

Dubuque County Zoning Commission

Minutes of the August 15, 2023 meeting.

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

1. ROLL CALL: Members present at the Dubuque County West Campus, 1225 Seippel Rd: Dave George, Kevin Soppe, Kathleen Scherrman, Ron Breitbach, Jerry Sigwarth and Lisa Flanagan. Member present via zoom: Sam Boyes. Member absent: Lisa Flanagan. Staff Present at the Dubuque County West Campus, 1225 Seippel Road: Tammy Henry and Amy Schmerbach. Planning & Development Director present at the Dubuque County West Campus, 1225 Seippel Rd: Ed Raber.

2. APPROVAL OF MINUTES: A motion was made by Ms. Boyes, **seconded by Mr. Sigwarth, and passed unanimously to approve the minutes of the July 18, 2023 meeting. Vote: 6-0.**

3. PLAT APPROVAL:

Plat of Survey of Miller Acres No. 4 – Final Plat

Plat of Survey of Lot 1 and Lot 2 of Miller Acres No. 4, a consolidation and division of Lot 2 NE-SW, the SE-NW, except Lot 1 thereof and Lot 1 SW-NE all in Section 33, T87N, R2W, Cascade Township, Dubuque County, Iowa.

The property is owned by Terry & Lynda Miller and is located 2.76 miles west of the City of Cascade along Goose Hill Road with a total of 34.82 acres surveyed. The property is zoned A-1, Agricultural and A-2, Agricultural Residential. The A-2, Agricultural Residential on ZC#06-17-23 was to allow the son and daughter in law to build a new home so they can continue to assist in the farming operation. The purpose of the plat is to separate the rezoned area for the construction of the new home.

The survey creates 2 lots. Lot 1 has a total of 33.22 acres surveyed with two hog barns and will remain in current ownership and agricultural use. Lot 2 has a total of 1.60 acres surveyed and will be sold to the son for the construction of a new home.

Lot 1 will use an existing field entrance off of Goose Hill Road. Lot 2 will use an approved residential entrance permit #23-18 off of Goose Hill Road.

Speaking to the board was Mike Weber, Weber Land Surveying, 26789 46th Ave, Bernard. Mr. Weber said the plat was a follow up of a recent rezoning case that was approved.

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

A motion was made by Mr. Sigwarth, **seconded by Mr. Breitbach to approve the plat. The motion passed unanimously. Vote: 6-0.**

Plat of Survey of Windy Ridge Subdivision Plat 4 – Final Plat

Plat of Survey of Lot 1 and Lot 2 of Windy Ridge Subdivision comprised of Lot 3 in Windy Ridge Subdivision Section 9, T89N, R1E, Center Township, Dubuque County, Iowa.

The property is owned by Ronald & Jessalynn Breiner and is located 1.92 miles northwest of the City of Asbury along Five Points Road with a total of 30.062 acres surveyed. The property is zoned R-2, Single Family Residential. The purpose of the plat to separate a lot to sell and create another lot for future development.

The survey creates 2 lots. Lot 1 has a total of 26.102 acres and will remain in current ownership and agricultural use. Lot 2 has a total of 3.960 acres surveyed and will be sold.

Lot 1 will use an existing field entrance off of Five Points Road. Lot 2 will use an entrance off of Five Points Road. Ms. Henry said the Engineers office is still working on approving the entrance for Lot 2.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. Mr. Schneider said the reason for the division was due to a transmission line that runs through Lot 3 of Windy Ridge Subdivision, and he said it made sense to use the center line of the power line easement as the property line.

Ms. Henry said the Engineers office would be meeting with the Breiner's Friday to determine the best access point for both lots for future development of a major subdivision.

A motion was made by Mr. Breitbach, **seconded by Mr. Sigwarth to approve the plat. The motion passed unanimously. Vote: 6-0.**

4. REZONING CASES:

ZC#08-20-23 Daryl & Sandra Klein A-1 Agricultural to A-2 Agricultural Residential

The applicants are requesting to rezone from A-1, Agricultural to A-2, Agricultural Residential 4.225 acres to be allowed to separate the existing home and shed to sell to their son and to also create a lot for the construction of a new home for themselves. The property is located .47 miles north of the City of Rickardsville along Klein Lane and is legally described as NW NE and Lot 1-1-1 E ½ NW both in Section 20, T90N, R1E, Jefferson Township, Dubuque County, Iowa.

The property is owned by Daryl & Sandra Klein. Zoning in the area includes A-1, Agricultural to the north, south, east and west. A-2, Agricultural Residential to the southwest. R-2, Single Family Residential to the south. The A-2, Agricultural Residential to the southwest on ZC#04-10-23 was to allow the sale of the existing farm home and buildings.

There are no previous zoning cases attached to this property. There are no special use permits attached to this property. Six (6) letters were sent to the property owners and the City of Rickardsville was notified.

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 said the Klein's are looking to build a new home on the west side of the property and the most logical access for the new home would be off Klein Lane which is a dead-end road that is maintained by the county. Mr. Schneider said the rezoning site plan is set up to show a few access & utility easements to service the existing home and excess crop ground.

Ms. Henry explained to the board that the plat that will follow the rezoning case as it will explain that there will not be 2 homes on the same parcel of land. She said the rezoning request would result in 2 homes on 80 acres with a condition that the remaining balance of land will not be allowed to have another dwelling unless the property is re-zoned for that use. She said the 2 homes would be in the same area because they will be sharing a well.

Speaking to the board was Jake Decker, 20007 Klein Lane, Durango. Mr. Decker said he was against the case. He said he had just recently purchased a home off Klein Lane and he has owned an Implement lot on Klein Lane for the last 10 years. Mr. Decker said that he had to appear before the Board of Adjustment 5 years ago for a Special Use Permit to allow him to refurbish agricultural equipment. He said that Mr. Klein at that time was against his case because he said the property was an eyesore. Mr. Decker said it does not make sense as to why Mr. Klein would want to build a second home on his property and continue driving past his implement lot that was an eye sore to him. Mr. Decker said Mr. Klein has other farm ground that he could choose to build a home on other than Klein Lane. Mr. Decker said the Klein's are not farmers because they rent the land out. Mr. Decker said that he has talked to neighbors, and they are against it as well. Mr. Decker stated he would have started a petition against the case if he had been notified sooner. He said he had just received his letter Friday. Ms. Schmerbach explained that the letter was returned to the Zoning office because the property was still under the previous owners name in the system so she looked up the new information and immediately resent the letter out to Mr. Decker Thursday so he would be notified of the meeting. Mr. Decker asked why his parents were not notified of the meeting and Ms. Henry said their property sits outside of the notification area. Mr. Decker said he knows if the Zoning Board approved the case it will then go before the Board of Supervisors for approval. He said Mr. Klein is a former County Supervisor therefore he feels the rezoning request will automatically pass. He explained to the board if they would review past meeting minutes, Mr. Klein as a County Supervisor denied multiple applications similar to what he is now requesting for himself.

Mr. Decker asked the board if they could potentially build a third home for another child at the end of Klein Lane? Ms. Henry said not on the specified 80 acres however if they requested to build a home on a separate 40-acre piece that currently does not have a home, she said the county could not stop them if they have enough land and the access.

Speaking to the board was Mark Riniker, 26826 Dyersville East Rd, Farley. Mr. Riniker said 10 years ago he applied for the same rezoning request, and he was denied by the Dubuque County Supervisors because it did not meet the zoning ordinance and his case went to trial. Mr. Riniker said that Mr. Klein based his decision on never using agricultural land for housing. Ms. Henry said in 2013 they had adopted the A-2, Agricultural Residential however they paused the applications because Mr. Riniker's case was still an active trial. Ms. Henry said she believed in late 2014 early 2015 they started to accept the applications. Mr. Riniker said his rezoning request was approved by the Zoning Board but his application was denied by the Dubuque County Board of Supervisors, so he sued the county and he won the case in District Court but lost the case at the state level. He said he

ended up having to burn down a \$130,000 home to build a new home because he was denied his rezoning request. Mr. Riniker said he was upset of what he went through when Mr. Klein was a Dubuque County Supervisor; however, he was glad the rules have changed and the rules are now more accessible. Mr. Sigwarth said we have new board members since then and the board has spent countless hours refining the ordinances to make them user friendly and to also avoid litigation. Mr. Sigwarth said the employees in the Zoning Office has since changed and they are head to shoulders above the previous staff.

A motion was made by Ms. Boyes, seconded by Mr. Sigwarth to approve the rezoning of 2.552 acres more or less be rezoned for a new home, which will be known as Lot 2 Klein Lane Subdivision, and 1.673 acres more or less be rezoned around the existing home and buildings, which will be known as Lot 3 Klein Lane Subdivision both to A-2, Agricultural Residential and the remainder will stay A-1, Agricultural. That the balance of the NW NE and Lot 1-1-1 E ½ NW, which will be known as Lot 1 Klein Lane Subdivision Section 20, T90N, R1E, Jefferson Township, Dubuque County, Iowa is not allowed to have another dwelling unless the property is re-zoned for that use. The motion passed unanimously. Vote: 6-0.

Plat of Survey of Klein Lane Subdivision – Final Plat

Plat of Survey of Lot 1, Lot 2 and Lot 3 of Klein Lane Subdivision comprised of Lot 1 of Lot 1 of Lot 1 and Lot 2 in the Subdivision of the E ½ of the NW ¼ and part of the NW ¼ of the NE ¼ all in Section 20, T90N, R1E, Jefferson Township, Dubuque County, Iowa.

The property is owned by Daryl & Sandra Klein and is located .47 miles north of the City of Rickardsville along Klein Lane with a total of 78.736 acres surveyed. The property is zoned A-1, Agricultural and A-2, Agricultural Residential. The A-2, Agricultural Residential on approved ZC#08-20-23 was to separate the existing home and shed to sell to their son and to also create a lot for the construction of a new home for themselves, which is the purpose of this plat.

The survey creates 3 lots. Lot 1 has a total of 74.511 acres surveyed with two sheds and a barn and will remain in current ownership and agricultural use. Lot 2 has a total of 2.029 acres surveyed and will create a lot for the owners to build a new home. Lot 3 has a total of 1.673 acres surveyed with a home and shed and will be sold to their son.

Lot 1 will use an existing field entrance off of Klein Lane. Lot 2 and Lot 3 will use an existing residential entrance off of Klein Lane.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. Mr. Schneider said the plat shows better definition to the lot lines after the rezoning case. He said the well is located on Lot 3 on the west side of the home and the septic is located in the lower part of Lot 3. He said Lot 1 will be the remainder of the property that will be locked up with a condition.

Ms. Henry explained to the board that the zoning case and plat will go before the Board of Supervisors next and if they deny the rezoning request then the plat will not be passed either.

A motion was made by Mr. Sigwarth, **seconded by Mr. Soppe to approve the plat. The motion passed unanimously. Vote: 6-0.**

5. OLD BUSINESS:

Ms. Henry said we did not have zoning cases that went to the Board of Supervisors because we had an extra week within the month. Ms. Boyes asked Ms. Henry if she had additional information regarding providing the public with contact information for board members.

Ms. Henry said she had no additional information.

6. NEW BUSINESS:

Ms. Henry introduced Mr. Ed Raber as the Dubuque County Planning & Development Director. Mr. Raber said he will be helping the entire county with future planning & development.

Mr. Raber passed out a memo to the Zoning Board Members regarding the Solar Ordinance. Ms. Henry said the Solar Ordinance was approved by the Dubuque County Supervisors however, it was never codified/published by the County Auditor. Mr. Breitbach said he remembered the Zoning Board worked on it and he felt that the Zoning Board did not have the qualifications to make those decisions and he said the Board of Supervisors agreed so the Solar Ordinance was never completed. Ms. Henry said she will talk to the County Auditor to clarify the status of the ordinance.

Mr. Sigwarth left the meeting at 6:50 p.m.

Ms. Boyes said the Farm Bureau stepped in and wanted further review because the ordinance as it stood was not in line with other Solar Ordinances throughout the State of Iowa.

Mr. Breitbach said that he did not vote to approve a Solar Ordinance for Dubuque County nor did the Zoning Commission. Ms. Boyes agreed with Mr. Breitbach's statement. Mr. Breitbach said it was his understanding that the Board of Supervisors took back the directive from the Zoning Commission. He said during the meetings he repeatedly stated as a commissioner that he felt he did not have the confidence to create an effective Solar Ordinance. Mr. Breitbach said he was confused and believes there is no Solar Ordinance in place for Dubuque County. Ms. Henry said she believes he is correct. She said Mr. Raber had talked to the County Auditor Kevin Dragatto and their conversation was different from what she thought because she believes it was stopped. Mr. Raber said the auditor said the ordinance was in effect but has not been recodified so there is a gray area of information. Ms. Henry and Mr. Raber said they would get clarification on this. Mr. Breitbach asked if the Board of Supervisors could decide on the Solar Ordinance without the recommendation from the Zoning Commission? Ms. Henry said she thought they could however if the Zoning Commission did not present and review a Solar Ordinance with the Board of Supervisors, she did not know what they would have been reviewing to make that decision.

Mr. Raber said the Dubuque County Supervisors reviewed what had been created so far for the Solar Ordinance not necessarily the completed ordinance. He referred to it as the “current document”.

Ms. Henry read in meeting minutes from January 18, 2022 for more clarity of the Solar Ordinance status.

ZC#10-21-21 Chapter 1-Zoning Ordinance Amendments (Board of Supervisors requested the Zoning Commission to revisit)

This amendment to the Dubuque County Code of Ordinances, Chapter 1- Zoning, includes a new addition to **PART 2**. This new addition adds **SECTION 1-19** titled UTILITY-SCALE SOLAR ENERGY SYSTEMS.

This section was previously approved by the Zoning Commission on October 12, 2021. Prior to the Board of Supervisors hearing there were concerns from local Utility/Solar Companies regarding the regulations in the new proposed Utility-Scale Solar Energy Systems Ordinance. The Board of Supervisors requested that the concerns be heard in a public hearing with the Zoning Commission and addressed before the Board of Supervisor’s make their final decision.

Ms. Henry said the people that wanted to have input on this Ordinance are not able to make it, so she asked that this case get tabled.

A motion was made by Mr. Sigwarth, **seconded by Mr. George to table the amendments. The motion passed unanimously. Vote: 6-0.**

Mr. Raber said the current document is information that was gathered from around the State of Iowa. He said there is three items that he has identified that may deserve to augment or amend the current solar document. They were setbacks, lot coverage and decommissioning.

The Zoning Board of Commission, Mr. Raber and Ms. Henry had discussed the three items but did not make changes to the current document at this time. A more formal presentation as an agenda item will be made at the Zoning Board’s September meeting.

Ms. Boyes left the meeting at 7:20pm.

7. PUBLIC COMMENTS:

8. ADJOURNMENT: A motion was made by Mr. Soppe., **seconded by Mr. Breitbach to adjourn the meeting. The motion passed unanimously. Vote: 4-0. The meeting ended at 7:52 p.m.**