

The Muscatine County Zoning Commission met in the Board of Supervisors Office on Friday, September 2, 2022, with Chairperson Tom Harper and board members Carol Schlueter, Martha Peterson, Virginia Cooper present, Brad Akers came in late but was present for the hearing. Eric S. Furnas, Planning, Zoning & Environmental Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Sondra Bateman, Russell Bateman and Josh Egolf.

Tom Harper: I will open this public hearing by reading the mission statement. The Muscatine County Zoning Commission is a five-member group of residents of the County who are appointed by the Muscatine County Board of Supervisors. We serve as non-professionals and without compensation. Our purpose is to advise the Muscatine County Board of Supervisors on managing the growth of the County. This involves reviewing subdivisions, rezoning requests, the use of public property, and reports related to land use policy and long-range planning. Recognizing that our decisions will not satisfy everyone, we attempt to base our decisions on what is best for the long-term interest of the County. We ask for your input, pro or con, on issues before us in order that we may formulate the best decisions possible. Please take this opportunity to share your thoughts and concerns with us. Our recommendations are not taken lightly by the Board of Supervisors, but the Board of Supervisors, your elected representatives, make the final decisions on all issues. Okay, all the board members were sent minutes from the last meeting. If there are no changes or corrections, they would need to be approved. Is there a motion to accept the minutes as written?

Virginia Cooper: I will move to approve the minutes as written.

Tom Harper: Is there a second?

Carol Schlueter: I'll second it.

Tom Harper: Okay, there has been a motion to approve the minutes as written and it has been seconded. Any other questions or comments? Not hearing any, all in favor of the motion please say Aye (4) Opposed (0) Absent (Akers-came in late and was not present for this vote). The motion is approved, the minutes are approved as written.

Tom Harper: Okay, for the owner or spokesperson we have one member missing right now, but he is on his way. But just in case he does not make it here, in order for your request to get a passing recommendation onto the Board of Supervisors, it has to be at least three yes votes. So if it's a tie vote, the request is denied. You have the option at any time here to ask, before we take a vote, to have us table this until next month. But I can't guarantee that we will have five board members the next month. But it's your option. It's like I say, he's on the way. So Eric, would you read the request?

Eric Furnas: I mean, I would urge you... I mean, just given the gravity of a rezoning and I think that clock is fast. I mean, since he's on his way... but it's your choice. He texted me several minutes ago saying he was on his way. I can read the request and see if he is here by then. Zoning Agenda Item #01. Joshua M. and Rachel R. Egolf, Record Owners, request approval to rezone their property located in Montpelier District, in the SE $\frac{1}{4}$ of Sec. 1-T77N-R1E, 1654 Zale Avenue, containing approximately 10 acres from the present A-1 Agricultural District to the proposed R-1 Residential District.

Tom Harper: Was there any correspondence?

Eric Furnas: No sir.

Brad Akers: My apologies, we had detours and I had to go around.

Eric Furnas: Oh, no problem. We just read the request, we haven't started anything else.

Brad Akers: Okay.

Virginia Cooper: So while we are waiting, can I have you clarify some map questions for me? On the county map that she has given us, the red circled area that we are looking at...to the Scott County side, that's orange on that or just off of that road. That's already all residential and then the whole strip that's white off of Zale is not. That's where those ten-acre groups are from the 70's, is that what you are saying?

Eric Furnas: Correct. Are you looking at the future land use map?

Virginia Cooper: Yeah, I'm looking at either one of those that shows what's residential on. What I'm trying to figure out is this is residential, this is the road, and that little white section right there is all divided into 10-acre tracts already?

Eric Furnas: Anything that is in the orange or yellow is already residential use. Basically all that wooded area where Zale Avenue goes down through there, that's represented by a lot of that. There may be little pockets that that map didn't pick up.

Virginia Cooper: So this little white piece here that's not developed is this little strip right here?

Eric Furnas: Yes.

Virginia Cooper: Okay, so there's a whole strip here that can be divided into 10 acres from the 70's rule, or already is?

Eric Furnas: There is 10-acre pieces on both sides of Zale Avenue and then nothing coming off of Zachary here. There's some here as well as Mr. Egolf's current parcel that comes in off a little tale of Zale and then it goes down and around the back side as well. So he has access off of the front.

Virginia Cooper: Okay, thank you.

Carol Schlueter: Okay, so all of these are residential?

Eric Furnas: No, they are not zoned residential. That's what we are here for.

Tom Harper: It's residential use, but it's not zoned residential.

Eric Furnas: Yeah, we have a couple of different maps. We have a land use map, a Comprehensive Plan map, one that shows existing uses and one that has proposed future uses.

Carol Schlueter: Got it, thank you.

Virginia Cooper: Yep, that all makes sense. I appreciate that Eric.

Tom Harper: Okay, since we didn't have any correspondence, would the applicant or spokesperson please state their name and give us some background on your request?

Josh Egolf: I'm Josh Egolf and I live at 1654 Zale Avenue. We have two parcels, one is 10 acres and the other one is like 6.3 to the west. They are currently zoned agricultural. We'd like to rezone the 10-acre lot to residential so I can split it and my mother-in-law and father-in-law would like to build a house on the east side of that lot. That's what we are looking for.

Tom Harper: Eric, do you have any comments on this?

Eric Furnas: So I will refer you to the map that has the topography or contour lines outlined in blue and I have highlighted it. That is the one that he is referring to. You can see that there is a black somewhat flat hayfield on the east side of his property, so that's the lot that we are looking at. I want to start off by saying, this is a tough one. This is definitely an interesting case. There is going to be a lot of things that we are going to need to talk about. We have a couple of areas in the county where these 10 acres... they are not really lots per say. In the early to mid-70's the zoning regulations still allowed building one home on at least 10 acres if the property was zoned agricultural. So if you had 10 acres, you could build a home. I don't know when that was put into place, but it was in place when a majority of these homes were built. So there's a number of them located up and down Zale and off of Ziegler. There's some off of the dead-end off of 155th Street, that's on the backside of the trailer park. But everything remains zoned agricultural. So as you know the current regulations do not allow a house to be built in properties zoned A-1 other than an approved farm exemption or an approved Special Use Permit for a rural residence, which was one of the first things that we talked about. He was really desiring not to subdivide and not to create a subdivision, per say. But as some of you that have served on the Board of Adjustment are aware of and one of the things that the Board of Adjustment looks at, primary of which, is the separation distance. The rural residence Special Use Permit is not to create subdivisions. It's about having a very limited non-farming homes in the county. We look at separation distances, low productivity and low CSR2 ratings, etc. This one would most likely not be granted a Special Use Permit because of multiple dwellings within the minimum of 750 feet, they strive for 1,250 feet of separation. So that leaves the only real option for them to pursue is rezoning. But if you look at this property there's things that maybe suggest that additional development might be okay. It's obviously not prime farm ground. If you take away Mr. Egolf's property, a lot of them don't have any farmable ground, he's got a flat hayfield in the back, but it's very low ag potential in this area. What Muscatine County needs to find, or to come to a conclusion is ... it would be that this entire area is acceptable for not just this parcel to be rezoned to residential, but other parcels in the area that desire that, would also be rezoned to residential. Otherwise, we are creating spot zoning, which we don't want to do. There are things that suggest that this might be acceptable in this area. It's like I said, it's very little economically viable ag units. There are not large farm fields in this area. Then things on the negative, Zale Avenue, that section is not maintained by the county. It's a private drive, which most all of our residential subdivisions are, however, it is not constructed to normal subdivision standards. That would be something... that if further development would continue than this road would need to be addressed. It's a hard surface but it's not...

Tom Harper: Zale is not a county road?

Eric Furnas: Not that section, no. It's not county maintained. Which again, most subdivisions aren't either, they are privately maintained public roads. But they are required to be developed to residential standards, that's new subdivisions. So I went back and took a look at the Comprehensive Land Use Plan. As you are aware, that is to be our guiding document. That is what we are to use to reach our conclusions. How does the Comprehensive Land Use Plan speak to development? In your development report, I included language from our goals and policies and to consider the following situation, that is all in your packet. Our Comprehensive Land Use Plan has existing land use maps and future land use maps. This study group ... when this Comprehensive Land Use Plan was updated, which was in 2014, they look at the different areas of the county and map out where we expect and encourage future growth for residential, commercial and industrial. The future land use map that Virginia had questioned, shows a significantly larger portion of orange than the existing land use map. That is recognizing that there is a large cluster of houses where there

is a non-agricultural housing. The future land use map you can see actually shows more natural green wooded area, it doesn't appear to show that this is an area of expected increase of residential development. I think the reason for that is the study group took into consideration of how steep and how rough a lot of this area is. On one hand, rough areas make it a less desirable area for farmland, and on the other very steep slopes, wooded areas, are actually also environmentally sensitive, and to preserve those areas. So the future land use map doesn't show any increase of residential development. That is what I wanted to summarize that I could see coming from the Comprehensive Land Use Plan. While we recognize that this isn't farm ground that we are converting or taking away, really. I think the rough topography would make it challenging to extend municipal sewer and water into this area. But I think the main point is, if you find that this particular site of Mr. Egolf's is ideally suited for residential zoning, you have to arrive at the conclusion that the entire area is as well, otherwise it is spot zoning. But if this area were all the way to Hwy. 61 it would be ideal. But it is within two miles of the City of Blue Grass, which is a positive. Normally when we look at expected development areas, that's where we want to see them, within two miles of the existing city limits and not far off of a paved road. But there are issues, I think, according to the Comprehensive Plan.

Brad Akers: So when I look at it, I mean, it is all zoned ag, but the current use of the area appears ... there are a lot of houses here already. I mean, it is kind of... I mean, I know it's ag but there is a lot of residential in that area. So I mean it's not going to be by itself, I mean, there are other houses across the road.

Eric Furnas: Correct. I mean, obviously the feel of it... when you drive down that road there is a lot of residential. There is very little viable... I mean, you take away his hayfield, there's not many of those parcels that have any agricultural use on them. I guess the term is hobby farms, or something like that. But the fact of the matter is, there is no adjoining or adjacent residential district. So this, if this property were rezoned, it really does open the door for everything in that area to be rezoned. And maybe that is okay, maybe you as a board and ultimately the Board of Supervisors, would arrive at that conclusion, that this is expected and encouraged to have additional residential development here.

Carol Schlueter: Okay, so these 10 acres, there is no house on this now?

Josh Egolf: We do have our house on there now, but we access from the Zale Avenue side on the west, not the private lane to the east.

Carol Schlueter: Okay, can you show me where your house is?

Josh Egolf: Yes ma'am. So this is the field and our house is actually right here.

Carol Schlueter: So you get to your house from that way?

Josh Egolf: Yes ma'am. So Zale comes down and does a little cul-de-sac right here. This is the private lane that they are discussing that is maintained by the homeowners. This hay field would be where my mother-in-law and father-in-law would be building right here. So they would access their house by the private lane.

Carol Schlueter: Okay, so how long have you owned this property?

Josh Egolf: About five or six years.

Carol Schlueter: Okay.

Josh Egolf: Yeah, I grew up just right across the highway.

Carol Schlueter: So if this was rezoned then they would have to split it then Eric?

Eric Furnas: Yeah, they would have to come back and do a subdivision.

Carol Schlueter: A rural subdivision?

Eric Furnas: Well it wouldn't be rural if this were to be rezoned.

Carol Schlueter: Oh, yeah... I'm sorry.

Eric Furnas: It would be a small residential subdivision, as opposed to a larger residential subdivision.

Tom Harper: Right.

Carol Schlueter: And you checked to see how close some of these houses were?

Eric Furnas: Yeah, there are houses under 1,250 feet and a couple or more under 750 feet.

Carol Schlueter: Even if they put it way back?

Eric Furnas: Then it's going to be very close to their existing dwelling.

Carol Schlueter: Yeah.

Tom Harper: And it appears that every 10-acre lot that is to the south already has a house on it, correct?

Josh Egolf: Yeah, there is only one that doesn't. They just bought that and I believe that they are trying to build a house on it.

Brad Akers: Yeah and looking at the contours on that map... that has a lot of roll to it. I mean, like 30 to 40 foot of contours.

Eric Furnas: Yeah, there is a tremendous amount of this area that really would not be ideal for residential. I mean, with the steep slopes and ravines ... the waterways have to be maintained. And to put housing back there would be very challenging.

Brad Akers: Did we get any correspondence from the neighbors?

Eric Furnas: Nope, and I discussed that with Mr. Egolf when we talked about it. I told him that the neighbors would be notified and that they may have an opinion on future development and we have not received any correspondence.

Josh Egolf: Yeah, I talked with Matt Kurtz, he's a neighbor and he said that he talked to some neighbors about.

Tom Harper: So did you mention that you had an HOA out there?

Josh Egolf: I am not part of it because I live on Zale. It's the owners that maintain that private lane to the east. I'm not sure if it's an HOA or they just do it.

Brad Akers: So they would access off of that private lane then?

Josh Egolf: Yes.

Brad Akers: So they would have to have approval from their HOA or whatever, to be a part of that?

Josh Egolf: Yeah, I don't think it's an HOA, I think they just all maintain the lane.

Eric Furnas: It would actually be something that we'd have to verify at subdividing time. I mean, they would have to prove legal rights to have an access there.

Tom Harper: So what is concerning to me is this road... since that's not a county road then at some point it would need to get more formal than that and I think any subdivision coming off of that is going to have problems here.

Eric Furnas: Yes, that would be the challenge if several other lots wanted to do the same thing. Because at what point can the county step in and say, this road has to be brought up to minimum standards? Normally at subdivision time we are showing the plat that has the proposed road and it has to meet standards and approved by you folks. For this one there is an existing private road or lane that we'd have to weigh ... I mean, is it sufficiently constructed with the increase expectation of traffic?

Tom Harper: Right.

Carol Schlueter: Well is it now okay, I mean for fire trucks and buses?

Eric Furnas: Well it's actually better than some private lanes I've seen. I mean, it's laid out like a boulevard. There's actually one lane going north and another lane going south. But it is gravel... I mean, we don't allow residential subdivisions to have a gravel street, the Board of Supervisors stopped that because of all the dust complaints.

Carol Schlueter: I still have a problem with the spot zoning. That's just my own personal opinion.

Virginia Cooper: I do have a problem with that, and I am not interested in setting that precedent to change that. I live in a neighborhood that the 1970's rule applied and it's...

Tom Harper: Well we recommend to the Board of Supervisors, it is ultimately the Board of Supervisor's decision. I have an issue with the spot zoning too. If we knew that this was going to go farther on, I would be okay with it. But I think we are in the unknown on this.

Eric Furnas: I mean, there are cases where the first case is always going to be spot zoning, of course in the instances where the county does a large comprehensive rezoning. We haven't done that for probably 40 years or more. I mean, for an example we laid out heavy industrial down on the south end. So I mean, spot zoning can occur occasionally, because someone has to be the first case. But like I said in the beginning, the county needs to arrive at the conclusion that the expectation that it won't be spot zoning forever and that the whole area would be ideally suited for additional residential development. So then it would roll off of that.

Martha Peterson: So there is no other place on the property where the house could be built to meet the rural residence without infringing on the private road?

Josh Egolf: Well if infringing on the private road is an issue, then we can give them access from our lane.

Eric Furnas: Well I think the Board of Adjustment is going to struggle with the issue that they need to look at in order to issue a rural residence under a Special Use Permit. The separation distances just aren't going to be there.

Tom Harper: Yeah, the BOA would have to make an exception of the distance and that's going to be a stretch to do that.

Eric Furnas: Yeah, they would have to find that there is something very unique about that property and ignore that separation distance requirement in the ordinance.

Brad Akers: Yeah, and I don't want to get involved with spot zoning either, but when you look at the usage in this area... it's pretty heavily residential. So I mean, like Eric says, somebody does have to go first. And I think this area does not lend itself for much other than housing or undisturbed timber ground, or whatever. It's not farm ground. I mean, there are a ton of houses in this area. I personally don't have a problem with it. But that's just my two cents.

Carol Schlueter: Okay, I have one more question. If it's it turned down by our board here, can they still take it to the Board of Supervisors anyway?

Eric Furnas: Yes.

Carol Schlueter: Then the Board of Supervisors can decide.

Eric Furnas: I believe that the Board of Supervisors has a higher threshold if the recommendation is... if there is not a passing recommendation from this board. They either have to have four out of five instead three out of five, but I'm not certain.

Martha Peterson: Well yeah, they can reverse our decision too, correct?

Eric Furnas: Yeah, it's ultimately up to the Board of Supervisors. This board gives a recommendation.

Carol Schlueter: So we could approve it and they could turn it down.

Eric Furnas: Absolutely.

Carol Schlueter: So in other words, if we turn it down then it can still go before the Board of Supervisors?

Eric Furnas: Yes. I think it's just a higher percentage, if this board does not recommend for the request to go through.

Tom Harper: Yeah, that's what I mean. They ultimately make the decision. In this case, I would rather have them make that decision.

Martha Peterson: Right, we just recommend.

Tom Harper: Right, I mean we can turn it down and not recommend it to them ... but with the caveat that we aren't opposed to it.

Eric Furnas: Well I think the expectation is, you know, that your duty would be to follow the Comprehensive Plan. Making the right decision isn't always the easy decision. But they want your actual recommendation. They know full well that they can vote however they please and they may not agree with how you arrived at that decision. But I don't know that it would be proper to make a recommendation just to make it easier.

Virginia Cooper: Right. Well between the road issue and setting precedence and what you have pointed out from the Comprehensive Plan and the future development use and the erosion ... Just because it is timber doesn't mean that you should build on it. It just covers a lot of territory, we've covered a lot of territory for the board. I think we've looked at it in a lot of areas, it's not just passing it on to them.

Tom Harper: Right. And this case... the Comprehensive Plan shows that it's not good for residential zoning, but that's the use out there right now. And maybe the Comprehensive Plan is not quite right.

Eric Furnas: Right. I wasn't part of the study group when they last updated it. I'm only gleaming items from the language ... the heavily wooded areas/steep slopes and the environment being sensitive. I mean, even if this whole area was rezoned, the development density is going to be pretty limited.

Virginia Cooper: Yeah, I was actually part of that Comprehensive Plan development. So I do know where they were coming from and why they added that language in there. But yeah, just because a decision was made in the 70's to do this, doesn't mean we continue to do it if it doesn't match what our needs are today. The 70's was a long time ago.

Tom Harper: Alright, is there any other comments or discussion? Does anybody have any questions? If not, does anybody want to make a motion on this? And please make it in the positive.

Martha Peterson: I will make a motion to recommend to the Board of Supervisors to approve this rezoning request from A-1 Agricultural District to R-1 Residential District in this area.

Brad Akers: I'll second it.

Tom Harper: Okay a motion has been made and seconded to recommend to the Board of Supervisors to approve this rezoning from the present A-1 Agricultural District to R-1 Residential District. Any other discussion? Hearing none, I'll have a roll call vote. Martha?

Martha Peterson: I'll vote against it.

Tom Harper: Carol?

Carol Schlueter: Nay.

Tom Harper: Brad?

Brad Akers: Yes, I'm for it.

Tom Harper: Virginia?

Virginia Cooper: Nay.

Tom Harper: Myself, I will vote Nay. So the recommendation is turned down to rezone this property.

Eric Furnas: Okay, so all you have to do is tell me if you still want to go before the Board of Supervisors and I will put it on their agenda.

MUSCATINE COUNTY ZONING COMMISSION

By Eric S. Furnas, Planning, Zoning & Environmental Administrator