

**MINUTES OF THE BLACK HAWK COUNTY PLANNING AND ZONING COMMISSION MEETING  
HELD ON JANUARY 15, 2019 HAROLD E. GETTY  
COUNCIL CHAMBERS - WATERLOO CITY HALL.**

Vice-Chairman Wurtz called the regular monthly meeting of the Black Hawk County Planning and Zoning Commission to order at 7:00 pm, Tuesday, January 15, 2019, in the Harold E. Getty Council Chambers- Waterloo City Hall.

**I. Call to order and roll call**

Members present: Allen Sage, Renata Sack, Gary Wurtz, and Kamyar Enshayan

Members absent: Peter Beck, Amanda Fesenmeyer, Deb Nagle

Also present: Black Hawk County Planning Staff – Seth Hyberger and John Dornoff, and 4 members of the public.

**Approval of the agenda.**

*It was moved by Sack and seconded by Sage to approve the agenda. Motion to approve the agenda carried unanimously.*

**II. Approval of minutes of the December 18, 2018 regular meeting.**

*It was moved by Enshayan and seconded by Sack, to approve the minutes. Motion to approve the minutes carried unanimously.*

**III. New Business**

**1. New Business**

**1. 11842 Gibson Road – Gunnarson Minor Plat**

Request to plat 7.1 acres to allow for the construction of one new single family home.

Hyberger gave the staff report.

Marc Gunnarson, 11842 Gibson Road, indicated that the survey has been completed and nothing has changed in regards to the initial application that was submitted for the minor plat. Hyberger also noted that the rezone for the property has already been approved by the Board of Supervisors.

*It was moved by Sack and seconded by Enshayan, to approve the request to plat 7.1 acres in order to build a new single family home. Motion to approve carried unanimously.*

**2. S of 8902 Dysart Road – Herkelman Rezone**

Request to rezone 5.18 acres from “A” Agricultural District to “A-R” Agricultural-Residential District in order to build two new single family homes.

Hyberger gave the staff report.

William Herkelman, 4121 Mockingbird Lane, Waterloo, noted he was a police officer that previously worked for the Black Hawk County Sherriff’s Office for 22 years and now is a police officer with the Waterloo Police Department. Herkelman later commented that the previous rezone request by Phillip Shirk

to rezone the property for future development at a previous March 20, 2018 Planning and Zoning Commission meeting is different because they have already submitted an offer on the property that has been accepted by the owner. Their goal is to have another home built on the southern portion of the property and has family friends that are interested in purchasing the property to build a home. Herkelman also noted that he has spoken to the two farmers that opposed the previous rezoning request and made agreements with the farmers to address their concerns. Farming, the dust, the smells of living in the county is not an issue for them. Herkleman noted that he spoke with Tom Schneider and he indicated that he would not oppose the request, but could not make it to tonight's meeting. He also spoke with Mr. Entz, but was unable to schedule a face to face meeting. Herkleman noted that they will continue to allow Mr. Schneider to use the farm drive on their property to ensure he has access to his land. Herkelman also noted that they limited the rezone sites to 2.5 acres to alleviate any concerns regarding any future lot splits for additional homes on the property.

Herkleman noted that is the goal of him and his wife to get out of Waterloo City Limits and they have a restriction by the police department that does not allow them to live further than 10 miles from City Hall. He also noted that he was on the Sherriff's Office Drug Task Force and somebody recently posted his address and phone number on Facebook. They will build out there regardless, but would like to have family friends nearby.

Enshayan noted that this was a classic case and their hands were tied. Based on the Zoning Ordinance they are here to preserve good farm land. Enshayan noted that he does understand the circumstances that were described, but it's about land preservation and protecting farmland. Wurtz also noted that since the land does have a high LESA score and they need to be consistent in how they look at these types of situations. Sack asked why the farm ground has not been farmed over the last 30 years. Herkleman noted the previous owners split off the parcel so that it could be a lot of record for the future and indicated that he does understand the importance of preserving good farm ground. Herkleman also noted that they plan on building a home regardless, but it confuses him because the goal of making that farm ground land again may never be met.

Hyberger noted that a lot of record is that it was a lot platted pre-zoning ordinance which was not approved until 1982. They also do allow for one home to be built on a lot of record without a rezone. It is akin to someone having 35 acres. Wurtz asked is that the northern lot or the southern lot is a lot of record. Hyberger indicated that they were both lots of record. Herkleman noted the lot to north has a home on it and the lot to the south doesn't and noted they plan on getting a survey completed for the southern parcel as well to make sure it is accurate. Wurtz then asked if the fact that the land has not been farmed for 30 years give it just cause to overlook the high LESA score for the land. Hyberger noted it is one of the criteria listed as an individual circumstance. Enshayan noted the fact was not farmed is simply just one criteria when there are three criteria regarding individual circumstances. Wurtz asked since the lot has not been farmed for 30 years give the Planning and Zoning Commission just cause to overlook the high LESA score? Hyberger noted it's one of the criteria listed. Sack stated that she believes the individual criteria of the land not being farmed for 30 years does give them the ability to overlook the high LESA score requirement. Enshayan commented that the land can still be farmed even though the land is currently pasture and commented that there are still three criteria and it specifically states that meeting one of them does not mean anything. Wurtz noted that they are discussing a lot of record and the applicant is going to build on the land regardless. Enshayan commented that is something the Planning and Zoning Commission does not have control over. Wurtz stated that wouldn't it make sense to rezone the property to Agricultural-Residential District so that it isn't still zoned Agricultural District. The land doesn't need to be rezoned, but why shouldn't the land be rezoned. Enshayan noted because they would be allowed to build a second home on the parcel.

Henkelman noted that once there is a house there it can never be rezoned. It is either now or never. Once the home is built the home cannot be rezoned or platted for a period 15 years. The pasture ground will therefore be tied to the home once it is built. So, the best thing to do is to approve the rezone for two homes. The previous rezone request was to allow for six homes on two lots. This request is for only two homes on one lot and this will create less traffic for the neighbors than allowing for six homes. He can understand were Mr. Entz is coming from when he wasn't in favor of the previous rezone request. Enshayan noted that if they approve the rezone they will be allowing for two homes instead of one and it is his responsibility to follow

the Zoning Ordinance. Sack later noted that once the applicant builds their one home there it will be too little ground to farm and the land does not need to be restricted for someone else. Enshayan stated that he is simply doing what is asked of him regarding the following of the Zoning Ordinance to preserve prime farmland.

Henkelman noted that he had a conversation with Mr. Schneider and he has had some issues with neighboring land owners. Mr. Schneider's farm was too close to a neighbor's garden and had to address that issue. Henkelman noted having their garden by Mr. Schneider's farm will not be an issue for them and they are well aware of what is involved concerning living next to a farm operation. Henkelman understands that and will respect Mr. Schneider's right to farm his land.

Sack made a motion to approve the rezone request due to the past history of land regarding it not being farmed for 30 years or more. Wurtz noted that there was no second and the motion will not proceed to the Planning and Zoning Commission members for a vote.

Kamyar then made a motion to deny the vote due to the land being prime farm ground. Sage seconded the request.

Hyberger was asked by a member of the audience if one or all three criteria should be considered when rezoning prime farmlands. Hyberger noted it could be one, two, or three criteria could be considered, but each agenda item is voted on independently and therefore isn't an absolute. Each rezone request should be reviewed or voted on per its own merits and just because one criterion has been met does not mean a Planning and Zoning Commission member has to approve the request. They can vote yes or no.

*It was moved by Enshayan and seconded by Sage, to deny the request to rezone 5.18 acres from "A" Agricultural District to "A-R" Agricultural-Residential District in order to build two new single family homes. Motion to deny failed 2-2 with Wurtz and Sack voting to approve the request.*

#### **IV. Discussion**

No discussion items were discussed

#### **V. Adjournment**

*It was moved by Enshayan and seconded by Sack to adjourn at 7:35 p.m. Motion carried unanimously.*

Respectfully submitted,



Seth Hyberger,  
Black Hawk County Zoning Administrator