

**DES MOINES COUNTY, IOWA  
ZONING COMMISSION  
REGULAR MEETING MINUTES  
THURSDAY, NOVEMBER 14, 2019**

The Des Moines County Zoning Commission met in regular session on November 14, 2019, at 5:30 P.M. in the public meeting room of the SEIRPC offices at 211 N Gear Ave, West Burlington, Iowa.

**1. Call to Order**

Chairman Dick Keith called the meeting to order at approximately 5:32 P.M.

**2. Roll Call**

Commission members present: Ron Breuer, Russ Fry, Dick Keith, Sally Parrott, Ron Wunderlich

Commission members absent: none (two positions presently vacant)

Staff Present: Zach James and Jarred Lassiter, SEIRPC

Public Present: Bob Bartles, prospective Zoning Commission appointee  
Henry Bohlen, subdivision applicant (FS-19-24)  
Pat Byrne and Cheryl Litch, neighboring property owners (FS-19-24)  
Eric Faugust, neighboring property owner (FS-19-24)  
Jeremy Grant, neighboring property owner (FS-19-24)  
John Riessen, neighboring property owner (FS-19-24)  
Jeff Stewart, neighboring property owner (FS-19-24)

**3. Introduction of New Commission Member(s)**

Mr. James noted that Russ Fry was appointed in September 2019 to replace Larry Werner, who had submitted his resignation from the Commission in June. Mr. Fry introduced himself, stating that he is a resident of the north Burlington Two-Mile Zoning Area, with a house on Y-Camp Road. He further stated that he is a retired former officer with the Iowa Department of Corrections, and is presently an author and filmmaker specializing in the history of Burlington and Des Moines County. Mr. James further stated that there are still two open positions on the Commission, following the resignations of John Roth and Jon Hedges. Mr. Lassiter noted that Jon Hedges resigned due to a scheduling conflict between a new shift with his employer and the preferred 5:30 time for Zoning Commission meetings. Mr. James introduced Bob Bartles, a resident of the south Two-Mile Zoning Area who he had spoken with about possibly replacing John Roth. Mr. Bartles had opted to attend this meeting as a member of the general public, to help guide his decision on being appointed. Mr. James mentioned that he had also spoken with Jesse Caston, a resident of the north Two-Mile Zoning Area, about possibly replacing Jon Hedges. He noted that Mr. Caston was presently evaluating this prospect.

**4. Changes to Tentative Agenda**

None

**5. Approval of the Minutes for June 27, 2019**

**Motion #1:** To approve the Minutes of the June 27, 2019 meeting.

**Motion by:** Wunderlich

**Seconded by:** Parrott

**Vote:** Unanimous vote. Motion carried.

**6. New Business**

**A. Public Hearing: Request for Preliminary Plat approval for Eighth Addition to Wildlife Lakes Subdivision**

Mr. Keith opened the public hearing at approximately 5:35 P.M. Mr. James reviewed the staff report, noting that this same subdivision had previously been addressed at the meeting on June 27, but was tabled by the Commission due to

unresolved concerns from neighbors in the Wildlife Lakes community. Those concerns pertained to the suitability of existing roads for the efficient movement of fire trucks. Mr. James noted that Burlington Fire Marshal Mark Crooks conducted a demonstration for Wildlife Lakes residents in September, where a loaded fire truck was driven around the tight turns of Wildlife Lakes Drive and Elk Run Drive. Mr. Bohlen complemented Marshal Crooks for his efforts, noting that he used the Department's longest truck, and had an ambulance drive through concurrently.

Mr. Keith asked who was present for this demonstration, and Mr. Bohlen said that approximately 6 to 8 people attended, including several of the individuals that voiced their concerns at the previous Zoning Commission meeting. Ms. Byrne asked whether the fire truck went around the cul-de-sac on Wood Duck Cove Drive. Mr. Bohlen said that they did not, since that road was not a part of those prior concerns. Mr. Lassiter stated that the hammerhead turnaround on the preliminary plat, which has not yet been installed, is intended to improve emergency traffic circulation on Wood Duck Cove Drive. It had been added to the plat at the request of the Fire Department, to account for the fact that the previously platted cul-de-sac for Wood Duck Cove drive was not paved to the dimensions required by the County Subdivision Ordinance.

Mr. James noted that several minor changes had been made to the preliminary plat since June 27, primarily meant to address the planned vacation of the platted right-of-way for Wildlife Lakes Drive north of Elk Run Drive. Mr. Grant, who owns Lot 28 in the adjoining 5th Addition to Wildlife Lakes, desired to have the east half of the ROW given to his lot, instead of Lot 29 in the 8th Addition, as shown on the previous version of the Preliminary Plat presented on June 27. Some other minor adjustments to Lots 28, 29, and 30 were required as a result of this change, to ensure that all lots met the minimum size requirement of 40,000 square feet (0.92 acres). Mr. James stated that the City of West Burlington had approved the plat for this subdivision in mid-June, but since only minor changes have been made to produce the latest version, the City opted to waive its right for further review until it moves to the Final Plat stage.

Mr. Keith asked the six neighboring property owners in attendance whether they had any additional questions or concerns regarding this subdivision. No such comments were made, and Mr. Keith closed the public hearing at approximately 5:44 PM.

**Motion #2:** To approve the Preliminary Plat for Eighth Addition to Wildlife Lakes, as submitted  
**Motion by:** Wunderlich  
**Seconded by:** Parrott  
**Vote:** Unanimous vote. Motion carried.

Mr. Keith asked Mr. James about the status of a Home Occupation Request from Dustan Fenton that had been included on a copy of the Tentative Agenda sent to the members several weeks prior. Mr. James noted that, due to a lack of response from the applicant regarding his availability to attend the meeting, this item was removed from the final version of the Agenda submitted one week before the meeting. It will be addressed at a future meeting.

## **B. Des Moines County Land Use Ordinances Update – Discussion of Proposed to Subdivision, Zoning and Flood Plain Development Ordinances**

Mr. James outlined the anticipated timeline and process for updating and reformatting the County's land use ordinances over the next several months. He also reviewed the reasoning behind the updates, noting that it's been a priority for the Land Use Department and Zoning Commission for many years now. Mr. Bartles asked about the jurisdiction for the individual ordinances. Mr. James noted that the Zoning Ordinance only covers the designated Two-Mile Area around the City of Burlington; whereas, the Subdivision and Flood Plain Development Ordinances cover the entirety of unincorporated Des Moines County. Mr. Keith noted that there is no nuisance ordinance for any part of the unincorporated county, and Mr. James stated that the Board of Supervisors had previously indicated that establishing one was not a priority. However, he noted that the Commission is welcome to recommend to the Board that they do so.

When discussing the procedure of subdivision review, Ms. Parrott recalled her prior experience as a Township Clerk for Danville Township, and said that it was helpful to have the Land Use Administrator send out packets with information on subdivisions in the Township. Mr. Lassiter indicated that it was not the Department's intention to cease with this practice – rather, the intent was to explore the option of digital communication (i.e. e-mail), instead of sending out paper copies to everyone. Ms. Parrott said she agreed with this idea, if it could assist in operating more efficiently.

Mr. James then noted that staff had prepared a Powerpoint presentation with several of the more substantial changes that staff is recommending for the three ordinances, based on prior experience in enforcing them. He stated that staff would prefer to go through all (or a portion of) that initial presentation, then give the members another month or two to review the ordinances and prepare their own comments, prior to the next meeting.

Mr. Keith referenced several specific issues with the current ordinances that he'd like to see resolved as part of this update. One of these relates to the contentious 2011 rezoning of a property on Highway 99 to I-1 Industrial, when it directly borders an R-2 Residential District. He noted that the present Zoning Ordinance only prohibits Industrial from bordering an R-1 District, and this should be changed to apply to all Residential Districts. Another issue that affected the legal interpretation of that case is the ordinance's vaguely worded definition of 'spot zoning'. He also referenced the fact that the Subdivision Ordinance has no requirements for the width or surfacing of access easements.

Mr. Lassiter began the staff presentation by addressing the fact that there are no requirements for paving private roads in a subdivision, regardless of how many lots are served. He noted that in a conversation with their Zoning Administrator, he learned that Henry County has a tiered system where roads can be gravel if 7 or fewer lots are served, but anything above 7 must be sealcoat, anything above 12 must be asphalt, etc. The Administrator gave him the impression that this was common practice in most County Zoning Ordinances. Mr. Keith stated that he would not be in favor of such a policy, as the choice of whether or not to pave private roads should be market driven – based on the anticipated price range of the lots to be sold. He inferred that staff was referencing The Ridge, a subdivision from 2018 where the developer intended to have 21 lots all served by gravel roads. Mr. Lassiter noted that topography was a significant factor in that case, and allowing gravel could cause problems for homeowners related to emergency response and winter driving.

Mr. Breuer asked if the County's Ordinance should be structured to match that of the City of Burlington. Mr. Lassiter noted that this wouldn't be necessary in all situations, as the City may envision annexing some areas and offer strict requirements in their subdivision review; whereas they'd be more permissive in other areas that are not likely to ever be annexed. Mr. Keith said that it would be unfair to require people to pave subdivision roads if the County road they access them from is gravel. Mr. Lassiter noted that topography and County road surfacing could be factored into the tiered paving requirements, so as to allow greater flexibility. Mr. Fry asked if the Fire Department would be included in staff interviews regarding the current ordinances. Mr. James said that they would indeed be included, and would likely be supportive of paving requirements, although they've been accepting of gravel roads in the past, so long as they're engineered to support the weight of a fully loaded fire truck.

Mr. Lassiter next discussed the concurrent project to update the Airport Zoning regulations for Southeast Iowa Regional Airport, which SEIRPC staff is also involved with. He noted that the effort will primarily involve the City of Burlington, but because the Airport Part 77 Surfaces cover portions of both jurisdictions, the same regulations present in the City Code will need to be addressed by the County's Ordinances as well, for the sake of consistency. He suggested that there should be a separate ordinance for the County's Airport Zoning regulations, since although the Part 77 Surfaces are primarily concentrated within the south Two-Mile Zoning area, they sometimes extend further away from the City – particularly in the Skunk River Bottoms area.

Mr. Fry asked if the Federal Aviation Administration (FAA) is primarily involved in regulating development in the Airport Zones. Mr. Lassiter noted that, much like with FEMA and floodplain regulations, the FAA designs the requirements, but it is up to the local government to enforce them. Mr. Keith added that, as with FEMA and floodplains, if the local government fails to adequately enforce the ordinance, the FAA can forcefully shut down the airport or withhold funding. Mr. James noted that for the majority of the unincorporated area within the Part 77 surfaces, the maximum building height is so tall that only wind turbines and communication towers could be affected. In addition, these height restrictions reference the elevation of the airport runway, so the maximum height is even taller in areas with a lower elevation than the airport, such as the Skunk River Bottoms.

Mr. Lassiter then addressed the fact that the Zoning Ordinance does not contain a reference to swimming pools. He noted that there have been two recent incidents where someone built a pool (with permanent foundation) over the property line. He also referenced a recent incident in another community where someone failed to provide screening around a pool, and neighborhood children were freely entering the property to swim. He noted that a search of all Zoning permits issued since 1998 did not reveal any instances of swimming pools being granted a permit. Mr. Keith said that he would be in favor of requiring permits for pools as an accessory use, to ensure that setback requirements were met. However, he was against the idea of screening requirements, as in a more rural setting, this could be interpreted as applying to farm ponds as well, and it would be highly contentious to require screening for those.

Mr. Lassiter next addressed an issue from the Flood Plain Development Ordinance, noting that while Des Moines County has a 'substantial damage' provision in its ordinance, it does not have a 'repetitive loss' provision. The former designation requires damage greater than 50% of a structure's market value during a single flood event, whereas the latter allows for damages from two separate events during a 10-year period, where the average damage amount was at least 25%. These figures are used in applying for financial assistance from FEMA for building improvements. He noted that he had a conversation with an Iowa DNR floodplain professional, who cautioned that the 'repetitive loss' provision would likely be viewed very favorably by landowners along the Mississippi River (i.e. river cabins), but opposed by landowners in the interior of the county, along minor streams with mapped floodplains.

Mr. Bartles asked why the County would want to encourage people to keep living in floodprone areas, by helping with financial assistance for those property owners. Mr. Lassiter stated that the FEMA money could only be used for improvements that mitigate future flood risk such as raising a cabin above the base flood elevation. In addition, other regulations in place either prohibit or heavily restrict any new development within the floodplain, depending on whether it is in the designated floodway. Mr. Keith noted that Pool 19 above the Keokuk dam is unique in that private cabins were allowed on the river side of the levee – this was due to Union Electric acquiring the land when the dam was built.

Mr. James noted that the meeting had reached 90 minutes in length, and said that the remaining items in the presentation could be discussed at a future meeting. Mr. Fry said that the graphics in the Powerpoint presentation were helpful, and allowed him to better understand some of the items that were listed in the 10-page packet that had been submitted to the Commission members prior to the meeting. Mr. James said that staff could e-mail the members a copy of the full presentation, including the items that had not been discussed at this meeting.

**7. Old Business**

None

**8. Public Input**

None

**9. Future Agenda Items**

Mr. James stated that staff planned to prepare drafts of the updated ordinances over the next few months, and schedule a meeting in January to present the initial draft to the Commission. He encouraged members to review the ordinances in detail in the interim, and submit any comments or suggestions to he and Mr. Lassiter. He noted that Mr. Keith had already gone through the ordinances and submitted a set of written comments. Ms. Parrott noted that she would be unavailable in the month of February. Mr. Keith reiterated the call for other members to review the ordinances, bringing up another issue that needed to be addressed – the requirements for what constitutes a quorum for a vote by the Board of Adjustment. Mr. James further noted that the County Attorney will review all of the updated ordinance documents before any of them are formally adopted.

**10. Adjournment**

**Motion #3** To adjourn  
**Motion by:** Wunderlich  
**Seconded by:** Parrott  
**Vote:** Unanimous vote. Motion carried.

The meeting adjourned at approximately 7:04 P.M.

**APPROVED:**   
Ryan Nagrocki, Chairman

**ATTEST:**   
Zach James, Land Use Administrator