

Supervisors sued over zoning denial

By **TIM JAMISON**
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A Black Hawk County couple have sued the Board of Supervisors for turning down their request to develop a housing subdivision south of Janesville.

John and Sandra Thode filed the lawsuit last week in Black Hawk County District Court, contending the supervisors acted in an "unreasonable, arbitrary and capricious" manner when they denied a request to rezone property from agricultural to residential use.

"The board's action substantially depreciated the real estate's value (and) ... amounted to the taking of the real estate for public use without just compensation," the Thodes state in the suit. No damage amounts were specified.

Assistant County Attorney Pete Burk said he prepared a response to the suit "generally denying that the board was in violation of their (zoning) ordinance or acted arbitrarily and capriciously."

The Thodes had asked the county to rezone 13 acres just south of Janesville on Waverly Road so they could put three houses on three separate lots. Their request was supported by the Janesville City Council and Janesville School Board.

But all of the neighboring property owners petitioned against the rezoning, which would have placed homes in the middle of a farming area. The neighbors said they feared nuisance complaints against them from the new residents based on farm operations and hog odors.

The county Planning and Zoning Commission voted 4-1 against the request. The Board of Supervisors voted 4-1 on July 19 to uphold the commission, with Supervisor Leon Mosley casting the dissenting vote.

According to a zoning report prepared by the Waterloo Planning Department, 58 percent of the soil on the property had a "crop suitability rating" higher than 50.

The county's zoning policy considers land with a CSR above 50 to be prime farming property, and discourages rezoning such land away from agricultural purposes. But John Thode, in his application, said the land is too sandy and will never be useful for crops.

Requests similar to the Thodes' are becoming more common as urban residents look to escape the crowded city conditions for a homestead in the country. The vast majority of those requests are being turned down.

Zoning commissioners and the supervisors have had numerous debates over the push for housing expansion into the rural areas that conflict with zoning policies. They have started redrafting the county zoning ordinance based on those discussions.

Burk said it's "hard to say at this time" whether the pending lawsuit could have some effect on how the new ordinance is written.

Eric Johnson, attorney for the Thodes, said he did not want to comment beyond the court documents.

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