

Polk County Zoning Commission  
Monday, October 25, 2021  
Staff Report



**Rezoning Petition**

**Property Owners & Applicant:**

John and Julie Vanderpool, 6665 NW 10<sup>th</sup> Street, Des Moines, IA 50313

**Request:**

Comprehensive Plan and Zoning Map Amendment

**Legal Description:**

THAT PART OF THE NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 36, TOWNSHIP 80 NORTH, RANGE 22 WEST OF THE 5TH P.M., POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH  $\frac{1}{4}$  CORNER OF SAID SECTION 36: THENCE NORTH 90°00'00" EAST ALONG THE NORTH LINE OF SAID NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  432.50 FEET; THENCE SOUTH 0°15'47" WEST, 1317.89 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$ ; THENCE NORTH 89°58'43" WEST ALONG SAID SOUTH LINE, 432.50 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0°15'47" EAST ALONG THE WEST LINE OF SAID NORTHEAST  $\frac{1}{4}$ , 1317.72 FEET TO THE POINT OF BEGINNING AND CONTAINING 13.08 ACRES 1569,950 S.F. MORE OR LESS AND SUBJECT TO ROADWAY EASEMENT BEING THE NORTH 33.00 FEET THEREOF, SAID EASEMENT CONTAINING 0.33 ACRES 114,273 S.F. MORE OR LESS.

**General Location:**

The subject property is located approximately one-half (1/2) mile west of the NE 78<sup>th</sup> Avenue and NE 120<sup>th</sup> Street intersection and addressed as 11653 NE 78<sup>th</sup> Avenue, Mitchellville. (Attachment 'A')

**Existing Future Land Use Map Classification:**

Agricultural (Attachment 'B')

**Proposed Future Land Use Map Classification:**

Estate Residential

**Existing Zoning:**

"AG" Agricultural District (Attachment 'C')

**Proposed Zoning:**

"ER" Estate Residential District

**Surrounding Zoning:**

**North** - "AG" Agricultural District

**East** – "AG" Agricultural District

**South** – "AG" Agricultural District

**West** – "AG" Agricultural District

**GENERAL COMMENTS:**

The applicant is requesting a Comprehensive Plan Amendment and Zoning Map Amendment to change the Future Land Use Map classification from Agricultural to Estate Residential and to change the Zoning Map from "AG" Agricultural District to "ER" Estate Residential District for the subject property addressed as 11653 NE 78<sup>th</sup> Avenue, Mitchellville. The property is generally located approximately ½ mile west of the NE 120<sup>th</sup> Street and NE 78<sup>th</sup> Avenue intersection, Section 36 of Franklin Township. The subject property was created by a rural survey originally recorded in 1999, and later corrected in 2006, which is included with this report as *Attachment 'E'*. The survey established a 1.94-acre buildable area on the adjacent property to the east located at 11747 NE 78<sup>th</sup> Avenue, being Parcel 'C' of the survey. The subject property was identified as Parcel 'D' and was clearly deed restricted to having no development rights and being required to be maintained as permanent open space. The previous property owners, Vicky and Lonnie Harmon and Curtis and Lynn Nixt signed the 2006 corrected rural survey acknowledging this deed restriction. The applicants of this rezoning request were notified of the deed restriction and lack of any development right for the property by Polk County staff prior to their recent purchase of the property from the Nixts in June of 2021.

The site is approximately 1.3-miles north of the City of Mitchellville, 2.5-miles east of the City of Bondurant, and one-half mile west of the Polk County Line where it borders Jasper County. Surrounding properties are all zoned "AG" Agricultural District, and classified as Agricultural on the Future Land Use Map. There is property zoned "ER" Estate Residential and classified as Estate Residential approximately one-half mile west/northwest of the subject property. Adjacent properties to the west and south are utilized as agricultural and open space, with properties to the north and east being mostly residential in nature. In all, there are ten (10) dwellings on NE 78<sup>th</sup> Avenue between NE 112<sup>th</sup> Street and NE 120<sup>th</sup> Street, the most recent of which was constructed in 1999. See *Attachment 'A'* for a vicinity map of the subject property and surrounding area.

The applicants provided a written request letter, which has been included with this report as *Attachment 'D'*. In summary, the applicant's state they have aspired to live in a rural community, and living on the property will allow them to better tend to the eight (8) acres of asparagus they farm on the subject property.

**ZONING BACKGROUND:**

The subject property and immediate surrounding area has been zoned agriculturally since the adoption of zoning in Polk County. The "AG" Agricultural District and Agricultural Future Land Use designation are intended to protect prime farmland and natural areas, including the continued encroachment and development of non-farm residences in these areas.

As stated previously above, the subject property was created in 1999 through a rural survey process initiated by the previous owner, Chester Bailey. The survey created the subject property (Parcel 'D') as well as the adjacent property to the west at 11747 NE 78<sup>th</sup> Avenue (Parcel 'C'). In 2006 the subject property was being transferred from Vicky and Lonnie Harmon to Curtis and Lynn Nixt. At that time Polk County required a corrected rural survey, including signatures from the Nixts and Harmons, to ensure all parties involved clearly understood that the subject property contained no development rights. The Harmons still own the adjacent Parcel 'C' at this time. In summary, the subject property has historically been zoned agriculturally, and utilized as agricultural and open space ground. Beginning in 1999 when the subject property configuration was created, it has never contained a development right. This fact has been clearly and consistently communicated to previous owners through a signed deed restriction. This information was also provided to numerous prospective buyers and real estate agents, including the applicants prior to their purchase of the property in June of 2021.

In April of 2007, Public Works Staff issued an Agricultural Exemption for the subject property, which allowed the previous owners to construct the existing storage building on the subject property, as the building was to be used for storage of a tractor and other equipment used for an asparagus farm on the subject property. The agricultural exemption was issued specifically for an agricultural storage building as proposed and clearly stated that the exemption did not supersede the deed restriction and that no future dwelling was permitted.

#### **STAFF REVIEW:**

##### **Natural Resources**

The subject property does not contain any portion of mapped floodplain. There is a creek at the southern end of the property which does include areas of mapped floodplain on adjacent properties further to the east. Additionally, there is a natural drainageway that runs west-to-east at approximately the midpoint of the property. The highpoint of the property is at the northwest corner, with the low-point near the southeastern corner. The topography of the ground is mostly gradual slopes, with a total elevation change of approximately 70 feet. The most sensitive slopes and drainageways are at the southern portion of the property, where there are also clusters of woodlands.

##### **Roads/Utilities**

The subject property has an existing entrance onto NE 78<sup>th</sup> Avenue, a paved two-lane, County maintained roadway. Water service is provided by Des Moines Water Works, and there is a 4-inch water main located on the north side of NE 78<sup>th</sup> Avenue. However, the public water supply in this area of the County has significant limitations. In conversations with Des Moines Water Works, and through review of other development proposals within the larger northeastern area of unincorporated Polk County, it has been established there is a very limited ability of the current water system and infrastructure to support additional development and taps for new and existing lots. There is no public sanitary sewer in the vicinity. All existing and future development in this area relies on private on-site septic systems for wastewater treatment.

## **Public Testimony**

Staff mailed eight (8) public notification letters to adjacent property owners located within a 500-foot radius of the subject property. As of October 20, 2021, Staff has received one (1) letter of support (from the adjacent property owner to the east), and one (1) letter in opposition of the request. Notice of the request and Zoning Commission public hearing was also published in the newspaper as required.

## **Comprehensive Plan Discussion**

The subject property is located within the Northeast Area, as identified in the Polk County 2030 Comprehensive Plan. The properties surrounding the subject property are similarly designated as Agricultural. Key issues identified during the development of the Northeast Area Plan relate to the desire to protect prime farmland, recreational and natural areas. As with other areas of the County, an issue that is identified by the Comprehensive Plan is a desire to protect prime farmland and the conflicts and trade-offs of residential growth in agricultural areas. Existing residential zoning in this area of the County is primarily a recognition of established lots and residences, with limited ability for future development. Existing zoning and future land use designations in close proximity to the City of Bondurant encourage future development in these areas to occur within the City following annexation.

Applicable general goals and policies of the Comprehensive Plan:

*Quality of Life Goal – Policy 2: Respect for Property Owners: Respecting the decisions of individual landowners must be a component of setting land use policies and regulation. Polk County will respect the individual decisions and values of private property owners in setting and administering land use policy and regulation, and will mitigate impacts to property owners' quality of life when community and private property interests conflict.*

*Character of Development Goal - Policy 1: Preserve Rural Character: Polk County includes large agricultural areas and vibrant rural communities. Polk County will protect prime farmland and maintain the rural character of non-urbanized areas.*

*Character of Development Goal - Policy 2: Coordinated Growth Patterns: Staged development and orderly extensions of street and utility infrastructure is necessary to protect neighborhood, community, and landscape character. Polk County and local governments will work to align City and County land use plans and discourage sprawl, protect social/economic/natural resources, and encourage controlled, orderly growth of cities.*

*Agriculture Goal - Policy 1: Agricultural Land Protection: Large tracts of prime soils are critical to maintaining agricultural practices in Polk County. The County will encourage stewardship of prime agricultural soils and will continue to protect areas most suitable for agricultural production, by encouraging more compact growth in and around municipalities and through development regulations that protect agricultural activities.*

*Agriculture Goal - Policy 2: Agricultural Practices Protection: Minimizing nuisances requires that incompatible land uses be separated. Polk County will protect agricultural practices as the primary and preferred land use in designated agricultural areas to encourage continued private economic investment in agricultural production.*

*Agriculture Goal - Policy 3: Rural Protection: Polk County will protect the rural character of agricultural landscapes and communities by directing non-agricultural growth to municipalities, discouraging municipal expansion into productive farming areas, and allowing rural communities to remain economically sustainable.*

*Planning Process and Implementation Goal – Policy 3: Zoning Consistency – Regulation is a critical tool to meeting County land use goals, and the County’s preferred land use vision. Polk County will update its zoning and land development regulations to encourage an efficient development pattern, fostering compact villages and corridors linking distinct communities.*

The Comprehensive Plan may be amended from time to time if it can be demonstrated that a real and immediate need exists based upon changing circumstances.

### **Comprehensive Plan Analysis**

The Polk 2030 Comprehensive Plan designated the subject property as Agricultural in an effort to preserve large agricultural areas and protect prime farmland in non-urbanized areas. This area of the County has primarily been classified and zoned for agricultural use therefore recognizing the importance of protecting prime farmland. Additionally, limited water service capacity in the area provides an additional reason to limit residential development.

### **RECOMMENDATION:**

Staff recommends denial of the 2030 Polk County Comprehensive Plan Map Amendment from the Agricultural Classification to the Estate Residential Classification and recommends denial of the Zoning Map Amendment from the "AG" Agricultural District to the "ER" Estate Residential District for the subject property.

The recommendation for denial of the Comprehensive Plan Amendment is based upon the fact that the request is not in harmony with the spirit, intent, goals and policies of the Polk County 2030 Comprehensive Plan. The recommendation of denial of the requested Zoning Map Amendment is based upon the following: a) The request is not in accordance with the Comprehensive Plan; b) Approval does not support the public, health, safety and welfare of County residents due to the proposal’s incompatibility with the Agricultural designation and use of the subject property and adjacent properties; and, c) Densification of the area would be a detriment to an already limited public water supply. Furthermore, approval of the request would likely prompt additional rezoning requests in the area and promote further subdivision and development that is not supported by the County’s Comprehensive Plan, existing public infrastructure needed, namely water, and which is not compatible with overall character of the area. It is important to note there are several parcels along this stretch of NE 78<sup>th</sup> Avenue which have been illegally created and divided over time. Approval of this application would likely initiate similar petitions for these parcels requesting they also be rezoned to confer development rights upon what are otherwise illegally created parcels zoned agriculturally.

Polk County has fairly and consistently enforced the agricultural preservation standards throughout the County since their adoption in 1990. The standards limit the creation of new building lots in agricultural areas of the County to a density of no more than one (1) dwelling until per every 35 acres. Specific to the subject property, staff has clearly and consistently

communicated the existing deed restriction to all inquiring parties, including the applicants and current property owners. The deed restriction was placed on the property at the time of its creation in 1999, and reiterated via a corrected survey in 2006. That survey was prepared in accordance with the County's agricultural preservation standards, and it conveyed the one (1) allowable development right for the previous 39-acre parcel to the created Parcel 'C' now adjacent to the east of the subject property at 11747 NE 78<sup>th</sup> Avenue. The subject property was leftover as a residual parcel with no further development rights. The applicants and current owners purchased the property in June of 2021 with the deed restriction in place, and were aware of this restriction. If a precedent is created to rezone agricultural land without proper justification then it will become a very difficult task to manage sprawl and consistently and fairly enforce the County's agricultural preservation requirements, which have been upheld over the last 30 years. There are other locations in the County that are designated for future growth and residential development where infrastructure is established to provide public utilities and roadways exist that can accommodate growth in a controlled and orderly manner. There have not been significant changes in this area, nor is the situation so considerably different that a change in the property's current Agricultural classification on the Future Land Use Map or a change to the current "AG" Agricultural District, is warranted.

**Attachments:**

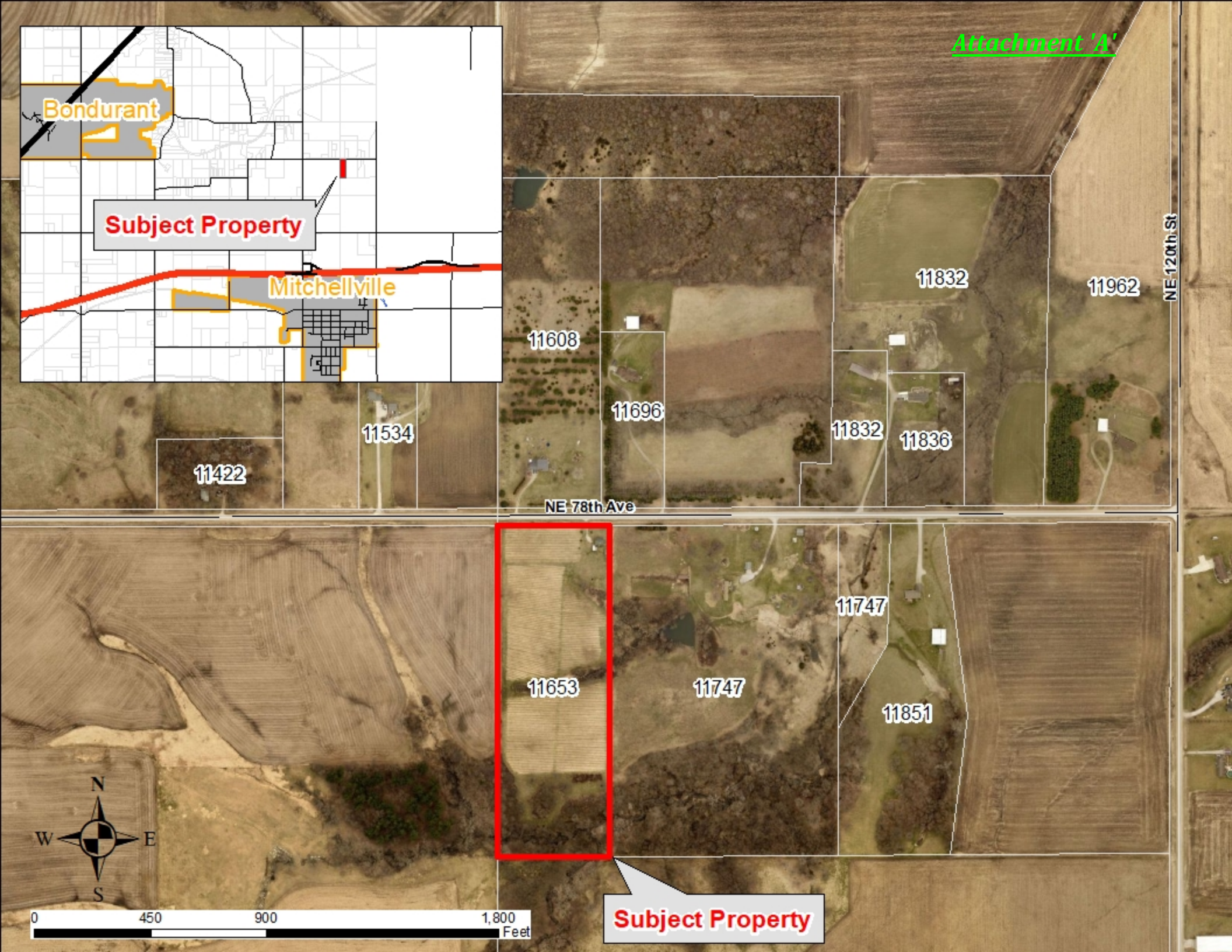
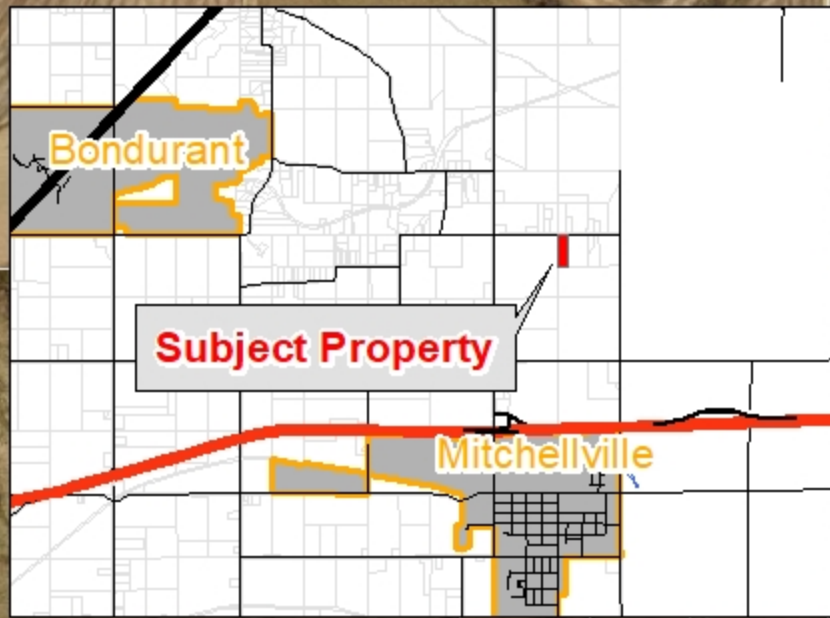
*Attachment A: Vicinity Map*

*Attachment B: Future Land Use Map*

*Attachment C: Zoning Map*

*Attachment D: Submittal Letter*

*Attachment E: Rural Survey of the Property*



**Subject Property**

***Attachment 'B'***  
***Future Land***  
***Use Map***

**Open Space**

NE 82nd Ave

**Estate Residential**

NE 109th St

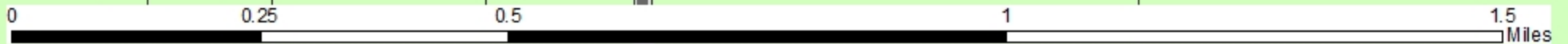
NE 78th Ave

**Subject Property**

**Agricultural**

NE 112th St

NE 120th St





***Attachment 'C'***  
***Current Zoning Map***

**"OS" Open Space District**

NE 82nd Ave

**"ER" Estate Residential District**

NE 109th St

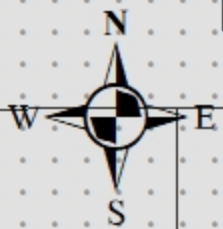
NE 78th Ave

**Subject Property**

NE 112th St

**"AG" Agricultural District**

NE 120th St



## Attachment 'D'

Polk County Zoning Commission,

We are John and Julie Vanderpool, and we've lived in Polk County our entire lives. We've run a small business here in Des Moines for almost 18 years. We aren't people of means, and we work hard for our living. We've always had a dream of living in the country and being a part of a rural community. Our dream came true with being able to purchase a running asparagus farm. The asparagus farm has 8 acres of organic asparagus on a 13 acre plot. We have customers all over Polk County including, 9 local grocery stores. We are respectfully submitting this proposal to ask for an allowance for an accessory or to rezone a portion of this land to residential for a home. It is nearly impossible to enter farming on a large scale. Our version is smaller, but to us is not less significant. Asparagus harvesting is a daily job requiring us to be on the farm every day. We feel our best chance to be successful will to be living on the farm; as we'll be also running our business during harvest season. Our plan is to do all the harvesting as a family effort. Our children are 14, 12, 10 years old, and to us a perfect age to be taught the value and reward of hard work. Our plan/goals for the farm are not based in financial gain. They are to teach our children lessons and character building through hard work, stewardship, respect for the land and others, teamwork, and community. We ask that you carefully discuss and take into consideration for us to build a home on our farm.

Sincerely,

John and Julie Vanderpool

