

County hears Lake Mills rezoning petition

By Alexa Zoellner Union staff writer | Posted: Wednesday, October 28, 2015 10:12 am

JEFFERSON — The Jefferson County Board of Supervisors heard significant commentary Tuesday regarding the rezoning of 3.2 acres of land in the Town of Lake Mills.

Owners Philip and Sandra Bittorf requested that the 3.2 acres, part of a 40-acre parcel located at N7103 Stoney Creek Road, be rezoned from A-1 Exclusive Agricultural to A-2 Agricultural and Rural Business in order to accommodate their business, Mid-State Traffic Control. A conditional use permit to store non-farm equipment and/or contractor's equipment and materials in the three existing sheds on the property also was part of the request.

Mid-State Traffic Control supplies traffic signals, highway signs, barricades, traffic control barrels and stripping services for use during road construction, according to a letter to the county board from the Bittorfs' attorney, Tyler Wilkinson of Axley Attorneys.

The county board rejected an ordinance that would have denied the Bittorfs' zoning petition in a vote of 3-24. Supervisors Donald Reese, Peter Hartz and Walt Christensen voted yes. Supervisors Amy Rinard and Jennifer Hanneman were absent from the vote.

The decision was made in accordance with Wisconsin State Statute 59.69(5)(e)5, which states "(the county board) may refuse to deny the petition as recommended by (the Planning and Zoning Committee), in which case it shall refer the petition to the agency with directions to draft an ordinance to effectuate the petition and report the ordinance back to the board which may then enact or reject the ordinance."

"What the Planning and Zoning Committee has to do is, they basically have to redraft the ordinance (to approve the petition) and resubmit it to the county board," county corporation counsel J. Blair Ward explained. "Then the action before the county board would be to approve



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OVERRULED — The Jefferson County Board of Supervisors on Tuesday rejected an ordinance that would have denied a petition for rezoning by Philip and Sandra Bittorf. The land in question is 3.2 acres of the Bittorfs' 40-acre property located on Stoney Creek Road in the Town of Lake Mills. — Daily Union photos by Alexa Zoellner.

the petition as submitted by the Bittorfs. (At that point), an affirmative vote would mean they approve the petition and a negative vote would mean they don't. So basically, we're going to try it all over again (at the next county board meeting) with a few minor differences.”

Ward said that individual board members can voice against the petition at the county board meeting, but the Planning and Zoning Committee itself will take no action.

The ordinance to deny the zoning petition was drafted by the Jefferson County Planning and Zoning Committee after findings from a Sept. 14 site inspection, a Sept. 17 public hearing and a Sept. 28 committee meeting led it to recommend denial of the petition.

“Information continues to trickle in (throughout the approval process) ... and it can skew peoples opinions,” Supervisor Steven Nass, chairperson of the Planning and Zoning Committee, said. “When I sat and listened to this petition at the town planning committee, there was one opposed, one for. The next week, there was more.

“When (the Planning and Zoning Committee) came to our public hearing, there were 13 opposed and zero came in favor of this petition,” he continued. “All the people that spoke in public comment tonight were not participatory in our decision making. We can only make a decision based on the information we have that day and that's how we made our decision.”

Other members of the Planning and Zoning Committee are Supervisors Greg David, Reese, Rinard and George Jaeckel.

The decision followed the August approval of the Bittorfs' request by the Town of Lake Mills Planning Commission and the Town of Lake Mills Board of Supervisors.

In order for land that is zoned A-1 Exclusive Agricultural to be rezoned to a zoning district that is not a certified farmland preservation zoning district, there are nine criteria that must be met: a) the land is better suited for a use not allowed in the A-1 district, b) the rezoning is consistent with the County Comprehensive Plan, c) the rezoning is substantially consistent with the Jefferson County Agricultural Preservation and Land Use Plan, d) the rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoning for or legally restricted to agricultural use, e) there will be adequate public facilities to serve the proposed and potential land use changes that would be enabled by the rezoning, f) the burdens on local government for providing the needed services to the proposed and potential land use changes that would be enabled by the rezoning are reasonable, g) the development will not cause unreasonable air or water pollution, soil erosion or adverse effects on valued natural areas, h) the soil productivity rating has been considered in the location of the area proposed for rezoning and I) the remaining A-1 parcel shall front on a public road for a minimum distance of a least 66 feet. Access to the lot shall be provided within this frontage.

“If all of those nine criteria are met in (the board’s) opinion, then they can approve the rezoning,” Ward said. “If one of the nine isn’t met, they legally can’t do it. It’s not if you like somebody or you like business ... that’s not a criteria in the state statues or county ordinances. I think most people feel for the Bittorfs — they want to see them succeed in their business — but that’s not a criteria. I think that’s the most difficult thing in a situation like this where there’s a lot of emotion.”

That emotion was expressed through the 13 citizens, 12 expressing support and one against, who took part in the public comment portion of the hearing.

Those in support of the rezoning included Hope Oostdik, Karen Battist, Ellen Rust, Caryn Hansen, Elaine Schallmayer, Erik Halverson, Jean Lenz, Roselyn Bittorf, Aaron Bittorf, Carol Eck, Brandon Wilke and Terry Adams.

“I’m a neighbor of the Bittorfs and I do support them,” Lenz told the board. “I feel that people who live on that road, one reason they like living there is because it is very private, very personal, and I feel that if you own property there and you’re not breaking any laws and just minding your own business, you should be able to do with your property what you desire.”

In addition to general support, many speakers expressed support of the Bittorfs’ business.

“Philip brings gainful employment and he’s not reinventing the wheel with this property,” Aaron Bittorf, a relation and employee of Philip Bittorf, said. “The sheds are already there and have been for years. He’s just using the existing structures that are there to house his supplies. It’s storage, that’s basically all it is.”

The fact that work does not take place on the property was later reiterated by Wilkinson, who said that “employees go to the property, pick up work trucks and supplies and then go to the work sites.”

Speaking in opposition of the rezoning was John Phillips, a neighbor of the Bittorfs, and attorney Jay Smith of Neuberger, Griggs, Sweet and Smith LLP, who represents eight property owners opposed to the rezoning.

“My clients oppose this request because they feel it’s not in compliance with the Jefferson County zoning ordinance (and that it does not meet the nine requirements to be rezoned),” Smith said. “Additionally, my clients feel that allowing the business activity that is the basis for this requested amendment, and ultimately the conditional use permit if it gets to that point, will be harmful their use and enjoyment of their properties and will be detrimental to the property values. My clients have concerns about the noise and commotion, site issues related to storage of materials and serious traffic concerns.”

Phillips expressed concerns for the safety of his three young children due to the increased traffic created by the Bittorfs' business.

"This is not personal," Phillips said. "I don't believe there's enough space (between the blind curve on the road and my driveway) to ensure the safety of my family."

Smith expressed disappointment after the conclusion of the hearing.

"The problem is we think there wasn't really a true look at the legal issues," Smith said. "It seemed to become more of a political thing and about the Bittorfs' personal story, which, we feel for them, but under the zoning ordinances and the relevant law, we don't think the right decision was made. I am adamantly in that camp and as an attorney living in the county, I think that that's unfortunate because our supervisors need to do that — that's their job."

Wilkinson, meanwhile, was pleased with the results.

"We are heading back to the zoning committee," Wilkinson said after the meeting. "That's where we hammer out the conditional-use requirement — things like reasonable hours of operation, whether or not we're going to screen certain things, what's stored in- or outside. Those are the things that, hopefully, we'll be able to negotiate and come to a good agreement with the neighbors on. That's where this thing needs to end — we need an agreement with the neighbors. I'm very hopeful that we'll be able to get one."

Nass and Ward also expressed approval of the decision to send the ordinance back to the Planning and Zoning Committee.

"To refer it back to the committee I think is a good decision," Ward said. "It doesn't finalize anything, it just requires additional thought and argument in this whole situation and I think that was the concern of a lot of the supervisors — it required more thought and consideration — and now that's what's going to happen."