

# **PLANNING & ZONING COMMISSION MEETING**

## **CITY OF DYERSVILLE**

**December 12, 2016**

**Meeting called to order by Chairman Olberding at 6:30 P.M.**

**Roll Call: Present:** Commission Members: Ryan Cahill, Roger Gibbs,  
Mike Murphy, Dan Olberding, Wayne Stelken, Bec Willenborg  
**Absent:** Pat Graham, Jim Willenbring

**1<sup>st</sup> Item: Chris Salrin**, Three Rivers FS, comments on November 14, 2016 Planning & Zoning Minutes.

Chris Salrin General Manager with Three Rivers FS was present and handed out a packet to the commission. This packet contained his minute corrections, November 14, 2016 Planning & Zoning Minutes, Three Rivers FS Agreement and 7 maps. He stated he prepared remarks to insure the facts were accurately recorded. On Monday, November 14, Three Rivers submitted a plat to the Planning & Zoning Commission that was tabled. Salrin had reviewed the minutes of the meeting and found 3 inaccuracies. He wanted to go over the inaccuracies so the minutes clearly reflect the facts. In addition to the 3 inaccuracies, he had 2 items to clarify. Salrin reviewed the minute inaccuracies for the commission.

The corrections he had are as follows (taken from Salrin handout sheet):

*Exhibit 1, page one, paragraph one under the 2<sup>nd</sup> Item Approve Preliminary Plat, two sentences read: "The committee asked if this was outside the 2-mile jurisdiction because the agreement states it is outside. Michel advised that it was within 2 miles."*

*Exhibit 2, the Agreement that Three Rivers submitted to the City's Mick Michel on October 31 and shared with the Planning and Zoning Commission; page one, paragraph three reads: "WHEREAS, the Property is situated entirely in the unincorporated portion of Dubuque County and is not within two miles of the incorporated boundaries of any city other than the City." With the City referenced being Dyersville. Clearly, the Three Rivers' Agreement acknowledges that the property is within 2 miles.*

*Exhibit 1, page two, paragraph four. It reads: "The city has considerable investment in water and sewer to this site which it did not have back in 2007."*

*Beginning at the northeast corner of the DOT property, Three Rivers' parcel is a minimum 1,000 feet away from the property. The City's investment does not extend to the property. Exhibit 3, is a collection of maps that illustrate the distance.*

*Exhibit 1, page four, the last paragraph that continues on to page five reads: "Salrin states the agreement was given to the city but they countered and then the unreasonableness set in." The statement implies that Three Rivers first provided an agreement. My statement referenced that when Three Rivers first approached the City about an agreement on October 3, Three Rivers offered to have Three Rivers draft an agreement; however, the City said that it wanted to draft the agreement so Three Rivers let the City draft an agreement, which the City provided on October 28, two weeks beyond the agreed to October 14 deadline. Given the unreasonableness of the City's agreement considering that Section 166, by definition, is not applicable Three Rivers, on October 31, provided an agreement that addresses zoning.*

*In Exhibit 1, page one, paragraph three: "Gibbs asked how someone enters Lot 2 ... Salrin advised they can also access from the north because the property owner owns that too." The answer provided was for Lot 2 of the Harvest Meadow subdivision. This Lot 2 parcel has access from Floyd Road. Lot 2 also has access via an easement that begins at Highway 136 and extends east providing access to all property - Lot 1 of Esches Estates, Lot 1 of Harvest Meadow, Lot 2 of Harvest Meadow and the Kirsch property -along said easement.*

*In Exhibit 1, page five, the paragraph that carryovers from page four, Michel states the City is not willing to entertain Three Rivers agreement because there is no veto on a land use situation. Exhibit 2, page one, point one, letter "A" reads "Three Rivers FS agrees it will not seek a change in the zoning classification of the Property with the Dubuque County Planning & Zoning Office without the consent and approval of the City of Dyersville" and furthermore, page two, point five continues "such consent and approval shall inure to the benefit of and be binding upon the successors and assigns of the parties and shall run with the Property." The Three Rivers agreement will be attached to the land's legal abstract thereby providing the City the protection it seeks.*

Salrin wants these comments attached to the November 14, 2016 minutes in order to provide an accurate record of the meeting.

Olberding asked for comments and mentioned that Recording Secretary Panton spent about 8 hours on the minutes and she has a recording.

Cahill made a motion to receive and file comments from Chris Salrin regarding the November 14, 2016 Planning & Zoning Minutes. Motion seconded by Willenborg.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:** None

**Motion Carried**

Chairman Olberding stated on the last page of the minutes Gibbs makes a motion to table the preliminary plat until the city and Three Rivers comes to an agreement. The Dyersville Commercial stated it was tabled because not enough members were at the meeting. He just wanted to set the record straight. Michel asked if the minutes were correct and Olberding replied he believes so.

## **2<sup>nd</sup> Item: Approve Minutes of the November 14, 2016 Meeting**

Chairman Olberding asked for comments or changes. Willenborg asked if approving the minutes will also approve the additions from Salrin. City Administrator Michel advised it will not. There is an audio recording of the meeting and the minutes were taken from the secretaries notes and from the audio tape. If someone feels there are inaccuracies, the audio can be played.

Olberding made a motion to approve the minutes of the November 14, 2016 meeting. Motion seconded by Willenborg.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:** None

**Motion Carried**

**3<sup>rd</sup> Item: Approve Preliminary Plat** of Harvest Meadow Subdivision Part of Lot 3 of Esch Estates, Section 20 Township Eighty-Nine North, Range Two West of the Fifth Principal Meridian, Dubuque County, Iowa. Plat submitted by Three Rivers FS.

Chris Salrin, Three Rivers FS, addressed the committee. Salrin stated at the last meeting there was confusion on whether Three Rivers owned the property. Three Rivers does have a warranty deed that has been filed at the recorder's office. It now needs to be filed with the

auditor's office so Three Rivers can sell the property. To sell the property, Three Rivers needs a clear title which means the property must be platted. This should be a simple platting procedure because Chapter 166 subdivision regulations do not apply. As was previously stated, this is not a subdivision because it is greater than 5 acres, is zoned A-1 and no road is needed. The plat submitted is a routine plat like the one submitted by Bard Concrete on February 8, 2016. At that time the commission and city administrator honored Chapter 166 given the property was 9-10 acres. Salrin provided copies of the P & Z minutes from the February 8, 2016 meeting for the commission. The Bard plat was over 5 acres and zoned A-1; that is what Three Rivers is requesting. This is consistent application of Chapter 166 and therefore would grant approval of the plat.

Commission member Murphy read the definition of "Subdivision" under Chapter 166.04(8). His question is about correct access to both parcels for future development. If there is not good access to both parcels, is there a need for street? If there is, Chapter 166, as he reads it, does apply. Salrin stated, by definition, there is no need for a street because the parcel is over 5 acres and is staying A-1. All property along there has access to the current easement. Murphy would like to see how that is true. Murphy sees a little gravel road coming off the highway that is good for agricultural use. He would hate see any development, which as a Planning & Zoning board, they need to look at. He doesn't know what the access to the larger parcel (Lot 2) would be. He heard the driveway that extends through the homestead, only allows access for agriculture purposes. Salrin states the zoning on their parcel will remain A-1. Murphy states they need to look to the future. If they subdivide these two parcels, there will be no property access and end up land-locking one of them. Someone could come back on them. Murphy does question the need for a road. Salrin restates that under Chapter 166, there is no need for a road because there is access there, it remains A-1 and is over 5 acres. Murphy states it comes down to the definition and the purpose of the P&Z commission. He wants Salrin to understand that, he doesn't have to agree, just understand it. Murphy understands what Salrin is saying. Salrin states he is looking at Chapter 166 and consistent application. Michel advises the city is doing that. Michel states Salrin is only reading part of the definition. Michel refers to Chapter 166.05 *"no tract or parcel of land shall be divided into three or more parts, whether the result of a single division or series of divisions, unless such plats follow the subdivision procedures and requirements as prescribed by this chapter For purposes of this section, a tract or parcel shall be considered to have been subdivision if there has been any previous division of the original 40 acres, as defined by Iowa Code Section 354.2, in which the tract or parcel is located in whole or in part. A plat of a tract or parcel containing more than one lot which is reconfigured into a tract or parcel containing the same or fewer lots shall follow the subdivision procedures and requirements as prescribed by this chapter"*. Michel states this is a series of divisions. Back in 2007 a plat of survey was submitted for this area. This is not just taking the original 40 acres and carving 10 acres out. This has been divided several times and therefore, in his opinion, requires a subdivision plat. Salrin responds they are greater than 5 acres and therefore do not require a subdivision plat. Salrin is looking for consistent application of Chapter 166 of the city code and how it was applied in 2007 and earlier this year.

Chairman Olberding asks Michel about the city's issues and concerns. Michel agrees we need to look at consistent application. The city needs to allow Three Rivers due process and equal protection of the law. In this situation, the city is considering this a subdivision. The city is requiring a roadway because of Lot 2 and the adverse effects of Lot 2. The city needs to protect the interest of the owner of Lot 2. The owner of Lot 2 does not have full access to his property. You heard in discussions from the last meeting that Mr. Kirsch is not willing to provide right-of-way space for a roadway. There needs to be a roadway placed on the property in conformance of the city code. The code states the purpose of Chapter 166 is *"for the harmonious*

development of the City; for the coordination of streets within subdivision with other existing or planned streets or with other features of the City Plan of Dyersville; for adequate open space for traffic, recreation, light and air, and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience and prosperity". The Three Rivers case is outside of the city jurisdiction but under our code section 166.03 "Pursuant to the authority of Section 354.9 of the Code of Iowa, the City does hereby extend its authority to review subdivisions outside the City's boundaries for a distance of two miles from the City's boundaries. All subdivisions of land within two miles of the boundaries of the City shall be subject to the provisions of this chapter". Unless there is an agreement between the city and Three Rivers to waive any requirements, the city has no choice but to follow Chapter 166.

Michel advises the city is seeking conditional approval which is in the best interest of the city. The city wants to make sure the petitioner can meet the requirements before the final plat process. If the P & Z commission wants to proceed to the Final Plat the petitioner will need to meet certain conditions prior to the final plat being presented or reach an agreement with the city. What the city is requiring is no different from what we require from other developers. Michel reads the conditions which are:

1. *The Developer agrees to dedicate to the City such construction easements, permanent easements, rights-of-way and/or other real property interests (collectively the "Infrastructure Property Interests") from the Property as are reasonably requested by the City. The Developer acknowledges that the timing of such dedications and the scope and location of the Infrastructure Property Interests shall be determined by the City in order to best accommodate the tailoring of the Infrastructure Project for the development needs on the Property.*
2. *The Developer agrees to install street or streets to grade and curb and gutter and surface the streets in accordance with Chapter 166 of the Code of Ordinances.*
3. *The Developer agrees to install sanitary sewer mains and sewer service laterals in accordance with Chapter 166 of the Code of Ordinances for the City of Dyersville. Prior to installation of said sanitary sewer mains and sewer service laterals, plans and specifications shall be approved by the City Council.*
4. *The Developer agrees to install a potable water mains and water service laterals in accordance with Chapter 166 of the Code of Ordinances for the City of Dyersville. Prior to installation of said potable water mains and water service laterals, plans and specifications shall be approved by the City Council.*
5. *The Developer agrees to install a storm sewers and catch basins in accordance with Chapter 166 of the Code of Ordinances for the City of Dyersville. Prior to installation of said storm sewers and catch basins, plans and specifications shall be approved by the City Council.*
6. *The Developer agrees to construct the Infrastructure Improvements approved by the City and State of Iowa, under the supervision of the Developer's Engineer. Any changes in the plans and specifications must be approved by the Developer's Engineer and a revised plan and specification submitted and approved by the City Council. The Developer's Engineer shall certify to the substantial compliance with said plans upon completion. That upon completion, Developer's Engineer shall provide the City with a complete set of as built*

*drawings which must be received prior to final acceptance of the Infrastructure Improvements.*

7. *The Developer agrees to maintain Infrastructure Improvements for a period of two (2) years from the date of their acceptance by the City.*

8. *The Developer agrees to provide the forgoing construction and maintenance at the sole expense of the Developer as the Property Owner, except as otherwise agreed upon by both parties, and as normally provided by the City.*

9. *The Developer shall be responsible for carrying out the future platting, preparation and development of the Property and for paying the costs thereof, including legal and engineering expenses.*

In this case, that is what is required under full compliance of Chapter 166 and that is what the city is seeking.

Salrin responds that Lot 2 of Harvest Meadows will have the same access as it does now and will continue to have that access. As far as the development agreement, Three Rivers is not developing anything as this is not a subdivision and are not changing zoning. Michel advises it is not a zoning issue but compliance under the subdivision code. Salrin states they are exempt because they are A-1 and greater than 5 acres. Michel argues his definition is not complete and under section 166.05 we can require a subdivision plat. Salrin argues his definition makes them exempt because they are A-1 and under 5 acres. Michel and Salrin reiterate their definitions of the city code.

Michel states the city needs to determine if a roadway is needed based what is in the best interest of the city. The city is seeking appropriate infrastructure for future development. It is not the responsibility of the taxpayer to pay for services for the developer. Salrin states when looking at the February 8, 2016 ruling that zones property A-1 greater than 5 acres there was no subdivision. Michel advised Bard purchased property for industrial speculation. There is a subdivision here, the subdivision is 10 acres and the highest best use of this property is not for ag land. Salrin refers back to the definition and there is ample space for an access easement. All lots have access and they will continue to have access. Michel advises this easement is for raising and growing crops. If the city does not request a roadway, property will be land-locked. Murphy states Salrin is quoting 166.04 but the city is quoting 166.05 but Chapter 166 includes both.

Karl Olson, Parker & McNeill Law Firm, states 166.05 does not apply to this plat request because 166.04 exempts it from the requirements of Chapter 166. The requirements in 166.05 only apply if the parcel is not exempt. This parcel is exempt because it is greater than 5 acres and is zoned A-1 and will continue to be. Chairman Olberding states that could change next week. Olson said it would then to go to the P & Z commission. Michel advised it does not. Olberding stated the Dubuque County Supervisors can change that. Olson said that is why the Three Rivers agreement gives the city veto power. Michel advised the city does not have veto power over the county and that is why the city did not accept the Three Rivers agreement. The city is requiring a roadway or Lot 2 is landlocked. Chapter 166.05 does apply – there are no exemptions and the city is requiring a full subdivision. Olson said they are not a developer because they are exempt under Chapter 166. Lot 2 is not landlocked because they will continue to have the easement access they have had. Michel states Lot 2 does not have full

access use and Olson states they do based on a supreme court decision. They also disagree over the requirements and authority of imposing those requirements.

Michel provides the choices that the commission has. They can accept the preliminary plat as is. They can accept the preliminary plat based on the 9 conditions of the city. Or, they can deny the preliminary plat for specific reasons and the reasons must be stated.

Gibbs asks if the city attorney can give his opinion because right now the commission has differing opinions. Carter Stevens, City Attorney, is present and states the zoning administrator has given his opinion and his responsibility in to interpret the zoning code Chapter 166. Stevens concurs with Michel's opinion. A road would be necessary or there will be property that is land-locked. He states Chapter 166 is not the best written code and is difficult to interpret. The board does not have to follow the administrator's advice. He is only giving his interpretation. The commission's job is to interpret the code and make a recommendation. Stevens cannot tell them what to do. Stevens feels Michel's interpretation is correct and consistent with the codes intent and purpose. If anyone has specific questions he can address those. Olberding asked if he believes this property is exempt. Carter does not and believes it needs a road system. All they have is an easement for agricultural use only. Stelken asks if the next owner would be responsible for the road if they want to develop it. Stevens states having an agreement provides leverage for future development. Giving up the conditions will lose your leverage. Those conditions allow for further discussion and provides bargaining power. Michel advised the city is still seeking conditional approval based on the 9 points stated earlier. Salrin again states a road is not required because all land owners that have access to the easement will continue to have access. Michel advises the city is requiring a roadway.

Dean Knepper, 1311 9<sup>th</sup> Avenue SE, said it sounds, to him, Three Rivers just wants to get out of the property they have without becoming a developer. They are not developers, they just want to sell off the property. The new property owner will be aware of the ordinances and conditions of the city if they want to develop it. Michel states if the city just subdivides the property as is, it is the responsibility of the taxpayers to bring everything back up to code. If this property is annexed into the city who pays for that expense? It should be the expense of the developer, not the taxpayers. That is why the city is putting conditions on the approval. Michel is recommending modifications to the plat, including the 9 conditions that conform to Chapter 166.

Murphy feels it is their job as the commission to plan for the future of the town and follow the code section. It is not to resolve any contract or purchase agreement issues.

Murphy made a motion to approve the Preliminary Plat of Harvest Meadow Subdivision Part of Lot 3 of Esch Estates, Section 20 Township Eighty-Nine North, Range Two West of the Fifth Principal Meridian, Dubuque County, Iowa as per the 9 points required by the city. Motion seconded by Olberding.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:**

**Motion Carried**

**4<sup>th</sup> Item: Approve Final Plat** of Harvest Meadow Subdivision Part of Lot 3 of Esch Estates, Section 20 Township Eighty-Nine North, Range Two West of the Fifth Principal Meridian, Dubuque County, Iowa. Plat submitted by Three Rivers FS.

Due to the 9 conditions to the preliminary plat not being met, this item was not discussed.

**5<sup>th</sup> Item: Approve Final Plat** of City View Acres 2<sup>nd</sup> Addition, Dubuque County, Iowa comprised of Lot 2, Lot 1-1, Lot 2-1 of City View Acres and Lot 1 of Holscher Place all in Section Thirty (30), Township Eighty-Nine North (T89N), Range Two West (R2W) of the Fifth Principal Meridian, Dubuque County, Iowa. Plat submitted by Don & Cecelia Lueck.

A five-minute recess was called.

Bill Burger (surveyor) and Don and Cecilia Lueck were present. Burger addressed the committee and advised Don Lueck owns the property behind his house. He is dividing it into 2 lots and giving ½ to his son Dan and ½ to his son Jim. Both have farming operations and will use the ground in their operations.

Michel advised all parcels have road access from 8<sup>th</sup> Street NW and comply to subdivision rules as a simple plat. This plat just cleans up property boundaries. Olberding asked what this was zoned; Michel advised agricultural. Michel also advised that the south portion of Lot 2 is within the city limits. Olberding confirmed that both Jim and Dan have their own access.

Murphy and Stelken questioned what area is being divided. Burger explained that Don Lueck lives on Lot 2 of Holscher place. There are dark lines on the plat that go around it. The light lines directly behind Don's lot is the property that is being divided. The heavy line splits that lot with the top half going to Dan and lower half going to Jim. Both Lot 1 and Lot 2 have access to 8<sup>th</sup> Street NW.

After no further discussion, Gibbs made a motion to approve the Final Plat of City View Acres 2<sup>nd</sup> Addition, Dubuque County, Iowa. Motion seconded by Willenborg.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:**

**Motion Carried**

**6<sup>th</sup> Item: Approve Plat of Survey** of #2016-72 NW ¼ Sec. 28-89-3. Plat submitted by Paul Overman.

Recording secretary Pantan advised a revised copy of this plat was placed on the table prior to the meeting.

Paul Overman was present and stated he is sectioning off a piece of his dad's property that includes a manure pit. He runs the operation and paid for the pit so they are sectioning off that property.

Michel has two issues with the plat. First it does not show the complete parcel on the plat. The second is that since it is under 5 acres the city needs to require street systems. He recommends denying the plat to let the surveyor change the boundary to 5 acres or more and to show the remaining property lines. What is presented is not acceptable under the city code. Michel advises it isn't that we don't want the development, it is just the paperwork is not complete. Currently the parcel is less than 5 acres so it would need to follow subdivision rules. The surveyor needs to change the parcel to 5 acres and show the remaining property lines.

Dennis Overman, property owner, asks why he falls under the city code. Olberding states because he is within 2 miles of the city limits. Overman asks where the city limits would be. Olberding and Stelken state is probably from the ethanol plant. Overman and Stelken were surprised his property was within 2 miles. Michel advises he will work with the surveyor on determining the 2-mile boundary but thinks the auditor's office confirmed it was in two miles. The surveyor came to us with the plat. Overman feels a small portion of his property might be within 2 miles but the parcel where the plat is located is not within 2 miles. Michel advises even if a small portion of the property is within 2 miles the whole parcel needs to be considered within the 2 miles.

Michel recommends the commission deny the plat at this time. Michel asks Overman to have his surveyor contact the city to work on the issues.

Gibbs made a motion to deny the Plat of Survey of #2016-72 NW ¼ Sec. 28-89-3. Motion seconded by Cahill.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:**

**Motion Carried**

**7<sup>th</sup> Item: Approve Amended Urban Renewal Plan**

Michel advises the City is adding the first Tomy building to the TIF district. The city is doing two projects. One is giving a tax rebate to ~~Allied~~ <sup>Alliance</sup> Mutual Insurance Association and the other is putting the first Tomy building and empty lot (the one by Casey's) into the TIF district. Allied Mutual is already in the TIF district by Kramer Funeral Home.

Gibbs made a motion to approve the Amended Urban Renewal Plan. Motion seconded by Stelken.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Mike Murphy,  
Dan Olberding, Wayne Stelken, Bec Willenborg

**Nays:**

**Motion Carried**

**The meeting adjourned at 7:35 PM on a motion by Willenborg, seconded by Murphy.**

*Lori A. Panton*

Lori A. Panton – Recording Secretary

12/12/16

Date