

PLAN COMMISSION

PLN20060403-1
UNAPPROVED MINUTES

April 3, 2006

A regular meeting of the Plan Commission of the City of Cedarburg was held on Monday, April 3, 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; interested citizens

STATEMENT OF PUBLIC NOTICE

Mayor Myers 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 March 6, 2006 as presented. The motion carried without a negative vote, with Commissioner Schara excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

John Nelson, W55 N470 Spring Court, advised that several of his neighbors wished to speak regarding the beer garden license request for Ernie's Wine Bar, LLC at N49 W5471 Portland Road, adjacent to their homes. He asked if comments would be accepted after the presentation.

Mayor Myers agreed to take comment from the neighbors at the presentation.

APPROVAL OF PAINT COLOR FOR FOUNDATION OF RECENTLY-APPROVED FOUR FAMILY CONDOMINIUM STRUCTURE LOCATED AT N28 W6348 ALYCE STREET – MARK SEEFELDT/ AMERICAN HERITAGE BUILDERS

Planner Censky noted that the Plan Commission approved certain changes to the approved 4-family condominium project in September of 2005 with the condition that Mark Seefeldt return for approval the color scheme for the poured concrete/stamped brick-pattern foundation. The consensus of the Plan Commission was that the foundation be of "Buff" or "Wicker" to complement the color of the brick used on the building, and sample materials and a color tab was to be provided for Plan Commission approval. Planner Censky advised there were no other changes to the plan.

Action:

Commissioner Brown moved to approve the Sherwin-Williams "Sands of Time SW6101" foundation color as presented for the project on N28 W6348/50/52/54 Alyce Street. Commissioner Emmerich seconded the motion and it carried without a negative vote, with Commissioner Schara excused.

BEER GARDEN LICENSE REQUEST FOR ERNIE'S WINE BAR, LLC LOCATED AT N49 W5471 PORTLAND ROAD – BEN GRADE

Planner Censky advised that Mr. Grade was seeking approval of a beer garden license to be permitted to serve alcoholic beverages on a proposed outdoor patio to be located to the south of the existing tavern. According to Section 7-2-17(b) of Licensing and Regulations, beer gardens are limited to an area no greater than 50% of the licensed premise, shall be located no closer than 100 feet to a residential structure and no amplified sound or music shall be permitted. He pointed out that the Plan Commission was being asked to review the proposed fence and that the actual beer garden licensing request would be acted on by the Common Council at its April 10, 2006 meeting. The fencing or other measures needed to provide control over the operation of the beer garden shall be approved by the Chief of Police and the Plan Commission.

Planner Censky added that the request complies with the required separation distance from a residential structure and the size restriction. With respect to the fence, the applicant is proposing a 40" high picket fence with rails surrounding the entire outdoor patio. This fencing plan has been reviewed by Chief Tom Frank and his only issue was that the fence completely surround the outdoor seating area.

Planner Censky suggested that, if approved, it should be subject to:

- All areas of the beer garden shall be at least 100 feet from the adjacent residential structure.
- No amplified sound or music is permitted.

Mayor Myers stated that the job of the Plan Commission is to determine if the fence is adequate. The Common Council will decide whether or not to approve the beer garden license.

Council Member Beck questioned whether the Plan Commission should be determining whether or not the beer garden license should be granted prior to Council action on the license and noted that the write-up said "seeking approval of a beer garden license." Mayor Myers responded that Mr. Grade would be seeking approval for the actual license at the Council. Planner Censky noted that the fence approval was part of the process.

Commissioner Brown recollected that the Plan Commission granted the approvals for the Wiesler's beer garden and others, and that he thought the beer garden had to be contiguous to the building.

John Nelson, W55 N470 Spring Court directly to the south, believed he and his neighbors would be dealing with noise. He advised that he can hear everything in the neighborhood and people who are drinking can be loud at night. A 40" picket fence will not block noise and the configuration will not prevent anyone from walking onto his property. He also feared that the business would attract people from other communities, which could cause problems similar to those experienced in Sheboygan.

Arthur Bruemmer is the property owner of N49 W5401 Portland Road, which is directly east of the proposed beer garden. When he built his home, he tried to rezone to four-family as a transition from the commercial tavern to the single-family residential to the east. His request was denied on the basis that the area was absolutely residential. He faulted the petitioner for not contacting the surrounding residential neighbors and asked if a plan had been submitted with the request. Mr. Bruemmer stated that the residential property owners had considerable investments in their property and the beer garden could have a negative impact with noise, lighting, etc.

Jerry Anderson, N46 W5363 Spring Court, reported that he can see Ernie's Wine Bar building from his home. He believed that Police Chief's analysis that a 40" fence was needed to control patrons of the establishment reflected that the use was not compatible with the families with children in the neighborhood.

Mayor Myers reminded those present that the Plan Commission needs to focus on what fencing would be adequate if the beer garden license was granted. The concerns of the neighbors regarding the beer garden license itself should be relayed to the Common Council at its April 10 meeting.

A man in the audience stated that the configuration of the fence would not keep the public away from private property.

Planner Censky advised that the Code does not require that the beer garden fence be contiguous to the building, but it does specifically prohibit any amplified sound or music.

Commissioner Brown suggested that the cart is before the horse in this instance, and Common Council action probably should have been taken before the Plan Commission considered the fence. The public has a right to make their comments to the Common Council before the Plan Commission takes any action. He expressed concern that, if the fence were approved, it would indicate the Plan Commission was in favor of approving the beer garden license. Commissioner Brown was also disappointed that the petitioner was not present.

Mayor Myers stated that the Plan Commission should make a recommendation on the fence for Common Council consideration without assuming whether or not a beer garden license is granted.

Council Member Beck agreed that any recommendation regarding the fence could be construed as a recommendation to approve the beer garden license. She encouraged Commissioners to drive Spring Court to see how close the fence would be to the houses. Fence or no fence, she did not believe a beer garden belongs in this area. Council Member Beck questioned whether this process (approving the fence first) was the correct way to consider the request.

Action:

Commissioner Brown moved to table the recommendation related to the fence for a proposed beer garden at N49 W5471 Portland Road. Commissioner Emmerich seconded the motion. The motion carried without a negative vote, with Commissioner Schara excused.

The public was informed that the Common Council would be considering the beer garden license request at its next meeting on Monday, April 10, 2006 at 7:00 p.m. in the Council Chambers.

LANDSCAPE/OPEN SPACE PLAN, FINAL PLAT, AND REZONING RECOMMENDATIONS FOR 85-LOT TOPVIEW TRAILS SINGLE-FAMILY SUBDIVISION AT THE NORTHWEST CORNER OF THE BRIDGE ROAD AND WAUWATOSA ROAD INTERSECTION – JAMES DOERING/TOWNE REALTY INC.

Planner Censky noted that Commissioners recommended preliminary plat approval for the Topview Subdivision at its March 7, 2005 meeting, which was then approved by Common Council action on April 11, 2005. That approval established, among other things, the FAR maximum of 36% and Lot Coverage maximum of 25% to better control the future home sizes within this project. It also established that neighborhood parkland will be dedicated as part of the final plat and that the developer will be responsible for extending a pedestrian/bike path along the full frontage of

Wauwatosa Road and along the north side of Bridge Street. This project will have the full compliment of improvements typical of Cedarburg subdivisions. The final plat was consistent with the approved preliminary plat and it complied with the City's dimensional standards of the RS-7(PUD) District.

Planner Censky noted, however, that the plat needed to show a 20' storm drainage easement located along the common lot line between Lots 9 and 10, and it should reflect the required 25' wetland setback on Lot 49 from the wetlands located on Outlot 4. Commissioners should also consider whether "TopView Lane" was an appropriate street name as it intersects Wauwatosa Road directly across from Chestnut Street.

Planner Censky pointed out that the landscape/open space and stormwater retention pond plan was also submitted for review and approval. Coupled with this plan was the Open Space Management and Storm Water Ponds Management Agreement, which specifies how the open spaces within the subdivision are to be used and also prescribes the maintenance responsibilities of the homeowners association for both the open spaces and stormwater detention ponds. The developer has agreed to incorporate the City Forester's review comments and suggestions into the plans, which included a type of vegetation to be planting within the roadway islands and parkways to assure their survival. The developer will be required to escrow sufficient funds to cover the time and material cost for installing street trees, and the City will be responsible for actual installation when the time is appropriate.

Planner Censky noted that the location of the neighborhood park has finally been identified within the subdivision and the wetlands have also been identified and staked. Commissioners were asked to consider rezoning in order to establish the appropriate zoning for those areas. Accordingly, the area identified as Outlot 5 on the plat should be rezoned to P-1 and the area in Outlots 2 and 3, identified as wetland/preservation areas, should be rezoned to C-2 Non Shoreland Conservancy District.

City Attorney Vance advised that the escrow account was going to be addressed in the development agreement to be approved by the Common Council along with the homeowners' association agreement. Planner Censky advised that the stormwater management plan would be reviewed in conjunction with the development agreement. City Attorney Vance stated no action would be taken on those items at this meeting.

Planner Censky noted that the Plan Commission determines the street names, and they are checked to make sure they are not duplicating or come close to another name in the City. Vice Chairperson Burgoyne added that the proposed street names did not appear to have a pattern. One of the petitioners advised that their marketing department chose the names loosely on an autumn pattern. Planner Censky advised that the historic name of the farm was "Top View."

Commissioners suggested that the chosen names also be checked for conflicts with the names of streets in the Town of Cedarburg.

Commissioners agreed that some of the names were too long and that the continuous street through the development reflect the name of the subdivision. The consensus was that the street that directly connected Wauwatosa Road and Bridge Street be named "TopView Trail." Since "Autumn Harvest Boulevard" was not a standard boulevard, the name be changed to "Harvest Lane." The petitioner expressed a preference that "Top View" be one word with the "V" capitalized and the Commissioners agreed.

Commissioner Brown questioned whether the utility easement would be better located within the open space access between Lots 7 and 8. Planner Censky advised a note would be placed on the plat that would identify all the outlots within the project as serving, among other things, the purpose of stormwater management and detention pond easements. The petitioner explained that the drainage pipe needed to go between Lots 9 and 10 because of the topography.

Planner Censky explained that Lot 49 would be allowed to measure the 25' setback from the wetland delineation, so the building would be approximately 18' from the property line.

In response to a question from Commissioner Brown, Mr. Doering advised that the pedestrian/bike path terminated in the middle of the outlot area rather than extending through because of safety concerns related to the stormwater feature for drainage and the steepness of the slope. Mr. Doering noted that the City Forester agreed that the trail would be identified by flagstones and then be a mowed path to eliminate maintenance hassles and discourage users that would utilize a paved path.

Action:

A motion was made by Commissioner Brown, seconded by Council Member Beck, to approve the landscape/open space plan, final plat and rezone Outlot 5 to P-1 Park & Recreation District and the wetland/preservation areas in Outlots 2 and 3 to C-2 Non Shoreland Conservancy District for TopView Trails development in the northwest corner of Wauwatosa Road and Bridge Road subject to the following:

- Establish a 20' storm water easement along the common lot line separating Lots 9 and 10.
- Show a 25' wetland setback on Lot 49 from the wetlands shown on Outlot 4.
- The street name "Top View Lane" be changed to "TopView Trail," and "Autumn Harvest Boulevard" be changed to "Harvest Lane."
- Submittal and staff approval of the revised landscape plans incorporating the City Forester's comments.

The motion carried with Mayor Myers, Council Member Beck, Vice Chairperson Burgoyne and Commissioners Brown and Emmerich voting in favor; and Commissioner Kaiman voting against, with Commissioner Schara excused.

REQUEST FOR TEMPORARY USE APPROVAL TO PLACE PORTABLE TO-GO RESTAURANT OF CHICAGO-STYLE FOOD IN THE REAR OF THE SITE AT W62 N596 WASHINGTON AVENUE – RICHARD S. GROWS d/b/a SNAPPY'S

Planner Censky advised that Richard Grows was requesting temporary use approval to sell Chicago style hot dogs, polish sausages, Italian sausages and char burgers from a restaurant trailer to be located behind property at W62 N596 Washington Avenue in the downtown area. Mr. Grows was proposing to operate this concession trailer from April thru October and may consider converting his principal structure into a "Snappy's" restaurant if he determines there is a market for his products. The concession trailer is a full mobile kitchen with a 22" refrigerator, 22" freezer, 24" LP gas griddle, and 40lb LP fryer. It is also equipped with a 72" exhaust hood with exhaust fans, 3 compartment sink, and freshwater and wastewater tanks. Planner Censky noted that Mr. Grows also obtained a vendor's permit and will be selling from a pushcart hot dog wagon in the downtown area along Washington Avenue this summer.

Planner Censky noted that Section 13-1-22(f) of the Zoning Code may permit facilities of this nature with conditions and/or restrictions established by the Plan Commission after review and approval. He believed the establishment of a semi-permanent kitchen trailer is of concern due to potential

impacts on the neighbors from odors, litter, loitering, etc. and Commissioners will need to determine if the use is appropriate for the area as it may set precedence for other similar requests.

Mr. Grows advised that he owned the building at W62 N596 Washington Avenue and he introduced his associate, Jeremiah, who lived in the upper floor. They have worked together in the landscaping industry for 25 years.

Planner Censky pointed out that a letter opposing the request had been received that afternoon from the adjacent neighbor, Karen Hale of Nouveau, for Plan Commission consideration.

Mayor Myers stated that he had concern over locating this type of unit in the Downtown area. The Downtown is unique and there has been great effort to preserve it. While Chicago-style food may be a very viable and appropriate business, he was not sure Downtown Cedarburg was the place for the mobile kitchen.

Mr. Grows provided CAD program photos showing how the area would look with the trailer in the rear of the site. He noted that the aesthetic appearance of the front of the building would remain the same. He added that he would do whatever it would take to make it look nice and someone would always be on site to pick litter up right away. He explained that the trailer was a temporary fixture and that he hoped to eventually convert the building to a restaurant. The trailer is necessary to provide a safe and quality product that consumers will remember. In answer to a question from Commissioner Burgoyne, he confirmed that the food would be prepared on site and most of the products are steamed; he would be willing to eliminate the grilled products if they are a concern to the neighbors. He is interested in bringing authentic Chicago taste to Cedarburg.

In response to Mayor Myer's query about the 12' easement claim in Ms. Hale's letter, Planner Censky noted that the driveway is fenced off with a pedestrian gate, but the neighbor is concerned that the trailer use would block her use of that area.

Council Member Beck supported the introduction of Chicago-style foods into Cedarburg and liked the idea of the hot-dog cart traveling Washington Avenue. However, she was not in favor of having a trailer in Downtown Cedarburg; it is not compatible with the historic nature of the Downtown.

Mr. Grows countered that the trailer would be hidden behind the building and suggested that it might be hauled away every evening. In response to a question from Commissioner Brown, he stated his hours of operation would be 10:30 a.m. to 9:00 p.m., but most nights he probably would not be there until 9:00 p.m.

Mayor Myers suggested that Mr. Grows explore opening his business in one of Downtown's empty storefronts, such as the storefront vacated by Messina's. He stated he liked the idea of the business, but had problems with parking a trailer in the Downtown area, even behind the building.

Commissioner Brown noted that the trailer would be visible from the property to the north and the Interurban Bridge. He was concerned with the precedent that would be established in the Historic District.

Commissioner Emmerich noted that Mr. Grows would be depending on foot traffic and that a storefront would be an advantage to the business and would require less investment.

Mr. Grows advised that he would rather move into a storefront and would check on open spaces Downtown.

Commissioner Brown asked if the cart would still be available regardless if he opened this or not and Mr. Grows responded that yes, that would be great. Commissioner Brown stated that was good.

The consensus of the Commission was that while they liked the concept of a Chicago-style food restaurant in Downtown Cedarburg, they would not support a mobile kitchen to support such a use.

Commissioner Kaiman asked if the lots extended to Cedar Creek. Planner Censky advised that they typically extend to the high water mark. Commissioner Kaiman then asked if City Attorney Vance could help clarify how far into the Creek they extended. City Attorney Vance advised that she did not know that offhand, and was not sure they should get into that too much here; usually it is to the center, but was not sure. Commissioner Kaiman explained he asked because it was not beyond imagination to extend the Cedar Creek Walkway south to the subject site. This would be another reason to disallow Mr. Grows' proposed activity into the area. Commissioners expressed their desire to see Mr. Grows occupy the former Messina's building and reduce the number of open storefronts on Washington Avenue.

**PUD ZONING TIMELINE EXTENSION REQUEST FOR APPROVED MIXED USE PROJECT
PROPOSED FOR THE NORTHWEST CORNER OF MILL STREET AND WASHINGTON AVENUE
– CORNERSTONE BUILDERS, LLC**

Planner Censky explained that Greg Zimmerschied was seeking a fourth PUD zoning timeline extension for his mixed-use project proposed for the vacant site at the corner of Mill Street and Washington Avenue. The Plan Commission granted final approval of the project in April 2003, and while the applicant still plans to pursue it, he has not yet taken out a permit. Mr. Zimmerschied received approval of his first 9-month extension for this project on January 5, 2004, his second on October 25, 2004 and the third extension on July 6, 2005. According to Section 13-1-69, Planned Unit Development Overlay District, it is expected that commencement of a PUD project shall begin within 9 months following approval of a PUD petition. Any extension should be limited to no more than 9 months unless another extension is granted.

Commissioner Kaiman advised that he voted against the extension on July 6, 2005 because it appears this particular builder, despite his excellent reputation and outstanding project on the corner of Washington Avenue and Western Road, is doing nothing to proceed with the project. If the extension is not granted, there would be a greater likelihood he would transfer ownership of the property to somebody who would develop it.

City Attorney Vance cautioned that denying the extension would not necessarily yield that result. Planner Censky noted that the Code has not changed, and by approving the extension you will have an approved project that meets the Code. Mayor Myers added that it was appropriate to approve the extension as long as the Plan Commission agrees with the approved plan.

Planner Censky reported that he had recently spoken with Mr. Zimmerschied, who has started a dialog with a potential anchor tenant. It appears that they are getting close to an agreement.

Mayor Myers opined if the City desired the corner be developed, that there is a suitable plan already approved. If the developer needs to find an anchor tenant, and is to present a proposal to a potential anchor tenant, then he needs to have a valid plan.

Action:

Mayor Myers moved to approve the PUD zoning timeline extension request for the approved mixed use project proposed for the northwest corner of Mill Street and Washington Avenue as requested. The motion was seconded by Vice Chairperson Burgoyne.

Continued Discussion:

Commissioner Kaiman stated that it would be a mistake to grant the extension. It has been three years since the project was approved; it makes no sense to keep granting extensions.

Vice Chairperson Burgoyne noted that it was probably closer to four years because it took a year to agree to a plan. He would approve an extension because Mr. Zimmerschied has proved to be a first-rate developer and has good style and taste in his projects. Vice Chairperson Burgoyne would gamble that given more time, considering the competition from locations Downtown and the redevelopment of the old Clark Station, Mr. Zimmerschied will obtain a 50% occupancy or an anchor tenant with a 10-year agreement required for financing. He added that there is no one clamoring to develop the corner at this time.

Commissioner Kaiman pointed out that the site is a unique parcel in the Downtown based upon the frontage on Washington Avenue and Mill Street.

Commissioner Brown concurred with Mayor Myers that the lot was for sale for years before Mr. Zimmerschied purchased it. Vice Chairperson Burgoyne added that if there were other parties interested in developing the site, Mr. Zimmerschied would receive an offer to sell that he would not be able to pass up.

Commissioner Brown stated that he personally believed the extension should be granted for the simple reason that the approved plan offers the commercial development, with a residential element, desired in Downtown Cedarburg. His opinion was that if another plan were to be presented for the site, it would not likely be commercial based on the fact that there are so many commercial spaces vacant at the moment. The extension would preserve the commercial aspect.

Commissioner Kaiman opined that if the extension were denied, it would spur activity.

Vice Chairperson Burgoyne cautioned against starting over with a new developer, noting that the City had dealt with proposals for the site from numerous developers and received considerable cooperation with Mr. Zimmerschied on his proposal.

Final Action:

The motion carried with Mayor Myers, Council Member Beck, Vice Chairperson Burgoyne, and Commissioners Brown and Emmerich voting in favor; and Commissioner Kaiman voting against, with Commissioner Schara excused.

APPOINT THREE PLAN COMMISSIONERS TO SERVE ON JOINT EXTRATERRITORIAL ZONING COMMITTEE (JETZCO) IN ACCORDANCE WITH SECTION 62.23(7a)(c) OF THE WIS. STATUTES

Planner Censky advised that according to Section 62.23(7a)(c) of the Wisconsin State Statutes, since the City adopted a resolution to exercise its extraterritorial zoning authority for the 5-Corners area, a Joint Extraterritorial Zoning Committee (JETZCO) must now be established. The Committee will be made up of 3 citizen members of the City's Plan Commission and 3 members from the Town to begin a cooperative effort to create a plan and regulations for the area that will be mutually

agreed upon. If the Committee accomplishes this task, a public hearing will be held and the plan and regulations will then be recommended to the Common Council for their consideration. Once enacted by the Common Council, these zoning regulations become the zoning law for the extraterritorial jurisdiction area and the Town no longer exercises zoning jurisdiction for the territory; all future requests for amendment to these zoning ordinances must come to the Common Council of the City of Cedarburg. Accordingly, the Plan Commission needed to appoint those members of this Commission to serve on the JETZCO. The Town has 30 days in which to appoint their members, and once that task is accomplished, the JETZCO will schedule its first meeting.

Mayor Myers stated that only non-elected members of the City's Plan Commission were eligible to serve on the committee. City Attorney Vance advised that the Statute does not stipulate how the three members are selected; it just states that there have to be three citizen members of the Plan Commission and they operate under the umbrella of the full Plan Commission. The Town appoints three members, and they can appoint three Town Board Members. The committee operates under the parameters of the City's Plan Commission, but as to the zoning in the 5-Corners area, only the JETZCO committee of six can vote.

Commissioner Kaiman asked if the three citizen Plan Commission Members are obligated to carry the Plan Commission's agenda to the table and vote accordingly, or are they there to act independently. Mayor Myers responded that they can act independently, but the discussion takes place within the Plan Commission. City Attorney Vance added that it would be the same as the Plan Commission votes, meaning each individual votes as he or she sees fit. Presumably, the Plan Commission will have some influence over their representatives on the JETZCO. Mayor Myers noted that the Plan Commission cannot dictate how the members vote. City Attorney Vance advised that if the JETZCO votes to make a recommendation, it still goes to the Common Council. If the Council does not accept the recommendation, it returns to the JETZCO. This will continue until the Council accepts the JETZCO recommendation. She added that the Plan Commission administers the current Town building code in those areas in which the zoning is frozen and all uses in those areas are conditional uses. Therefore, all development in the area during at least the next 2 years must be approved by the City's Plan Commission.

Commissioner Brown asked if the Town was agreeing to the JETZCO. City Attorney Vance answered that we did not know as of today but the Town has 30 days to appoint its members. Mayor Myers explained that the Council decided to go this route in an attempt to work with the Town to come up with acceptable zoning in the 5-Corners area that makes sense for the City and the Town. It will be the responsibility of the City JETZCO members to try to work with the members appointed by the Town to try to come up with a reasonable plan for zoning in the area. It may be very difficult at times. That is the JETZCO members' responsibility which also includes voting on whatever motions are put on the table.

City Attorney Vance advised that the Statute states: "The entire plan commission shall participate with the joint committee in the preparation of the plan and regulations, or amendments thereto. Only the members of the committee (JETZCO) shall vote" So it is not just the JETZCO members who talk about it. The Plan Commission is part of the whole active discussion, but the JETZCO only votes.

Commissioner Kaiman asked what the Town Board's obligation was, and City Attorney Vance responded that there was none. She added that Town Board Members are eligible for appointment to the JETZCO and it is supposed to be someone with planning expertise — "recognized experience and qualifications." Commissioner Brown understood that there would be a separate JETZCO agenda and that meetings would be held before a Plan Commission meeting. City Attorney Vance

advised that the JETZCO meeting can be held whenever the Plan Commission desires. Commissioner Emmerich asked if there would be any JETZCO meetings independent of the Plan Commission. City Attorney Vance added that it was theoretically possible for the JETZCO to have meetings independent of the Plan Commission, but restated that it the Plan Commission participates with JETZCO in preparation of the plan. She said you would post a Plan Commission meeting and a JETZCO agenda within the Plan Commission meeting. Everything has to pass with a majority vote.

City Planner Censky explained that he staffed the JETZCO for the City of Mequon when they exercised their extraterritorial zoning for the Town of Grafton, and they elected to meet separately from the planning commission. They held their own meetings and reported back to the planning commission after each meeting. City Attorney Vance said the statutory wording was "shall participate," but does not dictate how this participation occurs. This can be decided by the Plan Commission. JETZCO's authority is limited to voting on the zoning plan and regulations for the areas affected.

Commissioner Kaiman asked how a tie would be broken with an even number of participants. Planner Censky advised that Mequon and the Town of Grafton worked together and produced a plan, and then ordinances were adopted.

Commissioner Kaiman pointed out that the meetings would be completely public and noticed, so nothing would prevent other Plan Commission members attending independent JETZCO meetings. City Attorney Vance noted that the Plan Commission can establish any process but the Plan Commission has to participate. At first, logically, the meetings should start out together and then decide the process.

Commissioner Kaiman asked City Planner Censky, because that was rather a contentious issue with Mequon and the Town of Grafton, did he find that those separate meetings seemed to work. Planner Censky responded that he did not notice contention during the meetings at all and they all seemed to work well together; obviously, because they came up with a plan. It does not always work out at that way.

Commissioner Emmerich noted that the paper had stated that potentially there could be no resolution and after two years the Town is free to go their own way. City Attorney Vance advised that the City could ask to extend it for another year but JETZCO would have to vote to approve the extension.

Mayor Myers explained that in order to make the appointments to the JETZCO membership fair and reasonable, he would nominate the three senior members of the Plan Commission. Commissioner Brown stated he would gladly serve on the committee, Commissioner Kaiman also agreed, as did Vice Chairperson Burgoyne. Mayor Myers urged the JETZCO members to begin the process with an open mind, expecting a great deal of resistance, but with the idea that what develops in the 5-Corners area needs to be in the best interest of the entire community.

Commissioner Brown expressed his hope that the Town of Cedarburg would embrace the City's suggestion. Council Member Beck stated that this is a good thing to do. Vice Chairperson Burgoyne asked what would happen if the Town refused to appoint three members to JETZCO. City Attorney Vance advised that the City would have to go to court to require them to do so. She was unaware of any instances where a Town refused to appoint members.

Commissioner Kaiman asked City Planner Censky to provide background information, particularly on the Town regarding their Master Plan and their vision. City Planner Censky advised that the information would be provided at the first meeting. Mayor Myers explained that under extraterritorial zoning, the Town's current zoning has been frozen. Planner Censky noted that PDI went from Town property owner to property owner to discuss what they felt was appropriate for the Master Plan.

Action:

Commissioner Brown moved to appoint the three senior members of the Plan Commission (Vice Chairperson Burgoyne and Commissioners Brown and Kaiman) to represent the City of Cedarburg in the Joint Extraterritorial Zoning Committee, known as "JETZCO." The motion was seconded by Commissioner Emmerich.

Further Discussion:

City Attorney Vance noted that State Statutes do not make any provisions for alternates. Mayor Myers believed reassignments to the JETZCO could be done at any time. Commissioner Kaiman expressed concern that a vote would be taken when only two of the City JETZCO members were present. Commissioner Brown stated that it would probably make sense to name an alternate. Mayor Myers suggested that another citizen member of the Plan Commission could show up if one of the three named representatives could not attend.

Further Action:

Commissioner Brown moved to amend his motion to include an alternate: the next senior of the citizen members, Joe Emmerich.

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

RECOMMENDATION PERTAINING TO USES IN SECTION 13-1-54, THE B-2 COMMUNITY BUSINESS DISTRICT AND IN SECTION 13-1-55, THE B-3 CENTRAL BUSINESS DISTRICT

Planner Censky noted that staff was directed at the last meeting to study the B-2 Community Business District and the B-3 Central Business District and make necessary adjustments to change the more intensive uses listed as permitted by right and reclassify them as conditional uses. He explained that, having worked with the Districts over the past several years and currently completing a thorough review, it was apparent that more work was needed than to just change certain uses to conditional use status. Originally, the Districts were created by compiling a comprehensive list of all existing uses and categorizing them as either permitted by right or by conditional use permit. If a use was not listed, it was not allowed; there was no flexibility. Planner Censky added that over the years certain changes have taken place which have inadvertently resulted in uses being listed as both permitted by right and as conditional uses in the same district.

Planner Censky advised that he redrafted the list of uses by category and then added the phrase "including but not necessarily limited to" so that the characteristics of the use can be judged, rather than whether or not it is listed as by right or as conditional. The more intense uses such as restaurants, taverns, entertainment facilities etc. have been listed as conditional uses. This was completed for both the B-2 and B-3 Districts. Specific to the B-3 District, he had been asked to provide limits/controls over the office uses in the downtown area so more retail tenants would increase the customer traffic patronizing the retail shops. Recognizing that certain downtown buildings were built exclusively for office uses and that front space is considered prime for retailers, the B-3 District classifies office use of first-floor store-front space as a conditional use. Future requests for office use of these spaces would require a public hearing and Commissioners will then

need to determine, on a case-by-case basis, whether or not such request would negatively impact the downtown.

Planner Censky suggested that discussion on the proposed changes be delayed to the next meeting. Although he based the language on the codes of other communities, City Attorney Vance expressed some concerns on the way it was written. He would refine the language to make it more user friendly and make a presentation at the May 1, 2006 meeting.

Commissioner Brown commented that he was not keen on eliminating the lists and was uncomfortable with the language "including but not necessarily limited to." City Attorney Vance advised that the City cannot use that language in the Code.

MAYOR'S ANNOUNCEMENTS

Mayor Myers advised that the Plan Commission would be notified as soon as the appointed Town members of the JETZCO were known. A meeting would then be set up; probably most appropriate would be at the May Plan Commission meeting.

ADJOURNMENT

A motion was made by Commissioner Brown, seconded by Commissioner Emmerich, to adjourn the meeting at 9:30 p.m. The motion carried without a negative vote, with Commissioner Schara excused.

Darla Drumel,
Administrative Secretary