

PLAN COMMISSION

PLN20060105-1
UNAPPROVED MINUTES

January 5, 2006

A regular meeting of the Plan Commission of the City of Cedarburg was held on Thursday, January 5, 2006 at Cedarburg City Hall, W63 N645 Washington Avenue, in the Council Chambers. The meeting was called to order at 7:00 p.m. by Mayor Gregory Myers.

Roll Call: Present - Mayor Gregory Myers, Council Member Sandra Beck, Mark Burgoyne, Brook Brown, Joe Emmerich, Keith Kaiman

Excused - Park & Forestry Chairperson James Schara

Also Present - City Attorney Kaye Vance; City Planner Jon Censky; Administrative Secretary Darla Drumel; interested citizens

STATEMENT OF PUBLIC NOTICE

Administrative Secretary Drumel confirmed that the agenda for the meeting had been posted and distributed in compliance with the Wisconsin Open Meetings Law.

APPROVAL OF MINUTES

A motion was made by Council Member Beck, seconded by Commissioner Kaiman, to approve the minutes of the November 7, 2005 meeting as presented. The motion carried without a negative vote, with Commissioner Schara excused.

JURISDICTIONAL LAND DIVISION APPROVAL FOR A THREE-LOT PLANNED UNIT DEVELOPMENT FOR PROPERTY LOCATED IN THE TOWN OF CEDARBURG AT 550 SARAH LANE – DR. DAN GOECKNER

Planner Censky reminded Commissioners that this item was discussed at the November 7, 2005 meeting and action was postponed until more information was made available regarding topography, floodplain location, buildability of proposed Lot #3 and anything else that would assist in making a sound decision. While this property is located in the City's Sanitary Sewer Service Area, sewers are not available because the property is located in the Town of Cedarburg and the lots will be served by on-site septic systems. He advised that City staff felt it was important to plan for future sewer and other utility extensions to and through these sites to adjacent lands east and have suggested adding a 20-foot utility easement along the north property line of each parcel.

Planner Censky added that last November the debate centered on whether or not the utility easement should also serve as an emergency access easement to provide an alternate means of emergency access to adjacent lands. It was noted, however, that there is a 17-foot difference in grade between the Goeckner's site and Hazelwood's property at this location, which would likely make it impractical and costly to construct. He relayed his conversation with Fire Chief Rich Van Dinter regarding the emergency access issue; and Fire Chief Van Dinter advised that while he would prefer multiple access points to the adjacent property, he would not insist that the easement be provided across the Goeckner property. He felt that other options were available to the Hazelwood property which could be explored when development was considered.

Planner Censky noted that if the Hazelwood property is ever annexed into the City, the property owner will need to be aware of Section 13-1-68 (Flood Fringe Overlay) of the City's Zoning Code which requires that all structures be provided with dryland access outside the floodplain. Since the only access to the upland portion of his property is through the floodplain and across a bridge, this issue will need to be addressed if or when development is planned.

Planner Censky then recalled that there was a question regarding whether the absence of an emergency access easement here would have any affect on an annexation petition by Mr. Hazelwood. He found nothing in his research that specifically addressed that question.

Planner Censky suggested some stipulations to consider as part of any approval of the proposed Certified Survey Map (CSM).

Mary Kay Buratto, planning consultant for Dr. and Mrs. Goeckner, read the following statement into the record:

"By appearing before this Commission and by submitting an application for approval, the Goeckners are expressly not waiving their right to assert that the City's Land Division and Subdivision Regulations do not apply to their proposed Certified Survey Map." This statement is made as part of the record on advice of the Goeckner's legal counsel. Questions regarding the statement may be directed to him.

For clarification, the Goeckners would like the Plan Commission to tell them if the easement(s) asked for are to be given to the Town of Cedarburg or the City of Cedarburg?

The Goeckners wish to go on record in opposition to any easement on their property, as requested by the City, for any public purpose because they understand that the City doesn't have the right to require easements as a condition of extraterritorial plat review.

Respectfully submitted, Mary Kay Buratto, AICP

City Attorney Vance advised that she had spoken with the Goeckner's attorney, Richard Lehmann, who was under the impression that the City was requiring a dedication of a public right-of-way and public improvements. She advised that the City cannot require that the street be built to City standards when it is in the Town. However, the Plan Commission is talking about easements in the City's Sewer Service Area and are simply reserving the right to construct public improvements if the property is ever annexed to the City. City Attorney Vance pointed out that there was a big difference between constructing public improvements and requiring an easement if ever in the City.

Mayor Myers explained that cities have the right to require easements, as part of extraterritorial platting approvals, to accommodate utility services for properties in the Sewer Service Area should they become part of the City. He added that the City was not talking about requiring road construction.

Action:

A motion was made by Mayor Myers, seconded by Commissioner Kaiman, to approve the proposed three-lot CSM contingent upon:

- Obtaining a 20-foot public Utility Easement across the ingress and egress easement from Sarah Lane to the adjoining property line to the east that would also serve as an emergency access easement if needed.
- The stipulations as identified in the Fire Chief's letter to the applicant dated 1/27/05.
 - The cul-de-sac at the end of the drive should have a 90-foot diameter.
 - The proposed 20 foot drive is acceptable, but should be constructed to support the Fire Department's heavy equipment and have no grade drop on the sides.
 - Two bypass turnouts to allow safe passing should be provided.
 - A 5" underground PVC pipe should be installed from the end of Sarah Lane to the end of the private drive to serve as a dry hydrant.

Vice Chairperson Burgoyne asked what the standard width of a typical utility easement would be. Planner Censky responded that the City Engineer determined that the minimum utility easement would be 20 feet wide. If it were to be used as an emergency access, the Fire Department agreed the 20-foot wide easement would be adequate.

Additional Action:

Mayor Myers amended his motion to approve the three-lot CSM with a 20-foot utility easement. Commissioner Kaiman concurred.

City Attorney Vance advised that the City cannot require an emergency access easement. Mayor Myers explained that the City can require an easement for utilities at this point in time because the property is in the City's Sewer Service Area.

Additional Discussion:

Council Member Beck stated that she did not believe it was appropriate to require the Goeckners to provide access for the adjoining property and wondered if there was another way to provide public utilities rather than through the proposed easement. One of her concerns was potential landscape damage. Planner Censky noted that a utility easement should cross the entire Goeckner property to provide for public utility connections to these properties as well as lands both to the east and the west. It would only be used if annexation occurred and service was needed.

Vice Chairperson Burgoyne advised that he walked the property and agreed that an emergency access would be peculiar because of the steepness of the slope. He believed in property rights and noted that a single access to the Hazelwood property would not be unique to the City. Vice Chairperson Burgoyne also questioned whether a utility easement was necessary if service could be provided directly to the Hazelwood property.

Mayor Myers pointed out the utility design would not be determined until needed. At this point, it is not now known whether service could be provided without an easement. He added that the City was not requiring anything unique; it is standard to plan for the future in the most cost-effective way.

Council Member Beck asked for clarification on whether or not the City is requiring an emergency access easement by approving a 20-foot utility easement. City Attorney Vance responded that if the Goeckner property annexed into the City and an emergency access easement is needed, the City would then need to acquire an easement to be used to construct a road. Even if the Hazelwood property annexed to the City, the City cannot force the Goeckners in the Town to create an emergency access easement; only the Town can. Utilities, however, can be constructed prior to annexation, which has been done in the past.

Ms. Buratto, speaking for the Goeckners, stated that they opposed any easement. Their belief was that the City does not have a right to encumber their property.

Commissioner Brown believed that the Plan Commission has the right to require the easement, and did not believe the requirement would harm the Goeckners.

Dr. Goeckner stated his belief that the Hazelwood property could be served without going through their property, and without compromising the well and septic systems that would be located within the easement. He added that an emergency road access was totally ridiculous.

Council Member Beck questioned whether Dr. and Mrs. Goeckner could obtain utility service if the Hazelwood property is serviced without an easement. Mayor Myers explained that he was wary of the Plan Commission designing the sewer system because, for example, it is not known if the angle of the pipe can be adjusted, if rock will be encountered, and what could be negotiated with the railroad.

City Attorney Vance advised that if the City does not obtain the easement with the land division approval, and a need for it arises some time in the future, the City would then have to do a condemnation.

Additional Action:

Vice Chairperson Burgoyne moved to call the question. The motion to call the question was seconded by Commissioner Brown and carried without a negative vote.

The motion to approve the land division with the 20-foot utility easement carried with Mayor Myers, Vice Chairperson Burgoyne and Commissioners Brown, Emmerich and Kaiman voting in favor; and Council Member Beck voting against, with Commissioner Schara excused.

LAND USE PLAN AMENDMENT AND REZONING RECOMMENDATIONS FOR PROPERTIES LOCATED AT W57 N503 HILBERT AVENUE, W57 N507 HILBERT AVENUE, W57 N511 HILBERT AVENUE AND N51 W5838 PORTLAND AVENUE

Planner Censky advised that Karl Klosowski was requesting a rezoning recommendation from RM-2 to RS-5 for his single-family home located at W57 N503 Hilbert Avenue at the northwest corner of Hilbert Avenue and Portland Road. It is situated on a block that has a mix of single-family and multi-family uses all zoned RM-2 (multi-family). Because single family homes are not permitted in the RM-2 District, the homes on this block are all classified as non-conforming uses and Mr. Klosowski was finding it difficult to refinance because of the non-conforming status and is requesting rezoning to a district that will render his home conforming.

Planner Censky suggested that if Commissioners supported the applicant's request, the zoning on the other single-family homes be reconsidered as well. A drive-by review of these homes revealed that they are all very well maintained and are typical of Cedarburg. City records indicate that the applicant's home and the two single-family homes to the north were constructed in the late 1800s or early 1900s, and the two 8-family structures directly to the west on Portland Avenue were constructed in the mid-1940s. A 1947 single-family home is directly west of the 8-unit buildings and a newer 36-unit condominium the north of these structures.

Planner Censky pointed out that, when dealing with the physical development of the City and projecting that into the future, the City is guided by the Comprehensive Land Use Plan and Zoning. Based on the existing Comprehensive Land Use Plan and Zoning, the intent for this area would be

to phase the existing single-family homes out of existence in favor of future multi-family development. These uses have co-existed for years without conflict and he suggested that both the Comprehensive Land Use Plan and Zoning for the existing single-family parcels on this block be changed to reflect current use.

Action:

Vice Chairperson Burgoyne moved to recommend Land Use Plan amendment to Medium-Density Residential Development and rezone the properties to RS-5 Single-Family Residential District. The motion was seconded by Commissioner Emmerich.

Commissioners expressed concern whether information regarding the option of rezoning the properties to RS-6 Single-Family/Two-Family District was provided.

City Attorney Vance advised that both the RS-5 and RS-6 Districts were discussed in the staff's report, and it would be appropriate to make a recommendation to the Common Council. She advised that a public hearing would be held before the Common Council.

Mr. Klosowski, the petitioner, advised that he is paying a fee to hold the rate on the refinancing until the rezoning takes place and he asked the Commission to recommend either district.

Continued Action:

Vice Chairperson Burgoyne withdrew his original motion.

A motion was made by Vice Chairperson Burgoyne, seconded by Commissioner Emmerich, to recommend amending the Comprehensive Land Use Plan classifications for W57 N503 Hilbert Avenue, W57 N507 Hilbert Avenue, W57 N511 Hilbert Avenue and N51 W5838 Portland Road to Medium-Density Residential and rezoning them to either RS-5 or RS-6.

Planner Censky advised that a public hearing would be held during the January 30, 2006 Common Council meeting.

The motion carried without a negative vote, with Commissioner Schara excused.

Further Discussion:

Richard Brault, owner of property located at N51 W5838 Portland Road, opposed the action to rezone his property. He advised that he purchased the parcel with the RM-2 zoning and believed that his taxes were based on that zoning.

Mayor Myers informed Mr. Brault that he would have the opportunity to provide input at the public hearing on January 30, 2006.

CONSULTATION REGARDING REQUEST TO CONSIDER REZONING PROPERTY AT W60 N614 JEFFERSON AVENUE FROM RS-6 TO B-4 – JOSEPH HERKERT

Planner Censky advised that Mr. Joseph Herkert was simply looking for feedback to help him make the decision whether or not to purchase the property at W60 N614 Jefferson Avenue to operate his financial planning firm. Mr. Herkert was asking the Plan Commission to consider his proposal to rezone the site from RS-6 (Single-family and Two-family District) to B-4 (Office and Service District) and described the business as a low activity/by-appointment-only operation with no walk-in customers.

Planner Censky noted that the parcel was located at the northeast corner of Jefferson Avenue and Columbia Road, across the street and to the east of existing office uses and B-4 Zoning, across the street from a church to the south with I-1 zoning and bordered on the north and east by single-family homes zoned RS-6. He added that the B-4 District limits to the west extend to the center of Jefferson Avenue and the requested change would shift the district boundary from the center of a street to a location that directly abuts residential property.

Planner Censky cautioned that even though the applicant's office use may have characteristics that would have little impact on adjacent homes, future uses allowed in the B-4 Community Business District may not exhibit those same characteristics, which could result in incompatible uses located directly adjacent to each other.

Council Member Beck stated that the Plan Commission has been very clear that it will not rezone properties in residential neighborhoods to a commercial use throughout the City. She did not believe the proposal was a good idea and was very much against making the change.

Commission Kaiman noted that he has always been concerned about retaining the integrity of residential neighborhoods; and, historically, the City has denied similar requests. He was in complete agreement with Council Member Beck.

Mayor Myers pointed out that office space is available within the commercial districts of the community without creating an office out of a residential building, especially in such a dense residential area.

Commissioner Emmerich advised the he could not support a zoning change and agreed that precedence is to preserve residential neighborhoods.

Commissioner Brown agreed with the previous comments.

Vice Chairperson Burgoyne stated that although Mr. Herkert's passive use may be ideal for the site, the Plan Commission's policy has been to deny commercial uses along high-traffic arterials and protect and preserve the residential character of the neighborhoods along those arterials, particularly Washington and Columbia. He strongly believed the Plan Commission has acted properly in the past. Vice Chairperson Burgoyne expressed hope that Mr. Herkert would find an ideal location within the City because of his good reputation.

Mr. Herkert agreed that there were other locations for his business within the commercial districts and thanked the Plan Commissioners for the opportunity to hear their opinions.

CONSIDER REQUEST FOR A SITE MODIFICATION TO REMOVE FOUNDATION WALLS FROM WITHIN THE SEIDLER POND SUBDIVISION – WAYNE SATTLER/SEIDLER POND SUBDIVISION HOMEOWNERS REPRESENTATIVE

Planner Censky reported that the Seidler Pond Subdivision Homeowners Association was requesting approval to remove the existing stone foundations from Outlot #3 of their subdivision for safety and maintenance reasons. These foundations are the remnants of the original farmstead buildings that existed prior to the Seidler Pond subdivision and have apparently fallen into disrepair rendering them a potential hazard. The item was before the Plan Commission because the developer had indicated that the foundations would remain as reflected in the February 4, 2002, minutes. These foundation walls are also referred to in several documents.

Action:

Commissioner Brown moved to approve the removal of the crumbling foundation walls as requested. The motion was seconded by Vice Chairperson Burgoyne.

Continued Discussion:

Mr. Wayne Sattler, representing the Homeowners association, provided pictures of the foundation walls that would remain, which were part of the development design and had been maintained. He added that the homeowners were grateful for the work the developers did to retain these foundation walls and would continue to maintain them. The walls to be removed were in disrepair, were not part of the historic walls to be retained when the development was approved, and are right next to the playground.

Additional Action:

The motion carried without a negative vote, with Commissioner Schara excused.

CONCEPT REVIEW OF PROPOSED 54-LOT SINGLE-FAMILY SUBDIVISION FOR RECENTLY ANNEXED LAND LOCATED SOUTH OF HIGHWAY 60 ALONG THE EAST SIDE OF SHEBOYGAN ROAD – MLG DEVELOPMENT

Planner Censky advised that MLG Development Inc. was requesting concept review for a proposed single-family subdivision of the recently annexed parcel of land located south of Highway 60 along the east side of Sheboygan Road. In order to be consistent with the Comprehensive Land Use Plan, this subdivision is designed as a Planned Unit Development where lots are reduced from the lot size standards of the base Zoning District, then clustered along a curvilinear road design where the natural environmentally-sensitive lands are preserved. It consists of 54 lots on 49.25 acres for a density of 1.1 units per gross acre, as is recommended by the Comprehensive Land Use Plan. The lots are approximately 13,500 square feet in size, which are located on the upland portion of this property out of the floodplain and primary environmental area. As also recommended by the Comprehensive Land Use Plan, the subdivision would include a walk/bike path extending through the forested open space area along Cedar Creek and a neighborhood park to be located within the upland open space area between and behind Lots 32 and 33. The Park & Forestry Board was involved in the design and location of the park in the subdivision plat.

Planner Censky advised that while MLG is beginning the approval process now, they understand that public utilities (i.e. sewer and water) are currently not available and actual development of this project may not commence for some time. The City's sanitary sewer main is located on the east side of Cedar Creek and will need to extend across or under the Creek to serve this and other future development to the west, including the City's pending business park. Also, the comprehensive sanitary sewer plans call for a lift station on the west side of Cedar Creek at this location, which will be part of the infrastructure included for the sewer extension. Since the City has been considering development of a business park for the former Kohlwey property, the sewer extension and lift station were anticipated to be part of that project.

Planner Censky noted that MLG was requesting concept review comments, and if the plan won support, they would pursue preliminary plat and rezoning at a future date.

Vice Chairperson Burgoyne suggested that the length of the cul-de-sac be checked against City Codes to assure for proper water pressure. Planner Censky advised that the maximum length of a cul-de-sac pursuant to City Code was 750 feet and the proposed street was under that limit. He added that the road configuration was designed to accommodate a gravity sanitary sewer system.

In response to Commissioner questions, Planner Censky advised that Police Chief Frank preferred a single access to subdivisions, and that a large public park is proposed to the west and south of this development. Mayor Myers advised that the Blue Ribbon Committee Visioning Plan, which solicited input from City residents, recommended a 1% to 1.5% population increase per year and the City has come nowhere close to that rate. He added that the Common Council has been carefully monitoring the City's growth. Mayor Myers also noted that the Common Council has been involved in master planning the uses for this area for several years and that this is consistent with those plans.

City Attorney Vance advised that the petitioners were looking for feedback and there would be no binding approvals with the Commissioner's responses.

Commissioner Brown suggested that there be less homes and more trails.

Vice Chairperson Burgoyne found the overall design attractive and noted that full development of the subdivision would take a few years to be completed.

Planner Censky noted that the City has not met the 1% to 1.5% increase in growth for many of the past years and there are very few lots left for new home construction.

Mayor Myers directed staff to provide a copy of the Comprehensive Land Use Plan for the newly-annexed areas to the Commissioners.

COMMENTS AND SUGGESTIONS FROM CITIZENS

No comments or suggestions were offered.

MAYOR'S ANNOUNCEMENTS

The Mayor did not make any announcements.

ADJOURNMENT

A motion was made by Council Member Beck, seconded by Commissioner Brown, to adjourn the meeting at 8:33 p.m. The motion carried without a negative vote, with Commissioner Schara excused.

Darla Drumel,
Administrative Secretary