

**CITY OF CEDARBURG
COMMON COUNCIL
November 26, 2007**

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A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, November 26, 2007 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Mayor Myers called the meeting to order at 7:30 p.m. The meeting began with a moment of silence followed by the Pledge of Allegiance.

Roll Call: Present – Common Council – Mayor Gregory P. Myers, Council Members Chris Reimer, Steven Glamm, Haly Besaw, Paul Radtke, Sandra Beck, Kip Kinzel, Robert Loomis

Also Present - City Attorney Kaye Vance, City Administrator/Treasurer Christy Mertes, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Tom Wiza, City Planner Jon Censky, Developer Duey Stroebel, Architect Paul Rushing, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Mayor Myers' request, Deputy City Clerk Kletzien verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who had requested copies, and by posting in accordance with the Wisconsin Open Meetings Law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

CONSIDER MAYOR MYERS' APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES – None

PUBLIC HEARING – CONSIDER ORDINANCE NO. 2007-27 ADOPTING THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S (FEMA) FLOOD INSURANCE STUDY (FIS) AND FLOOD INSURANCE RATE MAP (FIRM) PANELS 55089C0159F, 0167F, 0178F, 0186F, 0187F AND 0188F DATED DECEMBER 4, 2007; AND WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WDNR) CEDAR CREEK/MILWAUKEE RIVER DAMBREAK HAZARD MAP, THE FLOODWAY DATA/TABLES AND THE DAMBREAK HAZARD PROFILE DATED OCTOBER 4, 2007

Mayor Myers declared the public hearing open on Ordinance No. 2007-27 adopting the Federal Emergency Management Agency's (FEMA) Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) Panels 55089c0159f, 0167f, 0178f, 0186f, 0187f and 0188f dated December 4, 2007; and Wisconsin Department of Natural Resources (WDNR) Cedar Creek/Milwaukee River Dambreak Hazard Map, the Floodway Data/Tables and the Dambreak Hazard Profile Dated October 4, 2007. Deputy City Clerk Kletzien verified that proper legal notice had been given with publication in the *News Graphic* on November 8 and 15, 2007.

Planner Censky explained that the Common Council adopted Ordinance No. 2007-02 last February which amended the City's Zoning Code to incorporate the adopted Wisconsin Model Floodplain Zoning Ordinance; however, the maps were not available at that time. The Federal Emergency Management Agency (FEMA) has recently completed a re-evaluation of flood hazards in the City and the Wisconsin Department of Natural Resources has conducted a dam failure analysis for the Woolen Mills Dam, the Ruck Dam, the Columbia Mills Dam and the Wire and Nail Factory Dam on Cedar Creek. They have provided copies of the final Flood Insurance Rate Maps and the Cedar Creek/Milwaukee River Dambreak Hazard Map and require that this material be formally adopted by December 4, 2007.

Except for a slight relocation of the floodplain boundary in the downtown area, the FEMA study resulted in no change to the previous floodplain location throughout the rest of the City. The changes that occurred in the downtown area are beneficial to the affected properties in that a number of structures have now been removed from the floodplain. More specifically, the existing maps show all property along the east side and certain areas on the west side of Washington Avenue between Columbia Road and Bridge Street within the floodplain, where the floodplain on the new maps has been adjusted to a point east of those structures along the east side of Washington Avenue. Accordingly, those who own buildings that have been removed from the floodplain will no longer be subject to the floodplain regulations and will not be required to purchase flood insurance.

Planner Censky stated that the Plan Commission voted unanimously to recommend adoption of the Flood Insurance Study (FIS), Flood Insurance Rate Maps (FIRM), WDNR Cedar Creek/Milwaukee River Dambreak Hazard Map, the Floodway Data/Tables and the Dambreak Hazard Profiles.

In answer to Mayor Myers' question, Planner Censky stated that the City has been working with the DNR and FEMA and there have been some problems; however, it would cost the City a large sum of money to challenge the two organizations. He recommended adoption of this plan with the possibility of challenging them at a later date because there is no statute of limitations in this case.

Mayor Myers asked Planner Censky to explain the implications to the City if the maps are not adopted this evening.

Planner Censky stated that failure to adopt this ordinance by December 4, 2007 could result in suspension from the National Flood Insurance Program (NFIP). If a community is suspended from NFIP, it is subject to the provisions of Section 202(a) of Public Law 93-234, which prohibits federal officers or agencies from approving any form of loan, grant, guaranty, insurance payment, rebate, subsidy or disaster assistance loan or grant, for acquisition or construction purposes within the floodplain area.

Myrt Metzger, W54 N121 McKinley Ct., asked how costly it would be to challenge FEMA and the DNR on their decisions.

Director Wiza stated that it is hard to say how much it would cost but it would involve survey and modeling work over a few year's time.

Motion made by Council Member Beck, seconded by Council Member Besaw, to close the Public Hearing. Motion carried without a negative vote.

Motion made by Council Member Loomis, seconded by Council Member Reimer, to adopt Ordinance No. 2007-27 adopting the Federal Emergency Management Agency's (FEMA) Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) Panels 55089C0159F, 0167F, 0178F, 0186F, 0187F and 0188F dated December 4, 2007; and Wisconsin Department of Natural Resources (WDNR) Cedar Creek/Milwaukee River Dambreak Hazard Map, the Floodway Data/Tables and the Dambreak Hazard Profiles dated October 4, 2007. Motion carried without a negative vote.

APPROVAL OF MINUTES

Motion made by Council Member Radtke, seconded by Council Member Glamm, to approve the minutes of the November 12, 2007 meeting. Motion carried without a negative vote.

REPORTS OF BOARDS, COMMISSIONS & COMMITTEES - None

COMMENTS & SUGGESTIONS FROM CITIZENS

Noel Jepson, W61 N358 Washington Avenue, stated that he had a difficult health experience. On three different occasions he called for emergency medical help and the Police and Fire Departments responded immediately. He expressed his appreciation to the departments for their quick response and to the Common Council for their support of the Police Department.

Mr. Jepson spoke in regard to the Stroebel development, stating that he had friends on both sides of this issue. He is in favor of the development because he has driven by the area for 31 years and rarely has it been used as a park and right now it is in a state of disrepair and is an eyesore. Mr. Jepson stated he has also been involved in many discussions involving development issues and often times neighbors are opposed because the plan does not fit in the neighborhood. Due to the surrounding apartments and the dairy, he did not think it was a misuse to propose a senior development in this particular park area.

Myrt Metzger, W54 N121 McKinley Ct., stated he was in favor of the proposed building and he is pleased to see the repairs to the Woodmere Apartment property.

Sue Helgesen, W52 N131 Pioneer Ct., agreed with the proposed senior housing development because the present area is an eyesore and something needs to be done.

Angela Rester, N17 W5461 Garfield Street, provided a few maps showing the density in the surrounding area to the proposed senior housing complex and a list of area residents who are opposed to the development. She stated that she attended the first Plan Commission meeting held in regard to this issue. At that time, she expressed that she was not in favor of a three-story building and understood that a two-story building was not possible. In this case, the development was voted down and she was certain the proposal was dropped because there was no other option. Ms. Rester referenced the maps that she provided, stating that other areas in the City showed a greater amount

of surface parking and streets and that this development would be taking away valuable recreational green space with a twenty-unit building that provided only eight additional parking spots. She stated that even though the recreation area is an eyesore, it was used and the owner should be required to maintain the area. Ms. Rester asked if the Council recognized that they would be setting a new precedent by allowing this PUD amendment. She opined that the development should include two entrance roads and more than eight parking spots, which the area does not support. Ms. Rester urged the Council not to change the current PUD and support the Plan Commission's decision.

Jerry Adrian, N17 W5384 Garfield Street, stated that his wife and he moved from Greenfield and chose their present home in Cedarburg because of the view. He stated that the current recreation area is not an eyesore because it is green space. Mr. Adrian does not want to see another building out of his window.

Harold Stefan, N17 W5419 Garfield Ct., stated he moved to Cedarburg from Menomonee Falls in 2004. He chose this area for the open space and was told that nothing could be built in the recreation area. When he heard that Duey Stroebel purchased the property, he expected the tennis and basketball courts to be restored. Mr. Stefan was very concerned when he learned that Mr. Stroebel wanted to build a 27-unit, three-story building. The current request for a 20-unit, two-story building is still too big for the site. He is not against all development or senior housing; however, the proposed building footprint is enormous and will dominate the neighborhood with two stories. Mr. Stefan expressed concern for only eight surface parking spaces that will be available for visitors. There is no on-street parking on the west side of the building. Mr. Stefan expressed concerns for parking and turn-around for general delivery vehicles, moving vans, garbage removal, snow removal and the lack of space for delivery trucks during construction. Mr. Stefan asked how often and for what reason the Common Council would disregard the wisdom and experience of the Plan Commission. The Commission voted a resounding 4-2 against this proposal. He stated that the Council would also be ignoring the concerns of staff in regard to the ingress and egress of the property. Mr. Stefan urged the Council to deny Mr. Stroebel's proposal.

Dolores Skiba, W54 N107 McKinley Ct., stated she is in favor of the proposed development because the recreation area has been an eyesore for eight years. She stated that many neighbors face the Ozaukee Ice Rink and the building which used to house a Lithography business and that this proposal would be an improvement for Cedarburg and the neighborhood.

Richard Dussow, N16 W5391 Garfield Ct., stated he spoke with many of the Common Council Members by phone and he wanted to introduce himself. He is opposed to the development and stated he was misled at prior meetings. He has never been in agreement, but he chose the lesser of two evils (two-story building vs. three-story building) because he understood that a two-story building would not be profitable for the developer and could not be built.

Ellen Haynes, W54 N114 McKinley Ct., stated she is in favor of the development and was concerned about what she had been hearing in regard to the proposal. She chose to ring 60 doorbells and was able to speak with 50% of the people. She presented them with information about Mr. Stroebel's development and they were grateful for the information. Ms. Haynes did not hear any negative comments from the people she contacted.

Angela Rester, N17 W5461 Garfield St., stated that the ice rink is located 212 feet below grade from the condominiums and cannot be used as a comparison. She urged the Common Council to listen to the Plan Commission.

UNFINISHED BUSINESS – None

CONSIDER GRANT OF UTILITY EASEMENT TO AT&T ON CITY-OWNED LANDS ADJACENT TO THE WASTEWATER TREATMENT PLANT

Director Wiza stated that AT&T has requested an easement to locate one of their large utility cabinets along Park Lane in the vicinity of the Wastewater Plant as part of their Project Lightspeed. The City has tried to work with AT&T to site these structures in locations that will not obstruct motorists' vision and not be an eyesore. The location proposed for this cabinet is about 150 feet southeast of Park lane adjacent to the Wastewater Treatment Plant driveway. This is somewhat behind the Wilshire Pond and should not be an aesthetic concern to the neighborhood.

In answer to Council Member Glamm's question, Director Wiza stated that AT&T has six cabinets located throughout the City at this point. They want a total of 13 cabinets throughout the City to serve all of the residents if safe locations are found.

Mayor Myers stated that one box serves approximately 700-800 residents around each cabinet.

City Attorney Vance stated that the deregulation law gives AT&T the right to place cabinets throughout the community.

Mayor Myers stated that AT&T is providing another cable TV option for the citizens of Cedarburg.

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to grant a utility easement to AT&T on City-owned lands adjacent to the Wastewater Treatment Plant. Motion carried without a negative vote.

In answer to Council Member Besaw's question, Director Wiza stated that the AT&T cabinets will not tip or lean because they are placed on a concrete slab.

CONSIDER PLANNED UNIT DEVELOPMENT AMENDMENT TO CONVERT THE RECREATIONAL AREA/FACILITIES OF THE WOODMERE DEVELOPMENT AT THE NORTHEAST CORNER OF MCKINLEY BOULEVARD AND GARFIELD STREET TO SENIOR HOUSING

Mayor Myers stated that Duey Stroebel is proposing to convert the existing tennis court and basketball court area of the Woodmere complex from recreation to senior housing condominiums. The Plan Commission has held two separate public hearings on this request and each resulted in a negative recommendation. This development is before the Common Council tonight to consider.

Council Member Loomis clarified that the Common Council is considering the one acre area for senior housing and a change to the PUD. The architecture will need to be approved by the Plan Commission.

In answer to Council Member Loomis' question, Planner Censky stated that Mr. Stroebel has made a significant change to the proposed development by reducing it to a two-story building. Any changes to the access drive could be considered by the Plan Commission or the Common Council at a later date.

City Attorney Vance stated that the Common Council is only considering the zoning changes this evening.

In answer to Council Member Loomis' question, City Attorney Vance stated that the City is not responsible for enforcing the senior housing requirements of 80% occupation by individuals 55 years or older and 20% occupation by individuals 45 years and older. These regulations are enforced by the Equal Housing Authority.

Duey Stroebel stated that provisions in the equal housing regulations allow discrimination against children in the case of senior housing. The property can be deed restricted to meet the conditional use requirement.

In answer to Council Member Loomis' questions, Planner Censky stated that one other PUD was changed in the Cedar Pointe residential area to allow for the Police Station. As far as maintenance of private tennis courts are concerned, the City would not get involved unless it were a nuisance to the Community.

In answer to Council Member Beck's question, Planner Censky stated that tonight's decision to amend the PUD does involve the building.

Mayor Myers stated that tonight's decision is whether or not to convert a recreation area into housing for the elderly.

Council Member Loomis questioned whether 6 surface parking spaces and 41 underground parking spaces were sufficient.

Planner Censky stated that only a one-half parking stall per unit is required and Mr. Stroebel has doubled the requirement with two parking spaces per unit.

Planner Censky stated that staff has some concerns with the driveway access onto McKinley Blvd. and recommends it be changed to Garfield Street. McKinley Blvd. is an arterial street with substantially higher traffic volumes where new driveway cuts should be discouraged. Garfield Street is a local street with lower volumes intended to support land access. Also a concern to staff is that the proposed access is at a bend in the road where visibility is poor and the southern drive is too close to the intersection which could encourage illegal traffic movements into that intersection. If the Council approves the PUD amendment this evening, then the Plan Commission will look at these other points of concern and make their recommendations to the Council at a future meeting.

Council Member Beck stated that she has been through the PUD process, and many of times it has been a give and take situation over a couple of years. She stated that it is necessary to be careful and thoughtful during this process. Council Member Beck stated that the recreation area is an eyesore now but she is not sure that the green space should be filled with a building. The Woodmere complex was built with this added green space in mind and this change would disregard that original design. Council Member Beck stated that she is uncertain that this development would truly add to the tax base. She stated that she is not ready to vote on this amendment to the PUD.

Council Member Loomis stated the pros and cons to this project. The pros are:

- The City needs more senior housing (which was indicated strongly in the Visioning Report).
- A financial analysis indicates that it would generate approximate \$42,000 to the City each year, which would pay for a Public Works position in the City.
- The building would be an improvement over the run down park.
- It appears to be a high quality development.

The cons are:

- There will be increase in traffic.
- Six parking spaces may not be adequate for the development.
- Some neighbors do not agree with the development.

Council Member Loomis stated that when the Retzlaff property was being considered for a subdivision, his personal preference was to have it remain as a pumpkin farm; however, it was better for the City to develop the land.

Mayor Myers stated that the City lacks elderly housing for long-time residents of the City who want to downsize and remain in Cedarburg. Presently, the City is landlocked and not much can be done to improve the situation so this is an opportunity. He stated that this is an appropriate place for this development because it is compatible with the surrounding condominiums and apartments. Mayor Myers also added that Cedarburg is a City, not a Town, where buildings are in close proximity to one another. Mayor Myers stated that Quarry Park did not exist when the Woodmere tennis courts were included in that development. He stated that Mr. Stroebel's project has been well thought out and it meets the needs of the City and it will help the tax base.

Council Member Besaw stated that development issues are the hardest decisions for the Council to consider. She stated that communities are moving toward a new urbanism where it is favorable to have tighter designs. She is certain that Kubala-Washatko Architects have created a nice design and that it will be nice addition to Cedarburg. Council Member Besaw stated she will vote in favor of the proposal to improve the City of Cedarburg.

Council Member Kinzel stated he was concerned about the traffic flow but he agrees that the development will fit in the area very nicely.

Council Member Glamm stated that having the Police Department in the backyard of the Cedar Pointe Subdivision was an unpopular decision at the time, and now the neighbors don't even know it is there. He stated this senior housing site is within walking distance to the grocery store and it

may add revenues that could go towards adding a worthwhile item that otherwise may go unfunded during the difficult budget process. For these reasons he will support the proposed PUD amendment.

Council Member Reimer stated he will vote in favor of the proposal because the City needs senior housing.

Motion made by Council Member Loomis, seconded by Council Member Kinzel, to approve the Planned Unit Development amendment to convert the recreational area/facilities of the Woodmere Development at the northeast corner of McKinley Boulevard and Garfield Street to Senior Housing with the condition that the following points are considered:

- The access drive being relocated from McKinley Boulevard to Garfield Street.
- The applicant shall pay all impact and user fees prior to the issuance of a building permit.
- Engineering Department review and approval of the grading, drainage, stormwater management and erosion control plans prior to issuing the building permit.
- The building shall be equipped with a proper fire/smoke detection and sprinkler system.
- The applicant submitting a Certified Survey Map to address the irregular shaped right-of-way of McKinley Blvd.

Motion carried with Council Members Reimer, Glamm, Besaw, Kinzel and Loomis in favor and Council Members Radtke and Beck opposed.

CONSIDER AMENDING POLICY FC-1; REVENUE POLICY

Motion made by Council Member Loomis, seconded by Council Member Reimer, to amend Policy FC-1; Revenue Policy. Motion carried without a negative vote.

LICENSE APPLICATIONS

Motion made by Council Member Beck, seconded by Council Member Glamm, to grant the request of Donna M. Taylor of Cream & Crepe Café located at N70 W6340 Bridge Road to transfer Class B Beer and Liquor Licenses to Anvil Pub & Grille, LLC, dba Anvil Pub & Grille, Donna M. Taylor, agent, located at N70 W6340 Bridge Road. Motion carried without a negative vote.

Motion made by Council Member Besaw, seconded by Council Member Kinzel, to authorize issuance of a Class B Beer and Class C Wine License to Donna M. Taylor, Cream & Crepe Café, N70 W6340 Bridge Road. Motion carried without a negative vote.

Motion made by Council Member Glamm, seconded by Council Member Kinzel, to authorize issuance of a Horse and Carriage License to Margaret L. Farrington, Cedarburg Carriage Company, 2485 Hillcrest Road, Saukville, WI 53080.

Council Member Beck questioned if the City needs more than one horse and carriage operator and asked how often Ms. Farrington plans to offer her service.

Margaret Farrington, 2485 Hillcrest Road, Saukville, WI, stated that she had a very successful business in California prior to moving to Cedarburg. She would be operating most Friday and Saturday afternoons along a route that was approved by the Police Department.

City Attorney Vance stated that the present Ordinance can be amended, if needed, at a later date.

Mayor Myers and Council Member Loomis stated that horse and carriage rides would be good for the City and will add to the quaintness of Cedarburg.

Council Member Beck stated she would vote in favor of the license knowing that the residential route can be reconsidered, if needed.

Motion carried without a negative vote.

Motion made by Council Member Besaw, seconded by Council Member Kinzel, to authorize issuance of new Operators' License for the period ending June 30, 2008 to Anthony R. Anders. Motion carried without a negative vote.

CITY ADMINISTRATOR'S REPORT - None

COMMENTS & SUGGESTIONS BY CITIZENS - None

REPORTS & COMMENTS BY COUNCIL MEMBERS - None

MAYOR'S REPORT

Santa arrived in Cedarburg this evening and the tree lighting was a success.

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Reimer, seconded by Council Member Glamm, to adjourn to closed session at 9:25 p.m. pursuant to Wisconsin State Statutes 19.85(1)(e) to deliberate or negotiate the purchase of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, and 19.85(1)(c) to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility, more specifically union negotiations. Approval of closed session minutes of 11/12/07.

Motion made by Council Member Beck, seconded by Council Member Reimer, to adjourn at 9:40 p.m. Motion carried without a negative vote. The meeting did not reconvene into open session.

Amy D. Kletzien, CMC
Deputy City Clerk