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MEMO

Date: July 15, 2015

Re: Planning Commission/Board of Adjustment Report

Dear Mayor and City Council,

The Planning Commission/Board of Adjustment held its regular meeting on July 13, 2015. There were two public hearings, for which the Commission/BOA is giving you their recommendations.

PUBLIC HEARING #1

Application: Conditional use permit to allow for a Planned Unit Development to include the construction of eight single-story four-plex residential buildings for rental purposes on an approximate 8.8 acre parcel.

Applicant: Roach Development LLC

Background Information: Roach Development LLC owns an approximate 8.8 acre property which they wish to develop into eight single-story four-plex residential buildings. The property, if the development is approved, would all remain under one owner and the units would be rented.

This application is a re-application of the project proposed at the April 13, 2015 Planning Commission meeting. That April application was sent to the City Council with no official recommendation, but a motion to approve the conditional use failed on a 2-3 vote (two members were not in attendance at that meeting). The City Council subsequently denied the conditional use request at its April 20 meeting.

Since that time, the applicant has met with a number of property owners in the area that had expressed concerns and/or opposition to the project at the April public hearing and Council meeting, as well as the City Engineer (the proposed development abuts the proposed utility improvement project to extend city sewer and water down Derosier Drive – that project was partially approved by the City Council at its July 6, 2015 meeting for the east portion of Derosier Drive only). The result of those meetings is that the applicant is re-applying for approval of the conditional use as previously submitted.

The City Code (Section 11.04.D) addresses the procedures for conditional use permit applications. That section, nor anywhere else in the City Code as far as Staff is aware, prevents an applicant from re-applying for a previously denied application.

As part of the proposed development of this property, the developer would build a new private road system for the units on the property. Those private roads would then connect to existing public roads at three points - two approaches onto Derosier Drive to the north and one approach onto Riverwood Drive to the east. The applicant has expressed a willingness to reduce the number of road entries onto Derosier Drive to one. A stormwater pond would be constructed within the development to address stormwater management requirements of the City Code.

The property contains several relatively large stands of coniferous and other trees. The applicant has indicated that he will be preserving as many of them as possible, which was part of the discussions with nearby property owners after the original denial in April.

In discussions with the City Attorney, it has been determined that the City Code allows for a "planned unit development" in any zoning district as a conditional use without the need for rezoning to any PUD-specific zoning district. A planned unit development is described in the ordinance as encompassing "all developments having two (2) or more principal uses or structures on a single parcel of land" and lists "apartment projects involving more than one building" as one of the allowable uses within a planned unit development.

A portion of the property (the far SW corner) lies within 500 feet of the Mississippi River. That portion of the property would be subject to the regulations of the R-2.M zoning district.

Ñ **Location:**

- Legal Description: Part of Government Lot 2, Section 27 and NW4 of SW4, Section 26, Township 41, Range 32
- Property Address: None (near intersection of Derosier Drive/Riverwood Drive), Little Falls)
- Parcel number(s): 48.6960.001

Ñ **Property Owner:** Roach Development LLC

Public Input:

1. No written comments were received prior to the public hearing.
2. One voicemail message was received prior to the public hearing, in support of the application.
3. Approximately 8 residents and others provided comments at the meeting. Two of these were in support of the application so long as the recommended conditions were part of the approval. Six of the comments were in opposition.
4. Comments in support included:
 - a. That the proposed development will be great for the area.
 - b. That the application follows the rules in the City Code and that Planned Unit Developments are a valid option under zoning.
 - c. That Roach Development's other similar developments are well-kept and very nice homes. They provide an affordable, attractive option for those who can afford market rents but not the cost of single-family homes.

5. Comments in opposition included (Staff comments related to several of the concerns are noted with underlined text below the relevant concern):
- a. The application is in violation of City Code requirements that an application for rezoning not be submitted within 6 months of a previous denial. Nothing has changed to support a reconsideration.
 - i. Staff's understanding is that this concern is referencing Section 11.04.E.7 of the City Code, which relates to rezoning requests. The application before the Council is not a rezoning application; the zoning would remain as it is now. The application is for a Conditional Use, which is subject to Section 11.04.D. Nowhere in that section, or anywhere else in the City Code as far as Staff is aware, is an applicant prohibited from re-applying for a denied conditional use until a certain time period has passed.
 - ~~i.ii.~~ It was noted by at least one Planning Commissioner at the meeting that even if the 6 month time frame for re-application applied, there is a provision allowing for re-application sooner if there exists "grounds of new evidence or proof of change of conditions found to be valid by the planning commission." It was noted that several elements had changed relating to the proposed conditions of approval and the apparent lesser degree of opposition from at least some neighboring residents in the area. The fact that the Planning Commission heard the request and made a recommendation would be evidence that they had found sufficient changes of conditions to allow for re-application sooner than 6 months even if that timeframe was otherwise required (Staff does not feel the timeframe requirement applies due to the application being a conditional use permit and not a rezoning).
 - b. That the meetings held between the April denial of this application and now tainted the discussions and that Planning Commission/Council members in attendance of those meetings should not be voting on this application as a result.
 - c. That Comprehensive Plan goals are not what is to guide the decision. Rather, it is the ordinance.
 - d. That the statement by Staff in its report that the property is not within the floodplain is not necessarily true and should be studied further.
 - i. The FEMA floodplain maps available to the City clearly show the property to be outside of the floodplain.
 - ~~d.e.~~ That the City needs to update its ordinances as per a December 2013 letter from the MN Department of Natural Resources regarding floodplain panels in recently annexed areas.
 - f. That the application is incomplete as it is missing several items identified in the application form checklist.
 - i. The application form does list out a number of items that are to be submitted with the application. However, that form also states "The City may omit or remove unrelated information requirements depending on the type of application request". In any case, the listing of items on the

application form are not identified in the City Code as being required. Section 11.03.N (Planned Unit Developments" requires that the applicant submit "a complete detailed plan...showing the location of all proposed structures, driveways, landscaping, parking, screening, sidewalks, access drives, land uses and other such information as may be requested." The application was reviewed for these items and found complete by Staff.

e.g. That the impact of the development on landowners to the south of the development should be considered as much as those on the north side.

f.h. That there was a citizen petition against the application in April and that should be considered.

i. Confusion over whether the proposed housing would be subsidized or not.

i. The applicant is not proposing subsidized housing. A recommended condition of approval is that the housing must be market rate rentals.

g.j. The number of trees that would need to be torn down as a result of the project was too high.

k. That the recommended condition of approval for only one road entrance onto Derosier Drive needs to be part of any approval (noting that the layout for the proposed development still showed two entrances).

i. The recommended conditions of approval stipulate that only one entrance onto Derosier Drive is allowed.

h.l. Concern about the impact of the proposed development on surrounding property values.

i.m. Concern that the development would be populated by Somalians.

j.n. Concern that other developments by Roach Development are located at the edges of the towns where they are located, not next to established single-family neighborhoods.

Planning Commission/Board of Adjustment Action: The Planning Commission has recommended approval of the request, on a ~~5-0~~ 4-1 vote, with the following conditions:

1. That the approval of this development is for 31 dwelling units and one common area only. Any proposed increase in these numbers shall be subject to a new conditional use permit request and public hearing.
2. That the applicant shall have no more than two fourplexes (each fourplex being one principal use) within the R-2.M portion of the property (the area within 500 feet of the Mississippi River).
3. The applicant shall have a survey of the property completed and a final plat filed at the Morrison County Recorder's office.
4. That the minimum setback of all dwelling units shall be 50 feet from public roads and 40 feet from all other property lines.

5. That a minimum vegetative buffer shall be maintained between the dwelling units and all property lines of 25 feet. This buffer requirement shall be met by maintaining existing trees as much as possible, and where necessary, by planting new trees with a minimum height of 6 feet. The vegetative buffer shall be maintained indefinitely by the property owner. Any areas of this buffer which become ineffective either due to trees dying or windfall from storms, etc... shall be replanted with minimum 6 ft tall trees within 30 days of the landowner being notified by the Zoning Administrator - or by May 31 if the damage occurs during winter months.
6. The applicant shall reconfigure the road layout so that there is only one access point allowed on DeRosier Drive, to be located approximately 900' West of Riverwood Drive, and one access point along Riverwood Drive.
7. The applicant shall submit a stormwater management plan to the City Engineer for review and approval. The plan shall be approved and implemented prior to issuance of a Certificate of Occupancy for any dwelling unit.
8. Garbage/recycling collection and mail delivery (if allowed by the post office) shall be at the common area within the development (not within 50 feet of Derosier Drive or Riverwood Drive).
9. All buildings shall be of "stick built" single story construction.
10. All building exteriors shall be of earth tone or neutral colors.
11. No accumulation of junk, garbage, noxious matters or debris may be maintained on the property. All vehicles stored outside of enclosed buildings must have current license and registration and in a driveable condition.
12. That the landowner shall ensure that a full time caretaker for the facility resides in an area that will allow for a 5 minute response time.
13. That the dwelling units within the development be rented at market rates.
14. In the event additional development occurs to the west and is under the same ownership, the internal roads shall be extended into that property such that one access shall be through Evergreen Terrace and the other access shall be at the intersection of Derosier Drive and Mississippi Boulevard.

City Council Direction: The City Council may approve the request, deny the request, or table the request if the Council should need additional information. If the application is tabled, the Council should provide specific direction as to what additional information is needed.

Findings of Fact: The Planning Commission recommends the following findings of fact in support of the recommendation for approval (several minor changes suggested by Staff are noted via underlined/crossed-out text):

1. **The tract of land for which a project is proposed and a permit requested shall be not less than one acre in area.** The property in question is approximately 8.8 acres in size and meets this criteria.
2. **Uses may include only those uses generally considered associated with the general land use category shown for the area on the official land use plan of the city.**

- a. The City's 2006 Comprehensive Plan identifies this area as appropriate for "Country and Suburban" – a designation for "country and suburban style residential development and related uses served by City water and sewer at a density of 1-3 units per acre.
 - b. The resulting density of the proposed development (31 units/8.8 acres) would be 3.5 dwelling units/acre.
 - c. Resulting density from a development meeting minimum zoning standards for the R-1.C zoning district could be up to 36 units (4.1 units per acre).
 - d. The proposed development would be served with city sewer and water either via infrastructure to be installed under Derosier Drive (recently approved-given preliminary approval, subject to bids, by the Council for the east portion of Derosier Drive, including service to the subject property) or could be served with existing infrastructure under Riverwood Drive.
3. **Where proposed private streets are determined by the council to better serve the traffic flow and the general welfare as a public street, the council may require such dedication and construction in conformance with city standards.** The proposal is that newly constructed roads within this development would be private.
 4. **All other development regulations not specified in the "planned unit development" subdivision or specified as a condition to the conditional use permit, shall apply as regulated in the zoning district in which structure or use would be placed if the land were to be placed in a zoning district classification to permit said use of structure.**
 - a. The zoning district in which this property lies is primarily R-1C "Country Homes" and a portion in the R-2.M Mississippi Headwaters district. Unless specified otherwise by the Council, the minimum setbacks would be as follows:
 - i. Maximum building height: Three stories or 40 feet in height.
 - ii. Front yard setback: Minimum 20 feet.
 - iii. Rear yard setback: Minimum 10 feet.
 - iv. Side yard interior setback: Minimum 15 feet.
 - v. Setbacks for buildings to private road: Not in City Code (could be determined in conditions of approval)
 5. **It is the intent of this subsection to provide a means to allow substantial variances from the provisions of this chapter, including uses, setbacks, height and similar regulations, but not including parking requirements, off street loading, necessary screening and the like. Variances may be granted for planned unit developments provided:**
 - a. **Certain regulations contained in this chapter do not realistically apply to the proposed development due to the unique nature of the proposed development.**
 - i. The variance which the applicant is seeking is to allow four-plexes ("multiple dwellings") on the property where the R-1C zoning district allows for those only as a conditional use and when being located in a

previously existing building that had been used for a school, church, government purposes, etc...

- ii. Two of the proposed four-plexes would be entirely or mostly within the R-2.M Mississippi Headwaters Zoning District, which allows for PUD development with a density of one principal use per 0.75 acres. With approximately 1.5 acres of the property located within the R-2.M zoning district, this would allow for 2 principal uses in that portion of the property. The City Code defines a "principal use" as being either a permitted or conditional use within a zoning district. One- and Two-Family dwellings are a permitted use in the R-1C district and multiple dwellings (i.e. a fourplex) are listed as a conditional use (but only when in a previously existing building as noted above). A planned unit development is also identified as a conditional use.

- b. **The variances, if granted, would be fully consistent with the general intent and purpose of this chapter.** The intent of the R-1C zoning district, in combination with the intent of the sections of the City Code allowing for planned unit developments, is to limit density in this proposed development to that which would be similar to that allowed with a normal subdivision of the property. A normal subdivision would appear to allow for up to 36 dwelling units and the proposal is for 31 dwelling units. As such, the proposal is consistent with the intent of the R-1C zoning district and the allowance for planned unit developments.
- c. **The planned unit development would produce urban development and an urban environment of equal or superior quality to that which would result from strict adherence to the provisions of this chapter.** The intent of the City, as expressed in the "Residential" chapter of the Comprehensive Plan, is to provide a mix of housing options, well-planned neighborhoods and protection of unique environmental qualities in neighborhoods along the Mississippi River. The proposed development meets these goals better than a standard plat would because it allows for a better mix of housing types in this area and preserves a greater percentage of the existing tree cover on the property and is therefore superior to what would be allowed with a standard plat.
- d. **The variances will not constitute a threat to the property values, safety, health or general welfare of the owners or occupants of adjacent or nearby land, nor be detrimental to the health, safety, morals or general welfare of the people of the city.** The proposed development would provide a density of housing that is less than what would be allowed under a standard subdividing of the property. As such, the density of housing and the resulting increase in traffic is sufficiently consistent with the type of development desired by the City in this area - as expressed in the zoning code (which allows for planned unit developments involving rental units and variances from normal use/density standards) and as expressed in the Comprehensive Plan (which allows for densities of 3 dwelling units per acre).
- e. **The proposed development is of such a unique nature as to require consideration under conditions of a planned unit development.** The proposed

development could not be allowed under the City Code in any other way than via a Planned Unit Development.

- f. **It shall be determined that the variances are required for reasonable and practicable physical development according to a plan and are not required solely on the basis of financial considerations.** The proposed development involves a type of development anticipated by the allowance for planned unit developments. It is reasonable as a proposal in that it would result in an overall density that is less than what would be allowed under a normal subdivision and is being designed not just for economic considerations, but also to preserve trees beyond what would likely remain after a standard subdivision.
- g. **The council, upon review and recommendations of the planning commission, shall find that the proposed development is fully consistent with the purposes of this chapter and in conformity to the comprehensive plan.** The proposed development is consistent with the zoning code in that the code would allow for up to -36 dwelling units on this property under current zoning and the proposal is for 31 dwelling units. It is also consistent in that the code allows for planned unit developments that arrange housing units in a different manner than would be allowed under normal subdivision requirements. The proposal is consistent with the Comprehensive Plan in that it helps achieves the stated goals of providing a variety/mix of housing options, better protects the existing tree cover on the property than a standard subdivision, and allows for a well-planned development that minimizes potential future costs for residents and/or the City in paying for and maintaining infrastructure.

The findings of fact adopted by the City Council at the April 20, 2015 meeting where the application was originally denied were as follow:

- a. **The tract of land for which a project is proposed and a permit requested shall be not less than one acre in area.** The property in question is approximately 8.8 acres in size and meets this criteria.
- b. **Uses may include only those uses generally considered associated with the general land use category shown for the area on the official land use plan of the city.** The City's 2006 Comprehensive Plan identifies this area as appropriate for "Country and Suburban" – a designation for "country and suburban style residential development and related uses served by City water and sewer at a density of 1-3 units per acre.
 - i. The resulting density of the proposed development (31 units/8.8 acres) would be 3.5 dwelling units/acre.
 - ii. The proposed development would be served with city sewer and water either via infrastructure to be installed under Derosier Drive (currently being discussed by the Council as a potential project) or existing infrastructure under Riverwood Drive.
- c. **Where proposed private streets are determined by the council to better serve the traffic flow and the general welfare as a public street, the council may**

require such dedication and construction in conformance with city standards. The proposal is that newly constructed roads within this development would be private.

- d. All other development regulations not specified in the "planned unit development" subdivision or specified as a condition to the conditional use permit, shall apply as regulated in the zoning district in which structure or use would be placed if the land were to be placed in a zoning district classification to permit said use of structure.**

- i. The zoning district in which this property lies is R-1C "Country Homes". Unless specified otherwise by the Council, the minimum setbacks would be as follows:

1. Maximum building height: Three stories or 40 feet in height.
2. Front yard setback: Minimum 20 feet.
3. Rear yard setback: Minimum 10 feet.
4. Side yard interior setback: Minimum 15 feet.
5. Setbacks for buildings to private road: Not in City Code (could be determined in conditions of approval)

- e. It is the intent of this subsection to provide a means to allow substantial variances from the provisions of this chapter, including uses, setbacks, height and similar regulations, but not including parking requirements, off street loading, necessary screening and the like. Variances may be granted for planned unit developments provided:**

- i. Certain regulations contained in this chapter do not realistically apply to the proposed development due to the unique nature of the proposed development.**

1. The variance which the applicant is seeking is to allow four-plexes ("multiple dwellings") on the property where the R-1C zoning district allows for those only as a conditional use and when being located in a previously existing building that had been used for a school, church, government purposes, etc...
2. Two of the proposed four-plexes would be entirely or mostly within the R-2.M Mississippi Headwaters Zoning District, which allows for PUD development with a density of one principal use per 0.75 acres. With approximately 1.5 acres of the property located within the R-2.M zoning district, this would allow for 2 principal uses in that portion of the property. The City Code defines a "principal use" as being either a permitted or conditional use within a zoning district. One- and Two-Family dwellings are a permitted use in the R-1C district and multiple dwellings (i.e. a fourplex) are listed as a conditional use (but only when in a previously existing building as noted above).

- ii. **The variances, if granted, would be fully consistent with the general intent and purpose of this chapter.** The intent of the R-1C zoning district is to limit development to one- and two-family homes. The proposal is for fourplexes and is therefore inconsistent with the intent of the zoning district.
- iii. **The planned unit development would produce urban development and an urban environment of equal or superior quality to that which would result from strict adherence to the provisions of this chapter.** The intent of the R-1C zoning district is to limit development to one- and two-family homes that promote home ownership and uniformity in the style of development within a particular area. The proposal would not be consistent with this intent and would therefore be of lesser quality than what would occur with a standard platting of the property.
- iv. **The variances will not constitute a threat to the property values, safety, health or general welfare of the owners or occupants of adjacent or nearby land, nor be detrimental to the health, safety, morals or general welfare of the people of the city.** The proposed development would create a concentration of rental housing in an area otherwise dominated by owner-occupied single-family housing. It would also create a significant amount of additional traffic that could lead to safety hazards for pedestrians using the road for walking, biking, etc... As such, the proposal would be detrimental to the general welfare of the owners or occupants of adjacent/nearby land.
- v. **The proposed development is of such a unique nature as to require consideration under conditions of a planned unit development.** The proposed development could not be allowed under the City Code in any other way than via a Planned Unit Development.
- vi. **It shall be determined that the variances are required for reasonable and practicable physical development according to a plan and are not required solely on the basis of financial considerations.** The proposed development involves fourplexes primarily due to the desire to reduce construction costs and would place a type of dwelling unit (fourplexes) that is inconsistent with the intent of the zoning district in which it lies.
- vii. **The council, upon review and recommendations of the planning commission, shall find that the proposed development is fully consistent with the purposes of this chapter and in conformity to the comprehensive plan.** The proposed development is inconsistent with the zoning code in that it would allow for fourplexes where the zoning district is limited to one and two-family dwellings except in specific limited circumstances. It is inconsistent with the Comprehensive Plan in that it proposes a density of 3.5 dwelling units per acre instead of the 1-3 identified in the Plan.

Application: Variance to construct an 8' x 34' open deck with an 8' x 18' portion to be roofed approximately 4 feet from a public road right-of-way (min. required 15 feet).

Applicant: Gregory Fietek

Background Information:

- **Proposal:** The applicant is proposing to construct a 8' x 34' addition to the south side of the existing dwelling. An 8' x 16' portion will be an open deck, while the remaining 8' x 18' portion will be roofed. The current house foundation appears to be just over the required 15 foot setback from 4th Avenue SW, which means that the 8' addition will be about 5-7 feet from the right-of-way.

Ñ **Location:**

- Legal Description: Lots 1 and 2, Block 13 of Searle's Addition
- Property Address: 410 12th Street SW
- Parcel number(s): 49.0861.000 and 49.0861.001

Ñ **Property Owner:** Gregory Fietek

Public Input: None

Board of Adjustment Action: The Board of Adjustment has recommended denial of the request, on a 5-0 vote. The Board noted that the ordinance does allow for a maximum three foot wide fire escape that could be used to allow for egress from the existing doorway on that side of the building where the deck was requested.

City Council Direction: The City Council may approve the request, deny the request, or table the request if the Council should need additional information. If the application is tabled, the Council should provide specific direction as to what additional information is needed.

Findings of Fact: The Board of Adjustment recommends the following findings of fact in support of the recommendation for denial:

1. **Will the granting of the variance be in harmony with the general purposes and intent of the Zoning and/or Subdivision Ordinance?**

The City's subdivision ordinance does not apply to this application.

The general purposes and intent of side yard setbacks for City streets in the Zoning Ordinance, is to provide for larger yards consistent with the residential nature of the area, to ensure adequate space for maintenance of the road, and to allow for potential future expansion of right-of-way should the need ever arise. In this case, the proposed deck would reduce the ability of the City to achieve these purposes.

2. **Will the granting of the variance be consistent with the City of Little Falls' Comprehensive Plan?**

The Comprehensive Plan does not directly address applications such as these.

3. Is the proposed use of the property reasonable?

The requested variance is reasonable in that the request is for a deck, which is a common addition for a house. Further, the house, which was originally built in the late 1970s, was constructed with a ledger board – presumably to allow for a future deck. However, the ordinance at the time the house was built specified a 15 foot setback and could have been met at that time.

4. Is the plight of the landowner due to circumstances unique to the property not created by the landowner?

While the current owner did not construct the house in its present location, the person who did build the house presumably knew of the 15 foot setback requirement since it was listed on their building permit. It appears the house could have been moved further to the north to allow space for a deck at that time.

5. Will the variance, if granted, alter the essential character of the locality?

The use of the property would remain residential in character and the proposed addition would not change anything in that regard. However, it would put a structure closer to the road than typically exists in the area.

6. Are economic considerations the only reason the applicant cannot meet the strict requirements of the ordinance?

To avoid the need for a variance, the entire house would need to be moved (to allow for an addition off the south side), which would obviously require a large economic expense. However, a maximum three foot wide fire escape is allowed by ordinance to be within the required setback and is possible to allow for egress from the house on that side.

7. Could the practical difficulty be alleviated by a feasible method other than a variance (taking into account economic considerations)?

To avoid the need or a variance, an addition could possibly be done on the west or north side of the house, although this would likely require significant remodeling and may not make sense given the layout of the home. The home already has an open deck off of the rear of the home. As noted previously, a fire escape could be constructed off the south side of the house where the proposed deck was to be located without need for a variance.

If you have any questions, please feel free to contact me. I can be reached by phone at (888) 439-9793 or by email at oleson@hometownplanning.com.

Sincerely,



Ben Oleson, AICP
Hometown Planning
City of Little Falls Zoning Administrator

3. **Erection Or Alteration Of Building:** The erection or alteration of a building pursuant to a granted variance shall be completed within six (6) months of the date the variance was granted, unless a building permit has been issued and the construction actually has begun within the six (6) month period, and is thereafter diligently pursued. Failure to comply will leave the variance subject to revocation as set forth herein.
4. **Revocation:** A variance may be revoked, suspended, or amended by following the requirements and procedures in subsection H of this section.

No required waiting period for conditional use permits listed in this section. The Roach application is for a conditional use - not a rezoning.

D. Conditional Uses:

1. **Purpose:** In order to give the district use regulations of this chapter the flexibility necessary to achieve the objectives of the comprehensive guide plan, in certain districts conditional uses are permitted, subject to the granting of a use permit. Conditional uses include those uses generally not suitable in a particular zoning district, but which may, under some circumstances, be suitable. When such circumstances exist, a conditional use permit may be granted. Conditions may be applied to issuance of the permit and a periodic review of the permit may be required.
2. **Application, Referral To Planning Commission, Planning Commission Recommendation And Council Action:** Except as otherwise noted in this subsection, the application and presentation requirements for conditional permits shall be the same as those for variances as provided in subsection C of this section.
3. **Revocation:** A conditional use permit may be revoked, suspended, or amended by following the requirements and procedures in subsection H of this section.
4. **Use Of Permit:** If the conditional use authorized by said conditional use permit has not been completed, or the use granted has been discontinued for a continuous one year period after grant of the permit, then the conditional use permit shall be subject to revocation, suspension, or amendment as set forth in subsection H of this section. (Ord. 59, 6th Series, eff. 7-21-2014)

E. Amendments:

1. **Amended According To City Charter:** This chapter may be amended according to the provisions of the city charter.
2. **Initiation:** Proceedings for amendment of this chapter shall be initiated by: a) a petition of the owner or owners of the actual property, the zoning of which is proposed to be changed; b) a recommendation of the planning commission; or c) by action of the council.
3. **Application:** All applications for amendment which are initiated by the petition of the owners of property shall be filed in the office of the zoning administrator and shall be accompanied by six (6) copies of a set of plans and graphics containing the following information and folded, where necessary, to the size of eight and one-half inches by eleven inches (8¹/₂" x 11"):
 - a. A generalized location map showing the location of the proposed site in relation to the city.
 - b. A scaled plot plan, with north indicated, of the proposed site showing all site dimensions.
 - c. All types of proposed uses.
 - d. Location of all buildings and structures on and within three hundred feet (300') of the proposed site.
 - e. Elevation drawings or illustrations indicating the architectural treatment of all proposed buildings and structures.
 - f. Any plans for the modification of standards set by this chapter or any other provisions of this code.
 - g. Location and size of all required parking spaces.
 - h. Landscaping plan, including location, size and type of all proposed planting materials.
 - i. General floor plans of all proposed buildings and structures.
 - j. Indication of location, size and type of storage facilities for the storage of trash and waste materials.
 - k. Design layout and size of all proposed signs.
 - l. Drainage plan of the proposed site and location and size of existing and proposed utilities.
4. **Action By Planning Commission:** Within sixty (60) days after the date or receipt of the petition by the zoning administrator, the planning commission shall make a written report to the council stating its findings and recommendations, unless the applicant, in writing, requests an extension of time.
5. **Action By Council:** On receipt of the written report from the planning commission, the council shall hold a hearing within thirty (30) days after the receipt of the report and recommendations from the planning commission. If the planning commission fails to make a report within sixty (60) days after receipt of the application, then the council shall hold a public hearing within thirty (30) days after the expiration of said sixty (60) day period, unless the applicant, in writing, requests an extension of time. Failure to receive a report from the planning commission as herein provided shall not invalidate the proceedings or actions of the council. The council shall give not

less than ten (10) days' nor more than thirty (30) days' notice of time and place of such hearing published in the designated legal newspaper, and such notice shall contain a description of the land and the proposed change in zoning. At least ten (10) days before the hearing, the council shall order the zoning administrator to mail an identical notice to the owner and to each of the property owners within three hundred feet (300') of the outside boundaries of the land proposed to be rezoned. Failure to mail the notice or failure of the property owners to receive the notice shall not invalidate the proceedings. At the time of hearing, the council may take final action upon the application or it may continue the hearing from time to time for further investigation and hearing. The council may also request further information and report from the planning commission.

6. Referral To Planning Commission: The council shall not rezone any land or area in any zoning district or make any other proposed amendment to this chapter without having first referred it to the planning commission for their consideration and recommendation.
7. Effect Of Denial: Rezoning applications may be denied by motion of the council and such motion shall constitute a finding and determination that the proposed rezoning is not in the best interest for the physical development of the city. **No application which has been denied wholly or in part shall be resubmitted for a period of six (6) months from the date of said order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the planning commission.** (Ord. 801, eff. 6-3-1974)

Waiting period for rezoning re-applications (no corresponding waiting period for conditional use permits in Section D. above).

F. Fees: The fees for each application shall be adopted by resolution of the council and shall be payable at the time applications are filed with the zoning administrator and to referral to the planning commission. There shall be no fee in the case of an application referred to the planning commission. (Ord. 132, 2nd Series, eff. 10-29-1984)

G. Conditional Use Permits And Variances Recorded: A certified copy of every conditional use permit and variance granted shall be recorded with the county recorder.

H. Revocation, Suspension Or Amendment Of Previously Approved Variances And Conditional Use Permits:

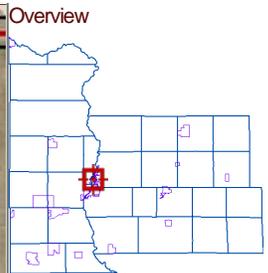
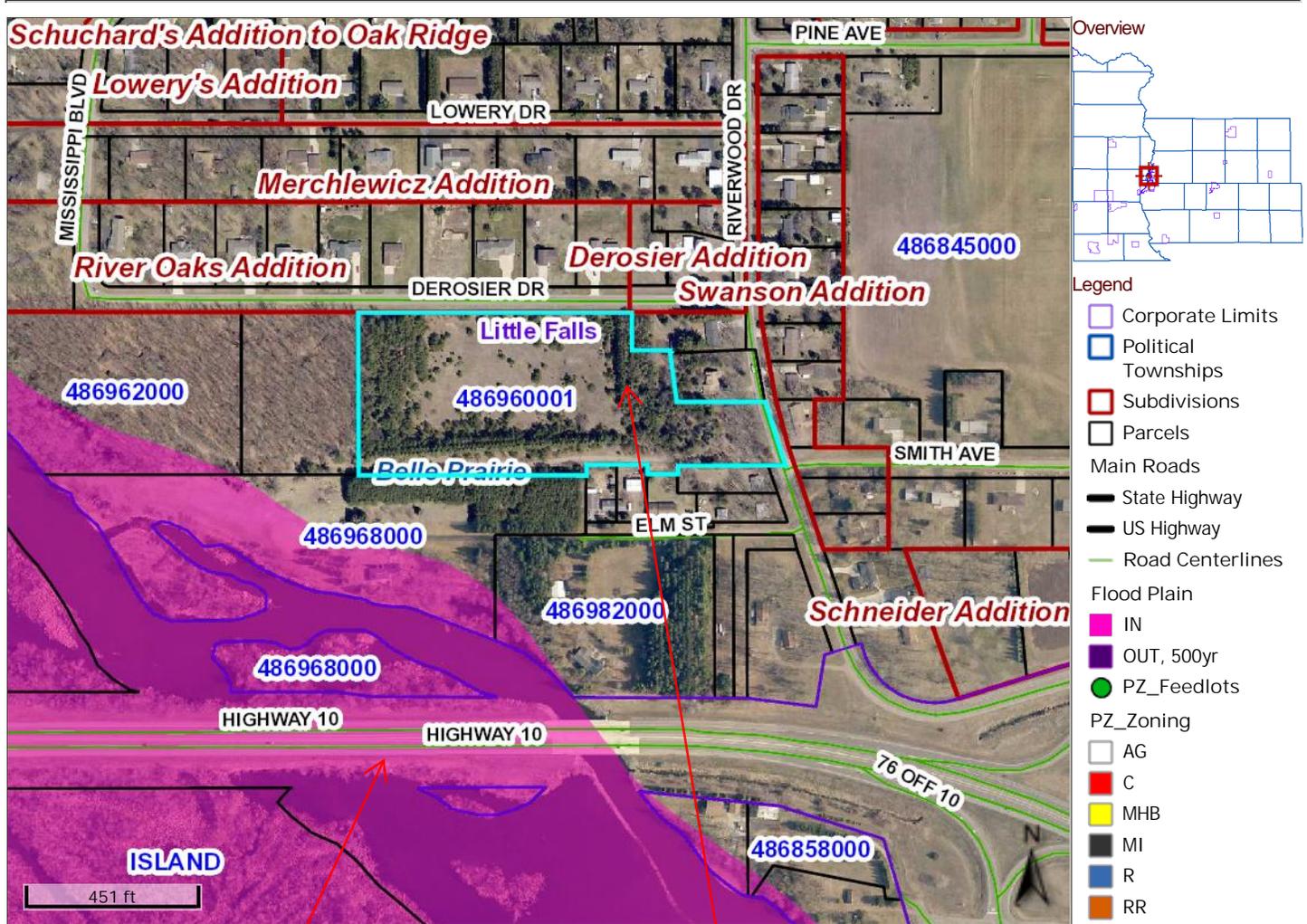
1. Jurisdiction: Upon obtaining information that indicates a basis for revocation, suspension or amendment, the zoning administrator or his/her designee may initiate proceedings for revocation, suspension, or amendment if a warning or other corrective action is deemed to be inappropriate or ineffective. If so, the matter shall be heard by the authority that originally granted the applicable variance or permit. A decision on whether to revoke, suspend or amend a permit that was originally issued by the zoning administrator shall be made by the zoning administrator. All other revocations, suspensions or amendments shall be submitted for hearing as indicated herein.
2. Hearing: The issuing authority shall establish a time, date and location for a hearing for revocation, suspension, or amendment, at the request of the zoning administrator or the administrator's designee. The administrator or designee shall serve notice of the date of the hearing to the permit or variance holder no less than ten (10) days prior to the date of the hearing using the same process as is required for civil actions at law. Other interested parties may be notified by first class mail or other appropriate means. At the hearing, the issuing entity will take such evidence as it deems appropriate. In all cases, the holder shall be entitled to present such evidence as that party deems appropriate either personally or through an attorney. Should the holder fail to appear in person or through counsel, the issuing entity shall still have the authority to take evidence and make a decision upon the request for revocation, suspension or amendment.
3. Findings At Hearing: Should the issuing authority find, by a preponderance of the evidence, that the holder has failed to comply with the conditions set forth on the variance or permit, the issuing party shall make that finding and state the reasons for its determination.
4. Remedies: Upon finding that the holder has failed to comply with the conditions set forth in the variance, conditional use permit or other permit, the issuing entity may then determine appropriate sanctions, if any, to impose. Sanctions may include, but not be limited to, revocation, suspension or amendment to the previously imposed conditions. A variance, conditional use permit or other permit may be suspended until such time as the holder comes into compliance with the terms of their original approval. The criteria for determining the appropriate sanctions shall include, but are not limited to, the length of time of the violation, the severity of the violation, and risk to the health, welfare, and safety of the neighboring residents and/or community as a whole. (Ord. 59, 6th Series, eff. 7-21-2014)

11.05: ZONING DISTRICTS AND MAP:

A. Districts: For the purpose of this chapter, the city is hereby divided into the following use districts and groups of use districts:

1. Residential Districts:

- R-1 One- and two-family residential district
- R-1C Country homes, one- and two-family residential district
- R-2 One- and two-family residential district
- R-3 Multiple-family residential district
- R-4 Mobile homes residential district (Ord. 801, eff. 6-3-1974; amd. Ord. 80, 5th Series, eff. 8-18-2003)



- Legend**
- Corporate Limits
 - Political Townships
 - Subdivisions
 - Parcels
 - Main Roads
 - State Highway
 - US Highway
 - Road Centerlines
 - Flood Plain
 - IN
 - OUT, 500yr
 - PZ_Feedlots
 - PZ_Zoning
 - AG
 - C
 - MHB
 - MI
 - R
 - RR
 - SC
 - SP
 - SR
 - PZ_Flood Plain
 - IN
 - OUT, 500yr
 - PZ_Army Compatible Use Buffer
 - PZ_Urban Fringe Zoning

In Floodplain

Out of Floodplain
(Roach Development property highlighted in light blue)

Parcel ID	486960001	Alternate ID	486960001	Owner Address	ROACH DEVELOPMENT LLC
Sec/Twp/Rng	26-41-32	Class	4BB-Residential Non-Homestead SFD		1414 PAUL LARSON DR
Property Address		Acreage	8.800		LITTLE FALLS MN 56345
District	LITTLE FALLS EAST-#482-HRA				
Brief Tax Description	PT OF GOV LOT 2 SEC 27 & OF NW1/4 OF SW1/4 SEC 26 DESC AS: COM AT NE COR OF SAID GOV LOT 2, S 0*01'33" E 937.97 FT ALG E LN, N 89*54'45" W 183.36 FT, N 7*33'25" W 127.21 FT TO SW COR OF DOC 295754 PT OF BEG, S 7*33'25" E 127.21 FT, S 89*54'45" E 232 FT TO CTRLN OF CO RD, S 17*10'39" E 134.38 FT ALG CTRLN, CONT ALG CTRLN S 19*15'32" E 36.95 FT TO INTERS WITH N LN OF DOC 321712, S 89*57'19" W 280.85 FT ALG SAID N LN TO ITS NW COR, S 0*02'41" E 25.46 FT ALG W LN TO S LN OF N 1130.84 FT OF GOV LOT 2, N 89*54'45" W 80.07 FT TO				



Ben Oleson <oleson@hometownplanning.com>

RE:

1 message

Ben Oleson <oleson@hometownplanning.com>

Wed, May 27, 2015 at 4:51 PM

To: Bruce Smith <BSmith@atlasconsortium.com>

Bcc: Tim Terrill <timt@mississippiheadwaters.org>, Greg Kimman <gkimman@cityoflittlefalls.com>

Mr. Smith-

I did some more research and spoke with Tim Terrill (Executive Director) of the Mississippi Headwaters Board yesterday. We both agreed that the City's Zoning Map reflects what areas of the City were subject to the R-2.M zoning regulations. The R-2.M zoning district regulations were the result of discussions and agreement between the MHB and the City back at that time – they aren't the same regulations that apply to areas within the jurisdiction of the MHB (areas outside of cities in Morrison and other counties in which they have jurisdiction). They are rules as agreed to by MHB and the City to reflect the unique nature of the land being annexed (i.e. many smaller existing lots, already developed lots, etc...).

As noted in my previous e-mail, my interpretation of the part of the MHB minutes that you provided refers to areas west of the roads mentioned. Some of those areas were less than 500 ft from the river and some were more. The agreement was that all of the areas west of those roads – regardless of how far from the river – would be put into the R-2.M zoning district. There was no such discussion for the area south of Derosier Drive, so the R-2.M map defaults to the 500 ft area that was subject to MHB rules prior to annexation. Mr. Terrill seemed to agree with that interpretation in my discussions with him.

So any area of the Roach property within 500 ft of the river we would subject to the R-2.M zoning district regulations, but areas beyond 500 ft would be subject to the R-1C district in which it lies.

Let me know if you have additional questions.

Ben

Ben Oleson

Hometown Planning

City of Little Falls Zoning Administrator

E-mail Response to Bruce Smith regarding "if part of the lot is in the corridor, all of it will be subject to the standards" (City ordinances applicable to MHB area as recognized by the MHB)

Toll Free Phone/Fax: 888-439-9793

Local Phone: 320-759-1560

Email: oleson@hometownplanning.com

From: Bruce Smith [mailto:BSmith@atlasconsortium.com]
Sent: Friday, May 22, 2015 2:35 PM
To: 'Ben Oleson'
Cc: 'Tim Terrill'
Subject:

Dear Mr. Oleson:

Thank you for your prompt response.

“that if any part of those lots was within 500 ft of the river, then the entire lot would be placed into the R-2.M zoning district. But I don’t believe it was intended to apply to lots in other areas.”

My immediate concern is with reference to the Roach Development property facing DeRosier Drive and their proposed development of their R-1 C (Planning Commission Hearing of April 13, 2015) property complying with MHB approval dated October 18, 1999 and Attachment D, map which I had attached the applicable detail in yesterdays message. That shows the southwestern corner in MHB jurisdiction and would become completely R-2 M if not subdivided. The zoning map you have attached does indicate applicability as it is in the same area.

I appreciate any additional efforts you could make to clarify and resolve this issue.

Bruce Smith

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[310.346.3622](tel:310.346.3622) (disabled during foreign service)

to go on and possibly receive a \$15,000 scholarship. One of the winners from last year went on to receive the Stockholm Conference award. This year's winners are as follows:

Rebecca Krystosek, Bagley High School, 12th grade – 1st place \$200

Ana Olson, Thief River Falls-Lincoln High School, 9th grade – 2nd place \$100

Jill Kobilka, Bemidji Middle School, 7th grade – 3rd place \$50

All of the students do exceptional study and preparation. They are a credit to their schools and instructors. Several of the Commissioners expressed concern that this type of practical learning will be eliminated with Governor Pawlenty's new proposals to rely on testing to show student achievements. Commissioner Larsen, a former educator, stated that the best way for students to learn is in hands-on situations such as the science fairs where they apply the knowledge they are receiving in the classroom.

9:59 AM - MHB took a short recess.

10:08 AM – Zoning Action

2003 Mississippi Headwaters Board minutes discussing what parts of annexed area will be subject to City ordinances recognized by MHB.

A. Belle Prairie Township annexation – City of Little Falls

Rich Carlson and Elvin Erickson presented information on the Belle Prairie Township annexation into the City of Little Falls. Large maps of the area were spread out to show the Board where the actual annexation lines would be. The area is west of the Burlington Northern Santa Fe Railroad tracks to Camp Ripley. The darkened neighborhoods and Riverwood Drive will be getting city sewer and water this year. This is one of the first communities to work with MHB, establishing special zoning regulations along the Mississippi River. Neighborhood 4, and portions of Neighborhoods 6 and 7 are within the MHB jurisdiction. Discussion of the maps and zoning occurred. Little Falls developed a map of the city that clearly defines who is in and who is out of the city limits. The jurisdiction crosses over some roads. Mr. Erickson stated the City proposed to keep everything in MHB area to the west of the main roads included Riverwood Drive, Gayle Drive, Mississippi Boulevard and Riverview Drive, the area that was annexed before. Some areas are over 500 ft. from the high water mark and some are less. The City proposes that if part of the lot is in the corridor, all of it will be subject to the standards.

Over the next 10 years, it will be difficult because some homeowners have new septic systems and do not want to switch over to city sewer and water. Mr. Carlson stated that the City is offering an incentive of \$2,500 for homeowners if they annex by July 31, 2003. If a homeowner's septic system fails, then they are required to hook up to the City if their property is within 500 feet of a municipal sewer main. In 10 years the entire area becomes annexed. The Board congratulated the City on the incentive program.

The Director expressed appreciation for the stewardship of the City and partnership with Morrison County. Discussion occurred regarding rain gardens, which are small ponding areas that prevent runoff from going directly into the River. No curb and gutters are planned, so they can work with the drainage system, reducing impervious surface and grading away from the River to direct runoff.

The Director stated that Little Falls has been a model for other cities and has done remarkable projects with vegetative buffers in flood plain and other sensitive areas.

A question was raised about the Ethanol Plant. Mr. Erickson stated that the plant is looking at correcting and completing a new system by burning its distillers dried grain by-products to cut down on electricity usage and emissions. Little Falls has been the first one built to code.

Mr. Carlson stated that the city is hiring a professor, Dr. Wall, from St. Cloud to assist the City planning for of the zoning in the newly annexed areas.

The Director asked the Chairperson that the Board Minutes reflect the detail from Mr. Carlson and Mr. Erickson's presentation, by having a rough draft sent to Mr. Carlson for his correction and approval before distribution.

Following discussion, the consensus of the Board was to accept the plan for annexation of that portion of Belle Prairie Township into the City of Little Falls as presented by Richard Carlson and Elvin Erickson, and to thank Little Falls for their continued partnership with MHB.

Discussion occurred regarding the Hennepin Paper Company's (HPC) brownfield and cleanup of the site, which MHB supported. Mr. Carlson stated that the grant for \$1.4 million in cleanup funds was either 1 or 2 out of 1500 applicants seeking funds from the US Environmental Protection Agency's Region V, Chicago office. The grant request now goes to Washington, DC for the final decision.

Commissioner Block stated that the HPC site is deteriorating so quickly that it will cause problems with the River if not dealt with soon. There are two miles of asbestos that could flow downstream if action is not timely. St. Cloud has a direct water intake on the River.

Chairperson Nelson stated that Little Falls is to be commended for their efforts to get that cleaned up. "You are looking at the present and the future. I appreciate the fact that you are being sensitive to people's needs. You have offered them a good working relationship with the City."

Mr. Carlson stated that the process of annexing Belle Prairie has actually gone more smoothly than they anticipated. This year with all the septic systems freezing up has caused more people to be receptive to annexation than they normally may have been.

Mr. Carlson and Mr. Erickson thanked the Board for their time and stated that they appreciate the work done by MHB. Mr. Erickson asked the Director if MHB wanted to keep the maps that were presented during today's meeting. The Director requested the maps be given to the County.

B. City of Palisade Annexation Process - Discussion

The Director stated that approval of the City of Palisade Annexation process was contingent upon their county. Letters and information have been sent to Marlene Kingsley, but apparently were not being distributed to the Mayor. Variances have been issued, even though there is a moratorium. This week the Director sent information directly to the Mayor's attention. The Director stated that MHB will continue to work with the City of Palisade and will keep things pleasant and "above board."