

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, June 7, 2019, with Vice Chairperson Bill Tharp, with board members Charles Clark and Barry McManus present, Carol Schlueter and Emily Geertz were absent. Eric S. Furnas, Planning & Zoning Director and Dixie Seitz, Office Administrator also attended.

Present for this hearing: Elizabeth Hackett, Jeff Hackett, Dave Tometich, and Edwin Steinke.

Bill Tharp: Come to order. This is the meeting of the Muscatine County Zoning Board of Adjustment for June, 2019. To begin, the Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions or hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. If fewer than five members are present like today where there are three, the appellant has the opportunity to have the appeal delayed until the next meeting. This request must be made prior to Board deliberation on that case. As a Board of the County, we welcome all testimony. We make our decision based on the facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please give your name and address.

Bill Tharp: Has everyone had an opportunity to review the minutes of the last meeting? Are there any necessary additions, deletions or modifications? I'd entertain a motion to approve the minutes of the last meeting.

Charles Clark: So moved.

Bill Tharp: Second?

Barry McManus: Second.

Bill Tharp: All in favor? Ayes-3; Nay-0; Absent-Schlueter & Geertz. The motion passes and we'll move onto today's business. Eric would you mind reading the request?

Eric Furnas: Case #19-06-01. An application has been filed by Jeff M. or Elizabeth A. Hackett, Record Owners. This property is located in Seventy-Six Township in the SE¼ of Sec. 2-T76N-R3W, South of 231st Street, containing approximately 41.50 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to approve the farm exemption appeal, that was previously denied by the Zoning Administrator, in order for the Hackett's to build a shop for seed and fertilizer storage, and farm equipment with housing attached on this property.

Bill Tharp: Has there been any correspondence that's been received?

Eric Furnas: I received a couple of phone calls from some neighbors just asking for some clarification on what the appeal was.

Bill Tharp: But they didn't have any position one way or the other?

Eric Furnas: No, nothing was stated.

Bill Tharp: Okay, is the applicant here?

Elizabeth Hackett: Yes.

Bill Tharp: Okay, would you like to go ahead and speak? You can either speak from there or you can go to the podium. I suppose it's not a podium it's a lectern I guess.

Elizabeth Hackett: Elizabeth Hackett, 2310 Burlington Road. The reason we applied, of course, is stated in our application. From my understanding the application requires us to supply a Schedule F or a 156 EZ form. We did attach to the application and I attached the indication and for what reasons we intend to use it. We ... a brief history of our farming operation... our first farm was bought in 2003, we purchased 47.5 acres. In 2008 we purchased 230 acres of farmland and another 90 acre farmland. In 2009 in Louisa County, we purchased 150 and in 2012 we purchased 21 farm that is on Burlington Road. And then we also purchased our home place, the farm ground around that that totals 230 acres. Now that is all acres, including timber, it is not all just tillable. In 2014 we purchased another 16.5 acres on Burlington Road and then in March of 2019... all of which has tillable ground on it, a portion of it. One of them has a grain bin now, a couple of grain bins on it. So I think we have established that we farm, we are actively farming. We make day to day decisions on operations. The portion of ground that we have indicated that we'd like to put this building on, is currently enrolled in the CRP program. I have talked to the FSA Office and my understanding that the reason for the denial was because it's not considered actively farming, however, they said that in order for this to be in the program, and I have some papers here that I can show you, it must have been actively farmed five years prior...documentation that it was ??? for five years. Now the reason we chose to do this is it's a piece of ground that does tend to have some runoff and they had a program that we could put it in... it helps the environment, you know, by the runoff prevention and it's to field... feed animals. The program is called enhance wildlife habitat. By putting it in this program they are saying okay instead of you renting it or farming it, at our choice farming it, or renting to another farmer, we will rent your ground if you would do these things and put it in. So we were required to follow a certain planting of grasses and seeds and flowers that were for habitat. So that is what we did and they pay us a rent. We get it yearly, it's based on so much per acre and we get a rent payment from them. That is still actively agricultural ground that is in a program instead of we... instead of putting it in an actual row crop we have elected to rent that to them.

Bill Tharp: And what do they use that for again, I mean, if you don't mind saying. Like you are renting it to them and then what are they using it for? What are they producing?

Elizabeth Hackett: They are producing the area for wildlife, and they are... the benefits of it is to protect the top soil and erosion. It's safe guarding the nations natural resources. Here is the program, this is what she submitted. I was out there, I went to make her card and make copies for you in case you had questions for her and I left that in the printer. So here is the program that it's in. Here it shows that we were... that this was crop ground and in order to be in this program, it must be crop ground. So this shows that ... well actually this shows the payments that we've received since enrolled.

Bill Tharp: So if I'm right and that's what this says, it says that in the past it's been farmed for...

Elizabeth Hackett: Yes it was required to be farmed prior to this.

Bill Tharp: I understand that.

Elizabeth Hackett: And it is still considered cropland, it's no different than renting it, just because it's not ??? a crop, it is in a program that they are renting it, which I could have rented it to anyone else. This was a better payout.

Bill Tharp: Okay are there any other documents that you want to ...

Elizabeth Hackett: These are all the things that they have given me to prove that it's active crop ground, it's just in a program and this is the program. If you want to... And I have, like I said, I have her card and name or you can call out to the FSA Office if you have any questions, you know. Now we applied for a farm exempt in 2008 to build a building on our current property where we live, which is still part of this farm. This is one considered... from the... I will show you that on the map. Whoops sorry – I just knocked that over.

Dixie Seitz: Is it still up though?

Elizabeth Hackett: It's still going. (The microphone was moved and you hear it on the tape) So the way the FSA has this farm in their program, this is a farm. So here's where we want to put the building in this piece of ground up here. This is our home and our outbuildings that are there and this is the tillable ground on our farm. This is considered... 200 and some acres, we actually added a railroad right-of-way in there too just recently, so that's why it has ... part of this is all acres because it is considered one farm of 124 acres. That's because it's considering this, this and this. That's how the Farm Service Agency classifies it, it will be the farm number and tract.

Bill Tharp: Okay do you fellows want to look at these documents anymore? Have you had an opportunity to review them?

Elizabeth Hackett: I can leave them until you... in case something else should pop up.

Bill Tharp: Okay that's fine. You can go ahead and go back to the lectern.

Elizabeth Hackett: Well I wanted to point out that in 2008, right here, this second building we built that and we applied for a farm exempt and was granted.

Charles Clark: Farm exempt?

Elizabeth Hackett: Uh huh, the farm that what we are doing now for farm exempt.

Charles Clark: So you did the same thing that you are asking to do here you did here?

Elizabeth Hackett: In 2008. And then in 2014 we decided to add a lean-to onto this back building and again we went through the process of doing the application and it was immediately granted. Because the form mentioned, the application form, I don't know if you guys have a copy of that?

Bill Tharp: We do.

Elizabeth Hackett: It states that if we provide the information either our tax paper or papers from the Farm Service Agency and we show that we farm and this is intended for farm use that the permit shall be granted, that's right here. We did receive a call from Wilma asking what our intentions was and she did not have any issues after I explained what we were doing. I did also ... Joe and Sean um ...well Tometich or Sean Conaway, they stopped down and we went over with what our intentions were. They actually said that you know, it would be nice to have neighbors close by if we're gone. Now the reason we did put on living was to protect from criminals, because a building sitting out there all by itself with valuables in it is asking for it. We have been broken into in our shop with our existing house right next to it, so our hope is...

Bill Tharp: I wonder if you would entertain a couple of questions.

Elizabeth Hackett: I would.

Bill Tharp: The first is, for income that you are getting from this property, one area is the CRP and what is the other source of income?

Elizabeth Hackett: On that particular parcel?

Bill Tharp: Yes.

Elizabeth Hackett: It's just the CRP.

Bill Tharp: So the only thing is the CRP that is producing... that you are getting money from?

Elizabeth Hackett: Right, I could have planted a crop but...

Bill Tharp: But you could have but you didn't.

Elizabeth Hackett: Right because I chose this program, it's an agricultural program. It's considered in place of actively raising a crop.

Bill Tharp: I'm sure that you are a smart lady and you've got your reasons for doing it, you know.

Elizabeth Hackett: Right.

Bill Tharp: But the reasons don't really factor into our decision. We just have to look at it... We don't get paid to do this, I mean, we are a volunteer board. We just have to look at the law and so I'm going to give these gentleman an opportunity to ask you questions as well. But the first thing that I noticed just right out the gate is that ... is two things gentleman, it's the first is that the only income that is coming from the property is from the CRP program. It specifically says, and I doubled checked, in the Iowa Department of Revenue it discusses that CRP does not qualify as a current active use of farming. Then the second part is that the definition to get this exemption says that you currently need to have this in use. And although it could be in use, it's not in use. So that seems to indicate to me that it's not currently in use. So I guess just with those things ... Go ahead if you have any questions, please go ahead and ask.

Elizabeth Hackett: May I respond to that?

Bill Tharp: Sure.

Elizabeth Hackett: Some of the additional granted farm exempts is this property. This is where Scott Eichelberger put his house, I don't believe it qualified under the farm exempt raising. This received a farm exempt, this is where Gary Hepker put his shop, there's nothing tillable there. This is where Rodd McNeal built his house...

Bill Tharp: We are not an enforcement agency.

Elizabeth Hackett: I understand, I am just saying that precedence prior farm exempt shows that you know, when we built our 2008 shop there was nothing tillable there. I didn't purchase the rest of this farm until 2012. I did have other land but on this parcel there was nothing tillable. It was 10 acres that I built a house on.

Bill Tharp: I've learned that laws change over time and regulations change over time and I'm not aware of what they were at those times but I am aware of what they are in 2019. That's all that I am working from.

Elizabeth Hackett: But these are under the same regulations that you are currently making a decision under where these were allowed to be farm exempt and it would follow the same even though it's 2019. The requirements didn't change in 2019, they were established when?

Bill Tharp: People don't know that right off the top of their head.

Eric Furnas: Well in 2009 was the last update to the ...

Elizabeth Hackett: 2009. So in 2014 I added a lean-to on a farm exempt building and these are all recent ones that had no...

Eric Furnas: Mr. Chairman I'm not sure of the relevancy ... I can speak for those if you would like me to but I'm not sure that it is relevant to the exemption of this appeal.

Bill Tharp: I really wouldn't ask to entertain it, unless you gentleman would like to hear about the history. If you do, just say so. But gentleman do you have any questions at all?

Charles Clark: Do you plan on keeping this property in CRP?

Elizabeth Hackett: Do we? In 2025 we have the ability to take it out if we choose to. I guess I would have to evaluate at that time. It's been in a program before. When we purchased it, it was in a program and we took it out. And then after farming it a few years we decided you know, maybe that wasn't such a bad idea with the issues of the runoff and you know, the conservation practices that we ... because that as we know with this flooding, all that water comes down into and follows the creek there and then goes into the sub-drains which then eventually drains ...so all that ground drains into, like I said, it comes down to a creek by my house and then it goes to a sub-drain and then eventually to the slough.

Barry McManus: Is all of this considered one farm, across the road from your house?

Elizabeth Hackett: Yes it is all considered one farm as far as the Farm Service Agency.

Barry McManus: Is this across from your house, is that it in CRP?

Elizabeth Hackett: No that is actively farmed in corn.

Barry McManus: So this is actively farmed and going up the hill behind your house is in CRP, but it's all considered one farm?

Elizabeth Hackett: Correct.

Bill Tharp: But are they separate parcels?

Elizabeth Hackett: Yes they are, they are separate parcels, it was all purchased as one farm. And when you register it with the Farm Service Agency it is one farm. There is a farm number and a tract number.

Bill Tharp: Have you talked to the auditor about combining parcels at all?

Elizabeth Hackett: No I guess I didn't see a reason to. I know when we purchased the ...what was the railroad right-of-way that was like two or three parcels and at that time they said would like to combine them and it made sense because I was doing something. Since we bought this in 2012 and it was never mentioned to combine parcels, I guess I didn't see a need for it at that time. I didn't understand why there would be a reason to change it.

Bill Tharp: I understand. I'm just asking as kind of a problem solver, just because you know, we all want everybody to be happy if they can. I mean, that's what we want and so...

(Someone started to shut the door)

Eric Furnas: We actually can't shut the door, it can be left open. We have to give the appearance of an open meeting. I mean, you can a little bit but...

Barry McManus: I guess that's my... that's why I asked that question there, they are obviously actively engaged in farming and they are growing crops. They take their... I hate to say this but they take their least desirable piece of ground that is most beneficial to take the government program and put it in to CRP. And I totally understand way, you don't want all that topsoil rushing down there by your house.

Elizabeth Hackett: I can tell you what the CSR 2 rating on this farm is 46, which is not high profitable production land. That's why part of the reason it is in the CRP is because of the quality of the dirt.

Bill Tharp: Okay at this point I am going to ask an important question.

Elizabeth Hackett: Okay.

Bill Tharp: There are three members of the board here and it would require all of us to be unanimous for your request to be approved. You've heard our discussion and you have the opportunity since there are just three of us and it's not a full board to request that a decision not be made today. And that there could be five full members, as opposed to just three so that ... I'm not saying which way all of us would vote but...

Elizabeth Hackett: I understand, and my choice is that if you deny it I go to my next step above you.

Bill Tharp: Eric is that the Board of Supervisors or does this just die here?

Barry McManus: Actually they can reapply next month can't they?

Eric Furnas: No. If the motion is denied they have to wait two years... sorry six months, but they would have to opportunity to take this to court and try to sue Muscatine County.

Bill Tharp: Sure any administrator could.

Eric Furnas: Yep.

Elizabeth Hackett: I think if I recall in one of these applications that it took quite a bit ... a couple of them if I remember right, I think Scott Eichelberger was denied... No?

Eric Furnas: I don't know.

Elizabeth Hackett: Okay and then I know...

Bill Tharp: These two gentleman here are new to the board so as for past decisions, they are not going to know about it and I've been on the board since 2010 and that's probably before my time. I don't want to call myself old but...

Elizabeth Hackett: What is before your time?

Bill Tharp: 2010... anything before 2010. But I would need to see, you know, a transcript or something for those proceedings to see exactly what happened. But the most important thing right now is just – do you want to have us make a... go into deliberation knowing what you've heard today and the possibility that it may be denied if all three of us don't say yes? Or would you like to table it to next month's meeting where... you know we can't guarantee that there will be a full board but there might be four or there might be five. So you know, hypothetically if ... let's say... I'm not going to put it on these guys, let's say me, if I voted to deny the request you would, you know, your request would be denied and you wouldn't be able to reapply for six months. Or the alternative would be that you could wait a month on it and you know, there would be a possibility of having four or five members and then you wouldn't have to have a unanimous vote of three people. And then again... and this is hypothetical, if I would have said no and then the other three people said yes, you would be approved. So I just want to know yes or no do you want us to make a decision today or would you like us to table it as is your right.

Elizabeth Hackett: Could we step out?

Bill Tharp: Sure. It's 10:27 a.m. for the record and we are taking a short recess.

Someone: Can we talk at all?

Eric Furnas: We're not going to discuss any of the case while we are in recess.

Someone: No I mean in the meeting.

Eric Furnas: Oh they normally will ask if there is anyone else that wishes to speak.

Someone: I've never been a part of anything like this.

Eric Furnas: Yeah they haven't even gotten to my part and it's at the chairman's discretion but they normally do.

Bill Tharp: Yes I will.

Barry McManus: Can we talk about other options for them?

Eric Furnas: No, I don't think that we should discuss anything at all while they are not present.

Bill Tharp: It's open meetings law and stuff like that. (everyone talking at once - nothing having to do with the Hackett request) Okay it's 10:30 a.m. and we will come back from the recess and we will reconvene, we are back on the record.

Elizabeth Hackett: We will wait the one month and have the... So Iowa law that you are stating that CRP isn't ... is there a copy of that?

Bill Tharp: It's online under the Iowa Department of Revenue. And the Iowa Department of Revenue has regulations. So you can go onto the Iowa Department of Revenue webpage.

Elizabeth Hackett: Is this a...

Bill Tharp: It's pretty user friendly.

Eric Furnas: I gave them my copy.

Jeff Hackett: Jeff Hackett, 2310 Burlington Road. I'd just like to say with so many of the other ones that were in the same situation as us with not income producing ... without showing income off of it off of their parcel and I know you don't have the prior history in front of you of it, but they are getting the farm exemption and then when it comes to us it's not granted. I don't know ... I would think you would have to be somewhat consistent and it's not. It doesn't seem right.

Bill Tharp: Mr. Hackett I completely agree and if other farmers, individuals, corporations are using that incorrectly so that it is getting an exemption where they should not have one because it's not currently being farmed, than they should lose their exemption. Although unfortunately we are not the enforcing agency. But I would suggest that if you do feel strongly enough about it you should contact the enforcement agency to go ahead and take care of that if there is adequate proof so that they can follow up. Because I feel the same way that you do, if you would be denied because you do not currently have the proper ...it's not currently being farmed, if that were the reason and they are not currently farming it, they shouldn't have it either. I completely agree. You seem to be a straight shooter and so am I, so I completely agree.

Elizabeth Hackett: I think that he believes the reason they were given the farm exemption was appropriate because it is considered a farm.

Jeff Hackett: They live on a farm, it's part of the farm. I realize you have parcels one, two, three, four or whatever, but it's still one farm. So the farm that we are on now, timber and everything, is 300 and some acres and we are actually farming it. But because we just have a few acres in set aside, does that make us not farmers? So that's what we are... it's not right. It's not right if you have 100 some acres of tillable ground and then we can't do this? Take out an acre or two on a 46 CSR 2 piece of ground that's not high quality farm ground? And you know, we're not allowed to do farm exemption?

Bill Tharp: I apologize if I mislead you. We are not saying that we would not grant the request. We're not making any statements to that right now. That's why we are asking if you wanted to wait before any kind of a deliberation. So instead of having you... I'm sure that your time is very valuable and so I don't want to waste it by having you explain it now and then you'd need to say the same thing next time. And so I think the best use of the time ... and also I know normally we'd ask for audience... you know anyone that is here that has anything and to have you give a... Mr. Furnas, to be able to give an assessment. But since it looks like right now the applicant would like to table the request for a month, I don't think that we need to go through that rigmarole and waste everybody's value time, unless anyone objects. With that I will entertain a motion to table this request for a month and then it will be reviewed at the next meeting.

Charles Clark: So moved.

Bill Tharp: A second?

Barry McManus: Second.

Bill Tharp: All in favor? Ayes-3; Nay-0; Absent-Schlueter & Geertz. The motion passes. We will see you in a month and thank you for your time. As for the people in the audience, I apologize that we didn't have a full board, you know, so we couldn't do it.

Dixie Seitz: It will actually be July 12th due to the holiday on July 4th. So it will be July 12th but we'll send notices of what time, Friday, July 12th.

Bill Tharp: Okay, so nobody get hit by a Roman candle. (laughter) We will be adjourned.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Eric S. Furnas, Zoning Administrator