

**MINUTES OF THE BLACK HAWK COUNTY PLANNING AND ZONING COMMISSION MEETING  
HELD ON AUGUST 20, 2019 HAROLD E. GETTY  
COUNCIL CHAMBERS - WATERLOO CITY HALL.**

Chairman Beck called the regular monthly meeting of the Black Hawk County Planning and Zoning Commission to order at 7:00 pm, Tuesday, August 20, 2019, in the Harold E. Getty Council Chambers- Waterloo City Hall.

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

Members present: Allen Sage, Deb Nagle, Gary Wurtz, Renata Sack, Peter Beck, and Jayme Renfro

Members absent: Amanda Fesenmeyer

Also present: Black Hawk County Planning Staff – Seth Hyberger and John Dornoff, and 20 members of the public.

**Approval of the agenda.**

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

**II. Approval of minutes of the July 16, 2019 regular meeting.**

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

**III. New Business**

**1. S of 8734 Waverly Road – Conner Rezone**

Request to rezone 7.3 acres from “A” Agricultural District to “A-R” Agricultural-Residential District in order to build three new single family homes.

Hyberger gave the staff report and discussed the current FEMA National Flood Insurance Program floodplain map (Adopted July 18, 2011) in effect today and the proposed FEMA map that will be adopted by Black Hawk County by October of 2021. Hyberger also noted that the southern rezone area has been dropped and the rezone process will only proceed with the northern and middle proposed lots.

Beck asked if the new maps will denote the 500-year floodplain and the 100-year floodplain. Hyberger noted that the preliminary maps are only showing the 100-year floodplain and not the 500-year floodplain.

Richard Conner, 402 A 3<sup>rd</sup> Street, Fairbank, Iowa, noted that he is no longer going to purchase the property, but thinks that the owners should still be able to do what they want with their property. Buildable land for acreages are sparse in Black Hawk County. He had been looking for months, but was fortunate to find another property when he became aware of the floodplain issues associated with the southernmost rezone area. Conner noted that the two proposed rezone areas have trees and have not been farmed for over 20 years. It would not be cost effective to tear down those trees in order to farm the land again. Conner noted that one of the lots to be rezoned would remain with the Thode family and the second lot would be sold to the public. The owner John Thode is a truck driver, who could not make it to the meeting today and is being represented by his son Jeff Thode, which plans on purchasing one of the rezone areas from his father for a home site. Conner noted that he is here to represent the Thode family, to keep things moving forward.

Jeff Thode, 8734 Waverly Road, noted he was there to represent his father and his future plans. He also noted they have no interest to develop the previous southernmost lot due to floodplain issues. Simply the

former middle and northern most lots. Thode noted that his family is aging and he plans on building a home on the northern lot, so that he can take care of his parents. Thode also noted he likes the wooded property and plans on removing as few trees as possible. They do not want a huge development out there and are simply requesting to have two more homes on the existing lot.

Nagle asked Thode if there was a lot of water on the southernmost part of the lot and on Waverly Road during past flood events. Thode noted that the only time he ever saw water was on the southwestern corner of the lot during the 2008 flood. But it did not cover the whole area identified on the FEMA preliminary floodplain map 2021. They also had Waverly Road closed at the Maxfield Road and Waverly Road intersection.

Pat Galison, Attorney with Burrell and Sheer, Iowa, noted he was here today to represent Charles and Lisa Hess, which are the neighbors across the road from the proposed rezone areas. Galison noted he represented the Hess's in the mid-1990's and brought a signed petition from the neighbors and photographs of the flooding that occurred on Waverly Road in 2008. Galison indicated that people were launching boats on his client's property to go south on Waverly Road. Galison noted the request has changed to only include the two northern parcels and noted that people should be allowed to do what they want with their land, but they also have the Zoning Ordinance to clarify what that is. In Iowa agriculture is very important and bringing two additional homes into the area is asking for problems. In 1995 his client was concerned that his right to farm and raise hogs would be impacted. The traffic was not the only problem in the area at that time, the Hess family utilizes semis to haul pigs and grain to and from the farm site. His client has an active farm operation and is still concerned about traffic. Galison noted that there have not been changes to the County Zoning Ordinance, state laws, or character of the real estate since 1994-1997. The only change is that the applicant has grown trees on their lot. However, the land is still zoned "A" Agricultural District for a reason. Galison also indicated that there are several homes along Waverly Road, but there are still more farms than houses in the area. Galison also understands that one of the lots will be sold to a family member, but when the applicant purchased the land it was still zoned "A" Agricultural District. Galison noted a Waterloo Courier article he handed out to the Planning and Zoning Commission members from 1995, and traffic was not the only concern. They will also still be required to get approval from the Black Hawk County Engineer's Office to gain access to Waverly Road. The applicant cannot point to anything that has changed in the last 20 years, except the land is no longer farmed, but that was the applicant's choice. Galison noted the applicant is still able to do anything that the "A" Agricultural District allows for their property. Same as his client and every real estate owner along Waverly Road. Galison also noted that the only thing that has changed in the last 25 years is the floodplain map.

Connor reiterated he has no investment regarding this rezone request. He also thinks that approving this rezone request is the right thing to do. Two additional homes are not going to increase traffic that much, or no more than 4 vehicles per day. Which is such a small percentage to the total traffic on Waverly Road. The persons opposed to the request already drive several semis up and down Waverly Road. Connor also noted that he has already spoken to the Black Hawk County Engineers Office and noted that they would have no issues with approving two additional driveway permits along Waverly Road. Connor noted that he sees no reason why this request should not be approved. They already eliminated the southernmost lot from consideration due to floodplain issues and indicated traffic is much less of an issue than what it was in 1994-1997 since the rebuilding of HWY 218. Connor noted that the land is never going to be farmed again and he grew up in farm county in northeast Iowa and is aware of the smells and the importance of agriculture. Connor also stated that he was on jury duty for a case where a resident sued a farmer for the loss of value of his house due to the smells coming from a new feedlot. The farmer won that case. Connor noted that they are not trying to change what the Hess family does with its own land. The land is agricultural, but entire 40-80 acres' fields are being taken out of production all of the time in order to build new homes in Cedar Falls. What is wrong with someone rezoning 5 acres and building two homes on it?

Thode noted that they never had issues with Hess's agricultural activities over the years. Thode noted that if he had issues with Hess's agricultural operation, he would not be moving back into the area. He just wants to be near family. Thode's family had plans to create additional lots on the property when they purchased it as an investment property, but were turned down in the 1990's. Those denials occurred for various reasons, but

change has happened. The Thodes had been neighbors to the Hess's for years without any issues and former traffic along Waverly road has been diverted to reconstructed HWY 218. The land is not farmed and the cost of converting that land back to farmland would make it cost prohibitive. Thode has felt that they have had a good relationship with the neighbor, and hopes that is taken into consideration.

Beck stated the LESA system was not available in the 1990's, noted there are trees there now, and the 1995 Courier article revealed that the Board of Supervisors did not unanimously deny the request. It was a 3-2 vote to approve, but failed to achieve the 4-1 super majority vote that would have been required for passage. Beck indicated the site now contains trees and the floodplain is always a concern. So, he was pleased to see that the southernmost rezone area was removed from the request. Beck indicated there has always been a lot of traffic on Waverly Road, noted the CSR for the land was only in the low 60's, and the LESA score indicated moderate agricultural value. Beck stated that the flags only go up if the LESA or CRS scores are high and the land is considered prime farmland. Protecting prime farmland is important to the Planning and Zoning Commission.

Wurtz asked Hyberger how the motion should be stated since one of the rezone areas was removed at the beginning of the meeting. Hyberger noted the motion should state approval for the northernmost lot and proposed middle lot.

Sage and Nagle were concerned about having two new homes next to an existing farm operation.

***It was moved by Wurtz and seconded by Sack to approve a request to rezone 5.1 acres from "A" Agricultural District to "A-R" Agricultural-Residential District in order to build two new single family homes on the proposed northern and middle lots. Motion to approve carried 4-2 with Sage and Nagel voting nay.***

## **2. E of 5211 W. Mt. Vernon Road – Schmitz Rezone**

Request to rezone 7.23 acres from "A" Agricultural District to "A-R" Agricultural-Residential District in order to build three new single family homes.

Hyberger gave the staff report.

Justin Schmitz, 1101 Fleur Drive, Waterloo, noted he was the owner of the property. He plans on building his home on the westernmost lot, which includes 2.9 acres. He indicated that he wanted to rezone the two lots in order to create two additional acreage lots in the county. Schmitz noted that he put a driveway on the property this last spring and has already been in contact with the Black Hawk County regarding roadway access and CFU regarding bringing rural water to the site as well. The remainder of the 16.72 acres will be placed into a program like CRP in order to preserve the area, and plans on planting two rows of trees to act as a windbreaker. The two rezone areas to the east will have a shared access road. Beck asked the applicant how long he has owned the parcel. Schmitz indicated that he purchased it a little over a year ago. Beck later asked if the land was still in production. The applicant noted he planted winter rye on it, but did not farm it this year. He wanted to change some things on the property and do some landscaping. He also noted the soil is very sandy and he is trying to prevent water from going onto anyone else's property. Schmitz noted the land was previously farmed before he owned it. Beck asked if the land bordering his property is being farmed. Schmitz indicated that the surrounding land is in farm production and his home would be placed on the southwest lot. Beck asked Schmitz if he really wanted two additional neighbors. Schmitz noted that it does not really bother him. It took him years to find a building site in the country and allowing two additional homes is not going to be any different from the homes that are already there. Beck asked the applicant what the CSR was for the property? Schmitz indicated it was around 40. Renfro asked what is the definition of CRP. Schmitz noted it is for the Conservation Reserve Program by the USDA. Wurtz asked Schmitz about the driveway extension onto the property and culvert. Schmitz noted when he brought the property there was no access for an existing shed on the property and got a permit from the Black Hawk County Engineer's Office.

Pam Banser, 5500 W Mt. Vernon Road, which is on the north side of W Mt. Vernon Road and a little to the west. Her main concern is that every spring the rezone areas fill up with water from snow melt and the water table is very high. She was also concerned about the home at 5211 W. Mt. Vernon Road and how it will be impacted by three additional homes in the area when her sump pump is always running constantly. The high water table needs to be taken into consideration and anyone who builds out there not knowing about the high water table in the area is going to be extremely upset when they constantly have water in their basement. Beck asked if Banser had any issues with their property. Banser noted that every spring her driveway fills up with water. There also is no drainage infrastructure along W Mt Vernon Road and they often have to drive through a foot of water to gain access to her property.

Craig Cordes, 5717 Big Woods Road, asked Hyberger to put the floodplain map up. Hyberger noted that none of the rezone area is in the floodplain. Cordes disagreed and said the property being rezoned gets 4 to 5 feet of water in it by the tree line on the southern end of the property. His main concern is having more people out there. They moved to the country to be in the country. Cordes also noted that he and several neighbors have animals out there and he had his property raised by an entire foot due to the water issues associated with his site. He does not care if he builds one home out there, but not three.

Lynn Dimitrov, 5248 W Mt Vernon Road, noted she purchased her property in 1994 from David Elliger who also tried to rezone his property into three lots, but that request was denied. Another rezone request in the immediate vicinity was also denied. If this request is approved, it would set a bad precedent for the area. Dimitrov noted that she owns horses that kick and was concerned about potentially getting sued if a person gets bit or kicked on her property.

William Hess, a trustee for the Washington Township, noted it was his brother who tried to rezone his land to in order to build three new homes. Hess didn't realize that this request was coming up. He was under the impression that there was moratorium in place to prevent any additional homes from being built in the area due to drainage issues.

Hyberger pulled up the floodplain map for the area and noted that none of the rezone area is in the floodplain. Cordes disagrees with the map. Hyberger noted that FEMA developed the floodplain map and this is what we use to regulate the floodplain. Hyberger indicated that there could be drainage issues for the site due to a high water table, but the land is not in the 100-year floodplain according to FEMA.

Randy Wheeler, 5010 W Mt. Vernon Road, just northeast of the proposed site. He had numerous conversations with Schmitz concerning the rezone request. Wheeler understands what he is trying to do, but initially he was only going to put one home on the lot. Schmitz noted that the elevation for his lot is 6' above Mt. Vernon Road. Wheller noted that the ground is good farmland with a 70 CSR rating. The rezone areas had been farmed for several years. Another request was denied in the area due drainage concerns associated with the site. Wheller noted it is not great farmland, but it is still good ground. He was ok with Schmitz building his home there, but does not want two additional homes out there because persons live in country for a reason. The Planning and Zoning Commission's role is to protect good farm ground.

Cyril Klein, 5831 Big Woods Road, had concerns regarding traffic and has no issues with the building of one home. Klein also noted that the county does not do a good job of taking care of W Mt. Vernon Road. Residents had to use their own money to make repairs to W Mt. Vernon Road. Klein also noted more people in the area equates to more problems. Klein also noted that he had three feet of water in his barn.

Schmitz noted that he originally wanted to build his home out there and he is not trying to do a huge development. He is simply requesting to have two additional homes out there. Schmitz simply wanted to create two additional lots so other families would have the opportunity to live in the country. Schmitz did note that there is a high water table out there. Persons have basements out there, but there is an option not to build a basement. Schmitz noted he cannot change the layout of the area. If someone want to bring in 8' fill. That would be there choice. If he could sell one parcel, that would help speed his process up to build a home. Schmitz also indicated that the drainage will stay on the site and not affect neighboring properties.

Tom Hessey, 5609 Big Woods, noted that Schmitz is requesting to build two additional lots to get rich.

Cordes indicated that approving the request would put three additional septic systems out there. Beck noted there are several homes already near the rezone area. Cordes asked Beck how he would feel if they put up three additional homes next to him. Beck noted, well good luck buying his land. They do not care about one home, but they do not want three additional homes out there.

Wurtz noted they have land with a low LESA score, but was still in agricultural production only a year ago. Beck stated that all of the ground around the rezone areas are being farmed as well. Sack noted that the land is agricultural and has drainage issues, and who would want build a home out there with a flooded basement. Wurtz does understand the nature of Schmitz's request, and why three other rezone applications in the area were denied previously. Nagle also noted that if he didn't create two additional lots, he could still build his home on the property. Nagle noted he does have the right to try through. Sack indicated this request goes against everything they represent. Beck also noted that all land around the rezone area has been farmed. They do place high value on prime agricultural ground. The land has a low CSR of 40, but with that being said, if the land does not produce, then no one would farm it. The parcel size is also large enough to be farmed.

***It was moved by Wurtz and seconded by Nagle to deny the request to rezone 7.23 from "A" Agricultural District to "A-R" Agricultural-Residential District in order to build three single family homes. Motion to deny carried unanimously.***

**3. 6410 N Butler Road – Bosier Rezone**

Request to rezone 1.6 acres from "A" Agricultural District to "A-R" Agricultural-Residential District in order to split off a home that was originally built on 35 acres.

Hyberger gave the staff report.

James Bosier, 6410 Butler Road, noted he had nothing new to add to the request.

***It was moved by Nagle and seconded by Wurtz to approve the request to rezone 1.6 acres from "A" Agricultural District to "A-R" Agricultural-Residential District in order to split off a home that was originally built on 35 acres. Motion to approve carried unanimously.***

**4. 438 S. Elk Run Road – Mills Rezone**

Request to rezone 2.14 acres from "C-M" Commercial-Manufacturing District to "A" Agricultural District in order to separate a dog boarding facility from an existing home site.

Hyberger gave the staff report.

Margaret Mills, 438 S Elk Run Road, indicated that the person that assisted them with their previous rezone request stated that they should rezone the whole area to "C-M" Commercial Manufacturing, but really only wanted to have a small area rezoned for their dog boarding facility. This also caused them some issues with building inspection when they wanted to make improvements to their barn and would have had to follow the "Commercial" building code to make any improvements. The applicants are requesting to rezone as much land back to "A" Agricultural District as possible. They also grow hay on the westernmost portion of their lot.

Beck noted that he is in favor of any request that involves rezoning land back to "A" Agricultural District.

***It was moved by Wurtz and seconded by Renfro to approve the request to rezone 2.14 acres from "C-M" Commercial-Manufacturing District to "A" Agricultural District in order to separate a dog boarding facility from an existing home site. Motion to approve carried unanimously.***

IV. **Discussion**

Hyberger noted that he didn't have any issues to discuss and thanked Renfro for becoming a member of the Planning and Zoning Commission.

V. **Adjournment**

*It was moved by Sage and seconded by Sack to adjourn at 8:25 p.m. Motion carried unanimously.*

Respectfully submitted,



Seth Hyberger,  
Black Hawk County Zoning Administrator