

TO: Board of Adjustment
FROM: Land Use Management
MEETING DATE: January 22, 2024
REPORT DATE: January 12, 2024

PUBLIC HEARING: Request for Variance, submitted by Devon Wittman (Applicant) on behalf of Ronald Fox (Owner), to Article 10 Maximum Density definition and Article 22 A-2 Agriculture District regulations to allow a new dwelling within an occupied $\frac{1}{4}$ $\frac{1}{4}$ section.

Application Information:

Applicant(s): Devon Wittman (Applicant) on behalf of Ronald Fox (Owner)
Address of zoning request: 244th Street Way Welch, MN 55089
Parcel: 46.013.0601
Abbreviated Legal Description: Part of the W $\frac{3}{4}$ of the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 13 TWP 113 Range 16 in Welch Township
Township Information: Welch Township signed the acknowledgement of the request on December 7, 2023. The Township indicated to the Applicant they will need a variance from the Township, due to meeting schedules this approval may not be obtained by the January 22, 2024 BOA meeting.
Zoning District: A-2 (General Agriculture District)

Attachments and Links:

Application and submitted project summary
Site Map(s)
SWCD Comments and Review
Goodhue County Zoning Ordinance:
<http://www.co.goodhue.mn.us/DocumentCenter/View/2428>

Background:

Devon Wittman (Applicant) on behalf of Ronald Fox (Owner) has applied for a variance to the Maximum Density definition and A-2 Agriculture District density regulations to allow a new dwelling within an occupied $\frac{1}{4}$ $\frac{1}{4}$ section.

Ronald Fox owns parcel 46.013.0601 which is mainly located in two $\frac{1}{4}$ $\frac{1}{4}$ sections, the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ in section 13 of Welch Township. The parcel comprises approximately 68.5 acres and consists of tilled cropland with rolling topography. Areas of

natural vegetation are present along 244th Street Way and Highway 61 which are hilly areas with steeper slopes.

Variance Standards:

Variances shall only be permitted when they are in harmony with the general purposes and intent of the Goodhue County Zoning Ordinance and when consistent with the adopted comprehensive plan. Variances may be granted when the applicant establishes “practical difficulties” exist in complying with the existing official controls. Practical difficulties mean the applicant proposes to use the property in a reasonable manner not permitted by an official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

Draft Findings of Fact:

- 1) **Harmony with the general purposes and intent of the official control:**
 - The Goodhue County Zoning Ordinance defines Maximum Density as “*A density standard establishing the maximum number of dwellings allowed in a Section, ¼ ¼ Section, District, or Subdivision. In order to maintain a balance of compatible uses, when the maximum density has been reached, the only opportunity to increase the density is through a change of zone process that would allow additional housing.*” The A-2 District is limited to 12 dwellings, one per original ¼ ¼ section. This request is to add a dwelling in an occupied ¼ ¼ section without rezoning the parcel to R-1 Suburban Residence District.
 - Section 13 was part of a zoning amendment procedure in early 2022 where all sections zoned A-3 (Urban Fringe District) in Welch Township were rezoned to A-2. The A-3 District does not have a maximum section density, any parcel 35 acres or greater is considered buildable. The parcel in question was considered buildable before the rezoning because it is over 35 acres in size and a dwelling could have been established anywhere on the Fox property meeting property line and bluff setbacks under A-3 rules.
 - After the rezoning to A-2, the parcel remains buildable in the NW ¼ of the SW ¼ (southern portion), and building eligibility closer to 244th Street in the SW ¼ of the NW ¼ was lost due to the presence of the Mark Wohlers dwelling to the north on parcel 46.013.0600. There are currently 8 dwellings in Section 13 therefore density is available in the section to add up to 4 more dwellings.

- The request may not be in harmony with the purpose and intent of the official controls because the Maximum Density provision was added to cease the issuance of “density variances” which were (and still are) difficult for staff to track and enforce.
- 2) **The variance request is consistent with the adopted Comprehensive Plan:**
- The Goodhue County Comprehensive Plan supports providing more housing choices for rural residents and flexible dwelling choices.
 - The Comprehensive Plan also prioritizes the preservation of agricultural land.
 - The Goodhue County Comprehensive Plan also encourages re-evaluating and possibly eliminating the A-3 District and rezoning these sections to A-1 or A-2.

The proposal may be considered consistent with the Comprehensive Plan.

- 3) **There are “practical difficulties” in complying with the official control (the applicant proposes to use the property in a reasonable manner not permitted by an official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality):**
- The Applicant desires to establish a dwelling closer to 244th Street Way to preserve tilled cropland and avoid having a long driveway taking up cropland.
 - The property has rolling hills beginning at the north property line, cresting near the area of the proposed dwelling. The area south of the proposed dwelling drops in elevation creating a natural drainage system/wash running east towards Highway 61.
 - The Applicant intends to use the existing field drive as an access point. The driveway would need to be at a 14% or less grade to be used for a new dwelling. A review by Chad Hildebrand with the Goodhue Soil and Water Conservation District indicated the current access is close to a 14% grade. Some grading may need to be done to achieve the 14% slope.
 - Establishing the dwelling in the open ¼ ¼ to the south would mean the Applicant would need to traverse the drainage area/wash and continue further south as the topography remains quite steep. A driveway further south may also require extensive grading to meet the 14% maximum slope requirement.
 - The parcel is an existing 68.5-acre lot which is a conforming lot size in the A-2 Zoning District (2-acre minimum). The Applicant would like to split off about 5 or 6 acres in the northwest corner for the proposed dwelling site.
 - Staff noted to the Applicant that Ronald Fox owns another 83.77-acre parcel in Section 13 with land in 4 open ¼ ¼ s along Welch Short Cut (Parcel 46.013.1401). After

discussion with staff, the Applicant rejected the possibility of building there because the area nearest to the road is within 1,000 feet of the Luhman’s Construction quarry. Constructing a dwelling within 1,000 feet of a quarry requires property owners to sign a waiver of setback requirements to the quarry. The area of the property that could meet the 1,000-foot setback would be a good distance from the road and a driveway would take up cropland.

- The parcel would have been considered buildable in the Applicant’s preferred location under A-3 District regulations. Neither the landowner nor the Applicant requested the section be rezoned to A-2 restricting the potential location of a new dwelling. Staff sent letters to all A-3 District property owners before the public hearing to inform them of the changes in dwelling density.
 - The County Zoning Ordinance provides mechanisms to increase dwelling density including rezoning property to R-1 Suburban Residence District and Conservation Subdivisions. This property would qualify for a Conservation Subdivision because it is over 40 acres in size.
 - The Applicant indicated to staff that Welch Township does not allow Conservation Subdivisions.
 - Staff would not recommend rezoning the parcel (or a portion of the parcel) to R-1 due to the surrounding uses and zoning districts.
 - Goodhue County Soil and Water Conservation District Natural Resource Specialist Chad Hildebrand reviewed the proposed dwelling site to identify runoff patterns and the drainage way. Mr. Hildebrand noted the property has various breaks in the topography creating separate watershed drainages.
- 4) **No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.**
- Dwellings are a permissible use in the A-2 Zoning District. The request does not constitute a use variance.

The draft Findings of Fact shall be amended to reflect concerns conveyed at the Board of Adjustment meeting and public hearing.

The Board should specify the facts and reasons that are the basis of the Board’s determination. In granting a variance, the Board of Adjustment may impose conditions directly related to, and bearing a rough proportionality with, the impact(s) created by the variance.

Staff has prepared two recommendations for the Board to consider. These recommendations are presented in no specific order. The Board may elect to include the condition that the NW ¼

of the SW ¼ have a dwelling site restriction placed on it to prevent a dwelling from being established there in the future.

Staff Recommendation:

- adopt the staff report into the record;
- adopt the findings of fact;
- accept the application, testimony, exhibits, and other evidence presented into the record; and

APPROVE the request for a variance, submitted by Devon Wittman (Applicant) on behalf of Ronald Fox (Owner) to allow a dwelling in the SW ¼ of the NW ¼ of Section 13 TWP 113 Range 16 of Welch Township.

OR

- adopt the staff report into the record;
- adopt the findings of fact;
- accept the application, testimony, exhibits, and other evidence presented into the record; and

DENY the request for a variance, submitted by Devon Wittman (Applicant) on behalf of Ronald Fox (Owner) to allow a dwelling in the SW ¼ of the NW ¼ of Section 13 TWP 113 Range 16 of Welch Township.

RECEIVED

APPLICATION FOR
Variance

DEC 29 2023

Land Use Management

For Staff Use only	
VARIANCE NUMBER:	724-0001
\$350 RECEIPT#	18312
DATE	12-29-23

SITE ADDRESS, CITY, AND STATE XXX 244 th St Welch, Minnesota		ZIP CODE: 55089
LEGAL DESCRIPTION: See attached papers Attached <input checked="" type="checkbox"/>		
PID#: 46.013.0601	ZONING DISTRICT: A2	LOT AREA (SF/ACRES): 68.5 acres
LOT DIMENSIONS:		
STRUCTURE DIMENSIONS (if applicable):		

APPLICANT OR AUTHORIZED AGENT'S NAME Devon Wittman	
APPLICANT'S ADDRESS: 1029 Putnam Ave Red Wing, MN 55066	TELEPHONE: EMAIL:

PROPERTY OWNER'S NAME: Same as Above <input type="checkbox"/> Ronald Fox	
PROPERTY OWNER'S ADDRESS: 25559 County 7 Blvd Welch, MN 55089	TELEPHONE: EMAIL:

CONTACT FOR PROJECT INFORMATION: Same as Above <input checked="" type="checkbox"/> Devon Wittman	
ADDRESS:	TELEPHONE: EMAIL:

VARIANCE REQUESTED TO: (check all that apply) <input type="checkbox"/> Road Right-Of-Way Setbacks <input type="checkbox"/> % Lot Coverage <input type="checkbox"/> Property Line Setbacks <input type="checkbox"/> Bluff Setbacks <input type="checkbox"/> Height Limits <input type="checkbox"/> Shoreland Setbacks <input type="checkbox"/> Lot Width &/or Area <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/> Subdivision Regulations moving homestead to least desirable farmland	CURRENT OR PREVIOUS USE: Agriculture	
	PROPOSED USE: Agriculture/homestead	
	BUILDING APPLICATION PERMIT NO.: (if filed)	DATE FILED:

TOWNSHIP SIGNATURE: By signing this form, the Township acknowledges they are aware of the Applicant's variance request. In no way does signing this application indicate the Township's position on the variance request. Attached <input type="checkbox"/>		
TOWNSHIP OFFICIAL'S SIGNATURE Andrew S. Jensen	TOWNSHIP OFFICIAL'S PRINTED NAME AND TITLE ANDREW S. JENSEN CHAIRMAN	DATE 12/7/23

By signing below, the applicant acknowledges:

1. The undersigned is the owner or authorized agent of the owner of this property.
2. The information presented is true and correct to the best of my knowledge.
3. If I am unable to be present at the hearing where my request is acted upon, I agree to accept the Notice of Decision via mail.
4. Additional information or applications may be required

Applicant's Signature: Devon Wittman Date: 12/5/23

Print name: Devon Wittman (owner or authorized agent)

REQUEST SUMMARY

Please cite the Ordinance Article(s) and Section(s) you are requesting a variance from:

Article: _____ Section: _____ Name: _____

Article: _____ Section: _____ Name: _____

SUPPORTING INFORMATION & JUSTIFICATION

You, or your agent, bear the burden of providing information to convince the Board to rule in your favor. Please provide answers to the following questions in the spaces below or in an attached document. You may also attach any additional supporting documentation you desire the board to review.

Discuss your current use of the property and the reason for your variance request:

Property is currently being used for agriculture only. We would like to build a house on the property and continue to farm the rest of it.

Describe the effects on the property if the variance is not granted:

If variance is not granted, the house and driveway would use up more tillable acreage. We would like to be able to continue farming as much of the ground as possible.

Describe any unique physical limitations that exist on your property, not generally found on others, which prevent you from complying with the provisions of the current ordinance:

The property only has access from the north side ~~road~~ (currently non-buildable side) for driveway.

Discuss alternatives you considered that comply with existing standards. If compliant alternatives exist, provide your reasoning for rejecting them:

An alternative to comply with existing standards would be to build a long driveway to the south (buildable) side of the property. We reject this alternative due to it costing more farm ground and using more desirable farm ground instead of less desirable farm ground.

Discuss alternatives you considered that would require a lesser variance. If you rejected such alternatives, provide your reasoning:

~~NA~~ N/A

In your opinion, do you think the granting of your variance request would alter the "essential character" of the neighborhood/area?:

In my opinion, I do not think it would alter the character of the area.

Hello,

My fiance and I are looking to build a home on my stepdad's (Ronald Fox) property. We are applying for a variance to be able to build on the north side of the property that is shown in the pictures attached to the application. The reasoning for this is to conserve as much farmland as possible. The only access to the land for a driveway is on the north side of the property. Therefore, the further south we build, the more farm ground we would be taking from the property. We do not wish to build on Ron Fox's property on Welch shortcut due to it being right next to a quarry (Luhman's). We were told to build inside of 1,000 feet from the quarry, we would need to sign a letter saying that we are willing to do that, which we are not. Also, to get more than 1,000 feet from the quarry, we would be taking a substantial amount of farmground. This is something we are trying to avoid, as previously mentioned. We believe that the location that we have chosen is the best for us, and for the farmland that we wish to build upon. We hope that Goodhue County agrees so we can move forward with the process.

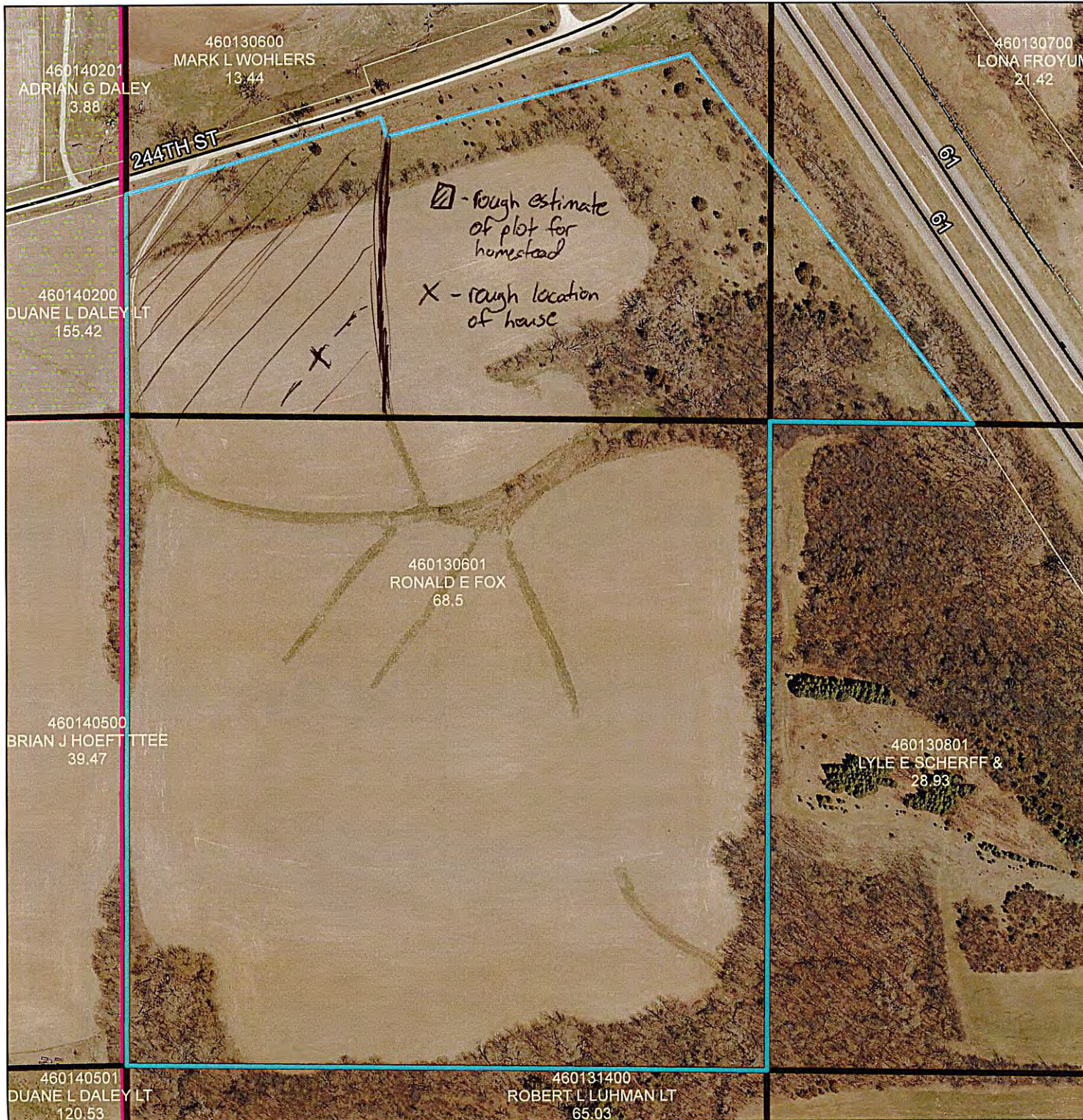
Thank you for the consideration,
Devon Wittman
Makenzie Franklin

SITE PLAN

State the use of the property. Show the size, shape and location of structures with distance to property lines and location of ALL wells and septic systems.

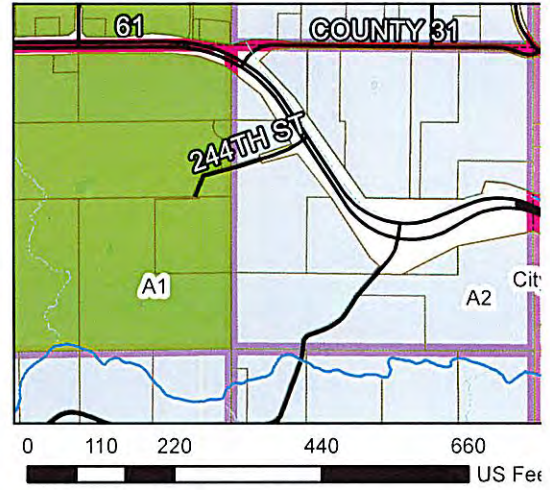
*Monday
Jan 22nd*

5-6 acres



Legend

- | | | | |
|--|----------------------------|--|------------------------------|
| | Intermittent Streams | | Bluff Impact Zones (% slope) |
| | Protected Streams | | Bluff Impact Zones (% slope) |
| | Lakes & Other Water Bodies | | FEMA Flood Zones |
| | Shoreland | | FEMA Flood Zones |
| | Historic Districts | | FEMA Flood Zones |
| | Parcels | | FEMA Flood Zones |
| | Registered Feedlots | | FEMA Flood Zones |
| | Dwellings | | |
| | Municipalities | | |



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From: [Hildebrand, Chad](#)
To: [Pierret, Samantha](#)
Subject: RE: New Dwelling Site Review
Date: Tuesday, January 9, 2024 11:14:55 AM
Attachments: [Figure A_Contour & Watershed Flow Map.pdf](#)
[Figure B_Overall Site Map.pdf](#)
[ElevationProfile_CurrentAccessRoute.jpg](#)

Here is my review with some additional PDF documents to go with it.

From review of the identified project site, appears the location of the proposed dwelling would be located near the top of the hill area. The determined area has various breaks in the topography creating separate watershed drainages. Please refer to Figure A which identifies 2 of the watershed drainage areas and the project flow path of surface water based on the 2020 contours. Water flows away and towards the grassed waterway to the south and towards 244th Street to the north.

Recommendation:

- Install best management practices (BMPs) prior to any earthwork begins to protect the grassed waterway to the south from being potentially sedimented in. Additionally, a BMP to the north to protect any sediment erosion from flowing towards 244th Street. Those are approximate BMP locations to give a general idea.
- Keep BMPs in place until at least 70% of the bare ground is revegetated to the areas that will remain turf grass. If it is returning to productive cropland, then that would be different.
- Seed and/or cover any bare areas if the site sits idle for 7 days to protect from potential erosion.

Additionally, attached an elevation profile of the current field access starting at 244th Street (left side) and running south to the top of the hill (right side). I have not measured or calculated overall slope/grade on the access route. Quick estimates appear to be 14% grade in 100 ft segments.

I did not review the parcel for bluff areas due to the proposed project site being located on the top of the hill area and a prior existing field access was present. If a bluff review is required, please let me know and will review the north side of the property.

If there are additional questions, please let me know.

Thank you,

Chad Hildebrand

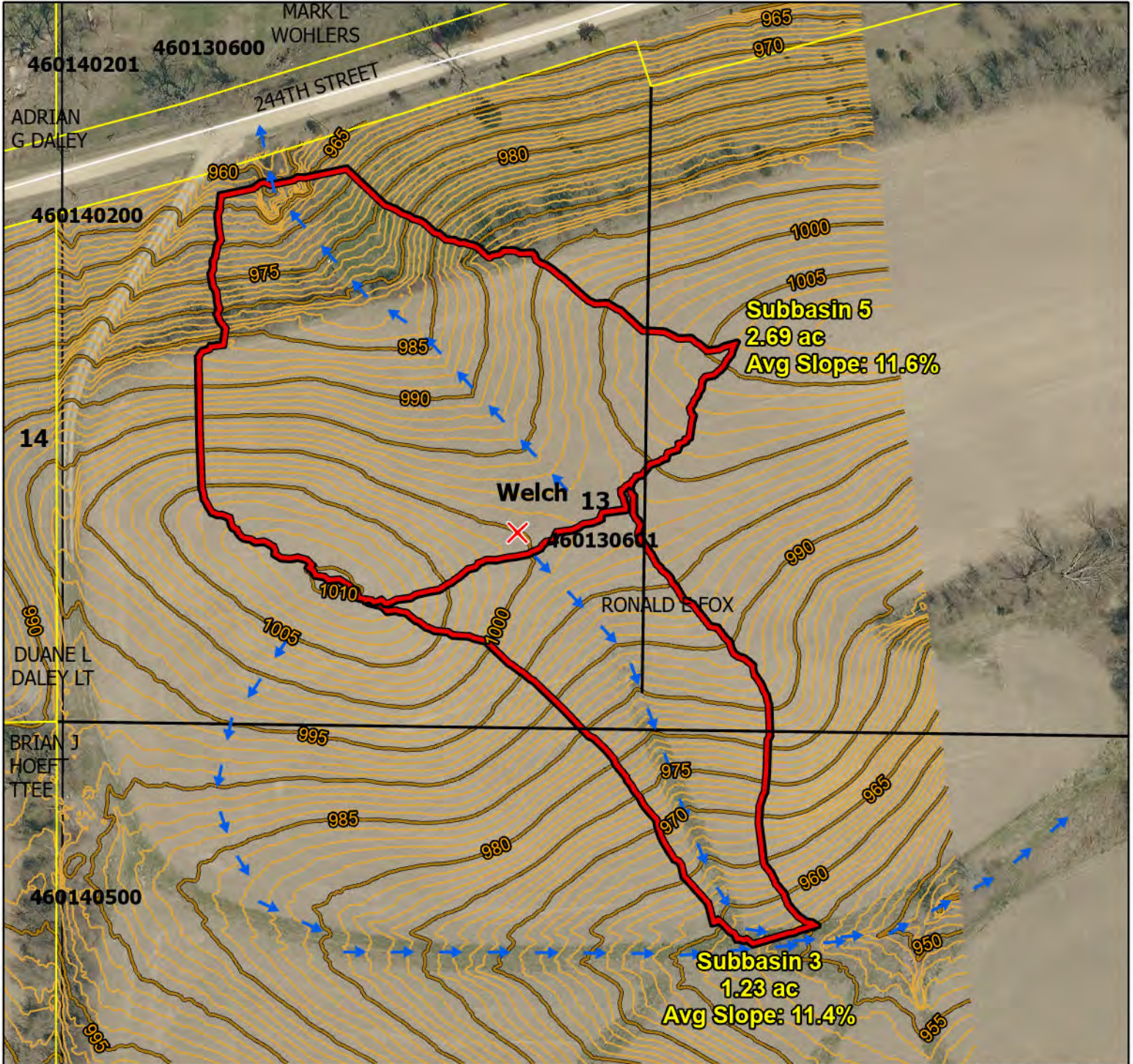


Natural Resource Specialist
Goodhue SWCD
Office: (651) 923-5286

**104 East 3rd Ave
PO Box 335**

Welch Township, Section 13

Parcel ID 460130601



Current Date: 1/9/2024
Scale: 1:1,500

Legend

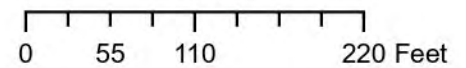
- Description**
- Temp Line
 - → Flow Path

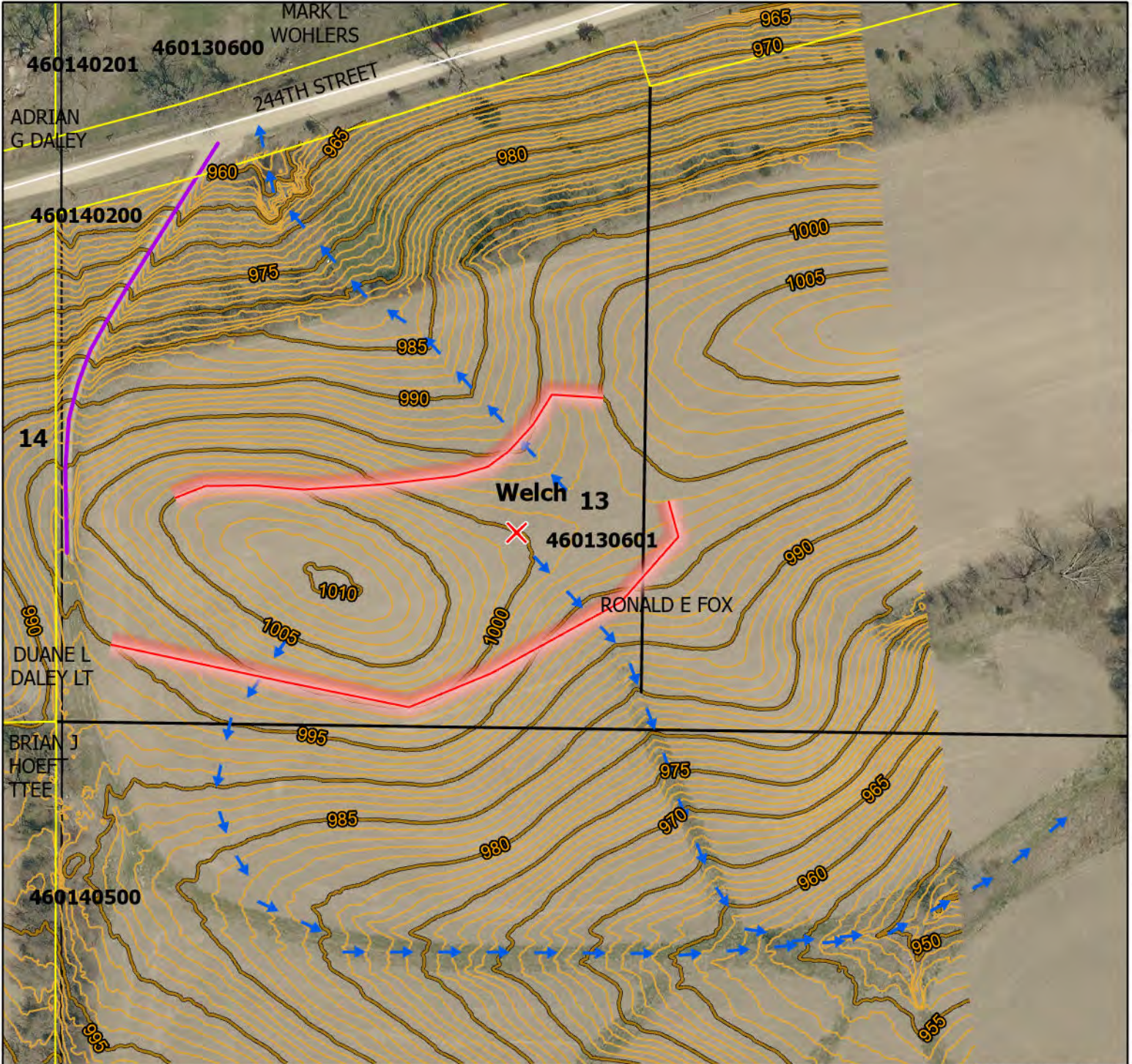
- ✗ Temp Point
- ▭ ParcelsGC
- ▭ Watershed Boundary

Contours (1 foot)

- Intermediate
- Index Contour

Figure A








Current Date: 1/9/2024
Scale: 1:1,500

Legend

- Description**
- Temp Line
 - → Flow Path

-  BMP
-  Elevation Profile
-  Temp Point
-  ParcelsGC

Contours (1 foot)

-  Intermediate
-  Index Contour

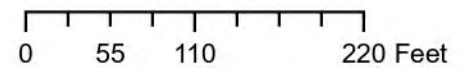
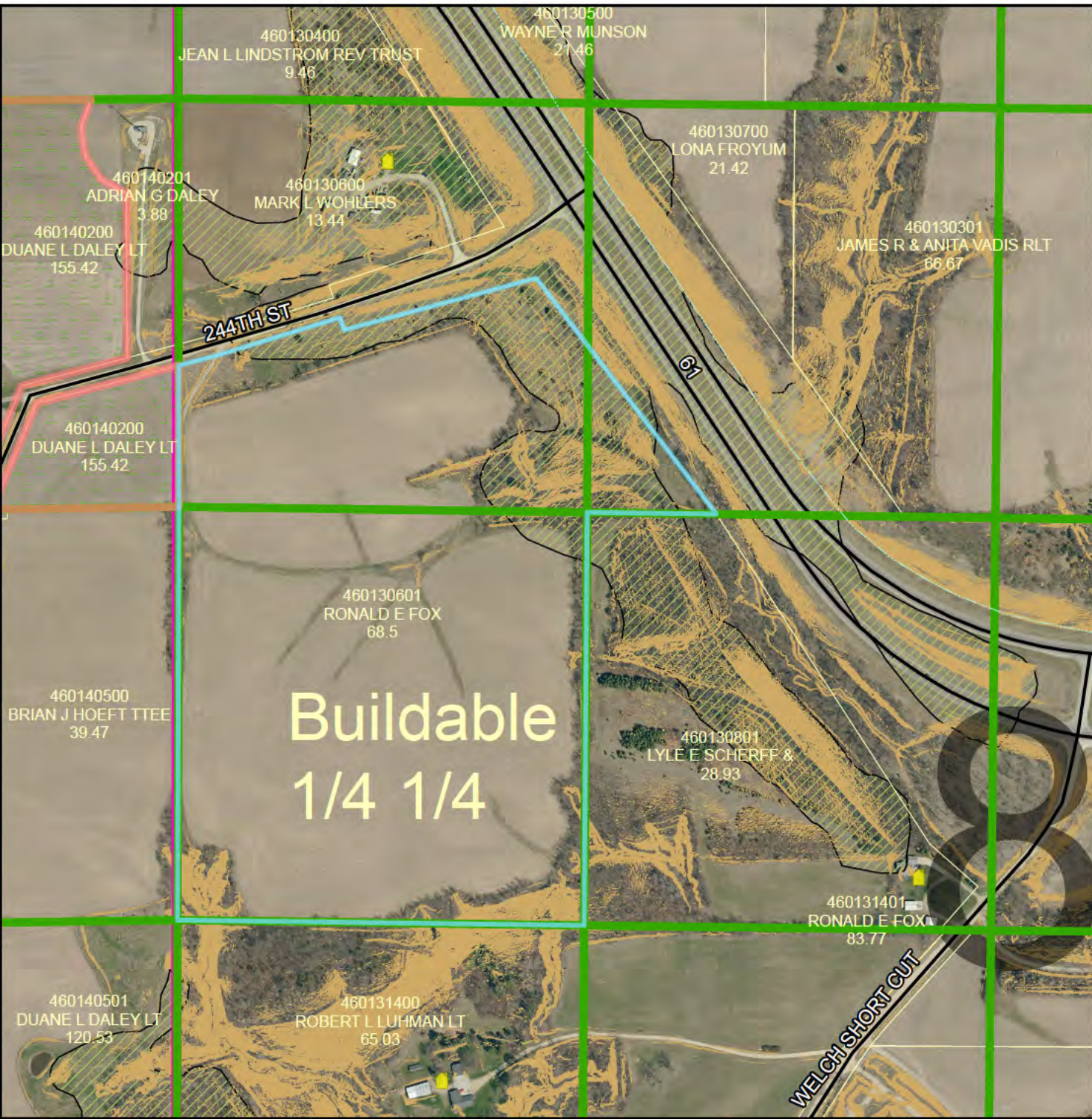


Figure B

MAP 01: PROPERTY OVERVIEW



BOARD OF ADJUSTMENT

Public Hearing
January 22, 2024

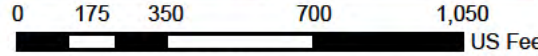
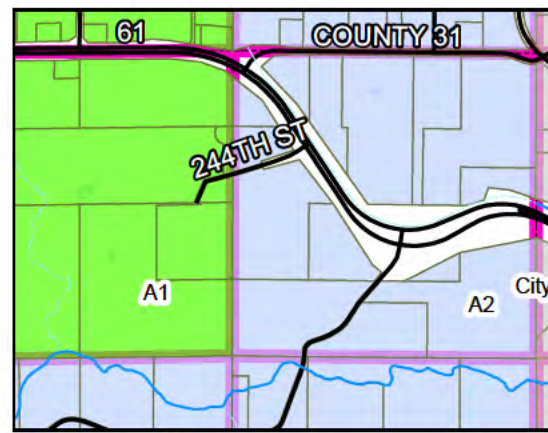
Devon Wittman (Applicant) on behalf of
Ronald Fox (Owner)
A-2 Zoned District

Part of the W 3/4 of the S 1/2
of the NW 1/4 of Section 13 TWP 113
Range 16 in Welch Township.

Request for Variance to Maximum
Density standards and A-2 regulations

Legend

- | | |
|----------------------------|-----------------------------------|
| Intermittent Streams | Bluff Impact Zones (% slope) 20 |
| Protected Streams | Bluff Impact Zones (% slope) 30 |
| Lakes & Other Water Bodies | FEMA Flood Zones 2% Annual Chance |
| Shoreland | FEMA Flood Zones A |
| Historic Districts | FEMA Flood Zones AE |
| Parcels | FEMA Flood Zones AO |
| Registered Feedlots | FEMA Flood Zones X |
| Dwellings | |
| Municipalities | |

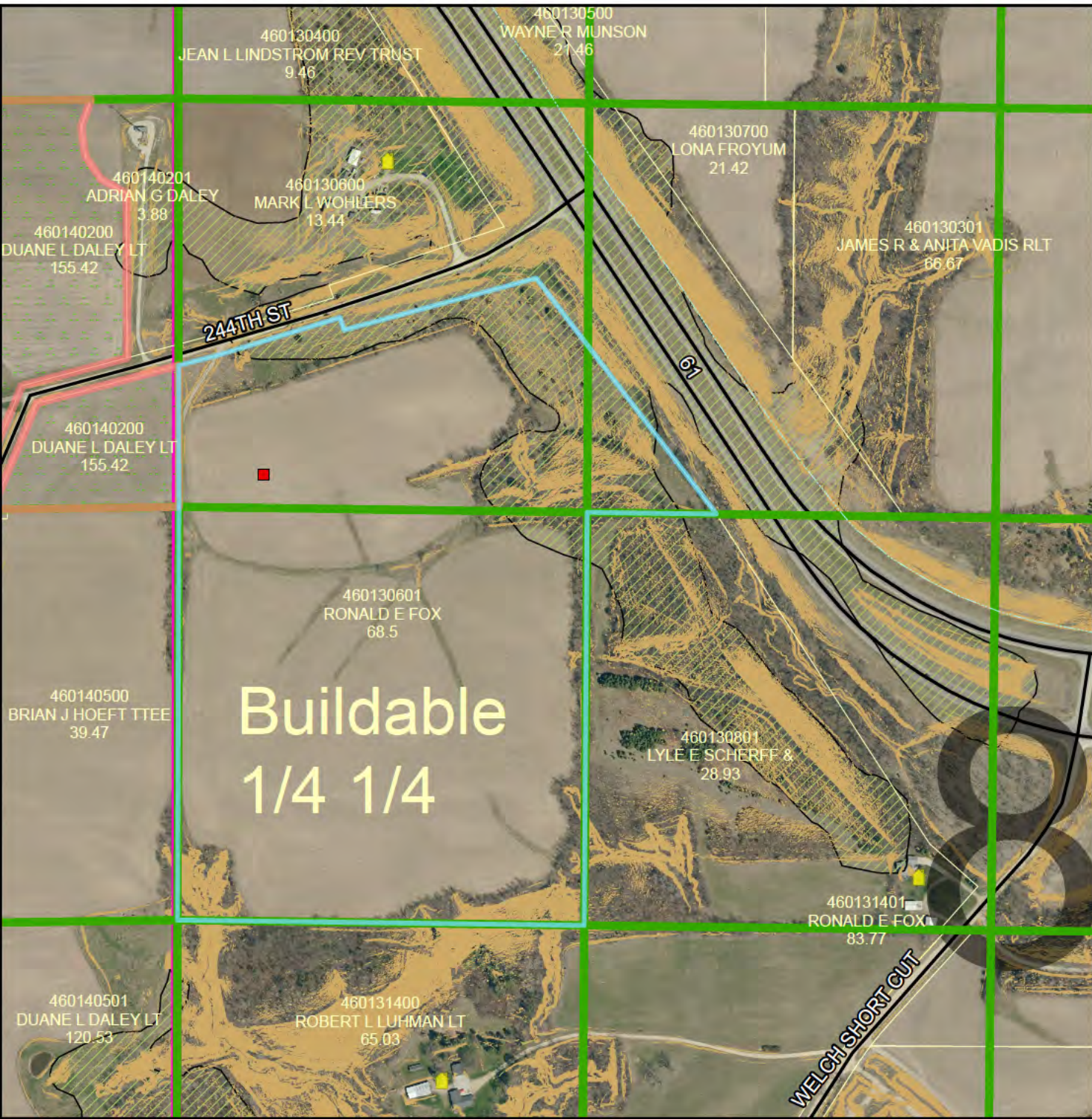


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MAP 01: PROPERTY OVERVIEW



BOARD OF ADJUSTMENT

Public Hearing
January 22, 2024

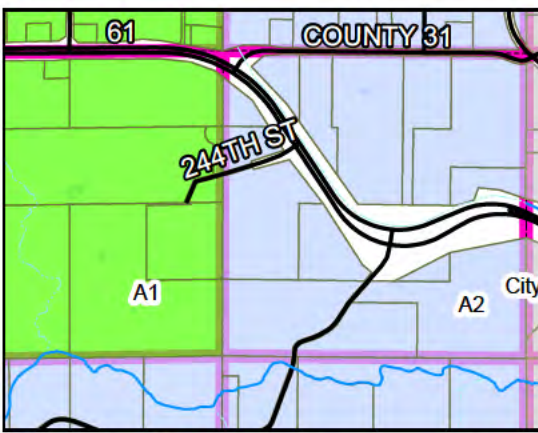
Devon Wittman (Applicant) on behalf of
Ronald Fox (Owner)
A-2 Zoned District

Part of the W 3/4 of the S 1/2
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Range 16 in Welch Township.

Request for Variance to Maximum
Density standards and A-2 regulations

Legend

- | | | | |
|--|----------------------------|--|------------------------------|
| | Intermittent Streams | | Bluff Impact Zones (% slope) |
| | Protected Streams | | 20 |
| | Lakes & Other Water Bodies | | 30 |
| | Shoreland | | FEMA Flood Zones |
| | Historic Districts | | 2% Annual Chance |
| | Parcels | | A |
| | Registered Feedlots | | AE |
| | Dwellings | | AO |
| | Municipalities | | X |

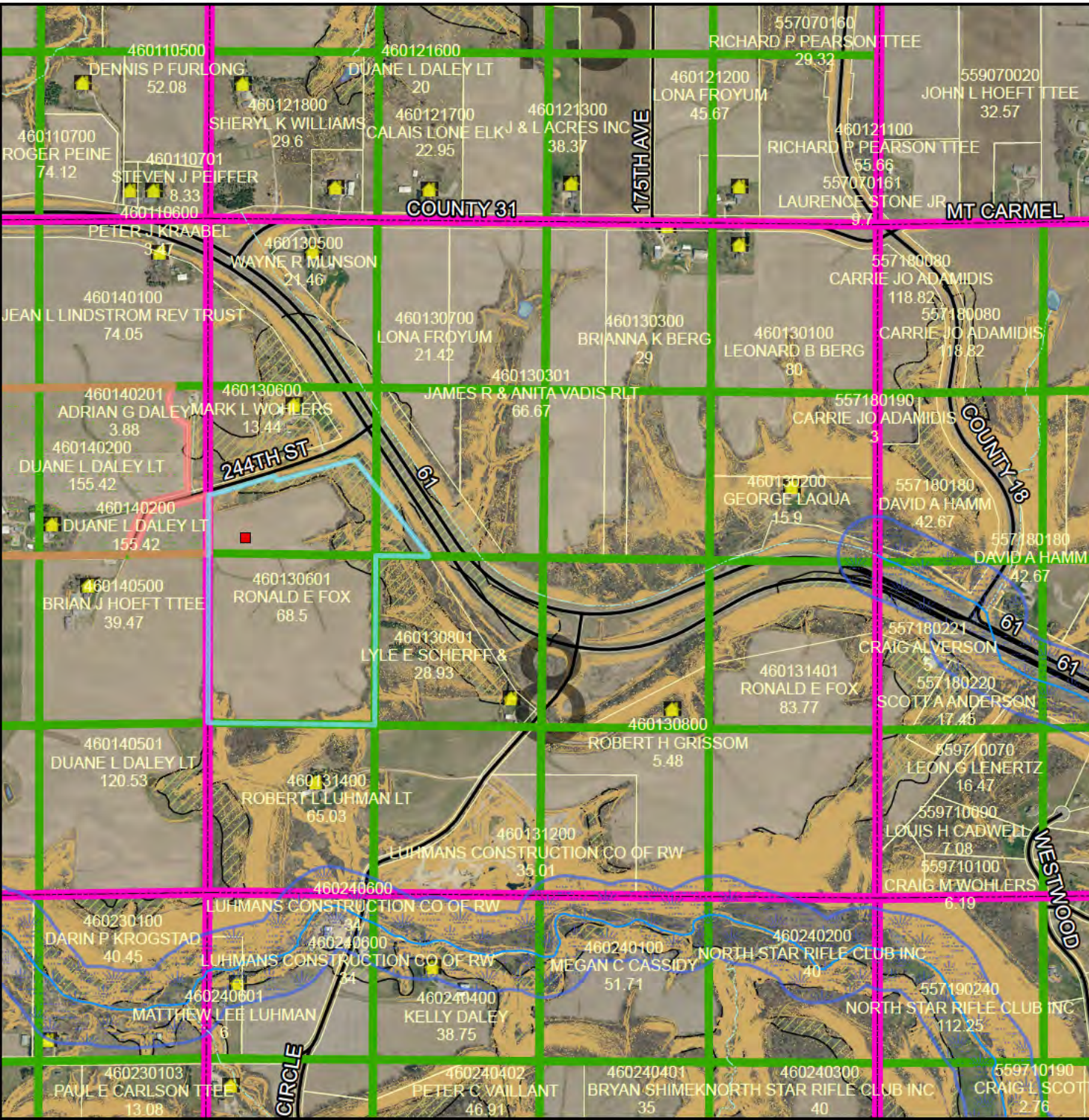


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MAP 02: VICINITY MAP



BOARD OF ADJUSTMENT

Public Hearing
January 22, 2024

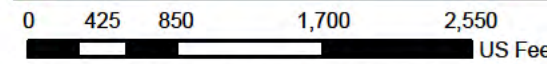
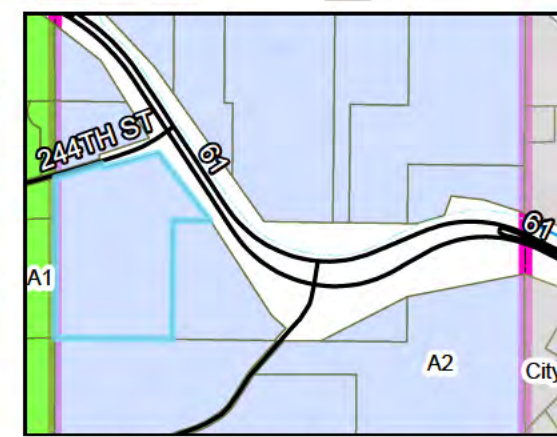
Devon Wittman (Applicant) on behalf of
Ronald Fox (Owner)
A-2 Zoned District

Part of the W 3/4 of the S 1/2
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Range 16 in Welch Township.

Request for Variance to Maximum
Density standards and A-2 regulations

Legend

- Intermittent Streams
 - Protected Streams
 - Lakes & Other Water Bodies
 - Shoreland
 - Historic Districts
 - Parcels
 - Registered Feedlots
 - Dwellings
 - Municipalities
- Bluff Impact Zones (% slope)**
 - 20
 - 30
- FEMA Flood Zones**
 - 2% Annual Chance
 - A
 - AE
 - AO
 - X



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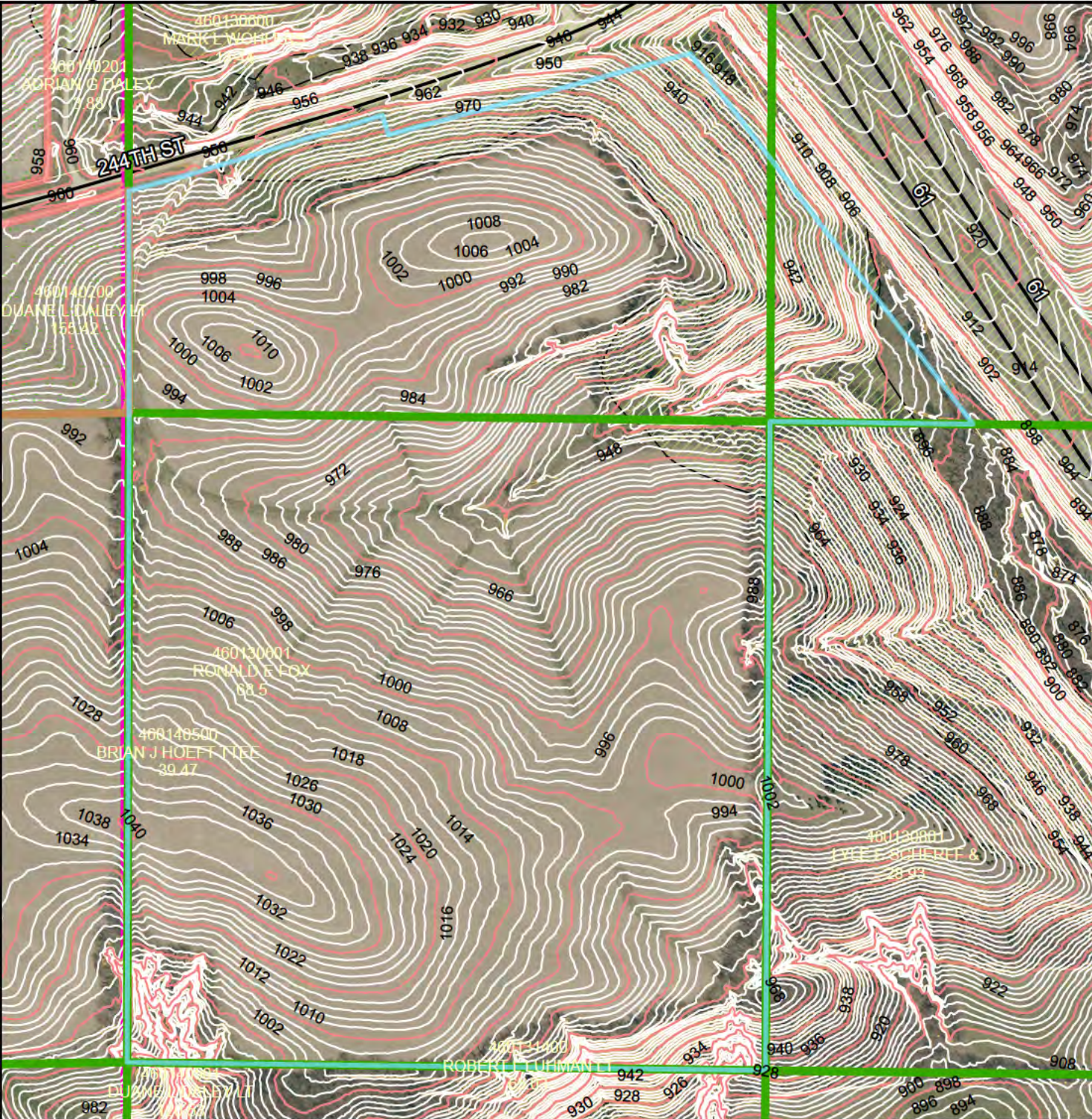


Public Hearing
January 22, 2024

Devon Wittman (Applicant) on behalf of
Ronald Fox (Owner)
A-2 Zoned District

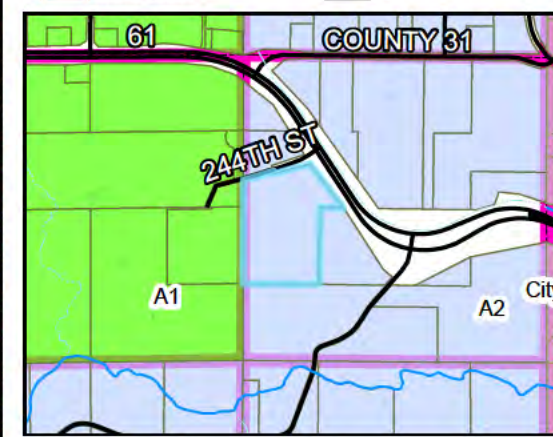
Part of the W 3/4 of the S 1/2
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Request for Variance to Maximum
Density standards and A-2 regulations



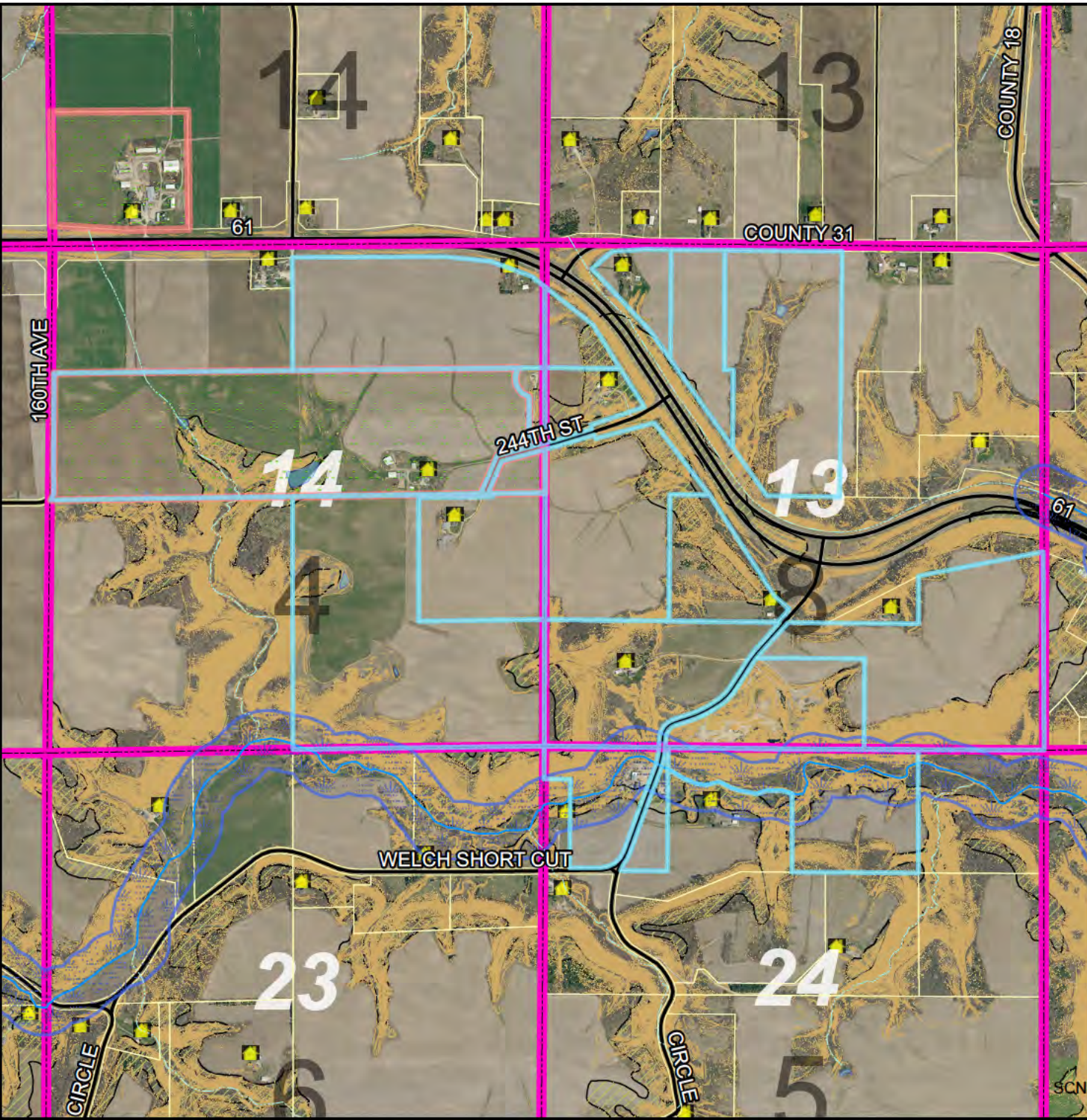
Legend

- Intermittent Streams
- Protected Streams
- Lakes & Other Water Bodies
- Shoreland
- Historic Districts
- Parcels
- Registered Feedlots
- Dwellings
- Municipalities
- Bluff Impact Zones (% slope) 20
- Bluff Impact Zones (% slope) 30
- FEMA Flood Zones**
- 2% Annual Chance
- A
- AE
- AO
- X



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PUBLIC NOTICE: NEIGHBORHOOD MAILING MAP



PLANNING COMMISSION

Public Hearing
January 22, 2024

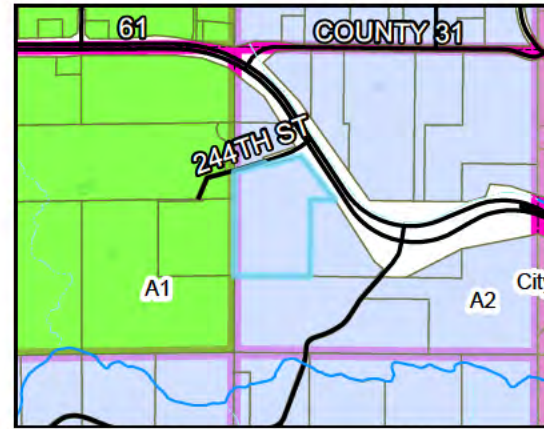
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Request for Variance to Maximum
Density standards and A-2 regulations

Legend

- | | |
|----------------------------|---------------------------------|
| Intermittent Streams | Bluff Impact Zones (% slope) 20 |
| Protected Streams | Bluff Impact Zones (% slope) 30 |
| Lakes & Other Water Bodies | FEMA Flood Zones |
| Shoreland | 2% Annual Chance |
| Historic Districts | A |
| Parcels | AE |
| Registered Feedlots | AO |
| Dwellings | X |
| Municipalities | |



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