

Dubuque County Zoning Commission Minutes of July 19, 2022

Chairperson Dave George called the meeting to order at 6 p.m.

1. ROLL CALL: Members present via a Zoom teleconferencing meeting: Kathleen Scherrman. Members present at the Dubuque County West Campus, 1225 Seippel Rd: Kevin Soppe, Lisa Flanagan, Sam Boyes, Carmen Dunkel, Dave George, and Ron Breitbach. Staff Present at the Dubuque County West Campus, 1225 Seippel Road: Tammy Henry and Amy Schmerbach.

2. APPROVAL OF MINUTES: A motion was made by Ms. Boyes, **seconded by Mr. Soppe, and passed unanimously to approve the minutes of the June 21, 2022, meeting. Vote: 7-0.**

3. PLAT APPROVAL:

Plat of Survey of Wildflower Ridge Subdivision No. 4 – Final Plat

Plat of Survey of Lot 1 thru Lot 11 of Wildflower Ridge Subdivision No. 4 in the City of Sageville and Dubuque County comprised of Lot A of Wildflower Ridge Subdivision No. 3 all in Section 3, T89N, R2E, Dubuque Township, Dubuque County, Iowa.

The property is owned by Vendors Unlimited Corporation and is located adjacent to the City of Sageville along Chicory Street with a total of 16.024 acres surveyed. The property is in both the City of Sageville and Dubuque County and is zoned R-2, Single Family Residential. The purpose of the plat is to create an 11-lot residential subdivision.

The survey creates 11 lots. Lot 1 thru Lot 11 all are a minimum of 1 acre in size and will be sold for residential homes. The above described property is partially within the city limits of the City of Sageville with the remainder located within Dubuque County in the R-2, Single Family Residential district, thus subject to all the requirements of that district. Vendors Unlimited Corporation and the City of Dubuque have signed an agreement for water service to all eleven (11) lots.

The Dubuque County Storm Water Ordinance requirements will be followed throughout the entire subdivision (All Lots) including lots that fall in the City of Sageville. A Storm water detention basin will be installed in between lots 5 and 6 that addresses post-construction storm water rate-control. All lots (1-11) will follow soil quality restoration (SQR) requirements as identified in the final plat and the subdivision covenants. The Developer will be responsible to ensure both the detention basin and all future lot owners must comply with SQR requirements. If any lots are found “non-compliant” with SQR requirements, building permit will be halted until all lots are in compliance with SQR. The property owners have provided a Declaration of Covenants, Conditions and Restrictions that will be handled by the Wildflower Ridge Subdivision No. 4 Homeowners Association Inc.

Lots 1 thru 11 will have residential entrances off of Dayflower Street.

Ms. Henry said that all lots are provided water by the City of Dubuque and Mr. Gantz has agreed to follow all County Rules when it comes to the water quality.

Speaking to the board was Michael Gantz, 17222 Chicory St, Dubuque.

Ms. Boyes asked Mr. Gantz if the intention was to provide city water to all lots and asked if there were any wells. Mr. Gantz said there's no wells and city water was provided.

Mr. George asked if anyone had questions, and no one spoke.

A motion was made by Ms. Boyes, **seconded by Mr. Breitbach to approve the plat. The motion passed unanimously. Vote: 7-0.**

Plat of Survey of Connolly Farm #3 – Final Plat

Plat of Survey of Lot 1, Lot 2 and Lot 3 of Connolly Farm #3 comprised of Lot 1-5 and Lot 2-8 of the SW ¼ of the SE ¼ and comprised of Lot 1 of Connolly Farm, all in Section 11, T87N, R1E, Prairie Creek Township, Dubuque County, Iowa.

The property is owned by James & Tammy Connolly and is located 2.73 miles northeast of the City of Bernard along Twelve Mile Road with a total of 5.37 acres surveyed. The property is zoned A-1, Agricultural. The purpose of the plat is to adjust the lot lines to include the driveway on Lot 2 so they can sell Lot 1, which has an existing driveway and adjust a lot line to allow the property owners to own the property that is currently being maintained as part of the home lot.

The survey creates 3 lots. Lot 1 has a total of 1.04 acres surveyed with a home and will be sold. Lot 2 has a total of 2.87 acres surveyed with farm buildings and will remain in current ownership and agricultural use. Lot 3 has a total of 1.46 acres surveyed and will remain in current ownership and agricultural use.

Lot 1 will use an existing residential entrance off of Twelve Mile Road. Lot 2 and Lot 3 will use an existing residential entrance off of Twelve Mile Road.

Speaking to the board was James Connolly, 16508 Twelve Mile Road, Bernard. Mr. Connolly said they are adjusting the lot lines to include the driveway and powerlines on to his property. He said he didn't want the new buyer to worry about maintaining the driveway and powerlines. He said they also adjusted the back lot line for the new buyer to include the fence line.

Ms. Henry stated the new buyers would not need the driveway that is being surveyed off because they already had access to the front of their home from Twelve Mile Road.

Mr. Breitbach asked if this change would cause any setback issues and Ms. Henry said no.

Mr. George asked if anyone had additional questions, and no one spoke.

A motion was made by Mr. Soppe, **seconded by Mr. Breitbach to approve the plat. The motion passed unanimously. Vote: 7-0.**

Plat of Survey of Dalsing Place No. 4 – Final Plat

Plat of Survey of Lot 1 and Lot 2 of Dalsing Place No. 4 a consolidation and division of Lot 1-3 & Lot 2-3 of Dalsing Place No. 3 in Section 5, T88N, R2E, Table Mound Township, Dubuque County, Iowa.

The property is owned by Megan Dalsing and is located .14 miles south of the City of Dubuque along Barrington Drive with a total of 7.19 acres surveyed. The property is zoned R-1, Rural Residential. The purpose of the plat is to adjust the lot lines of the existing two lots so that Megan can have more land on Lot 2.

The survey creates 2 lots. Lot 1 has a total of 3.93 acres surveyed and will be sold. Lot 2 has a total of 3.19 acres surveyed with a home and will remain in current ownership and residential use.

Lot 1 will use an existing 20' wide access easement off of Barrington Drive. Lot 2 will use an existing residential entrance off of Barrington Drive.

Speaking to the board was Mike Weber, Weber Surveying, 26789 46th Ave, Bernard. Mr. Weber stated that the owner wanted to keep the additional land south of the driveway with the existing home.

Mr. George asked if anyone had additional questions, and no one spoke.

A motion was made by Ms. Boyes, **seconded by Mr. Soppe to approve the plat. The motion passed unanimously. Vote: 7-0.**

4. REZONING CASES:

ZC#07-22-22 Estate of Lester A. Weber, co-executor Jeanette Talbert A-1

Agricultural to A-2 Agricultural Residential

The applicants are requesting to rezone from A-1, Agricultural to A-2, Agricultural Residential 9.930 acres to allow them to sell the farmhouse, buildings, timber and crop land. The property is located 3.37 miles southeast of the City of Dubuque along Dayton Road and is legally described as Lot 1 Weber's 1st Addition Section 33, T88N, R3E, Mosalem Township, Dubuque County, Iowa.

The property is owned by the Estate of Lester A. Weber, Executor Jeanette Talbert. Zoning in the area includes A-1, Agricultural to the north, east and west. A-2, Agricultural Residential to the north and west. R-1, Rural Residential to the northwest and the east. The A-2, Agricultural Residential to the north on ZC#12-29-13 was to allow the construction of a new home. The A-2, Agricultural Residential to the west on ZC#09-21-15 was to allow the owner to sell the property to the sister so she could restore the home on the century family farm. The R-1, Rural Residential property to the east on ZC#9000-32-77 was to allow the construction of a new home.

The family is asking for the rezoning to allow them to finalize the Estate and sell what the family is not keeping at auction.

There are no previous zoning cases attached to this property. There are no special use permits attached to this property. Nine (9) notification letters were sent to the property owners.

Comprehensive Plan Policy Chapter 9 Agricultural and Natural Resources page 134 objective 3.1 and Chapter 8 Housing page 122 objective 12.7 may apply to this case.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. Mr. Schneider invited the executors of the estate to state their names. Jeanette & Steve Talbert, 1433 W. 61st St. Davenport.

Mr. Schneider said the family and he decided that the best way to sell the home and buildings is to rezone the 9.930-acre piece.

Mr. George asked if this is what a realtor/auctioneer suggested for the sale of the property. Mr. Schneider said yes however, just looking at the property in general it was the best way to divide the land for different buyers.

Ms. Henry said that she was receiving calls concerning the size of the rezoning area and why it the rezoning was needed. She said it was a possibility to rezone only 4-5 acres to include the house, buildings, and septic but if a buyer came in to purchase the entire corner that included the field and rezoned it from A-1, Agricultural to and A-2, Agricultural Residential that would then restrict another home from being built on the property. She said that if someone did want to build a new home on this property the existing home would have to be torn down. Ms. Henry said she was informed that the rezoning request could potentially add more value to the purchaser because it could still be used as a small farm.

Mr. Schneider said that there would be a condition on the rezoning agreement to lock up the remainder of the 40-acre parcel so another home could not be built.

Mr. Schneider said that after the 9.930 acres is rezoned to A-2, Agricultural Residential the remaining property included in the estate would be divided up and stay A-1, Agricultural and the entire 241 acre property could only have up to 6 homes built on it.

Mr. George said he had looked back at other rezoning cases that were approved to carve out around the homes and buildings to sell the property and those cases were 7-9 acre lots as well.

Mr. George asked if anyone from the public would like to speak.

Speaking to the board was John Arenz, 39585 239th Ave, LaMotte. Mr. Arenz said his property is neighboring the Weber property along the southern boundary. Mr. Arenz stated he was in attendance to speak in opposition of the rezoning case. He said he thought the case was inconsistent with Dubuque County Zoning Ordinance. Mr. Arenz presented a petition of 85-90 signatures that were in opposition to the rezoning case. He stated that the farm will sell for a large amount of money without the rezoning. Mr. Arenz stated the property is in the heart of A-1, Agricultural ground and rezoning to A-2, Agricultural Residential was not necessary.

Mr. Breitbach asked Mr. Arenz if he would be opposed if a Weber family member had purchased the house and Mr. Arenz said if the lot was smaller with a couple of buildings he would not object to the rezoning. Mr. Arenz said he doesn't think anyone would purchase this piece of land to only have 4 acres of farmland.

Ms. Boyes said the County and the State of Iowa allows Hobby Farms. She asked if there was a potential buyer for the property. Ms. Henry said there was not a guaranteed buyer, and she was told that the entire property will be going up for auction.

Speaking to the board was Jesse Meyer, Peoples Company, 421 Stoffel Rd, Bernard. Mr. Meyer said he recommend the Weber family to rezone the 9.930-acre parcel to attract a quality buyer to the property. Mr. Meyer stated the property could only have one home so if a new buyer decided to remove the existing home and build new home they could.

Speaking to the board was Cathy Caitlin, 6552 Mitchell Mill Rd, LaMotte. Ms. Caitlin said she had also signed the petition in opposition of the rezoning and stated a recommendation from an auctioneer is not a reason to deviate from the ordinance. She said the rezoning request deviates from the A-2, Agricultural Residential Ordinance because the rezoning area is too big. She said going through the historical data of the A-2, Agricultural Residential there is not an A-2, Agricultural Residential lot of this size.

Mr. Meyer said that it is possible to have a buyer bid on the entire property rather than just the farmhouse.

Mr. Breitbach asked Ms. Henry why we couldn't make only 2 acres A-2, Agricultural Residential and leave the other 7 acres A-1, Agricultural. Ms. Henry said because it doesn't meet the current platting ordinance. She said A-1, Agricultural must be a 35-acre minimum.

Ms. Henry explained the aerial map listing 2 other A-2, Agricultural Residential in the area. Those lots were sold to family members however she said we have done rezoning on other A-2, Agricultural Residential just to sell to a non-family member. Ms. Henry stated that a rezoning of an A-2, Agricultural Residential was just approved recently that consisted of an 11-acre piece of land.

Speaking to the board was Mark Reiss, 6568 Dayton Rd, Dubuque. Mr. Reiss stated a farmer would not have any problem accessing the farm ground with their machinery that is considered in the rezoning case. He stated that he & his wife signed the petition in opposition to the rezoning case. Mr. Reiss said this could cause more subdividing for residential use. He said this could potentially cause more rezoning requests for A-2, Agricultural Residential & R-2, Single Family Residential. Mr. Reiss said another concern of his was the safety on Dayton Road with the additional traffic and driveways.

Ms. Boyes asked Mr. Reiss if he would be ok with the rezoning if it was only for 1-2 acres and Mr. Reiss said he would be fine with that.

Mr. Reiss stated he was hearing that the property was going to be split into 40-acre pieces. Ms. Henry stated that was not true and then went to the plat and gave a detailed explanation of what the property owners intentions were. She explained that the owners were not trying to rezone the entire 241 acres. Ms. Henry explained if a person were to buy

a large piece of the property with the intentions of putting a subdivision in, they would have to come back to the zoning board to have it approved and at this point it would be spot zoning and the board most likely would deny it. Ms. Henry said someone could take the entire property and create 40-acre pieces leaving the zoning as A-1, Agriculture. She said each 40-acre lot could legally have a home on them. Ms. Henry said the state law just changed and the owners would not even have to ask for a building permit.

Ms. Caitlin said that the fear is the executors, and the real estate agent are looking to attract an investor that could possibly buy the property as an A-2, Agricultural Residential and down the road with a new board and want to subdivide it out into 8 or 9 lots. Ms. Caitlin said looking at the history of the A-2, Agricultural Residential the largest piece was a 4-acre piece. She said she didn't think it was a legitimate reason to rezone such a large piece of land because it was suggested by a real estate agent.

Ms. Boyes said doing the math of splitting the 241 acres into 40 acres pieces would allow for 6 legal homes without opposition.

Mr. Meyer replied to Ms. Caitlin's comment about an investor purchasing the rezoned land. He said that they were looking for someone to invest in the home to take care of the home and land and there would be a stipulation on the 9.930 acres that only one home could be built so it would not be possible for an investor to purchase the property and subdivide it into 8-9 lots for homes. Mr. Meyer said he and the family don't want to see the land get developed into a subdivision.

Speaking to the board Tom Kemp, 38619 229th Ave, LaMotte. Mr. Kemp said his concerns were the size of the rezoning and he believes this is a case of spot zoning.

Speaking to the board was Joseph Kies, 39239 239th Ave, LaMotte. Mr. Kies is an adjacent landowner and is opposed to the case. He said he thinks if the property gets rezoned it may cause more rezoning in the area. Ms. Boyes asked him if he would be ok if it was a smaller rezoning area and he said it would be better but would rather not see any zoning changes in the area. Mr. Kies said he didn't understand why it couldn't be auctioned off as is. Ms. Boyes thanked him for his comment but reminded him that it's their land. Mr. Kies said they as neighbors were protecting their interests.

Speaking to the board was Cynthia Arenz, 39585 239th Ave, LaMotte. Ms. Arenz said she is opposed to the rezoning request. Ms. Boyes asked if the rezoning area was smaller if she would still be opposed and Ms. Arenz said she would still be opposed to it. Ms. Arenz said it is their land and they have every right to sell it to make money but can do that without the rezoning.

Speaking to the board was Mary Moody, 6697 Mitchell Mill Rd, LaMotte. Ms. Moody asked what the reasoning behind the small A-2, Agricultural Residential. Ms. Henry said it was designed to allow family farms to create a smaller piece but also helped preserve the farmland. Ms. Henry said at one point they use to change to R-1, Residential which created more spot zoning. Ms. Henry said that there is nothing in the zoning ordinance that states it must be a specific number of acres. She said it has just been the general rule of thumb that they kept these A-2, Agricultural Residential pieces smaller.

Mr. George read in the A-2, Agricultural Residential zoning ordinance.

Mr. Schneider said that the A-2, Agricultural Residential zoning is necessary in Dubuque County which allows people to disburse their property and to maintain the house if they wanted to retire. He said all the A-2, Agricultural Residential cases only happen in or around A-1, Agricultural property. Mr. Schneider said when he started surveying in 1998 they would have zoned a case like this to a R-1, Residential and it was spot zoning that made no sense.

Mr. Schneider said the rezoning agreement will be drawn up and recorded at the courthouse that will state that no additional houses can be built on the remainder of the 40-acre piece. This document will be added to the abstract of the property so when an attorney does an opinion, they will be aware of the conditional rezoning agreement.

Mr. Arenz asked if the board would make an exception if a person that purchased the remainder of the 40-acre non buildable parcel was unaware of the condition and wanted to build a home. Ms. Henry said the recorded document would be filed and it states that they can't build on that land however, she would never tell anyone that they can't ask for permission from the Zoning Board.

Ms. Caitlin made a comment that this A-2, Agricultural Residential rezoning case is putting the county at risk for litigation. She said the application does not follow the ordinance.

Mr. Schneider asked Ms. Henry to clarify that in the past quite a few smaller A-2, Agricultural Residential have been done but also have attached A-1, Agriculture ground to them for larger parcels with a condition. Ms. Henry said those cases were because the land was adjacent to the owner and we could prove that they were farming and had over 40 acres of land that was being farmed.

Mr. Schneider explained if Mr. Weber was alive today and decided he wanted to stop farming he could split the 10 acres off and claim the farm exemption and no questions would be asked. He said the family is trying to do the same scenario.

Ms. Caitlin said it was not true because its an A-2, Agricultural Residential. Mr. Schneider said it would have been left A-1, Agricultural if Mr. Weber was still alive and platting like this has been done in the past. Ms. Henry also agreed it has been done in the past.

Mr. Arenz stated that it is not the same situation. He said Mr. Weber is not staying on the farm because he is deceased, and the children are not even planning to stay on the farm.

Ms. Flanagan asked the family what the significance of the 10-acre piece compared to the 4-acre parcel. Mr. Schneider said the realtor had recommended this to the family. Mr. Schneider asked the family if they would want to change the site plan or keep what was already submitted to the Zoning Board. Ms. Henry said if there are changes to the site plan it could be withdrawn and it would have to come back before the zoning board with a new application. Mr. Schneider said the family would like to keep the rezoning application as it is.

A motion was made by Mr. Soppe, **seconded by Ms. Boyes to approve the rezoning with the conditions that 9.930 acres more or less be rezoned around the existing home and buildings to A-2, Agricultural/Residential for one home only and the remainder will stay A-1, Agricultural. That the balance of the parcel is not allowed to have another dwelling unless the property is rezoned for that use. Mr. Soppe, Ms. Boyes, Ms. Scherrman, Mr. Breitbach, Mr. George & Ms. Dunkel voted in favor of the rezoning. Ms. Flanagan voted against the rezoning. The motion passed unanimously. Vote: 6-1.**

Plat of Survey of Weber's Second Addition – Final Plat

Plat of Survey of Lot 1 thru Lot 5 of Weber's Second Addition comprised of Lot 1 in Weber's First Addition Section 33, T88N, R3E, Mosalem Township, Dubuque County, Iowa.

The property is owned by the Estate of Lester A. Weber, Executor Jeanette Talbert and is located 3.37 miles southeast of the City of Dubuque along Dayton Road with a total of 241.514 acres surveyed. The property is zoned A-1, Agricultural with a pending ZC#07-22-22 requesting to rezone 9.930 acres to A-2, Agricultural Residential. The purpose of the plat is to divide the parcel to allow the family to sell the land and finalize the Estate.

The survey creates 5 lots. Lot 1 is an un-buildable lot and has a total of 2.598 acres surveyed and will be transferred to the neighbor, David Reiss. Lot 2 has a total of 86.858 acres surveyed with timber and will be sold at auction. Lot 3 has a total of 94.688 acres surveyed with cropland and will be sold at auction. Lot 4 has a total of 9.930 acres surveyed with a home and buildings and will be sold at auction. Lot 5 has a total of 47.440 acres surveyed and will be sold to a family member, Francis and Vicki Weber.

Lot 1 will use an existing field entrance through a neighboring farm off of Mitchell Mill Road. Lot 2 will use an existing field entrance off of Mitchell Mill Road. Lot 3 will use an existing field entrance off of Dayton Road. Lot 4 will use an existing residential entrance off of Dayton Road. Lot 5 will use an existing residential entrance off of Dayton Road.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St. North, Farley. Mr. Schneider told the board there is not a purchase agreement for Lot 1 and they are retaining it because of a potential title issue related to a fence line. He said the thought is it will get transfer with Lot 2. Ms. Henry said she was under the impression that Lot 1 was being transferred to David Reiss. Mr. Schneider said if there is not agreement made then it will be transferred with Lot 2. Mr. Schneider said they are trying not to transfer a title issue off to a buyer without having a remedy for the issue.

Speaking to the board was Cathy Caitlin, 6552 Mitchell Mill Rd, LaMotte. Ms. Caitlin said the plat could not be approved because Lot 1 violates the platting ordinance. She said you can't have a A-1, Agricultural lot be only 2.589 acres. Ms. Henry said Lot 1 is a non-buildable lot and this has been done to A-1, Agricultural lots this size in the past. Ms. Henry said she has documentation to prove these have been done even when Ms. Caitlin was on the Zoning Board. Ms. Caitlin said it violates the ordinance and needs to be at least 35 acres. Mr. Schneider said Iowa State Code allows surveys for sliver lots to correct title issues and the only way in Dubuque County that we can do this is through a subdivision process because we don't have a plat of survey process which Iowa Code allows for.

A motion was made by Mr. Breitbach, **seconded by Ms. Boyes to approve the plat. Mr. Breitbach, Ms. Boyes, Mr. Soppe, Ms. Scherrman, Mr. George, Ms. Dunkel voted in favor of the motion. Ms. Flanagan voted against the motion. The motion passed. Vote: 6-1.**

5. OLD BUSINESS:

Ms. Henry said ZC#06-18-22 Tim Lahey and Andrew Lahey A-1 Agricultural to A-2 Agricultural Residential, ZC#06-19-22 Eric & Meredith Lahey A-2 Agricultural Residential to A-1 Agricultural, ZC#06-20-22 Steve & Dawn Wilwert and Eric & Meredith Lahey A-1 Agricultural to A-2 Agricultural Residential, ZC#06-21-22 James & Linda Markham A-1 Agricultural to A-2 Agricultural Residential were all approved by the Board of Supervisors.

6. NEW BUSINESS:

Mr. Henry introduced our new board members Carmen Dunkel & Lisa Flanagan.

7. PUBLIC COMMENTS:

Ms. Scherrman went back to Ms. Caitlin's comment about the platting ordinance being an old ordinance and asked if the ordinances that were online were the current ordinances. Ms. Henry said they are the current ordinances and Mr. George did read the correct & current ordinance.

8. ADJOURNMENT: A motion was made by Mr. Breitbach, **seconded by Ms. Boyes to adjourn the meeting. The motion passed unanimously. Vote: 7-0. The meeting ended at 8:08 p.m.**