



# THE LAND USE BULLETIN

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## Supreme Court Faults Decorah in Wal-Mart Case

**T**he Iowa Supreme Court recently ruled in favor of plaintiffs Frank Holland and Loyal and Marilyn Rue, all of Decorah, who maintained the city council's approval of Wal-Mart's request to place fill in an Upper Iowa River flood plain for its supercenter was illegal.

On Aug. 15, 2000, the Decorah City Council voted 4-3 to approve Wal-Mart's request to fill land zoned as a flood plain. The Board of Adjustment earlier had denied Wal-Mart's request.

The Court affirmed an earlier Court of Appeals decision, which said the Board of Adjustment should have considered the request, and the city ordinance allowing the Council to grant fill permits was flawed. The state appeals court had overturned a Winneshiek County District Court ruling that supported Decorah officials' actions.

The case has now been sent back to Winneshiek County District Court to determine a remedy. A compromise may be worked out.

Based on the city ordinance giving the Council the right to issue fill permits, the Council bypassed the Board of Adjustment. The Court's decision raises important questions. What role, if any, does a city council have in issuing exceptions to zoning ordinances? What happens when a city decides not to follow its comprehensive plan? This decision is a vote for Decorah's comprehensive plan, which provides for the integrity of the city's flood plains and preserves the flood plain as permanent open space for parks and recreational uses and for wildlife protection.

Also at issue is the conflict between economic gain at the expense of the environment. Some say that Decorah is anti-business; others that Decorah is pro-business, but with a healthy environment. Some Council members question the ability of Supreme Court justices in Des Moines to grasp the

economic realities the Decorah community faces, 400 miles away.

Karl Knudson of Decorah, the plaintiffs' attorney, said the Supreme Court decision means a large portion of the supercenter sits on fill that was placed illegally. The city claims that 25% of the store was built on the flood plain, while the plaintiffs say the portion in the flood plain is 40-50%.

Attorneys for Wal-Mart have filed a motion asking for further review of the Iowa Supreme Court's decision. Wal-Mart attorney Mark McCormick says, "The court should withdraw its opinion and, upon reconsideration, vacate the Court of Appeals decision and affirm the decision of the District Court."

In a move that some describe as arrogant, Wal-Mart proceeded with its project during the litigation, bringing in 120,000 cubic yards of fill and building a 184,000-square-foot supercenter in the flood plain. The store was completed last fall. Landscaping is in place and the parking lot painted. However, the store is not open, and now the future of the \$20 million structure is in doubt.

There is no indication of when the Supreme Court will rule on the request for further review.

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The mission of 1000 Friends of Iowa is to educate the citizens of our state about the long-term benefits of halting urban sprawl, conserving and protecting our agricultural and natural resources, and revitalizing our cities and towns.

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## The Big Picture

### How Do I Tell People?

by LaVon Griffieon



How lucky those folks are who can say one short word or phrase like doctor, lawyer, or auto mechanic and describe their life's work. When I'm asked to tell people what my job is I struggle for brevity and clarity. I'm trained as a dental assistant. I live on a working farm—but I'm not the farmer. I'm the president of 1000 Friends of Iowa, but that requires another explanation. In 2001 I was appointed a Food and Society Policy Fellow.

If you are an academic, being a fellow is a big deal. Your peers are in awe. It adds to your resume and probably hastens your climb up the ladder to success. When you are a farmwife and announce you are a fellow, folks stare, smile and mumble to their peers, "Heck, she had me fooled...I thought she was a girl." Of all the hats I wear, the fellowship hat is probably the least recognizable. No one knows what being a fellow entails. So before I retire my fellowship hat, let me tell you about it.

It has been an honor to be one of twelve individuals selected from across the United States to participate in the first class of a national fellowship program. My job is to improve communication about food and agriculture issues in the United States. The program addresses the need for consumers and our leaders to better understand the issues and challenges associated with sustaining family farms and food production in the U.S. today. The fellowship lasts for two years and a new class is selected each year. It is funded by the W.K. Kellogg Foundation.

Although I live on a diverse farm, like on so many Iowa farms conventional agriculture has often won out over sustainable practices on our place. I hope that pendulum can swing back the other direction for the next generation of Griffieons. I wasn't selected to the fellowship because of my model farming practices. Each fellow has an area of expertise, and I was selected because of my work on land-use issues. Other key issues represented in my class are organic agriculture, human nutrition, food security, rural development, public health, farm policy, women and ag, sustainable fisheries and sustainable ag.

Sounds like a bunch of stuffy topics, huh? Well, it has been a wonderful learning curve to delve into all these issues and put the pieces of the puzzle together. My fellowship has involved a two-week visit to The Netherlands, Belgium and France. I have been in Washington, DC, Nevada, Minnesota, Colorado, Washington state, Texas and Vancouver. I was very fortunate to spend two weeks in Cuba studying the only national model for sustainable ag that exists in the world.

Some major points that I have learned from my travels, co-workers and studies:

- Food shortages do not occur because of a lack of production. They occur because of poor government policies and inadequate infrastructure to distribute the food that is produced.

*Continued on page 7*



# Legislature adjourns with progress on TIF – but other bills stall out

by Ed Fallon

## TAX INCREMENT FINANCING (TIF)

Clearly the most significant accomplishment of this year's Iowa General Assembly was the passage by the Iowa House of HF 686 on a 91 – 6 vote. The bill still must pass the Senate to become law, but its prospects seem very good next January when the legislature reconvenes.

Concerns about TIF continue to grow. Citizens are waking up to the fact that their property taxes are going up in part to pay for TIF subsidies. Some county governments sacrifice more and more of their budgets to TIF each year, and the state of Iowa now pays \$30 million to reimburse school districts that lose revenue to TIF.

While there is still much progress to be made in order to restore sanity to TIF, HF 686 begins to move us in the right direction. Here are the bill's key provisions:

- Cities will no longer be able to capture the school portion of the TIF, unless the school district agrees to allow this to happen. This will gradually eliminate the current \$30 million loss to the state budget. Any TIF valuation reduced due to the rollback must be removed from the increment valuation.
- Some TIF districts have sunset clauses of ten or fifteen years, but "slum and blight" TIFs can last forever. In fact, Des Moines has one district that has been around for over 30 years. HF 686 will limit the lifespan of slum and blight TIFs to no more than twenty years.
- Current law does not limit the size of a TIF. In fact, some cities are entirely in a TIF district! HF 686 would establish a 5% indebtedness limit on all TIFs.
- Finally, the bill eliminates the use of TIF to suspend, abate, exempt, rebate, refund, reimburse or provide property tax relief for a retail property. While this provision of the bill comes too late to stop the proposed Jordan Creek Mall – a \$60 million TIF project in West Des Moines – it will help add some sanity to the use of TIF for retail in the future.

## LAND MANAGEMENT PLANNING ACT

HF 488 passed the House Local Government Committee 15 – 6, with 8 Republicans and 7 Democrats voting for the bill. HF 488 would require cities and counties in the ten largest counties to plan cooperatively. Planning would occur at the local level, and the state would help resolve matters only in a situation where one or more local governments were at odds. Plans would consider growth over the next twenty years, and cities and counties would work together to:

- Protect prime farmland and sensitive environmental areas.
- Encourage infill and redevelopment of existing urban areas.
- Assure a balance of economic development across the region.
- Accomplish fair distribution of housing for all levels of income.
- Fully utilize existing infrastructure.

Unfortunately, the bill was never allowed to come up for a vote by the full House, but it remains a live round for the 2004 session.

## ANNEXATION

Every year, the legislature makes a knee-jerk response to some heated annexation problem somewhere in the state. This year was no different. HF 595 gives more authority to county supervisors for an 80-20 annexation, and a century farm that has been annexed may continue to be regulated under county ordinances for ten years. These provisions may be helpful in a few cases, but what's needed is a proactive rewrite of Chapter 368, so that the Iowa Code is updated to better deal with current and future annexation disputes.

## CONDEMNATION

In the House, efforts to protect century farms from condemnation failed on a mostly party-line vote. In fact, all the votes in favor of protecting century farms were cast by Democrats. But there remains bipartisan concern about the frequent heavy-handed use of eminent domain, and some House Republican leaders are promising to bring up the issue next year.

*Continued on page 4*



### Iowa, Land of 10,000 Man-made Lakes?

What do Clarke, Page, Ringgold and Marshall counties all have in common? They are each the site of a proposed man-made lake—and significant citizen opposition due to the potential loss of farms, homes and woods. The rationale given for these lakes includes augmenting local water supplies, creating recreation areas, giving developers a lucrative place to build pricey homes, and even helping casino gambling!

However, man-made lakes in rural Iowa have not created the kind of growth that backers tend to promise. In the past decade, cities near existing lakes—including Creston, Centerville, Clear Lake and Knoxville—all lost population. By itself, a lake does little to stimulate the local economy.

Furthermore, man-made lakes in Iowa often silt in, requiring prohibitively expensive dredging to maintain aquatic life. In Clarke County, over 3,300 acres of fertile bottomland and 25 farms are proposed to be flooded for the Coyote Canyon Lake. (Actually, as we go to press, it appears officials in Clarke County may be considering a second new lake.) This lake would be nine miles from West Lake, which currently supplies Osceola with an adequate water supply. West Lake, also man-made, had restorative work done to it in 1984 yet continues to silt in today.

West Lake is home to Lakeside Casino, which according to the definition in the Iowa Code, qualifies as a riverboat—but barely. Iowa law states that a riverboat is required to float at least 180 days of the year, and because of siltation, the Osceola riverboat finds itself in mud more often than in water. The casino's need to achieve "floatability" is being touted as another reason for the new lake at Coyote Canyon, which would provide additional water to West Lake so the casino meets the state's floatation requirement.

In this case, one has to wonder if it would be simpler—and less expensive—to change the Iowa code rather than build a whole new lake!

We'll keep you posted about Iowa's ill-advised—and expensive—drive to become Minnesota.

### North Grand Mall Expansion

Proponents of a new 750,000 sq. ft. regional mall in northeast Ames have argued that Ames' existing mall, North Grand Mall, is not large enough for the growing city. North Grand owners deflated that argument recently with the hiring of an architect to facilitate an expansion of the mall.

The Ames Tribune reported on April 16, that L&H Real Estate, owners of North Grand Mall, hired RKTL, a major architecture firm, to expand and redesign the structure, originally built in 1971. The mall stands at full capacity and plans to expand upward as well as outward to minimize effects on nearby businesses and neighborhoods. North Grand hopes to add another department store as well as several small shops and a multi-level parking area. Construction could start by fall 2004.

Wolford, Inc. has been planning a new mall for Ames at the northeast edge of the city. The official proposal is expected at the end of May. Ken Stone, an economist at Iowa State University, believes this mall could cost existing Ames businesses \$35 million with North Grand Mall hit hardest.

Suburban sprawl is irresponsible, poorly planned development that destroys green space, increases traffic, crowds schools and drives up taxes.

Sierra Club, *Sprawl Costs Us All*, 2000

### Legislature adjourns

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#### IMPACT FEES

Most residential development costs cities more than can be raised in new taxes. A few years back, to offset this problem some cities insisted that developers help fund the additional services required. Impact fees were levied. Developers sued and won. Now, the matter is before the legislature, and bipartisan groups of lawmakers in both the House and Senate proposed bills to allow cities to levy impact fees, specifically to cover the cost of establishing parks related to new developments. Neither bill made it out of committee, but they are still live rounds for next year.



## 7TH ST. REVITALIZATION PROJECT NEARS COMPLETION

Three years has brought a marked change to the face of the 1300 block of 7th Street in Des Moines. Year three is seeing the Community Garden spring to life with activity and plants.



A picket fence has been constructed to define the area. Ten gallons of paint will be donated by Diamond Vogel through the Keep Iowa Beautiful organization. A tool shed, entryway and gazebo will be constructed for the neighborhood's enjoyment in the garden. A waterline is being run for gardeners' convenience by Ron's Electric and Plumbing, who

have coordinated the donation of considerable supplies, machinery and time from Iowa Concrete Cutting, United Rentals Highway Technologies, Plumb Supply, Municipal Supply, Des Moines City Engineering, and Lister Concrete.

The actual garden has 20 neighborhood residents working their own plots. This builds community and provides the gardeners with fresh, healthy, nutritious vegetables and fruit. On the north side of the garden Des Moines Community Garden Project is working with youth from PACE to grow food so they can learn to cook and prepare it. They will also be donating produce to the *Plant a Row for the Hungry* campaign. Things are beginning to come together and will culminate with a community orchard being planted in the fall. Any idle hands that can be spared will be given a task. Please consider donating some time to help complete this wonderful project.



Richard Nau-DeWitt will use a lot of experience this summer when he helps with the on-site coordination of the 7th Street Revitalization Project. Rich has a background in sustainable agriculture and lives on a farm near Van Meter. He coordinated (and motivated) volunteers when he was with a city's recreation department, and he's worked in a greenhouse and designed gardens.

He will not only coordinate where dirt gets dumped, paths are laid and what is and isn't a weed to be mowed—but will also do some community building activities to involve neighbors with the many projects that are taking place. With so many activities underway, we're fortunate to be able to welcome someone with Rich's skills—which we hope also includes the ability to juggle!



## Roads and Development Take Toll on Wildlife, Natural Habitats

### Iowa DOT praised for Living Roadway Trust Fund

A new report suggests that the nation's natural environment and biological habitats are at risk from both development patterns and the roads that make development possible. The report, *Second Nature: Improving Transportation Without Putting Nature Second*, praises projects in several states, including Iowa, that reduce the negative impacts of transportation on natural habitats and promote better environmental stewardship.

The report is the result of a partnership between two national non-profit groups, Defenders of Wildlife and Surface Transportation Policy Project, and was released locally by 1000 Friends of Iowa.

The report names transportation as an important factor in the loss of species at a time when conservation biologists are predicting that one-third of the world's plant and animal species will be lost in the next 50 years. It says that roads and highways directly affect wildlife habitat, ecosystems, endangered species and water quality through land consumption, habitat fragmentation and replacement of natural cover with impervious surfaces.

Four million miles of roadway crisscross America, covering 19,000 square miles with pavement, an area one-third the size of Iowa. An estimated one million animals are killed every day on America's roads, including endangered species.

"Vehicle-critter encounters are potentially deadly for motorists," said Ed Fallon. "For this and other reasons, the Iowa Department of Transportation's Living Roadway Trust Fund deserves praise and continued support, and Iowans should be proud that the program is receiving national accolades."

**"The Living Roadway Trust Fund is a win-win situation for everyone."**

Mark Wandro,  
director of the Iowa DOT

"The Living Roadway Trust Fund is a win-win situation for everyone," said Mark Wandro, director of the Iowa DOT. "We've reduced mowing, which saves citizens money. We've enhanced the aesthetic value of the roadsides. We're providing habitat, and we're creating filter strips to improve water quality."

Conflicts over the environmental impacts of traditional transportation projects can be avoided in many cases. The report points to several states that have combined transportation and environmental protection, utilizing better governmental cooperation, more comprehensive up-front planning, more use of technologies to map natural habitats and greater stakeholder involvement early in the planning of transportation projects.

"Transportation and wildlife conservation are both national priorities, and what we're seeing is that we don't have to sacrifice biodiversity for the sake of getting from point A to point B," said Patricia White, Transportation Associate for Defenders of Wildlife and co-author of *Second Nature*. "The key is cooperation, common sense and commitment."

According to the report, successfully balancing habitat conservation with mobility needs starts with identifying and mapping critical habitats. When expensive mitigation efforts are required they can have greater positive impact by being combined with ongoing conservation efforts. Where existing roads cross migration routes, states are building passageways to allow wildlife to move safely from one side to the other. The report also notes that America's public land, which provide critical habitat for threatened species, in addition to scenic vistas and recreational opportunities for millions of Americans, are investing in transportation alternatives—such as clean-fuel shuttles and bicycle trails—thus reducing the demand for more roadways.

Prairies and grasslands are highly imperiled native habitats, and roadsides offer excellent opportunities for restoring some components of the prairie ecosystem. In Iowa, where 98% of the native prairie habitat has been lost, there are 600,000 acres of roadside habitat. *Second Nature* profiles Iowa's Living Roadway Trust Fund, which ensures that roadside vegetation is safe, visually interesting, and ecologically integrated. It requires that 50% of shrubs and trees are native, and that all grasses and forbs are native. *Second Nature* and more detailed descriptions of the state-level case studies are available on-line at [www.transact.org](http://www.transact.org) and [www.defenders.org](http://www.defenders.org). More information about the Living Roadway Trust Fund is available at [www.iowalivingroadway.com](http://www.iowalivingroadway.com).



## How Do I Tell People?

*Continued from page 2*

- There is no basic research or sound science to back up the safety of genetic manipulation and the effects it will have on the world in the future.
- Biotechnology is a health issue in Europe and a trade issue for the United States. Perhaps we could learn from our European friends that good health may be more important than financial gain.
- In order to trade, a country must be willing to do more than sell (it sounds simple—but we don't seem to be able to grasp the concept).
- American farmers do not have to feed the world. They have to be sure their government policies allow the world to feed itself.
- 50 years of poor federal agricultural policy in the U.S. has driven small farmers off the land and is in large part responsible for the land-use problems we experience today.
- Iowa has world-class soils and ideal growing conditions to raise food. But we have no food security, because growers aren't raising food and consumers aren't asking for Iowa grown food. In fact, 86% of Iowa's food comes from across state lines—and that is up from 80% ten years ago.
- In the past 24 months, America has experienced more meat recalls than in the past 50 years. Something is wrong with our food system, and most consumers aren't aware of a problem.

## "Buy Local-ing"

Each Friday afternoon, Rose Winkeler travels to a different Iowa town in an effort to blanket the state with Buy Local posters, main street by main street. 1000 Friends has been distributing the posters since they were designed in November 2000. Since March, new posters have gone up in Ames, Cedar Rapids, Winterset, Grinnell, Des Moines, Adel, Marshalltown, Tama and several other areas. Businesses have been eager to display the posters in windows and on their walls.

Rose will continue handing out the posters throughout the summer. If you would like to suggest a town or help out on some sunny, Friday afternoon, call the office at (515) 288-5364.

# MEMBERSHIP

*We are gearing up to make our name a reality. We now have 949 members in 72 counties. We hope to have 1,000 \$100 Founding Friends, giving us an operating budget of \$100,000 — a solid position from which to move forward in our work.*

*If you would like to be a Founding Friend, but can't afford a lump sum contribution of \$100, we have a monthly pledge program for \$8.75 a month. Of course, we gratefully accept annual members at \$20 and up as well.*

**Clip and mail with your tax deductible check, payable to 1000 Friends of Iowa.  
Mail to 1000 Friends of Iowa, 3524 Sixth Avenue, Des Moines, IA 50313.**

## MEMBERSHIP CATEGORIES

Student/Senior ☐ \$20 Founding Friend ☐ \$100

Individual ☐ \$35 Sustaining Friend ☐ \$1,000  
(or more)

Family ☐ \$45 Other ☐ \$\_\_\_\_\_

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**Legislature adjourns with  
progress on TIF**  
*...details inside*

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## **Transit Bonding Proposal bad for transportation, bad for economy, bad for environment**

**U**nder current law, 2.86 cents per gallon of the gas tax is put into the Mass Transit Account, supporting 80% of transit funding. The remaining 20% comes from the general fund, requiring yearly appropriation. Senate Finance Committee Chairman Charles E. Grassley (R-Iowa) and Ranking Member Max S. Baucus (D-Mont.) have proposed using 2.36 cents of transit's portion of the gas tax to fund highway and road construction, leaving only one-half of one cent per gallon for mass transit. They would also eliminate the general fund contribution, leaving only \$5.5 billion over 6 years for mass transit while boosting highway funding to \$240 billion over 6 years. To make up for the lost revenues to mass transit, Congress would direct the U.S. Treasury to sell enough bonds to deposit \$9 billion per year into the Mass Transit Account, giving bondholders annual tax credits instead of interest.

There are four major arguments against the proposal:

- 1. It funds transit on credit.**
- 2. It uses a debt system that is risky and unproven.**
- 3. It disrupts the link between highway and transit and jeopardizes the transit program.**
- 4. It jeopardizes the chances for reauthorization.**

We urge you to contact Senator Grassley about this proposal. By phone: Cedar Rapids (319) 363-6832, Council Bluffs (712) 322-7103, Davenport (563) 322-4331, Des Moines (515) 294-4890, Sioux City (712) 233-1860, Waterloo (319) 232-6657. Or you can use his website at [www.senate.gov/~grassley/constit.htm](http://www.senate.gov/~grassley/constit.htm) to locate the mailing address of his office nearest you or to contact him by email.