The identification of improper zoning relative to at least 83 properties in the City of Davenport could be just the beginning of serious legal consequences for the city. In 1997, the Iowa Legislature amended Iowa Code 380. 3 to require three readings for land-use changes, including changes in zoning. Traditionally, only two readings were necessary as long as they were accompanied by publication of the change(s) in the newspaper before the final consideration, in other words, in lieu of a third reading. Davenport's zoning, economic development, and legal staff all missed the change back in 1997 and continued to operate according to the old law until it came to their attention in June 2000 that they were doing so illegally. This means that all the affected properties, at least 83 to date (including the action that expanded a I-74 TIF district to include city-owned property at 53rd and Eastern.), are not in compliance with Iowa law relative to their respective zonings and must remedy the situation, one way or the other. At a minimum, they may have to repeat the entire process to comply. Because the zoning process is no simple endeavor, the situation could lead to expensive solutions.

Other considerations for the city include its exposure to court challenges by citizens who have been adversely affected by any of the zoning changes, including neighbors who originally protested such changes, or property owners whose illegal zoning puts their own interests at risk, because the City did not follow proper procedure or state law. Since this is new legal turf for any city in Iowa, there could be ramifications not yet encountered.

A suggested solution involving lumping all the actions into one and having the State pass a legalizing act to bring the properties into compliance would be the simplest methodology for resolving these previous improper actions. A legalizing act is an action by the legislature. The result is that it corrects for deficiencies of previous actions. It makes acceptable what was done in the past. The action itself, however, must follow similar procedure as that of a council action, but in duplicate because it must pass through both houses. The entire legislature is made aware of the impropriety before it is resolved.

According to Iowa Assistant Attorney General Grant Dugdale, the Attorney General's office only has enforcement authority over violations of the open meetings and open records laws of cities. Cities and counties have home rule and the Attorney General "does not operate like big brother" over municipalities in matters that should be governed by the municipalities themselves, and by the citizens.

Dugdale further explained that the Attorney General's office does not have the authority to initiate a court challenge against any municipality. The action must come directly from a citizen or injured party. While in this case, the AG's jurisdiction is limited to helping with legal opinions , the job of policing cities and counties rests with the municipalities themselves.

The City Council has asked City Attorney John Martin to bring some form of closure to the matter of the cities improper and possibly illegal zonings. According to Mr. Martin's statement on the issue at Monday's Committee of the Whole, he will be submitting possible remedy(s) to the Council this week.

Meanwhile, Niky Bowles has filed a formal complaint with the Iowa Citizen's Aide Ombudsman

(ICAO), who will investigate Bowles' complaint against city staff for the illegal zonings, as well as for her predicament relative to the denial to zone 10 acres she owns from Agriculture (A1) to Commercial (C1). The ICAO is a citizens advocacy group that investigates a wide range of issues and complaints against both local and state governmental agencies, as well as cities and counties, on behalf of individual citizens. Bill Angrick, Director of ICAO, explained that there are a number of criteria by which complaints are assessed. “Once the office determines whether the complaint is jurisdictional and there is an appropriate role for us to play, we then proceed with a suitable investigation, unless there is an alternative remedy that is more appropriate. Otherwise, if we find there is some sort of transgression, we implement reasonable persuasion or issue a public report depending on the situation. We have no enforcing authority. However, we do have a relatively high rate of success in that we are in some way able to help make the complainant whole again, so to speak. Right now, we are still assessing Mrs. Bowles complaint.”

In the meantime, the long-range solution to the improper zonings will likely require the intervention of the state legislature if and when Attorney Martin is able to discern what direction to take. As for avoiding future problems such as these and creating meaningful change, Director Angrick responded, “The City Council can do far more than the Ombudsman ever could.”