

To: Osceola Village Planning Commission and Village Board

Prepared in advance for the February 27, 2023 public hearing by Perry Thorvig Urban Planner, Historic Preservation specialist, Development specialist; Legal consultants, and other Citizen organizations.

Proposed Village of Osceola ("Osceola" or "Village") Zoning Changes are intended to satisfy development demands made by Gaughan Companies ("Gaughan"), a Minnesota corporation.

The following text amendments to the Osceola Zoning Code would allow Gaughan to:

1. Allow Multi-Family Uses within Mixed-Use Buildings in the B-1 zone.
2. Increase Building Heights in the River Town District.
3. Potentially damage or destroy historic burial grounds on the site.

The Historic Garden District of Osceola; and Citizens Concerned for Osceola **opposes the text amendments to the Osceola Zoning Code** because they would permit a foreign corporation to build mixed-use buildings in Osceola that it would not be permitted to build on a comparable site in its home state of Minnesota, *and we oppose the Zoning Changes for other specific reasons stated below:*

- First, what do the proposed zoning amendments do for Gaughan? The proposed Zoning Code Amendment declares that "MULTI-FAMILY RESIDENTIAL USES WITHIN MIXED-USE BUILDINGS AND/OR DEVELOPMENTS" should be allowed as a permitted use in the B-1 zone.
- Second, what does the proposed zoning amendment eliminate from current Zoning Code? It eliminates Village review of "RESIDENTIAL USES LOCATED ABOVE OR BELOW THE STREET LEVEL IN THE SAME B-1 ZONE" as a conditional use. Every property in the B-1 zone in the core of downtown Osceola would be impacted by this ordinance change. Village power to require conditional use compliance would be lost.

There are **seven issues** related to the proposed zoning ordinance changes. **Because these issues have not been addressed or resolved, the proposed zoning amendment changes should be rejected.**

Issue One: Mixed-use commercial and residential projects are potentially troublesome. Hours of operation for business establishments may not be compatible with residential uses above or on the same floor as commercial uses. Restaurants with their smells and noise and cars coming and going late into the evening are particularly difficult to find compatible. Loud patrons, who have had too much to drink are also a problem. **Restaurants are not acceptable as buffers to residential neighborhoods.**

Since multi-family residential use in mixed use development is *proposed as a permitted use* by this amendment, the Village Council would lose the means to assure compatibility after uses have been established.

It will be incredibly reckless to eliminate the following standards for review of multi-family uses in mixed-use developments by making this change from conditional use to permitted use:

If Passed, the **Village will no longer be able to evaluate** if a use will:

- ✓ Endanger public health, safety, morals, comfort and general welfare; or
- ✓ Be injurious to the employment of other property in the immediate vicinity
- ✓ or Impede the orderly development and improvement of other property for use permitted in the district; or
- ✓ If it conforms to the approval regulations of the district in which it is located; or
- ✓ If adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion and traffic hazards in public streets.

The zoning amendments would also eliminate other standards that currently apply specifically to residential uses in the B-1 zone.

The proposed zoning amendment *would eliminate the following powers currently held by the Village:*

- ✓ Village ***will lose the power to require that the use shall be compliant with all federal, state and local codes.*** This puts the Village in costly legal jeopardy.
- ✓ Village ***will lose power to require that development shall be in compliance with the rental licensing*** and property maintenance requirements in Ch.172 of Village Code, and the Village will *no longer be able to assure that a valid rental license shall be maintained at all times* if the residential use is a rental unit. These are valuable policing powers that the Village Board and Planning Commission will be dropping. This threatens the public safety.
- ✓ Village ***will lose the power to require that the owner of the property on which the residential use is located shall provide a minimum of two parking spaces per residential unit.*** The Village currently has (but will lose) the power to require that “if the parking spaces are not provided on-site, the owner shall contract for the required number of parking spaces off-site and provide evidence of such contract to the Village as part of the conditional use permit application process. The contract for the provision of parking shall be in writing, have a minimum of a one-year term, and shall be executed by the property owners of the land allowing the parking on their site and the property owners receiving the parking benefit, or others duly authorized to enter into such binding agreements”.
- ✓ The Village ***will lose the power to require that “a violation of any one of these conditions shall be cause for the Village to suspend or revoke the conditional use permit”.***
- ✓ At a minimum, The ***Village will lose the power to enforce parking restrictions*** .This is because current Village powers to exercise conditional use review and compliance procedures would be replaced with very limited

- ✓ site plan review procedures to determine only if a permitted site plan was appropriate. This limited function has no teeth. **If the Village approves this amendment they will certainly find that they have BIG problems in the future.**

Issue Two: There is **no definition** of “mixed-uses” or “mixed-use building” in the zoning code. How much is mixed use? Should there be more space for commercial use than residential use in a B-1 COMMERCIAL DISTRICT? One would think so. **This issue is not addressed.**

Issue Three: There are **no conditions in the proposed code defining when it is appropriate to allow residential use.** Residential use on the ground floor could be allowed on Main Street in this proposal. **Shouldn't there be a limit** as to how much ground floor space should be occupied by residential uses in a mixed use development on Main Street?

Issue Four: If there is a strong market for apartment units in an attractive community such as Osceola, is there not a danger of mixed-use developments usurping parking spaces needed for commercial properties? The proposed Osceola Bluff's property line extends right to the back of the buildings along Main Street (Cascade). They would lose access to their off-street parking and deliveries. It could also happen in other parts of the B-1 district caused by the amendment. This causes congestion and safety problems on Cascade when deliveries are forced to use the front of businesses.

Issue Five: There are **no setback requirements for permitted uses in the new proposed B-1 zone.** Since the site plan review process cannot establish arbitrary setbacks on a property, can you imagine the protests of people in the residential units in the B-1 zone, or next to it, if a commercial building was proposed right up to the adjacent property line, as would be permitted in the new proposed B-1 ZONE.

Issue Six: (Expanded from Issue One) is **The parking requirement disappears if a use is changed from conditional use to permitted use. There is no parking requirement in the B-1 zone.** The current conditional use requirement of two parking spaces per dwelling unit disappears. Without a requirement for parking spaces, a developer could (would) PLACE AN EXHORBITANT NUMBER OF UNITS ON A SITE AND FORCE THE REST OF THE COMMUNITY TO ABSORB ITS PARKING NEEDS. Many businesses and residents will lose access to their current off-street parking as supply is limited and demand increases.

Issue Seven: Eliminating the conditional use also violates the Village's Comprehensive Plan. The overall goal of that plan is to protect the health, safety, economy, appearance and welfare of the Village by balancing growth with the preservation of our social and natural resources. **Section 1.31** states the means to achieve this and includes the term "smart growth", specifically calling out, "better access, less traffic". The approach of "better access, less traffic" is clarified in **Section 3.5, Osceola Comprehensive Plan** under Goals and Objectives for Transportation, calling the Village to:

1. Create a more walkable community.
2. Eliminate Pedestrian and vehicle conflicts.
3. Minimize traffic accidents.

Eliminating the conditional use allows a developer to overbuild without any oversight from village citizens. Its governmental officials will have irresponsibly extinguished this authority through passage of these proposed ordinances. Gaughan and other developers WILL BE ABLE TO IGNORE Criteria 1-3 above.

BASED ON THE FINDINGS ABOVE

It is recommended that these text amendments allowing multi-family in mixed-use developments be denied. If in fact residential use is considered appropriate for the former medical center site, then appropriate zoning controls must be developed that address the issues above. AND, that allow ONLY RESIDENTIAL DEVELOPMENT with a defined parking requirement.

This may result in a new zoning district for that part of B-1 zone adjacent to Osceola's St. Croix River bluffs.

Proposed Height Amendment

The River Town Management District is shown in the map below. It is that part of downtown shown in the green color. If the proposed Zoning Code changes are adopted, four blocks of downtown frontage would now be eligible for new 45-foot-tall buildings if a conditional use permit was granted.



There are other problems with the 45-foot height amendment. The current section of the code for the River Town Management District reads as follows:

“(4)Maximum structure height. The maximum structure height shall be measured between the **average ground elevation** and the uppermost point of the structure, excluding chimneys. The **maximum structure height** for each management zoner shall be:”

Response: Though there is no change in this section of the code, the point from where the height is measured is not clear. Is it from the average ground elevation from the building elevation facing the St. Croix River? Or, is it intended that the average ground elevation be from the street curb? In a situation where a site slopes towards the river there can be a substantial difference on where the measuring point is. Therefore, the ordinance is deficient and should be rejected.

Further, the code (with NEW language in CAPITAL LETTERS) reads as follows:

“(a) In the River Town Management Zone, the maximum structure height shall be 35 feet except for wireless communication service facilities which are requirements of Wis. Admin. Code NR 118.07(4)(c) and (d). A conditional use permit may be granted for a maximum structure height up to 45 feet.

(1) A CONDITIONAL USE PERMIT MAY BE ISSUED PURSUANT TO THIS #217-7A.

(4)(A) if all of the following criteria are met:

(I) THE STRUCTURE IS VISUALLY INCONSPICUOUS, MEANING IT IS DIFFICULT TO SEE, OR NOT READILY NOTICEABLE, IN THE SUMMER MONTHS AS VIEWED FROM AT OR NEAR THE MIDLINE OF THE LOWER ST. CROIX RIVERWAY.”

Response: The ordinance change acknowledges that the present height limit is 35 feet in the River Management Zone. **The conditional use permit for greater height up to 45 feet has added five standards for determining the appropriateness of granting the change in height.** However, the standards are problematic because they are vague. For example:

(I) The standard contains several vague terms that make enforcement difficult. The code attempts to clarify “visually inconspicuous” with equally vague terms difficult to see” or “not readily noticeable”. **The standard only applies in the summer months. Is it not appropriate to preserve the unbroken height limit in the winter months too?**

Another problem is that the point of view is the “mid-line” of the river as if the only view that is protected is that of the people canoeing or paddleboating down the river. Where in the midline of the river is the view supposed to be calculated? **The view from Osceola Landing, upriver looking down and downriver looking up also needs to be protected.**

People crossing the St. Croix River bridge are going to notice buildings protruding above the tree line. Are not motorists, pedestrians, bicyclists crossing the river at the Osceola Bridge to have their views of the scenic bluff protected from new developments breaking the tree line? What about the lights from such a massive Big Box apartment? Unit lights and necessary driveway

lights will be visible 7 months of the year! And the section of the Gaughan Complex facing the scenic Osceola Creek Glen, a protected area, will be visible all year long.

Imagine what a 45-foot tall (55-feet when their proposed measurement formula is used). Just think what a three story, four-story or five-story massive building will look like! Such a huge urban intrusion into the scenic landscape would violate the existing principle of nothing visible above the tree line no matter what the season. If that standard is allowed to be broken in Osceola it would set a precedent for the entire length of the river!



Further, New code language in CAPITAL LETTERS reads as follows:

“(II)THE NATURAL AND SCENIC QUALITIES OF THE LOWER ST. CROIX RIVERWAY ARE PROTECTED”.

Response: The scenic qualities were defined in the original study that established the St. Croix National Scenic Riverway. Osceola and all other communities along the riverway participated. They voted and sent acceptance memoranda. The study went to Congress, was accepted and it voted legislation to establish the current riverway protections. Osceola’s commitment is irrevocable. Osceola has benefited enormously and financially from having these protections so that the tourists and residents can enjoy a national treasure.

However, the scenic qualities are not stated in the proposed ordinance. They should be stated here.

Further, NEW code language in CAPITAL LETTERS reads as follows:

“(III)THE USE DOES NOT NEGATIVELY IMPACT PUBLIC HEALTH AND SAFETY”

“(IV)THE STRUCTURE IS DESIGNED TO BLEND IN WITH THE HISTORIC CHARACTER OF THE COMMUNITY”.

Response: Safety will certainly be impacted when driver attention is drawn toward a building that exceed the height of the tree canopy and represents a glaring visual intrusion, day or night, winter or summer.

A 55-foot tall, or 45-foot tall, 5-story or 4-story building does not blend in with the historic character of the Osceola community, whether on the bluff or elsewhere in the River Town Management Zone in downtown. The tallest buildings on Main Street (Cascade) are two stories tall. There is only one building in Osceola that is 3-stories tall. That building is Grace Apartments. However, it is not on the river bluff but approximately 300 feet from the bluff line. It is also not 45 feet tall. **The Village should first have a discussion with residents and businesses as to whether 45-foot tall buildings are appropriate anywhere in Osceola (even with the proposed conditional use standards).**

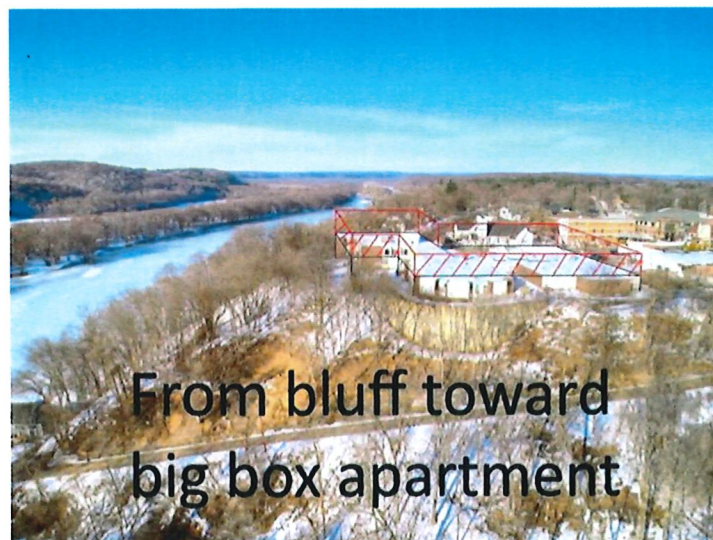
AFTER



View from City Hall - 3rd Ave & Chieftain St



View from River Street looking South



Conclusion

The Historic Garden District of Osceola, and Citizens Concerned for Osceola are not opposed to development along the river bluff **if it is done right**. Their position for the good of their community and the St. Croix National Scenic Riverway is that:

1. The proposed Zoning Code amendments **should not be approved** for the reasons stated above.
2. **Osceola residents should conclude the current Planning Commission and Village Council has failed them IF the proposed ordinance changes and amendments are not re-written and have proper public input by affected parties.**

If adopted, the proposed Zoning Code amendments give over far too much power to a developer to abuse the system, providing developers what they can get by with. Good Planning should, instead, keep power and control of development in the hands of the Village, its residents, and the Comprehensive Plan. UNDER THESE PROPOSALS, THE VILLAGE IS REVOKING ITS AUTHORITY AND GIVING IT AWAY TO ALL DEVELOPERS.

The proposed Zoning Code **amendments do not have sufficient safeguards** to require development the Comprehensive Plan Osceola says it wants. If adopted the **obvious loopholes could, (and will) be exploited** for profit or other reasons to the detriment of the Village residents and property owners. These constituents will realize (too late) **THAT THEY HAVE NOT GOTTEN THE KIND OF DEVELOPMENT THEY WANTED. The small, quaint river town community that is Osceola will be forever lost if these proposals are adopted. The blanket proposal of 45-foot height in the B-1 zone will eventually create a "canyon" effect, beginning at 3rd Ave. and River Street, but eventually on main street as apartments replace businesses and strive for views of the falls and river.**

Passage of these amendments and ordinance changes opens a “Pandora’s Box” of unintended harm that the Village Council will no longer have the power to stop, because they will have given it away to out of state Big Box developers.

Further, **the purpose of “Planning” is to anticipate** how new changes to the Zoning Code could be exploited by a future, or present developer resulting in **incompatible development violating Osceola’s historic character.**

3. **There should be no commercial component to developments that front directly on the bluff line or are within 300 feet of residential properties for reasons stated here-in.**
4. **The height limit should stay at 35 feet measured from the lowest elevation of a building facing the river bluff.**
5. **The Gaughan Companies’ (Osceola Bluffs Development LLC.) request to approve a variance to the 35-foot height maximum roof height is not warranted under N.R.118, OR UNDER Public Law 90-560.**
6. **Gaughan’s proposed request for variance from the maximum height limitation of a structure is not permitted under law because there is NO UNDUE HARDSHIP; and because variances are intentional deviations from the Village’s Zoning Code.** A Variance should NOT be granted solely to provide Gaughan Companies’ with additional financial gain.
7. **Osceola is further bound by Wisconsin N.R. 118 Standards for the Lower St. Croix National Scenic Riverway and the Osceola St. Croix River Overlay District regulations adopted by Osceola. The Gaughan Companies’ request is incompatible with and violates the N.R.118 guide for how Osceola “must act to preserve and maintain the exceptional scenic, cultural and**

natural characteristics of the water and related land of the Lower St. Croix Riverway”.

8. The zoning district for the former medical center site should be a new zone not present in the existing zoning code. The zoning code map should be changed on the former medical center site to a zoning classification that permits two-story residential buildings.
9. That new medical center zone should have appropriate parking, height, density, and setback standards that are missing in the present and in the proposed zoning code amendments **AND ORDINANCE CHANGES**. Only then will the public interests of those protecting the St. Croix National Scenic Riverway, nearby affected residents, and the community as a whole be served.