

9 Ms. Griest moved, seconded by Ms. Lee, that the Champaign County Zoning Board of Appeals finds
 10 that, based upon the application, testimony, and other evidence received in this case, that the
 11 requirements for approval in Section 9.1.9.C HAVE been met, and pursuant to the authority granted
 12 by Section 9.1.6.B of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of
 13 Champaign County determines that:

14 The Variances requested in Case 843-V-16 are hereby GRANTED WITH CONDITIONS to the
 15 petitioner, Chris Popovich, to authorize the following variances for an existing dwelling and existing
 16 garage in the R-1 Single Family Residence Zoning District:

17 **Part A: An existing dwelling with a setback of 47 feet in lieu of 55 feet from the street**
 18 **centerline of Robin Road and a front yard of 19 feet in lieu of the minimum required 25 feet,**
 19 **as per Section 5.3 of the Zoning Ordinance; and**

20 **Part B: Lot coverage of 34.2% in lieu of the maximum allowed 30%, as per Section 5.3 of the**
 21 **Zoning Ordinance; and**

22 **Part C: Large landscaping (bunker) blocks and earth fill that occupy 3 feet 4 inches of a 10**
 23 **feet wide utility and drainage easement in lieu of the requirement that no construction shall**
 24 **take place in a recorded utility and drainage easement.**

25 **SUBJECT TO THE FOLLOWING CONDITIONS:**

26 **A. Upon written request of any utility with an interest in using the utility and drainage**
 27 **easement, the owner shall be responsible for the full cost of removing the bunker**
 28 **block and fill and refusing to remove the bunker block and fill shall be considered a**
 29 **violation of the Zoning Ordinance.**

30 **B. Within 30 days of Final Action of Case 843-V-16, the petitioners shall file a**
 31 **miscellaneous document with the Champaign County Recorder of Deeds that**
 32 **documents the following:**

33 **(1) Lot coverage for this property has been exhausted; no additional area can be**
 34

1 **added to the footprint of existing buildings and structures.**

2
3 Mr. Thorsland requested a roll call vote.

4
5 The roll was called as follows:

6			
7	Capel – yes	DiNovo – yes	Griest – yes
8	Lee – yes	Passalacqua – yes	Randol – yes
9	Thorsland – yes		

10
11 Mr. Hall informed the petitioners that they have received an approval of their request. He informed the
12 petitioners that staff would be in touch soon regarding the final paperwork.

13
14 **Case 844-AM-16 Petitioner: Aric & Lauryl Silver Request: Amend the Zoning Map to change the**
15 **zoning district designation from the B-3, Highway Business District to the AG-1, Agriculture District.**
16 **Location: A 2-acre tract in the Northwest Quarter of the Northeast Quarter of Section 2, Township**
17 **20N, Range 14W of the Second Principal Meridian in Ogden Township and formerly known as the**
18 **Burr-Oak Restaurant and farmstead with an address of 2667 CR 2100N, Ogden.**

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

24
25 Mr. Thorsland asked the petitioners if they would like to make a statement regarding their request.

26
27 Mr. Aric Silver, who resides at 323 Cedarwood, Danville, stated that they purchased the property last fall.
28 He said that they are in the category of empty nesters and they wanted to downsize to a smaller home, which
29 is more accessible. He said that while going through the process for permitting, they were informed by staff
30 that the property was zoned for business and a map amendment was necessary so that they could construct
31 their home. He said that the machine shed and the garage will remain on the property, but everything else
32 will be removed prior to construction of their home.

33
34 Mr. Thorsland asked the Board if there were any questions for Mr. Silver.

35
36 Ms. Lee asked Mr. Thorsland if, basically, the map amendment is required so that they can remove the old
37 house and construct a new home for their residence.

38
39 Mr. Thorsland stated yes, but the petitioner cannot do that in the B-3 district. Mr. Thorsland asked Mr.
40 Silver if the machine shed has not been utilized as restaurant for a long time.

41
42 Mr. Silver stated that the restaurant ceased operation between 1991 and 1993.

1
2 Mr. Thorsland asked the Board and staff if there were any additional questions for Mr. Silver.
3
4 Mr. John Hall, Zoning Administrator, stated that he is concerned about the building that was a restaurant,
5 which is being requested to be rezoned to a zoning district that does not allow restaurants. He said that there
6 is a Change of Use requirement and part of the Change of Use Permit is going to involve some amount of
7 decommissioning, because the Board cannot allow a restaurant to be rezoned to the AG-1 district. He asked
8 Mr. Silver to indicate what types of things still exist from when the shed was a restaurant and what will
9 remain and what will be removed.
10
11 Mr. Silver stated that when they purchased the property, the shed had a couple of bathrooms, sink, overhead
12 hood, and a walk-in cooler. He said that all of those items, except for one bathroom and the overhead hood,
13 have been removed and they are changing the electrical service in the shed from 3-phase to single phase.
14
15 Mr. Thorsland asked Mr. Silver if he ever intends to have a restaurant on the property.
16
17 Mr. Silver stated that they have no intent to operate a restaurant on the property. He said that all of the
18 water lines in the shed had busted, because they were not shut down properly. He said that there are some
19 issues with the electrical service in the shed, but they are trying to work through them. He said that he is
20 confident that the septic system does not meet any of today's codes for a restaurant. He said that he would
21 like the ability to keep the overhead hood in the shed so that when he does any woodworking, varnishing or
22 painting in the shed, he could use the overhead hood to pull the fumes out of the shed.
23
24 Mr. Thorsland asked Mr. Hall if the petitioner's statement regarding the overhead hood is sufficient.
25
26 Mr. Hall stated that the petitioner has testified that they do not intend to re-establish a restaurant on the
27 property and that testimony should be sufficient.
28
29 Mr. Silver stated that he has a full-time job and he does not need a part-time job.
30
31 Mr. Hall stated that the Board is not concerned with the petitioner's intent for the property, but perhaps the
32 next owner's intent.
33
34 Ms. Griest asked Mr. Silver if his testimony is that all of the cooking equipment in the shed has been
35 removed from the property.
36
37 Mr. Silver stated yes. He said that all of the cooking equipment, except for the overhead hood, was sold at
38 auction when the restaurant closed.
39
40 Mr. Thorsland asked staff and the Board if there were any additional questions for Mr. Silver and there was
41 none.
42

1 Mr. Thorsland noted that there are no new Documents of Record for this case.

2
3 Ms. Lee asked staff if Item #12.B. in the Summary of Evidence should be revised or stricken.

4
5 Ms. Chavarria stated that Premier Cooperative Incorporated should be stricken in Item #12.B.

6
7 Mr. Hall stated that Item 12 should indicate that the proposed amendment does NOT IMPEDE Goal 3 and
8 Item #12.B. should be eliminated.

9
10 Mr. Thorsland read proposed Special Condition A. as follows:

- 11
12 **A. The owners of the subject property hereby recognize and provide for the right of**
13 **agricultural activities to continue on adjacent land consistent with the Right to Farm**
14 **Resolution 3425.**

15 The above special condition is necessary to ensure the following:

16 **Conformance with Policy 4.2.3 of the Land Resource Management Plan.**

17
18 Mr. Thorsland asked Mr. Silver if he agreed to Special Condition A.

19
20 Mr. Silver stated that he agreed to Special Condition A.

21
22 Mr. Thorsland read proposed Special Condition B. as follows:

- 23
24 **B. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
25 **844-AM-16 by the County Board.**

26
27 The above special condition is required to ensure the following:

28 **The establishment of the proposed use shall be properly documented as**
29 **required by the Zoning Ordinance.**

30
31 Mr. Thorsland asked Mr. Silver if he agreed to Special Condition B.

32
33 Mr. Silver stated that he agreed to Special Condition B.

34
35 Mr. Thorsland entertained a motion to approve the special conditions as read.

36
37 **Mr. DiNovo moved, seconded by Mr. Passalacqua, to approve the special conditions as read. The**
38 **motion carried by voice vote.**

39
40 Mr. Thorsland stated that there are no new Documents of Record.

41

1 Mr. Thorsland stated that, if the Board is comfortable with staff's recommendations in the Summary
2 Finding of Fact for Case 844-AM-16, the Board could approve it, including the revision related to Goal 3.

3
4 Ms. Griest suggested that Goal 3 be stricken from Item #1.A of staff's recommended Summary Finding of
5 Fact and relocate Goal 3 to Item #1.D as WILL NOT IMPEDE.

6
7 Mr. Thorsland asked the Board if they were comfortable with Ms. Griest's recommendation and staff's
8 recommendations for the rest of the Summary Finding of Fact.

9
10 The Board indicated that they agreed with Ms. Griest's recommendation for Goal 3 and staff's
11 recommendations for the rest of the Summary Finding of Fact.

12
13 **SUMMARY FINDING OF FACT FOR CASE 844-AM-16:**

14
15 From the documents of record and the testimony and exhibits received at the public hearing conducted
16 on **August 25, 2016**, the Zoning Board of Appeals of Champaign County finds that:

- 17
18 1. The proposed Zoning Ordinance map amendment will **HELP ACHIEVE** the Land Resource
19 Management Plan because:
- 20 A. Regarding Goal 4 Agriculture:
- 21 (1) It will **HELP ACHIEVE** Objective 4.3 requiring any discretionary development
22 to be on a suitable site because it will **HELP ACHIEVE** the following:
- 23 a. Policy 4.3.5 requiring that a business or non-residential use establish on
24 best prime farmland only if it serves surrounding agriculture and is
25 appropriate in a rural area (see Item 13.A.(5)).
- 26
27 b. Policy 4.3.4 requiring existing public infrastructure be adequate to support
28
29 the proposed development effectively and safely without undue public
30 expense (see Item 13.A.(4)).
- 31
32 c. Policy 4.3.3 requiring existing public services be adequate to support the
33 proposed development effectively and safely without undue public
34 expense (see Item 13.A.(3)).
- 35
36 d. Policy 4.3.2 requiring a discretionary development on best prime farmland
37 to be well suited overall (see Item 13.A.(2)).
- 38
39 (2) It will **HELP ACHIEVE** Objective 4.2 requiring discretionary development to
40 not interfere with agriculture because it will **HELP ACHIEVE** the following:

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- a. Policy 4.2.4 requiring that all discretionary review consider whether a buffer between existing agricultural operations and the proposed development is necessary (see Item 13.B.(4)).
 - b. Policy 4.2.3 requiring that each proposed *discretionary development* explicitly recognize and provide for the right of agricultural activities to continue on adjacent land (see Item 13.B.(3)).
 - c. Policy 4.2.2 requiring discretionary development in a rural area to not interfere with agriculture or negatively affect rural infrastructure (see Item 13.B.(2)).
 - d. Policy 4.2.1 requiring a proposed business in a rural area to support agriculture or provide a service that is better provided in the rural area (see Item 13.B.(1)).
- (3) It will **HELP ACHIEVE** Objective 4.1 requiring minimization of the fragmentation of farmland, conservation of farmland, and stringent development standards on best prime farmland because it will **HELP ACHIEVE** the following:
- a. Policy 4.1.8 requiring the County to consider the LESA rating for farmland protection when making land use decisions regarding a discretionary development (see Item 13.C.(4)).
 - b. Policy 4.1.6 requiring that the use, design, site and location are consistent with policies regarding suitability, adequacy of infrastructure and public services, conflict with agriculture, conversion of farmland, and disturbance of natural areas (see Item 13.C.(3)).
 - c. Policy 4.1.1, which states that commercial agriculture is the highest and best use of land in the areas of Champaign County that are by virtue of topography, soil and drainage, suited to its pursuit. The County will not accommodate other land uses except under very restricted conditions or in areas of less productive soils (see Item 13.C.(2)).
- (4) Based on achievement of the above Objectives and Policies, the proposed map amendment will **HELP ACHIEVE** Goal 4 Agriculture.
- B. Regarding Goal 8 Natural Resources:
- (1) The proposed amendment will **HELP ACHIEVE** Objective 8.6 requiring the County to encourage resource management which avoids loss or degradation of areas representative of the pre-settlement environment and other areas that

- 1 provide habitat for native and game species because it will **HELP ACHIEVE** the
2 following:
- 3 a. Policy 8.6.3 requiring that the County use the Illinois Natural Areas
4 Inventory and other scientific sources of information to identify priority
5 areas for protection or which offer the potential for restoration,
6 preservation, or enhancement (see Item 17.A.(2)).
7
- 8 C. The proposed amendment will **NOT IMPEDE** the following LRMP goal(s):
9
 - 10 • Goal 1 Planning and Public Involvement
 - 11 • Goal 2 Governmental Coordination
 - 12 • Goal 3 Prosperity
 - 13 • Goal 5 Urban Land Use
 - 14 • Goal 6 Public Health and Public Safety
 - 15 • Goal 7 Transportation
 - 16 • Goal 9 Energy Conservation
 - 17 • Goal 10 Cultural Amenities
- 18 D. Overall, the proposed map amendment will **HELP ACHIEVE** the Land Resource
19 Management Plan.
20
- 21 2. The proposed Zoning Ordinance map amendment **IS** consistent with the *LaSalle* and *Sinclair*
22 factors because of the following:
- 23 A. The proposed residential use would involve the demolition of a dilapidated house, the
24 construction of a new house, and resident occupation of a vacant property.
25
- 26 B. The site with proposed improvements is well suited overall for the proposed land use.
27
- 28 C. The property has been vacant of a use permitted in the B-3 Highway Business Zoning
29 District for many years. The Village of Royal southern corporate limit is the same
30 distance from the subject property as it was in 1988 aerial photography.
31
- 32 D. There has been no proposed development of the site as a restaurant or other business.
33
- 34 E. The ZBA has recommended that the proposed rezoning will **HELP ACHIEVE** the
35 Champaign County Land Resource Management Plan.
36
- 37 3. The proposed Zoning Ordinance map amendment will **HELP ACHIEVE** the purpose of the
38 Zoning Ordinance because:
- 39 A. Re-establishing the AG-1 District at this location will not introduce haphazard urban land
40 uses (Purpose 2.0 (n) see Item 21.I.).
41

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- 1 B. Re-establishing the AG-1 District at this location will not impact sensitive natural
2 resources or habitats (Purpose 2.0 (o) see Item 21.J.).
3
4 C. Re-establishing the AG-1 District at this location will not require the development of
5 public utilities or transportation facilities (Purpose 2.0 (p) see Item 21.K.).
6
7 D. Re-establishing the AG-1 District at this location will not take any land out of production
8 (Purpose 2.0 (q) see Item 21.L.).
9

10 Mr. Thorsland entertained a motion to adopt the Summary Finding of Fact as amended.

11
12 **Ms. Griest moved, seconded by Mr. Randol, to adopt the Summary Finding of Fact as amended.**
13 **The motion carried by voice vote.**
14

15 Mr. Thorsland entertained a motion to adopt the Finding of Fact, Documents of Record, Summary
16 Finding of Fact, as amended and move to the Final Determination for Case 844-AM-16.

17
18 **Ms. Griest moved, seconded by Ms. Capel to adopt the Finding of Fact, Documents of Record,**
19 **Summary Finding of Fact, as amended and move to the Final Determination for Case 844-AM-16.**
20 **The motion carried by voice vote.**
21

22 Mr. Thorsland informed the petitioners that a full Board is present tonight and four affirmative votes are
23 required for approval.
24

25 **FINAL DETERMINATION FOR CASE 844-AM-16:**

26 **Ms. Griest moved, seconded by Mr. Passalacqua, that pursuant to the authority granted by**
27 **Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of**
28 **Champaign County determines that:**

29 **The Zoning Ordinance Amendment requested in Case 844-AM-16 should *BE ENACTED***
30 **by the County Board.**

31 ***SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:***

- 32 **A. The owners of the subject property hereby recognize and provide for the right of**
33 **agricultural activities to continue on adjacent land consistent with the Right to Farm**
34 **Resolution 3425.**

35 The above special condition is necessary to ensure the following:

36 **Conformance with Policy 4.2.3 of the Land Resource Management Plan.**
37

1 **B. A Change of Use Permit shall be applied for within 30 days of the approval of Case**
2 **844-AM-16 by the County Board.**

3
4 The above special condition is required to ensure the following:

5 **The establishment of the proposed use shall be properly documented as**
6 **required by the Zoning Ordinance.**

7
8 Mr. Thorsland requested a roll call vote.

9
10 The roll was called as follows:

11	Capel – yes	DiNovo – yes	Griest – yes
12	Lee – yes	Passalacqua – yes	Randol – yes
13	Thorsland – yes		

14
15
16 Mr. Hall informed the petitioners that they have received a recommendation of approval for their request.
17 He said that the case will be forwarded to the Environment and Land Use Committee for their September 8th
18 meeting and staff will be in contact with the petitioners regarding that meeting.

19
20 Mr. Thorsland stated that the Board would now hear Case 843-V-16, Chris Popovich.

21
22 **7. Staff Report**

23
24 None

25
26 **8. Other Business**

27 A. Review of Docket

28
29 Mr. Thorsland requested that the Board inform the staff of any future absences to scheduled meetings.

30
31 Ms. Lee stated that she is having surgery on September 1st and it is possible that she will not be able to
32 attend the September 15th meeting.

33
34 Mr. Thorsland reminded the Board, if they plan to attend the 2016 IACZO Conference on September 29th at
35 Starved Rock Lodge & Conference Center, they need to send in their reservation.

36
37 Mr. Hall noted that the conference is on the same day as a ZBA meeting and attendance to the conference is
38 not an excuse to miss the ZBA meeting.

39
40 **9. Audience Participation with respect to matters other than cases pending before the Board**

41
42 None

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10. Adjournment

Mr. Thorsland entertained a motion to adjourn the meeting.

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

The meeting adjourned at 10:05 p.m.

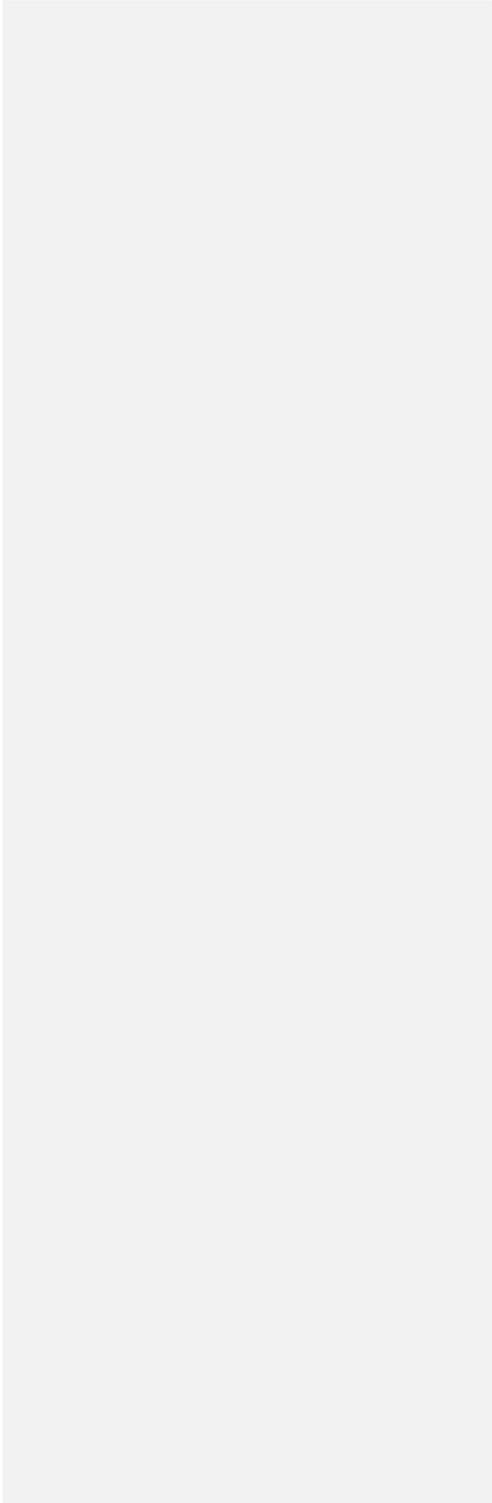
Respectfully submitted

Secretary of Zoning Board of Appeals

DRAFT SUBJECT TO APPROVAL DRAFT

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