

TOWN OF KINNICKINNIC

SPECIAL TOWN BOARD MEETING

JULY 21, 2008

BETTENDORF RE-ZONING

- I. Meeting was called to order by Chair Roger Van Beek at 7:05 pm.
- II. Roll Call: present was Chair Roger Van Beek, Mary Murphy, Bill Gnatzig, John Humphrey, Milo Opegard, and Clerk Lola Higgins. Also present, Bob Loberg, town attorney.
- III. Statement of public notice was given and put on file for public record.
- IV. Comments and suggestions from citizens, which actually went right into the next item:
- V. Business
 - a. Consider and take action upon recommendation of the Plan Commission with respect to the Bettendorf application to re-zone from Ag/Res to commercial, the parcel on County Rd SS. The Town Board may adopt and approve or disapprove resolution with respect to proposed change. Chair Roger Van Beek asked for comments and Matt Biegert began. He first gave a history of the Bettendorf zoning on the property at County Road SS and Hwy 65, beginning with the zoning application in 1985. After the history, Matt noted to the people present that there is a quorum of the Plan Commission. A document was also presented from Catherine Munkittrick, not present at the meeting, but she gave a brief to the Town Board members, on file for public record. Also an affidavit was presented by Mr. Biegert of a deposition of Eugene Larson stating that he has no objection to the re-zoning and that a member of the Plan Commission solicited rejection from him. Mr. Biegert went on to say that the re-zoning has no detriment to the neighbors. He said the Plan Commission was under some erroneous condition of nothing they could do and he stated there is, he asked the Town Board to approve contingent approval of a "Developers Agreement" after the Town's Attorney OK. In finishing he asked the Town Board for discretion to do the right thing, fairness would be if there was a way Mr. Bettendorf can continue operating his business with his wife. He then went on to ask the Town Board for a recommendation of approval to the County for the zoning request and consider the Developers Agreement.

Bob Loberg, stated that the Developers Agreement is inappropriate and we cannot manufacture a document to supersede the County Ordinance. He reminded the Town Board they have no authority to do zoning. The Developers Agreement does not fit here it is a contract, the Town asks the Bettendorfs not to do something and in return we will give the Commercial zoning. Bob Loberg said the document is an inappropriate fit. Matt Biegert disagreed.

Candace Bettendorf spoke and said they have been good neighbors since the early 1970's. She gave example of the acts of kindness her family and their truck drivers did for neighbors.

Judith Hansen Jorgenson spoke and said the operation has been in Kinnickinnic since the 70's and it has been run well. She stated that the business is best located at Hwy 65 and SS and where else in the town would people like to see the business.

Sandy Lubich spoke and said she lives across the valley and agrees with Judy and would like to see the Bettendorf's get the commercial zoning.

Gordon Awsumb spoke he said he was not able to complete his testimony last time, and the Plan Commission failed to take into account the history of the matter, He went on to say he felt what happened at the County undermines what government is all about.

Dan Krumweide a neighbor of Bettendorf's spoke, he said this is the second time they have been through this and no one mentioned the 1 vote at the County level, 1 swing vote and a 7 member board has brought this forward for the last 23 years. No one monitors the site and he cares about the liability of the trucks and the children in the neighborhood. He also stated that the Board should look at what came first the zoning or the building and they should check the dates on that, and this is just a mirror of what happened last time, the buildings are there and now they are going after zoning.

Dan Gilbert spoke and stated he is a friend of John Bettendorf and wants to see the Town Board do what is right for John Bettendorf.

Lilie Awsumb spoke and asked the Board to ignore the Plan Commission's recommendation. She went on to state that this is an excellent place to re-zone and every citizen has a right to make a living. All citizens rely on Government therefore look at the ordinances we have in place and do the right thing.

Dan Weishaar spoke he stated he lives at 258 County Rd SS. He said he is more effected by this that anyone in the town, other than John and Candy. He added he does not want to deny any one a right to make a living, but if the rezoning is granted he is concerned with the outcome and ramification of the trucks in this area. He went on to explain the specific truck companies he was having conflict with, regarding garbage in his yard and trucks passing all hours of the day and night.

Roger Van Beek explained that there is a quorum of the Plan Commission and Garth Mueller is here as a citizen tonight and Peter Bloch was asked to be present as the Plan Commission Chair to explain the decision of the Plan Commission.

Peter Bloch, first stated that the reason the zoning map was pulled from the Comprehensive Plan was because the map was generated by UWRF Students, with their ideas and suggestions, and after review the Plan Commission pulled a host of language, verbiage and maps that were deleted, because they were in conflict of the Vision Statement and Plan, and that is why and how the zoning map was removed.

Roger Van Beek stated that the Town has not yet adopted its Comprehensive Plan and the decision is to be based on the Comprehensive Plan and what the town has decided on many issues of growth and zoning. John Bettendorf said yes they would like to move forward now, he is anxious to take action against the County. Matt Beigert asked the Board to take the town's vision statement into consideration and move forward.

Bob Loberg explained to the Board that zoning is made in the best interest of the public. Development Agreements are used in new development and in connection with new subdivisions. He stated the agreement Mr. Biegert submitted is just a way around County Zoning and only the County has the power to zone. He went on to say that this situation is filled with emotion, no one wants to deprive anyone a living, but this is not what the decision is about. It is about zoning and compatibility of the land use with surrounding area.

Mary Murphy added, she agreed with Catherine Munkittrick letter and felt it was strong and that for safety and health the zoning commercial would be incompatible with residents and the area.

John Humphrey said he was having a hard time with the decision. He can't look John Bettendorf in the eye and say no, the business has been there for 23 years, and he can't get by the fairness issue. He went on to say he would like to see it go back to the way it was, and if that happened would Bettendorf's cease doing business.

Roger Van Beek explained that in 1985 conditions were put on the zoning, in 90 the Bettendorfs were asked to get a Special Exception permit to get into compliance. The Board of Adjustments superseded the zoning and changed the zoning at that time, Bettendorfs built these buildings knowing these conditions and neighbors moved in knowing there would be an end to the conditions someday. If the Board approves this we take that away from the neighbors. Also the Bettendorfs could sell and a different commercial business can run out of there with a Special Exception permit, the County approved Bettendorfs Special Exception permit without conditions. He went on to say this is a hard and troubling decision to make.

Milo Opegard wanted clarity on the 1990 conditions, and it was explained to him, and that all commercial zoning was taken away by the County and the property right now is zoned Ag/Res, from last year's ruling.

Bill Gnatzig pointed out what will happen in the future? Is the loss of value that will come with the sale of property the primary drive or their ability to get a higher dollar amount from a sale of commercial property, will they sell or continue their business, he went on to say he has not seen anything compelling to overturn the Plan Commissions recommendation.

Roger Van Beek add that he didn't think a Trucking Transfer business fit the commercial zoning, and commercial is more of a retail business. Mary Murphy agreed.

Candace Bettendorf wanted to say a few words, she stated that regarding spot zoning, every zoning in Kinnickinnic is spot zoning. Regarding Commercial vs. Industrial there are five trucking transfer companies in St Croix County and all of them are zoned commercial. St Croix County does not even have a tax code for industrial zoning. She added the Vision Statement has been adopted allowing residents residential and commercial development, this has been a long established business they have never harmed or injured anyone. She would like the Board to take everything into consideration and added that we, (The Bettendorf's) don't lie.

Roger Van Beek said we are looking at this as a new re-zone from ag/res to commercial, and we have no other alternative than to look at it that way. The County asked for a recommendation and that is where we are at. The Developers Agreement is just another form of condition, that's what happen in 85 and the Town can't change zoning. After a short discussion regarding emotions and feelings and going back to the 85 decision which can't happen that is why the Board is here tonight, Matt Biegert said he would like an opportunity to show Bob Loberg that the Developers Agreement is a tool that can be useable in the application.

A motion was made to disapprove the zoning request resolution unless within two weeks Mr. Biegert can provide to Bob Loberg to overturn the decision. RVB/ motion was amended by Roger Van Beek, after a short discussion it was decided that the attorneys communicate and research the developer's agreement and if warrants to bring back and the Board will look at it. Matt agreed to have his materials to Bob Loberg by July 30.

Bob Loberg stated that he would report back to the Board anything Mr. Biegert could give him that would support and change a disapproval decision and give it to the Board to take another look at the motion. Bob also stated that he knows this Board and the Commission all have sympathies with the Bettendorf's on this matter.

John Bettendorf asked the Board that if they do come back for another look at the matter to have the person from the 1990 County Decision, (from New Richmond) to came under oath in front of the Board and give his explanation of the 1990 decision.

A motion was made to give Bob Loberg authority on town's time to do research ahead of Matt Biegert's proposal to explore it on his own. (The developer's agreement) RVB/MM all in favor.

A motion was made to recommend disapproval of zoning request for Bettendorf rezone by resolution RVB/BG Roger Van Beek asked for a roll call vote:

- Roger Van Beek, in favor of disapprove
- Milo Oppegard, in favor of disapprove
- John Humphrey, oppose disapprove
- Bill Gnatzig, in favor of disapprove

- Mary Murphy, in favor of disapprove
- Motion passed

A motion was made to allow Mr. Biegert to do some more research and provide that information to our attorney, in regards to a potential Developers Agreement and if it is workable binding document and of such research would provide evidence to support that we would hold a meeting to reconsider. RVB.JH

VI. Adjourn, motion to adjourn RVB/BG, all in favor

Note this is an abstract account of the conversation of the Special Town Board Meeting. It is not word for word of what was said and some residents did not get into these minutes as their comments were agreement or repeated sentiments. What is recorded here is an abstract reflection on the evening's proceedings, per State Statute and recommendation of the WTA, on taking abstract minutes of meetings. Respectfully, Lola Higgins, Clerk