

Turf Wars

Want to build a new home in the country? Black Hawk County officials often say no



RICK CHASE/Courier staff photographer

Black Hawk County's zoning requirements have stopped H.J. Lichty from building a home on his farm land just south of Waterloo on Schrock Road. The field, now in soybean production, sits adjacent to another rural residence (in the background.)

Policy is meant to protect farmland from urban sprawl

By **TIM JAMISON**
Courier Staff Writer

H. J. Lichty believes Black Hawk County is trampling one of his most cherished individual rights — the freedom to use his property for his own good and enjoyment.

The 69-year-old farmer is retiring soon and hopes to sell his farmstead south of Waterloo to his son, who is working the land. But he would like to keep a little three-acre lot along Schrock Road to build his retirement home or a place for his grandchildren.

"It's an ideal building location," Lichty said. "It's just a little piece of ground that's kind of a nuisance to farm anymore because you've got to make so many corners."

But last month, the county Planning and Zoning Board and the Board of Supervisors refused to rezone the land for residential use.

"It makes me sick that I can't build on my own property," he said. "They're just taking the freedom away from us. Is this still a democracy?"

Lichty is among a growing number of prospective home builders to have their dream of a little house in the country spurned by restrictive zoning requirements geared at protecting farm ground and preventing urban sprawl.

Zoning officials say a revitalized local economy has people looking toward rural areas for living space. The growing pressure for expansion is turning up the heat on the zoning board and causing many to question the viability of the county zoning ordinance.

Lichty said there's just a need for common sense.

"There's two or three people on that county zoning board that have their minds made up before the meetings that they aren't going to rezone any ag land," he

said. "One the members flatly said you cannot build on your own land.

"I agree there should be limitations. But, by God, let's not turn everybody down."

Protecting the land

Harold Foss, chairman of the Black Hawk County Planning and Zoning Board, is sympathetic to Lichty's situation, but believes there is good reason to protect one of the area's most valuable resources.

"I think we have to preserve this prime farm land," he said. "That's really our sole purpose as a board."

It appears that philosophy has been at work during the last 10 years, according to figures from the Iowa Department of Agriculture. Less than 1 percent of the county's agricultural land has been taken out of production over the last decade, said Howard

Zoning / Some farmers worry new residents will complain about farm chemicals, smells

Continued from page A1

Holden, the department's deputy statistician.

The county's farm land has dropped from 309,400 acres in 1983 to its current level of 306,400. Holden attributed much of the loss to geometric growth of Waterloo and Cedar Falls and to some park land that was taken out of production. Statewide, land in farm production has dropped 300,000 acres in 10 years.

The intention to preserve good farm land is clearly etched in Black Hawk County's zoning policies. "Only agricultural uses or those uses incidental to agriculture shall be allowed on prime land," the policy states.

The value of farmland is measured as a Corn Suitability Rating on a scale from zero to 100, with anything above 50 being deemed "prime land." Portions of Lichty's property rated 91 on that scale.

But there's another provision in the zoning policy that has been causing the most concern for those who feel the ordinance is too restrictive. It has more to do with the conflict between rural and urban residents than the preservation of farm land.

Another zoning board objective is "to encourage residential, commercial and industrial development within incorporated areas utilizing municipal utilities. Development in the unincorporated areas of the county shall be directed toward existing areas which have been rezoned for residential, commercial and industrial uses but are vacant."

As Planning and Zoning Board member Russ Toothman said, "If we follow that to the letter, we wouldn't let anyone build anything out in the county."

Doing what farmers do

Bill Niichel, a former farmer now living in Jesup, has asked for permission to rezone 40 acres of poor farmland in the eastern half of the county. The land would support about eight homes, which he envisions would be constructed by former rural residents and others looking for a more peaceful environment.

That request comes before the Board of Supervisors on Tuesday. But despite having a CSR rating of 5 on much of the soil, the request will be bucking a tough-to-beat recommendation from the Planning and Zoning Board to deny it.

Nearly all of the farmers living near Niichel's proposed development are opposed to mixing a residential use with heavy agricultural

In '73, zoning ordinance was considered revolutionary

By TIM JAMISON

Former Zoning Administrator Ken Lind said Black Hawk County's zoning ordinance was on the cutting edge when it was adopted in 1973.

"We were the first ones here in Iowa and maybe the country that used soil types in a zoning ordinance," Lind said. "It got all kinds of recognition nationwide and sort of revolutionized zoning here in Iowa."

Lind was an employee of the Iowa Northland Regional Council of Governments in the early 1970s when he went to Wisconsin for a county zoning seminar. One of the speakers suggested that zoning ordinances could restrict agricultural land from being rezoned based on

the type and quality of soil.

The idea didn't catch on in Wisconsin, Lind said. But Black Hawk County officials, who were struggling to find a way to conserve farmland, wrote it into an ordinance.

Its uniqueness prompted a film crew from Washington to film a documentary on the ordinance, and the zoning administrator was traveling around the country speaking about it, Lind said.



Ken Lind

But the ordinance is now under attack by those who believe it has become too restrictive and is preventing the area from growing. Others believe it could be infringing on property owners' rights.

"One thing we're proud of is that when that ordinance was first developed it was used as a model around the nation," said zoning board member Russ Toothman. "But it is old and it needs to be updated."

Lind agreed.

"I think what should happen is that we should take another look at the zoning ordinance and see if there needs to be some changes, because that thing is over 20 years old," he said. "We need to sit down and decide where and what direction this county is going to go with zoning."

industry. Many fear the new neighbors will create problems for the farmers by complaining about the odor or chemicals sprayed on nearby fields.

County Planning and Zoning Board member Dave Messerly, a farmer who shares their views, said the urban-rural conflict is a growing concern to farmers nationally.

"It appears to me that there's very little animal agriculture going on or being allowed within city limits," Messerly said. "I think there's some pretty good reasons for that: health concerns, odor concerns."

"But I believe, conversely, they apply just as well in the county," he added. "If they're not willing to tolerate that stuff in the city or subdivisions, what makes you think they're going to tolerate it living next door to animal agriculture in the county?"

Messerly said urban dwellers who move to the county usually don't know what they're getting into.

"People that have grown up in an urban setting think of the county as the wide open, peaceful spaces that they're yearning to move into," he said. "Yet when they move out there, they find out there's some nasty stuff going on."

"You've got heavy industry going out there, but we don't think of it that way," he said. "People see reports about dangerous anhydrous ammonia leaks on TV and then they see (a tank) being pulled out right outside the fence in the back yard."

Messerly fears residents in rural areas, if there are enough, will band together to fight the use of chemicals on farms near their homes or push for restrictions on hog confine-

ment operations because of the odor.

There is another aspect to urban sprawl — a lack of public infrastructure — that Messerly believes will haunt taxpayers well into the future.

"Police, fire, emergency protection. The farther you fling it out in the county, the more expensive it becomes," he said. "It costs the taxpayers a lot of money when they finally build up enough population in these areas where single septic tanks and single wells don't work very well anymore."

Messerly pointed to the unincorporated community of Washburn as a perfect example. The area is now in need of a water and sanitary sewer system that could cost taxpayers plenty.

"I think we're kind of myopic in our view. We're looking at the short term gains," he said. "We'll get some new houses on the tax rolls and it will bring in revenue for the

county, but in the long term it's going to end up costing us big bucks down the road."

The right to farm

Neil Hamilton, director of the Agricultural Law Center at Drake University in Des Moines, said there is some merit to Messerly's argument about mixing urban and rural.

"There's reason for livestock producers to be concerned about the intrusion of nonagricultural uses into agricultural areas," said Hamilton, adding that the issue is becoming a hot topic nationally.

Hamilton has studied "right-to-farm" legislation that all 50 states have passed in an effort to protect farmers from nuisance-based lawsuits. But he said many state statutes have encountered trouble in the courts, with the majority of the decisions favoring homeowners over farmers.

The effectiveness of Iowa's legis-

lation is hard to measure, Hamilton said. The statute itself may have a "prophylactic effect" that keeps many people from filing nuisance lawsuits in the first place, he said.

However, he said the Iowa courts, in a recent Plymouth County case between two farmers, found in favor of a feedlot owner who had been sued over the smell, dust and flies emanating from his operation.

Greater demand

Former Black Hawk County Zoning Administrator Ken Lind said there is a growing need to re-evaluate zoning laws in light of the demand for rural housing.

"People are getting really tired of living in the city," Lind said. "With more blacktop roads and other services out in the county now, people are thinking about going out and getting a few acres."

Bernie Moine, president of the Waterloo-Cedar Falls Board of Realtors, said there are not many lots available for building in the rural areas, and restrictions in the zoning laws make finding that dream location very difficult.

"There is a pretty good demand from people wanting to buy a small

acreage in the rural area," he said. "They want a little more elbow room and lower taxes."

Members of the Board of Supervisors also have been hearing the cry for more rural housing development and are calling for change in the ordinance.

Said Supervisor Leon Mosley, "If the dirt couldn't grow a dandelion, there would be people on that (planning and zoning) board that will say 'No, go build it in the city.'"

Messerly said the influx of requests is putting the county's 20-year-old zoning ordinance to its first real test.

"Right about the time that I came on the board about 12 years ago, zoning was hot," Messerly said. "Every meeting we were doing a subdivision and a bunch of little single-family requests."

"As soon as Deere laid off, we met once a year for some little commercial request," he said. "Now we're picking up steam again."

"There's pressure economically and politically to go back into this growth mode," he said. "It's not a politically and economically very popular ordinance we've got here because of its restrictiveness."