

# **PLANNING & ZONING COMMISSION MEETING**

## **CITY OF DYERSVILLE**

**November 14, 2016**

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

**Roll Call: Present:** Commission Members: Ryan Cahill, Roger Gibbs, Pat Graham,  
Dan Olberding, Wayne Stelken

**Absent:** Mike Murphy, Bec Willenborg, Jim Willenbring

### **1<sup>st</sup> Item: Approve Minutes of the October 10, 2016 Meeting**

Chairman Olberding asked for comments or changes and there were none.

Gibbs made a motion to approve the minutes of the October 10, 2016 meeting. Motion seconded by Graham.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Pat Graham, Dan Olberding,  
Wayne Stelken

**Nays:** None

**Motion Carried**

**2<sup>nd</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, General Manager of Three Rivers FS, was present and advised their intention is for approval a plat of their property along Highway 136. They are not requesting a zoning change; it will remain A-1 Agricultural. Salrin distributed an agreement, to the commission, that Three Rivers FS proposed to the City of Dyersville. He explained the agreement states the property will not be re-zoned and will remain A-1. Any successor to the property will keep it A-1 or request a zoning change with the City. City Administrator Mick Michel advised the city has seen the agreement. 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. He also advised the commission is not able to make any consideration on the agreement. The agreement is something the City Council will need to consider. At this time, there is no agreement in place. Salrin advised they are keeping the zoning A-1 and are just platting to sell Lot 1 which is their portion. They do not have a potential buyer and they have no intention of putting their plant there.

The committee asked about the driveway and if it was OK with the state. Salrin advised they had talked to the state and it is consistent with A-1 zoning and meets all their requirements regarding agricultural use. He believes he talked to Steve Lueck and confirmed that it was compliant. The prior owner (Jude Becker) originally approached the DOT about putting in a driveway. Gibbs asked how someone enters Lot 2. He was shown on the map in the packet where the access is. Salrin advised they can also access from the north because the property

owner owns that too. Michel advised Kirsch owns the current driveway with an ingress/egress easement with limitations. Gibbs asked if Lot 2 is sold, is there an access issue to it. Salrin believes there is an easement starting at highway 136 and extends to the east end of Lot 2.

Salrin also advised that back in 2007 Esch Estates plat was submitted to the Planning and Zoning Commission and was approved and it remained A-1. He presented the commission with a copy of the minutes and plat from 2007. The commission had questions regarding how Lot 1 on the current plat is different than in 2007. They were advised the new plat (Harvest Meadow Subdivision) is carving out Lot 3 from Esch Estates and making it into 2 lots in Harvest Meadow Subdivision. Lots 1 and 2 of Esch Estates will remain the same. Salrin advised the new plat is consistent with the 2007 plat along with the covenants and zoning of A-1. Salrin restated the zoning is remaining A-1, they are staying consistent with the plat from 2007 and providing covenants at the city's request.

Commission member Gibbs does not see the access easement for Lot 2 on the plat. Salrin stated there is an easement but it is not 66' wide. It was explained it is the 20' wide access easement and 15' utility easement that leads to the property in the center. Michel advised the 35' wide access/utility easement is there but is limited to agriculture/harvesting equipment.

Karl Olson, Parker & McNeill Law Firm, also spoke on behalf of Three Rivers FS. He wanted to clarify that Three Rivers FS is asking for the plat to be approved. The city is insisting on a 66' road and for them to provide a development plan for utilities and insisting FS abandon the north entrance approved by the DOT. They feel those requirements are unreasonable since Three Rivers is abandoning their plans for a fertilizer plant. Three Rivers is keeping the zoning as A-1. The use of the property is not being changed it is just being platted so it can be sold.

Michel advised that Chapter 166 requires water, sanitary and storm sewer plans which this board considers. The issue is they are splitting a 58 plus acre parcel into two parcels with one being 10 acres. Is the highest and best use of the property agricultural development? The petitioner may agree not to do anything with the property but they want to sell it. So, the issue on Lot 1 – what is the best use? The city has considerable investment in water and sewer to this site which it did not have back in 2007. If the petitioner wants to ensure the use as A-1, they should put the proper safety nets in place to protect the citizens and their investment. The city is not holding up the process, we just want the safety measures in place. If the petitioner doesn't want that then it is reasonable for the city to ask them to comply under Chapter 166 of the code.

Chairman Olberding questioned how Lot 2 falls under this. The issue with Lot 2 is there is no waiving of the requirements of Chapter 166. Lot 2 of Esch Estates has their own driveway to Hwy 136. The issue to consider is Lot 2 of Harvest Meadows which has limited access and limitations which can cause a landlock situation. If you look at the ingress/egress easement and the code requirements, Chapter 166 says it should have an easement abutted to the property to ensure the safety of the people of the subdivision. Right now, there is a lot 1 and lot 2 of Harvest Meadow plus Esch Estates blending them together. On the south side, you have a driveway access owned by another property owner. It would be reasonable for both parties to work together to put a plan in place for a right-a-way off a busy highway that has the potential to become busier. Olberding asked if the highway becomes busier and the entrance moves to the north, will the DOT be alright with that. Michel has no idea what the DOT would say. He is most concerned about what is in the code of Chapter 166 and what it says about right-of-ways. Currently there is no easement that allows someone to fully use it to access Lot 2 of Harvest Meadow. There is only limited access and he is worried about the owner (or future owner) of

Lot 2 coming back and saying we landlocked his property. He is also concerned with the safety in that area. He doesn't want to create another 7<sup>th</sup> Street SW issue.

Olson stated Lot 1 and 2 of Harvest Meadows are remaining A-1 and the access will not be changed by this request. It is not right to suggest otherwise. What makes these requirements hard on Three Rivers is the use and access has not changed. They are just trying plat a 10-acre portion of it. The city is trying to impose a 66' wide easement, plan for water and sewer and abandon the north access. When you look at Ch. 166 it is unreasonable because it exempts agricultural parcels that are over 5 acres from these requirements. Olson states the definition of subdivisions in Ch. 166 exempts agricultural lots of this size. Salrin provided the commission with minutes from the 2007 meeting because this commission honored that intent back then. Those requirements were not imposed on Lot 2 back in 2007 because they honored Ch. 166 and it did not apply. Olson read the definition of a subdivision – 166.04(8) of the Code. Therefore, agricultural lots 5 acres or greater are not subject to those requirements, and it is unreasonable to impose them on this plat. Olberding stated water and sewer were not available to this area back in 2007.

Michel advised it is obvious the future intention of Lot 1 is not for agriculture even though the zoning doesn't change. The future intention is to utilize it for the highest and best use. Olson states that nothing is changing with the use. Three Rivers intent is not to pursue a fertilizer plant. Olberding stated a future owner may want to change the use. Olson stated that is what the agreement is for. Three Rivers is willing to enter an agreement that would have a covenant that says if a future owner wants to change the zoning, they would need the consent of the city. That is the purpose of the draft agreement presented to the commission. Michel stated the city attorney advised their agreement is weak on principle and that is why the city has not entertained that agreement but wants them to entertain their agreement which includes safeguards for the citizen's investment and the city. We want to make sure the appropriate water and sewer easements are in place for the highest and best use of the property determined by the county. The biggest concern is access, especially to Lot 2 so it is not landlocked. Olson states there is access. Michel advised the property owner does not own it and it has very limited use. Olson states nothing has changed since 2007 and won't change. Just wants the city to be fair. Olberding disagrees and says things have changed. Michel states that if the 2007 plat was presented today he would make sure the appropriate safeguards were in place. Back in 2007 it was presented that Lot 3 would be for farming purposes only. Lot 1 and 2 were there for an existing house and a possible house in the future. If there would have been a lot 4 and 5 back then, the tone would have been different. Now things have changed, we are dividing it further into more parcels. This changes the overall harmony and creating more rules to be followed. We want to make sure the city does not incur unnecessary expenses (utility and right-of-way easements) if annexation would occur on this property. We would require this of any developer with a new subdivision. Olson states this all premature since nothing has changed. Olberding disagrees that things have not changed and does not like the references back to 2007. Olson again states that nothing has changed. It is still agricultural. It is just being divided into 2 lots. Olberding states they need to cover their bases for future development. Olson states that is why they have the agreement. Michel advised it is not appropriate for the authority of the commission to review the agreement but of the city council. Olson brings the commission back to the definition of subdivision that parcels over 5 acres are exempt. He just wants the commission to be fair and even handed. There were no requirements back in 2007. They just want the parcel divided so they can obtain a clear title so it can be sold.

Gibbs has questions regarding the access to Lot 1. He sees a DOT permit for a drive and asks if the DOT has granted this. Michel advises that back in 2014 there was a driveway access but thinks the petitioner meant it for farm access but is not sure. It was asked earlier if this would change and Michel advised he does not have an answer for that. The city wants an appropriate access and a 66' right-of-way that is safe and in harmony with both subdivisions. He does not think that is unreasonable for this board to ask for. The location of the existing right-of-way is indicated to the commission. It is the 20' wide access and 15' utility easement. It is limited to farm use only. To get the easement wider there would need to be negotiations and possible payments to get that to happen. Olson states that is what makes this unreasonable.

Chairman Olberding asks for public comment. Ray Kirsch, owner of Lot 2 of Esch Estates, wanted to clear up that he is the owner of the existing driveway and doesn't know who will make it 66' wide. He questions why this is considered a subdivision if it is staying agricultural. Olson says it shouldn't be considered a subdivision. They are just subdividing a lot into 2 lots. Kirsch indicates that Jeff Pape owns Lot 3 and probably still the other 10 acres since Three Rivers probably doesn't have a deed for it. He gets they are platting it to get a deed but legally Pape probably still owns the property. Olson states they are platting to get clear title, they own the property. They need to have clear title to transfer it and need it platted to get clear title. Kirsch advises he has no plans to do anything with his lane and it is 12' wide and it is for agricultural equipment. Kirsch asks if a driveway is platted, will it be to the north? If they got the driveway would they give up the easement to the lane? Michel advised they have the driveway and will keep the recording of the driveway in lot 1. Olberding asked for more comments and there were none.

Michel states they need to look at the preliminary plat process and come back with the final plat. The city's concern is harmony in the development. You put the necessary requirements in place if things change. A 10-acre lot is most likely not going to remain agricultural. The agreement being presented is a council decision and the mayor is not entertaining that, we have our agreement they can entertain. Looking at the harmony of the development, water and sewer are in close proximity as are the corporate boundaries. The city is concerned about lot 2 being landlocked and having a driveway access. The city needs to follow Ch. 166 and outline water, sewer and right-of-way easements. Michel is not looking at zoning, just the harmony of the subdivision. The highest and best use in the county comp plan is commercial or maybe residential. Michel is concerned about someone else coming in and changing it without the harmony being there and city needs to pay for water, sewer and streets. If the city does not want to entertain a subdivision they would not have control in a 2-mile jurisdiction. This gives us a say in the development as it occurs. If the petitioner wants to cut a deal with the city let them bring something in and see what they say. The city is not willing to entertain the proposed agreement. To move forward we need to look at the removal of driveway access and follow Chapter 166 and 167 of code. If they want it to remain agricultural let's put it in a resolution. As far as the purchasing of the property that is between Three Rivers and Pape. His concern is how this plat is presented to the city.

Salrin says Michel is concerned about zoning and that is the purpose of the agreement. Second is development of the property. If someone wants to develop it, they are going to need approval from the city so they will still have control. These items are addressed in the agreement proposed to the city. We don't want to change the property. We just want it platted to sell it. Olberding asks if it would be easier to sell the property if easements were in place. Salrin doesn't know and doesn't care about development. Olberding feels the city and Three Rivers need to come to an agreement on this. He isn't sure how it got this far without an agreement. Salrin states the agreement was given to the city but they countered and then the

unreasonableness set in. Three Rivers has been very transparent with their intent but the city is being unreasonable. Michel states they have discussed agreements and understands their perspective. The city understands they want clear title but they should have considered that before entering an agreement to purchase the property. It is not the city's fault they cannot get a clear title. We should not have to plat a parcel for them to get a title, the purpose is to make sure we have appropriate land use and harmony of development within our 2-mile jurisdiction. If Three Rivers wants to entertain our agreement that is fine. We are not willing to entertain theirs because there is no veto on a land use situation. Looking at what is presented and the city position while looking at Chapter 166, it is not unreasonable to ask for those stipulations to have this move forward. Part of moving forward is developing a resolution that if something changes you need to come before the city or comply to our standards. The city is not trying to hold this up, we just want the appropriate safeguards in place to make sure a parcel is not landlocked and that the city can move forward without spending a lot of money for easements and streets if developed.

Olson states that Chapter 166 does not apply to A-1 Lots of this size. It is unreasonable because nobody is developing the land. Nothing is changing. It is premature and unreasonable to require FS to do this. Michel reiterates it is changing and says it is unlikely it will remain agriculture. It may not be FS but someone will. We need to have those safeguards in place. Does not want it stopped but wants the safeguards in place. It won't cost them anything to put them in place for the future.

Michel advises this is a 9-member board and will need 5 members to make a positive recommendation. He suggests considering the preliminary plat and bringing back the final plat. He feels they need to comply under Chapters 166.06 and 166.07 of the code which includes a right-of-way plan and utility easements.

Graham suggested maybe tabling the item. Gibbs thinks the city and FS need to come together with an agreement with the necessary safeguards in place. Until he hears from legal counsel from the city, he won't make a decision. He does not want this coming back on them. He can see a 10-acre lot, along highway 136 becoming commercial. We can't take the chance of getting involved in problems in the future. The question also came up on how they could buy a piece of property but not have it platted. Should that not have come before the purchase? Is this a mistake on FS's part and now they want us to correct it? Maybe they should negotiate with who they bought it from to give them the land back. Olson said that is irrelevant. Three Rivers FS had some other properties they sold and needed to invest the money so they did a lifetime exchange on these 10 acres with Pape. For tax purposes, they had to buy land and the thought was to put a fertilizer plant here. But that isn't happening. There was discussion between Michel and Olson on the ownership of the land. Olson advises Three Rivers owns the 10 acres of land. Michel said it seems there are 2 owners of the 10 acres since there is no deed. They can't get a deed without the parcel being platted. How the deal was made is not the city's concern. They should have come before the board and the county to have the land subdivided before they purchased it. Olson said it does not prevent them doing so now.

Gibbs made a motion, if possible, to approve the plat with the stipulation that FS and the city work out an agreement for future use. Michel is not sure if thy board can do that. They can approve with a condition that the city and FS work out an agreement to exclude certain parts of chapter 166. It will still need to come back for a final plat approval. Gibbs said if the city and FS could come up with an agreement, and it was brought back to the commission, it may help them in their decision.

Michel's concern in Chapter 166 is the city wants the appropriate safeguards in place. Three Rivers agreement is too weak. The commission has conditional approval with exemptions but the city has not agreed to any exemptions from the code. We need utility easements and a right-of-way plan. Gibbs thinks an agreement on the safeguards should be put in place before it comes to the Planning & Zoning commission. Michel advises if that is their feeling, it should be tabled until the next meeting.

Gibbs makes a new motion to table 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 for 30 days until the City and Three Rivers FS can come to an agreement. Motion seconded by Cahill.

Roll Call Vote: **Ayes:** Ryan Cahill, Roger Gibbs, Pat Graham, Dan Olberding,  
Wayne Stelken

**Nays:**

**Motion Carried**

**3<sup>rd</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.

No consideration due to Preliminary Plat being tabled.

**The meeting adjourned at 7:40 PM on a motion by Graham, seconded by Stelken.**

*Lori A. Panton*

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Lori A. Panton – Recording Secretary

11/14/16

Date