

## County narrowly backs rezoning

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JEFFERSON — A petition to rezone 3.2 acres of land in the Town of Lake Mills was approved by the Jefferson County Board of Supervisors Tuesday after much debate.

Owners Philip and Sandra Bittorf had asked that 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.

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

The 16-13 vote of approval followed almost 80 minutes of debate among supervisors. In addition, 38 people voiced their support or opposition of the rezoning during nearly 30 minutes of public comment. The number of those speaking in support were relatively equal to the number speaking in opposition.

Voting "yes" on the measure were county Supervisors Augie Tietz, James Braughler, Ron Buchanan, Dwayne Morris, Michael Wineke, Al Counsell, Kirk Lund, Russell Kutz, Jim Mode, John Kannard, Blane Poulson, George Jaeckel, Matthew Foelker, Gregg Patrick, Glen Borland and Dick Schultz.

Casting "no" votes were Supervisors Richard Jones, Mike Kelly, Greg David, Amy Rinard, Donald Reese, Peter Hartz, Ed Morse, Steven Nass, Laura Payne, Jennifer Hannemann, Jim Schroeder, Paul Babcock and Walt Christensen.

The controversial decision followed several meetings of various entities, including the Town of Lake Mills Planning Commission, Town of Lake Mills Board of Supervisors, Jefferson County Planning and Zoning Commission and Jefferson County Board of Supervisors.

In August, the Town of Lake Mills Planning Commission and the Town of Lake Mills Board of Supervisors approved the Bittorfs' petition.

The Jefferson County Planning and Zoning Committee performed a site inspection on Sept. 14 and a public hearing was held Sept. 17, during which significant opposition from the public was heard. On Sept. 28, the committee voted 4-1 to deny the petition.

Members of the Planning and Zoning Committee include Nass, David, Reese, Rinard and Jaeckel. Jaeckel voted to approve the petition.

According to a report from the Planning and Zoning Committee to the county board, the committee based its recommendation for denial upon the findings that the proposal is in an area that is not relatively isolated and rural in nature and would be utilizing a narrow town road. Therefore, it conflicts with the purpose of the A-2 zoning district as described in the Jefferson County Zoning Ordinance and the A-2 Agricultural and Rural Business Zoning District Policies of the Jefferson County Agricultural Preservation and Land Use Plan.

Also involved in the committee's decision were nine criteria that must be met 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.

The criteria are as follows: 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 zoned 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 front-age.

Jefferson County corporation counsel J. Blair Ward explained that, should even one of the criteria not be met, the county board legally could not approve the rezoning.

Criteria points a, b, c and e were found by the majority of the Planning and Zoning Committee members to not be met. Criteria points d, f, g, h and i were determined not to be in question.

The matter went before the county board on Oct. 27, during which an ordinance was presented to deny the Bittorfs' petition. County supervisors voted 3-24 to send the ordinance back to the Planning and Zoning Committee, which would be required by law to redraft the ordinance to approve the petition.

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.”

“When (the petition) was initially presented to the county board, it was a motion to deny,” Ward said. “If a majority of board members had voted in favor of denying the rezoning, then it would have been over with, but that didn’t happen. Because there weren’t enough board members voting in favor of denying it, it had to go back to the Planning and Zoning Committee based on state statute (and be redrafted as) a motion to approve the rezoning. That’s what was voted on (Tuesday).”

While not allowed to decide how to draft the ordinance, the Planning and Zoning Committee was allowed to send the redrafted ordinance back to the county board with a recommendation.

“Our hands are tied,” Rinard said during the Nov. 30 meeting. “We have to send (the ordinance) back (to county board) in a certain way. ... State statute can tell us what to do, but we don’t have to like it.”

In its Nov. 30 meeting, the Planning and Zoning Committee voted 4-1 to reaffirm the original decision to recommend denial of the Bittorfs’ petition. Jaeckel again voted to recommend approval of the petition.

The county board received the recommendation Tuesday. In addition, supervisors received a letter from the corporation counsel explaining that they must discuss not only the nine criteria (listed above), but also must consider the purpose and intent of the A-2 Zoning District and A-2 detailed policies in the Agricultural Preservation and Land-Use Plan.

The Jefferson County Zoning Ordinance states the purpose of A-2 Agriculture and Rural Business is “to provide for the proper location and regulation of manufacturing, storage warehousing and related marketing or industrial activities that are related to the agricultural industry and otherwise suited to a relatively isolated, rural location.”

According to Rob Klotz, director of the Planning and Zoning Department, the Bittorfs’ business would fall under conditional use ii, storage of contractor’s equipment and materials.

“Storage of contractor’s equipment is meant for the plumber, the electrician, all those types of businesses that have equipment,” Klotz, who opposed the rezoning, said. “They might have trailers and the property is used for the storage of that. It’s basically a business that is not done at the site. They store the equipment there, but they go work somewhere else.”

Klotz and Nass, chairperson of the Planning and Zoning Committee, stated that many of the points are subjective. Nass explained that, as long as the county board registered valid arguments for its reasoning, it could decide to approve the petition.

“It’s not a question of whether we are business-friendly or support business or don’t,” Nass explained. “That’s not the question. The question that the Planning and Zoning Committee needs to hear (from the county board) is a good, solid argument as to why we are in error of interpretation of the law. We must follow the law and not base this on our emotions.”

The main debate among the supervisors was whether the Bittorfs’ business was agricultural related, if there were adequate public facilities (mainly Stoney Creek Road) to serve the land-use changes and if the rezoning was consistent with the county comprehensive land-use plan.

“When everybody comes saying (the Bittorfs’ business) has nothing to do with farming, they have everything to do with farming,” Jaeckel said. “Every single farm in the county uses public roads to get from their field to their farm. I don’t know one of them that doesn’t use a single public road. Therefore, this fits it very well because (Bittorf) enhances the safety of roads, especially when the farmers are doing harvest work or planting.

“This business fits in very well with farming for barricade and one-way traffic and stuff like that, he continued. “I don’t know any reason this would not fit in this area other than the neighbors think somebody might drive too fast down the road.”

Buchanan, Tietz and Schultz expressed similar thoughts.

“I will grant that the A-2 zoning has been stretched further than (the Planning and Zoning Committee) we’ve desired in some instances,” Nass said. “But we’ve always been able to find in some way that the business is related to agriculture in an isolated, rural area. Unfortunately, the Stoney Brook Road in question, (the Planning and Zoning Committee) felt was not isolated with numerous residences and that the petitioners business is not agriculturally related.”

Nass said the road is curvy and narrow with impaired sight lines and that the business in question does not need to be there in order to operate. The committee felt it could operate in a city or village industrial park just as well.

Agreement was expressed by David, Christensen and Rinard, among others.

Ultimately, after reviewing the nine criteria, the majority of the county board members found that all nine requirements were met.

“Without question (the supervisors did their job in discussing the petition),” Ward said after the meeting. “It’s important that all nine points are addressed, even if everyone feels (a point) is not an impediment to granting a rezoning. It still needs to be brought out on the record, someone needs to say something about it — at least mention it in the record — and discuss it to the extent that it needs to be discussed.”

Ward explained that failure to discuss even one of the points would be grounds for an appeal.

“It would be grounds for a circuit court to send it back and say, ‘do it again and this time, do it right,’” he said. “I don’t want to see that happen, so that’s why I made sure all the criteria were discussed during the meeting. It was already discussed at the Planning and Zoning Committee, but they’re not the decisionmaking committee. (The Jefferson County Board of Supervisors) is the decisionmaking body and this is the official record that would go to the circuit court on appeal.”

Schroeder, county board chairperson, agreed with Ward.

“I thought that the board was really diligent in considering all the factors,” Schroeder said. “As we heard from the debate, some of these are judgement calls and you get disagreement on how you interpret a certain portion of the ordinance. But I think the board did an outstanding job of really taking a close look at the issues and making the best decision.”

While the rezoning has been approved, the Bittorfs’ process to legally run their business is not yet complete, according to Ward.

“Currently, the business is operating without a county permit; therefore, it’s operating illegally,” Ward said. “It’s been doing that for some time, from what I’ve been told. In order for the business to operate legally, two things need to happen. One, the business needs to get their property rezoned so that it’s an appropriate type of operation in that area. Two, once they get it rezoned to A-2, they then have to go back to the Planning and Zoning Committee and ask for a conditional-use permit.”

The conditional-use permit is a chance for the Planning and Zoning Committee to put conditions on how the business operates, Ward explained. Such conditions potentially could include hours of operation and requiring inside storage at all time.

“Whatever the Planning and Zoning Committee feels is reasonable is conditions they may impose,” he said. “That’s something that’s also subject to a public hearing where the public can comment on what they would like to see.”

The conditional-use permit is dealt with only by the Planning and Zoning Committee. It will not be brought before county board for approval.

Other business

In other business Tuesday, the board:

- Unanimously approved a resolution authorizing entry into contracts for court-appointed Guardian ad Litem and adversary legal counsel services for a fixed annual cost.

“Guardian ad Litem are court-appointed attorneys for all sorts of cases ... representing the interest of kids,” Jefferson County Circuit Court Judge William Hue said. “We have injunctions

where kids as young as 12 ask for an injunction and they get a lawyer. (Guardian ad Litem) are lawyers for kids.”

These cases include providing Guardian ad Litem and adversary legal counsel services for parties in guardianships, protective placements, restraining order/injunctions, estate matters, paternity, family, children in need of protection/services, termination of parental rights and other miscellaneous matters as required by the court.

Funding for the contracts has been included in the 2016 Jefferson County Clerk of Courts budget and will continue to be funded in subsequent years.

- Unanimously approved resolutions authorizing the termination of insurance coverage with the Local Government Property Insurance Fund (LGPIF) and entry into contracts with other vendors to provide insurance coverage to Jefferson County.

The reason for the termination of the contract with LGPIF were changes within LGPIF that included a significant increase in premiums. In the case of Jefferson County, the increase was from \$103,977 to \$167,334 per year.

Jefferson County worked with T.E. Brennan Company in seeking competitive bids for coverage to replace the coverage currently held through the LGPIF. The contract with LGPIF will be terminated Dec. 31, 2015.

The county plans to enter into a contract with Chubb through M3 for Real and Personal Property and Contractor’s Equipment and Monies and Securities, and a contract with Liberty Insurance through Wisconsin Municipal Mutual Insurance Company for auto coverage. The total cost will be \$130,251. Adequate funds are in the 2016 budget to cover this cost.

- Unanimously approved a resolution authorizing the execution of state human services contracts, consortium agreements and professional/care provider contracts.

The Jefferson County Human Services Department contracts with state agencies, consortiums and in excess of 100 professional and care providers to fulfill its statutory duties. Each year contracts are renewed and/or updated with additional providers. State law requires the county board to approve the contracts.

- Unanimously approved a resolution authorizing entry into an amended agreement with the Wisconsin Department of Transportation to allow snowmobiles to use designated portions of the Glacial River Trail as snowmobile trail-crossing points.

- Accepted a donation of a perpetual agricultural conservation easement from Thomas and Margaret Burlingham. The donation consists of 38.92 acres of cropland located on Island Road in the Town of Palmyra.

- Approved appointments of Morris, John Rhiel and Linda Ager to the Bridges Federated Library System Board. Morris was appointed for a one year term, Rhiel for a two year term and Ager for a three year term.