

AS APPROVED MAY 31, 2007

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

1776 E. Washington Street

Urbana, IL 61801

DATE: April 26, 2007

PLACE: Lyle Shield's Meeting Room

1776 East Washington Street

Urbana, IL 61802

TIME: 7:00 p.m.

MEMBERS PRESENT: Dennis Goldenstein, Debra Griest, Joseph L. Irle, Richard Steeves

MEMBERS ABSENT: Doug Bluhm, Roger Miller, Melvin Schroeder

STAFF PRESENT: John Hall, JR Knight, Leroy Holliday, Susan McGrath (Assistant States Attorney), Christina Papavosiliou (Assistant States Attorney),

OTHERS PRESENT : Jenny Park, Clyde E. Kesler, Mary Anne Kesler, Carol Owen, Kent Weeks, Judy Swartzenfruber, Billie Theide, David Swartzendruber, Dale Kesler, Curt Rau, Kim McQueen, Elizabeth Owens, Bob McQueen, Lynn Stuckey, Vennatesh Yekkirala, Sharon Kesler-Sanders, Kevin Luebchow, Deoki Tripathy, Phillip & Susan Kesler, Ravi Kandasamy, Tom Courson, David Phillippe, Nani Bhowmik, Justine Schoeplein, Peggy Anderson, Mylarassu Sivagnanam, Pradeep Khanna, Kishor Joshi, Kokila Joshi, A. Patel, J.P. Kukreti, Rumela Ben, Anard Bagavandoss, Kalaimari Singanauely, Mahenfra Desai, Lowell Osterbur, Somabhai Panchal, Pomila Ahuja, Hal Barnhart, Vijay Bavda, B. Patel, Charles Patel, Bholi Patel, H. Patel, P.M. PatelFran Ray, Manjula Tekal, Aradhana, Chhaged, James D. Moncrief, Kyong Moncrief, R. Govindjee, Shiv Kapoor, Bridgit McCall, Tanna Fruhling, Sandra Panditi, indra Narindaraggarwal, Raja Perecherla, Veera Bodduu, Sivali Boddu, P. Saravanan MD., Stuart Levy, Shuchi Kapoor, Rashmi Kapoor, Shawn Foley, Shyamola Balgopal, George Mallock, Mukesha Kukreti

1. Call to Order

Ms. Griest called meeting to order at 7:06.

2. Roll Call and Declaration of Quorum

The roll was called and quorum declared.

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2 **3. Correspondence**

3 There was no correspondence.

4

5 **4. Approval of Minutes**

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7 **Mr. Irle moved, seconded by Mr. Goldenstein to approve the March 15, 2007, minutes. Motion**
8 **carried by voice vote.**

9

10 **5. Continued Public Hearing**

11

12 **Case 555-AM-06 Petitioner: James T. Battle Request: Amend the Zoning Map to change the zoning**
13 **district designation from B-3 Highway Business Zoning District to B-4 General Business Zoning**
14 **District. Location: A 5.0 acre tract located in the Northeast ¼ of the Northeast ¼ of Section 24 of**
15 **Hensley Township and commonly known as the field north of the I-57 interchange in Section 24 of**
16 **Hensley Township.**

17

18 Mr. Steeves stated that he would have to abstain from voting because Hensley Township is one of his
19 clients.

20

21 Ms. Griest stated that since Mr. Steeves is abstaining from voting the board does not have enough members
22 to take action and asked Ms. Park for her preference.

23

24 Ms. Park stated that she would like to have the case continued.

25

26 Ms. McGrath, Assistant States Attorney stated that no action could be taken for lack of a quorum and the
27 chair could declare the case continued.

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29 Mr. Hall said the next date for continuance would be June 28, 2007, and that would also meet the 100 day

1 limit.

2

3 Ms. Griest said that the case was continued to June 28, 2007.

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5 **Case 560-S-06** Petitioner: **The Hindu Temple & Cultural Society of Central Illinois** Request: **Authorize**
6 **the establishment and use of a Temple and Cultural Center as a Special Use in the AG-1 Agriculture**
7 **Zoning District** Location: **A 40 acre parcel that is the South ½ of the North ½ of the Southwest ¼ of**
8 **Section 14 of Hensley Township, except for the North 100 feet of the West 350 feet of said area, and**
9 **located on the east side of County Highway One and that is commonly known as the field north of**
10 **Thor-O-Bred Acres subdivision.**

11

12 Ms Griest informed the audience that Case 560-S-06 is an Administrative Case and as such the County
13 allows anyone the opportunity to cross examine any witness. She stated that at the proper time she will ask
14 for a show of hands of those who like to cross examine and each person will be called upon. She requested
15 that anyone called to cross examine go to the cross examination microphone to ask any questions. She said
16 that those who desire to cross examine are not required to sign the witness register but are requested to
17 clearly state their name before asking any questions. She noted that no new testimony is to be given during
18 cross examination. She also said that attorney's who have complied with article 6.5 of the ZBA Bylaws are
19 exempt from cross examination.

20

21 Mr. Steeves stated that he has to abstain from voting because Hensley Township is a client of his.

22

23 Ms. Griest asked Mr. Hall if the Board has a formal objection from Hensley Township.

24

25 Mr. Hall said that they have no protest right in Special Use Permits.

26

27 Ms. Griest stated that since Mr. Steeves has abstained from voting they do not have a quorum and therefore
28 cannot take any action. She said however, they could take new testimony if the Board so chooses.

29

1 Mr. Goldenstein said that he feels they should not hear any testimony until all Board members are present.

2

3 Mr. Irle said that he feels they should have new testimony so that it would be a matter of public record for
4 the next meeting and the members could have it to review for the next meeting.

5

6 Mr. Hall stated that the Board could make use of this meeting to discuss the aspects of this case themselves
7 since they have not previously had an opportunity to do so.

8

9 Ms. Griest asked if any transcription of the meeting could be available for approval prior to any final action
10 so that the absent Board members could have approved minutes to review and also available to the public.

11

12 Mr. Hall said that the minutes cannot be approved until the next meeting but we can have draft minutes
13 available but they cannot be approved until the Board approves them.

14

15 Ms. Griest asked if they are available before they are approved.

16

17 Mr. Hall said that the minutes are mailed out to everyone who attends the meeting in a draft state because
18 anyone may comment. He said that the next available date to hear this case would be May 31, 2007.

19

20 Ms. Griest asked Mr. Goldenstein if he feels comfortable in moving forward with new testimony.

21

22 Mr. Goldenstein said yes.

23

24 Mr. Goldenstein asked Mr. Hall if at the last meeting the petitioner requested that action be taken in two
25 meetings and would this meeting count as one.

26

27 Mr. Hall said that provision of the ordinance states that the Board has to honor that request. He said that it's
28 kind of a tension between the need for new information and the petitioner's desire for a timely conclusion
29 and in the past it has been a trade-off between a quicker decision and leaving information outstanding and

1 this is the first of the two meetings.

2

3 Ms. Griest asked Mr. Hall if we did not take public testimony would it count against the first of the two
4 meetings if the petitioner was interested in preserving those meeting's.

5

6 Mr. Hall said that it would be a reasonable arrangement.

7

8 Mr. Goldenstein asked could the petitioner have an option to continue this case if they choose or take final
9 action just like with the others with short Board members to take a vote.

10

11 Ms. Griest said that we don't have a quorum to even make that determination.

12

13 Ms. McGrath stated that the Board does not have a quorum in this case to take any action nor close the
14 hearing tonight. She said that the Board cannot make any findings or determinations. She said that there is
15 nothing in your rules that says that the request from the petitioners or any other interested party has to be
16 honored as to when you make your decision in this case. It is up to you to decide. Ms. McGrath said that you
17 can take testimony tonight and then continue the case to the May 31st date but that is all you can do.

18

19 Ms. Griest called Mr. Matt Deering and asked if he wished to continue with the hearing this evening
20 although we do not have a quorum to make any decision.

21

22 Mr. Deering said he would like to confer with his client. Mr. Deering said that his client's preference is for
23 the meeting to continue with the testimony with the understanding that this will be considered one of the two
24 meetings from our request last time.

25

26 Mr. Hall said that there is a new memo dated April 26, 2007, regarding the States Attorney's comments that
27 are confidential and not available for public review. Mr. Hall said he will paraphrase the memo for those
28 here tonight. He said the first item is the proper standard for public convenience criteria for Religious Use
29 Special Use Permits. Mr. Hall said that there has been conflicting evidence as far as what are the proper

1 standards for public convenience. He said that in most cases the Board simply relies on some statement of
2
3 market demand for every special use that is proposed and generally doesn't get complicated unless it seems
4 to be some significant public safety issue that neighbors raise. Mr. Hall said that a denial of a Special Use
5 Permit in this case should not be based solely on speculative conclusions about the Applicant's religion,
6 such as that the residences of the congregation are not in near proximity to the proposed location or that the
7 necessity of the temple to the practice of the Hindu religion has not been demonstrated. He said that if the
8 board finds that the Special Use Permit is injurious to public health, safety, moral or general welfare and if
9 those injuries could not be mitigated by some type of condition then the Board is not obligated to find that it
10 is necessary for the public convenience.

11 Mr. Hall said that there are two other concerns regarding Best Prime Farmland and architectural appearance.
12 He said that the Zoning Ordinance has no standards for the consideration of Best Prime Farmland in Special
13 Use Permits other than the maximum lot size and contains no specific requirements for architectural
14 appearance so neither Best Prime Farmland nor architectural appearance are appropriate bases for denial
15 this of Special Use Permit, not individually or together. He said that if the Board finds there is a compelling
16 state interest to deny the Special Use Permit he would recommend that no discussion of Best Prime
17 Farmland or architectural appearance be added to your conclusion. He said that the staff memo has other
18 attachments one of which is a revised land use map based on the aerial photo that indicates that portion of
19 the forty acres that is to be developed and the part which is to remain as farmland and you will see that the
20 portion of the property proposed to be developed in the Special Use Permit borders two lots in Thor-O-Bred
21 Acres Subdivision. He said that also included in the memo is a final plat of Thor-O-Bred Acres Subdivision
22 and excerpts from a portion of that plat which are directly relevant to testimony that has been submitted in
23 this case. He said there is another revised Summary of Evidence and this new Summary has been amended
24 with Mr. Lubechow's previous testimony about the concerns of neighbors and added new evidence related
25 to the essential character of the AG-1 District. He said that the Summary of Evidence has a number of things
26 added that are relevant to the question of whether the Special Use preserves the essential character of the
27 District. Mr. Hall read the new evidence items 2 through 8f.

28

29 Ms. Griest asked the Board if there were any questions for Mr. Hall and there were none.

1 Ms. Griest asked if Mr. Hall had anything he would like to add.

2

3 Mr. Hall said that there is another hand-out on Case 560-S-06 Draft dated April 26, 2007, that compares

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5 evidence of compliance with each criteria with evidence of non-compliance. He said that it is intended as a

6 convenience for the Board in keeping track of all the criteria and testimony presented and a way to keep

7 track of whether or not the conditions proposed are necessary. He said that conditions on a religious special

8 use should only be for a compelling state interest and should not be more restrictive than necessary to insure

9 that the compelling stated interest is achieved. He said that the petitioner has agreed with all the conditions

10 and in the memo that went out in the mailing an additional condition was proposed and it was reviewed with

11 the petitioner. He said this will be something we will start doing especially when there are a number of

12 conditions like we have in this case. He said that he had not went through the Summary of Evidence to point

13 out all of the new evidence that has been added but it generally consists of testimony of Kevin Luebchow

14 where it was relevant.

15

16 Ms. Griest asked if there were any questions from the Board for Mr. Hall.

17

18 Mr. Goldenstein asked Mr. Hall if we could grant the petitioner a special use on just the property being used

19 and leave the remainder as farmland.

20

21 Mr. Hall said that is in fact what the petitioner had proposed. In order to comply with the maximum lot size

22 this special use needs to be on a 35 acre tract or it needs to be on a multiple of three acre tracts or it needs a

23 Variance. He said that small deviations from the site plan are allowable and the way that a Zoning

24 Administrator can evaluate whether a deviation is small or not is how it relates back to the approval. He said

25 this is the first time he has seen a Special Use on 40 acres even though they are only proposing to use five.

26 He said they don't need 40 acres to comply with the maximum lot size they only need 35. He said that in the

27 future they may want to dispose of the five acres and he would like some guidance from the Board in this

28 case about the minimum lot area required for this Special Use Permit. He proposed just requiring the Special

29 Use Permit be in compliance with the maximum lot area requirement which would mean that after approval

1 if they wanted to create two-three acre lots and sell 35 acres of the farmland to a farmer, they could do that
2
3 providing they have subdivision approval. He said the compelling state interest is that whatever land the
4 Special Use Permit is on complies with the Zoning Ordinance and that does not have to be 40 acres.

5
6 Ms. Griest asked the Board if there were any other questions for Mr. Hall and there was none.

7
8 Mr. Deering stated that he has nothing further at this time but would like to speak at the latter part of the
9 meeting.

10
11 Kevin Luebchow, attorney for several of the homeowners in the Thor-O-Bred Acres Subdivision, stated that
12 he was asked by the State's Attorney to provide information regarding those he represents in the case as well
13 as the scope of his representation. Mr. Luebchow said that he was submitting a memorandum with an
14 attached list of those whom he represented as well as his scope of representation but he said that it borders
15 on privileged information. He said he would like to note for the record that he disagrees with the State's
16 Attorney's memorandum. He said that he was also asked by the State's Attorney to provide addition
17 citations and references to testimony that he gave at the last meeting which is also included in the beginning
18 of the memorandum. He said that he had referenced the specific case *Southside Move of God Church* which
19 he believed stood for the proper factors to consider in determining whether or not the standard of necessity
20 of has been met in a case like this. He said that tonight was the first time he saw the memorandum from the
21 State's Attorney's Office regarding this matter and would like to note for the record that he disagrees with
22 the opinion of the State's Attorney's Office and the standard of the compelling state interest is not the proper
23 standard in this case and he does not believe there is any zoning case law in Illinois that supports that
24 standard. He said that his intention tonight was not to go through every case he had cited in this
25 memorandum but to provide this memorandum to the Board.

26
27 Mr. Luebchow said that he may not touch on everything included in the memorandum in his oral testimony
28 but that does not mean that he conceded a point. He said that he had provided a list of cases of other Special
29 Use Permits involving Hindu Temples or publicized articles regarding Hindu Temples and their ability to

1 locate in urban areas or the ability to purchase existing buildings and convert them for use. He said when he
2
3 testified at the last meeting that was not a reference to Illinois case law but was information provided by the
4 general media and some were publicized Special Use hearings in other jurisdictions and some of the
5 references made did not rely on Illinois case law but from examples from other jurisdictions.
6 Mr. Luebchow said that he had provided case law as to why the physical appearance is related to public
7 health, safety and welfare although the State's Attorney disagrees with him on that.

8
9 Mr. Luebchow said there are a couple of cases he would like to take a little time on regarding the standard
10 and necessity for the public convenience at that location. He said that the cases he wants to talk about are
11 *Bethel Evangelical Lutheran Church vs the Village of Morton* which is the case Mr. Deering referenced in
12 his memorandum. He said that this case is a leading case regarding a Special Use Permit involving a
13 religious organization and he said that Mr. Deering cited in his memorandum that that case held that one of
14 the conditions referenced in *Southside Move of God* was not a relevant criteria to consider in determining if
15 the use was necessary for the public convenience at that location and that standard was whether or not the
16 particular location had been assigned to the petitioner's ministry. Mr. Luebchow said that case, although it
17 was a leading case did not address the issue of necessary for the public convenience at that location, that
18 issue is not relevant in this case at all and there is a good reason for that. Mr. Luebchow stated that this case
19 involved a religious school which already existed at that location and the Village of Morton had a restriction
20 on the limit of students enrolled there so the question of the necessity for public convenience was not
21 relevant so this case could not be interpreted to hold that the standards previously cited in *Southside Move of*
22 *God* are not relevant because it was not regarding that issue. Mr. Luebchow said this case is about is when a
23 religious organization is involved in a Special Use Permit it sets forth certain test that has to be met when
24 determining whether or not the Special Use Permit should be granted or denied and this test is different from
25 the normal criteria. He said that there is a two factor test to determine whether or not the ordinance infringes
26 on religious freedom and then there is a balancing test to determine whether or not the special use places an
27 undue burden on the petitioner as a religious organization. He said that in this case the court did find that it
28 placed an undue burden on the religious organization. He said that the enrollment restriction would require
29 an already existing use to relocate somewhere else and the court found that burden was an undue burden. He

1 said that the court stated that a church has no constitutional right to be free from reasonable zoning
2
3 regulation nor does a church have a right to build a house of worship anywhere it pleases.
4

5 Mr. Luebchow said secondly in examining the weighing of burdens placed on religious organizations the
6 court stated the following: causing the appellant to relocate appears to be more of an economic burden on
7 the appellant than the burden imposed on the religious institutions in *Gross and Messiah*, those are two
8 cases that the court has referenced. He said in those two cases the court did the balancing test and found that
9 the restriction was not an undue burden because the churches had not already constructed a facility for
10 worship and it was merely a matter of choosing another location so this case provides authority in Illinois
11 that the denial of a Special Use Permit for a case with these facts where a church has not already built a
12 worship facility and it is merely a matter of choosing another location is not an undue burden on a religious
13 organization.
14

15 Mr. Luebchow stated that Mr. Deering also cited several other cases in arguing that the factors that he
16 previously proposed should not be deemed relevant, either those cases are not on point, or not related to the
17 standard of necessary for the public use. He said one of the cases that was on point was the 1983 case *Hope*
18 *Deliverance Center Inc. vs the Zoning Board of Appeals of the City of Chicago* that looked at those factors
19 and said the church met those factors. Mr. Luebchow said that case had been located in the immediate
20 vicinity of the proposed special use for eight years and had a long standing history with the community at
21 that location. He said that the court found that the church failed to show it was necessary for the public
22 convenience at the proposed site, again not showing that the area had been assigned to the congregation for
23 its ministry or that members of the congregation lived in the vicinity of the church. Mr. Luebchow said that
24 Mr. Deering stated that case law indicates that “necessary” as used in the Zoning Ordinance does not mean
25 “absolutely necessary”. Mr. Luebchow said that the factors to be considered are the same factors that I
26 presented at the last meeting.
27

28 Mr. Luebchow said that in the *t. James Temple of the A. O. H. Church of God, Inc.* the court recognized that
29 the presence of a church brings benefits to any neighborhood but the church failed to show it was necessary

1 for the public convenience at the proposed site.

2

3 He said the petitioner introduced no evidence of any effort of locating the church in a permitted district
4 rather than where a Special Use is required. He said the State's Attorney's opinion stated that the petitioner
5 did not have to prove there are no locations available where temples can be authorized by right but that was
6 not the standard in this case the standard is had they attempted to locate in a district where this use was
7 allowed by right.

8

9 Mr. Luebchow said that the State's Attorney's memo from 2002 stated that a religious use should be
10 presumed to meet the necessity standard but there is no basis for that in Illinois case law that he could find
11 and Mr. Deering had not even argued for that presumption but he argued that Special Use Permits should be
12 more liberally granted but he don't know if that is even an accurate reflection of the case law. Mr.
13 Luebchow said that obviously there is a balancing test as was set forth in the primary case that he referenced
14 earlier.

15

16 Mr. Luebchow said that some of the cases and argument that he prepared in the memo deals with Best Prime
17 Farmland but the State's Attorney indicated that this is not a relevant factor. He said that I do not agree with
18 that opinion and my question to myself is what has all the work of the Environment and Land Use
19 Committee in proposing land use policies regarding Best Prime Farmland meant if it does not mean
20 anything. He stated that it seems that the county spent a lot of money and a lot of time for standards that are
21 not relevant.

22

23 Mr. Luebchow stated that some points in Mr. Deering's memo he agrees with and there are some cases that
24 he feels are a mischaracterization or a misapplication of the holdings, some of them are not relevant to the
25 standard that they are proposed to apply to. He said that Mr. Deering has accurately stated additional
26 concerns when a religious use is in question. Mr.Luebchow said with regards to the *Bethel Evangelical*
27 *Lutheran Church* the balancing test Mr. Deering has accurately described that, there are two threshold tests
28 and then a balancing test. He said in the case regarding Bethel Lutheran Church in cases where they had not
29 already constructed elaborate facilities for worship and it was merely a matter of choosing another location

1 it was deemed that it was not an undue burden on the religious organization. Mr. Luebchow said that the
2 *Bethel Evangelical Lutheran Church* case was a federal case and the interesting fact in that case was that a
3
4 church sought a Special Use Permit for construction of a church and recreational facility in an agricultural
5 zoned area. He said church facilities were an allowed special use subject to approval by the planning
6 commission. Mr. Luebchow said that the Planning Commission denied the special use request and the court
7 upheld the denial of the special use permit.

8
9 Mr. Luebchow said that part of his memorandum set forth at the very end additional intent as expressed in
10 the Champaign County zoning code as guided by the land use policies developed by the Champaign County
11 Environment and Land Use Committee. He said that the executive summary indicates that the standards and
12 policies set forth therein are intended to be guidance in discretionary cases such as this and are intended to
13 be relied upon in guiding the Board in determining the intent of the Champaign County Zoning Code. Mr.
14 Luebchow read the Champaign County Regulatory Policies Section 1.1.2 through 1.6.2. Mr. Luebchow
15 stated the above language together with previous language in the Champaign County Zoning Code makes
16 the intent clear.

17
18 Ms. Griest asked the Board if there were questions for Mr. Luebchow and there were none.
19
20 Fran Ray who resides in Thor-O-Bred Acres Subdivision at 1008 Churchill Downs Drive, in Champaign, IL.
21 read and submitted her comments to the Board regarding case 560-S-06.

22
23 Ms. Griest asked Ms. Ray if she would like to submit her letter as a document of record.

24
25 Ms Ray said yes.

26
27 Ms. Griest asked the Board if there were any questions for Ms. Ray and there were none.

28 Ms. Griest asked staff if there were questions for Ms. Ray and there were none.

29 Ms. Griest asked if there is anyone that has any questions for Ms. Ray.

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Matt Deering, attorney for the petitioner, asked Ms. Ray if the spring festival she referenced was attended by about 500 people.

Ms. Ray said that she said several hundred which is what it stated in the minutes from the meeting.

Mr. Deering asked Ms. Ray if she was aware if whether the testimony was that was a Hindu Festival or an Indian festival.

Ms. Ray said that it's in the minutes the woman that spoke said she was there on behalf of the petitioners in support of them.

Mr. Deering said that he disagrees and asked if she believed there is a difference in being Hindu or being Indian.

Ms. Ray asked Mr. Deering did she testify to anything that would indicate that I have to answer that.

Ms. Griest said to Mr. Deering that he might want to rephrase his question.

Mr. Deering asked Ms. Ray would it affect her thoughts on the spring festival if it was determined that it was an Indian festival and not Hindu.

Ms. Ray said no that I only offered that testimony because it supported that there was a need in this area and it had been presented as indicating that need. Ms Ray went on to say you want to strike that you may.

Mr. Deering interrupted and said that that's ok you answered my question.

1 Mr. Deering asked Ms. Ray if she had reviewed the letter from the Champaign County Health Department
2 regarding the ability to establish a working septic system on this site.

3

4

5 Ms. Ray said yes.

6

7 Mr. Deering asked Ms. Ray if she disagrees with their conclusion.

8

9 Ms. said yes because it does not speak to what has been presented and submitted as to what the use of that
10 facility would be.

11

12 Mr. Deering asked Ms. Ray if she reviewed the site plan that is a matter of record.

13

14 Ms. Ray said what is contained in the packets yes.

15

16 Mr. Deering asked Ms. Ray if she saw anything in the site plan you can testify to concerning impeded
17 drainage from the south and can you point to something on that site plan that would impede drainage from
18 the south.

19

20 Ms. Ray said no, what she stated was that it's important for her to know not only will the flow not be
21 affected which has been stated by Mr. Hall in the Summary of Evidence and there are some conditions for
22 that but that's not the only thing that is important to her. She said flow can also be impeded because an
23 influx of ground water from the downstream and the drainage tile and the swale can only absorb so much
24 water.

25

26 Mr. Deering said there are several proposed conditions for drainage. He said there are conditions that restrict
27 the petitioner if the use is approved from affecting or damaging drainage tiles when adding capacity to
28 drainage tiles and also restrict the petitioner from changing the topography in the south 70 feet of the site to
29 be developed. Mr. Deering asked Ms. Ray if she has a position on whether those are adequate.

1

2 Ms. Ray said that her concern is that curtain drain is being proposed to be emptied into an agricultural tile
3 that is also used for drainage from the Thor-O-Bred Acres Subdivision, and there is a limited drainage
4
5 capacity and that's why she said she would like to know that there has been a study done to ensure that
6 water can leave Thor-O-Bred Acres at the same rate that it does currently.

7

8 Ms. Griest said to Ms. Ray that she had referenced Mr. Hall by name and it is generally her rule to give Mr.
9 Hall an opportunity to ask any questions.

10

11 Mr. Hall asked Ms. Ray if she is an engineer by practice or do you have an engineering degree and should
12 the Board pay particular attention to her comments about drainage conditions.

13

14 Ms. Ray said that she is a mechanical engineer not a civil engineer and I have no experience in designing
15 septic systems I have just lived with one for many years.

16

17 Ms. Griest asked Ms. Ray if she is testifying based on her professional engineering background.

18

19 Ms. Ray said no.

20

21 Ms. Griest asked if anyone else had any questions for Ms. Ray.

22

23 Mike Kukreti said Ms. Ray stated that several hundred people attended the Spring Festival and asked
24 if she knew how many actually attended the festival.

25

26 Ms. Ray said that she did not know.

27

28 Mr. Kukreti asked Ms. Ray about how many did she think attended the festival.

29

1 Ms. Ray stated that to her several hundred reinforces two to three hundred.

2

3 Mr. Kukreti asked Ms. Ray when that festival was.

4

5 Ms. Ray said that it was not stated but as it was presented she believes it was last year.

6

7 Mr. Kukreti said that festival was not this year.

8

9 Ms. Griest interrupted and said to Mr. Kukreti that if you have testimony that you would like to submit in
10 contradiction to what's published in the minutes you can sign the witness register to do that but the cross
11 examination process is not where he do that so limit the questioning to Ms. Ray based on what she has
12 testified about.

13

14 Mr. Kukreti asked Ms. Ray if she had a sense of the price of the farmland of the proposed site.

15

16 Ms. Griest interrupted again and said that Ms. Ray had not testified to anything regarding the price of that
17 farm ground.

18

19 Lynn Stuckey who lives at 806B West Healey Street, Champaign asked Ms. Ray if she was a homeowner in
20 Thor-O-Bred Acres.

21

22 Ms. Ray said yes.

23

24 Ms. Stuckey asked Ms. Ray if her neighbors experience ponding or extended wetness in their yards.

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26 Ms. Ray said yes at the point where the water discharges onto the fields.

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28 Ms. Griest asked if there was anyone else who would like to cross examine this witness and there was no
29 one.

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Dave Phillippe of HDC Engineering and engineer for the Petitioner said that the septic system design for this facility is based upon soil sampling that was done and criteria established by the Champaign County Public

Health District and was reviewed by them and approved by them. He said that the site plan is designed to not hinder the drainage or impede water from the Thor-O-Bred Acres Subdivision.

Ms. Griest asked if there were questions for Mr. Phillippe.

Mr. Irlé asked Mr. Phillippe if there are assurances that there will not be any downstream saturation.

Mr. Phillippe said that the Public Health District had recommended this curtain drain and I don't know if the curtain drain will do more than just augment the current drainage field tile system that's in place. He said the current field tile system crosses this area and this is just a rerouting of part of that system.

Ms. Griest asked if there were any other questions from the Board for Mr. Phillippe and there were none.

Ms. Griest asked if there were question for Mr. Phillippe from staff and there were none.

Ms. Griest asked if there was anyone else who had questions for Mr. Phillippe.

Attorney Kevin Luebchow, representing certain neighbors, asked Mr. Phillippe where the septic was presently located on the site plan and is there any water from Thor-O-Bred Acres that will drain into the area where the septic system is located.

Mr. Phillippe said yes there is.

Mr. Luebchow asked Mr. Phillippe if drainage will drain to the east from the septic system.

Mr. Phillippe said it will drain to the east and then north.

1

2 Mr. Luebchow asked if water drains over the septic system.

3

4 Mr. Phillippe said he is not sure what Mr. Luebchow is asking but the Thor-O-Bred Acres site currently

5

6 drains across that particular property and will continue to do so.

7

8 Mr. Luebchow asked if it was correct that on the most recent site plan to the west of the location of the

9 septic tank there is a notation that steps will be taken to ensure drainage will flow to the east.

10

11 Mr. Phillippe said that there is a notation that we will be doing some re-routing and re-shaping of some of

12 the drainage on the site to minimize the amount of water that runs across the area of the septic system.

13

14 Mr. Luebchow said he is confused because the current site plan has a notation that shows the drainage will

15 be ensured to flow east from that point immediately west of the septic system.

16

17 Mr. Phillippe said that it will flow east and north.

18

19 Mr. Luebchow asked Mr. Phillippe if any of that will flow across the location of the septic system.

20

21 Mr. Phillippe said that it may be some that will flow across the septic system. He said the design of that

22 system is to minimize the amount of surface water that runs across the septic system. He said he's not

23 implying that it will eliminate all of the water but will minimize it.

24

25 Mr. Luebchow asked Mr. Phillippe if the curtain drain will connect to the existing field tile

26

27 Mr. Phillippe said yes.

28

29 Mr. Luebchow asked Mr. Phillippe if the run-off from the development of the site will be draining into the

1 natural water courses.

2

3 Mr. Phillippe said that's correct.

4

5

6 Mr. Luebchow asked Mr. Phillippe if the additional drainage that will be added to the existing field tile and
7 the natural courses that exist currently will have not effect on Thor-O-Bred Acres.

8

9 Mr. Phillippe said that's correct.

10

11 Mr. Luebchow asked Mr. Phillippe if the issue regarding ground saturation that was discussed earlier would
12 have any impact on Thor-O-Bred Acres.

13

14 Mr. Phillippe said I don't believe it will.

15

16 Mr. Luebchow asked Mr. Phillippe if the water from Thor-O-Bred Acres drains into these same systems.

17

18 Mr. Deering said he objects to that question because it was previously asked.

19

20 Mr. Luebchow asked Mr. Phillippe what would the curtain drain accomplish.

21

22 Mr. Phillippe said that the curtain drain will lower the ground water in the leach field area.

23

24 Mr. Luebchow asked Mr. Phillippe if the curtain drain will enhance any of the drainage.

25

26 Mr. Phillippe said the curtain drain will be an extension of the current field tile system that's in place to
27 lower the ground water table.

28

29 Mr. Luebchow asked Mr. Phillippe if there is any ponding or accumulation of water in the area of the septic

1 system.

2

3 Mr. Phillippe said that he is not aware of any ponding in that location.

4

5

6 Mr. Luebchow asked Mr. Phillippe if he previously performed soil testing to determine the feasibility of a
7 septic system of this size.

8

9 Mr. Phillippe said that's correct.

10

11 Mr. Luebchow asked Mr. Phillippe if that was the same test results that were submitted at the last hearing.

12

13 Mr. Phillippe said that he believes they were.

14

15 Mr. Luebchow asked Mr. Phillippe if he believed the soil samples were in compliance with the private
16 sewage disposal code requirements.

17

18 Mr. Phillippe said that he believed it is.

19

20 Mr. Luebchow asked Mr. Phillippe was familiar with the Administrative Code Requirement regarding
21 private sewage disposal code requirements.

22

23 Ms. Griest interrupted and said that she believe that he answered that question at a previous meeting so if
24 you asked them before please don't cover the same ground.

25

26 Mr. Luebchow said that Mr. Phillippe had not testified at the last hearing.

27

28 Ms. Griest said no he testified at the first hearing.

29

1 Mr. Luebchow said that he thinks the Administrative Code was raised at the last hearing.

2

3 Ms. Griest asked Mr. Luebchow if it relates directly to Mr. Phillippe's testimony.

4

5

6 Mr. Luebchow said yes.

7

8 Ms. Griest said please limit it to that.

9

10 Mr. Luebchow asked Mr. Phillippe if he was familiar with the requirements of the Administrative Code.

11

12 Mr. Deering, attorney for the petitioner, interrupted and said that he objects to this line of questioning
13 because this is not in the scope of his testimony.

14

15 Ms. Griest asked if the States Attorney has an opinion on this.

16

17 Ms. McGrath said according to the by-laws it is up to you since this is an informal hearing and it is up to the
18 Board Chair to determine what testimony is appropriate. She said that the by-laws specifically states that
19 this is an informal proceeding and you can determine if this is evidence you wish to hear based upon the
20 question and response that are given this evening.

21

22 Ms. Griest asked Mr. Luebchow to continue.

23

24 Mr. Luebchow said that he has no more questions.

25

26 Ms. Griest asked if there was anyone else who wished to cross examine Mr. Phillippe.

27

28 Kent Weeks, resident of Thor-O-Bred Acres, asked Mr. Phillippe if there has been any investigation to see if
29 the field tile as it is right now is taxed. He said they are going to be adding to that field tile line but have

1 never heard anything regarding if that line has been tested to find out if that line is at capacity and can't take
2 anymore.

3

4 Mr. Phillippe said that they had not tested that field tile line.

5

6 Mr. Weeks asked Mr. Phillippe how you can say that you are going to add other ground water to it and say
7 there will be no upstream problem. He said that part of our ponding now could be that the field tile is
8 already at capacity.

9

10 Mr. Phillippe said that Thor-O-Bread Acres is upstream and the proposed site is downstream so if there are
11 any problems with this tile it would occur on the proposed site because the proposed site is downstream.

12

13 Ms. Griest asked Mr. Phillippe if he was presenting that testimony as a certified engineer related to drainage.

14

15 Mr. Phillippe said that's correct.

16

17 Ms. Griest asked Mr. Phillippe to elaborate briefly on the compliance that is required for septic systems for
18 ensuring adequate outlet or discharge.

19

20 Mr. Phillippe said that the septic system won't outlet itself but will percolate into the ground and won't be
21 connected to the field tile system that is currently there.

22

23 Ms. Griest asked Mr. Phillippe if he has any requirement that he is required to meet as part of your
24 certification process for where the curtain drains and discharge into that field tile.

25

26 Mr. Phillippe said not that he is aware of any requirement.

27

28 Ms. Griest asked Mr. Weeks if that answered his question.

29

1 Mr. Weeks said that partly answered but not completely and said my questions as the field tile line lays now
2 has it been tested or checked to determine if it's operating correctly and my other part is if you add ground
3 water that area either through ground penetration or what ever are you stating that that line will not be
4 overtaxed or in other words would the flow rate could be greatly reduced which although we are upstream
5
6 still will slow that rate. He said that Mr. Phillippe has done core samples and we keep talking about this field
7 tile line that I have not ever heard that that field tile line has ever been checked for perfect operation or it
8 whether can take any addition groundwater be it from parking lot or what.

9
10 Mr. Deering, attorney for the petitioner stated that he objects.

11
12 Ms. Griest stated she was not quite there yet but was getting close and asked Mr. Phillippe if he was under
13 any legal requirement to check that or test that or certify that.

14
15 Mr. Phillippe said that they will be checking that during the planning and design of this project.

16
17 Ms. Griest asked Mr. Weeks if that answered his question.

18
19 Mr. Weeks said no but if I want to continue I would have to sign the witness register.

20
21 Dale Kesler stated he has property to the north of the proposed facility and asked Mr. Phillippe what type of
22 studies had been done to decide how the water runs off from the building site and to the north.

23
24 Mr. Phillippe said that they took topographical surveys on the ground as it currently exists and prepared a
25 preliminary site plan that shows how the drainage off this facility will occur and will drain to the natural
26 drain path that exist.

27
28 Mr. Kesler asked Mr. Phillippe would that increase the amount of drainage with the water from the roof of
29 the building, parking lot, paved parking lot and would that increase the amount of drainage to the north to

1 the northeast.

2

3 Mr. Phillippe stated that it would increase the amount of drainage currently on this particular site and as this
4 water drains naturally to the north and leaves the property it should leave in no more higher concentration
5
6 than it is today.

7

8 Mr. Kesler asked Mr. Phillippe if he anticipated any change to the field tile currently in place to the north of
9 this building site.

10

11 Mr. Phillippe said no.

12

13 Ms. Griest asked if there was anyone else who want to testify or cross examine.

14

15 Lynn Stuckey said that we had discussion tonight about agricultural use and how wonderful the soil is that
16 we have in Champaign County and discussion about land use policies developed by our specific
17 subcommittees. She said she came to Champaign County in August 1989 and grew up seventy miles south
18 of here in Cumberland County in the southwest corner. She said the soil there is dark grey soil and there are
19 areas where there are rust color patches in the soil and eroded hillsides.

20

21 Ms. Griest said unfortunately Ms. Stuckey that is not relevant to this case or this site or Champaign County.

22

23 Ms. Stuckey said thank you and continued by saying on the farm ground the soil is black and may get one
24 hundred fifty to two hundred bushels of corn per acre, with soy beans about 50 or 60 bushels per acre that's
25 excellent where she grew up she said most farmers would be lucky to get one hundred twenty to one
26 hundred fifty bushels for corn and maybe 35 to 45 bushels of soybeans and the farm land is just not as
27 productive so it hurts when she see houses going up or office buildings or Clint Atkins Proposed Clear Lake
28 Development.

29

1 Ms. Griest interrupted again and said that is not relevant and that is the City of Champaign and she needs to
2 stay on task.

3
4 Ms. Stuckey said that the Clear Lake Development is two to three miles possibly a little less from Thor-O-
5 Bred Acres.

6
7 Ms. Griest said that it is still the City of Champaign and the County has no jurisdiction over the City of
8 Champaign

9
10 Ms. Stuckey said that growth is coming and she is not happy about it and rather that it stay in the city itself.
11 She said that we heard discussion about drainage and she's not an engineer and cannot testify to the
12 difference between a curtain drain and any other type of drain. She said that she knows a little about field
13 tile from growing up on a farm and she also know that she heard discussion about how peoples yards drain
14 into this agricultural property and at some point she have to wonder when does that become a legal issue.
15 She said if she had an acre or a 40 acres or even an 80 acres field that my development is loaded on because
16 of a subdivision that was developed under a prior policy exist in an area that no longer supports that use at
17 what point would she have to give up the economic benefit of developing my property or transferring it to a
18 party for their use.

19
20 Ms. Griest asked if anyone had any questions for Ms. Stuckey and there was none.

21
22 Billie Jean Theide said she and her husband live at 2111 Belmont Park Lane in the Thor-O-Bred Acres
23 Subdivision, along with their two children. She said that Kevin Luebchow represents her family along with
24 some of the other residents of Thor-O-Bred Acres and she feels very strongly against the rezoning of the
25 farmland on north Mattis Ave. She said that her house is the last house in the cal-de-sac and borders the
26 farmland that is being considered to be rezoned. She said that of all the property in Thor-O-Bred
27 Subdivision our property has the most frontage bordering the farmland at about 415 feet. Ms. Theide read
28 her letter of testimony to the Board.

29

1 Ms. Griest asked Ms. Theide if her letter could be entered in as testimony.

2

3 Ms. Theide said yes.

4

5 Ms. Griest said that this case is a Special Use not a Map Amendment so the zoning district will not change

6

7 this is a request for a Special Use Permit.

8

9 Ms. Griest asked Ms. Theide what lot number she resides at.

10

11 Ms. Theide said lot 115.

12

13 Ms. Griest asked staff if they had any questions for Ms. Theide and there was none.

14 Ms. Griest asked if the petitioner or their representative had any questions for Ms. Theide.

15

16 Mr. Deering, attorney for thee petitioner, asked Ms. Theide if she said her property is lot 115 on Belmont

17 Park lane.

18

19 Ms. Theide said yes.

20

21 Mr. Deering asked Ms. Theide if she saw the site plan for the proposed development.

22

23 Ms. Theide said yes.

24

25 Mr. Deering asked Ms Theide if the proposed development site adjoins her property.

26

27 Ms. Theide said no.

28

29 Ms. Griest asked if there was anyone else who would like to cross examine Ms. Theide.

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Mr. Luebchow, representing certain neighbors, asked Ms. Theide is she understood that this case is a Special Use case and not a rezoning case.

Ms. Theide said yes.

Mr. Luebchow asked since this is a Special Use case and not a rezoning case does this change her objection to this proposed special use.

Ms. Theide said no.

Ms. Griest asked if there were any other questions for Ms. Theide and there were none.

Ms. Griest said that that concluded the signatures on the witness register at this time. She also said that there are two people who might want to present testimony and if anyone else wishes to testify they may also sign the register.

Justine Schoeplein said that she lives in Urbana and said that she attended the spring festival at the Civic Center and wanted to clear up things. She said earlier in the evening the attorney for the subdivision had mentioned concerns over parking for various Hindu celebrations that might take place. She said that she had attended celebration at the Urbana Civic Center in the winter and there had been no problem with parking. She said she also attended other functions such as the Champaign Urbana Earth Society and Anniversary celebrations and she felt that attending the celebration for spring festival was quite analogous to those who attend parties at Christmas time at your churches or if you're Jewish attending the High Holidays at your synagogue and I felt that everybody was accommodated very easily. She said that she had no trouble parking at some of the civic events.

Ms. Griest asked Ms. Schoeplein if her testimony is that she had no difficulty parking at the spring festival.

1 Ms Schoeplein said I had no problem parking.

2

3 Mr. Irlle asked Ms. Schoeplein if the festival was a Hindu festival.

4

5 Ms. Schoeplein said that there were some Hindus there as well as others.

6

7 Ms. Griest asked Ms. Schoeplein if the event was officially a Hindu event.

8

9 Ms. Schoeplein said no it was for everyone.

10

11 Ms. Griest asked if there were any questions for Ms. Schoeplein from the Board and there were none.

12 Ms. Griest asked Staff if there were any question for Ms. Schoeplein and there were none.

13 Ms Griest asked if either of the representatives had any questions for Ms. Schoeplein.

14

15 Susan Kesler asked Ms. Schoeplein if there were a lot of people that had attended and if there was adequate
16 parking.

17

18 Ms. Schoeplein stated that she was that addressing the earlier concerns regarding the certain celebrations
19 that would be held at the temple once it would be built and if the parking would be a problem. She said that
20 she did not feel the event that she attended was unlike events that she had attended in other religious
21 institutions in Champaign Urbana and parking was not a problem.

22

23 Ms. Keslser said that she is trying to get a clarification and asked was that due to the parking at the civic
24 center lot or was there not a lot people.

25

26 Ms. Schoeplein said that for those who attended the civic center, they have a parking lot although it is not
27 very large. She said that she parked in the civic center parking lot.

28

29 Ms. Kesler asked Ms. Schoeplein if there were any MTD bus services for the event.

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Ms. Shcoeplein said she could not testify to that.

Ms. Griest asked if there were any other questions for Ms. Schoeplein.

Mr. Luebchow said that he is the attorney representing various land owners in the Thor- O- Bred Acres Subdivision and asked if she knew the approximate number for the people who attended the Spring Festival.

Ms. Schoeplein said that she had mentioned in her testimony that several hundred people attended the event.

Mr. Luebchow asked if that was a large group at the one time and if it was exclusively Hindu.

Ms. Schoeplein said yes it was a large group and that it was not was not exclusively Hindu

Mr. Luebchow asked if that event was organized by the petitioner.

Ms. Griest said that there was no testimony to that.

Mr. Luebchow said that Ms. Schoepein testified that there were no parking problems and asked if she was referring to the civic center.

Ms. Schoeplein said yes.

Mr. Luebchow asked Ms. Schoeplein how long did the festival last.

Ms. Schoeplein said that she was there for part of the ceremony and there was a meal afterwards. She said it's a time when people gathered.

1 Ms. Griest asked if there were any other questions for Ms. Schoeplein and there were none.

2

3 Mr. Mike Kukreti read a prepared statement and presented it as testimony and evidence.

4

5 Ms. Griest asked the Board if there were any questions for Mr. Kukreti and there were none.

6

7 Ms. Griest asked Mr. Kukreti if he understand that the petitioner's request is a Special Use Permit in the
8 AG-1 Zoning District not a request for rezoning from B-3 to B-2.

9

10 Mr. Kukreti said that's what he meant.

11

12 Ms. Griest asked if staff had any questions for Mr. Kukreti and there were none.

13 Ms. Griest asked if the petitioner or their representative had any questions for Mr. Kukreti and there were
14 none.

15 Ms. Griest asked if anyone else wished to cross examine Mr. Kukreti.

16

17 Mr. Luebchow, attorney for some residents of Thor-O-Bred Acres and other land owners near the proposed
18 site asked Mr. Kukreti if this will be a temple and cultural center.

19

20 Mr. Kukreti said yes and a multi purpose use.

21

22 Mr. Luebchow stated Mr. Kukreti that had mentioned education for various generations in history,
23 mythology, architecture etc. and asked if that will be one of the goals of the cultural center.

24

25 Ms. Griest interrupted and asked that Mr. Luebchow not to continue that line of questions because to Mr.
26 Kukreti is not the petitioner nor is he the petitioner's representative.

27

28 Bob McQueen, resident in Thor-O-Bred Acres, asked Mr. Kukreti what is the need to build this temple on
29 this site that it is not zoned for.

1

2 Ms. Griest said to Mr. McQueen that it is zoned for that use as a special use within the zoning district.

3

4 Mr. Deering stated that Mr. Kukreti did not present any testimony specific to this site.

5

6

7 Ms. Griest agreed.

8

9 Ms. Griest asked if there was anyone else who wished to give testimony and there was no one.

10 Ms. Griest asked staff if Mr. Hall if there was anything else for May 31, 2007.

11 Ms. Griest asked Mr. Deering if he wished to speak now since he asked to be the last to speak.

12

13 Mr. Deering stated that he has nothing to add.

14

15 Ms. Griest asked the Board if there was anything else that they would like for staff to prepare for the May
16 31, 2007, meeting that they don't have presently.

17

18 Mr. Hall said that Mr. Luebchow commented on the effectiveness of the conditions being proposed and
19 wanted to know if any of these conditions would be acceptable in the neighbor's minds or what kind of
20 changes would be necessary.

21

22 Ms Griest asked Mr. Luebchow if he would be prepared to present testimony to that affect this evening or if
23 is not could he be prepared by the next meeting.

24

25 Mr. Luebchow said that he would be prepared by the next meeting.

26

27 Ms. Griest suggested that it should be submitted to staff before the May 31st meeting to give staff a chance
28 to respond if necessary. She went on to say that if they have any suggestions for solutions we would
29 welcome it.

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Mr. Luebchow said that he would like to consult with his client especially from the testimony he heard tonight.

Mr. Deering asked Ms. Griest if it would be appropriate to set a deadline for additional written comments understanding that he and Mr. Luebchow are likely to submit further written comments and understanding that neither one of us could be cross examined. He said he thought it would be helpful if a deadline could be set to move the process forward.

Ms. Griest said that she will get clarification from the States Attorney but she believes that the Board is required to accept any testimony be it written or oral up until the time the witness register or public hearing is closed. She went on to say that they formally close the public hearing just prior to Final Determination and that generally occurs on the same night when proceeding to the Final Determination.

Ms. McGrath said that Ms. Griest was correct and said that the Board could not close the public hearing this evening.

Ms. Griest asked the Board if there was anything else.

Mr. Goldenstein said that in the Land Use Regulatory Policies Section 1.2 they speak about Best Prime Farmland and in almost every case we had before this Board Best Prime Farmland is at the top the list and whether it is Best Prime or is not Best Prime. He went on to say that he had a question with the State's Attorney advising us since there are no zoning requirements in the Zoning Ordinance related to Best Prime Farmland.

Mr. Hall said the State's Attorney should answer that question but there has been references made to the Land Use Regulatory Polices tonight and near as he could tell since no one gave a date or version of what land use policies they were referring to they may be referring to the amended version dated September 22,

1 2005. He said the land use policies were in place primarily to guide the Comprehensive Zoning Review. He
2 said that in the past he would argue that the Land Use Regulatory Policies only apply to map amendment
3 however the latest version of the Land Use Regulatory Policies obviously do not even apply to map
4 amendments because if they did you could not propose any RRO on Best Prime Farmland at all. He said in
5 his mind there was a real question how much relevance the Land Use Regulatory Policies can have on
6 Special Use Permits. He said that

7
8 Special Use Permits are defined in the Zoning Ordinance by the relevant requirements and he would like to
9 have input from the State's Attorney at least by the next meeting. Mr. Hall said that he believes that the
10 County has a problem with having written two versions of Land Use Regulatory Policies one of which on its
11 face is not relevant to zoning because if it was there would no be accepting applications for RRO's on Best
12 Prime Farmland so there is a contradiction and they have to follow those policies with a lot of care and it's
13 not a good situation and he wished something had been done about the Zoning Ordinance revision but the
14 County Board didn't. He said that he could not advise the Board on this case and it would have to come
15 from the State's Attorney.

16
17 Mr. Goldenstein said that the reason for asking was the affect that it could or could not have on this case and
18 on all future cases.

19
20 Ms. Griest asked the States Attorney if they could provide the necessary information by the next meeting.

21
22 Ms. McGrath said yes by the next meeting.

23
24 Mr. Irle said that in item 4 in the confidential memorandum he disagrees with the State's Attorney's opinion
25 as far as firm yes or no but feels that it should be more subjective.

26
27 Ms. Griest asked the Board if there was anything else.

28
29 Mr. Hall asked if any Board member had any comment about what was proposed in the mailing prior to the

1 last meeting.

2

3 Ms. Griest said in the general memorandum item 13B she liked the no parking on any street right of way.

4

5 Mr. Hall asked the Board if they had any thoughts about the total lot area for the Special Use Permit.

6

7

8 Ms. Griest asked Mr. Hall if he was saying for clarification if the Special Use is confined only to the
9 segment of the parcel designated to be developed that a Variance could be required because it's five acres
10 and less than 35 and more than three or it could be a Variance for under six or two three's. Ms. Griest said
11 she got lost in regards to if the entire parcel is granted the Special Use the petitioner has responsibility to
12 this Board and the County to continue to farm that ground in agricultural production but if that was not
13 included in the Special Use they could allow that ground to lay fallow or they could do something different
14 with it.

15

16 Mr. Hall said that the site plan indicates the remaining site area to be farmed but I don't think if they decide
17 to turn it into a prairie that we could take them to court and make them farm it but what they could not do is
18 to let it grow fallow and not maintain because it that would be counter to the expectations of this Board and
19 would not be in accordance with the testimony that was provided and that would be an issue. He said that he
20 did not think the county can force the petitioner to keep 35 acres in agricultural production.

21

22 Ms. Griest asked Mr. Hall if it would become a subdivision issue if they decide to sell off additional
23 segments of it.

24

25 Mr. Hall said it could for example if the petitioner gets approval and gets a farmer to farm the land, then
26 after fifteen years the petitioner decides they would be better off by selling the land to a neighbor and not
27 have to manage it, that does not change the amount of area developed and on the ground everything looks
28 the same and yet a strict interpretation of the site plan is that it would be a deviation from the site plan even
29 though the land use would be the same. He said that a condition that merely requires them to always be in

1 compliance with the maximum lot size would allow them to sell off the 35 acres of farmland provided that
2 they find some way to be in compliance with the maximum lot size.

3

4 Ms. Griest asked Mr. Hall if that would be six acres.

5

6 Mr. Hall said yes or it could be two two-and-a-half acre lots. He said that as the Zoning Administrator and

7

8 given that this case is so controversial, he wanted guidance in case the petitioner deviated from the site plan.

9 He said on the face of it, it is not changing the amount of land being developed nor is it taking any land out

10 of production and it's just changing ownership and as a Zoning Administrator that is not a significant change

11 but he wanted to bring it the Board's attention. He said that if the Board agrees that maintaining compliance

12 with the maximum lot size is the thing to be concerned about then it could be that simple.

13

14 Ms. Griest said that she's not sure if the Board understands all of the implications of that.

15

16 Mr. Irle said that if another owner buys the property it may have to go through this process again.

17

18 Ms. Griest said that she would not want to see it grow up with weeds and thistles and would rather see it
19 farmed.

20

21 Mr. Goldestein asked if they take five or six acres for the temple and the remaining 35 or 34 acres would be

22 a separate lot.

23

24 Mr. Hall said that it could be if the Board determines that as a condition.

25

26 Mr. Irle asked Mr. Hall if the request is for a 40 acre parcel

27

28 Ms. Griest asked Mr. Hall if there was a need to readvertise.

29

1 Mr. Hall said that there would be no need to re-advertise. He said that the amount of area to be developed
2 that is a non-negotiable part of the site plan so if the 35 acres of farmland is shown with this plan as a
3 separate parcel or not in terms of the land use impact there is no difference as long as it complies with the
4 Zoning Ordinance.

5
6 Ms. Griest said that it seems counter intuitive to the Ordinance to say that you can have a development of
7
8 any type that only requires five or six acres that they have to have 40 acres to do be in compliance.

9
10 Mr. Hall asked Ms. Griest if that what she was asking before.

11
12 Ms. Griest said no she said that what she was saying was to find a system that leaves this AG-1 Agriculture
13 where it is in production or it requires the Special Use to maintain it in production and not go fallow.

14
15 Mr. Hall asked Ms. Griest if she thinks if the petitioner retains the 40 acres it should be farmed.

16
17 Ms. Griest said or they should come back and ask for something different.

18
19 Mr. Irle asked if the farmland could be enrolled in CRP.

20
21 Ms. Griest said that she did not think that farmground qualifies for CRP. She said that she did want to see
22 the ground grown up and no one maintain it so it would have an impact on neighboring farmland.
23 She said the petitioner could get a Special Use on the entire parcel, develop the five acre portion and sell off
24 the remaining 35 but they are not eligible to only get a Special Use on the five acres that they want to
25 develop.

26
27 Mr. Hall said that in a pure zoning sense there is no difference between this petitioner owning 40and only
28 farming 35 of it or owning only five acres and selling the 35. He said that now that the Board has been
29 presented with this site plan he wants to make sure that the Board would except selling the 35 acres off as

1 farm land and retaining the developed portion provide that it is in compliance with the maximum lot size. He
2 said if some neighbor challenges his decision later that they could sell off 30 acres he wants to know that the
3 Zoning Board has already approved that.

4
5 Mr. Goldenstein said for example if we approve the Special Use for the whole 40 acre tract then the owner
6 sells off the 35 acres. He asked does the Special Use go with the new buyer.

7
8 Mr. Hall stated no. He also said that the petitioner had not raised this as an issue.

9
10 Ms. Griest said that she did not mean to infer that they did in any way.

11
12 Mr. Irle said that he did not have a problem with the petitioner selling that ground for the exact purpose for
13 what it is being used for now.

14
15 Mr. Goldenstein said that he did not have a problem with it either.

16
17 Mr. Hall said that remember once you separate the 35 acres from this site plan, what the new owners do with
18 it is a separate issue.

19
20 Ms. Griest said that this particular site plan does not provide access to the 35 acres from the road.

21
22 Mr. Hall said that is correct but he said that his study indicated that access could be provided with no
23 material change to the site plan.

24
25 Mr. Goldenstein asked Mr. Hall if a condition means that they are guaranteed ingress and egress if it's ever
26 sold.

27
28 Mr. Hall said that is already required under the ordinance.

29

1 Ms. Griest said that her concern is she has seen in other cases that when you have to access a parcel through
2 a right of easement then the development rights are severely limited.

3

4 Mr. Hall said that would be creating illegal lots.

5

6 Ms. Griest said not changing the site plan would still provide the necessary 20 foot wide accessway that
7
8 would go with that other parcel.

9

10 Mr. Hall said that is correct.

11

12 Ms. Griest asked Mr. Hall if the development were separated from the remaining part of the tract but yet
13 dependant upon the tiling in that remaining tract how does that relate. She said in other words, this curtain
14 drain is connected to this field tile in this undeveloped portion, if that was not part of the Special Use would
15 they be prohibited from doing that.

16

17 Mr. Hall said that the curtain drain function is to drain ground water so he said he do not see anything that
18 would prohibit them from that.

19

20 Mr. Irle said that the Agricultural tile serves a different purpose when it gets to Thor-O-Bred Acres because
21 it drains all of their drainage and we have a lot of conditions that address the tile that's there but if there is
22 this problem where they can't get adequate drainage now wouldn't it make sense if we propose a condition
23 to the petitioner that says something to the affect that they would allow access through their property for a
24 new tile system to drain those acres or lots in Thor-O-Bred Acres.

25

26 Mr. Hall said by prohibiting the use of tile drains to protect agricultural drainage is also benefiting Thor-O-
27 Bred Acres so to that extent this condition is helping Thor-O-Bred Acres. He said the area that in the area to
28 be developed they are supposed to vacate an easement for tile maintenance for the existing tile.

29

1 Mr. Irle said that since there are all these problems as testified the only to way to correct this problem is to
2 put in new tile.

3
4 Ms. Griest asked the Board if there were any other comments on the proposed conditions and there were
5 none.

6 Ms. Griest said that the next hearing date for this case would be May 31, 2007, and if anyone has additional
7
8 information get it to staff early as possible.

9
10 **Staff Report**

11
12 None

13
14 **Other Business**

15
16 None

17
18 **Audience Participation with respect to matters other than cases pending before the Board**

19
20 None

21
22 **Adjournment**

23
24 Ms. Griest declared meeting adjourned at 9:55pm.

25
26
27 Respectfully Submitted

28
29 Secretary of Zoning Board of Appeal

ZBA //

DRAFT SUBJECT TO APPROVAL DRAFT

1