

MINUTES - PLANNING COMMISSION/BOARD OF ADJUSTMENT MEETING

TUESDAY, JANUARY 12, 2010, 7:00 P.M., COMMISSIONER'S ROOMS, LYON COUNTY GOVERNMENT CENTER, MARSHALL, MINNESOTA

MEMBERS PRESENT: Nassif, Vroman, Buesing, Ritter, Nelson, Zimmer and Biren

MEMBERS ABSENT: Ludeman, Thoof

PLEDGE OF ALLEGIANCE TO THE FLAG

AMEND/APPROVE AGENDA – Motion by Buesing, seconded by Vroman to approve agenda. All voted in favor. Motion carried.

CORRECT/APPROVE MINUTES OF THE NOVEMBER 10, 2009 MEETING (THERE WAS NO DECEMBER MEETING) – Motion by Vroman, seconded by Buesing to approve minutes. All voted in favor. Motion carried.

BOARD OF ADJUSTMENT:

Public Hearing - Jeff and Cheryl McConnaughey, variance request to construct a house addition thirty (30) feet from a township road. This is a seventy (70) foot variance request. The area representing the request is zoned rural residential. The property is described as all that part of the Southwest Quarter of the Northwest Quarter (SW1/4 NW1/4) of Section Thirty-three (33), Township One Hundred Eleven (111) North, Range Forty-two (42) West (Lynd Township).

Jeff and Cheryl McConnaughey were present. Nassif – needed for frost footing. McConnaughey – if there would be one there wouldn't need to do. Safe guard, best way to do it. Excavate, slope between trees, add onto house 16' wide (about half the width of the house) by 12' length. Vroman – solid foundation? McConnaughey – addition made to code, frost footing, soil backfilled to original where it is now then sloped down to the front of the addition, ground level, whole addition frost proof foundation. Buesing – south end of house, even with west side of house? McConnaughey – in a little bit. Biren – house sits at an angle, garage is closer to road than proposed addition. Vroman – concerned with flooding. Biren – showed map, red shows floodway, regulated area for the floodplain. Floodplain elevation at 100 year event was modeled at 1316', next cross section is at 1311', really goes down fast, a lot of grade on river. Leave property 9' fall on the floodplain through their property. Conversations I have had with the McConnaugheys is when we have a flood event, I don't want the county being in trouble for giving them a permit to give them an access for the floodwater to get into their house. With the elevations on the house, highway folks helped with some shots, based on elevations done with bridge that was done out there, bridge deck 1312.35', flood elevation 100 year event according to Corp and FEMA going to be 3' 7/10s higher than bridge. However, the house is higher than that. Took a shot on the window seal and measured from the window seal down to the basement so this isn't exact, but within a 10th or so, basement floor is at 1311.60, real close to floodplain elevation. With the walkout want to make sure there is enough protection with natural ground, water cannot come back in. Vroman – basement now

below 100 year flood? Biren – no. Did take some shots up on the hill and when the original survey was done. Between the house and river can get up to 1318. But if going to have walkout basement, cut through hill, careful how you do that. They have some options. I feel that issue can be handled. Engineering issue. Issue we have to deal with is the variance from the road right-of-way. If the variance is granted, I want to have a stipulation that we discussed floodplain issue, up to you to take care of it. Nassif – not that we don't trust you but you may sell it, someone else may have an issue. Biren – can see how it slopes down. Vroman – berm, keep water out. Biren – how they address the water being a way from their house, they have some options. One option we talked about was that instead of coming through the trees to come out this side. Vroman – remember location. Biren – variance is an area variance, have Findings of Fact to go through. Nassif – not concerned about the road, more concerned about a flood, dead end road. Vroman - \$100,000 bridge on road. Oakland – Lynd Township agreed with request. Board reviewed Findings of Fact. 1) Not a substantial variation from the intent of the ordinance given the individual circumstances of the application (garage is closer to right-of-way than this will be, it is a dead end road). 4. Applicants have checked into other options with multiple contractors, contractors would not guarantee the work performed under the other options due to the frost issue/possibility of future damage to home. Attached is a copy of the Findings of Fact.

Vroman moved, seconded by Buesing to grant a variance to Jeff and Cheryl McConnaughey to construct a house addition thirty (30) feet from a township road. This is a seventy (70) foot variance request. The area representing the variance request is zoned rural residential. The property is described as part of the Southwest Quarter of the Northwest Quarter (SW1/4 NW1/4), Section 33 of Lynd Township. With the following stipulations:

1. That if any of the work performed as allowed by the granting of this variance is ever impacted or required to be removed, the cost of such impact shall be borne by the landowner, including removal and/or relocation of property and facilities.
2. Must obtain a building permit prior to construction.
3. The excavation to accommodate the walkout basement to be one foot higher than the flood stage. Elevation to be certified by a registered land surveyor.
4. The purpose of which the variance was granted shall be undertaken by the applicant within 18 months of the granting of the variance. For good cause, the Zoning Administrator may grant an administrative extension of up to 12 months. Said extension shall be in writing. If the applicant fails to establish use of the variance within said time limits, the variance shall expire.
5. Adopt Findings of Fact as part of Motion.
6. A copy of this Motion shall be filed with the County Recorder's Office along with the legal description of the property. Additional fees to be paid by the applicant for the actual costs incurred by the county for the recording fees.

VOTING FOR: Nassif, Buesing, Vroman

OPPOSED: None

ABSTAINED: None

ABSENT: Thooft, Ludeman

PLANNING COMMISSION:

Public Hearing - Lyon County Highway Department, Conditional Use Permit to reconstruct County State Aid Highway (CSAH) 3 in the Floodplain and Floodway designation (raise road elevation for the bridge approaches). The affected land is located in part of the Northeast Quarter, Section 10 and part of the Northwest Quarter, Section 11, Nordland Township.

Suhail Kanwar and Aaron VanMoer were present for the Highway Department. Kanwar – VanMoer project engineer involved in design process, he knows the details. I am here if help is needed. VanMoer – first time in hot seat, introduced himself to board members, project engineer. Nassif – Aaron tell us what you want to do. Biren – why don't we start with floodplain issues. I will try to help Aaron out in terms of why we are here. Floodplain maps that FEMA has given to us to adopt, not done yet, best available information we have. South Branch of Yellow Medicine River and a bridge that has been replaced. Blue area represents the one percent annual chance of flooding. Every time the highway department replaces a bridge we are not going to make them do a CUP. But when we have a map that looks like this, floodplain getting wider upstream and downstream from the bridge it is something we need to look at in terms of safety in terms of people getting in out in the event of a flood as well as upstream and downstream impacts. Line stops, area that Corp of Engineers or contractor study quit, happens with map. When we get an event it starts flooding area and at a certain point in time before it goes over this road this water will head back north and east to Minneota. Can see some evidence of old channels. Discussed floodplain maps. Water goes over road north and east to Minneota. Ritter - top of map is north? Biren – yes, river runs north. Here to look at the people's places and if there is a flooding event, interruption/dangers to public and consider impacts. Aaron and I have been working with Wayne Corner with DNR. Person modeling this for us. We had a conference call with him today. He is real confident the work that is being done is not going to impact floodplain. Terms of interruption of services during a flooding event, road that has been here for some time, not building a new road, repairing what is there already. Irrelevance of that being questioned to begin with. Last year bridge was built. Bridge different style, bigger and longer bridge, want to blend road from here to the bridge deck on both sides, raising the road a little bit on both sides. That is the filling, potential impact we are looking at in the floodplain. Nassif – south side more fill? VanMoer – road profile, design going to match, more vertical curve on north side of bridge, a little higher, how they put the bridge in, elevations used. 350' north end and 250' south end. Nassif – thought it would be the opposite. VanMoer – temporary gravel there now. Nelson – how much of an increase in cubic feet/second compared to old bridge? VanMoer – new bridge is 25' longer and lowest member is 1' higher than old bridge. Kanwar – not increasing any of the capacity, normal flow the same but it will handle more in case of flood. Nelson – handle more cubic feet in flood, which mitigates problem. VanMoer – over topping event, much higher flood year, less of a chance of a flood, more flow would be able to go through the new area of the bridge. Kanwar – elevation of the new bridge is higher. Nelson – design got us to 1%, old bridge wouldn't stand up 1%. VanMoer – low member of this bridge at the 100 year event, that elevation is to that flood. 100 year flood it would come up to the bridge and any more, they designed the bridge so it would not significantly affect the bridge. Vroman – if flood, spillway? VanMoer - would go around. 100-500 year event over top. Biren - before that goes to the northeast. Buesing – how much raising the road? VanMoer – 1 1/2' feet highest point on the north side. Vroman – saw three 100 year floods in one year. Brien – modeling, tree jams and ice not calculated. Erickson Engineering consulting engineers used to design this

bridge. 100 year event over the top used a frequency of 428 cubic feet/second. Nelson – April 80 degree weather and south wind, will tell. VanMoer – 45% increase in the cross section area, more debris and ice handled by new bridge. Confident that is why Erickson Engineering raised bridge to increase capacity, longer bridge. Designed so no upstream or down stream effect. Vroman – if you were to raise the road 1.5’ all the way from one side to the other, then concerned. Don’t feel it should be this board’s recommendation to prevent or create a flood. Biren – received some comments. Telephone call from Bob Tillemans, not able to make meeting. Supporting project has pictures when it floods. Did get a comment from the township, talked with Supervisor a couple of times about it, in favor of project. Issue with a culvert on township road, road runs east and west, on west side of county road, 3’ culvert not adequate, township knows it is their responsibility. Flooding event, issues with that culvert. (on back of comment sheet). Members of the public here that may want to address things too. Dennis Heggeseth – farm land to the south and rent land northeast, northeast land is about one mile from bridge project. Last time water ran over was Mother/Father day rains in 1993, trees out in field one mile away due to flooding. Line you have drawn, that is what the water does. Biren – do agree with line. Heggeseth – just keeps on going. One concern, going to redo road, County Road 3 going to be regraded? VanMoer – this year. Heggeseth – how much higher are the curves going to be, or the same grade? Water goes over this line, did run over the road by the curves, then would go on the east side of Hope Cemetery and then over the township road to the Minneota Golf Course, how creek ran. I don’t have any problem with the bridge or increasing the height along there as long as the water could get around it somewhere else. Somewhere else would probably be the curves. Don’t know if that will create a problem for you. VanMoer – as of right now there is no proposition to raise the profile along here, matching, road itself will stay the same elevation. Heggeseth – no problem. Kanwar – try to make the curves bigger, not changing elevation. Heggeseth – farm 80 acres to south of bridge, water runs across here and widens out before heads on both sides of Leo’s farmsite and runs to 160th street, gets caught up in the road ditch, then to the township road on the north, couple of box culverts then it ran over the top of the road also. Does not cross 160th. VanMoer – not affected at all by the road. Biren – didn’t realize that the watershed feeding this is 86 square miles, big watershed. Nassif – choke point. Biren – flattens out there. Kanwar – scope of project is to just make sure that the road is not destroyed by future flooding. Not raising other elevations of road just over the bridge only. VanMoer – leaves the channel bank before it gets to the bridge. Heggeseth – exactly. Leaves the river channel good ¼ mile before bridge, approaches really won’t matter. Board reviewed Findings of Fact. Attached is a copy. Nassif – Tricia’s comments? Zimmer – John was there anything else in the ordinance, nothing special we have in the ordinance, thinking shoreland additional considerations? No, I cannot think of anything else. Biren – this project is heavily permitted by several other agencies. Yellow Medicine Watershed District, Soil & Water District (wetland conservation act), some of what we are doing here tonight will pacify FEMA requirements, Corp of Engineers with their 404 Permit. This is one of several steps. Shoreland issues, DNR issuing a waters permit. Ordinance being met. Wanted to make sure that the public got a chance to voice their issues with it and we have a good record why we approved or denied this.

Nassif moved, seconded by Vroman to recommend to the Lyon County Board of Commissioners to grant a Conditional Use Permit to the Lyon County Highway Department to reconstruct County State Aid Highway (CSAH) 3 in the floodplain and

floodway designation (raise road elevation for the bridge approaches). The land is located in part of the Northeast Quarter, Section 10 and part of the Northwest Quarter, Section 11, Nordland Township. With the following stipulations:

1. Site to be inspected as needed.
2. Must follow DNR regulations.
3. Must apply for and obtain permits from other appropriate agencies.
4. Adopt Findings of Fact as part of this motion.
5. A copy of the County Board of Commissioner's Motion shall be filed with the County Recorder's Office. Additional fees to be paid by the applicant for the actual costs incurred by the County for the recording fees.

Discussion: Ritter- bridge height raised? VanMoer –deck and low member one foot higher than old bridge.

VOTING FOR: Vroman, Nassif, Buesing

OPPOSED: None

ABSTAINED: None

ABSENT: Thooft, Ludeman

CONDITIONAL USE PERMIT/PUBLIC HEARING – MINNESOTA SESSION LAW 2000 – MINN. STAT. §116.07, SUBD. 7(I), FEEDLOT: None

INSPECTIONS – CONDITIONAL USE PERMITS – DECEMBER:

Adam Willert, Manufacture and Recycle Pallets, N1/2 NE1/4, Section 36 Fairview Township. Rural – Oriented Commercial Use. Issued: December 2007. Recorded, review and inspect annually. Biren – neighbor that has done a lot of complaining on this site, I feel it has been without merit. Any board members or commissioners that want to look at it, owner open to Board going out there without an appointment, just show up, doesn't have a problem with that. Future plans are to still build a house out there. Photo showed pallets in the back and semi trailers out there, don't feel that is a violation of the CUP. Showed the inside of pallet shop. Builds new and recycling old pallets. New building permitted administratively, used for storage. In operation for a little bit more than one year. December 2007 permit, not in operation until October 2008. One of the complaints I have had is the township road to the north that runs east and west 290th street. I have talked with Adam about this several times. He does have signs posted for drivers to not use road. Adamant that his trucks and semis are not using road. Other trucks making deliveries may be using it. Have not heard any concerns from township. A lot of detours in area last couple of years could have been used as a short cut. Holiday season his business is slow. I told him he could have pallets out there. I felt he was in compliance with his CUP. We don't allow the building materials or equipment to be stored out there. His intentions are to get them moved out of there. Having a few growing pains, don't see that as a big issue, keep an eye on it though. From the road it is hard to see it. Ritter – I have been out there and I have stopped out there, there are a lot of other groves in this county that need to be cleaned up, this is not an issue. I got a call from this person that has an issue with it. Biren - invitation is open. Nassif – maybe something we should do, go visit, have a very clear idea. Vroman – done that. Buesing – gone past it. Biren – wanted to show you pictures and offer invitation.

Joe Ektanitphong, Topographic Alterations/Grading and Filling and Excavation, Lot 28 and Part of Lot 27, Block 1, Kastjaga Subdivision, Rock Lake Township. Issued: November 2008. Complete work by December 31, 2009. Biren – Chris Nibbe did earth work, done. Not satisfied with the seeding, want to make sure it takes hold next year. Nassif – what is your concern on the seeding? Biren – just make sure it happens, nice mixture of some natives to hold shoreline.

INSPECTIONS – CONDITIONAL USE PERMITS – JANUARY:

Precision Autobody, Business, SE1/4, Section 32, Lucas Township. Issued: January 1993. Inspect yearly, renew every 5 years. (2013 renew). Biren – fine.

Biren – want to have a little discussion on the next list of contaminated soil sites. Ordinance does not require CUPs any more. MPCA monitors much closer than it once was. Have a procedure for doing that. Contaminated soils basically deals with 99% petroleum contaminated soils. They are the ones out there sampling the soil and make sure it is spread on right. Use that no longer requires CUP, appropriate to have a motion to get them off the books.

Mark Vandelanotte, Disposal of Contaminated Soil, NW1/4SE1/4, Section 21, Lucas Township. Issued: January 10, 2000 (5 years). Not recorded.

Mark Vandelanotte, Disposal of Contaminated Soil, SE1/4, Section 4, Stanley Township. Issued: January 10, 2000 (5 years). Not recorded.

Mark Vandelanotte, Disposal of Contaminated Soil, SW1/4 SW1/4, Section 3, Stanley Township. Issued: January 10, 2000 (5 years). Not recorded.

Robert Blomme, Disposal of Contaminated Soil, SW1/4 NE1/4, Section 14, Fairview Township. Issued: January 10, 2000 (5 years). Not recorded.

Robert Blomme, Disposal of Contaminated Soil, NW1/4 SW1/4, Section 13, Fairview Township. Issued: January 10, 2000 (5 years). Not recorded.

Robert Blomme, Disposal of Contaminated Soil, NE1/4 SW1/4, Section 13, Fairview Township. Issued: January 10, 2000 (5 years). Not recorded.

Brad Matthys, Disposal of Contaminated Soil, NE1/4SE1/4, Section 28, Lucas Township. Issued: January 10, 2000 (5 years). Not recorded.

Raymond Louwagie, Disposal of Contaminated Soil, NE1/4 NW1/4, Section 6, Stanley Township. Issued: January 10, 2000 (5 years). Not recorded.

Motion by Vroman, seconded by Nassif to remove CUPs from CUP list. All voted in favor. Motion carried. Nelson – places used to spread contaminated soil? Biren – not the polluters, places to get rid of the material.

DISCUSSION:

Lyon County Zoning Ordinance revisions. Revision and re-numbering of portions of Article 24 relating to Subsurface Sewage Treatment Systems (SSTS). Adopted by the County Board on December 15th. Effective date February 1, 2010. (NOTE: As other portions of the ordinance were affected by this Article change, I am in the process of making those revisions to the ordinance and will be making you a new copy of the whole ordinance – copies should be ready for the February meeting).

Wind Energy Conversion Systems Ordinance (WECS), Article 21 – staff recommendation. Biren – presentation made to this Board and County Board. County Board directed staff to write a response back, response in packet. One thing requested to do but didn't get it in the packet was to provide a map. Do have map here, not on a county basis, wanted to show on map a tract of land (areas where current wind towers are) shows setbacks from property line, road right-of ways, and from houses. Based on the towers that are built out there. Potential areas that towers could be sited. 3000' diameter. Projects larger than 5 megawatts, permitted by county and hopefully by the state. Access buffer of approximately that would have to be bought. Not very many properties there that you could place a tower without buying a wind access buffer from someone. Small section of the county. Vary from one to another. Put on a big county map, hard to make sense of it. Nassif – perspective. Want to go over your response? I read it. Says what you want it to say. Don't need to go through it. Biren – important for everyone to understand the ordinance process requires a due process. If we open this ordinance up especially our wind ordinance, if that is the desire of the County Board, P&Z makes a recommendation to do that to the County Board and the County Board directs us to do that, I think that we need to be careful and we have to ensure that both proponents and opponents of the wind industry are all at the table. Set a process up like that, in the name of health, safety and welfare, I am not sure if our ordinance would end up being more or less restrictive than it is now. Did something similar with the feedlot ordinance a while back, it was quite a process. We have had feedlots in this state for around 200 years, wind in state since mid/late 1980's to early 1990's until now, pretty new industry. Facts and science behind it, a lot to be desired yet. Nassif – young industry, not mature. A lot we don't know about what may and may not happen. Our Ordinance right now probably adequate to do what we know, address issues that we know about. What we don't know is anybody's guess and it is something we have to keep track of as the industry develops and matures. If that happens and we need to revise ordinance then we can do so. Biren – good reminder to talk for a second on why we are at with wind permitting in the county. We wrote our ordinance when the only jurisdiction counties had was on smaller wind energy projects, less than 5 mega watts. We went through the process just south of town which was a project that together was larger than 5 mega watts. We asked the state should we be permitting them as 4 CUPs, or do you want them. The state at that time said, county it is your responsibility. There are members within the state that will argue that but at the time Dept. of Commerce determined it was our jurisdiction. After that, the state came up with statute language said counties if you want to take on greater responsibility you can. We opted to do that. Reasons we opted to do that weren't necessarily because we wanted to permit more projects but the statute language also provided the counties with more strict ordinances than the state, the state would have to respect those ordinances on large projects permitted by the state. Particularly we wanted a further setback from homes, power lines buried, better relationship created between highway

departments, road authorities and developers. At the time I think our ordinance was one of the better ones in the state to handle that. Think differently today, sure, I know more today. Do we want to open that up? I am hesitant because I don't know where it would end up. Nassif – I think we need to let it sit for awhile. Projects complete, maybe reassess it in a year. Vroman - think we are on the right track, reasonable ordinance. Nassif – health, safety and welfare of people. If you have a wind generator sitting there and it is going to fall on your house, safety factor. We have addressed that among other things. As other issues come up address them. Biren – do have CUP process, state doesn't utilize that process within their permitting. CUP process allows us to be more stringent on any of our standards that are written in the ordinance if you find good reason to through our public process. We do have that protection. Put some of your faith in that process. Nassif – good process. Follow precedence set, address newer issues as they come up. CUP process to modify on a case by case basis. Ritter – other counties issue with some lawsuits. More I think about it as I read this, maybe it is a good idea for this board to consider to have a representative from the PUC come here and explain what we are obligated by statute. If anyone has any questions, I'm sure John can get a hold of anyone at the PUC or Department of Commerce and schedule them to have a question and answer session. Just a suggestion. Nassif – I think that is a very good idea. Biren – some projects going on in Pipestone County that some state folks may be down this winter. Nassif – contact them and see what we can arrange for a future meeting. Riddlemoser – I do have some comments if you will open this up. I share in some of your sentiments about the ordinance but I have been in contact with the PUC and there is a concern that I have. Ms. Pile and Mr. Cupit believe that we are not in compliance with Minnesota statute because we have not incorporated the PUC setbacks and standards in the ordinance. Let me explain what that means. When the original statute for wind energy came out, there is a section in the statute that basically directed the PUC to go out and establish some general standards for any county that assumes permitting responsibility. Checklist from standards, where are we in the ordinance compared to those item. I did that. Results that I shared with the PUC weren't all that good. Certain instances in our ordinance that the PUC had more stringent language, more robust language, certain instances that we did not address their issues. Handout attached to minutes. 6 month process, comment period. Citizen's thorough list, protects citizen from the developer. One instance John and I are in disagreement with and perhaps Tricia is the issue of wind rights. In PUC order, which we are to follow, buffer setback. That issue is paramount to adjacent property landowners of this project. Because what a buffer does is ensures if your neighbor wants to develop wind power in the future, they have the opportunity to set turbines on the property. Turbulent caused by wind project won't affect the ability to optimize the wind as it goes to the second property. I read through the comments in detail and put this response together. Two issues: 1) Citizens in Lyon County should have visibility into the PUC order, protects them. Reference in our ordinance the PUC order, if you chose although the PUC says you should incorporate the PUC in your ordinance, if for some reason you choose the lesser path, at least you should site that. Citizen goes to John or looks on line they will know they are out there. Visibility and awareness that this PUC order even exists. 2) Concerned from previous experience, not particularly in this county here, when these developers come to this county they are not going to come by themselves. They are going to have a cava ray of attorneys with them. If I can go through and find these conflicts between our current ordinance and the PUC order as it stands now, they will create such a situation that they will be able to turn it all around, and basically define how they feel the ordinance should be interpreted.

Delegation description document from PUC, part of handout. PUC more than happy to have someone from their staff come out and talk. I wrote the secretary of the PUC after I had my original meeting with John and Tricia and the question was asked do we really have to incorporate the PUC requirements in our ordinance. Quite frankly there was nothing that I could find written from the PUC that said we had to. This is what staff is telling everybody. Counties that have assumed permitting responsibilities, only 5 - Lyon, Lincoln, Murray, Yellow Medicine and Freeborn. Read handout page 3 of 3. Talking with staff, position PUC when permit a project, lay out all of the requirements that everybody is suppose to follow. Anyone can comment during public meetings. They want the same thing to happen at the county level. Allow both parties to comment as you go through the process. Agree with John, never my intent in any actions I have taken to circumvent any public review process or to have wind advocates in here. Closing statement – by implementing the mandated statutes/law doesn't set a precedence by our county that we are having an opinion or setting a position about wind rights or anything else. Taking what they are giving us and we are putting it in so people cannot say you are abstract and you are developing your own opinion. Nelson – Lyon County still have the right to say the power line must be buried. Not part of the state. Riddlemoser – Minnesota statute says we are going to give you this set of stuff, baseline requirements in PUC order, set your ordinance up like that if you are going to assume permit responsibility. Then it says you can take any of those and make them more stringent but what you have to do is identify those that are more stringent. Permit everyone understands that you did that. PUC dwelling 750', Lyon County has 1000', cannot go less than that. Wind access buffer – wind right issues not mentioned at all in our ordinance. PUC going to come in and say we have told you in this delegation document that you have to incorporate those, where is the wind access buffer set back? Other counties have it. Nelson – some big players coming in. Xcel position we will buy the power don't own, that has changed now. They are building their own towers in North Dakota. Riddemoser – Adam Sokolski hired by larger companies, big companies abide by PUC requirement it's the c-bed people try to maximize revenue. They are the ones causing all the problems. Biren – original reason why the 216F statute was written was for those projects, politics behind it for 5/25 megawatt c-bed projects. Those projects did not want to buy the access. Quickly drafted, and thrown in there and passed before anyone knew what happened. Circumvent 5x4 rotor diameters, keep ahead of legislature. Project would come in, commercial size, sending that application to the state, they are giving us a determination. Group of suits coming in to influence us would still likely happen but at least there are some heads up. If we want to go forward with the wind access buffer – for or against, Jackson County, working on a project. Public Hearings state did exact location of towers without accesses and easements obtained. Not convinced that the state is doing a good job. Why I am cautious. Riddemoser – endless communications with John, concerned with the big guns rolling in with their attorneys. Eat us alive. At least we have to go with what the statute says right now because if we don't then they are going to turn it around and say you really don't want us to follow the statute because you never updated your ordinance. Games they play. Concerned. Zimmer – I also have email communication from the PUC and I know John has been in communication with various members of the PUC staff. Based on my discussions I respectfully disagree with Mr. Riddemoser's interpretation of what must be incorporated in the ordinance, even in the CUP application by the county earlier tonight, this board is very aware that there are many laws that control individual projects that are not specifically laid out in our county ordinance but that we are aware of, that the individual

applicants are aware of and that they must follow. PUC order is no different, the county is aware of that. If you look at the communication provided by Mr. Riddlemoser tonight, page 2 of 3, counties must incorporate PUC prescribed general rule permit standards in all permits they issue. We have the CUP process, when we look at individual applications, we can address individual concerns of that specific application and addressing the PUC order would be part of that process. Page 3 of 3, read last paragraph. I submit to you, that is a process that we are undertaking right now, we have reviewed our ordinance, we are aware of the PUC order. This Board has faced attorneys before on other projects and I almost feel that Mr. Riddlemoser enters with the assumption that the county is going to turn a blind eye to PUC order and I have not seen this board do that yet so I guess I respectfully disagree with Mr. Riddlemoser's comments in so far as our ordinance is going to fail and that we should be afraid of a group of attorney on a particular project. Nassif – young merging industry. Going to be changes in procedures and applications. Riddlemoser brought us points, staff response, take into account Tricia's comments, my personal feeling is that we regulate the best or least, set standards and adapt those through our CUP process on a case by case basis. Not ignore PUC, schedule PUC to visit. Riddlemoser – I am a board member on two other boards for the county, I understand. I just wanted to raise the issues; there are things out there that we may want to look at. Doing something with a mandated PUC order, don't see much risk in doing that. Riddlemoser – only request that I would make is per Mr. Cupit that we communicate with the director of the permitting group which is Ms. Deborah Pile in seeking this guidance. Some employees are making up their own interpretation. Make sure that is done. Biren – I agree with Scott that would be good. Riddlemoser – John and I would both call and get different answers. Biren - will schedule a meeting and invite her.

Wind Easements – information in packet.

2010 Meeting Schedule – information in packet.

Next meeting to be held on Tuesday, February 9th at 7:00 p.m.

Nassif adjourned meeting.

Respectfully submitted,

Michael Nassif, Chairman
Planning and Zoning/Board of Adjustments

Carol Oakland, Secretary
Planning and Zoning/Board of Adjustments